Harmonising Legal Terminology

Elena Chiocchetti – Leonhard Voltmer
editors

EURAC research

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This project has received European Regional Development Funding through the INTERREG IIIB Community Initiative

Alpine Space

Interreg III B

This publication was co-financed by the Interreg IIIB 'Alpine Space' Programme
in the frame of the LexALP project *(Legal Language Harmonisation System for Environment and Spatial Planning within the Multilingual Alps)*.
Further information on the project is provided at the following Internet address:
http//www.eurac.edu/lexalp

Special thanks to the collaborators of the Ministry of Environment for their support.
Thank you very much also to all the LexALP partners and observers for the fruitful collaboration.

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Orders can be placed by e-mail, telephone, fax or postal mail.

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ISBN: 978-88-88906-39-3

Printed by:
Printeam - Bolzano/ Bozen, 2008

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Foreword

LexALP has worked on the harmonisation of the legal terminology of the Alpine Convention in the field of spatial planning, covering the main subjects of sustainable development. More than five hundred terms in the Convention's languages (French, German, Italian and Slovenian) were harmonised. The project results will be very useful, not only for those who are institutionally concerned in the Alpine Convention, but also for professional translators and the broad public. One reason for this is that in a multilingual context precision in translation helps avoiding misunderstandings. This is important when dealing with sensitive political themes. Furthermore, experience shows that the harmonisation of the documents used during Alpine Convention meetings contributes to improve the efficiency of the meetings themselves, as a better quality of the translations helps focussing on substantive issues while avoiding purely linguistic discussions. In this regard, we can say that LexALP created an instrument which will improve the cooperation between the Alpine States.

The harmonisation of terms leads to fixed translation relations. The equivalence of terms ensures that equal rules for the protection and the sustainable development are applied throughout the entire Alpine Space, which is one of the objectives of the Alpine Convention.

Harmonised terms are, legally speaking, means of interpretation of legal provisions. In case of a multilateral treaty under international law with more than one official language such as the Alpine Convention, they contribute to a consistent implementation of the treaty in the whole area of application. For example, the Austrian Administrative Court interpreted the expression 'fragile area' used in Article 14 of the Soil Conservation Protocol by referring also to its French and Italian meaning. Nevertheless, harmonised terms cannot change the content of legal provisions.

My most sincere thanks go to the project team for its efforts. A broad use of the results achieved by LexALP would be most welcome, not least as they will help to better implement the Alpine Convention.

Marco Onida

Secretary General of the Alpine Convention

Preface of the editors

Prescribing language use has been an important ingredient of the nation building era, and language policies have profoundly shaped the linguistic reality in European nation states. The current European unification and regionalisation does not rely on language for political legitimisation, it rather re-introduces linguistic complexity at the level of legislation and norm-giving in general. Prescribing language use often meant prescribing *one* language rather than the other, or prescribing *one* regional variant of a language rather than accepting diversity.

Today, multilingualism has become officially part of norm-giving processes through the distribution of sovereignty to supra- and sub-national levels. This entails that the languages used may not necessarily be the national languages of all Member States or Parties. With different legal languages the question of equivalence arises, either during co-drafting or during translation.

Against this background, the issue of language standardisation is not anymore assimilating, but rather facilitating diversity. The goal of language standardisation in this context is not "one nation – one language", but allowing the use of several different languages without impairing communication. Hence, prescribing language becomes prescribing translation relations.

Prescribing translation relations through harmonisation simplifies a complex and dynamic situation. The scientific and creative competence of translators is somehow limited by setting up a simple substitution rule, at least for certain terms. Translation theory teaches that the interpretation of a source text or source meaning is never finished, never perfect, but for practical reasons the search for a better translation may have to be restricted. The decision for one translation rather than another should be well informed, but even under ideal conditions harmonisation would never be infallible or undisputed. There are of course reasons for preferring one translation to another, but an arbitrary element will always remain. In this respect linguistic standardisation resembles norm-giving in general.

Harmonised terminology has to live with this original sin, but it has the advantage of being ready to use. The shortcomings of any standardisation or harmonisation effort have to be judged against the background of their achievements.

To be able to fully judge the work of the harmonisers – just as it happens for any criticism of legislation – it would be necessary to look at the arguments and discussions taking place during the harmonising or legislative procedure. Parliaments usually keep a record of the discussions and preparatory work that have lead to a law. As regards the LexALP project, which aimed at the harmonisation of the terminology used within the Alpine Convention and its Protocols, there are harmonisation notes in the term-bank, there are

minutes of the Harmonising Group meetings, but there are no word protocols. Therefore, this publication shall also account for the decisions and the painstaking procedure applied. One lesson learnt from this project is, for example, that the ideal composition of a group of harmonisers consists of one lawyer per legal system, one terminologist per language and possibly one jurilinguist (lawyer and linguist at the same time) per participating institution.

There is another aspect common to all norms which strongly affects harmonised terminology: time. The legislator intends to regulate a typical situation at one moment in time, then reality evolves and the norm becomes outdated. Fortunately, norms are open to interpretation and the abstract feature of language allows, at least to a certain extent, to adapt the meaning without having to change the letter of the norm. Contrary to this, there is no space for interpretation in the case of fixed translation relations. Determining a precise translation relation has exactly the intention of limiting interpretation. Harmonised terminology is therefore like glass: transparent and extremely inflexible, breaking at the first strike. It would need constant updating.

Multilingual realities and supranational legislation necessarily lead to legal translation. With a view to this, harmonising translation relations between legal terms can only be of help. The future will surely see more harmonisation in this sense, and we hope that the experiences contained in this publication may guide future activities.

The structure of this publication is from general to specific. It starts with a chapter by G. Peruginelli on the relation between law and computer technology, which played an instrumental, yet paramount role in the LexALP project. Then there is an introduction by P. Angelini and J.M. Church to the implications of multilingualism at supranational level, focussing on the Alpine Convention. The third chapter by the editors presents the general context and goals of the harmonisation within the LexALP project. Chapter 4, written by E. Zamuner, provides the necessary background over international agreements authenticated in several languages. In her article L. Lanzoni illustrates the importance of transnational cooperation for implementing community policy. Chapter 6 by L. Voltmer describes the process of harmonisation in LexALP on the background of legal theory. The following chapter by C. Randier illustrates some specific harmonisation cases in the Protocol on the Conservation of Nature and the Countryside.

This legal publication has a trilingual sister publication by the same editors on the linguistic aspects of harmonisation: *Normazione, armonizzazione e pianificazione linguistica/ Normierung, Harmonisierung und Sprachplanung/ Normalisation, harmonisation et planification linguistique.*

Leonhard Voltmer

Elena Chiocchetti

Bolzano/Bozen, January 2008

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Multilingual Legal Information Access: an Overview

Ginevra Peruginelli

Multilingualism is a phenomenon which greatly affects the efficiency of information exchange among people in every sector of life. Cross-language retrieval systems are tools that contribute to such exchange, supporting research and world-wide communication, helping to search for data irrespective of the language in which information objects are expressed. In particular, in the domain of law a vast category of users need to exchange legal information world-wide and carry out activities in a context where a common understanding of law beyond language barriers is highly desired. However, this requirement is hard to meet, due to the variety of languages and modes in which the legal discourse is expressed as well as to the diversity of legal orders and the legal concepts on which these systems are founded.

1. The phenomenon of multilingualism in the law

Internationalisation and increasing globalisation of the market economy and social patterns of life have created a situation where the need for legal information from foreign countries and from different legal systems is greater than ever before. There is no doubt that the exchange of information is largely dependent on language, to be intended not only as a system of symbols, but also as a means of communication (Wittgenstein 1997) and thus as a tool for mediating between different cultures (Kjaer 2004b). If we consider the language of the law, we notice that the properties of such a language have a major impact on the exchange of legal information. In fact, the language of the law is the expression of legal identities that vary according to systems and countries, where different languages are used to express legislation, case law and doctrine as main components of the various legal cultures (Sacco 2005, Fletcher 2005).

In the current multilingual and multicultural environment there is a significant need – in the academic area, in the legal profession, in business settings as well as in the context of public administration services to citizens – of common understanding and exchange of legal concepts of the various legal systems, while there is a strong pressure for the preservation of their basic sense and value. Both requirements are quite difficult to meet, complicated by the complexity of the legal language and by the variety of modalities used to express law within the various legal systems.

Unlike a number of technical and scientific disciplines, where a fair correspondence exists between concepts across languages, serious difficulties arise in interpreting law across countries and languages, due to the system-bound nature of legal terminology. In fact, each legal order is situated within a complex social and political framework originating from the history, traditions and habits of a particular community. Multilingualism in the legal domain is almost unanimously perceived as a very complex issue. It is a highly debated topic not only among professionals and scholars of comparative law, linguistics, translation theory and practice (de Groot 1998, Sacco 1996), but also among government officials in institutional settings at national and international level, as demonstrated by the efforts made for the preservation and management of the plurality of languages in a number of countries as a guarantee of cultural diversity. This is the case of Belgium, Switzerland, Canada and the EU.

Europe in particular is a typical example of a multi-language and multi-system environment where decisions on linguistic policy are now receiving considerable attention (Gallo 1999). The European Union subscribes to full multilingualism in its 23 official languages, causing a huge amount of translation work for legal documentation. Linguistic policy is faced with the economic and practical problems of handling so many languages. Hence, there is a certain pressure to simplify, at least for certain contexts and specific types of documentation. Two opposite positions are often discussed (Moréteau 1999) when dealing with the management of multilingualism. These are represented by a multilingualism embracing all European languages and being as egalitarian as possible on the one extreme (indeed a very expensive solution) and on the other by the adoption of one single language, in particular a sort of international English, which is already used in some fields of law and specific legal areas such as international trade as well as in the scholarly and professional literature.

In this chapter the various aspects of multilingualism that are crucial for the development of cross-language legal information retrieval will be examined. These are to be identified on the one hand in the intimate link between language and law, covering the crucial issues of conveying legal concepts across languages, and on the other hand in the broad spectrum of comparative issues, more precisely, in the relation between legal systems. While a problem in its own, the situation is exacerbated in a multi-language environment. In fact, every attempt to exchange legal knowledge among different communities and to reach a common understanding of different legal systems must inevitably cope with the problems posed by language and the diversity of the systems. These topics are examined with a view to the extent in which they influence and impact on the development and performance of cross-language legal information retrieval systems.

It seems appropriate to first give a brief overview over the definition and scope of multilingual information access in general, and then highlight the main aspects of cross-

language retrieval of information. In particular, legal information will be dealt with, which is a topic in its own due to the complexity associated with mapping legal concepts across languages and systems.

2. Multilingual information access: definition and scope

Multilingual information access can be defined as the functionality allowing anyone to find information that is expressed in any language. Oard (1997c) identifies it as a selection of useful documents from collections that may contain several languages. Multilingual access is the general expression used to refer to the development, research and applications concerning the above-mentioned functionality. Another expression widely used in literature, also adopted in this study, is cross-language information retrieval (CLIR), often as opposed to within-language (or monolingual) retrieval (Oard 1997b).

The need for multilingual access stems from the acknowledgment that cultural diversity is vital to the maintenance of society and that languages are a strong element of the different cultural traditions. The role of information professionals in this context is crucial, as clearly stated by Clews (1988), who points out that the commitment of libraries to providing access to multilingual information resources means that they should lead the way in developing systems and services to foster cross-language retrieval. As the diversity of the world's languages and cultures generates a wealth of knowledge and ideas, it is essential to develop research studies and tools to preserve and successfully use the variety of resources produced.

With the increasing integration of the EU and the increasingly multicultural nature of modern society and its globalisation, stimulated by the development of digital information and telecommunications networks, the need for multilingual information access has become more and more pressing and the issues connected with cross-language retrieval have increased in importance. Language barriers are critical to the effectiveness of resource sharing and world-wide common access. This problem is also connected with the growing number of information databases now available on networks (Hudon 1997, Oard 1997a, Michos et al. 1999).

Multilingual access to information is a complex and multifaceted topic, embracing technical, functional and strategic issues which have been under discussion in the community of information specialists for many years (and still are). The main issues are functionalities such as thorough and proper handling of characters (their presentation, arrangement, transfer), putting queries in a preferred language and script, retrieving resources irrespective of the language used in searching and indexing, facilitating world-wide communication no matter what the language.

Literature in the late 1960s concentrated mainly on character encoding, font facilities, filing and display of multiscripts[1]. The challenge of accessing multilingual resources in single libraries and on a world-wide scale was perceived as being mostly of technological nature. It was mainly in the late 1970s that careful attention was paid to cross-language retrieval functionalities and tools, software solutions, research projects and studies where CLIR is often associated with disciplines like artificial intelligence and computational linguistics (Michos et al. 1999), machine translation (Kay 1996), language engineering, and natural language processing (Fluhr 1996).

Another important aspect of multilingual access concerns strategic issues and management issues. These refer to the need for general consensus and recommendations to achieve multilingual functionality in information systems. Emphasis is put on the need for a paradigm shift in the community of information professionals to overcome language barriers in information retrieval, taking into account language variety in building information systems. These themes are not as popular in the literature as those concerning technical and functional aspects, but are specifically addressed by some authors such as Borgman (1997) and Nardi-Ford (1998), who focus on the issue of English language dominance.

In addition, it is worth noting that, despite the technological developments which have occurred in the 1990s, until recently digital library research and development have somehow neglected the issues of multilingual presentation and access and have concentrated more on monolingual environments, mainly in the English language. Development of tools and applications embracing different languages, including Asian ones, has nevertheless progressed in these last few years (Peters & Picchi 1997).

2. 1. Multilingual Information Retrieval (MLIR) and Cross-Language Information Retrieval (CLIR)

The field of study that addresses the problem of accessing collections of documents is called Information Retrieval (IR). People use IR systems to get (the documents that contain) the information they need. These systems are based on techniques and tools to compare and match the need for information with the information content of documents. In reality, what the IR systems compare are surrogate expressions, as the query and the document characterisations are an approximation of the two data to be matched: the information need of the user and the information content of documents which are indexed (Salton 1989, Blair 1990). Information retrieval is based on a conceptual model that has been

1 One main concern of the library system has been the management of different character sets in bibliographic databases. Efforts have been made to follow ISO encoding standards to represent the various alphabets, so to allow the exchange of data between systems. The aim is to provide all possible opportunities of data presentation and data exploitation.

extensively discussed (Salton 1989, van Rijsbergen 1979). It includes three information processing functions: indexing, query formulation and matching.

Information retrieval across languages is undoubtedly an application of information retrieval. These two fields share the same goals and a number of information retrieval techniques for matching documents as well as for processing queries are equally useful in a multilingual application. However, cross-language retrieval differs from information retrieval in a significant way as the standard monolingual information retrieval process involves no translation component, which is the main issue to cope with when searching in a multilingual environment.

While nowadays large-scale digital collections help dismantling the geographic barriers to information access, language barriers are still critical to the effectiveness of resource sharing and world-wide common access. In the current digital environment the number of languages texts are written in is considerably increasing and, as a consequence, the problem of handling multilingual information resources is to be connected with the growing number of diverse information databases now available on networks (Hudon 1997, Oard 1997a, Michos et al. 1999). For this reason cross-language information retrieval has become an important area in both research and practice (Oard & Diekema 1998, Peters & Picchi 1997).

Cross-language information retrieval is defined as the capability for users to retrieve material written or expressed in a language different from the query language (Lee et al. 2004), whereas multilingual information retrieval (MLIR) is concerned with the retrieval of information, following a search request in one language, from a collection covering documents in multiple languages. In this chapter general reference is made to CLIR to mean retrieving and accessing information in a multilingual context. The underlying functionality implies the ability of a system to process a query for information in any language, search a multi-language collection and return the most relevant documents.

Cross-language information retrieval has also been referred to as the problem of finding documents for somebody who cannot read the results; otherwise, they would trigger the search in that language (Oard 2000). This is, however, too restricted. In fact, multilingual users might issue a single query into a multilingual collection. Also, there may be the case of users with a limited active vocabulary but good reading comprehension in a second language, who prefer to issue queries in their most fluent language. As such, CLIR is a complex phenomenon, embracing technical, functional and strategic issues.

It is a matter of fact that in the last decade research and development on CLIR have progressed rapidly and issues of multilingual querying, presentation and retrieval have been extensively tackled, mainly in the area of general domain information. A rather limited number of studies and applications have been provided in domain-specific areas (e.g. medicine, environment); cross-language retrieval of legal information has received limited

attention. Despite recent developments in CLIR and the efforts made in this direction by a number of international initiatives and fora, such as the Cross-Language Evaluation Forum (CLEF)[2] and Text Retrieval Conferences (TREC)[3] promoting synchronisation between researchers working in the area by developing systematic tasks, test-suites and evaluation of results, no optimal solution for CLIR is available yet.

The requirements of a cross-language information retrieval system can be clarified by stating that in a multilingual access environment information is searched, retrieved and presented effectively, without constraints due to the different languages and scripts used in the material to be searched and in the metadata, that is bibliographic and semantic information allowing the retrieval of documents. This implies that in creating multilingual access services, both the users' native language and the multiplicity and richness of languages world-wide are to be accommodated. Also, methods have to be developed to allow users to put queries expressed in any language and retrieve information resources independently of the language of the documents and indexing.

One of the main questions arising in the context of CLIR is how the language barrier between the search requests and the documents should be crossed. This involves decisions about what to translate: search requests into the language of the documents, documents into the language of the request, or even both.[4] From a practical point of view the approach followed for large collections is usually based on the most economical method, consisting in simply translating the query at retrieval time into the document (or metadata) languages. This method presupposes that the query can be translated in a reasonably accurate way and that monolingual retrieval systems are available for all languages of the documents. Although many experiments have been carried out using query translation techniques, in the real world they pose a number of problems related to the need of contextualisation and interpretation, which increases when dealing with legal information (Francesconi & Peruginelli 2004, Sheridan et al. 1997).

Retrieving information over languages implies facilities such as multiple language recognition, translation, manipulation of information of both the queries and the documents, cross-language search and retrieval, displaying and merging of results (Peters & Picchi 1997, Bossmeyer 1994). Basically, these components reflect different sides of the problem of multilingual access, covering technical and linguistic aspects. These two aspects

2 CLEF: http://www.clef-campaign.org. The purpose of the Cross-Language Evaluation Forum (CLEF) is to support global digital library applications by developing an infrastructure for the testing, tuning and evaluation of information retrieval systems operating on European languages in both monolingual and cross-language contexts.

3 TREC: http://trec.nist.gov. The objective of the Text Retrieval Conference (TREC), co-sponsored by the National Institute of Standards and Technology (NIST) and the U.S. Department of Defense is to support research within the information retrieval community by providing the infrastructure necessary for large-scale evaluation of text retrieval methodologies.

4 In section 3 approaches to carry out this translation and how far such translation can be successful when legal information is concerned will be considered.

are very rarely dealt with in parallel in research studies and reports on implementations. Issues concerning the presentation of results following a search session, standard character encoding and the development of multilingual thesauri for subject headings generally appear in strictly library-related literature, while topics such as matching queries and documents, query translation, expansion techniques and ranking methods are discussed in wider information professional settings.

The main components of a cross-language retrieval system can be identified in multilingual resources, machine translation, multilingual information retrieval, multilingual information extraction and summarisation as well as user evaluation and studies. In the context of CLIR, multilingual resources include corpora (parallel and comparable, useful to generate translations), lexicons and ontologies, which can be defined as inventories of concepts organised on the basis of some internal structuring principle, which serves to categorise and organise information. The problems connected with such multilingual resources are generally due to their scarce availability and to the high cost, as their development requires specialised human skills. Machine translation, which plays quite an important role in current CLIR systems, consists of an automated process that transforms written text from one language into another and is usually based on bilingual dictionaries or model parameters that can be learnt from a large parallel corpus. As regards free text retrieval, techniques like information extraction and summarisation are generally used. These techniques refer to extracting semantic information from documents to be searched according to their relevance for the users' tasks. Usually a set of extraction rules are developed, either manually or automatically, and after a training phase the knowledge or rules learnt can be used to carry out automatic information extraction and to produce a summary of the document. Due to grammatical and lexical differences between languages these techniques may not be directly applicable in cross-language retrieval.

3. Legal information retrieval and cross-language access

As mentioned above, while much attention has been given over the past years to the study and development of methodologies for accessing multilingual information in general, research has been limited to the specific areas of legal information retrieval and of related cross-language indexing and search tools. It is worth noting that major attention has been paid by scholars and legal experts to linguistic and conceptual aspects of the legal languages: these themes are undoubtedly relevant to multilingual access and can provide important insights into this topic.

The difficulty in effectively accessing multilingual legal material through information retrieval systems definitively lies in the matching and weighing of legal terms across languages (Sacco 1998). This generally implies translating from the language of the query to

that of the material to be found or vice versa and addresses the problem of word disambiguation, which is greatly increased when mapping over legal languages. In fact, crossing the language barrier between search requests and documents implies addressing the problems of the system-bound nature of legal terminology and devising methods to map concepts between different legal systems.

Most projects and system implementations are confined to making legislative and jurisprudential information available at national level; however, in the last few years there has been a wide production of digital legal repositories made available over the Internet in a variety of languages. Hence, the need for accessing such a wealth of information by a wide variety of users all over the world has rapidly increased.

The above-mentioned issues regarding the peculiarities of legal information and information retrieval mechanisms have been highlighted as an introduction to the subject of cross-language retrieval of legal information, where problems are exacerbated due to the linguistic and systemic diversity to be handled in multilingual searching.

Aspects which seem worthy of analysis, being closely related to the development and effectiveness of legal information retrieval systems, are essentially of a linguistic, translational and comparative law nature.

3. 1. Linguistic issues in the legal domain

It has been said more than once that "the law is a profession of words" (Mellinkoff 1963, Sacco 1998). Many of the problems about meaning that are of concern to language specialists turn out to be of interest to legal professionals too and to impact on the exchange and retrieval of legal information. In fact, information retrieval systems are based on language, as queries are matched with the documents to be searched (be they free-text or metadata) through strings.

The relationship between language and law has since long attracted the interest of both jurists and linguists. It is a big concern in our modern society, where the interrelation between different legal orders is common. Both the comparatists operating in academic environments and the legal professionals are faced more and more with issues and cases where disparate legal models and concepts are involved. As these are expressed in different languages, the linguistic problem arises, with the practical implications of multilingualism, as well as with its theoretical principles.

Like language, the law is, in its origin, development and structure intimately linked to the history and culture of each country. A number of linguists and historians of the law have compared law and languages from the point of view of their origins as well as of their patterns of evolution and have pointed out that both law and language have, at their essence, rules which are constitutive of a system (Grimm 1816, Sacco 1993). Moreover,

there is a functional relationship between language and law as knowledge of the law requires language; the legal experts themselves have greatly contributed to the elaboration of the legal languages to better fit them to the needs of the law within the various countries and communities. In this context, the transfer of legal knowledge is entrusted to written or spoken language. This leads a specialist in the field to state that the law cannot manifest itself without language (Vanderlinden 1995).

As language is essentially a communication tool, it is successful when the parties understand each other, even in their disagreement. But while language is a means of understanding, it is also a means of misunderstanding between people belonging to different social groups or cultures. This synchronisation is more than elsewhere fundamental in the language of the law (Vanderlinden 1999), where equivalence of meanings across legal systems are difficult to find and assess, even when the same language is used!

In fact, legal language consists of legal terms, phrases and stable conventions and as such reflects one particular legal system. The system-specificity of legal terms makes a relevant number of legal scholars and professionals state that the language of the law is to be learnt and communicated in its close relationship with a given culture, the related country and the people's history and heritage, conceived as a socially acquired pool of knowledge, which represents its richness and uniqueness. (Moreteau 1999, de Groot 1998). As legal language is culture-bound and entwined with one particular society and its legal system, it is seen as the collective memory of the legal actors belonging to a given legal system. In addition, the multiple languages of law are a concern also among speakers of the same language in so far as, in principle, each category of receiver (citizen, lawyer, judge, public officer, etc.) requires a specific vocabulary for his or her understanding of the law.

While the dependency of legal concepts from a particular legal system is the key characteristic of legal language as a system of signs, such concepts are claimed not to be forever fixed and unchangeable, because they change when legal experience changes (Luhmann 1993). The change of legal concepts is brought about through legal argumentation (Kjaer 2004b). This is evidenced in the multifaceted role of language in establishing, maintaining, and changing concepts, which makes cross-system interoperability even harder to achieve (Kjaer 2004b, Gémar 1982).

A further argumentation is based on the branch of linguistics known as 'linguistic relativity', focusing on the fact that what one language system conceptualises in one way is not conceptualised in the same way in all other language systems. This is especially true of legal terminologies at system level (Engberg 2004).

Legal language, like language in general, can be viewed both as a system of conventional symbols and as a means of communication for people belonging to a particular social group or culture. When it is viewed as discourse, the focus is on its function as a means of communication. Discourse is defined as language used in social practice, com-

municative practice in a particular social group (Fairclough 1992, 1995). So discourse is dependent on the social context in which it is used; it is shaped by that context, which is not an immutable entity.

In this view legal discourse consists of legal rules produced within the framework of a legal system, with the double function of sustaining and reproducing the system and of changing and transforming it. All this has implications on the possibilities of legal communication and, since these changes are brought about in legal discourse, it is possible for the national legal systems and their languages to converge. In addition, today legal discourse is no longer confined to the individual national legal systems, but it transcends national boundaries. This implies that different legal practices, diverse legal languages and cultures are exposed to each other and it is likely that, for example in Europe, the national legal traditions will gradually change along with the emerging intercultural communication of legal actors, who in that way adapt themselves to the changing institutional context of law (Kjaer 2004a).

From another perspective, similar conclusions have been drawn (Gadamer 1975), based on the assumption that reason, as the universal human faculty of intuition by which one sees reality, is the common language of people belonging to different speech communities, but the fact that our experience of the world is bound to language, does not imply an exclusiveness of perspectives. An example clarifies this concept: even though the French legal concept of *contrat* is radically different from the English concept 'contract', due to opposite approaches to contract formation, an English lawyer can understand the French concept and vice versa.

However, coming to an understanding across legal languages and legal systems is a hard process and establishing a common understanding can only be done if the actors base their interpretation on the same tacit suppositions about the world, which forms the point of departure for communicative action. Incorporating these requirements in cross-language information systems requires interpretation and adaptation strategies over languages and systems, which is hard to accomplish without a high expertise in linguistics and comparative law.

3. 2. Legal translation

There is a general consensus that translation is a complex form of action, requiring much feeling and understanding of cultural aspects. There are lots of ongoing discussions among linguists, scholars and professionals working in various settings and disciplines, all sharing the opinion that this activity is much more than the substitution of lexical and grammatical elements between two languages (Capellas-Espuny 2004). Jakobson (1959), a leading linguist and expert in the subject of translation, defines translation as "the interpretation

of verbal signs by means of some other language". Further argumentation is based on the nature and scope of translation, depending on the nature and scope of the translated materials in a way that quite often "the process of translation requires the art of leaving aside some of the linguistic elements of the source text to find an expressive identity among the elements of the source and the target texts" (Capellas-Espuny 2004). To this regard it is also worth mentioning a statement on translation made by an outstanding author who makes an ongoing contribution to legal translation issues: "*la traduction est nécessairement une lutte. Le bon traducteur est celui qui cherche, qui se pose des questions, qui, loin de se contenter de ce qu'il a trouvé d'abord, commence par s'en méfier; il est comme le médecin scrupuleux qui, son diagnostic a été à peine posé, cherche les indices qui pourraient le conduire à le remplacer par un autre mieux fondé. En matière de traduction, on ne pourrait dire que la première idée n'est jamais la meilleure*» (Gémar 1979).

The significance of translation is multifold, allowing different cultures to connect, interact and enrich one another. When taking an element from one particular cultural system and introducing it into another, translation serves as a tool for cultural exchange. As Ralph Linton (1955) points out: "The comparatively rapid growth of human culture as a whole has been due to the ability of all societies to borrow elements from other cultures and to incorporate them into their own". Despite the ever increasing exchange and communication between cultures, coping with language differences and conveying meanings across languages is still a complex process. As regards the area of law, the relation between law and language can significantly broaden the scope of legal translation theory. In fact, while it can be assessed that everyday language already implies a formalised way of communication, legal language introduces a supplementary system of formalisation (Prakken & Sartor 1995). Differences between legal language and ordinary language lie, in the view of a number of authors (White 1985, Phillips 2003, Pozzo 2005), in the use of words and in the connotations they bear when they are incorporated in legal speech.

Translation is seen by White (1990) as "a set of practices that can serve as an ethical and political model for the law and, beyond it, as a standard of justice". In particular, in legal translation the demand for precision is greater than in literary translation (Avalos 1998), since what is to be carefully taken into account is not only compliance with the rules of the foreign language, but also with the rules of the foreign legal system. Further complexity is due to the fact that, although legal translation demands precision and certainty, it is bound to use abstractions, the meanings of which derive from particular (changing) cultural and social contexts. These contexts generate a certain degree of ambiguity that increases when the legal cultures and systems are vastly different from each other (Rotman 1995). It is also claimed (Harvey 2002) that law is an unstable discipline, largely indeterminate, and that legal discourse is fluctuant, with its meaning depending on the language in which it is expressed and even on the target audience.

There are several arguments for the specific status of legal translation, which are widely debated. Legal translation is claimed having a special status (Weston 1990, Gémar 1995), due to the peculiarities of legal language, which is defined as a special-purpose communication between specialists (Šarčević 1997, Harvey 2002). In addition, it is pointed out that the characteristics of legal discourse make legal language not restricted to specialists, but understandable also by the layman (Heutger 2003). Furthermore, the point is made that not only prescriptive documents are to be considered in legal translation, but also the expressive or persuasive function which is found in legal discourse, occurring, for example, in the explanatory parts of a judicial decision or in a doctrinal work. It is the complex communication situation which is peculiar to the language of the law and the perspective nature of legal discourse that makes legal translation so special, in a way that in transferring a source legal text into a target one, this latter must produce the same legal effects of the original (Šarčević 1997, Gémar 1995).

In contrast to what happens with disciplines as mathematics or chemistry, where there is an objective extra-linguistic reference, legal realities are conceived as the result of legal discourse, which creates its own reality from different or shared historic traditions, in one or several languages. Thus, legal realities cannot coincide or can coincide only partially when they focus on a common international legal phenomenon.

However, several different opinions are expressed denying the special status of legal translation, and arguments are offered on equally specific disciplines, as, for example, astrophysics, where the target text must have effects in the special subject area (Harvey 2002). Furthermore, the characteristics of the law as a system-bound discipline are also typical for several subject areas like religion and political science, where the notion of system is an inherent feature. On the whole, the opinion is widely shared that legal translators are more rigidly bound to specialised knowledge than the translators of everyday language or the humanities (Gizbert-Studnicki 1987) and that finding out terminological equivalence between terms is a serious problem when comparable concepts do not exist in the legal systems expressed by the languages to be mapped. In this context the danger of ambiguity and miscomprehension is considerable.

A field where the significance of legal translation is evident in many respects is international law. Since the right of the States to communicate in their own language has been accepted, translation has become more important than ever in this field of law. Yet, very little attention has been devoted to language in international law and there is still the danger of a communication gap between nations. Translation also matters greatly for international law in the area of international organisations. For example, the plurality of languages in the United Nations creates a serious challenge to communication: this task is faced by the multilingual system ODS – Official documents of the United Nations,

which covers all types of official UN documentation available in the six official languages, namely Arabic, Chinese, English, French, Russian and Spanish.

On a practical level legal translation requires both a comparative study of the different legal systems and an awareness of the problems created by the absence of equivalents (Capellas-Espuny 2004). This means that legal translators must be familiar with the legal culture of the target context in order to reformulate an equivalent meaning through what they judge to be the most appropriate linguistic and legal expressions. In fact, a particular concept in a legal system may have no counterpart in other systems, or a particular concept may exist in two different systems but may refer to different realities. In other words, law lacks a common knowledge base or "universal operative referents" (Pelage 2000), which makes it very difficult to find equivalents for culture-bound terms, especially those concerning legal concepts, procedures and institutions (Harvey 2002). To this regard there is an important distinction to be taken into account: the normative language of the law (as found in statutes and judicial reports), where translation is likely to be more constrained by the words of the positive law, and the language of the legal doctrine (used in law review articles, or monographs) where translation can be adapted to the spirit of the message. Finally, translating a text from the language of a civil law country to the language of another civil law country is generally less complicated than translating the same text to the language of a common law country (De Vries 1969).

Addressing the problem of functional equivalence is a major task of legal translators, who need to find an equivalent in the target language legal system for the terms of the source language legal system. Because of the system-specificity of legal terms, full equivalence can only be achieved between the languages of the same legal systems, as is the case when translating within a bilingual or multilingual legal system, such as Belgium, Finland, Switzerland and – to some extent – Canada (Gémar 1988). Where the source and target language relate to different legal systems, equivalence is rare (Sandrini 1994). To this regard de Groot (1996, 1998) points out that near-full equivalence can be found when the legal systems related to the source language and the target language have one legal area relevant to the translation in common. This is the case of the implementation of treaties, EU harmonisation or one legal system willingly adopting the legal solutions of another system.

Where the source language and the target language relate to different legal systems and the above exceptions are not at issue, perfect equivalence is rare. Nevertheless, certain terms relating to different legal systems will readily be seen as equivalents by translators. Kisch (1973) states that translatability is achieved if the terms correspond in essence and, according to this author, "this is a question of pragmatic order".

It is possible that in a particular context, such as the legal domain, certain words are acceptable equivalents where they are not in a different context. Relevant is also whether

a translation needs to be prepared to give somebody who does not master the source language a summary impression of the contents of the text, or whether the translation will receive the status of authentic text in addition to or in substitution of the source text. In the latter situation it is important that the meanings of the terms in the target text are not narrower or broader than those in the source text (de Groot & van Laer 2006).

On the principle of expressing a source language term by a 'functional' equivalent of the target language, there is a general consensus on the principle that the first method is that of functional equivalence: using a term or expression in the target language which embodies the nearest situationally equivalent concept (Šarčević 1988, Weston 1990, Šarčević 1997, Temorshuizen-Arts 2003). However, doubts about this approach are justified, as for a target language term to be identified as an equivalent to a source language term there must not only be functional equivalence, but also a similar systematic and structural embedding (de Groot 1999).

If no acceptable equivalents in the target language legal system can be established, different solutions must be sought. Basically, three subsidiary solutions may be distinguished (Šarčević 1997, Wiesmann 2004):

1. preserving the source term (loanword): Here no translation is provided and the term may be explained by adding information in parentheses or in a footnote. But in this case the main purpose of conveying the meaning of the source terms through a target term is definitely not fulfilled.

2. neologism: A new term is created in the target language that does not form part of the terminology of the target language legal system, if necessary in combination with an explanatory footnote.

3. paraphrasing: A description is used to render the source language term in the target language. If the paraphrase in the target language is a perfect definition of the source language concept, such a paraphrase approximates an equivalent composed of several words. Šarčević (1997) qualifies this as a descriptive equivalent. This is the case of a legal entity that is described, even though it does not exist as such in the target language legal system; however, the combination of its elements makes the term accessible to a lawyer trained in that system.

While interpreters often tend to choose the solution involving cognates, literal translation, synonyms and neologisms, these, however, have undesirable effects on both the accuracy and the effectiveness of communication. This tendency reveals a lack of awareness concerning the semantic discrepancies between the legal terms in the source language and in the target language on the part of interpreters. For these reasons, paraphrase is perhaps the most effective technique, involving re-formulation at sentence level in order to transfer the speaker's intention and highlight a specific context. A significant lexico-grammatical shift that helps to achieve this should not be seen as resulting in free or in-

accurate interpreting. It may be the only way of achieving listener-centred interpretation and conveying the meaning in the target language. It is important to remember that, unlike in other technical contexts, finding an adequate solution that combines the accuracy necessary for the faithful conveying of legal concepts and the need of communication is very challenging.

One serious practical problem legal translators are faced with is the limited help provided by legal dictionaries, which fail to meet their expectations for conveying the meaning of the source legal language into the target legal language. According to de Groot and van Laer (2006), who extensively analyse the problem of functional equivalence of legal terms, only very few dictionaries are reliable tools. These authors propose to indicate the degree of equivalence and to provide alternatives according to area of law, legal system and use.

As illustrated above, the comparison of law and translation studies shows differences of perspective, especially in the application of the rule of equal authority, which has not been used in translation studies, but also reveals similarities, with regard to the weaknesses attributed to translation (secondary nature of translation, authority of the original text). In spite of these common views, law and translation studies continue to develop separately, even though it would plainly be an advantage if they shared some of their theoretical approaches (Lavoie 2005).

Legal translation is an essential function for cross-language retrieval systems. One major question concerns the translation strategy to be adopted in order to ensure that users access legal information independently of the language used in a query. As described above, legal translation mainly refers to texts, whereas in cross-language retrieval what mainly matters is handling single or combined units of information as searched by users. There are different approaches to legal translation that can be used for accessing multilingual legal information.

In general the approach of fidelity to the letter of the original document, that is the strict adherence to the original, has long lasted over the centuries. Little by little the method of simple linguistic equivalence has given way to a target-oriented translation adopting a functionalist approach, where it is not formal correspondence between source and target text that is to be sought, but rather the equivalent legal effects principle (Šarčević 1997). Despite the functionalist approach having received much attention, so far linguistic fidelity is still a popular approach, being recommended by the United Nations instructions for translators (Harvey 2000). Furthermore, a narrow view of fidelity to the original text is favoured by Court interpreters (Morris 1995).

Other methods of translation, such as borrowing (translation procedure whereby the translator uses a word or expression from the source text in the target text) and creation of neologisms are scarcely significant in cross-language information retrieval, where the objective is to find materials in any language, irrespective of the language used in searching.

3. 3. Issues of comparative law

The problems raised by multilingualism are strictly connected to those related to the variety and diversity of legal systems and as such to comparative law. Far from the opinion that pursuing comparisons may be limited to descriptive translations or summaries of foreign law, a number of comparatists (van Hoecke 2004, Schlesinger 1995, Sacco 1991) express their doubts about the possibility of a real comparison of legal systems. This does not mean ignoring that comparative research has reached very good results in putting scholars and legal professionals to work together in comparative projects, launching harmonisation activities and, at EU level, having codes drafted as well as having directives fitted with the legal concepts and structure of the Member States.

Retrieval systems for legal information across different legal systems represent a practical approach to the confrontation and exchange of legal cultures. Since comparison involves observation and explanation of similarities and differences, comparative research can give a major contribution to the development of these information systems. In fact, the implementation of retrieval functionalities implies taking into account and properly managing the peculiarities of legal concepts across systems, handling the variety of languages used to express these various concepts as well as addressing the terminological issues of representing the various legal cultures.

A glance to worldwide legal orders shows that several countries have been operating in a multi-system and multilingual environment for many years: Canada, Switzerland, Belgium, Spain are only some examples of this, not to mention the European Union, with its 27 countries with their respective systems, languages and families of law. This pluralism is managed using different methods and practices, based on translation, interpretation, adaptations of legal terms and in a number of cases on multi-language drafting.

Multilingualism and comparison among systems are often addressed as a joint main issue in cooperative efforts promoting harmonisation activities for the creation of uniform law in various areas (at EU level efforts have mainly been made in contract, private and trade law). It is a matter of fact that the direct implications of comparing and possibly integrating different legal concepts and structures are intimately linked to language issues.

Many comparatists are strongly concerned with the implications of the differences existing between the cultural contexts underlying the various legal languages and with the difficulties in transferring legal meanings and legal concepts from one legal system to another, even when the same language is used (Kjaer 2004a). A number of frequently mentioned examples refer to this phenomenon, such as *societé* in the French legal language in France, which has not the same meaning as *sociéte* in the French legal language in Belgium (Vanderlinden 1999). Similarly, *Besitz* means factual possession for a German. However, an Austrian lawyer understands *Besitz* as the factual possession including

the *animus domini*, that is *Innehabung.* So even German-speaking lawyers from Austria, Germany, Liechtenstein and Switzerland will not automatically understand each other's legal terminology (Heutger 2004).

In recent years research studies increasingly concentrate on the relation between legal language and the comparative analysis of different legal orders. This topic, mainly debated in conferences, is often tackled from the point of view of the validity and performance of legal translation and of the analogy between legal translation and legal interpretation. Many are the initiatives aimed at laying the foundation for a common frame of reference and at promoting, for example at EU level, a pan-European terminology (Pozzo 2003).

In addressing the issues related to the development of systems and tools for accessing legal information across legal systems, consideration is to be given to the methods employed in the comparative process of legal systems: integrative as opposed to contrastive (Schlesinger 1955). Looking at the methods followed, it is likely that these comparative law approaches can influence the cross-system retrieval techniques adopted in the implementation of retrieval systems.

In continental Europe a *jus commune* emerged over a number of centuries, which did not mean an entirely uniform law, but certainly a set of shared formative elements of the law, called by Sacco 'legal formants' (Sacco 1991). With the age of codification, two facts contributed to the creation of intellectual barriers between the legal systems of the several nations: the abandonment of Latin and the adoption of national codes in the language of each country. This introduced a contrastive approach in the practice of comparative law and legal professionals treated the national systems as foreign law. It is only under the recent influence of transnational exchange and increasing cross-border transactions in every sector of life, that a common core of legal systems is being looked for and that an integrative comparison has newly emerged among legal scholars.

The current debate among comparative scholars is extremely rich and complex. It is claimed that original innovation in law is very small and borrowing and emulation are of central importance in understanding the course of legal change (Sacco 1991). Nevertheless, the focus is also on the divergences and peculiarities of common and civil law systems, namely in their formants, principles and rules, manner of reasoning of lawyers and use of authorities guiding them in legal questions. However, the possibility for fruitful convergence and mutual understanding is envisaged and encouraged (Schlesinger 1995). Reciprocal influences, even though not necessarily direct legal transplants, are likely to happen and the point is made that in the first decades of the twentieth century the differences between common law and civil law traditions were emphasised, whereas today, at least in a number of fields of law, the common elements are sought for, rather than differences stressed (Orucu 1999).

The convergence or divergence approaches mentioned above are key elements for implementing multilingual retrieval tools and services: according to the chosen approach, the methods followed in these systems will facilitate terms and concepts to be matched across legal systems, adapting concepts of different systems and helping contextualisation to approach the most similar concept in the target language and system. In a more restrictive approach, only broad correspondences will be established focusing on broad concepts which are likely to be commonly understood by a variety of users.

4. Conclusion

Access to information regardless of language barriers is a key factor for effective global sharing of knowledge. This need has created a convergence of interests from various research communities around cross-language retrieval, which is becoming more and more popular between information specialists. Referred to legal information, it is to be intended both as a *de-facto* situation characterised by the existence of different legal languages, and as the set of issues involved in the management of legal information across language barriers.

In order for legal material to be accessible worldwide, interoperability is paramount, but so far there are not many solutions for cross-language legal information access and no truly multilingual information system is available yet. In this sense, the LexALP Project[5] is a pioneer project within Europe, aimed at harmonising the terminology of the Alpine Convention in the four official languages (French, German, Italian and Slovene), in a way that member States can achieve fruitful cooperation and a common understanding of their respective regulations and strategies in the fields of environmental law, sustainable development and spatial planning.

All this implies a labour-intensive work as the model of legal multilingualism is not simply to be confined to the transposition of legal concepts from one system to another, but it is likely to require a cooperative venture, an orchestration process involving all stakeholders responsible for the various legal systems: legislators, judges, legal professionals and eventually citizens in an effort towards a common understanding of law beyond language and system barriers.

5 The methodologies and instruments developed by LexALP allow to compare the specialised terminology of six different national legal systems (Austria, France, Germany, Italy, Slovenia and Switzerland) and more than one supranational system (EU law, International law and, within the latter, the particular frame of the Alpine Convention) in four different languages, and to harmonise it. Further information in the following chapters.

Bibliography

Altuna, Bélen (1994): Considerations and requirements in designing Spanish multilingual library catalogues. In *Automated systems for access to multilingual and multiscript materials:* proceedings of the second IFLA satellite meeting, Madrid, 18th–19th August, 1993. München: K. G. Saur, 29-44.

Avalos, Francisco (1998): *Legal translations: some tips.* Lecture delivered at National Language Resource Center, San Diego State University. http://www.law.arizona.edu/Library/Research/Guides/legal_translations.cfm?page=research

Blair, David C. (1990): *Language and representation in information retrieval*. Amsterdam [etc.]: Elsevier Science.

Bobrow, Daniel G./ King, Tracy H./ Lee, Lawrence C. (2007): Enhancing legal discovery with linguistic processing. http://www2.parc.com/isl/groups/nltt/papers/bobrow.pdf

Borgman, Christine L. (1997): Multi-media, multi-cultural, and multi-lingual digital libraries, or how do we exchange data in 400 languages? In *D-Lib magazine*. http://www.dlib.org/dlib/june97/06borgman.html

Bossmeyer, Christine (1994): What's next: issues arising from the satellite meeting. In *Automated systems for access to multilingual and multiscript materials*: proceedings of the second IFLA satellite meeting, Madrid, 18th-19th August, 1993. München: K. G. Saur, 167-173.

Cappellas-Espuny, Gemma (2004): The problem of terminological equivalence in international maritime law: the case of *hypothèque* and mortgage in the document Final Act and International Convention on maritime liens and mortgages. In *Journal of diplomatic language,* 1:4.

CLEF - Cross-Language Evaluation Forum. http://www.clef-campaign.org

Clews, John (1988): *Language automation worldwide: the development of character set standards*. British Library R&D report 5962. Harrogate: SESAME Computer Projects.

de Groot, Gerard-René (1996): Het Vertalen van Juridische Informatie. In *Preadvies Nederlandse Vereniging voor Rechtsvergelijking*, 53. Deventer: Kluwer, 1-77.

de Groot, Gerard-René (1998): Language and law. In *Netherlands report to the fifteenth International Congress of Comparative Law*. Antwerp/ Groningen: Intersentia, 21-32.

de Groot, Gerard-René (1999): Das Übersetzen Juristischer Terminologie. In de Groot, Gerard-René & Schulze, Reiner (eds.): *Recht und Übersetzen.* Baden-Baden: Nomos, 11-46.

de Groot, Gerard-René & van Laer, Conrad J.P. (2006): The dubious quality of legal dictionaries. In *International journal of legal information*, 34:1 (spring), 65-86.

De Vries, Henry P. (1969): *Foreign law and the American lawyer: an introduction to the civil law method and language*. New York: Parker School of Foreign and Comparative Law, Columbia University.

Dowlin, Kenneth E. (1994): Issues in offering multilingual and multiscript library services: the key to the global village library. In *Automated systems for access to multilingual and multiscript materials: proceedings of the second IFLA satellite meeting, Madrid,* 18th-19th August*, 1993.* München: K. G. Saur, 23-26.

Engberg, Jan (2004): *Statutory texts as instances of language(s): consequences and limitations of interpretation*.

http://www.brooklaw.edu/students/journals/bjil/bjil29iii_engberg.pdf

Fairclough, Norman (1992): *Discourse and social change*. Cambridge, MA: Polity Press.

Fairclough, Norman (1995): *Critical discourse analysis: the critical study of language*. London/ New York: Longman.

Fletcher, George P. (2005): The language of law: common and civil. In Pozzo, Barbara (ed.): *Ordinary language and legal language.* Milano: Giuffrè, 83-107.

Fluhr, Christian (1996): Multilingual Information Retrieval (Chapter 8.5). Battista Varile, Giovanni & Zampolli, Antonio: *Survey of the State of the Art in Human Language Technology*. http://cslu.cse.ogi.edu/HLTsurvey/ch8node7.html

Francesconi, Enrico & Peruginelli, Ginevra (2004): Opening the legal literature portal to multilingual access. In *DC-2004: Proceedings of the International Conference on Dublin Core and Metadata Applications*, 11th-14th October, Shanghai, 37-44.

Gadamer, Hans-Georg (1975): *Truth and method*. New York: Seabury Press.

Gallo, Giovanni (1999): Les linguiste juristes de la Cour de Justice des Communautés européennes. In Sacco, Rodolfo & Castellani, Luca (eds.): *Les multiples langues du droit européen uniforme*. Torino: L'Harmattan Italia, 71-89.

Gémar, Jean-Claude (1979): La traduction juridique et son enseignement: aspects théoriques et pratiques. In *La traduction juridique*. *Meta*, 24:1, 35-53.

Gémar, Jean-Claude (1982): Langage du droit et traduction : essays de jurilinguistique. In Gémar, Jean-Claude (ed.): *The Language of the Law and Translation: Essays on Jurilinguistics.* Québec: Linguatech-Conseil de la langue française.

Gémar, Jean-Claude (1988): Le Traducteur Juridique ou l'interprète du Language du Droit. In Nekeman, Paul (ed.): *Translation, our Future/ La Traduction, Notre Avenir, Proceedings of the Xlth World Congress of FIT*. Maastricht, 422-430.

Gémar Jean-Claude (1995): *Traduire ou l'art d'interpréter, langue, droit et société: éléments de jurilinguistique*. Québec: Presses de l'Université du Québec.

Gizbert-Studnicki, Tomasz (1987): Is an empirical theory of the language of the law possible? In Ziembinski, Zygmunt (ed.): *Polish contributions to the theory and philosophy of law*. Amsterdam: Bodopi, 99-114.

Gollins, Tim & Sanderson, Mark (2001): Improving Cross-Language Retrieval with Triangulated Translation. In *Proceedings of the 24th Annual International ACM SIGIR Conference on Research and Development in Information Retrieval*, New Orleans, 9th-13th September, 90-95.

Grimm, Jacob (1816): Von der Poesie im Recht. In *Zeitschrift für geschichtliche Rechtswissenschaft*, 25.

Harvey, Malcolm (2002): What's so special about legal translation? In *Meta*, 47*:2,* 177-185.

Heutger, Viola (2003): *Law and language in the European Union*. http://www.jus.uio.no/pace/law_and_language_in_the_european_union.viola_heutger/landscape.pdf

Heutger, Viola (2004): A more coherent European wide legal language. In *European Integration online Papers (EioP)*, *7:2*. http://eiop.or.at/eiop/pdf/2004-002.pdf

Hudon, Michèle (1997): Multilingual thesaurus construction: integrating the views of different cultures in one gateway to knowledge and concepts. In *Knowledge Organisation, 24:2,* 84-91.

Jakobson, Roman (1959): On linguistic aspects of translation. In Brower, R. A. (ed.): *On Translation*. London & New York: Oxford University Press.

Kay, Martin (1996): Machine Translation: the disappointing past and present. In *Survey of the State of the Art in Human Language Technology.* http://cslu.cse.ogi.edu/HLTsurvey/ch8node4.html#SECTION82

Kisch, Isaac (1973): Droit comparé et terminologie juridique. In Rotondi, Mario (ed.): *Inchieste di diritto comparato*. Padova/ New York, 407-423.

Kjaer, Anne Lise (2004a): A common legal language in Europe? In Van Hoecke, Mark (ed.): *Epistemology and Methodology of Comparative Law*. Oxford: Hart.

Kjaer, Anne Lise (2004b): Convergence of European legal systems: the role of languages. In *Language and culture, 29*, 125-137.

Landry, Patrice (2003): Cross-lingual applications: Workshop 4. In *ELAG 2003: cross-language applications and the Web. 27th Library Systems Seminar, Bern, 2nd-4th April*. http://www.elag2003.ch/ws/ws_4.pdf

Lavoie, Judith (2005): Droit et traductologie: convergence et divergence. In Gémar Jean-Claude & Kasirer, Nicholas (eds.)*: Jurilinguistique entre langues et droits*. Bruxelles: Bruylant, 523-536.

Lee, Kyung-Soon/ Kageura, Kyo/ Choi, Key-Sun (2004): Implicit ambiguity resolution using incremental clustering in cross-language information retrieval. In *Information processing and management,* 40:1, 145-159.

Linton, Ralph (1955): *The tree of culture*. New York: Knopf.

Luhmann, Niklas (1993): *Das Recht der Gesellschaft.* Frankfurt/Main: Suhrkamp.

Matthijssen, Luuk (1999): *Interfacing between lawyers and computers: an architecture for knowledge-based interfaces to legal databases.* The Hague/ Boston: Kluwer Law International.

McCarley, J. Scott (1999): Should we translate the documents or the queries in cross-language information retrieval? In *Proceedings of the 37th Annual Meeting of the Association for Computational Linguistics (ACL 99)*, University of Maryland, College Park, June 20th-26th, 208-214.

Mellinkoff, David (1963): *The Language of the Law.* Boston/ Toronto: Little, Brown.

Michos, Stephanos/ Stamatos, Efstathios/ Fakotakis, Nikos (1999): *Supporting multilinguality in library automation systems using A. I.* http://slt.wcl.ee.upatras.gr/papers/michos3.pdf

Moens, Marie-Francine (2006): Improving access to legal information. In Oskamp, Anja and Lodder, Arno (eds.): *Information technology and lawyers*. Dordrecht: Springer, 119-136.

Moreteau, Olivier (1999): L'anglais pourrait-il devenir la langue juridique commune en Europe? In Sacco, Rodolfo & Castellani, Luca (eds.): *Les multiples langues du droit européen uniforme.* Torino: L'Harmattan Italia, 143-162.

Nardi-Ford, Loredana (1998): *VALA Conference Sponsor report: report on VALA Conference to COLUG on 29/7/1998 at the CIAC Italian Resource Centre in Forrest*. http://archive.alia.org.au/sigs/online/reports/vala.report.html

Morris, Marshall (ed.) (1995): *Translation and the law.* Amsterdam/ Phialdelphia: Benjamins.

Oard, Douglas W. (1997a): Serving users in many languages: cross-language information retrieval for digital libraries. In *D-Lib Magazine*, December.

http://www.dlib.org/dlib/december97/oard/12oard.html

Oard, Douglas W. (1997b): *Alternative approaches for cross-language text retrieval.* http://www.glue.umd.edu/~dlrg/filter/sss/papers/oard/paper.html

Oard, Douglas W. (1997c): Cross-language text retrieval research in the USA. In *Third DELOS Workshop: Cross-Language Information Retrieval*, Zurich, 5th-7th March. http://www.ercim.org/publication/ws-proceedings/DELOS3/Oard.pdf

Oard, Douglas W. & Diekema, Anne R. (1998): Cross-language Information Retrieval. In Williams, Martha E. (ed.): *Annual Review of Information Science and Technology,* 33. Medford: Information Today.

Oard, Douglas W. (2001): Evaluating interactive cross-language information retrieval: Document selection. In Peters, Carol (ed.): *Proceedings of the First Cross-Language Evaluation Forum*, Lisbon, 21st September.

Orucu, Esin (1999): *Critical comparative law: considering paradoxes for legal systems in transition.* http://www.ejcl.org/41/art41-1.doc

Pelage, Jacques (2000): La traductologie face au droit. In *Proceedings of the International Colloquium University of Geneva, 17th-19th February.* Berne: Association Suisse des Traducteurs, Terminologues et Interprètes (ASTTI), Ecole de traduction et d'interprétation de Genève (ETI), 125-131.

Peters, Carol & Picchi, Eugenio (1997): Across languages, across cultures: issues in multilinguality and digital libraries. In *D-Lib magazine*, *May.* http://www.dlib.org/dlib/may97/peters/05peters.html

Peters, Carol & Sheridan, Paraic (2001): Multilingual access for information systems. In *67th IFLA Council and general Conference,* August, 16-25. http://www.ifla.org/IV/ifla67/papers/099-183e.pdf

Phillips, Alfred (2003): *Lawyer's language: how and why legal language is different.* London/ New York: Routledge.

Pozzo, Barbara (2003): Harmonisation of European contract law and the need of creating a common terminology. In *European review of private law,* 11:6, 754-767.

Pozzo, Barbara (ed.) (2005): *Ordinary language and legal language.* Milano: Giuffrè.

Prakken, Henry & Sartor, Giovanni (1995): On the relation between legal language and legal argument: assumptions, applicability and dynamic priorities. In *Proceedings of the Fifth International Conference on Artificial Intelligence and Law.* New York: ACM, 1-10.

Rotman, Edgar (1996): The inherent problems of legal translation: theoretical aspects. In *Indiana International and Comparative Law review,* 6:1, 187-196.

Sacco, Rodolfo (1991): Legal formants: a dynamic approach to comparative law. In *The American Comparative Law,* 1, 343-358.

Sacco, Rodolfo (1996): Riflessioni di un giurista sulla lingua (lingua del diritto uniforme e il diritto al servizio di una lingua uniforme). In *Rivista di diritto civile,* 42:1, 57-65.

Sacco, Rodolfo (1998): Langue et droit. In *Rapports nationaux italiens au XVéme Congrès International de Droit Comparé.* Bristol/ Milano: Giuffrè.

Sacco, Rodolfo (1993): Il diritto muto. In *Rivista di diritto civile,* 6, 689-702.

Sacco, Rodolfo (2005): Language and law. In Pozzo, Barbara (ed.): *Ordinary language and legal language.* Milano: Giuffrè, 1-21.

Salton, Gerard (1989): *Automatic text processing: the transformation analysis and retrieval of information by computer.* Reading (Mass.): Addison-Wesley.

Sandrini, Peter (1994): *Deskriptive Begriffsorientierte Terminologiearbeit im Recht, Problemstellung und Lösungsansätze vom Standpunkt des Übersetzers.* Doctoral Thesis, University of Innsbruck.

Šarčević, Susan (1988): Bilingual and Multilingual Legal Dictionaries: New Standards for the Future. In *Revue Générale de Droit*, 970 ff.

Šarčević, Susan (1997): *New approach to legal translation.* The Hague/ Boston: Kluwer law International.

Schlesinger, Rudolf B. (1995): The past and future of comparative law. In *American Journal of Comparative Law,* 43, summer, 477-481.

Sheridan, Paraic/ Braschler, Martin/ Schauble, Peter (1997): Cross-language information retrieval in a multilingual legal domain. In Peters, Carol & Tanos, Costantino (eds.): *Proceedings of ECDL-97, 1st European Conference on Research and Advanced Technology for Digital Libraries,* Pisa, 1st-3rd September, 253-268.

Temorshuizen-Arts, Marjanne (2003): *Juridische Semantiek. Een Bijdrage tot de Methodologie van de Rechtsvergelijking, de Rechtsvinding en het Juridisch Vertalen*. Doctoral Thesis, University of Leiden.

TREC: *Text REtrieval Conference* (2004): http://trec.nist.gov

Vanderlinden, Jacques & Snow, Gérard (1995): *Francais juridique et science du droit.* Bruxelles: Bruylant.

Vanderlinden, Jacques (1999): Le future des langues du droit ou le dilemma du dernier orateur. In Sacco, Rodolfo & Castellani, Luca (eds.): *Les multiples langues du droit européen uniforme*. Torino: L'Harmattan Italia, 193-222.

van Rijsbergen, Cornelis J. (1979): *Information Retrieval,* 2nd ed. London/ Boston: Butterworths.

Weston, Martin (1990). Theoretical and practical approaches to translation. In *An English Reader's Guide to the French Legal System*. New York: Berg.

White, James B. (1985): Law as rhetoric, rhetoric as law: the art of cultural and communal life. In *The University of Chicago law Review,* 52:3, 684-702.

Wiesmann, Eva (2004): *Rechtsübersetzung und Hilfsmittel zur Translation. Wissenschaftliche Grundlagen und computergestützte Umsetzung eines lexikographischen Konzepts*. Tübingen: Narr.

Wittgenstein, Ludwig (1997): *Philosophical investigations*. Oxford: Blackwell.

The Logic of Multilingualism in the Alpine Convention

Paolo Angelini & Jon Marco Church

French, German, Italian, and Slovenian are the official languages of the Alpine Convention: the practice of linguistic pluralism is frequent within some Alpine countries and has been practised since the early years of the Convention. The common institutions play a vital role in ensuring the practice of multilingualism, choosing the model of the European Communities. In the Convention the use of English is frequent, but not predominant. Multilingualism is an asset for the Alpine Convention, allowing the participation of those who do not speak foreign languages – but who play a vital role in the protection and sustainable development of the Alpine region – and contributing to the establishment of an effective system of multilevel governance. This analysis mirrors the daily practice of international cooperation to protect and sustainably develop the Alpine region.

1. The Alpine Convention: an Italian perspective

Italy held the presidency of the Alpine Convention in 2001 and 2002, just two years after it deposited the ratification of the Framework Convention[1]. Italy was the last Alpine State to ratify the Convention. However, it had participated to the sessions of its bodies since the beginning of activities under the Alpine Convention. Furthermore, Italy possessed a legal and political culture that was already in harmony with the spirit of the Convention, as the Italian Constitution had already granted special protection to mountain areas and peoples since 1948[2]. With mountains covering more than half of its territory, it could not be otherwise[3] (Angelini et al. 2006:15).

In 2001 the Alpine Convention had already produced most of its Protocols, with the exception of those on transport and dispute settlement; so from the legal perspective it had advanced significantly[4]. However, its institutional side lacked a permanent structure, which conditioned its effectiveness, entrusting the whole administration of the Conven-

1 Italy ratified the Framework Convention for the Protection of the Alps with Law no. 403 of 14th October 1999.

2 See article 44 of the Italian Constitution of 1948.

3 This statement is based on data from UNCEM-ISTAT (National Union of Mountain Municipalities, Communities and Authorities – Italian Institute for Statistics).

4 Both the Protocol on Transport and the one on Dispute Settlement were finalised at the Alpine Conference of Luzern, Switzerland, at the end of October 2000.

tion, its initiatives and meetings to the rotating presidency. In order to assist the presidency with an efficient translation of the working documents and an appropriate interpreting of official meetings, Italy further promoted the creation of a Permanent Secretariat[5], charged to meet also to these needs of the bodies of the Alpine Convention, from the Conferences of the Ministers to the Permanent Committee and the Working Groups, to the various meetings[6].

The aim of this chapter is to reflect upon the cases for and against the multilingualism of the Alpine Convention. This analysis mainly mirrors the daily practice of international cooperation to protect and sustainably develop the Alpine region. It is therefore based on official documents, the existing literature, chosen interviews, as well as on personal experience. Due to the background of its authors, this chapter begins with an introduction to the context of the Alpine Convention from an Italian perspective and goes on to sketch its evolution in order to present an analysis of the logic or *ratio* of the multilingualism of the Convention.

The Convention for the Protection of the Alps (Alpine Convention) is an international framework agreement for the protection and sustainable development of the Alpine region. It was open for signature on 7th November 1991 in Salzburg, Austria, and since 2000 all Alpine States, including Italy, have signed and ratified it. It consists of a general convention in whose framework nine specific protocols have been adopted, each relating to a particular Alpine issue.

The text of the Convention as well as the letter of the Protocols were drafted "in the German, French, Italian, and Slovene languages, the four texts being equally authentic", employing the same formula used in the treaties of the European communities since the 1950s[7]. This makes these four languages the official languages of the Alpine Convention, in the same way as twenty-three languages of the twenty-seven Member States are official languages of the European Union. This means that all official meetings should have a simultaneous or consecutive interpreting service and that all working documents should be translated into the four languages. In most cases, this provision is respected and all four official languages receive equal or similar treatment[8].

5 The possibility of establishing a Permanent Secretariat was already foreseen by article 9 of the Framework Convention; its inclusion in the programme of the Italian presidency was the product of all the efforts that the Alpine States had made since the beginning of the works of the Convention.

6 The Permanent Secretariat was established at the Alpine Conference of Merano, Italy, at the end of November 2002 with decision VII/2.

7 See article 14 of the Alpine Convention of 1991, as well as, for example, article 314 (ex-248) of the Treaty of Rome of 1957 and article 53 (ex-S) of the Treaty of Maastricht of 1992.

8 See also article 21 on languages of the Rules of the Conference of the Parties (Alpine Conference), adopted in 1996 at Brdo, Slovenia, and article 19 of the Rules of the Permanent Committee, according to which all official languages of the Alpine Conference – i.e. German, French, Italian, and Slovene – are also the official languages of the Perma-

Due to its geographical extension and strategic position, the Alpine Convention goes beyond the scope of a mere international agreement. It represents a crossroads of nationalities, cultures and languages, unified by a common territory with unique features (Salsa 2005, Cason et al. 1998, Cason et al. 2004, Ruffini et al. 2006). The Alpine regions within the Italian territory alone already mirror this cultural and linguistic diversity, ranging from the Italian and French speaking Valle d'Aosta to the Italian, German and Ladin speaking Trentino-Alto Adige or the Italian, Friulian, Slovenian and German speaking Friuli Venezia Giulia.

Multilingualism is such a central issue in the Alps that, after six years of activities of the Working Group on Population and Culture, led by Italy, a recent ministerial declaration considered language one of the three axes of cultural diversity in the Alps and suggested specific measures in this regard[9].

Table 1: Measures in favour of linguistic pluralism[10]

1	Specific promotion of Alpine languages at school, especially local languages, including dialects
2	Professional training and upgrading for teachers
3	Provision of the tools needed by schools
4	Promotion of linguistic diversity and multilingualism, as well as of the linguistic integration of immigrants
5	Creation of partnerships among schools of different regions
6	Cultural events – especially in the field of music, literature, and/or theatre – in the local languages, language courses, print and electronic media
7	Projects for the development and knowledge of the territory through the study and use of toponymy
8	Development within municipalities or small centres of signs explaining the main or most important toponyms of a given area

Even if multilingualism is such a central value in the Alps, English – the new global auxiliary language – is often used in non-official meetings or publications, such as the present one, while French – the old language of diplomacy – is sometimes used by those representatives who choose to use an Alpine language anyway or do not feel comfortable speaking English. Sometimes English is also used at the meetings of some Working Groups of the Alpine Convention, mainly due to budgetary constraints or out of convenience.

In recent years, certain technical meetings, such as the ones in preparation of the first Report on the State of the Alps in 2006, were held in English only. Other meetings, for example the one organised in preparation of the mandate of the Working Group on UNESCO World Heritage, hosted in Bolzano on 15th March 2007, took place in the four

nent Committee and its Working Groups; according to both articles, declaration and official documents should all be translated in the four official languages.

9 See section II of the Declaration on Population and Culture, adopted in 2006 at Alpbach, Austria.

10 *Ibid.*; see also the Multi-annual Work Programme of the Alpine Conference, 2005-2010, adopted in 2004 at Garmisch-Partenkirchen, Germany.

languages, with the draft of the mandate being projected in each language on four different screens and being elaborated at the same time in the four languages. In either case, the translation or harmonisation of the final documents was needed, but these are significant examples of the practice of multilingualism in the Alpine Convention.

2. The origins of multilingualism in the Alpine Convention

In order to better understand the logic of multilingualism within the Alpine Convention, a look at the origins of the Convention and at the evolution of the practice of multilingualism is fitting. The following paragraphs illustrate these developments, dividing them in two periods, the pre and early Convention period, between 1987 and the year 2000, and the late Convention period, starting in 2001. As the principal divide between the two periods, common bodies were created and the functions of translation, interpreting and linguistic harmonisation were institutionalised and professionalised. While the analysis of the first period relies more on external documents and academic literature, the second part mainly draws on primary sources and personal experience.

2. 1. The pre and early Convention period, 1987-2000

Since the 1950s, the CIPRA (*Commission Internationale pour la Protection des Alpes/ Internationale Alpenschutzkommission*) has been active in the field of international cooperation for the protection of the Alpine environment at a non-governmental level. In the 1970s a series of Working Groups on the Alpine environment were created at regional level and ArgeAlp (*Comunità di Lavoro delle Regioni Alpine/ Arbeitsgemeinschaft Alpenländer*) was the first institution to be founded. While the official languages of CIPRA were French and German at that time, the languages of ArgeAlp were German and Italian. This was due to the fact that CIPRA was virtually absent in Italy and former Yugoslavia, whereas ArgeAlp was composed only of Italian and German speaking regions, provinces or cantons[11].

In the 1970s, the Alpine governments also made a first step towards the development of an international legal instrument in this field, with the adoption of the Ecological Charter for Mountain Regions in Europe in the context of the Council of Europe[12]. However, only starting from the mid-1980s some concrete steps were made towards the conclusion of an international agreement for the protection of the Alps. In 1987, CIPRA – which was in the process of increasingly professionalising its activities and staff, but which was still us-

11 For more information, see the websites of CIPRA (http://www.cipra.com) and ArgeAlp (http://www.argealp.org).

12 See resolution 76 (34) of the Committee of Ministers, adopted in 1976 at the 258th Meeting of the Ministers' Deputies.

ing only German and French as its official languages – launched the process of developing an international convention, what later became the Alpine Convention.

Multilingualism imposed itself on the work of the Convention from the beginning. All four languages received equal respect at all meetings from the very first ones with very few exceptions. The multilingualism of the Convention even influenced the linguistic regime of CIPRA, which, after moving its office to Vaduz, Liechtenstein, adopted Italian as its third official language in 1990. Slovenian, the fourth official language of the Convention, was added in 1992. The multilingualism of the Alpine Convention was then established and, as in the case of CIPRA, was already influencing the linguistic regime in the Alps. Naturally, the multilingualism of the Convention was then reinforced during the Slovene and Swiss presidencies in 1995-1998 and 1999-2000, respectively, because of the linguistic pluralism of many Swiss cantons and the small number of Slovene speakers outside of the Eastern Alps.

2. 2. The late Convention period, 2001-present

The Italian presidency of the Alpine Convention in 2001 and 2002 faced a situation similar to that of the previous Slovene and Swiss presidencies, given that the knowledge of Italian is not as common as that of French or German at European level, as in the Slovenian case; also, in a number of Italian Alpine regions, especially Valle d'Aosta, Trentino-Alto Adige, and Friuli Venezia Giulia, multilingualism involving at least one other official language of the Alpine Convention is a common feature, as in the Swiss case.

The multilingualism of the Convention was further strengthened by the beginning of the collaboration between the bodies of the Alpine Convention and INTRALP, which is still ongoing at the time of the writing of this chapter. INTRALP is now a team of interpreters and translators from all over the Alpine region, which is based in Italy and has acquired a deep knowledge of the Alpine environment, as well as of the specific terms and peculiar 'jargon' of the Alpine Convention. The creation of INTRALP was encouraged by the Italian presidency, which stimulated the association and professionalisation of individual interpreters, who had worked for the organs of the Convention under the Italian presidency.

Moreover, with the creation of a Permanent Secretariat at the end of the Italian presidency, a further step was taken in the direction of reinforcing the institutional support to multilingualism in the Alpine Convention. In fact, among the duties of the Permanent Secretariat in its seat of Bolzano, Italy, there is the provision of translation and interpreting services for the organs of the Convention. At that time, the city of Bolzano was chosen not only because it was at the centre of the Alps, but also because of its bilingual regime,

with German and Italian being both official languages[13]. The Permanent Secretariat plays a central role in ensuring the optimal practice of multilingualism and in carrying out the harmonisation of the various versions of the official documents produced in the framework of the Convention. As a matter of fact, a linguistic analysis of the documents of the Alpine Convention highlighted that of all Protocols to the Convention – all of which were finalised before 2000, i.e. before the establishment of the Permanent Secretariat – only the Protocol on Dispute Settlement underwent a process of linguistic harmonisation.

The Italian presidency was followed by two German-speaking presidencies, in order the German and the Austrian ones, in 2003-2004 and 2005-2006, respectively. From the perspective of the practice of multilingualism, the late German presidency was marked by the critical situation of the Permanent Secretariat after the departure of the interim Secretary General, while during the whole Austrian presidency the Permanent Secretariat suffered from this situation, in particular, because of the lack of an official Secretary General; moreover, towards the end, it suffered from limited funding. This stretched the capacity of the institutions of the Convention to ensure and maintain the practice of multilingualism.

We previously mentioned the drafting of the first Report on the State of the Alps in 2006 as an example of an exception to the practice of multilingualism, as the report was initially drafted in English, and the preparatory meetings were usually held in English only. Furthermore, as in this period the Permanent Secretariat lacked Italian and French native speakers, the use of German became particularly common within the Permanent Secretariat, even if its statute established the equal respect of the four languages[14]. However, English has always been common at technical meetings, such as those of some Sub Working Groups, or in the daily correspondence among the representatives of Alpine governments or observers.

The current French presidency benefited from the normalisation of the situation of the Permanent Secretariat, with the nomination of a full Secretary General, and the reviving of its activities and services with new, multilingual personnel in both the seats of Innsbruck and Bolzano. Under the new Secretary General and the French presidency, all official languages are represented by at least one staff member who is a native speaker of that language. Minor meetings and communications still sometimes occur in English or French only, but the general rule is that all communications, meetings and documents are available in all four Alpine languages. This is also true for some activities that run paral-

13 See article 99 of the Special Statute for Trentino-Alto Adige of 1972.

14 According to article 5 of decision VII/2, "equal consideration shall be guaranteed to the four official languages in the selection of the personnel".

lel to those of the bodies of the Alpine Convention, such as some expert workshops, or public conferences.

Now that the context of the Alpine Convention has been introduced and a sketch of its evolution has been provided, certainly from an Italian perspective, but focussing mainly on the linguistic regime of the Convention, we can now present an analysis of the logic of the multilingualism of the Convention.

3. The logic of multilingualism in the Alpine Convention

At the time of the drafting of the text of the Alpine Convention among the seven States sharing the Alpine territory only France, Germany and Italy were members of the European Communities. European institutions were already multilingual as they adopted as official languages the languages that each Member State wanted to be adopted as such[15]; Switzerland was already a multilingual country with four national languages, German, French, Italian, and Romansh[16]. The former Yugoslavia, as well as some Italian Alpine regions, was also multilingual. So, for most Alpine countries, multilingualism was already a reality and the spirit of the Alpine Convention only reflects this reality. Moreover, since the European Communities ratified the Alpine Convention in 1996, the text of the Framework Convention as well as of the Protocols that have been ratified at European Community level are also available in other official languages of the European Union, including English. As an official observer to the Convention recently commented, "at the end of the day, they are *four* official languages, not one hundred!"

English has the advantage of being a relatively neutral language, not favouring any participant to the Convention, but it is not an Alpine language. In the Alpine area, being the number of those who speak all four official languages extremely limited, the translation of all official documents and the interpreting of all meetings is essential for the works of the Convention. This is true even if most participants do speak English and a number of them speak at least two, often three Alpine languages.

However, the same choice was not made in the case of the Carpathian area, where a 'sister' convention to the Alpine Convention exists, the so-called Carpathian Convention[17]. In fact, the Carpathian governments chose English as the only official language of their Convention, because each of the seven Contracting Parties to the Convention has

15 See article 314 of the Treaty Establishing the European Communities and article 53 of the Treaty on European Union (consolidated versions).

16 See article 4 of the Federal Constitution on national languages, as well as article 18 on freedom of language and article 70 on languages.

17 The Convention for the Protection and Sustainable Development of the Carpathian Mountain Regions (Carpathian Convention) is a 'sister' international framework convention to the Alpine Convention. It was open for signature on 22nd May 2003, in Kiev, Ukraine, and all seven Carpathian States, i.e. the Czech Republic, Hungary, Poland, Romania, Slovakia, and Ukraine ratified it, with the exception of Serbia (as of December 2007).

a different official language, and the use of seven official languages for a convention for such a specific mandate would be particularly cumbersome, especially in an area currently not as wealthy as the Alpine region. This linguistic regime of the organs of the Carpathian Convention therefore requires the Carpathian governments and international institutions to engage in further efforts for the dissemination of the works of the Convention in the Carpathian languages.

So far for the main participants to the meetings of the bodies of the Convention, such as the heads of the delegations or the national focal points. Concerning the main recipients of the works and decisions of the organs of the Alpine Convention, i.e. mainly local and regional authorities – but also sometimes national institutions, as well as individual citizens or stakeholders in general – it must be stated that they often have little knowledge of foreign languages, including other Alpine languages. For this reason, the availability of the works and documents of the Alpine Convention in all Alpine languages is not only essential, but it is also needed to ensure access to information and public participation[18].

In this field, the Alpine Convention and its implementation by the Alpine States can be considered a good example of the principles of the Aarhus Convention[19] put into practice. A recent document on the formalised rules and procedures and the non-formalised practices regarding access to information and access to justice in the framework of the consultation process on the Almaty Guidelines[20], prepared by the Task Force on Public Participation in International Forums with the assistance of the Secretariat of the Aarhus Convention, reported that the public relations tasks of the Permanent Secretariat of the Alpine Convention include responding to requests for information and providing for general information through the website of the Alpine Convention (www.alpconv.org)[21]. In fact, the rich content of the website of the Alpine Convention is not only available in all four languages, plus English, but so is its internet address[22].

Even if multilingualism was a natural choice for the Parties of the Convention, it still represents a rather extreme one. Of course, it is not as extreme as employing all the languages and dialects spoken in every single Alpine valley, but it is still closer to that extreme of the spectrum of possible linguistic choices than to the extreme of an English-only lin-

18 Italy, for example, is investing a considerable amount of resources in the process of translating its national report of 2005 to the Compliance Committee into all the four Alpine languages. A manual, so far available in Italian only, on the implementation of the Convention in Italy at national as well as local level was already produced (Angelini et al. 2006).

19 See, in this regard, the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, done in 1998 at Aarhus, Denmark. While the letter of the Aarhus Convention does not provide for any obligation of its Parties to make all information available in all national languages, this is not against the spirit of the Convention, especially of articles 3, 6, 7 and 8.

20 See doc. ECE/MP.PP/2005/2/Add.5.

21 See doc. ECE/MP.PP/WG.1/2007/L.2/Add.1.

22 That is, http://www.convenzionedellealpi.org, http://www.conventionalpine.org, http://www.alpenkonvention.org and http://www.alpskakonvencija.org.

guistic regime. Between the model of the European Union, which uses all the languages of its Member States, and that of the Council of Europe, which employs only English and French, the Alpine States have chosen the former for the Alpine Convention. The practice of multilingualism in the Convention is akin to that of the Swiss cantons, of some Italian Alpine regions, as well as of the former Yugoslavia. These experiences at the same time justify and support this extreme choice of linguistic pluralism. Had these experiences not existed, the establishment and implementation of the linguistic regime of the Alpine Convention would have been more cumbersome; on the other hand, if an English only linguistic regime had been established, the interaction among the participants to the Convention would have been more troublesome, with higher risks of misunderstandings, and lower chances of true cooperation.

4. Conclusion

The aim of this chapter has been to reflect upon the cases for and against the multilingualism of the Alpine Convention. This analysis mirrored the daily practice of international cooperation to protect and sustainably develop the Alpine region: it began with an introduction to the context of the Alpine Convention from an Italian perspective and a sketch of its evolution, in order to present an analysis of the logic of the multilingualism of the Convention. This chapter highlighted how the practice of linguistic pluralism is frequent within some Alpine countries and has been maintained since the early years of the Convention, how the common institutions play a vital role in ensuring the practice of multilingualism, and how the model of the European Communities was favoured over the use of English, which is frequent, but not predominant.

Multilingualism is an asset for the Alpine Convention. This asset justifies a remarkable investment in translation, interpreting, and harmonisation, all of which absorb an important share of the budget of both the Permanent Secretariat and the Alpine States. This allows also to those who do not speak foreign languages – but who do play a vital role in the protection and sustainable development of the Alpine region – to participate to the works of the Convention. In this manner, they contribute to the establishment of an effective system of multilevel governance, from local authorities to international civil servants, from individual citizens to the national governments[23].

23 See, for example, the presentation "Regionalism Reconsidered: The Alpine Convention as a Model of Earth System Governance" presented by Jörg Balsiger of the University of California at Berkeley, United States, and the European University Institute of Fiesole, Italy, at the 2007 Amsterdam Conference on the Human Dimensions of Global Environmental Change; see also Price (1999, 2000, 2001).

Bibliography

Angelini, Paolo/ Morandini, Marcella/ Giulietti, Silvia (eds.) (2004): *Collectio della Convenzione delle Alpi*. Bolzano: EURAC.

Angelini, Paolo/ Ventura, Egizia/ Martini, Miriell (eds.) (2006): La Convenzione delle Alpi: politiche, leggi e misure di attuazione in Italia. Bolzano: EURAC.

Bätzing, Werner (2005): *Le Alpi. Una regione unica al centro d'Europa*. Torino: Bollati Boringhieri.

Cason, Ester (ed.) (1998): *Mes Alpes à moi: Civiltà storiche e comunità culturali delle Alpi.* Belluno: Fondazione G. Angelini – Centro studi sulla Montagna.

Cason, Ester/ Giulietti, Silvia/ Ruffini, Flavio V. (eds.) (2004): *Il privilegio delle Alpi: moltitudine di popoli, culture e paesaggi*. Bolzano: EURAC – Fondazione Angelini.

Caveri, Luciano (2002): *L'Europa e la montagna.* Verbania: Tararà.

Pasqualini Salsa, Claudia (2004): *Diritto ambientale: principi, norme, giurisprudenza.* Santarcangelo di Romagna: Maggioli.

Price, Martin F. (1999): Towards cooperation across mountain frontiers: The Alpine Convention. In *European Environment* 9:3, 83-89.

Price, Martin F. (2000): The Alpine Convention: A model for other regions? In *Mountain Research and Development,* 20:2, 192-194.

Price, Martin F. (2001): The Alpine connection – A new context for European cooperation. In *Looking at the Big Picture: Ecosystem Management in Mountains, Watersheds and River Basins*, Interactive Session 1, IUCN World Conservation Congress, Gland, 5th October 2000, 33-43.

Ruffini, Flavio V./ Giulietti, Silvia/ Schirpke, Uta (eds.) (2006): *Alpi: punti di vista.* Bolzano: EURAC.

Salsa, Annibale (ed.) (2005): *Viaggio alle Alpi: alle origini del turismo alpino.* Turin: Museo nazionale della montagna.

Treves, Tullio/ Pineschi, Laura/ Fodella, Alessandro (2002): *International Law and the Protection of Mountain Areas*. Milano: Giuffré.

Treves, Tullio/ Pineschi, Laura/ Fodella, Alessandro (2004): *Sustainable Development of Mountain Areas*. Milano: Giuffré.

Zanzi, Luigi (2004): *Le Alpi nella storia d'Europa*. Torino: CDA-Vivalda.

LexALP – Harmonising Alpine Terminology

Elena Chiocchetti & Leonhard Voltmer

This paper aims at first placing harmonisation within its family of related activities and on describing the issues of legal harmonisation within environmental law. Then the objective of the LexALP project is described, together with the working steps, the methodology and particular challenges. The Harmonising Group and its activities are presented. Finally, the results of the project are summarised in the last section.

1. What is harmonisation?

The first sections of this article focus on describing what is meant by terminology harmonisation and on outlining the family of related activities.

1. 1. Related fields

There are different forms of controlling or guiding linguistic and terminological development, which can be referred to as 'COMMUNICATION PLANNING', namely language planning and terminology planning (Infoterm 2005:6). Language planning is usually distinguished into corpus planning and status planning (Kloss in Laurén et al. 1998: 274). Specific activities of language and terminology planning are language and terminology standardisation, respectively.

LANGUAGE PLANNING can also be referred to as glottopolitics, language engineering, language regulation or language development. It comprises a wide range of activities, from the creation of neologisms to the introduction of spelling reforms, and may be based on a combination of approaches: lexicography, terminology management, translation, translation management and corpus linguistics. It addresses issues such as the right to native language education, enhancing cultural diversity and ensuring access to information for all layers of society (Infoterm 2005:6-8). This form of linguistic policy may be concerned with the corpus or the status of a language. While CORPUS PLANNING includes activities such as reforming orthography, producing grammars and setting up institutions to take care of language issues, STATUS PLANNING regards decisions such as what languages should

be taught in school, which languages should be used in court or by the public administration, etc. (Infoterm 2005:6, Laurén et al. 1998:274.)

Language standardisation is often an issue for lesser spoken languages and basically belongs to corpus planning. It usually implies choosing, according to a set of well-defined criteria, among different variants or spellings of a language, so as to create a unified standard variety or orthography. This has been done for example for languages such as Ladin and Romansh in the Alps. The development of PinYin may also be considered as a particular example of language stadardisation. PinYin is a systematised and codified transcription norm for expressing Chinese spoken language in Roman letters (ISO 7098:1991). Chinese spoken language can be written with traditional characters, like this: 北京. In PinYin the same word is written Běijīng. There are other ways of transcribing Chinese with other results, e.g. Peiching, Pei-ching, [pɛjtɕiŋ], Peking. These alternatives look different, but they all refer to the same original content and are only alternative ways of expressing it. The traditional characters are one sign system, PinYin is another. In this way, the linguistic signs are standardised, even without the need to compare content.

Terminology planning has a much more focussed goal. It aims at systematically developing or guiding the development of specialised language for the purpose of communication within a particular domain (Infoterm 2005:8). Also, it is often multilingual and involves several disciplines (such as information science and cognitive science), for example, when multilingual specialised dictionaries are produced (Laurén et al. 1998:287).

Terminology standardisation is a mostly institutionalised activity. Terminology standardisation is defined in the German DIN 2342/1992:5 as the "standardisation of concepts and their designations as well as of concept systems and the related systems of designations or nomenclatures"[1]. It generally consists of a first, purely descriptive phase of terminology work. The subsequent phase has a prescriptive character and implies choosing the most adequate or correct one among different variants in use or proposing new terms (Laurén et al. 1998:295-296). Terminology standardisation is done for example in the German-speaking province of Bolzano/Bozen in Italy, where a dedicated Terminology Commission is in charge of determining and regularly updating the legal and administrative terminology used by the public bodies and institutions in the German language (DPR 574/88, art. 6(1)). The aim of the Commission, created with the Decree of the President of the Republic No. 574/1988, is to set and validate full equivalences between the Italian and German terms and thus provide controlled translation relations for the main concepts of the Italian legal system.

1 In the original language: *"Normung von Begriffen und ihren Benennungen sowie von Begriffssystemen und den dazugehörigen Benennungssysyemen oder Nomenklaturen"*.

1. 2. Harmonisation

According to the ISO 860 norm, HARMONISATION is to be subdivided into two main activities, the harmonisation of concepts and the harmonisation of the corresponding linguistic labels. In the first case, minor differences between two or more very similar concepts shall be reduced or eliminated. In the second case, the terms used to designate one and the same concept in more than one language should aim at expressing the same or very similar characteristics of the concept. Furthermore, the form of the terms should be the same or at least very similar.[2] Contrary to terminology standardisation, the results do not necessarily become (legally) binding, but a well-done linguistic harmonisation will impose itself by the mere usefulness of results.

Harmonisation is particularly challenging in the domain of law. Since legal terms are intimately linked to their legal system of origin, equivalents are rarely to be found when comparing different legal realities (Arntz 1993:6, Sandrini 1996:138, Šarčević 1997:232). This is especially true because the concept that legal terms refer to is not a real world object, but an abstract categorisation. Given that each State has chosen a different set of rules for its internal organisation, the same abstract categorisation is unlikely to be encountered when comparing the legal systems of two States.
The following extract shows why legal harmonisation in the field of environmental protection is particularly challenging:

> One feature of ecological-network programmes that can lead to some confusion is the variation in terminology. The term 'ecological network' gained favour in Europe in the early 1990s and has been used in the most important international mechanisms in recent years, including IUCN's World Conservation Congresses, the World Summit on Sustainable Development's Plan of Implementation and the CBD Conferences of the Parties, including the programme of work on protected areas. In regional and national settings, however, different terms are used to describe the model. These include 'territorial system of ecological stability', 'reserve network', 'bioregional planning', 'ecoregion-based conservation', 'connectivity conservation areas' and various language-specific variants, but also 'corridor'. As a result, it is not always obvious from the title of a programme or project whether the approach reflects the ecological-network model. (Bennett & Mulongoy 2006:82)[3]

2 The definitions from the French language version of the ISO 860 norm are a) for harmonisation of concepts: *"réduction ou élimination des différences mineures entre deux notions très semblables ou plus"*; and b) for harmonisation of terms: *"activité devant aboutir à la désignation, dans plusieurs langues, d'une même notion par des termes qui reflètent les mêmes caractères ou des caractères similaires dont la forme est la même ou légèrement différente"* (sec. 3.1-3.2).

3 The examples discussed in this review carry the English or equivalent names of 'ecological network', 'green network', 'reserve network', 'wildlands network', 'interwoven biotope system', 'territorial system of ecological stability', 'corridor', 'biological corridor', 'ecological corridor', 'biodiversity corridor', 'conservation corridor', 'biogeographical corridor', 'sustainable-development corridor', 'green corridor', 'ecoregion plan', 'transboundary natural-resources

This quotation shows that:

- terminology evolves with the subject field (in this case, ecology);
- international terminology does not follow national terminology;
- supranational and international communication require terminological awareness or, better, harmonisation;
- the scientific terminology of 'ecological-network programmes' is enshrined in legal texts, e.g. international treaties or national laws.

Those few points suffice to illustrate that harmonisation is a daunting task which can only be done provided that certain conditions are fulfilled. The ideal conditions for harmonisation to be successful are stated in ISO 860:

- the domain is well established and relatively stable;
- the domain concerns concrete objects, such as machinery, tools, materials or industrial products;
- there is a tradition of harmonisation within the domain.

Regarding a), the field of conservation of nature and sustainable development is not especially stable, but rather rapidly evolving, and even evolving at a different pace in the different countries.

As to b), as explained above, legal terms do not refer to concrete objects. As Cortelazzo puts it, the law does not just use the language; it is *made of language*[4] (1997:36). Hence, a univocal reference to a real-world object is rare, contrary to the situation in other subject fields like botany or zoology.

In relation to c), even though an official effort to harmonise the four language versions of the texts of the Protocols had been made in 2000 (see 2.1), the results of the LexALP project show that still many synonyms and variants of a term, sometimes even incorrect translations survive in the Frame Convention and its Protocols. This suggests an insufficient comparative analysis before harmonisation or political motivations behind term choice.

The following sections discuss how such a challenging goal was faced within the LexALP project, which aimed at harmonising the terminology of the Alpine Convention in the four languages French, German, Italian and Slovene.

management area' and 'transfrontier conservation area'. Still other names are undoubtedly used for programmes that have not been reviewed (Bennett & Mulongoy 2006:82).

4 "*Il diritto non si serve della lingua, ma è fatto di lingua.*" (No italics in the original text.)

2. Harmonisation in LexALP

2. 1. Project goal

The goal of the INTERREG IIIB project LexALP[5] is to harmonise the legal and scientific terminology used within the Alpine Convention and its nine Implementation Protocols (hereinafter called AC). The Alpine Convention is a framework agreement between eight countries of the Alpine region (Austria, France, Germany, Italy, Liechtenstein, Monaco, Slovenia and Switzerland)[6], signed also by the European Union, that aims at the long-term environmental protection and sustainable development of the Alps.

The contents of the AC have already been declared equivalent for its four official languages, French, German, Italian and Slovene in 2000. The minutes of the meeting of the sixth Alpine Conference held in Lucerne, Switzerland, state that the Alpine Conference takes note of the final report on the linguistic harmonisation of all Implementation Protocols already agreed-on and approves it. The Alpine Conference assessed that the Protocols on Spatial Planning and Sustainable Development, Mountain Farming, Conservation of Nature and the Countryside, Mountain Forests, Tourism, Soil Conservation and Energy[7] have been fully harmonised from the point of view of both language and style, without any modification of the content (2000:5.6).[8] Nevertheless, it became clear during the following years that this formal process had left several gaps and inconsistencies between the four language versions. For example, in the Protocol on the Conservation of Nature and the Countryside the Slovene expression used to refer to 'genetically modified organism' is *genetsko spremenjeni organizem.* The Mountain Farming Protocol even uses the paraphrase *z genetskimi tehnikami spremenjeni organizem,* instead of the correct technical term *gensko spremenjeni organizem.* Also, the German term used to express the concept of *economia agricola* in art. 12 of the Protocol on Mountain Farming is *Bewirtschaftung* (which corresponds to Italian *coltivazione*), instead of *Landwirtschaft*.

In order to better achieve a full formal and conceptual equivalence (harmonisation) in the future texts produced, the LexALP project identifies the concepts used within the AC texts and retrieves their (four or more) designations in all AC languages. Then, the

5 Acronym for *Legal Language Harmonisation System for Environment and Spatial Planning within the Multilingual Alps*.

6 Even though Liechtenstein and Monaco are parties to the Convention, their legal systems were not analysed within the LexALP project due to temporal and financial limitations.

7 The titles of the Protocols used here are the official English translations given by the EU when providing the ratified texts into all the languages of the Union.

8 The exact wording in French is: "*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.*"

equivalent concepts in the national and other reference legal systems (EU and international law) are looked for. Each designation is described through a definition, whenever possible, a context of use and other linguistic information. This facilitates comparative work between the languages and legal systems of reference, as inconsistencies in the use and meaning of the different designations across languages and legal systems can often be highlighted during this preliminary description and explained in specific comparative notes. For example, the notes to the terms *Verbandsklage* and *comunità montana* explain that the corresponding concepts are intimately linked to their legal system of origin, namely the German and the Italian system respectively, and have no equivalents in the other legal realities. In such cases, translation proposals are validated and a controlled translation relation is established. In the case of *Verbandsklage* the harmonised translation proposals for the other three languages are *azione legale intentata da un'associazione*, *action en justice d'une association* and *tožba združenj.* For *comunità montana* the harmonised equivalents are *communauté de communes de montagne*, *Berggemeinschaft* and *gorska skupnost*.

The main aim of the comparative terminology work described above is to facilitate the activity of a group of experts, the Harmonising Group, who are to find an agreement on the most correct and least ambiguous linguistic labels for each AC concept and thus harmonise them in form of term quartets (one per each language and one-to-one correspondence between each of the four terms).[9] For example, when there are just too many synonyms or near-synonyms in the AC texts to indicate one concept, the preferred term is established. Such was the case with *deterioramento della natura*, *compromissione della natura* and *compromissione a danno della natura* in Italian, which all indicate a measurable negative change in the natural resources. Only *deterioramento della natura* was harmonised with its equivalents in the other three languages, namely *Beeinträchtigung der Natur*, *déterioration de la nature* and *okrnitev narave*. The other two Italian terms remain in the term bank, as they can be found within AC texts, but are clearly marked as 'rejected', while the preferred term is marked as 'harmonised'. Only these terms should be used to indicate the concept described above, so as to ensure that all four language versions express the same meaning.

The resulting collection of term quartets form a specialised glossary, which is obviously a great help for translators, interpreters and, in general, anybody working with the AC texts. But harmonised terminology is even more: the interpretation of legal texts becomes easier, because the meaning of a term is indicated through its equivalents in the other languages and the definition given by the Harmonising Group. In the example illustrated above the interpreter of an AC text is not lead to believe that *deterioramento della natura* is supposed to mean something else than *compromissione della natura*. In fact, as legislators usually

9 For the benefit of translators also quartets of phraseological units are harmonised, even though they do not always constitute 'terms' in the strict sense in all four reference languages.

stick to a precise terminology and use other terms only to refer to other concepts, without harmonisation one might think that *deterioramento* indicates a more serious damage than *compromissione*. The interpreter might 'invent' a difference between the two terms implying authorship and intention, for instance. Those considerations were discussed during the Harmonising Group meetings and settled by giving the preferable term, its precise meaning and translations. Hence, harmonised terminology is a great help also for interpreters of the text: it should support national public officials responsible for the application of the AC principles next to translators and interpreters in the field of mountain issues. Harmonised and clearly defined concepts may be of use also for lawyers and politicians when interpreting or drafting new AC texts or working documents. More in general, it aims at facilitating communication and enhancing international collaboration.

Given the amount of different legal systems and languages as well as the different competences (legal, linguistic, computational) and types of partners (public, private, academic)[10] involved in the project and the relatively short time available between the beginning of 2005 to the beginning of 2008, this task proved extremely challenging as far as organisation, coordination and workflow are concerned. In this paper we will try to highlight the main difficulties encountered and outline the solutions that were or could have been adopted.

2. 2. Status of harmonised legal terminology within the AC

Unlike the Province of Bolzano/Bozen in Italy with its Terminology Commission, the Alpine Convention has no official body charged with standardising its (legal) terminology. Even a more practical approach, as adopted by multilingual Switzerland (where the terms contained in the TERMDAT database are considered an authoritative reference for all public administrations) is difficult, since the Alpine Convention does not have a dedicated terminology service.

To avoid incurring into the same mistakes of the past and multiplying mistakes and (near-)synonyms also in the future text production, the creation of an online system to provide all users with clear and consistent terminology was strongly supported by the Permanent Secretariat of the Alpine Convention. To achieve this goal, a group of Alpine legal experts and terminologists representing institutional levels and public or private instances (see 3.1) gathered during six meetings to discuss the harmonisation of most AC terms. The results of these meetings (see section 4) are not binding in any way, but constitute a useful and accurate reference work for all translators, interpreters, technical drafters and public officials dealing with the Alpine Convention and its implementation.

10 See Lanzoni in this collection, p. 65-66 for a list of project partners and observers.

3. Composition of the Harmonising Group

3. 1. The members of the Harmonising Group

The institutions represented within the Harmonising Group cover all languages and legal systems of the Alps. The Group is composed of legal experts and terminologists from public services or the academic world. Thanks to this composition it was possible to ensure a high-quality work, which is the result of a detailed comparative work between the AC concepts and the national concepts and an accurate linguistic and terminological analysis.

The following institutions took part in the harmonisation meetings:

- Permanent Secretariat of the Alpine Convention (Innsbruck),
- Direzione per la Ricerca Ambientale e lo Sviluppo del Ministero dell'Ambiente e della Tutela del Territorio e del Mare (Rome),
- Abteilung Internationale Zusammenarbeit – Umweltbundesamt Österreich (Vienna),
- Délégation Générale à la Langue Française et aux Langues de France – Ministère de la Culture et de la Communication (Paris),
- Direktorat za okolje – Ministrstvo za Okolje in Prostor (Ljubljana),
- Sektion Terminologie der Schweizerischen Bundeskanzlei (Bern),
- Dipartimento Affari Regionali e Autonomie Locali della Presidenza del Consiglio dei Ministri (Rome),
- Servizio Legislativo della Regione Autonoma Friuli Venezia Giulia (Trieste),
- Amt für Sprachangelegenheiten der Autonomen Provinz Bozen-Südtirol (Bolzano/Bozen),
- Sprachen und Dolmetscher Institut München (Munich),
- Research groups GREMUTS (ILCEA, UFR de Langues) and LIDILEM (UFR de Sciences du langage) – Université Stendhal, Grenoble 3 (Grenoble),
- Institute for Specialised Communication and Multilingualism of the European Academy (EURAC), Bolzano/Bozen.

3. 2. The role of the members of the Harmonising Group

Collaboration between academic project partners and public institutions can represent a challenge for both categories. Political and institutional interests not always match the academic and scientific interests. Procedures, schedules and work methodologies may be so different that misunderstandings are often unavoidable. For example, the idea of testing and adapting a research product during project lifetime is difficult to accept for public institutions, which tend to prefer using ready-made conventional/ commercial

products. Also, publications are seen as a way of disseminating and celebrating project activities by the public bodies. This makes scientific accurateness become less important to them than conveying simple and direct messages to the citizenship. In such cases, issues of quantity and quality should always be resolved with a good compromise between the two groups.

Particular attention should be put in trying to avoid that previous relations between the public institutions participating in a project do not influence the dynamics of the project. When two or more public institutions belonging to different levels (e.g. ministries, regions, local bodies) are involved in a discussion, there is the risk that the national and more important institutions are given pre-eminence during the decisional processes, even though each partner's importance inside the project is absolutely equal. Separate meetings of all public institutions are sometimes called for, but it should be made clear that these preliminary discussions should help to minimise discord between the various institutional levels but that no 'secret plotting' can take place. No decisions should be taken separately and outside the common meetings.

3. 3. The multilingualism of all participants as a great resource

In the case of the LexALP project, English was chosen as the official project language, because it was the language of all official contracts and almost all project participants could understand it and speak it. Unfortunately, this choice created additional difficulties to the terminologists, who were already supposed to work in their native language, be able to refer to the entries of at least one or more other languages *and* also speak English. Finding someone sufficiently competent in the five languages English, French, German, Italian and Slovene was basically impossible. Still, most collaborators had a sound knowledge of two project languages plus English. Many even had a passive understanding of an additional Alpine language.

It was even more challenging to find legal experts who could revise entries of more than one legal system and in more than one language. The two working languages of the Harmonising Group had to be French and Italian, given that most members were either native speakers of one of the two languages or sufficiently competent in either of the two to participate in the meetings. English was considered acceptable for general communication, but not desirable for explaining specific legal differences between the legal systems, since all participants wished to avoid misunderstandings based on the possible incorrect use of English legal terms often connected with common law. Most of the legal experts corrected the entries in their native language, with a particular eye to the legal systems they know best, and referred to the corresponding entries in one of the two romance languages.

Obviously in a terminology project starting with four different working languages and one additional language for general communication it is not easy to ensure a coherent and clear flow of communication. Nevertheless, choosing to add English as a fifth language ensured that none of the project partners could be favoured by the possibility of communicating in their native language.

4. Results

Some 500 concepts were harmonised. This number has to be multiplied by four to get the number of harmonised terms (i.e. 2000 terms, 500 per language). Besides the validated terms, the terminology data base documents also many other terms found in the AC, but labelled 'rejected'. This is indeed an important piece of information, because it directs the user towards those terms that are considered preferable. Of course, some more terms were worked on, but not harmonised for one reason or another. Those terms are ready for the user and just as useful for a translator. Finally, next to the AC terms, many more terms were elaborated at international and EU level as well as at the national levels during the comparative work.

All project results are freely available to the public via the LexALP Information System at http://www.eurac.edu/lexalp. This portal gives access also to a connected corpus of legal documents and to a bibliographic database connected with the information sources cited in the term bank.

The corpus contains about 3000 documents of national and supranational legal systems, selected in 2005 by legal experts according to the relevance to the subject fields treated within Alpine Convention Protocols. The documents comprise over 18 Million words and are freely available for consultation. Multilingual documents are aligned, which means that the user can immediately access, starting from a text in one language, the equivalent text segment in another language.

The bibliographic data base contains the full reference to all sources (of the definitions, contexts of use and notes) quoted in the terminological entries. Almost 5000 references are stored. Next to the 3000 corpus documents, reference to further legislation and handbooks are available. The bibliographic data base can be used for finding relevant legislation or handbooks in one of the sub-domains defined (e.g. protected areas, transport, agriculture, etc.) for each legal system.

Much more work is still to be done on environmental terminology and on its usage within AC texts. Nevertheless, we hope we provided useful material for all stakeholders and have contributed to foster clear and consistent communication within the Alpine arc.

Bibliography

Arntz, Rainer (1993): Terminological Equivalence and Translation. In Sonneveld, Helmi B. & Loening, Kurt L. (eds.) *Terminology. Applications in interdisciplinary communication.* Amsterdam/ Philadelphia: Benjamins, 5-19.

Bennett, Graham & Mulongoy, Kalemani J. (2006): *Review of Experience with Ecological Networks, Corridors and Buffer Zones*. Secretariat of the Convention on Biological Diversity, Montreal, Technical Series no. 23, 5-6.
http://www.biodiv.org/doc/publications/cbd-ts-23.pdf (date of consultation 17.04.2007)

Cortelazzo, Michele A. (1997) Lingua e diritto in Italia: Il punto di vista dei linguisti. In Schena, Leo (ed.) *La lingua del diritto: difficoltà traduttive. Applicazioni didattiche*. Proceedings of the first international Conference, Milan, 5th-6th October 1997. Milan: CISU.

DIN 2342:1992 *Begriffe der Terminologielehre, Grundbegriffe*. Berlin.

GEMET Thesaurus (2004) European Environment Information and Observation Network, version 1.0. http://www.eionet.europa.eu/gemet (date of consultation 03.07.2007)

Infoterm (2005): *Guidelines for Terminology Policies. Formulating and implementing terminology policy in language communities.* Paris: UNESCO.
http://unesdoc.unesco.org/images/0014/001407/140765e.pdf (date of consultation 27.11.07)

ISO 704:2000 *Terminology Work – Principles and Methods.*

ISO 7098:1991 *Information and documentation – Romanization of Chinese.*

ISO 860:1996 *Travaux Terminologiques – Harmonisation des notions et des termes.*

Laurén, Christer/ Myking, Johan/ Picht, Heribert (1998): Terminologie unter der Lupe: Vom Grenzgebiet zum Wissenschaftszweig. Vienna: TermNet.

Ständiges Sekretariat der Alpenkonvention (2003): Procès-verbal de la 6e Conférence alpine des 30 et 31 octobre 2000 à Lucerne (2000). In *Convention Alpine : Ouvrage de référence*, Signaux Alpins, no. 1. Innsbruck: Ständiges Sekretariat der Alpenkonvention, 173-180.

Sandrini, Peter (1996): *Terminologiearbeit im Recht: Deskriptiver begriffsorientierter Ansatz vom Standpunkt des Übersetzers*. IITF Series, no. 8. Vienna: International Network for Terminology (TermNet).

Šarčević, Susan (1997): *New Approach to legal Translation*. The Hague: Kluwer Law International.

International Treaties Authenticated in Two or More Languages

Enrico Zamuner

This article briefly discusses the problem of interpretation of international treaties drawn up in two or more languages with special regard to the Alpine Convention and the experience of the LexALP project.

1. International law and interpretation of treaties

The application of international law (as it is for all branches of law) presupposes an activity of interpretation (cf. Yasseen 1976, Köck 1976, Bos 1980, McRae 2002) in order to define the meaning and range of its rules. It is indeed a delicate task, given that many international disputes are concerned with the interpretation of international agreements.

The international community does not have a dedicated body empowered to provide States with a binding interpretation of norms, even though the parties to a dispute may confer such a competence on an *ad hoc* arbitral Tribunal or the International Court of Justice.

The rules of interpretation were codified in 1969 in the Vienna Convention on the Law of Treaties (art. 31-33)[1]. The Vienna Convention distinguishes between a general rule of interpretation and supplementary means of interpretation. The General rule in article 33 of the Vienna Convention provides that:

> 1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

This rule expresses the so called textual approach of interpretation, based on the ordinary meaning of the terms used in the text of the treaty, in the light of the context as well as of the object and purpose of the treaty. In the Advisory Opinion of 3rd March 1950[2], the International Court of Justice observed that:

> …the first duty of a tribunal which is called upon to interpret and apply the provisions of

1 *United Nations Treaty Series*, vol. 1155, p. 331.

2 *Competence of Assembly regarding admission to the United Nations*, Advisory Opinion, I.C.J. Reports 1950, p. 8.

> a treaty, is to endeavour to give effect to them in their natural and ordinary meaning in the context in which they occur. If the relevant words in their natural and ordinary meaning make sense in their context, that is an end of the matter.
> If, on the other hand, the words in their natural and ordinary meaning are ambiguous or lead to an unreasonable result, then, and then only, must the Court, by resort to other methods of interpretation, seek to ascertain what the parties really did mean when they used these words.

Article 31, paragraph 2, defines the concept of 'context':

> 2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:
> (a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;
> (b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

In accordance with article 31, paragraph 3, the interpreter shall also take into account any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions (cf. Voícu 1968), any subsequent practice in the application of the treaty (cf. Capotorti 1987), which establishes the agreement of the parties regarding its interpretation, and any relevant rules of international law applicable in the relations between the parties. Finally, a special meaning shall be given to a term if it is established that the parties so intended (cf. article 31, paragraph 3 of the Vienna Convention).

Article 32 of the Vienna Convention provides for supplementary means, such as preparatory work (cf. Lauterpacht 1934) or the circumstances in which the treaty was concluded, in order to confirm the interpretation resulting from the application of article 31 or to determine the meaning when the interpretation according to article 31 leaves it still ambiguous or obscure.

International disputes may concern the interpretation of international agreements authenticated in two or more languages (cf. Hardy 1961, Shelton 1997), where the divergence in the interpretation of the treaty may be caused by a discrepancy in the meaning of the texts.

On this point article 33 of the Vienna Convention ("Interpretation of treaties authenticated in two or more languages") provides that:

> 1. When a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail.

> 2. A version of the treaty in a language other than one of those in which the text was authenticated shall be considered an authentic text only if the treaty so provides or the parties so agree.
> 3. The terms of the treaty are presumed to have the same meaning in each authentic text.
> 4. Except where a particular text prevails in accordance with paragraph 1, when a comparison of the authentic texts discloses a difference of meaning which the application of articles 31 and 32 does not remove, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted.

Therefore, on the basis of the above mentioned rules it can be assumed that the terms of a treaty shall have the same meaning in all languages in which the text has been authenticated. When a comparison between the authentic texts reveals a discrepancy of meaning and the divergence of interpretation still persists, the interpreter has to individuate the meaning that best reconciles the texts, having regard to the object and purpose of the treaty. As a result, it is of primary importance to give preference to an interpretation that is compatible with both texts and not an interpretation that, although compatible with one of the texts, is in contradiction with the other. Consequently, a comparison of all authentic versions is necessary in order to find the meaning that reconciles all versions of the treaty.

Obviously in case of doubt the interpreter enjoys a certain degree of discretion that only an authentic interpretation contextually furnished by the contracting parties or provided subsequently to the conclusion of the agreement can reduce or eliminate.

2. The Alpine Convention and the experience of the Lex-ALP project

A divergence in interpretation necessarily produces a divergence in application, with the consequence that an agreement might not have a uniform application in the territory of the contracting States. Such a situation is to be avoided, especially when treaties concern subjects of general interest not only for the contracting parties, but for the international community as a whole. The long-term protection of the natural ecosystem and the sustainable development can certainly be included among such topics of general interest. Both are objects and aims of the Convention on the Protection of the Alps (Alpine Convention) signed on 7th November 1991.

In the case of the Alpine Convention (and its Protocols), whose texts have been authenticated in French, German, Italian and Slovenian, the interpretation problem affects both the organs of the domestic legal system having competence to enforce the treaty and, at international level, the representatives of the member States, the officials, the interpreters and translators (cf. Vandevelde 1988).

The LexALP project responds to the demand for useful tools of a legal and linguistic nature to support those who operate within and around the Alpine Convention and, with them, a vast array of linguists, legal experts and diplomats. Throughout all project activities a group composed of legal experts and linguists, the 'Harmonising Group', was confronted with the above mentioned rules to decide on the harmonisation of Alpine Convention terms in four languages. The terms have been harmonised keeping in mind the letter and the context of the Convention, its objects and purposes, as well as the need to find a solution that may conciliate the texts in the various languages. Finally, all decisions have been taken in the light of the opinions expressed by the representatives of the Permanent Secretariat of the Alpine Convention and other observers represented in the Harmonising Group.

Bibliography

Bos, Marteen (1980): Theory and Practice of Treaty Interpretation. In *Netherlands International Law Review.* Cambridge University Press, 135 ff.

Capotorti, Francesco (1987): Sul valore della prassi applicativa dei trattati secondo la Convenzione di Vienna. In *Etudes en l'honneur de Roberto Ago*, I. Milano: Giuffrè, 197 ff.

Hardy, Jean (1961): The Interpretation of Plurilingual Treaties by International Courts and Tribunals. In *British Year Book of International Law*. London/ Oxford: Clarendon Press, 72 ff.

Köck, Heribert Franz (1980): *Vertragsinterpretation und Vertragsrechtskonvention*. Berlin: Duncker & Humblot.

Lauterpacht, Hersch (1934): Les travaux préparatoires et l'interprétation des traités, in *Recueil des Cours de l'Académie de Droit International de la Haye,* (II). Boston: Martinus Nijhoff Publ., 713 ff.

McRae, Peter (2002): The Search for Meaning: Continuing Problems with the Interpretation of Treaties. In *Victoria University of Wellington Law Review*. Unpublished Masters Research paper, Victoria University of Wellington, 2001.

Vandevelde, Kenneth J. (1988): Treaty Interpretation from a Negotiator's Perspective, in *Vanderbilt Journal of Transnational Law*. Nashville: Vanderbilt University, School of Law, 281 ff.

Voícu, Ioan (1968): *De l'interprétation authentique des traités internationaux.* Paris: Pedone.

Yasseen, Mustafa K. (1976): L'interprétation des traités d'après la Convention de Vienne sur le droit des traités. In *Recueil des Cours de l'Académie de Droit International de la Haye,* (II). Boston: Martinus Nijhoff Publ., 3 ff.

Transnational Cooperation Activities through the Experience of the LexALP Project

Lisa Lanzoni

Transnational cooperation activities are particularly relevant to the European territorial context. Against the background of the experience within the LexALP project, this paper focuses on how the principle of 'horizontal subsidiarity' can be enacted as well as on the role of territorial partnerships in Europe.

1. Applying the principle of 'horizontal subsidiarity' in the European territory

Article 158 (former article 130A) of the EC Treaty underlines the intent to support a balanced development of the European territory by reducing the "disparities between the levels of development of the various regions and the backwardness of the least favoured regions or islands, including rural areas"[1].

Starting from the Eighties, community policies have been more and more directed towards development dynamics leading to the construction of a 'Europe of Regions' (cf. Caciagli 2006, Sharpe 1993). This was typically characterised by the upcoming of several forms of regionalisation for territories intending to locally enhance their endogenous potential, together with the cooperation instruments needed to implement this.

Following the European trend toward the realisation of a truly common space, in recent times the role of the meso-government levels[2] has been reformed. The reforms of Part II, *Title V* of the Italian Constitution in 2001 (cf. Bartole et al. 2003:65 ff.), of *Title XII* of the French Constitution in 2003 (cf. Calamo Specchia 2005) and of several provisions of the German Constitution in 2006 (cf. Schefold 2006) represent only the most recent examples of an internal reforming tendency. These efforts aimed at increasing the value of national territories in compliance with the asset of internal regulations as well as with the general trend toward implementation and development at supranational level (cf. Miglio

1 The concept of 'Region' generally considered in the European space refers to areas with common characteristics (i.e. the cross-border allocation or the territorial morphology).

2 The sub-national levels of government.

1988, Bifulco 1995, Cassese 2002). In fact, only when starting from the 'bottom-up' needs it is possible to evaluate the functional problems related to a given territory and to create a common cooperation network within the European space for the identification of the most proper instruments and juridical processes to reach an adequate solution.

Such perspectives express the principle of subsidiarity, object of the well-known article 5 (former article 3B) of the EC Treaty and of article 2 of the EU Treaty (cf. Bin & Caretti 2005:107-112). The principle of subsidiarity was made more explicit in 1997 by the Protocol on the application of the principles of subsidiarity and proportionality appended to the Amsterdam Treaty[3]. This principle is intended to ensure that decisions are taken at a level as close as possible to the citizens and that constant checks are made as to wheter action at Community level is taken only considering the possibilities available within the Member States. In particular, the principle of 'horizontal subsidiarity' concerns the regional level involving public and private institutions in the evaluation of the concrete needs concerning the local dimension. The 'horizontal subsidiarity' *ratio* is based on the elaboration of different solutions in compliance with the territorial needs and problems (cf. Antonini 2000: 64-72, 76). It allows concrete interaction between players involved in the management of the territory, thus supporting the exploitation of local resources (cf. Cosulich 2006 on the introduction of a horizontal subsidiarity concept in Italy).

Against this background, the Interreg III programmes are one of the most useful istruments to implement Article 158 and the application of the principle of subsidiarity in its horizontal meaning. Interreg III programmes concern specific transeuropean forms of cooperation approved by the European Commission to support the Member States and the sub-national institutions in solving the territorial problems that impair European integration (cf. Mascali 2001:1104 ff.). In particular, its 'B' string addresses transnational cooperation among national, regional and local authorities in order to sustain the development of specific European areas. The European Interreg IIIB 'Alpine Space' Programme[4] may represent a tool for the resolution of common problems in order to create cohesion in meeting the needs of border areas in the Alpine region.

In this context the LexALP Project has created a network of institutions and other players allowing them to work together, analyse given issues and provide adequate solutions. LexALP is based on the observations made by legal experts and skilled translators dealing with the Alpine Convention on the difficulties encountered in translating a great part of the legal terminology used within Alpine Convention texts into four languages. The common efforts of players coming from areas in which the Convention is applied allowed an evaluation of these legal provisions with a view to harmonising them. The work was strongly linked to the real territorial needs of each country and the solutions provided

3 We remind that the Italian Constitution expresses the principle of subsidiarity in the reformed article 118.

4 See http://www.alpinespace.org for more information.

permit to uniformly apply the Convention in the four languages used for the analysis (cf. Strassoldo 1973:14 ff.).

With respect to subsidiarity, the contribution of each partner gave a full overview of the issues related to the use of a particular legal term in the different territorial areas of the Alpine Space. LexALP developed a useful model to apply the horizontal subsidiarity among players acting in the common space of the Alpine Convention.

2. The significance of the LexALP territorial partnership

The 2001 White Paper on European Governance and the 2003 Communication of the European Commission concern the establishment of a systematic dialogue with the associations of regional and local authorities in defining the territorial policies of the European Union.[5] These documents highlight the significance of territorial transnational networks in Europe and reflect the Union's will to support cooperation procedures and integration processes in the common space. They identify the typology of the involved actors through the role they play in managing territorial resources and participating in political relations with players of the border areas. In particular, the dialogue among territorial actors and institutions follows the so called 'two way approach', that is an action supporting, through the partnership, territorial initiatives and a wider involvement of local, national and supranational authorities assuring an adequate representation of the involved areas (Stocchiero 2003:15). A useful reflection linked to the LexALP experience arises from the particular composition of the partnership and of its representation within a common body called Harmonising Group.

The involvement of border Regions in the LexALP partnership stressed the importance of creating a cooperative network among territorial players, because these areas (in fact all Alpine areas) are characterised by profound relations, closely connected with the territorial peculiarities, affecting the meaning that every single legal term can assume in these contexts. The Project partnership corresponds to these requirements with substantial and functional criteria and was able to involve actors characterised by particular competences and expertise (Sivini 2003, Stocchiero 2004:11).

The LexALP partnership and is composed of institutional authorities:

- Dipartimento Affari Regionali e Autonomie Locali – Presidenza del Consiglio dei Ministri, Rome;
- Direzione per la Ricerca ambientale e lo sviluppo – Ministero dell'Ambiente e della Tutela del Territorio e del Mare, Rome;
- Direzione generale, Servizio legislativo – Regione Autonoma Friuli Venezia Giulia, Trieste;

5 See COM(2001) 428 definitive /2 and COM(2003) 811 definitive.

- Sektion Terminologie der Schweizerischen Bundeskanzlei, Bern;

Other subjects with specific linguistic and terminological skills are also part of the partnership:

- Institute for Specialised Communication and Multilingualism – European Academy of Bolzano (Lead Partner);
- Sprachen & Dolmetscher Institut, Munich;
- Research groups GREMUTS and LIDILEM – Université Stendhal, Grenoble.

The computational support is provided by the Laboratoire Communication Langagière et Interaction Personne Système of the Université Joseph Fourier in Grenoble. Moreover, a group of prestigious institutions constantly and closely observes project activities to further guarantee the quality and wide applicability of results:

- Permanent Secretariat of the Alpine Convention;
- Délégation générale à la langue française et aux langues de France – Ministère de la Culture et de la Communication;
- Bundesministerium für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft (Lebensministerium);
- Direzione Ambiente – Regione Autonoma Valle d'Aosta;
- Office for Language Issues – Autonomous Province of Bolzano/Bozen.

The creation of a partnership able to involve territorial areas within the Alpine Convention has been realised in the Harmonising Group. This Group, which is regulated by internally approved rules of procedure, is a forum where all actors can discuss the harmonisation of terms in order to reach common solutions and shared results. The Harmonising Group therefore represents a useful example on how to solve the problems faced by the project objective. This aspect is a feature that has never been found in an Interreg IIIB transnational cooperation project[6] (cf. Delli Zotti 1983:113 ff.). Its structure allows the Harmonising Group to define its own rules of procedure and the multidisciplinary approach (legal and terminological) needed to produce useful outcomes for all operators working daily with the multilingual documents of the Alpine Convention.

In conclusion, it is important to note that the significance of the LexALP Project is not just based on the practicability of the achieved goals (harmonisation of legal terms made freely available through an on-line term bank[7]), but also on its capacity to create an organisational structure reflecting the principle of subsidiarity and co-operation that is essential for increasing the value of the territories in the European Space.

6 Especially for intermediate groups the need to evaluate the cooperation results is a well-known issue of these forms of integration.

7 See http://www.eurac.edu/lexalp, link TERM BANK.

Bibliography

Antonini, Luca (2000): *Il regionalismo differenziato*. Milano: Giuffrè.

Bartole, Sergio/ Bin, Roberto/ Falcon, Giandomenico/ Tosi, Rosanna (2003): *Diritto regionale*. Bologna: Il Mulino.

Bifulco, Raffaele (1995): *La cooperazione nello Stato unitario composto. Le relazioni intergovernative di Belgio, Italia, Repubblica Federale di Germania e Spagna nell'Unione europea*. Padova: Cedam.

Bin, Roberto & Caretti, Paolo (2005): *Profili costituzionali dell'Unione europea.* Bologna: Il Mulino.

Caciagli, Mario (2006): *Regioni d'Europa. Devoluzioni, regionalismi, integrazione europea*. Bologna: Il Mulino.

Calamo Specchia, Marino (2005): Dalla sovranità "indivisa" alla sovranità "condivisa": la riforma del decentramento in Francia e il riparto implicito di competenze normative tra Stato, collettività territoriali e Unione Europea. In *Rassegna di Diritto Pubblico europeo*. Napoli: Edizioni Scientifiche Italiane, 55 ff.

Cassese, Sabino (2002): *La crisi dello Stato*. Roma/ Bari: Laterza.

Cosulich, Matteo (2006): La sussidiarietà come principio applicato. In Gamper, Anna & Bubjager, Peter (eds.): *La sussidiarietà applicata. Regioni, Stati, Unione Europea*. Vienna: Braumüller, 77 ff.

Delli Zotti, Giovanni (1983): *Relazioni transnazionali e cooperazione transfrontaliera. Il caso del Friuli Venezia Giulia.* Milano: Angeli.

Mascali, Laura (2001): Le Regioni dell'Obiettivo 1 e l'utilizzo dei Fondi strutturali. Opportunità di sviluppo offerte dal Pic «Interreg III». In *Rivista giuridica del Mezzogiorno*. Bologna: Il Mulino.

Miglio, Gianfranco (1988): Genesi e trasformazioni del termine-concetto "Stato". In Miglio, Gianfranco (ed.): *Le regolarità della politica*, vol. II. Milano: Giuffrè, 815 ff.

Schefold, Dian (2006): *Federalismo, regionalismo e riforma del federalismo tedesco*, Report of the III Convegno biennale dell'Associazione di Diritto Pubblico comparato ed europeo, Certosa di Pontignano.

Sharpe, Laurence J. (1993): *The rise of Meso-Government in Europe*. London: Sage.

Sivini, Silvia (2003): *Limiti e potenzialità dei processi di governance locale.* Presentation held at the seminar "Policies, Governance and Innovation for Rural Areas", Arcavacata di Rende.

Stocchiero, Andrea (2003): *La cooperazione decentrata delle regioni italiane e I partenariati internazionali per lo sviluppo locale*. Roma: Cespi.

Stocchiero, Andrea (2004): *I partenariati territoriali nelle politiche di prossimità*. Roma: Cespi.

Strassoldo, Raimondo (1973): *Frontier Regions and regional planning. Analytical study*. Strasbourg, Council of Europe, CEMAT BP10.

Experiences in Harmonising

Leonhard Voltmer

This article reports of the experiences in harmonising legal terms within the LexALP project. It starts with the theoretical background and explains why harmonised terminology is useful, illustrates the connection between legal harmonising and harmonising legal terms and explains why the legal language is a very special language for special purposes. The first section examines the importance of legal systems for legal terminology, the second the harmonising procedure. Then, the procedural order during the Harmonising Group meetings is presented and discussed with the metaphor of a marketplace. The last section discusses the consequences of harmonised terminology: can the goal of an easier legal communication be reached?

The European Union itself has no harmonised legal terminology – why does it finance a project to acquire harmonised[1] legal terminology? We should not conclude that the EU is preparing to harmonise its terminology itself – a Hercules' work with 23 languages and 27 legal systems – nor should we conclude that the EU wants to fly a testing balloon to check whether it were feasible, but we can very well assume that the EU is aware of the value of harmonised legal terminology. How many misunderstandings and negotiation efforts could be avoided if legal communication was more efficient? But how about the States, do they really need harmonised terminology? And if they need it, do they perceive that need?

1. The call for harmonised[2] terminology

One might say that the actors of international law rather avoid getting too precise and concrete about their obligations. The texts of the Alpine Convention (AC[3]) breathe a spirit of good-will in vagueness. There are only five legal definitions in all the AC, contrary to modern EU legislation, where legal definitions stand for the state-of-the-art in legistics. Most of the Members of the AC took ratification really easy[4] – an indicator of low com-

1 "Harmonisation in terminology is the process of aligning terms and definitions between languages (or between language variants within a language)." The Government of Canada's Translation Bureau, http://www.termiumplus.gc.ca/didacticiel_tutorial/english/lesson5/page5_2_9_e.html (date of consultation 12.10.2007).

2 For the definition and scope of harmonisation see Chiocchetti & Voltmer p. 47.

3 The acronym AC shall stand for the Framework Convention and all its Implementation Protocols.

4 The Alpine Convention was ratified by all Parties. Italy has not ratified any of the Protocols yet. Switzerland has ratified only the 'welcome Monaco'-Protocol (an additional Protocol for the belated accession of Monaco to the Alpine

mitment to the protection of the Alpine environment through this instrument? Not necessarily, because Italy has a huge part of the Southern Alpine Arc and high interest in the Alpine Convention, but has ratified late, whereas Switzerland has ratified early, even though the Swiss Cantons were very reluctant to yield power to a supranational institution.

But in international law as elsewhere, precision and diplomacy are two different things: Precise language is always a diplomatic advantage, even when one intends to remain vague in content. Harmonised legal language allows precision both in acting and avoiding.

This might be behind the decision of the Carpathian Convention, a 'sister' treaty of the Alpine Convention, to adopt a *lingua franca* English, which is not an official language in any of the contracting States. But will communication become clearer by the simple fact that all actors use the same language? Keeping multilingualism out of the treaty externalises the challenges of translation, but does not resolve them. The negotiators have to translate the English wording of the Convention into the national languages for their Government, their Parliament and their people. The problem of equivalent legal expressions across languages and legal systems remains.

Harmonised terminology is more than precise and effective communication. It has a legal value. Of course there is no language law with sanctions for preferring an alternative expression over a harmonised term. We are in the presence of soft law: the harmonised terms do not oblige, but not using them might harm. A simple point of departure for the interpretation of a Protocol is the meaning given by legal experts during harmonisation. Lawyers often refer to comments of legal scholars to justify a certain interpretation, and there is a sort of unwritten 'burden of proof' on anybody claiming that a term means something different than the generally accepted definition. There is also an effect for legal drafting: new legal texts in the AC treaty system will, for the convenience of all, rely on the harmonised terminology. If a State wants to circumvent the precise meaning, it needs to throw in its political weight – either to introduce in one language an alternative, non-harmonised term, or to eliminate the inconvenient content in all four languages.

The **soft-law character of legally harmonised terminology** is subtle, but most of the States act with foresight and intervene during the harmonisation process where they have vital interests. Apart from the micro-States Monaco and Liechtenstein, all Member States showed interest in a certain interpretation at some point in time. In some cases such conflicts of interpretation could not be resolved and the term had to be abandoned. For instance, there was no way to individuate equivalent concepts for the idea of "having power over an animal or a plant after its extraction from a protected area". In the Protocol, this

Convention was signed in 1994). Germany, Liechtenstein, Austria, Slovenia and France have ratified all Protocols, Monaco has ratified the four Protocols relevant for the Principality. The EU has ratified five of nine Protocols. Only in Austria and Germany there is also jurisdiction on the AC.
See http://www.alpenkonvention.org/page3_de.htm (date of consultation 05.12.2007)

concept reads *détention – possesso – Besitz* and *posedovanje* (see annex for documentation). The underlying problems are two. The first is a terminological problem: the power over a thing is conceptualized differently in the different legal systems, so that it was impossible to give four corresponding labels, when those labels mean such different things in the national systems. This could have been resolved through case distinctions (two terms to be chosen from, according to context) or a note (explaining the special restricted or enlarged meaning within the AC).

The second problem was that the cases are not distinguished in the same way because of different legal approaches to the situation: in Germany, the Civil Law conceives of a proprietor with full rights on a thing, and of a (lawful or unlawful) possessor who has more rights than anybody else except the proprietor. The underlying idea is that it would be a danger for peace and order to deny the unlawful possessor the protection of the law, for example against a robber. The reason is that the possession and propriety have the same lawful appearance. The German legislator protects therefore even unlawful possession against violence, which always appears unlawful. Therefore violence is illegal even if directed against an unlawful proprietor. It is unlawful to steal plants from somebody who has picked them illegally from a protected area.

In France and Italy, the lawful possession (*possession/ possesso*) and the (possibly unlawful) keeping of something (*détention/ detenzione*) provide a different status in Civil Law. The protection from thieves is reached through a different mechanism. In this situation, harmonising would have meant introducing a profoundly different legal concept at the very basis of any Civil Law system. The term was dropped. Terminological harmonisation requires minor differences, like the situation after harmonisation of the law.

We have come across an interesting point here, the difference and connection between harmonising law and harmonising legal terminology. For the first, the EU Community has a harmonisation strategy laid down in articles 100-102 of chapter 3 of the EC treaty: "Approximation of laws – The Council shall […] issue directives for the approximation of such laws, regulations or administrative provisions of the Member States as directly affect the establishment or functioning of the common market." The target is the common market, and the idea is that such a market works, when all technical, administrative and normative obstacles are eliminated. Such a harmonisation is different yet connected in a complex way to the harmonisation of legal terminology. The next section will compare the two processes to clarify that relation.

2. Differences between harmonised law and harmonised legal terminology

This table is to be read from the outside to the inside, starting from column A and D and proceeding to the middle columns B and C. The middle columns confront the differences and similarities.

Table 1: differences between harmonised law and harmonised legal terminology

Legal harmonisation ⟶	**comparative and linguistic consequences/comments** ⟶⟵		**Harmonised legal terminology** ⟵
Context and point of departure: starting from 'what shall be', a specific regulation concern is ruled for its concrete application in the present.	Harmonisation starts with a research on the existing legal regimes in the Member States.	The definition of 'what is there' is done through interpretation. Interpreting a text develops its understanding and reduces the possible senses. The harmonising interpretation shows what can be understood and what not.	**Context and point of departure**: starting from 'what is there' to provide tools applicable in the future.
The underlying **intention** is to unify the legal systems, but not the languages.	When a directive is to be received by national law, it is usually not 'localised' and worked through terminologically. The EU language is taken over with the content, also because most of the directives come with definitions. As a consequence, national legal systems receive a) a homograph term with a different meaning, or b) an additional, divergent meaning for their pre-existing term. Both is regularly source of confusion and introduces obstacles for an efficient communication. The only way out is 'terminological hygiene', in the best case already when introducing directives, in the worst case later. **Legal harmonisation leads to a need for terminological harmonisation.**	In the AC there are examples where lawyers of one language claim to be in the presence of one legal concept, because in their language there is one term, but other lawyers claim that there are different concepts because in their language there are different terms: the harmonisation at text level cannot be found at term level. Hence, the legal fiction of equal content of the texts is difficult to sustain when the actual content is nearly impossible to identify. **Harmonising the terms brings harmony to the term-text-relation.**	The underlying **intention** is to unify the legal language used in intercultural specialised knowledge transfer, but not the legal system. The AC is already harmonised (i.e. of equal legal content in all systems and languages).
Legal **consequences** must be identical in all legal systems and languages.	The concepts do not have to be equal, but the need to arrive at identical results is a driving force: sometimes new conceptualisations (example: the *societas europea* in EU law) become familiar to the adopting legal systems, sometimes legal concepts change through the influence of the harmonised law (example: *Überlassung von Arbeitnehmern* before and after the directive).	The consequences do not have to be equal, but the use of identical concepts makes it easier to reach an understanding and common solutions seem more natural.	Legal **concepts** must be identical in all legal systems and languages.
Normative in the strict sense of the word: **guide behaviour!**	**Sanctions** (EU treaty) are foreseen. Reciprocity is not a condition; every Member State is bound irrespectively of the behaviour of others.	**No sanctions** are foreseen. Even if there were any, a Member State could invoke the requirement of reciprocity ('real' international law).	Normative in a large or second level sense: **influence linguistic behaviour!**
Limits of the mission: harmonise results, but support difference at the level of methods, concepts and the 23 official languages! The languages, and therefore also the languages for special purposes shall be preserved!	As to content, legal harmonisation adapts law more quickly to changing social circumstances. As to language, legal harmonisation **develops the legal language** of most of the Member States, especially in lesser used languages and in the younger legal systems of the former communist States.	Defining and harmonising terms is interpretation, but it is **not binding** for a judge. Is the text to be interpreted in the way it was meant when the treaty was concluded (harmonisation came later than the text and would not count)? Does harmonisation have any legal effect at all on a norm of international law (harmonisation has no intention of changing the content of the treaty, but to take the treaty's content and use it for communication)? But: **soft-law character** (see below).	**Limits** of the mission: harmonise terms, but do not impeach the meaning of the AC 'by' doing so! Defining a term of the AC is an act of interpreting and of 'para-jurisdiction' without democratic legitimacy.
Coherent multilingual terminology **facilitates harmonisation work.**	Coherent terminology would facilitate the research of what law there is, and it would facilitate the norm-giving act, which could be written precisely and without any possibility of misinterpretation.	If there were identical legal content, there would be no need for comparison. There would be only correct and incorrect terms and a norm saying which term is the correct one would be superfluous.	Coherent legal content **facilitates terminology harmonisation.**

We have seen that legal harmonisation and the harmonisation of legal terms are different, yet connected, even complementary activities. The harmonisation of terms is a more linguistic kind of activity. One might therefore assume that there are similarities with other linguistic standardisation activities, as they are regularly done by the International Organization for Standardization and national standardisation organisations. Both the language of the law and the language of natural sciences and technology are languages for special purposes (LSPs), and this field of research usually treats all LSPs together (see for example the European Symposium on Language for Special Purposes). Nevertheless, legal terminology is profoundly different from scientific terminology.

3. Languages for Special Purposes compared

The following metaphor shall help to understand why legal language is so different from technical language:

Scientific terminology is like looking into the sea from different continents and naming the sea animals of the ocean in-between: the fish belong to the same scientific reality, and the difficulties stem from the different points of view from the different coasts, from different categorisations (industrial fish? common fish?) or from the fact that this type of fish is rather known at one coast than at the other. Still, the linguistic representation can be checked against reality and a good picture often helps to understand. In principle, all instances of that common sea can be integrated into one conceptual tree or ontology with clear, often hierarchical connections between the concepts.

Legal terminology is like looking from the ocean onto different continents and comparing the land species, which are in most cases different. Even where similar animals exist, the type of elephant on one continent is not the same type of elephant of the other continent, and even if comparable in size, scope and function, the completely different context (savannah vs. jungle) gives the African elephant a completely different meaning than the Indian elephant. This background is called legal culture by comparative lawyers.

In fact, legal terminology is still more complicated, because legal concepts are not real-life things, but inventions. Legal terminology is actually like comparing religious rules: to understand a rule we must try to know as much of the normative system in the background as possible. In legal terminology there will nearly never be a 100% match (not even in legal systems of the same language like Germany and Austria). All legal terminology is therefore comparative, with a focus not on linguistic but on functional features. While the artificial character of law is prone to categorisation as far as a single legal system is concerned, artificialness handicaps common ontologies for more than one legal system, whereas no problem should obviously be encountered in those cases where one legal system is expressed in more languages (e.g. Switzerland).

Having said that scientific and legal terminology is profoundly different, it should be easy to distinguish a scientific term from a legal term. Nevertheless, this is often difficult. As an example, the terms in the domains of tourism and traffic are rather often human inventions, and terms concerning flora and fauna or zootechnics are often taken from nature. Both pose difficulties for harmonisation:

a) A traffic term would be 'traffic capacity'[5], with the definition "The maximum traffic volume which can transit an existing road without curtailing the traffic flow." Terms and definitions might be easy to agree on, but is this a legal term at all? If it is a technical term, it should not be harmonised, because its definition should follow the scientific progress in all languages and legal systems. On the other hand, there are often competing opinions, theories and models in science, and the use of a certain technical definition rather than another would then be a legislative, norm giving decision. The definition for 'traffic capacity' might just as well be "The maximum traffic volume which can transit an existing road, without forcing a majority of the vehicles to reduce speed below the speed limit." Or it might be "The maximum traffic volume which can transit an existing road." All three definitions are technical, but the choice of one of them is legal. Therefore harmonisation might even be necessary for apparently technical and scientific terms.

Of course technical expertise in the field is important for harmonising technical terms. It is similar to technical expertise in law-making: norm givers consult technicians, but then they decide in the way they think best.

b) A term from zootechnics would be 'breeding animals'.[6] It seems that the concept is not abstract, but concrete, so that there should not be any harmonisation problems at all. A lion is a lion everywhere. Nevertheless, the term refers to a class of animals, and the strains used for breeding might be different throughout the Alps. They might be different in the future, when more farmers than today introduce ostriches as breeding animals. They might become different when buffalo breeding is spreading from Campania to the Italian Alps, because more and more buffalo cheese is exported. The term seems to depend on the social reality behind, and this might already be different or become different in the future. It is therefore appropriate to harmonise these terms as well.

c) Of course terms can be used in a common text in a common sense and in legal texts in a specific, legal sense. The problem arises when the legal text is somehow 'not only legal', or not in all parts, so that you can find a term also in the common sense. One example is 'responsible for soil use'.[7] The responsible might be defined legally in the sense that the environmental restrictions against over-use or under-use of mountain soil weigh on the

5 *Straßenkapazität, capacité routière, capacità stradale, cestne zmogljivosti.*

6 *Nutztierrasse, race d'élevage, razza di allevamento, pasma rejne živali.*

7 *Nutzungsgremium/ Nutzungsverantwortlicher, responsable de l'utilisation de l'espace, responsabile degli usi, odgovorni za rabo.*

landlord rather than on the lessee. The term 'responsible for soil use' might also be used in its common sense, comprising whoever is using soil. In fact, the term appears only once in the AC, where inventories should be made for any formal collaboration with persons who use the land. The AC does obviously not define who is in charge and who not, but intends to simply include any deal concerning soil use.

We might conclude that this term is close to phraseology, because its meaning is deliberately open. In any case, it is not a term that has to be defined and harmonised for better communication. But after a second thought, it might indeed be such a term after all, because it might adopt the restrictive, legal sense, and might be used in this sense in the future. Even when the AC leaves it open who the Member States collaborate with, it is obvious that the national administrations know very well with whom they have to cooperate and contract with (the landlord!) and with whom not (the lessee!). So even with an open definition at AC level the content might be precise by the simple fact that the underlying reality is already legally shaped by the national systems.

In this perspective, including that term or not is a decision of convenience. With the argument that the legal terms already in use are most important, the terms in the four languages have not been defined and harmonised, but they are still in the database to help translators.

The unfortunate consequence of the explained difficulties in identifying the (legal) terms is that the legal experts find themselves discussing about scientific or social facts. Sometimes experts in those areas would be required to resolve the discussions, and very often one of the harmonisers proposes to drop the question because it is "not a legal question at all".

Let us assume we are sure that we are in the presence of a legal term. It might have different denotations in different legal systems. But what are the legal systems? Can only States have a legal system of their own, even though the Alpine space knows also other norm-givers? Are these also different 'continents' as in the metaphor above?

4. The legal systems in the Alpine space

Two main criteria to identify a legal system are a) sovereignty and b) legitimacy.

a) A legal system is a non-contradictory normative universe, which provides exactly one answer to the question: "Is this claim sound or bad?" Only a sovereign normative universe can force some claims under the others and organise a legal hierarchy. The sovereign has to smoothen out all contradictions through meta-rules, often procedural and formal rules on how different pretences are ranked. Of course also the monopoly of power to enforce those decisions is necessary.

b) The political function of a legal system is to generate legitimacy through self-limitation. Sovereignty could not survive for long if it were not recognised as legitimate by most of the people for most of the time. Decisions of the sovereign come almost always with reasons and argumentations, making reference to meta-rules.

According to these two criteria, it need not be discussed that all eight national AC-States are legal systems of their own. It is also clear that they all have different content, as they recognise different claims and organise their self-limitation differently. Being different legal systems, their terminology has to be compared. But how about the supranational normative spheres, the EU, International Law and the Alpine Convention 'system'?

The EU fulfils the sovereignty criterion: it was founded as an emanation of national legal systems, because the Member States wanted to give equivalent, harmonised answers to a series of legal questions. Initially the EU 'borrowed' legitimacy from the national legal systems, but with its growing power the EU started to generate legitimacy on its own: the norm-giving process is checked and balanced in many ways today. Therefore the EU has started to become a legal system of its own also according to the second, political criterion.

The complication is that EU law cannot contradict national systems and the EU legal system might not be a 'different' legal system. In the metaphor we could talk of migratory birds, which visit both continents. The EU might be seen as complementary, as a common prolongation of the national legal systems. This view is only justified in those fields where the EU is ruling directly, by regulations and decisions. Where the EU is ruling indirectly, by directives, the Member States are free to use their own legal concepts to reach the intended goal. In these cases terms like 'traffic' might very well have a different meaning at EU level and at national level. The consequence for legal terminology is that EU concepts have to be compared to the presumably different national concepts (even though they might be in the same language!).

The AC has only faint traits of a legal system. The common answer of the Member States through equivalent AC Protocols and some concepts proper to the AC (e.g. *inneralpiner Verkehr/ trafic intra-alpin/ traffico intraalpino/ znotrajalpski promet*) are the first emancipatory attempts of an upcoming legal system. Another sign in this logic is the attempt to harmonise terms on the basis of concepts common to AC Members States but not necessarily to any of the other legal systems. Yet the AC is far from providing answers to all claims or from providing a political justification of its own. Nevertheless, the consequence for legal terminology is not that the AC uses concepts of the sphere of national law, EU law or International Law, but rather that it uses own concepts which are not set in a fully fledged legal system. Hence also the choice of treating the AC a system on its own, the 'Alpine Convention system', for the purposes of the LexALP project.

Therefore we still have to compare, because a concept suggested by the AC, such as the one presented above, might not exist or be different on national level. An additional complication is that we cannot see AC legal concepts directly 'at work', because AC obligations are not directly applicable like some parts of EU law. The AC Member States have to transform them into national law and enforce them. This necessity of a transformation into national law is due to the fact that the AC is part of international public law. Nevertheless, the content of concepts like 'transport' will be different in a pro-nature covenant as the AC and in a pro-economy covenant as GATT.

5. Methodology and procedural order

The validity of any scientific process depends heavily on the method, and the backbone of any scientifically valid method is the prescription of a certain order. Defining the 'perfect' order has been a big challenge for several reasons. The points of departure for harmonisation are very different, but the only possibility to understand the point of departure is starting to harmonise. Before harmonising, no categorisation is possible. This very abstract statement will be made clear with the following examples.

a) The AC has four official languages, but the languages fan out differently than the legal systems: Some legal systems have the same language as others (Switzerland, Germany, Austria, EU), some legal systems have several languages (EU, Switzerland, Italy). Therefore we encounter three different cases: language translation but no legal comparison (e.g. Italian and German in Switzerland), legal comparison but no linguistic translation (German in Germany and Austria), both language translation and legal comparison (France and Slovenia).

There is no compulsory order for the description of a concept and the terminographic itinerary through all the languages and legal systems varies a lot. But during the LexALP project, a best procedure has been developed (see next section).

b) Legal harmonisation is always interdisciplinary work with different points of view on how to proceed. For example, both lawyers and linguists agree on working with a corpus of authoritative texts, which are connected to the terminological data through schematic and controlled references. But when collecting this corpus of documents, linguists desire large amounts of text and in any case complete texts, while legal experts prefer to be more specific. For example, at the beginning of corpus collection it was debated whether text excerpts, e.g. only a few articles of a legal text, could be uploaded into the corpus.

Another question concerned the terminological relevance of legal texts. Whereas the legal experts were in favour of uploading any relevant legal text in the corps, even those containing only lists of place names, numbers or similar data, linguists were absolutely against burdening the corpus with relatively useless data. When the terms are extracted

from the corpus, linguists consider phraseology quite useful for translators, and they see the advantages of automatic extraction relying on frequency, while legal experts see concepts where they are not even explicitly named in the text. In the same way linguists are especially interested in the contexts and strive for the most meaningful context in every language, even when parallel texts exist. On the contrary, legal experts are almost exclusively interested in definitions and wish to have corresponding definitions in the four languages at AC level, so they will happily use parallel texts, they being translated or original language versions. A different point of view could be noticed during the constitution of glossaries, the subdivision of the AC-terminology into thematic sub-domains. It is neither legal nor linguistic but pragmatic, because it follows the division of AC texts into different thematic Implementation Protocols.

At the end of the day, different points of view are daily bread for any interdisciplinary project. What makes LexALP an additional challenge is that the output of one task is the input for the next: the corpus was collected with a legal perspective, which implied more effort from a linguistic point of view (research of equivalents, contexts and definitions also outside the corpus). In a second step, the extracted terms had to be defined from the legal point of view, but not all terms corresponded to legal concepts. Finally, during harmonisation, terms were changed to satisfy the legal congruence of the underlying concepts, with the consequence that the coined term lacks linguistic description (i.e., a context).

c) A naive procedural rule for harmonisation could be: check the correspondence of the terms first, then check the correspondence of the legal content. Such an approach would distinguish between 'phraseological units' and 'real terms', because phrases do not describe a specific legal concept and would only require the first step, i.e. comparison at linguistic level. Unfortunately, exactly this distinction has posed a recurrent difficulty when harmonising four languages.

To proceed step by step in a predefined order is not only impossible for term and definition, but also for the label 'phraseology'. There was a lot of discussion about this data category during the LexALP project. The point of departure was the linguistic category 'phraseology', but it soon became clear that the scope of phraseology is different in legal terminology: a legal concept has to have a definition for comparison purposes, as described in the example above. Non-legal concepts and phraseology do not need a legal comparison, and therefore do not need to be defined. Linguistic dictionaries do of course define non-legal concepts, and even for phraseologies it is possible to formulate what they mean. For the purpose of the harmonising project the importance lay in the distinction between what indicates a legal concept and what not.

One might assume that all terms to be harmonised are chosen in accordance to their legal meaning, so that all terms stand for a legal concept. Unfortunately, things are not that easy. When extracting four corresponding strings from an AC text, one ends up for

example with *UVP-Recht* (German), *droit national applicable aux études d'impact* (French), *normativa sulla VIA* (Italian), and *pravni predpisi o PVO-ju* (Slovene). The German string is a legal term with a precise meaning in law, but the expressions in the other languages are not. An explanation for this is that the Protocol on Transport was first written in German and then translated into the other languages. As a consequence, the German term would need a definition whereas the others would not. But then, can there be harmonised equivalents when there is only one term? In any case, for the benefit of translators, also a quartet of four corresponding phraseological units were harmonised in LexALP. Therefore also the recommended translations of a term can be harmonised.

Coming back to the data category 'phraseological unit', there was much discussion about the fact that it was used to indicate that a legal definition is not required. As explained, it means 'anything but a legal concept', independently of the linguistic category 'phraseology'. We find therefore all kinds of non-fixed word formations: phraseology, non-legal terms strings and even half-sentences. For the purpose of harmonisation, these strings were labelled 'phraseological unit'.

d) The two-step approach is also impossible for another reason: terms may seem easy enough, but their legal definitions might diverge all the same. For example, the two Romance languages Italian and French seem to have a perfect correspondence for the terms *protezione del clima* and *protection du climat* (climate protection). Even in English the Latin etymology is obvious, and the meaning seems to be granted. Only when it comes to define the concept for the Italian legal system on the one hand and the French and Swiss legal systems on the other hand, then we find out about the profound difference. In Italy *protezione* means protection of an object from negative influence, for example protection of a child, a building or a computer. The protection of something as complex and constantly evolving as the climate is always labelled *salvaguardia*, a word with the same roots as safeguard. From this surprise at definition level we have to go back to the term level and couple the Italian *salvaguardia del clima* with the French *protection du climat*, even though the Italian *protezione* and the French *sauvegarde* do exist. Any uninformed user of the database would consider this, judging from the linguistic point of view and backed by any Italian-French dictionary as an error.

In those 'surprising' cases the harmonisers feel that they should justify or explain their choice in a harmonising note. Unfortunately there are too many comparative and linguistic considerations for any given term to fit into a short note (which should come in four languages, for the benefit of all users).

Despite all those difficulties, procedural rules have been defined, and we present them in full conscience that they are not more than a basis for discussion.

6. Work-flow during the Harmonising Group meetings

When the glossary reaches the Harmonising Group (HG), it has proven to be the best procedure to proceed as illustrated in Figure 1.

Figure 1: workflow during the Harmonising Group meetings

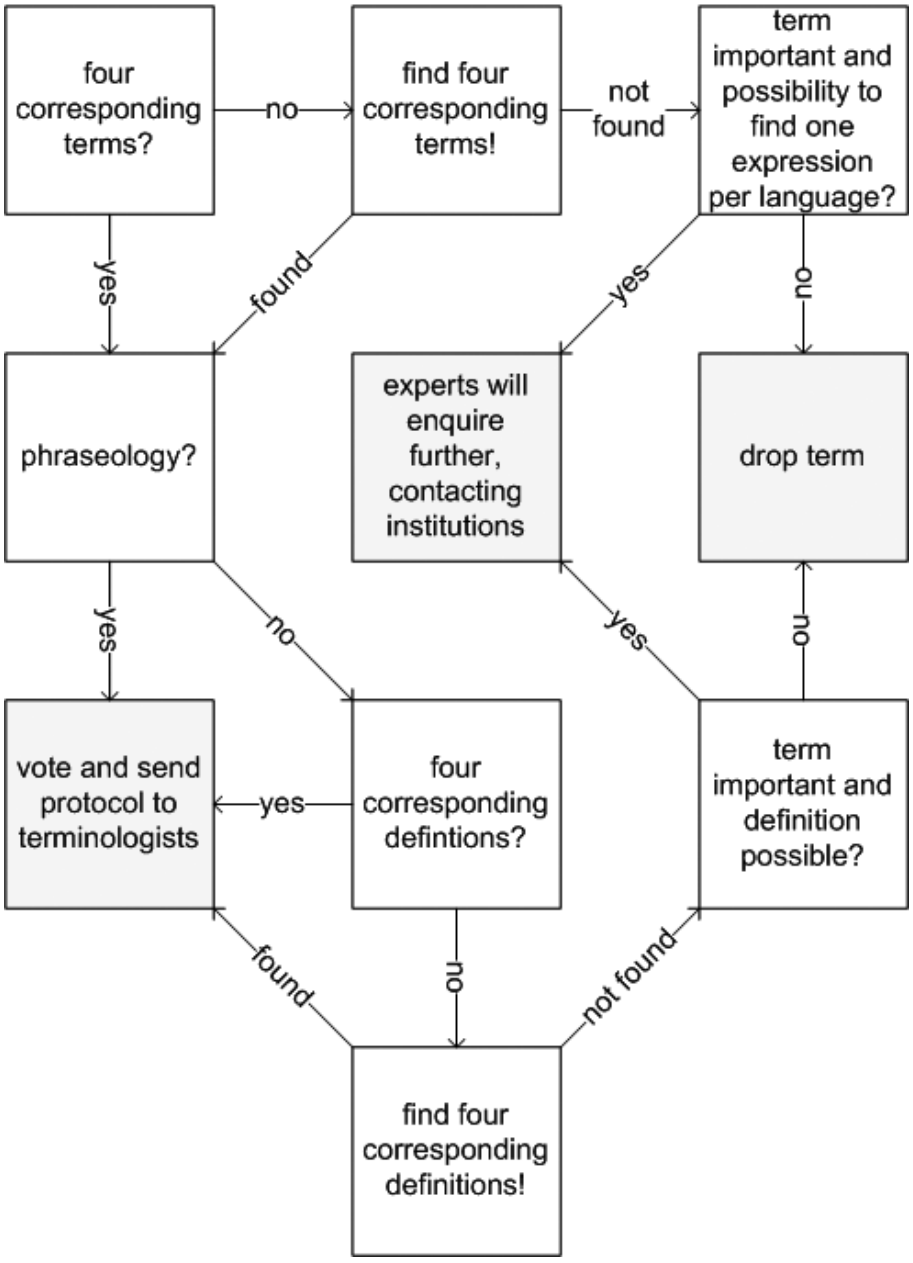


Figure 1 shows that terminology has three ways out of the Harmonising Group: harmonised, to be enquired further and be presented again, or to be dropped and left not harmonised. Actually, the second option, further enquiry, is only preliminary, because the cycle will start again for those terms, so that the two final exit points are harmonisation or 'not harmonised'. We should not conclude that 'not harmonised' is a failure. Actually, the concerned terms are labelled 'rejected', which is important information in itself! 'Rejected' means that there term is not congruent with the main concept described or that the terms available do not refer to four congruent concepts. Lawyers and translators will understand that there is a trap of incongruence hidden, and they can get more information on it from the terminological description. The user might find that the incongruence is not at lexical level, or not between the language pair the user is interested in. But he or she will be warned.

We can also learn from the figure that labelling a term as phraseology absolves from defining the term. This means easier and quicker harmonisation. In terms of work efficiency, the Harmonising Group has therefore an interest in seeing phraseologies everywhere. One major break to this is the German language: long chunks of words in French (*surfaces pour lesquelles subsistent des soupçons de pollution* in the AC) or Slovene (*površine, za katere sumijo, da so ekološko obremenjene* in the AC, with even two commas!) are only one word in German: *Altlastenverdachtsfläche*! And following the common definition, one word terms cannot be phraseology! While discussing terms like this one, the Harmonising Group has defended for a long time the theory of the conceptual unity, in the sense that a legal concept of the Alpine Convention remains one and the same legal concept for all treaty languages, without regard to the number of words you need to utter it. Actually, the Protocol on Soil Protection where the word *Altlastenverdachtsfläche* is taken from had been drafted by the Germans and the other languages are really a translation.

This definition of 'phraseological unit' according to legal dogmatics was scathed by linguists, who argued that even if all things on earth can be uttered, not all things can be uttered using a term; sometimes you simply need more words even when you refer to one specific thing. Concepts like 'meme', 'Weltgeist' or 'Über-Ich' are either taken over as *mot d'emprunt* (!), or they translate into a bit more than one word. Linguists say that phraseology is a purely linguistic phenomenon, which is not necessarily connected to the meaning. In the end the lawyers had to back down and accept that legal concepts can not always be expressed through a term. The consequence is that there are harmonised items which are terms in one language, but phraseology in another.

A dogmatic question is also if only the terms are harmonised, or also the definitions, when present. The four corresponding definitions prove that the concept is the same in all four languages of the AC. For harmonised terms the definitions cannot, therefore, remain contradictory. But they can be different, for example one definition can be more

explicit and another more general. Also, a definition can be reformulated without disturbing the harmonised meaning, which is not so for the terms, where the precise linguistic formulation is prescribed. Sometimes the Harmonising Group was close to a solution, having already individuated four corresponding terms and only discussing about the best formulation of a definition. In this moment the presence of many excellent linguists was rather complicating harmonisation, because the real task of finding a correct label for a common concept had already been reached. At this point, it was not legal expertise which was required, and the perfection of the definition (or of other terminographic aspects) should have better been left to the terminologists.

In my opinion, term, definition and context have three different 'creators' and 'target groups':

data category	who creates it	what it refers to
term	terminologist	concept
definition	lawyer	Law
context	linguist	language

Lawyers usually know their own legal language, and they intuitively know what concept they deal with, even when it is difficult to give an exhausting definition immediately. A definition in their own legal system should therefore be mainly directed at translators, who are proficient in their language, but not legal experts. The context would normally not represent an added value for a lawyer, but it does for the linguist. The important part for both lawyers and translators is obviously the harmonised term, for lawyers because it is harmonised and has a specific legal meaning (the one defined), and for the translator, because the translational choice is restricted and therefore easier.

7. Will legal communication after harmonisation be really easier?

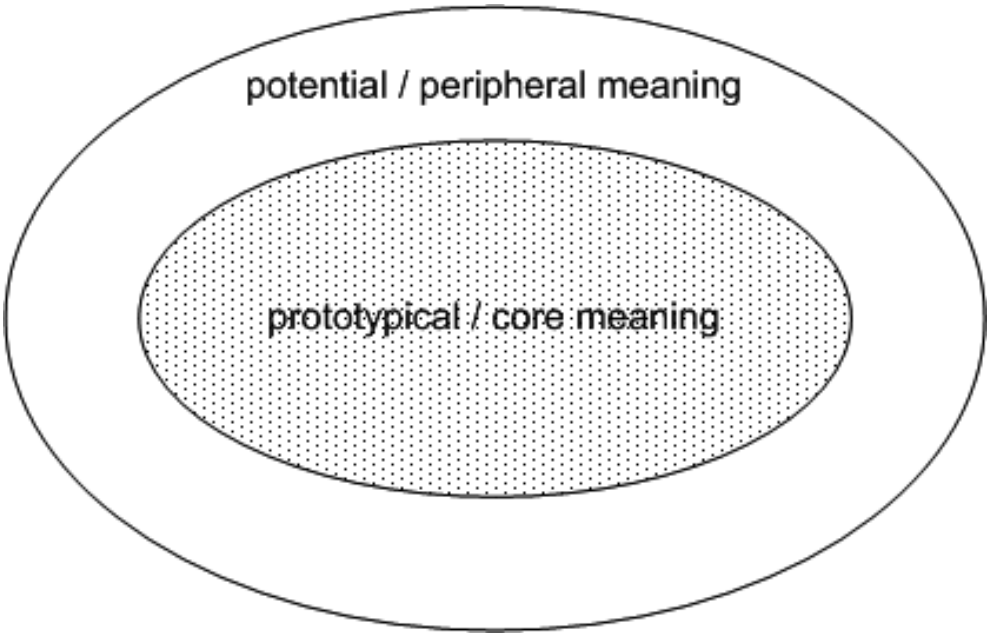
When one person is using confusing and inconsistent language and another uses clear words, we start to appreciate the difference. We might only be able to prove that harmonising works when harmonised terminology is actually used. But we can, of course, give an outlook of what will change with harmonised terminology.

As was mentioned earlier, the Protocols have already been harmonised as such, but the single terms, expressions and phraseologies in the texts of the Protocols have not. To describe this situation, it is useful to think of the distinction between phenotype and genotype in biology. The Protocol is the phenotype, the observable result as a whole. The terms, expressions and phraseologies are the genes or building blocks behind that result.

It is the genes which constitute the real heritage and value, because they allow rebuilding the same or another result. Some of the terms or genes might be defect without damage for the whole, because in the quadrilingual texts there are three other languages which give the correct meaning. In genetics, those terms would be called recessive. Still, this term might do harm to the next generation, when it is applied in a translation or a draft. Harmonisation finds the misinformation and mistakes and excludes them by assigning them the right definition, by pointing out the preferable term or even by proposing the use of the correct term. In this way, the genetic heritage is improved.

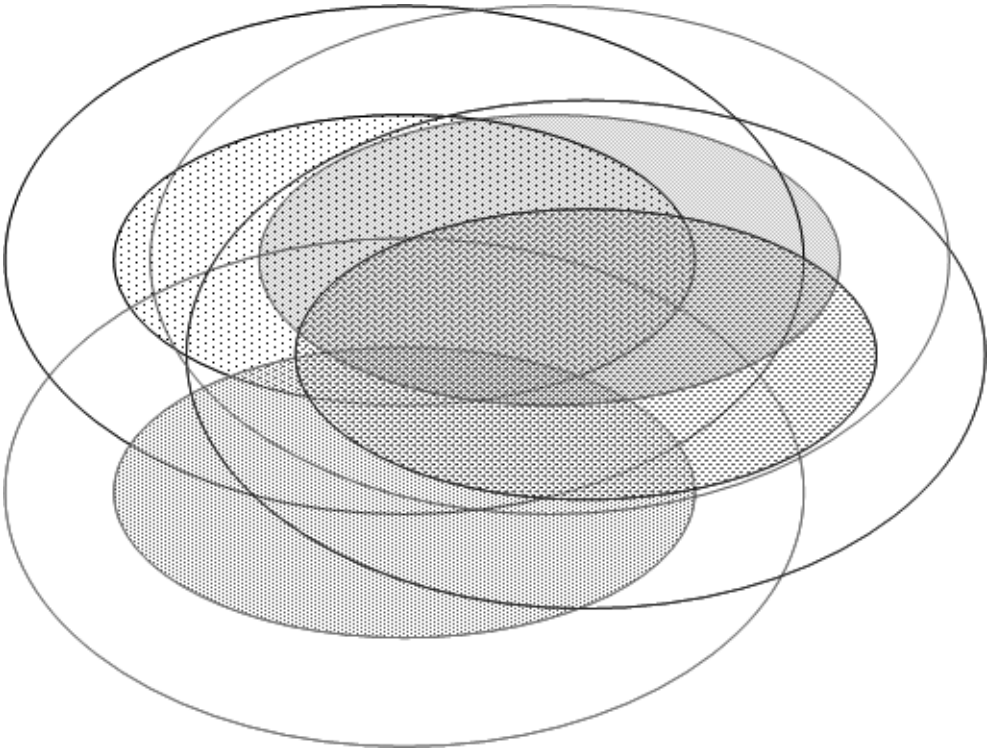
But how do harmonisers know what the correct meaning is? It might be more precise, but it might also be precisely wrong! A graphic illustration is useful here. Any term has a core of instances which are clearly designated and around that core a sphere of instances which may or may not be designated, depending on broad or strict interpretation of the term (Figure 2).

Figure 2: core and peripheral meaning



When we have several terms supposed to refer to the same concept, then we usually receive a wider core area (all cores together), and a much wider potential meaning, indicated by the sphere of indetermination resulting from the combination of the four peripheries (Figure 3).

Figure 3: terms of four languages overlapping in core and peripheral meaning



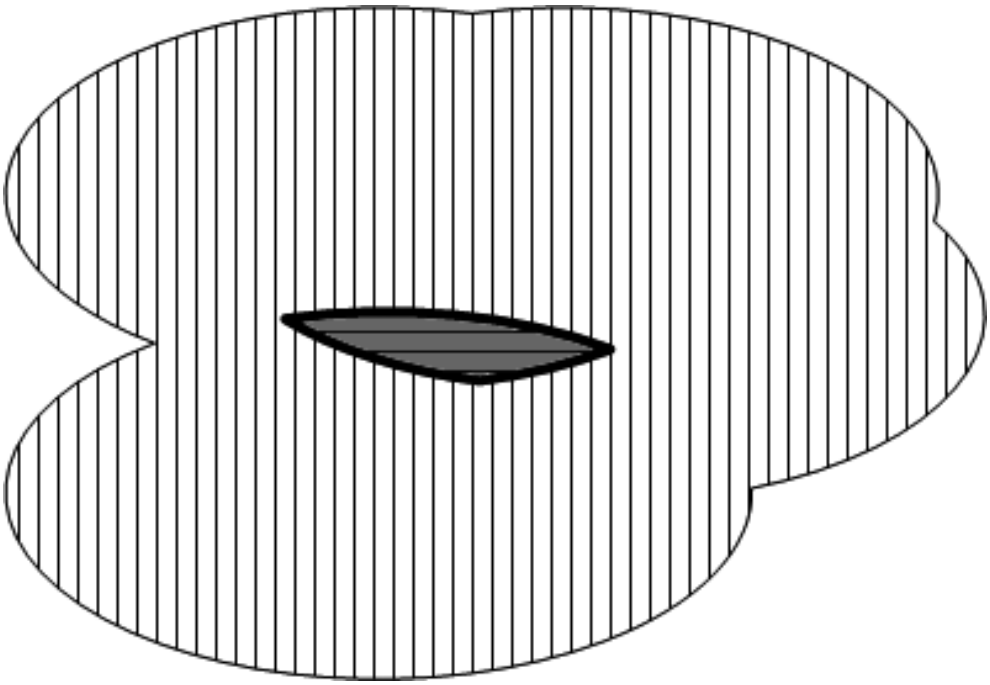
The picture has become quite blurred now, and it is difficult to see where the core meanings overlap. This is exactly what happens during harmonisation. Especially the speakers who start from the term at the bottom of the picture will have some difficulty to understand that their normal understanding of the term is quite far away from the signification of the terms in other languages, even though those terms are given in a dictionary as perfect translations.

The first impression is therefore that precision has not increased, but decreased, because both the core meaning of the concept and the potential meaning have become larger. As all four texts are binding, a lawyer would simply look for the most advantageous term and claim that meaning. With repeated operations of this kind throughout the whole text, the legal norm becomes blurred.

This is where harmonisation comes into play. The task of harmonisation is exactly to reduce the (core and potential) meaning to the common meaning. Starting from the above figure and operating a simple set theory operation, i.e. intersection, we receive a very small and hence precise common core meaning. The potential meaning is represented by the union of the four core sets. This union set is in the figure above about as large as the potential meaning of any of the four basic terms. Reducing the potential meaning

beyond would equal a (teleological) reduction against the core meaning of at least one of the terms. The resulting harmonised term is visualised in Figure 4.

Figure 4: core and periphery of the harmonised term



The figure can be interpreted as follows: meanings and interpretations which are possible in one language are not considered at all. They may or may not be included in the harmonised term. Core meanings and interpretations for one language become downgraded to potential meanings of the harmonised term. Only the intersection of all four core meanings becomes core meaning of the harmonised term. The resulting shape has usually a smaller core than any of the pre-existing terms (horizontal line filling in Figure 4). The resulting shape has usually a larger periphery than any of the pre-existing terms (vertical line filling in Figure 4). Core and periphery taken together cover approximately the same space as any of the four pre-existing terms. This is important, because after harmonisation the legal consequences are more narrowly contoured than before and it is more difficult for a lawyer to circumvent the binding force by combining several favourable terms. The conclusion is that harmonisation restricts the meaning of the terms.

We have to consider also a psychological effect: normally the text will be read in one language and it will appear having a certain rather precise meaning. In reality the meaning is not this one-language meaning. In reality, it is the combined meaning of the confusing Figure 3, because we have to think in a union of all meanings of all terms. It is only after

harmonising that the real meaning is as restricted as it appears from reading the text in one language only. Nevertheless, reading in one language is still misleading, because the meaning one might draw from this language has been very much restricted. Before or after harmonisation, reading the text in one language only never gives a complete idea of the legal content. The great advantage of harmonisation is however that this meaning is given explicitly for every term and in every language. Instead of reading the text in all four languages, the lawyer can read it in one language assisted by the harmonised terminology. In fact it would be technically nice to have harmonised texts with all terms annotated with their definitions as screen tips. On the other hand, many people do not read the law text and abide to it all the same. Also harmonisation will be one of those products one does not perceive until something is going wrong.

There is by the way an interesting back door for DIVERSITY AFTER HARMONISATION. Consider the term 'indigenous plant'. After harmonising the terms in all languages and for all legal systems,[8] the concept might still refers to different instances, because in all parts of the Alps the indigenous plants may differ.

Another possibility how diversity remains after harmonisation is when the AC legal term refers in its definition to the applicable national legal concepts. This is the case of 'protected species'.[9] The definition is: "Threatened, vulnerable or endangered species which are protected from extinction by preventive measures."[10] Those preventive measures might be anything, but in practice the prominent form of species protection is done by national law.[11] In this way the concept of 'protected species' fully corresponds in all languages, because the abstract content is identical, but the concrete instances are different in every legal system. This might be justified where a species is endangered in one country, but abundant in another. Still, it might also be misleading when a species is endangered everywhere, but only protected in some of the countries. A similar example would be 'protected area'[12], where obviously no overlapping is possible at all. A norm of the AC which shall be valid in all 'protected areas' may be linguistically harmonised, but still have a very different meaning for every Contracting Party. Still another example is 'mountain forest'[13]. It seems to be really simple, but a mountain area is defined above 600 metres in

8 *Heimische Pflanzenart, espèce végétale indigène, specie vegetale autoctona, domorodna rastlinska vrsta.*

9 *Geschützte Art, specie protetta, espèce protégée, zavarovana vrsta.*

10 The definition has been taken over from the European Environment Agency, http://glossary.eea.europa.eu/EEAGlossary/P/protected_species (date of consultation 11.10.2007).

11 Even when the content of the concept 'protected species' has been harmonised within the EU, for example through Annex IV of European Community Directive 92/43/EEC, the difference still remains with the Swiss legal system.

12 *Schutzgebiet, espace protégé, area protetta, zavarovano območje.*

13 *Bergwald, forêt de montagne, foresta montana, gorski gozd.*

Italy and above 700 metres in Germany, with a colder and wetter climate in Germany at the same altitude.

A quite debated term was *Bodenkataster/ Kataster*, *cadastre/ cadastre des sols, catasto/ catasto del suolo, kataster tal/ kataster* from Article 5, 1 of the Protocol on Soil Protection. The AC refers to national registers where the quality and destination of the soil is (or should be) registered. In some countries, such inventories have yet to be created (Monaco), in others there is a cadastre for the purpose of taxation (France and Italy) or proving property rights (Germany and Austria). In Germany there are even two land registers, one rather for Civil law but containing also public servitudes (*Grundbuch*) and one for spatial planning. In one word: a complex situation to which the AC refers quite nonchalantly by saying 'soil cadastre'. Obviously it was very difficult to find a common definition, because by starting from the national understanding of the soil registers, neither contents nor purposes overlap. Starting from the AC and trying to comprise all national registers, the definition had to be extremely open. The solution was the following: The term was defined in the plural and refers to an inhomogeneous collection of national realities (see term in annex).

This class of terms is large, but not a majority. The term 'plant heritage'[14] seems to be, as above, different in every country. But the definition is already flexible: "All plants of one or several types in an ecosystem, given on an area or volume." This concept is limited from the beginning to a certain territory, and this is made explicit. In any use of the term, the context will have to make clear to what specific ecosystem it refers to, and it cannot refer to different realities in different legal systems.

8. Harmonising as a marketplace

Harmonisers cannot proceed step by step; they proceed through market-like behaviour. All market participant have their own legal system in mind and try to get as much of it into the AC level as possible. The result should be the perfect compromise between all participants. In economical terms, the perfect price is found through an invisible hand, or in other words, by iterative negotiation.

Let us assume that there are two terms for every AC language and therefore eight terms designating one concept. Now the Harmonising Group members of the legal system A choose one of the two terms as preferable, because it corresponds best to the terms used in European and national law. This changes the situation for the harmonisers, because now they have to refer only to this term. The harmonisers of legal system B continue negotiation. They choose the term that matches best the term chosen by A, and propose a legal definition for that term. Such a definition is often strongly influenced by the definition of

14 *Pflanzenbestand, patrimoine végétal, patrimonio vegetale, rastlinska združba.*

the term in the national law of B or in European law. This in turn changes the situation profoundly for A, C and D. They have to look for a term that corresponds to the terms of A and B, and also to the definition suggested by B. The negotiation continues with C, choosing a term which fits this situation best. C will often have to propose a change in the definition, because in legal system C the definition of the term discussed is different. Again, this changes the situation for A, B and C. At this point A, confronted with the two preferred terms of other languages and a specific definition, proposes to change the term. This is like making a new offer under modified circumstances, like at a market. Continuing with this marketing process, the harmonisers eventually end up with a compromise.

The parallels with a market are: the process is supported but not guided centrally, it is determined by the participants, and it is an open process, because until the final agreement is reached it is never clear how close a compromise is or if it will ever be reached. The final agreement mirrors the interests, but it is not simply a price. It is a much more complex bartering, with many aspects to be taken into account. Sometimes the harmonisers have to take a time-out to ask the national governments for instructions if a certain result would be acceptable, and harmonisation is postponed or delayed until confirmation. The negotiation is also limited in time and often resembles an auction. As a certain number of harmonised concepts was declared goal of the project, it was necessary to introduce a time limit for discussion. Its use was, however, not impeding on the quantity or quality of the results, because the consequence of a lacking pact was neither that the concept was dropped, nor that it was harmonised according to the last proposal, but the procedure just postponed the decision. Very often the discussion on the concept showed the basic difficulties to all partners and the open questions could then be resolved with more research and reflection in a later session or by e-mail. Sometimes a rapporteur solution was used, which also worked well.

These solutions prove another parallel to market systems: with repeated deals cooperation kicks in. Every pact creates a plus-value for all partners and inspires trust for the next negotiation with these partners. Of course this could be felt not only at personal level, but also at institutional level. Trust is not irrational, when it is based on the previous behaviour of the market participants. Trust is rather a factor of rational behaviour.

9. Conclusions

Harmonised terminology is the result of the interaction of different legal cultures. The concept of legal culture by definition contains a reference to itself, explaining the meaning and formulating the critique of a legal setting. There is an implicit relativism in the expression 'legal culture', and admitting relativeness is already half-way to comparison, discursive explanation and integration of different solutions from foreign legal cultures.

The result of such comparison and interaction is, as mentioned before, contained in every single harmonised translation relation.

This section tried to describe the nature of comparison and interaction of legal cultures, how such interaction has been organised, and how the procedure can be read from the standpoint of legal theory. Contrary to the harmonisation of legal content, a related but different activity, harmonisation of legal terms for more than two languages has not attracted much attention in doctrine, therefore this contribution shall also catalyse discussion in this field.

10. Annex of all terms quoted

The following table shows all the terms discussed in this article, in the ways these terms appear in the context of the Protocols of the Alpine Convention:

Table 2: annex of all terms quoted in order of appearance

Italian	German	French	Slovene
possesso di esemplari	Besitz von Exemplaren	détenir des spécimens prélever des spécimens	posedovanje primerkov posedovanje posameznih primerkov
capacità stradale	Straßenkapazität	capacité routière	cestne zmogljivosti
razza di allevamento	Nutztierrasse	espèce d'animal d'élevage race d'animal d'élevage race d'animal de rente	pasma živine
responsabile degli usi	Nutzungsgremium Nutzungsverantwortlicher	responsable de l'utilisation de l'espace	odgovorni za rabo
traffico intraalpino	inneralpiner Verkehr	trafic intra-alpin	znotrajalpski promet
normativa sulla VIA	UVP-Recht	droit national applicable aux études d'impact	pravni predpisi o PVO-ju
protezione del clima salvaguardia del clima	Klimaschutz Klimavorsorge	protection du climat sauvegarde du climat	varovanje podnebja varstvo podnebja

For more information related to these terms, like definitions, context in the AC and harmonised terms please consult the term bank at http://www.eurac.edu/lexalp.

Bibliography

Avalos, Francisco (1998): *Legal Translations: Some Tips*. Lecture delivered at National Language Resource Center, San Diego State University on 24th July 1998. http://www.law.arizona.edu/Library/Research/Guides/legal_translations.cfm?page=research.

Bassey, Edem Antia (2003): Terminology and language planning – an alternative framework of practice and discourse. In *Language Policy*, vol. 2, no. 3 (October 2003), 285-286.

Cao, Deborah (2007): *Translating Law.* Topics in translation 33. Clevedon/ Buffalo: Multilingual Matters LTD.

Faber, Pamela et al. (2006): Process-oriented terminology management in the domain of Coastal Engineering. In *Terminology* 12:2, 189-213.

Faure, Michael G. (2000): The harmonization, codification and integration of environmental law: a search for definitions. In *European Environmental Law Review*, June 2000, 174-182.

Heusing, Gerald (2006): Das Acholi übersetzen – Hilfe für ein Volk in Uganda, Journal, *Mitteilungen und Berichte für die Angehörigen und Freunde der Universität Leipzig*, issue 1/2006, 29. http://www.uni-leipzig.de/journal/0601/0601ul_journal.pdf

Heutger, Viola (2004): A more coherent European wide legal language – A concept-based approach. In *European Integration online Papers* (EIoP) vol. 8 (2004), no. 2. http://eiop.or.at/eiop/texte/2004-002a.htm

Heutger, Viola (2003): Law and Language in the European Union, *Global Jurist Topics*, volume 3, no. 1, 2003, art. 3, 1-17.

International Information Centre for Terminology (Austria) (2005): Guidelines for terminology policies: formulating and implementing terminology policy in language communities. UNESCO document number CI.2005/WS/4. http://unesdoc.unesco.org/images/0014/001407/140765e.pdf

Mohr, Georg (2008): Rechtskultur. In Gosepath, Stefan/ Hinsch, Wilfried/ Rössler, Beate (to be published): *Handbuch der Politischen Philosophie und Sozialphilosophie*, Berlin/ New York: de Gruyter. http://www.unesco-phil.uni-bremen.de/Texte%20zur%20Vorlesung/Rechtskultur.pdf

Sueur, Jean-Jacques (2007): *Interpréter et traduire*. Actes du colloque international des 25 et 26 novembre 2005, Faculté de droit de Toulon. Bruxelles: Bruylant.

Sandrini, Peter (1999) (ed.): *Übersetzen von Rechtstexten. Fachkommunikation im Spannungsfeld zwischen Rechtsordnung und Sprache*. Forum für FachsprachenForschung, no. 54. Tübingen: Narr.

Sandrini, Peter (1999): Legal Terminology. Some Aspects for a New Methodology. In Sandrini, Peter (ed.): *Hermes Journal of Linguistics* 22, Aarhus School of Business, 101-112. http://homepage.uibk.ac.at/~c61302//publik/legal.pdf.

Definitions for Harmonising Legal Terminology

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

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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 specifics 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/EC[1] 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 Directive[2] 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 2000[3]. Unlike France, the Italian government has copied all the definitions provided by the European directive in the decree transposing the Fauna-Flora-Habitats Directive[4].

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 administration[5] (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 parks[7].

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 website[8], 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 protection[9]. This protected area has a specific legal meaning in Germany. But this concept is not a category of protected areas in the French legal system[10]; 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 Europe[11].

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 Convention[15] in 2005. Hence, this Convention is now hierarchically higher than the French laws, according to article 55 of the French Constitution[16].

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 Tyrol[17] (*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 areas[18]. 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 breed 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 species[19]. 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 handicaps[20]. 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) 1257/1999[22], 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 Alpins 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 borders[24].

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 systems[25] 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 States[26]. 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. *élements 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 Advise (SBSTTA) of the Convention on Biological Diversity in 2003[27]: "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 whole[28]. 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 activities[29]. That is why the Harmonising Group proposed to create a new term in order to express the concept of cultural landscape, namely *paysage culturaI*[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 Johannesbourg*. 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.

Ssymank, 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.

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The Alpine States made a conscious and courageous choice in 1991 when drafting the Convention on the Protection of the Alps: the Frame Convention and all its Implementation Protocols have four official versions (in French, German, Italian and Slovene) to ensure equal treatment of all Alpine languages. This publication describes the motivations for such choice as well as the ensuing consequences. It contains background articles on the multilingual access to legal information and the authentication of international treaties in several languages. An in-depth description of the policy of multilingualism within the Alpine Convention helps to understand the constant commitment to using all four languages. The book analyses why the linguistic harmonisation of legal terms may be a good strategy to ensure that multilingualism remains an asset for the Alpine Convention and does not turn into a source of misunderstandings. It examines the cooperation of representatives of different government levels of the Alps and of the academic and scientific world with a view to achieving the goal of harmonisation. Finally, the harmonising procedure and the specific difficulties faced within the LexALP project, which aimed at harmonising the legal and technical terminology used within the Frame Convention and its Protocols, are described against the background of legal theory and illustrated on the basis of concrete examples.

This book should prove particularly useful to legal scholars, translators and all professionals working in a multilingual legal context.

ISBN 978-88-88906-39-3

The initiative is co-financed with European Union funds