HANDBOOK OF TERMINOLOGY

VOLUME 3

Legal Terminology

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JOHN BENJAMINS PUBLISHING COMPANY

Handbook of Terminology, Volume 3
Legal Terminology

Handbook of Terminology

ISSN 2352-1821

The *Handbook of Terminology* (*HOT*) aims at disseminating knowledge about terminology (management) and at providing easy access to a large range of topics, traditions, best practices, and methods to a broad audience: students, researchers, professionals and lecturers in Terminology, scholars and experts from other disciplines, such as linguistics, life sciences, metrology, chemistry, law studies, machine engineering, and any other expert domain. In addition, the *HOT* addresses experts in (multilingual) terminology, translation, interpreting, localization, editing, etc., such as communication specialists, translators, scientists, editors, public servants, brand managers, engineers, and (intercultural) organization specialists.

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Volume 3

Handbook of Terminology. Legal Terminology
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Legal Terminology

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John Benjamins Publishing Company
Amsterdam / Philadelphia

The paper used in this publication meets the minimum requirements of American National Standard for Information Sciences – Permanence of Paper for Printed Library Materials, ANSI z39.48-1984.

DOI 10.1075/hot.3

Cataloging-in-Publication Data available from Library of Congress:
LCCN 2023035726 (PRINT) / 2023035727 (E-BOOK)

ISBN 978 90 272 1426 3 (HB)
ISBN 978 90 272 4938 8 (E-BOOK)

John Benjamins Publishing Company · www.benjamins.com

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Legal terms that travel

Constraints to presenting national legal terminology to international audiences

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This chapter discusses national legal terminology used in texts allowing for the dissemination of national legal knowledge, namely translated domestic legislation, academic literature, and international case law. The purpose of the chapter is to investigate the transfer of national legal terminology from its original national context to a context of a different kind, a process that requires a more or less overt form of translation. The chapter thus explores seven constraints (target audience, *lingua franca*, legal system of reference, comparative law methods, intertextuality, type of publication, editorial policies and linguistic precedent) that are imposed on text producers (translators, scholars, and drafters) when faced with national legal terminology crossing the 'natural' borders of the legal system which conceived it.

Keywords: national legal terminology, legal translation, translation constraints, legal knowledge dissemination, international audience

1. Legal terminology in Legal Translation Studies

In Legal Translation Studies, legal terminology has always occupied centre stage (Cao 2007; Galdia 2003, 4; Šarčević 1997). As well expressed by Biel and Engberg (2013, 3), "[t]erminological incongruity, the (un)translatability of legal terms, as well as such compensating 'terminological bridges' – that is, strategies for and techniques of establishing equivalence between terms from different legal systems – have traditionally been one of the key areas of research into legal translation". However, 'legal translation' as such is not a homogeneous field of activity; therefore, especially since the 1990s, research has paid growing attention to the multiple forms legal translation may assume. Since then, various strands of research have been undertaken in this field, which Cao (2013, 419–420) conveniently grouped into six categories: (1) general commentaries on legal translation, (2) specific problems of legal translation, (3) legal translation issues within a particular jurisdiction, (4) legal translation training, (5) bilingual and multilingual drafting and judicial

https://doi.org/10.1075/hot.3.leg1

interpretation involving translation, and (6) bilingual legal dictionaries and terminological and other tools. Despite the difference in focus, in all the categories just mentioned legal terminology plays a relevant role. Bearing in mind Cao's classification, this chapter addresses a specific problem of legal translation (also linked to writing and drafting, as illustrated in Section 2), namely the need to recontextualize national legal terms for international audiences, and does so by taking into account three types of discourse, i.e. legislative, academic, and judicial discourse (rather than a particular jurisdiction).

1.1 Legal terminology and the translation for normative purposes

If we have a look at where legal translation takes place, following Borja Albi and Prieto Ramos (2013), we can identify three broad sectors, i.e. the private sector, national public institutions, and international organizations. This distinction also applies to Legal Translation Studies since research in this field usually revolves around one of these three sectors. For instance, a significant line of research concerns the translation of legislative texts within national borders, i.e. legal translation as performed in bi- or plurilingual or bi- or multi-juridical countries, such as Canada, Switzerland, and Hong Kong (see, among many others, Cao 2007, 101–33; Megale 2008, 37–60; Šarčević 1997, 14–15, 41–53). One of the main foci of this line of research is the production of "legal translations for normative purposes" (Cao 2007, 10) or "instrumental translations" (Nord 1991, 80), which are translations meant to maintain the same function of the source texts. This area of research has not been of interest to translation scholars only, since the relationship between language and law, and thus the need for translation – especially in comparative law – has also attracted legal scholars' attention (see, for instance, Pozzo 2015; Sacco 1992, 2000).

In the field of research related to legal translation in supranational organizations characterized by multilingualism, the main focus of attention has long been European Union institutions, which resulted not only in abundant literature (see, for instance, Biel 2007; Caliendo, Di Martino, and Venuti 2005; Felici 2010; Kjær 2015; Šarčević 2007; Sosoni and Biel 2018), but also in a proposal to treat legal translation in the EU as a sub-genre of legal translation (Biel 2007) or even a separate research field due to its unique nature (Kjær 2007). The increasing presence and impact of supranational organizations on national legal systems on the one hand and the creation of supranational, multilingual judicial systems on the other have led to major transformations in legal translation seen both as a process and as a product. Broadly speaking, like in the case of legal translation in bi- and multilingual national settings, the main concern in this area of research has been exploring how equivalence is established between texts written in the official languages of these organizations, and thus how 'equally authentic texts' are produced (Athanassious 2006, 9; Cao 2010, 73). This, again, necessarily involves an in-depth reflection on the terminology used in these texts, which must meet certain criteria, first of all convey legal notions that are embedded in the supranational legal system

they refer to and avoid possible or unwanted relations with national legal systems (see, for example, Cosmai 2000).

Within this strand of research, legal translation scholars have been mainly concerned with the analysis of supranational legislation (see Baaij 2010; Biel 2007, 2014; Correia 2003; Cosmai 2007; Robertson 2014), which also requires investigating the characteristics of supranational legal terminology (see, Bajčić 2010; Biel 2014; Peruzzo 2012; Šarčević 2015; Šarčević and Čikara 2009). Given the increasing role of international adjudication, it should come as no surprise that multilingualism and the need for translation at supranational courts have also attracted attention from both academics (legal translation and legal scholars) and practitioners (translators) (e.g., for the Court of Justice of the European Union, see Łachacz and Mańko 2013; McAuliffe 2008, 2009, 2011; Trklja 2018; Wright 2018); for the European Court of Human Rights, see Brannan 2013, 2018; Peruzzo 2019a; Weston 1988, 1995, 2005). In addition to these mainstream studies, the terminology used by multilingual supranational organizations has also spurred some still relatively marginal but valuable research into another phenomenon related to the creation of multilingual legislation, namely the transposition of supranational legal acts into the national legislation of Member States (Biel and Doczekalska 2020; Ruiz-Cortés 2020; Temmerman 2018), which involves intralinguistic rather than interlinguistic translation.

The main strands of research outlined above revolve around legislative and judicial texts that are supposed to maintain the same function in their translated versions. This is so because source and target texts are expected to be equivalent in order to produce the same legal effect, and thus the legal translation involved pursues a normative purpose. However, Legal Translation Studies have also directed attention to other types of translation which have an informative rather than normative purpose, i.e. those intended to provide information to the target readers without being legally binding (Cao 2007, 11).

1.2 Legal terminology and translation for informative purposes

While it is undeniable that legal translation for informative purposes has also been the subject of research interest, it is also true that the attention it has attracted is less copious than translation for normative purposes. In this regard, let us mention the second type of translation of domestic legislation considered by Cao (2007, 101), i.e. translated legislation "found in any monolingual country where its laws are translated into a foreign language or languages for information purposes" (the first one being translation in bilingual or multilingual national jurisdictions). This type of legal translation is certainly recognized in the literature and required in the professional market, also due to the increasing interconnectedness of today's world. Given the preeminent role of English in all fields of human endeavour, it should come as no surprise that English is pervasively present also in the translation of national legislation. Evidence for this can be found in websites con-

taining collections of translated national legislation, which are frequently topic-specific.[1] One such example is Legislationline.org,[2] the free-of-charge database managed by the Office for Democratic Institutions and Human Rights (ODIHR) and created to assist the participating States of the Organization for Security and Co-operation in Europe (OSCE) in bringing their legislation into line with international human-rights standards, where the legislation relevant to ODIHR's aim is mostly available in English. Another resource worth mentioning is *Oxford Constitutions of the World*,[3] which contains "fully-translated English-language versions of all the world's constitutions (both national and sub-national)". Yet another example is the *Guide to Law Online: Nations of the World*[4] of the Law Library of Congress, which lists sources for national legislative material and specifies whether they are available or summarized in English. While these resources have a far-reaching scope, trying to cover as many countries as possible, there are also other, more limited resources, which nevertheless prove the importance of translating national legislation. One such example is *Foreign Law Translations*,[5] available on the website of the School of Law of the University of Texas at Austin, which gathers French, German, Austrian, and Israeli legal materials in the fields of constitutional, administrative, contract, and tort law.

An interesting fact about some of the translation-oriented legal resources just mentioned is that their developers are aware of the status of these translations, for which they clearly state that they are unofficial, or even that they "may not be reliable, and are rarely current".[6] In some cases, they identify the end users they were developed for, with Legislationline.org listing "law drafters, academic researchers, legal professionals, government officials, students, and legal specialists in international organizations", and *Foreign Law Translations* mentioning "students and teachers interested in foreign law". What is even more remarkable and interesting for the purposes of this chapter is that the latter webpage contains a disclaimer notifying the visitors that "[t]he translations have been made by various specialists in the field. There has been no attempt to create a uniform terminology or style throughout. In rendering the texts into English, the emphasis has

1. A rich list of databases containing legal materials translated into English is provided by the webpage *Foreign and Comparative Law Basics: Translation* of Hugh F. Macmillan Law Library, available at https://guides.libraries.emory.edu/c.php?g=1082987&p=7894383 (last access: 05/04/2021).

2. Available at https://www.legislationline.org/ (last access: 02/04/2021).

3. Available at https://oxcon.ouplaw.com/home/OCW (last access: 02/04/2021).

4. Available at https://www.loc.gov/law/help/guide/nations.php (last access: 05/04/2021).

5. Available at https://law.utexas.edu/transnational/foreign-law-translations/ (last access: 05/04/2021).

6. https://guides.libraries.emory.edu/c.php?g=1082987&p=7894383 (last access: 05/04/2021).

been on readability, which means that the texts reproduced here could be described as 'free' translations".[7]

What emerges clearly from this brief and incomplete overview is that the demand for this type of translation exists and is addressed in a variety of ways and places, since "[s]ome translations of legal materials are available on foreign government sites, commercial databases, university websites, and foreign bar associations and law firms" (Flick 2021). Both the compilers of these databases and the translators involved show awareness of the challenges posed by this type of translation, such as the need to make the target text readable and comprehensible, but also of the significant role of terminology. However, while the existence of this type of translation is undeniable and recognized in the literature (Cao 2007; Kocbek 2009), the body of research in this field seems still relatively scarce (Brannan 2017; Frade 2014, 2015; Matulewska 2016, 2017; Prieto Ramos 1998; Scarpa, Peruzzo, and Pontrandolfo 2017; Takeda and Yasuhiro 2014). For this reason, this chapter is meant to bring attention to the challenges posed by legal terminology when translating domestic legal material for a foreign audience, in particular legislation and case law, which in what follows are conceived as constraints to the translators' and drafters' work.

2. Legal translation and drafting as a form of dissemination of national legal knowledge

As seen above, there is growing interest in the translation of domestic legal material for informative purposes, both in professional and in academic circles, with a variety of professional profiles involved in the circulation of legal knowledge. However, a closer look should be taken at where and how domestic legal material is translated for informative purposes, since it is believed that some contexts in which this type of translation occurs have been overlooked in the literature.

The prototypical domestic legal material that is translated is the material collected in the databases mentioned in Section 1.2 above, namely statute and case law[8] for which

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7. https://law.utexas.edu/transnational/foreign-law-translations/copyright.php (last access: 05/04/2021).

8. In national judicial cases, court documents may be translated for informative purposes for different types of target readers. For instance, as aptly described by Ortega Herráez, Giambruno, and Hertog (2013, 103–106), under EU law procedural documents in national criminal proceedings are to be translated for the benefit of defendants, i.e. first to ensure that they are informed, in a language they understand, of the reasons for their arrest or the charges against them, and second to allow them to fully participate in the proceedings. Moreover, under EU law the right to information and thus to translation is also granted to victims of crime involved in criminal proceedings (Gialuz 2017, 33). Another type of judicial translation is that performed to enable international law enforcement and judicial co-operation

a source text and a target text can be found. However, translation is also involved in other forms of written communication, which may risk going unnoticed. For instance, in the legal scholarly literature dealing with national legal and judicial systems, legislative, judicial, and scholarly texts in the original language may serve as a basis for drafting in another language rather than as the source text proper.

The number of legal scholars who decide to publish their works in a language other than the language of the legal system they discuss is huge, and reviewing the academic literature of this type is beyond the scope of this paper. But an academic publication can be mentioned here, the aim of which is precisely to facilitate the dissemination of legal knowledge, i.e. the *Global Review of Constitutional Law*. Launched in 2017, the *Global Review* aims "to offer readers systemic knowledge about jurisdiction-specific constitutional law that has previously been limited mainly to local networks" as well as "to increase the base of knowledge upon which scholars and judges can draw" (Albert et al. 2020, 6). While the editors explicitly state that their focus is on "making public law developments around the world available to all in an easily digestible format" (Albert et al. 2020, 6), what they keep implicit in their foreword is that the tool to make this possible is language, and in particular the English language. Indeed, in today's world English is the language of choice when broader audiences are to be addressed, but this has an inevitable implication: writing in English also entails interlinguistic translation. In other words, in the *Global Review*, and in any other academic publication of the same ilk, translation plays a role but may be more or less hidden. Example (1) below, which is an extract from the *Global Review* discussing Judgment No. 24 of 2019[9] issued by the Italian Constitutional Court, will illustrate the point.

(1) This case dealt with numerous referral orders concerning the application of certain personal preventive measures of seizure and confiscation. [...] The contested preventive measures applied to "any person who may be presumed, on the basis of factual findings, to be habitually involved in unlawful dealings," and "any person who, owing to his or her conduct and lifestyle, may be presumed, on the basis of factual findings, to earn a living, either in full or in part, from the proceeds of unlawful activities."

(Faraguna et al. 2020, 200)

(see, for instance, Hickey 2013; Ortega Herráez, Giambruno, and Hertog 2013). While these forms of translation require the transfer of national legal terminology from its original context to a context of a different kind and are thus subject to the same or similar constraints as those described in Section 3 of this chapter, their specific purpose and target readers make the circulation of these translated judicial documents generally restricted to those involved in the proceedings. Since the emphasis in this chapter is on broader international audiences, translated national court documents have been set aside in favour of international case law, which inevitably resorts to translation and is believed to have a wider reach.

9. Corte Costituzionale, 24/01/2019, sentenza n. 24/2019, https://www.cortecostituzionale.it/actionPronuncia.do (last access: 15/07/2022).

A comparison of the scholarly text in Example (1) with the Italian version of the judgment reveals that the first sentence is a reformulation – though with some simplification – in English of the Italian text. The second sentence, instead, contains verbatim quotations from legislative sources which, at a closer look, are translations of excerpts from Italian legislation. Therefore, while the first sentence is an instance of covert or hidden translation, the second sentence contains two instances of overt or explicit translation,[10] but both forms are functional to the dissemination of national legal knowledge, and thus to the recontextualization of national terminology, beyond national boundaries.

Another type of texts in which a form of covert translation may be involved is international case law. Unlike academic literature, these texts are not primarily informative since their final goal is reaching a decision in a specific judicial case. Nevertheless, the very fact that domestic law and judicial procedure needs to be accounted for and reported in the argumentative part of the decision means that national legal knowledge is recontextualized and made available to a broader audience, with an informative secondary outcome.

A notable example is the case law of the European Court of Human Rights (ECtHR), which opted for a bilingual linguistic regime (French and English). By having a look at how ECtHR judgments are structured, we can easily notice that they contain a section devoted to the illustration of the domestic law of the respondent State. There is no need to delve into the subtleties of ECtHR's linguistic regime to understand that the presence of 46 Contracting States means that the Court also discusses the domestic law of countries, the official language of which is neither French nor English. This, in turn, means that translation is used in the process of judicial drafting, although it is not necessarily visible or adherent to what is prototypically regarded as translation. In other words, in this type of judicial drafting there may be parts which could be easily identified as translations, such as quotations from legislative or judicial sources which correspond to the source text (see (b) in Example (2) below). However, there are also other parts which are based on an existing text in a language other than French or English that serve as inspiration for drafting rather than as true source texts, such as in (a) in Example (2):

(2) a. 34. Furthermore, Article 157 § 1, sub-paragraph 4, of the Criminal Code provides that the limitation period for involuntary manslaughter is five years. That period may be extended by one half as a result of any interlocutory matters arising, but may under no circumstances exceed seven and a half years from the date of the offence.

10. For a distinction between overt and covert translation see House (1997, 76–78) and House (2010).

b. 35. Lastly, Article 120 of the Code of Civil Procedure provides:
"In cases in which publishing the decision on the merits may contribute to providing reparation for the damage, the court may, on application by an interested party, order the losing party to publish the decision at its own expense in one or more newspapers determined by the court." (*Calvelli and Ciglio v. Italy*)[11]

Although limited, the evidence provided above is considered sufficient to prove that translation is not necessarily limited to the type of operation it is prototypically believed to be, i.e. the translation of a whole source text, but may also be part of a broader writing or drafting process allowing legal knowledge to circulate beyond national boundaries. Having established this, the next question to be addressed is why this is relevant to national legal terminology. It is argued here that legal terminology plays a central role in the dissemination of domestic legal knowledge, be it in the form of translation of domestic legal material in its narrow sense or in the form of translation as part of a broader writing or drafting process. When it comes to making national legal terminology available to a foreign, international audience, both types of translation are highly constrained in similar ways. Therefore, in what follows, the constraints that affect the circulation of legal knowledge – and thus influence the drafters' or the translators' choices – are illustrated.

3. National legal terminology and constraints

In this chapter, the notion of 'constraint' is drawn both from Translation Studies (see Delisle, Lee-Jahnke, and Cormier 1999, 128–129; Gémar 1992, 376–377; González Davies 2004, 228; Lefevere 1983; Palumbo 2010) and from Legal Translation Studies (Pontrandolfo 2019; Scott 2018). The notion here relies heavily on the definition provided by Delisle, Lee-Jahnke and Cormier (1999, 128), according to whom a constraint is "[a] factor influencing the reading of the source text and the production of the target text, which the translator consciously or unconsciously takes into account". However, based on the various forms of translation involved in the dissemination of domestic legal knowledge highlighted in Section 2, 'constraint' is intended here to go beyond this definition by including not only translators but also scholars and drafters as possible subjects influenced by these factors. Moreover, not all the constraints influencing the translation, writing or drafting processes are considered in this chapter, but only those constraints affecting the circulation of legal knowledge that is embedded in a national legal system and that is expressed through national legal terminology. Therefore, the following discussion on constraints will be limited to texts containing national legal terms

11. *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, ECHR 2002-I.

with a primary or secondary informative purpose in which an overt or covert form of translation is involved. For the sake of clarity, the constraints affecting the translation of national legal terminology are presented separately in what follows, although it must be borne in mind that they have a "natural tendency [...] to interact among each other" (Pontrandolfo 2019, 156).

3.1 Target audience

The main constraint that affects the dissemination of legal knowledge is the target audience, or rather the difficulty of defining the target audience. By way of simplification, depending on the text type and its function, national legal texts are usually written for a target audience capable of interpreting them correctly or at least having access to all the resources necessary to do so. When these legal texts cross national borders, identifying their interpretive community is all but an easy task. In fact, the audience addressed by these texts is highly undefined, making it almost impossible to profile the target reader. Broadly speaking, the target audience could be said to be made of readers who do not have direct access to the national legal system they are reading about in the language it is generally expressed in. But what else do translators, scholars, and drafters know about the readers?

If we take into consideration the translation of domestic legislation for informative purposes, we could say that the ideal reader is a lawyer with an interest in the legislation of that country. However, if the purpose of the translation is to reach an audience as wide as possible, unfortunately the profiling of the target reader cannot go much beyond this very basic information. Therefore, what happens is that the text is recontextualized in a context with blurred boundaries and a stock of vague references. This is so because meanings must be negotiated with a highly undefined target audience, whose language and reference legal system are difficult to foresee. While it is undeniable that "[f]ailure to adjust the target text to the communicative needs of translation recipients is a serious source of problems" (Matulewska 2016, 65), it is also true that adjusting to such communicative needs is only possible when the profile of the target audience is known. Therefore, not knowing who exactly the target readers are or what their reference legal systems and languages are means that what is generally advocated as the starting point for providing adequate translation solutions, i.e. the consistent use of the comparative method to solve problems of "inter-systemic incongruity" (Prieto Ramos 2021), has a limited application when translating or drafting for a heterogeneous international audience (see Sections 3.3 and 3.4).

3.2 *Lingua franca*

The second major constraint is closely linked to the target audience and consists in the need to resort to a language intended to serve as a *lingua franca*. Today, the *lingua franca* par excellence, also used as a target language in translation (Albl-Mikasa 2017; House 2013, 2016; Taviano 2010; Taviano 2018; Williams 2013), is English. Yet, the reflections made here would apply to any other language used for this scope. If the purpose of the text is to allow access to legal knowledge embedded in a national legal system to a wide audience, and the characteristics such an audience, especially in terms of reference legal system, are impossible to foresee, then the *lingua franca* used should be devoid of references to legal systems other than the one being described – or at least try to avoid them as much as possible.

However, the choice of a *lingua franca* in general and English in particular does not necessarily result in a straightforward message for the target audience. Kocbek (2009, 54), for instance, warns that the choice of English as a *lingua franca* entails – on a lexical, or rather terminological level – "a risk of introducing concepts from the legal system underlying the *lingua franca* (in the case of English the Common Law), which are alien to the legal systems of the communicating parties and may as such prejudice communication".

Although not relevant to the dissemination of legal knowledge through national legal terminology, it is important to notice that Kocbek (2009, 54) also mentions the "problems deriving from the discrepancy between the Common and Continental Law [...] within the EU where English as the most widely adopted *lingua franca* [...] is used to describe specific concepts of the European Law or of national legal systems pertaining to the continental legal family within the EU by using terms tainted by the meaning attributed to them within the Anglo-American legal system". At the EU level, English is used as a *de facto lingua franca* but at the same time has the same legal status as any other official and working language of the EU.

In 2000, the relevance of language for ensuring that the legal acts drawn up by the European institutions are drafted clearly and precisely resulted in the publication of the *Joint Practical Guide of the European Parliament, the Council and the Commission for Persons Involved in the Drafting of European Union Legislation*. This Guide establishes general principles that apply to drafting, and thus also to translation, but also sets out principles regulating the use of terminology, stating that "concepts or terminology specific to any national legal system are to be used with care" (European Union 2015, 16) and that "[a]s regards legal terminology, terms which are too closely linked to a particular national legal system should be avoided" (European Union 2015, 18). These principles, which apply to any language of the EU, are accompanied by another principle, according to which terms should be provided with a definition where there is a risk of ambiguity (European Union 2015, 41). It follows that, despite the possible links of English with the

Common Law tradition, the linguistic strategies put in place by the EU ensure that the risk of misinterpretation is kept at a minimum.

However, when using English as a *lingua franca* for the dissemination of domestic legal knowledge, considering on the one hand the variety of contexts in which this occurs (as mentioned above, in translated domestic legislation, academic literature, and international case law) and on the other the absence of a clear profile of the target audience, there is always a risk of creating undesirable associations and links to other legal systems when translating national legal terminology in the absence of guidelines comparable to those developed by the EU. Moreover, when national legal material is to be recontextualized in English, the very fact that numerous varieties of English exist makes it necessary to thoroughly evaluate which one is the most appropriate target language, as well illustrated by Chromá (2016, 77–80). However, given the use of English as a *lingua franca* for a wide international audience, the answer is very likely to be a variety of English devoid of connections with any legal system, if any such variety really exists.

3.3 Legal system of reference

As emerged clearly from the discussion above, the dissemination of legal knowledge relies on making national legal material available to a wide, undefined audience, in a language that serves as a *lingua franca*. What is important in this recontextualization process is to keep in mind, and make the target audience aware of, the fact that the legal system of reference remains the original domestic legal system, which is generally expressed in a language other than the *lingua franca*. In other words, the underlying legal conceptual system is one, but the languages used to express it are at least two, the original one and the one used to make the circulation of legal knowledge possible. This means that when the circulation of national legal knowledge is the aim (or one of the aims) of legal translation (also as part of a broader writing or drafting process), the national legal system is the focal point of this operation, which must be maintained and conveyed in the *lingua franca*, and thus represents a constraint for the translator or drafter involved in the operation.

3.4 Comparative law methods

The need to express the legal knowledge embedded in a legal system in a language that functions as a *lingua franca* has repercussions on the application of comparative law methods in legal translation. Traditionally, legal translation scholars have seen these methods as highly desirable or even essential to solve practical translation issues, especially when it comes to dealing with legal terminology. However, comparative methods in Legal Translation Studies have found their most obvious application when the object of comparison is different national legal systems. For instance, in the comparative law

field, Galdia (2003, 3–4) states that "the structural feature common to legal translation – the absence of universally operative terms of reference [...] – can be overcome only through the comparison of legal institutions on a case-by-case basis". Galdia mentions the German *Treuhand* as a possible equivalent of the English *trust*, and thus his discussion revolves around the comparison of legal terms under different national legal systems. The same applies in Legal Translation Studies, and the title of Engberg's paper "Comparative Law for Translation: The Key to Successful Mediation between Legal Systems" (2013) is particularly significant in this sense. Such an application of comparative law methods, however, is only possible when the type of legal translation involves a text produced in one national legal system to be translated into the language of another national legal system. In these cases, both the source and the target legal systems of reference are known to the translator, scholar, or drafter.

Comparative law has also been used in the production of multilingual law or the transposition of supranational law in national legal systems. If we take the creation of European Union multilingual law as an example, we can notice that comparative law is necessary in any harmonization attempt. However, the very nature of the EU on the one hand and the complexity of the linguistic regime adopted by it to guarantee, as much as possible, uniform interpretation on the other, have led to the publishing of the *Joint Practical Guide* mentioned in Section 3.2. Considering the harmonization policies of the EU and the need for legislative texts to avoid terms which are too closely linked to national legal systems, in this context comparative law is used during the creation of multilingual legislation in two ways, namely from a legal perspective, to compare national legal systems in view of creating harmonized supranational law, and, from a linguistic perspective, to avoid the use of terminology that is bound to a national legal system since the reference legal system is the European one, which is expressed in 24 official languages.

In the translation that allows for the dissemination of domestic legal knowledge among an international audience, the possibilities to apply comparative law methods are limited. In fact, the desire to reach a wide audience, and thus the impossibility to establish a detailed profile of the target reader (Section 3.1), combined with the use of a *lingua franca* ideally capable of maintaining the link with the national legal system (Section 3.2) and the impossibility to identify a reference legal system for the target audience (Section 3.3), means that comparative law methods have a very limited scope in this type of legal translation. Indeed, in the translation of national texts for informative purposes for broad international audiences, comparative law methods cannot be used to compare legal systems and find possible translation equivalents (e.g. functional equivalents) to include in the target text. In this sense, this type of legal translation is close to translation for multilingual law-making since it resorts to comparative methods to exclude translation equivalents in order to avoid 'interference'. However, there are two fundamental differences between EU multilingual legislation and national legislative texts translated for informative purposes. The first lies in the legal effect of the final

product. In multilingual legislation, the resulting linguistic versions are to be considered equivalent, which means that they are ideally meant to produce all the same legal effect. In the translation for disseminating legal knowledge, the resulting text has no legal effect at all. The second difference consists in the target audience. In EU law, the community of recipients is ideally made of EU citizens. This means that, when multilingual law is created, comparative law methods are applied to exclude cases of interference or overlapping with the legal systems of the Member States. This is not possible when national legislation is translated for informative purposes, since not knowing who the recipients are means not knowing what the legal system to be compared is.

3.5 Intertextuality

Another constraint affecting the translation of national legal material and thus of system-bound terminology which seems to have gone unnoticed in the literature so far is intertextuality. Within any national legal system, a legislative or judicial text does not come out of the blue and is rather produced as part of a broader legislative or judicial 'network' of texts expressed in the same language as the new text. The texts that are part of this network are frequently recalled in all the texts examined above (legislation, academic literature, and international case law), either because this is functional to the discussion or because referencing is (almost) compulsory.

If we consider the texts used in the dissemination of domestic legal knowledge examined in this chapter, it is not difficult to recognize that the translation is selective in the sense that only a limited number of texts, or portions of texts, are actually translated, while the rest of the 'network' they may be part of or related to remain untranslated. This means that, although the source and the target text contain the same intertextual references, the untranslated texts remain inaccessible to the target audience. Example (3) from the English translation of the Italian Code of Criminal Procedure (Gialuz, Lupária, and Scarpa 2017) will help clarify this point:

(3) 1. The following offences – completed or attempted – shall be assigned to the collegial Tribunal: [...]
   b. crimes provided for in Chapter I, Title II, Book II of the Criminal Code, except for those referred to in Articles 329, 331, paragraph 1, 332, 334 and 335; [...]
   d. offences provided for in Title XI of Book V of the Civil Code, as well as the provisions extending their application to subjects other than those referred to therein;
   e. crimes provided for in Article 1136 of the Navigation Code;
   f. crimes provided for in Articles 6 and 11 of Constitutional Law no 1 of 16 January 1989;

g. crimes provided for in Articles 216, 223, 228 and 234 of Royal Decree no 267 of 16 March 1942 on bankruptcy, as well as the provisions extending their application to subjects other than those referred to therein;
h. crimes provided for in Article 1 of Legislative decree no 43 of 14 February 1948, ratified by Law no 561 of 17 April 1956 on military associations; [...]

Article 33-*bis* lists the offences that are assigned to the *collegial Tribunal*. However, instead of identifying the offences by means of terminology (e.g. murder, blackmail, etc.), the Code frequently refers to the legislative act containing the terms and the statutory definitions of such offences. Therefore, this Article refers to a variety of legislative acts, such as the Italian Civil Code or royal and presidential decrees. While in some cases at least the field can be identified (e.g. bankruptcy), in other cases the reader is left totally adrift, since very often the legislative acts mentioned are not translated and are therefore of no help for understanding the legal qualification of offences. Therefore, although some national legal material is translated, what remains untranslated in the target language may impede the effective dissemination of legal knowledge and the circulation of the relevant legal terminology.

3.6 Type of publication

The fact that only selected domestic legal material is translated and that the translations are produced by a variety of different text producers (e.g. public bodies, academics, or commercial publishing houses) also means that these translations tend to be scattered over a wide range of books, periodicals, and online repositories. This, in turn, means that for translators, scholars, and drafters it is almost impossible to keep track of all the existing translations, which may otherwise be useful in the translation, writing or drafting process, especially if an attempt at ensuring a certain degree of consistency in the translation of national legal terminology is pursued.

3.7 Editorial policies and linguistic precedent

As seen above, the dissemination of legal knowledge beyond the boundaries of a national legal system is possible through different forms of overt or covert translation in various text types. Such a variety of text types inevitably corresponds to a variety of text producers (translators, scholars, or drafters), who may be more or less free to choose a certain strategy as regards the translation of national legal terminology or may be subject to editorial policies limiting their freedom of choice.

The texts presented above as examples of texts allowing for the circulation of national legal knowledge (the Italian CCP, the *Global Review*, and ECtHR judgments) are used here to illustrate different degrees of freedom of choice in terms of translation

strategies and techniques applied to system-bound terminology, although they are not to be taken as representative of the whole category they belong to (translated domestic legislation, academic literature, and international case law). The team involved in the translation of the Italian CCP (Peruzzo 2015; Scarpa, Peruzzo, and Pontrandolfo 2017), for instance, decided to avoid borrowings and preferred the creation of neologisms through secondary term formation (most often by means of calques) and sometimes the use of Latinisms. Although, obviously enough, in the paper by Faraguna et al. (2020) published in the *Global Review* no mention is made of the translation strategy adopted in the writing process, in this case a preference is shown for avoiding both borrowings and Latinisms, with national terminology being recreated in English through calques.

Conversely, a study on ECtHR judgments involving Italy as the respondent State (Peruzzo 2019b) revealed that borrowings are one of the possible ways to refer to Italian national system-bound elements in portions of texts obtained by means of either overt or covert translation. However, any choice made in the translation process at the ECtHR must be carefully pondered, since the Court needs its decisions to be consistent, and thus uses such a language that allows a consistent interpretation of its case law. This means that any segment of an ECtHR judgment may constitute a "linguistic precedent" (Brannan 2013, 917ff.; 2018, 178ff.; Weston 1988, 687), which is a portion of text from previous judgments used in later judgments. Therefore, any decision related to the translation of national legal terminology may have an impact on the future formulation or translation of ECtHR case law.

The space available does not allow for an in-depth discussion of the possible solutions, in terms of translation strategies and techniques, to overcome the constraints described in this chapter. Suffice it to say that the translators' choices may lead to different results depending on the premises of the decision-making process and the legal system(s) involved even in translation projects that are very similar. For instance, if we compare the techniques adopted in the translation of the Italian CCP mentioned above and the English translation of the Hungarian Civil Code of 2013 (Fuglinszky and Somssich 2020), we can notice that in both cases borrowings were avoided to facilitate understanding and neologisms were created to prevent misleading impressions of similarity between the target readers' legal system and the legal system of the source text. However, Latinisms were only used in the translation of the Italian CCP as translation equivalents of Italian terms (and phrasemes), while functional equivalents were used with a higher frequency in the Hungarian Code especially when the national concepts referred to were the result of legal transplants of common law concepts.

Concluding remarks

National legal terms are the lexical expression of legal concepts as embedded in a national legal system. They can be said to condense large chunks of domestic legal knowledge in single, specialized lexical units. However, despite being system-bound and expressing their full potential in a national context, in today's globalized world they frequently 'travel abroad' together with the texts containing them, and they do so in different ways. To stay with the metaphor, in this chapter three 'means of transport' have been taken into account, namely translated domestic legislation, academic literature, and international case law, which show that when national legal terminology crosses the borders of the legal system which originated it, it may be dealt with and discussed in the most varied forums.

When it leaves its system of origin, national legal terminology must be recontextualized, i.e. adapted in order to suit the new context where it is used. Such a recontextualization most often entails a translation process, which in the three 'means of transport' mentioned above has an informative purpose and may be more or less overt. Indeed, in the case of translated domestic legislation, such a process is unmistakably overt, while in the case of academic literature and international case law a combination of both overt and covert translation can be observed. No matter the degree of overtness of the translation process involved, however, what is undeniable is that this is a constrained process which requires national legal terminology to be made available to an audience who has no direct access to the original texts containing it and who is frequently undefined.

The chapter has thus presented seven interrelated constraints (target audience, *lingua franca*, legal system of reference, comparative law methods, intertextuality, type of publication, editorial policies and linguistic precedent) that are imposed on text producers (translators, scholars, and drafters) when faced with national legal terminology crossing the 'natural' borders of the legal system which conceived it. The aim of the chapter was to highlight the challenges and complexities involved in the recontextualization of domestic legal terms for broad international audiences. Considering the similarities in terms of constraints between the three 'means of transport' discussed in the chapter, it is believed that further research is needed for a better understanding of the correlation between translation in its narrow sense and other forms of translation that are part of broader writing or drafting processes.

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