

**Center for International Legal Cooperation – *United in Translation, Translation of Dutch legislation into English, Exploring the possibilities***, report made in 2009 by Berend Vis, Universiteit Groningen.

Full report in Dutch downloadable at <http://www.cilc.nl/>

**English summary of the report and specification of its relevance for the Paul Scholten Digital Research Project by M. Termorshuizen-Arts and S. Aalten**

*Introduction*

In general

During the last 25 years a large part of Dutch legislation was renewed and adapted to meet modern legal standards. Often this new legislation could serve as an example on an international level, because of the way it solves certain legal problems. Usually however a reliable translation of the actual text of the law is missing in these cases which leaves only the possibility of presenting articles about the relevant subject to illustrate the solutions developed in Dutch law. Through translation the modernized Dutch legislation might therefore play a more powerful role in the development of laws within the EU and in other international settings (e.g. in developmental relationships or in international institutions).

More specifically

By order of the Department of Justice (*Ministerie van Justitie, Directie Wetgeving, Internationale Aangelegenheden en Vreemdelingenzaken*) a translation project was realized in the past years at, and on the initiative of the Center for International Legal Cooperation (CILC). Over the years extensive experience in legal projects with foreign countries was built up within the CILC and, quite often, problems regarding interpretation arose concerning the translation of Dutch legal terms into foreign languages. It had also been noticed, that both in the Netherlands and abroad, there appeared to be a great need for translations of Dutch legislation in English. For instance this need was sensed in legal education and research, economic traffic, the legal profession, in the administration of justice and in commercial enterprises (pp. 5 and 9 and the following of the report). Of course translations are actually being produced in these domains but a systematic approach is lacking and the quality of the existing translations is variable. The pilot project of translating the *Algemene Wet Bestuursrecht* (*Awb*, ‘General Administrative Law Act’) into English should be taken as a first attempt to meet practical needs. In time, depending on the outcome, other legislation could be translated. The English language was chosen because this language is spoken in all countries the CILC cooperates with.

In preparation of the project a sounding board was established with members from trade and industry, the legal profession, central government and legal education. Subsequently a translation protocol was drawn up that was to be used for the pilot translation. In doing this it was attempted to join up with already existing guidelines for translations, e.g. the European (Quality) Standard for Translation Services (p. 31). Also, an advisory Committee was established which was to monitor the quality of translation. A proposal was made for the set-up of a website for publication of the prepared translations. Following was an inventory of questions pertaining to copyright as well as a list of all the available translations into English in different countries. In 2009 the translation of the General Administrative Law Act (*Awb*) was published. The translation can be downloaded in full from the CILC website.

In the report of the project some subjects are touched upon that might also be of importance for the Paul Scholten Project. The report was written by Mr.B.C. Vis, at that time employed at the law faculty of Groningen University in the administrative law department.

### *Points of departure for the CILC Translation Project*

The main starting point is that the translation must be publicly accessible to all. Therefore publication shall take place on the Internet and free of charge so everyone will be in a position to consult the translation. The word accessibility, however, is also construed as meaning comprehensibility. Readers should be able to understand the translation without the need of an additional study in Dutch law. The translation should, thirdly, constitute a reliable rendering of the Dutch text. The option for the English language is also related to a world-wide accessibility that is as large as possible.

### *Procedure*

Initially the sounding board oriented itself in the matter. Already existing sites with names like the 'Brussels list', the 'Interactive Terminology for Europe' (IATE) of the European Union which can be found at <http://iate.europa.eu/> were examined. The German and French authorities proved already to have English translations of their *BGB* and the *Code Civil* available on the Internet. An overview of Dutch legislation that had already been translated into English was added (appendix 5, pp. 46-62).

Appendix 6 of the report (pp. 63-65) contains an overview of URLs to translated legislation from other European countries now already available on the Internet.

Part of the terminology, like that of the Brussels list, has already become a standard in international traffic. It is worthwhile to take good notice of this terminology before beginning to build a database of one's own, thus the report. Therefore the report also refers to the publications by the committee of the *Nederlandse Vereniging voor Rechtsvergelijking* ('Dutch Association for Comparative Law'), the so-called *PINYIN-commissie*, such as a dictionary in Dutch, French, German and English entitled *Nederlandse rechtstermen vertaald* ('Dutch legal terms translated'; this especially entails terms from family law) and the translations of jurisprudence of the European Court (p. 23). What was furthermore examined were translation quality guidelines like the European (Quality) Standard for Translation Services, standards like the ones kept by e.g. the *Directie Vertalingen* of the Ministry of Foreign Affairs, terminology lists of translation agencies and of specialized free-lance translators (p. 31).

Thereafter, the focus came to lie on the translating itself.

### *Translators and translation*

The sounding board (or a part thereof) made a study of the important literature on legal translation, comparative law and (legal) doctrine (app. 4 on pp. 40-41). The conclusion of this study of literature - as worded on p. 13 of the report - is, that, apart from making an all-round translation, a terminological database of terms and their translation equivalents should be

established wherein the choice for the translation will be motivated and be completed with references. This terminological database can later be extended when other legislation is translated. Because a changing number of translators shall be taking part in the project the database also has a function of its own for the translation of legislation and, simultaneously, a possible problem like exchanging data between different translation programmes is overcome.

From the literature read all kinds of information were obtained; thus a format was found for a term together with its translation and explanation (p. 72) where factors like context, legal history, jurisprudence et cetera are taken into consideration.

In addition an effort was made to construct a translation method (translation protocol) with the aid of the literature mentioned. Thus the option became that of a translation team consisting of a *first translator* and a *second translator/revisor*. The latter may also be a native speaker of the English language. In the background both are aided by two *field experts* namely experts in the field of law concerned. The work of the field experts commences once that a substantial part of the translation has been completed by the translator and revisor. According to the report this field expertise will – in addition to the more general legal specialization of the translators – add to approaching the ideal situation of the method worked out by Termorshuizen-Arts<sup>1</sup>.

In choosing a translation – so one reads in literature pertaining to legal translation – in general one needs to choose between a *functional equivalent* (a judicial term from the target language system functionally similar to the term to be translated from the source language system)<sup>2</sup>, a definition, a description, or a neologism. In the Paul Scholten Digital Research Group, during its first meeting, the desire was already expressed to attain a translation as *neutral* as possible. Terms from everyday language may qualify for this, as they lack the specifically legal and possibly confusing association with terms from the common law system. Neologisms might also be an option here<sup>3</sup>.

#### *Translation Committee and Secretariat*

On pp. 19-20 a sketch is given of how a Translation Committee and Secretariat can provide a plan of action for the translations, for the guarding of the translation process, and for recruitment and selection of new translators, revisors and field experts. They also take care of establishing priorities for the legislation that is to be translated. The Translation Committee looks after the final assessment of the translated work. Annually, the Translation Committee draws up a report containing the progress as well as an account.

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<sup>1</sup> Cf. p.18 of the report. Marjanne Termorshuizen-Arts, *Juridische semantiek. Een bijdrage tot de methodologie van de rechtsvergelijking, de rechtsvinding en het juridisch vertalen*, Wolf Legal Publishers, 2003, esp. pp. 217 a.f.

<sup>2</sup> Note by Marjanne Termorshuizen-Arts: Susan Sarcevic, *New approach to legal translation*, Kluwer Law International, The Hague/London/Boston 1997. (p. 235): “since most legal systems provide solutions for basically the same problems, comparative lawyers maintain that concepts and institutions of different legal systems can be meaningfully compared only if they are capable of performing the same tasks, i.e. if they have the same function”.

<sup>3</sup> Note by Marjanne Termorshuizen-Arts: De Groot 1996 and 1993, Sarcevic 1997, Oderkerk 1999, Termorshuizen-Arts 2003:30-49, 217 a.f., and other cited literature that was also incorporated in the annex to the report.

The translations are published on the governmental website (wetten.overheid.nl; see also p. 27) for legislation. This will only take place once the Translation Committee has declared to vouch for the translation's quality (quality mark).

P. 22 deals with the contacts between translator, revisor, field experts and Translation Committee.

On pp. 23 and 24 an outline is given about the steps to be taken in case of disagreement over possible translation options. Appendix 8 is mainly about the reporting and accountability of the translators with the aid of a form that is drawn up in advance.

### *Disclaimers*

Examples of disclaimers can be found in app. 7 on pp. 66-68 of the report.

### *Models*

Models for translation reports and the terminological database with the translation protocol can be found in app. 8 on pp. 69-72.