



Universiteit
Leiden

Mishandeling versus Assault

A Comparative Approach

MA Thesis

Mirjam Teunissen

s1364936

m.e.teunissen@umail.leidenuniv.nl

mirjamteunissen95@gmail.com

6 June 2017

Faculty of Humanities

Leiden University Centre for Linguistics

MA Linguistics

Translation in Theory and Practice

Supervisor: Mr. drs. A.A. Foster

Second reader: Dr. M.B. Elenbaas

Table of Contents

	Page #
1. Introduction.....	2
2. Theory.....	5
3. Analysis.....	21
4. Discussion.....	33
5. Case Examples.....	42
6. Conclusion.....	49
7. Works Cited.....	55

1. Introduction

On one of the translation fora, there was a discussion between translators on how to translate the term “assault and battery,” which occurred in a film (proz.com). The Dutch term *mishandeling* was provided, but this sparked a discussion on whether this term was legally correct. Other translations that were provided ranged from *geweld* to *moord en doodslag*, which seem two ends of a spectrum. In this thesis, a comparative analysis of the terms *mishandeling* in Dutch law and *assault* in British and American law is constructed, where other non-sexual, violent offences against the person are also taken into account. This includes some fatal crimes, as *mishandeling* may have fatal consequences. The terms are considered in the language pairs Dutch to American English and vice versa and Dutch to British English and vice versa. Full understanding of these terms is vital for the translator operating in criminal law, as “the demand for quality has been a catalyst for both the recognition of legal translation as professional practice, particularly in multilingual contexts, and for the development of Legal Translation Studies” (Ramos 12). Furthermore, in international law – specifically in treaties – offenses are usually transformed according to the “*sinnegemäße Umstellung des Sachverhalts*” principle (Handboek Strafzaken). This principle prescribes that offenses committed and judged in foreign countries need to be converted to offenses in the home country of the offender, as not all offenses are punishable in every country (Handboek Strafzaken). The actual comparison of the terminology will be drawn based upon equivalence theories by Eugene Nida and Mona Baker, the comparative analysis by Cees Koster and the prototype theory by Eleanor Rosch, as well as the terminologist approach in general.

1.1 Overview Theoretical Framework

Eugene Nida and Mona Baker both elaborate on how and when terms can be considered equivalent. Nida uses the terms “formal equivalence” (Principles 161) and “dynamic equivalence” (162). The first form considers the source text of paramount importance and would as such focus on how to transfer as much as possible from the source text to the target text (161), while the latter is aimed to create the same response in the target audience as the original had on that audience (162). Baker approaches equivalence differently, and discussed equivalence on multiple levels: word, above word and textual (Baker 5-6). Considering these levels, one may be able to conclude that while words are not equivalent specifically on word level, on sentence level their equivalence might be acceptable. Nida’s componential analysis is also one of the models that is used to analyse the legal terminology. This model consists of

“plus-minus matrices” (Science of Translation 488), from which the translator can establish which features two terms share and which are different.

Other comparative approaches, not necessarily aimed at equivalence between terms, include the comparative analysis by Cees Koster, and the prototype theory by Eleanor Rosch. The first theory focusses on all the implications in the meaning of a source language word, and compares the implied meaning to the meaning of the target language term. The latter theory can be opposed to the componential analysis, as the prototype theory seems to be the opposite: the most important feature of the meaning of a term is considered, and when this feature is also the most important feature of the other term, these terms can be used as translations for each other.

Terminology is the final theory included for the comparative approach that is adopted in this thesis. Terminology concerns itself mostly with a “collection, description and presentation of terms,” which can be elaborated on in detail – with arguments, conclusions and explanations, for example (Sager qtd. in Thelen 348). The first part is the most relevant for translators, because further explanation “is not appropriate for a professional translator: theory and theory-building would simply take up too much time, although he may use its principles as “(heuristic) discovery procedures” (348). As not all the work of terminologists applies to translators, Thelen distinguishes between “theory-oriented terminology” and “translation-oriented terminology” (348-349).

This topic relates not only to translation studies in general, as the above paragraphs illustrate, but also specifically to legal translation. Translating documents for criminal law is a particular task, and involves knowledge of the law systems of both the source language as well as the target language, as well as the ability to put that understanding into words (Legrand 262). Legrand also elaborates on comparative legal studies, claiming that “Comparative legal studies presents a new perspective, allowing one critically to illuminate a legal system - another’s or one’s own - much in the same way as, say, critical legal studies” (264). In the case of this thesis, the Dutch, British and American legal systems are reviewed, within the context of non-fatal, non-sexual offences against a person. “*Mishandeling*” for the Dutch legal system and “*assault*” for the British and American system are used as starting points. All of the theories above are discussed in full detail in the theory chapter.

1.2 Hypothesis

The main research questions in this thesis are:

- (1) Are “*mishandeling*” and “*assault*” equivalent, and
- (2) What is equivalence and how can this be established?

A third question which is considered is:

(3) How can terminology help establish equivalence?

And finally:

(4) Are the translation options provided for “*mishandeling*” and “*assault*” correct?

In this last question, “correct” means equivalent.

My hypothesis is that even though “*mishandeling*” and “*assault*” may be used often as translations for one another, these terms are not sufficiently equivalent and the context in which the terms occur is of extreme importance when the translator is drafting a translation. A terminology bank may help distinguish these contexts, and give explicit directions when to use which translation.

1.3 Structure of the thesis

The second chapter of this thesis consists of an expansion on the theories that were briefly introduced in this chapter. As such, it comprises of two distinctive parts: the translation theories that are relevant for this thesis, and the explanation of the terms “*mishandeling*” and “*assault*” in their legal context – including the legal system, and other non-fatal, non-sexual offences against a person that occur within their context. The results chapter deals with the application of these theories, and either establishes or refutes the equivalence between the terms. Terms coined by monolingual and multilingual legal dictionaries, such as IATE and Van den End, will also be considered in this analysis. The discussion chapter contains a detailed discussion of how the results can be interpreted, and which of the terms in the analysis should be used or disregarded in legal translation. In the conclusion, a brief overview of all chapters is provided, along with the answers to the research questions, and an answer to the hypothesis.

2. Theory

This chapter is divided in two parts: the first part considers the translation theories underlying this thesis, the second part sets out the legal context of *mishandeling*, *assault* and relating crimes. The translation theories of Nida, Baker, Koster and Rosch, which were explained briefly in the introduction, are discussed more elaborately in the following sections. Nida and Baker's theories concern equivalence, and how it may be achieved. Furthermore, Nida's componential analysis is used in the analysis of this thesis. Rosch' prototype analysis is an extension on that theory, and is also part of the analysis. Koster's theory deals with the comparative approach in general – the approach which is taken in this thesis. There is also a section on Terminology, and how it can help establish the equivalence between two terms.

2.1 Translation Theories

2.1.1 Cees Koster

Koster's Comparative Approach consists mostly of comparing multiple translations of a text with each other, or comparing the translation of the text with the source material. He provides that, in doing comparative research, one needs a corpus, an aim, a conceptual apparatus and a certain method (21). The corpus relates to the texts one is comparing (21). The aim of the comparison may be either descriptive or evaluative in nature, where evaluation is almost descriptive to a certain extent (22). A conceptual apparatus will provide the terminology to describe certain phenomena in the comparison (23). And, finally, the method of research may consist of a top-down process, where the researcher first analyses the overall approach of the translator and then looks at examples of that strategy in smaller parts of the text, or a bottom-up approach, where it is the other way around (24). In this thesis, the word level and sentence level is maintained for the comparison, which is called the "microstructure" (24) by Koster. By comparing the terms in their microstructure, though, one may also comment on the equivalence of the terms on a larger scale.

2.1.2 Mona Baker

Mona Baker addresses equivalence from the basis: the meaning of a word. Her theory focuses less on different forms of equivalence that occur between a source text and a target text and more on equivalence on different textual levels. As the source text used in this text consists mostly of loose terms and fragments, the focus is kept on equivalence at word level.

To establish equivalence at word level, one first needs a definition of a 'word'. Baker suggests "any sequence of letters with an orthographic space on either side" (11). A word need not have a "one-to-one correspondence" with its meaning, as Baker illustrates by the

word “rebuild,” which consists of two elements that transfer meaning: “re” and “build.”

Now there is a definition for word, but not for “meaning.” “The lexical meaning of a word or lexical unit may be thought of as the specific value it has in a particular linguistic system and the ‘personality’ it acquires through usage within that system” (12). This last part of the definition may be of particular value to this thesis, as the usage of the terms within their legal systems is researched. Baker later distinguishes between four types of meaning: “propositional, expressive, presupposed and evoked” (13). A propositional meaning “arises from the relation between it and what it refers to” (13). Moreover, it “provides the basis on which we can judge an utterance as false or true” (13). For example, if one altered the previous definition for word to “any sequence of letters without any orthographic boundaries,” the definition would be false. Expressive meaning is not based on truth or falsehood, but refers to the attitude of the speaker (13). An example would be “famous” and “infamous,” where the latter is used in a more derogatory fashion, generally. The presupposed meaning “arises from co-occurrence restrictions, i.e. restrictions on what other words and expressions we expect to see before or after a particular lexical unit” (14). There are two types of restrictions: selectional restrictions, which is partly based on the propositional meaning of a word, and collocational restrictions, which are “semantically arbitrary restrictions which do not follow from the propositional meaning of a word” (14). Put differently, the collocational restrictions do not follow from logic, and are simply always used by the speakers, whereas selectional restrictions do follow from logic, and more importantly from the literal meaning of a word. The last type, the evoked meaning, stems either from dialect or register. Especially register is of importance for this thesis, as the legal register is very particular.

Baker then moves on to the problem of “non-equivalence” (20). This concept entails that “the target language has no direct equivalence for a word which occurs in the source text” (20). Causes for non-equivalence may be:

- there are references to “culture specific concepts” (21), such as ‘fish and chips’,
- “the source-language concept is not lexicalized in the target text” (21), where the concept of the word is clear, but it has no lexical item which expresses the concept in the target language,
- “the source language word is semantically complex” (22), where there are several meanings connected to the word,

- “the source and target languages make different distinctions in meaning” (22), where the target language could distinguish in meaning more or less than the source language,
- “the target language lacks a superordinate” (22), where “the target language may have specific words but no general word” (22),
- “the target language lacks a specific term” (23), the opposite of the previous problem,
- there are “differences in physical or interpersonal perspective,” where it may be of importance “where things or people are in relation to one another or to a place” (23),
- there are “differences in expressive meaning,” where there are different attitudes attached to the source and target terms,
- there are “differences in form” (24), where the target language may not have the same form of a word readily available,
- there are “differences in frequency and purpose of using specific forms” (25), where the purpose implied in the word or the frequency of usage may pose a problem and
- there is “[a] use of loan words in the source text” (25), where the loan in the source text does not have an equivalent loan in the target text.

Baker then offers some strategies to solve the problems in equivalence: “translation by a more general term” (26), “translation by a more neutral/less expressive word” (28), “translation by cultural substitution” (31), “translation using a loan word or loan word plus explanation” (34), “translation by paraphrasing using a related word” (37), “translation by paraphrase using unrelated words” (38), “translation by omission” (40) and “translation by illustration” (42).

Baker also briefly addresses the aim of a good translation and its features. She states that “the aim of a translator [...] is to achieve a measure of equivalence at text level” (112). How a translator should achieve this is also described: “once the source text is understood, the translator then has to tackle the task of producing a target version which can be accepted as a text in its own right” (111). Baker’s standard for translation conforms with Nida’s natural translation in the next section, as “the phraseology and the collocational and grammatical patterning of the target version must conform to target-language norms” (111).

2.1.3 Eugene Nida

Nida also discusses equivalence. He states that any difference in translation is usually due to

three factors: “the nature of the message, the purpose or purposes of the author and, by proxy, of the translator and [thirdly] the type of audience” (Principles 154). The major difference between the nature of the message is whether “form or content” (154) is dominant. He uses the example of poetry and prose, as in poetry form is more important than in a prose text (154). The purposes of a translator are usually considered “similar to, or at least compatible with, those of the original author, but this is not necessarily so” (154). Generally, the aim of a translator is providing information, but he or she may also opt for “full intelligibility,” for example (154). The audiences Nida distinguishes are “children, [...] new literates, [...] the average literate adult, [...] and specialists” (155).

Nida also establishes a framework for linguistic and cultural difference. The framework provides more insight as to how much a translation may be altered to convey the same message. According to Nida’s model, there are three types of relations between the source language and target language and the culture they belong to. The first is when both the languages and the cultures are closely related to each other. This relation is applicable to the one that is investigated in this thesis: Dutch and English both Germanic languages, and are both Western European cultures. Nida states that even though this form of translation is least likely to produce serious problems, there is a risk of “superficial,” and therefore poor translation (157). Another relation is when the languages are not related in their linguistic background, but the cultures are linked. Nida mentions the example of Swedish to Finnish: both countries share a Western European culture, but belong to a different language family (157). Thirdly, there is the relation where both the languages and cultures differ significantly. Nida claims that this is the most difficult form of translation, because “differences in culture cause many more severe complications for the translator than do differences in language” (157).

Nida then elaborates on the act of translating. From earlier theories on translation, he establishes four parameters for translations. These consist of “making sense, conveying the spirit and manner of the original, having natural and easy form of expression and producing a similar response” (160). These parameters may cause conflict between “form and content,” so there is an implication of a decision for the translator, and “in general, [...] meaning must have priority over style” (Tancock qtd in Nida 160). The parameters eventually lead to principles of equivalence.

The first form of equivalence discussed by Nida is formal equivalence. Nida provides the following definition: “[it] is basically source-oriented; [...] it is designed to reveal as much as possible of the form and content of the original” (161). In this case, a translator is “to

reproduce several formal elements, [such as] grammatical units, consistency in word usage and meanings in terms of the source language” (161). The reproduction of grammatical units can be displayed at multiple levels: translating the word with the same word class as the source language, maintaining the same sentences, and transferring the formal indicators, such as “marks of punctuation, paragraph breaks and poetic indentation” (161). Consistency in word usage is based on “concordance of terminology; [...] it always renders a particular term in the source-language document by the corresponding term in the receptor document” (161). This entails that even the terms without any meaning subscribed to them are translated, even though it may result in a “meaningless string of words” (161). To obtain the same meanings in terms of the source language, a translator should reproduce the expressions of the source language “more or less literally” (162). However, as the source and target language may differ significantly, this aim is not always achievable. A translator should then employ “marginal notes” (162).

Dynamic equivalence focusses less on the “source message, as toward the receptor response” (162). Though this may allow for a freer form of translation, it should reflect that it is in fact a translation, and “as such must clearly reflect the meaning and intent of the source” (163). There are three essential features to a D-E translation: “equivalent, which points toward the source-language message; natural, which points toward the receptor language and closest, which binds the two orientations together on the basis of the highest degree of approximation” (163).

The natural translation is of especial importance to Nida. He claims that a “natural rendering must fit the receptor language as a whole, the context of the particular message and the receptor language audience” (163). To achieve this natural rendering, the translator has two “areas of adaptation” (163) at his command: grammar and lexicon. Nida claims that grammatical adaptation is usually self-explanatory, since it is governed by “the obligatory structures of the receptor language” (163). Lexical adaptation, however, allows for more freedom and therefore more options. Nida considers three lexical levels which should be regarded by the translator: terms for which there are readily available parallels, [...] terms which identify culturally different objects, but with somewhat different functions, [...] and terms which identify cultural specialties” (163). These levels build up in difficulty, and because the last level is very source-culture specific, “foreign associations can rarely be avoided” (163). The translator must also maintain the context of the message. Nida distinguishes between the “referential content of the words” (the register of the words, the symbols they represent) and the “stylistic selection and arrangement of such symbols” (a

different word order may cause loss in the stylistics of the message) (165). Finally, a translator should keep in mind the receptor-language audience. Nida bases this on “the level experience and the capacity for decoding” of the audience (166). In other words, a translator should consider the level of education and the degree of specialism of the audience.

Finally, the componential analysis serves as one of the models for comparing the meaning of the terminology in this thesis. This analysis consists of “plus-minus matrices” to determine which features are part of a term and which ones are not (Science of Translation 488). Ultimately, this should result in “[a] relatively well-structured sets of words as kinship terms” (489). However, Nida adds that there are limitations to this – and any other – model. He states that “there are always a number of different ways” (489) to describe a term. Lyons criticized the componential analysis because “it cannot naturally represent the distinction between complementarity and antonymy without failing to represent the similarity between these two kinds of dichotomous contrast” (Lyons 325). What is meant by this is that negation and antonymy (opposites) have no contrast from each other within this model. He also claims that knowing the meaning of the feature would evidently make the analyst assume that s/he also knows the meaning of the term and all its implications (335). Therefore, not only the componential analysis is used in this thesis, but also the prototype analysis by Rosch. These different angles of regarding a term may result in more reliable prescriptions.

2.1.4 Rosch

Rosch coined the prototype theory. She states that earlier psychological but also linguistic research usually assume that “categories are logical, clearly bounded entities, whose membership is defined by an item’s possession of a simple set of critical features, in which all instances possessing the critical attributes have a full and equal degree of membership” (193). However, there is another form of attributing certain concepts to a certain category. Rosch uses the category “colour” as an example, where it is the “internal structure” of a term which determines the category (193). She states that “in terms of a prototype (the clearest cases, best examples) of the category, surrounded by other colours of decreasing similarity to the prototype and of decreasing degree of membership” (193). This entails that there is one feature which is crucial for a term to belong to a category, and if other terms in close approximation to this original term showcase this crucial feature in a lesser degree, the terms are more distanced from each other in terms of equivalence. Even though legal terminology differs wildly from a concept such as “colour,” it may be worthwhile to look into this prototype theory using the terms *mishandeling*, *assault*, and related crimes. There may not be a term in English legal terminology or Dutch terminology to fit all the complexities of

meaning for the term in the source text. If the componential analysis does not provide any absolute prescription for the usage of these terms, the prototype approach could be used as an alternative.

2.1.5 Terminology

Terminology is defined by Sager in three definitions:

- 1) “the set of practices and methods used for the collection, description and presentation of terms”
- 2) “a theory, i.e. the set of premises, arguments and conclusions required for explaining the relationships between concepts and terms which are fundamental for a coherent activity under (1)”
- 3) “a vocabulary of a special subject field” (Sager qtd. in Thelen 348).

Thelen explains that though these definitions seem different, they are all connected: definition (2) ensures (1), and from (1) eventually (3) – or the vocabulary – follows. Thelen also adds that building a theory with arguments is not usually a task of a translator, because it would take up too much time – which a translator generally does not have (348). Following this assumption, Thelen distinguishes between two different types of terminology: “theory-oriented terminology” and “translation-oriented terminology” (348-349). The first of the two was coined by Thelen himself, and he describes it as “the type of terminology work done by terminologists who are essentially concerned with the relation between terms and concepts, concept formation, term formation and standardisation” (Thelen qtd. in Thelen 349). On the other hand, translation-oriented terminology is

“[...] the kind of terminology work done by translators, either monolingually (in order to analyse the meaning of a term in the source language and/or the meaning of an equivalent term in the target language) or bilingually or multilingually (in order to compare the results of the monolingual analyses to see if there is equivalence between them), but always with a view to translation, where effectiveness and efficiency of the translation process and speed are most important (Thelen qtd. in Thelen 349).

Even though the translator may not have time to add a theory to the definition of the term, he or she may build on some previous work to arrive at a translation. In this thesis, both theory-oriented terminology and translation-oriented terminology is applicable, because the aim is to find an equivalent translation for these legal terms, but this will be based on theories from both translation studies and terminology in general.

Combining all the information about the terms into one overview provides you with a term base. According to TerminOrgs, “A term base is a database comprising information about

special language concepts and terms designated to represent these concepts, along with associated conceptual, term-related, and administrative information” (TerminOrgs 23). The requirements for entries are the “description, processing, presentation, and distribution of concepts and their designations” (TerminOrgs 23). The terms that are evaluated in this thesis are listed conform to this system at the end of the analysis chapter.

2.2 Legal Context

For the legal context, the *Wetboek van Strafrecht* is used for *mishandeling* in Dutch law, and also written law for “*assault*” in British and American law. First, the terms are defined by the law articles and supporting legal theory. After that, the section introduces other relating crimes, which may serve as an alternative translation for either term, and are taken into account in the analysis.

2.2.1. *Mishandeling*

The entry on *mishandeling* in the *Wetboek van Strafrecht* is as follows:

[A]rtikel 300

1 *Mishandeling wordt gestraft met gevangenisstraf van ten hoogste drie jaren of geldboete van de vierde categorie.*

2 *Indien het feit zwaar lichamenlijk letsel ten gevolge heeft, wordt de schuldige gestraft met gevangenisstraf van ten hoogste vier jaren of geldboete van de vierde categorie.*

3 *Indien het feit de dood ten gevolge heeft, wordt hij gestraft met gevangenisstraf van ten hoogste zes jaren of geldboete van de vierde categorie[.]*

4 *Met mishandeling wordt gelijkgesteld opzettelijke benadeling van de gezondheid.*

5 *Poging tot dit misdrijf is niet strafbaar[.] (Wetboek online)*

This entry does not define the crime, but states what the sentence is. The only part that could be regarded as a definition is section 4: “*met mishandeling wordt gelijkgesteld opzettelijke benadeling van de gezondheid*” (Wetboek online). This last part means “to harm someone’s health intentionally.” Section 5 states that attempts to this crime are not punishable by law. The other articles of *mishandeling* in the *Wetboek* also refer to: “*mishandeling met voorbedachte rade*,” “*zware mishandeling*” and “*zware mishandeling met voorbedachte rade*” (Wetboek online). *Zware mishandeling* is defined as “*een ander opzettelijk zwaar lichamenlijk letsel toebreng[en]*” (Wetboek online). This means that there is a distinction between minor and major injury (*zwaar letsel*) as a result of *mishandeling*, and whether there was criminal intent (*met voorbedachte rade*) in the cases producing such injuries. The *Tekst en Commentaar Strafrecht*, containing explanations of and notes on Dutch law, adds that because there is no clear definition of *mishandeling* in the article, this should be defined by

science and jurisprudence (Tekst en Commentaar). It is later provided that “[*eenvoudige mishandeling bestaat in het opzettelijk toebrengen van lichaamspijn of lichamelijk letsel*]” (Tekst en Commentaar). This definition specifically states that *mishandeling* is physical, not mental. In *Juridisch Woordenboek*, a monolingual legal dictionary, the following definition can be found: “*het opzettelijk veroorzaken van lichamelijke pijn of letsel of de opzettelijke benadeling van de gezondheid van een ander (eenvoudige [mishandeling]); door de wetgever nader geclassificeerd, zoals in zware [mishandeling], de dood ten gevolge hebbende enz*” (230). This definition combines the intentional harm of the other’s health that is provided in the *Wetboek* and the infliction of physical injury, that was provided by the *Tekst en Commentaar*. From these definitions, there are three elements that are crucial in *mishandeling*: 1) there is physical harm as a result, which could be either minor or major 2) there is a clear distinction between *eenvoudige* (lit. simple) and *zware* (lit. heavy) *mishandeling* and 3) there is a distinction between *met voorbedachte rade* (lit. with criminal intent) and without criminal intent. However, it should be noted that there is always some intention involved in *mishandeling* (Tekst en Commentaar).

There are several other offenses which relate to *mishandeling*, but which do have a different definition in the *Wetboek*. The first one is “*belaging*” in article 285b. The definition of this term is: “*wederrechtelijk stelselmatig opzettelijk inbreuk ma[ken] op een anders persoonlijke levenssfeer met het oogmerk die ander te dwingen iets te doen, niet te doen of te dulden dan wel vrees aan te jagen*” (Wetboek online). This definition indicates that the person committing the crime intentionally violates someone’s personal life in order to force someone to do or not do or allow something, or scare someone. In the *Wetboek*, there is no indication whether this is only by threats or if there could actual physical harm as a result of *belaging*. The article does add that the offender can only be prosecuted if the victim files a complaint against said offender. The *Tekst en Commentaar* explains that there may be an overlap with article 285 in the *Wetboek*, namely “*bedreiging met misdrijf*.” *Bedreiging* also means using force to achieve a goal, but in this case there is usually violence involved (Wetboek online). Another set of terms relating to *mishandeling* are *doodslag* (article 287) and *moord* (article 289). In both cases the death of the victim is intentional, but *moord* indicates that there is premeditation involved in the death (*Tekst en Commentaar*). The difference with *mishandeling* is that with both *doodslag* en *moord*, the result is always death, whereas with *mishandeling*, death is usually not the result and is also not the intended goal of the offender. *Juridisch Woordenboek* adds “*dood door schuld*” (101) as is mentioned in article 307 in the *Wetboek*. In this case, the death is a non-intended result but nevertheless a crucial element of

the crime. It is also imminent that there is no intention involved in *dood door schuld*: the offender does not act solely to cause someone's death (*Tekst en Commentaar*). In article 308, “*zwaar lichamelijk letsel door schuld*” (Wetboek online) is explained. As with *dood door schuld*, this crime is a non-intentional crime, where *zwaar lichamelijk letsel* is not intended by the offender. This is what supposedly separates *mishandeling* and *zwaar lichamelijk letsel door schuld*: whether there is intention or not.

2.2.2. Assault: British Law

In British law, there is not always codification of every law, but in the case of “*assault*” and relating crimes written document are plenty. Three different forms of *assault* can already be established in this stage:

[I]t is the level of injuries and the likely sentence that are crucial. In simple terms, Parliament has determined that there should be separate offences reflecting three levels of injury - Common Assault, ABH and GBH. As a starting point, where there is no injury or injuries which are not serious, the offence charged should generally be Common Assault. Where there is serious injury and the likely sentence is clearly more than six months' imprisonment the offence charged should generally be ABH. And where there is really serious injury the offence charged should generally be GBH (The Crown Prosecution Service)[.]

ABH here means “Actual Bodily Harm” and GBH “Grievous Bodily Harm” (CPS). These terms are explained further in the next paragraph, dealing with relating crimes. As is stated in this excerpt, the expected sentence is also taken into account when establishing the crime, which is not the case in Dutch law. A more specific definition of *assault* is provided, contrary to section 39 of the Criminal Justice Act 1988:

[A]n offence of Common Assault is committed when a person either assaults another person or commits a battery. An assault is committed when a person intentionally or recklessly causes another to apprehend the immediate infliction of unlawful force. A battery is committed when a person intentionally and recklessly applies unlawful force to another (CPS)[.]

Another form of *assault* is introduced and opposed to Common Assault here – battery. The difference between these terms is that *assault* also includes the threat of violence, whereas battery always involves the act of violence. Black's Law Dictionary adds another definition: “an attempt to commit battery, requiring the specific intent to cause physical injury” (137). From this definition it appears that *assault* is merely the threat of violence, whereas battery is an instance of *assault* where violence actually occurs. The Crown Prosecution Service states

that “where there is a battery the defendant should be charged with 'assault by beating'. (DPP v Little (1992) 1 All ER 299).”

The difference between assault and battery has been pointed out, but there are more crimes relating to *assault*. Actual Bodily Harm, contrary to section 47 of the Offences against the Person Act 1861, is applied “when a person assaults another, thereby causing Actual Bodily Harm (ABH). Bodily harm has its ordinary meaning and includes any hurt calculated to interfere with the health or comfort of the victim: such hurt need not be permanent, but must be more than transient and trifling: (R v Donovan 25 Cr. App. Rep. 1, CCA)” (CPS). This implies that, in practice, there is more serious injury than with Common Assault. Secondly, there is Unlawful wounding/inflicting grievous bodily harm, contrary to section 20 of the Offences Against the Person Act 1861. These crimes provide that “this offence is committed when a person unlawfully and maliciously, either: wounds another person; or inflicts grievous bodily harm upon another person” (CPS). A wound is described as “the breaking of the continuity of the whole of the outer skin, or the inner skin within the cheek or lip. It does not include the rupturing of internal blood vessels” (CPS). It should be noted, however, that this can also include minor injuries, which may also be classified under Common Assault (CPS). Grievous Bodily Harm “means really serious bodily harm. It is for the jury to decide whether the harm is really serious” (CPS). It is added that,

[I]n accordance with the recommendation in R v McCready (1978) 1 WLR 1376, if there is any reliable evidence that a sufficiently serious wound has been inflicted, then the charge under section 20 should be of unlawful wounding, rather than of inflicting grievous bodily harm. Where both a wound and grievous bodily harm have been inflicted, discretion should be used in choosing which part of section 20 more appropriately reflects the true nature of the offence (CPS) [.]

This recommendation implies that there is a great deal of subjectivity which leads to the conviction for either crime, since there are no actual set limitations for when something can be Common Assault, Actual Bodily Harm, Unlawful Wounding or Grievous Bodily Harm. It should be noted, however, that Unlawful Wounding and Grievous Bodily Harm cannot be attempted, since a serious injury is necessary for prosecution. Also, when these crimes are committed with intent (contrary to section 18 of the Offences Against the Person Act 1861), this could lead to a more serious sentence.

Still other crimes may relate to *assault* in a lesser degree. Firstly, there is a “threat to kill,” which may or may not lead to the offender actually killing the victim or a close relation of him. Secondly, there are crimes which have a fatal consequence in all instances.

Manslaughter is one of such crimes. There is no clear definition in the Homicide Act 1957, but The Elementary Principles of Jurisprudence defines this as:

[T]he main line of division is between voluntary and involuntary manslaughter, the first occurring where there is an intention to do some illegal harm to a person, the second where there is no such intention. [...] Manslaughter [...] may not be the result of intent at all. It may be the consequence of negligence. This, indeed is one of the principle causes of involuntary manslaughter[.] (315-316)

Black's Law Dictionary defines it as "the unlawful killing of a human being without malice aforethought" (1108). In the latter definition, there is no distinction between voluntary (with intent) or involuntary (without intent); all cases are without "malice aforethought." Murder, on the other hand, is with malice aforethought (Black's Law Dictionary 1176). The Dictionary also makes a distinction between certain cases of murder, of which felony murder is of particular interest. In the case of felony murder, also termed unintentional murder, the murder comes forth from another crime that is committed (1176), for example *assault*.

2.2.3. *Assault: American Law*

In the U.S. Code Title 18, Chapter 7, section 113, the crimes that are considered *assault* are listed as follows:

- (1) [A]ssault with intent to commit murder or a violation of section 2241 or 2242
- (2) Assault with intent to commit any felony, except murder or a violation of section 2241 or 2242
- (3) Assault with a dangerous weapon, with intent to do bodily harm
- (4) Assault by striking, beating, or wounding
- (5) Simple assault
- (6) Assault resulting in serious bodily injury
- (7) Assault resulting in substantial bodily injury to a spouse or intimate partner, a dating partner, or an individual who has not attained the age of 16 years
- (8) Assault of a spouse, intimate partner, or dating partner by strangling, suffocating, or attempting to strangle or suffocate (Legal Information Institute)[.]

In all cases, assault implies an act of violence against the other, not of threatening with violence. There is, however, a clear distinction between the degree of violence: violence resulting in death, violence resulting in physical harm, and strangulation or suffocation of an intimate partner.

In the U.S., an *assault* case may be tried both in a criminal court as well as a civil court. The difference between the two cases is that in a criminal case, "the burden of proof is

stricter in a criminal case, and there is the added requirement of proving the violation of a specific criminal statute, as worded by the legislature” (Nolo Legal Encyclopedia). However, if the assaulter is not convicted in the criminal case, the victim could attempt to sue the assaulter in a civil case. Then it is not the State who is suing the assaulter, but the victim him/herself. Because of that, and the fact that this case is tried to obtain “monetary damages,” double jeopardy – “trying a person more than once for the same actions” – is not applicable (Nolo Legal Encyclopedia). Even if the alleged assaulter is not convicted in the criminal case, he or she may still be liable for the damages that resulted from the assault.

In close proximity to *assault*, section 114 of chapter 7, “maiming” is mentioned. This consists of:

[W]hoever, within the special maritime and territorial jurisdiction of the United States, and with intent to torture (as defined in section 2340), maim, or distable, cuts, bites, or slits the nose, ear, or lip, or cuts out or disables the tongue, or puts out or destroys an eye, or cuts off or disables a limb or any member of another person; or Whoever, within the special maritime and territorial jurisdiction of the United States, and with like intent, throws or pours upon another person, any scalding water, corrosive acid, or caustic substance[.] (Legal Information Institute)

Maiming thus also consists of inflicting an injury upon another person, but is very restricted of the area where the injury is inflicted, and also certain tools that may be used for inflicting the injury. In this section, “torture” is also mentioned. It is defined in U.S. Code Title 18, Chapter 113C, section 2340 as “an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control” (Legal Information Institute). Here it is mentioned that the injury may also be a mental one. Also, this crime may be committed under the pretence of being a lawful act. Section 2340A indeed explains that U.S. officials are exempted from legal prosecution when committing this crime (Legal Information Institute). In Title 18 of the U.S. Code, the fatal crimes are also listed, in Chapter 51, section 1111 and 1112. Murder is described very specifically as:

[M]urder is the unlawful killing of a human being with malice aforethought. Every murder perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious, and premeditated killing; or committed in the perpetration of, or attempt to perpetrate, any arson, escape, murder, kidnapping, treason, espionage, sabotage, aggravated sexual abuse or sexual abuse, child abuse, burglary, or robbery; or

perpetrated as part of a pattern or practice of assault or torture against a child or children; or perpetrated from a premeditated design unlawfully and maliciously to effect the death of any human being other than him who is killed, is murder in the first degree. Any other murder is murder in the second degree (Legal Information Institute)[.]

Just as with murder in British law, murder must be premeditated – or in other words, with malice aforethought. This section is, however, more specific on how murder can also be a result from other crimes. Manslaughter is also specified in great detail in the U.S. Code Title 18, Chapter 51, section 1112, as:

Manslaughter is the unlawful killing of a human being without malice. It is of two kinds: Voluntary—Upon a sudden quarrel or heat of passion.

Involuntary—In the commission of an unlawful act not amounting to a felony, or in the commission in an unlawful manner, or without due caution and circumspection, of a lawful act which might produce death.

In this section, the difference between voluntary and involuntary is already established, whereas this is not the case in the British Offences Against the Person Act 1861.

2.2.4. *Bilingual Dictionaries*

There are also some terms coined by bilingual legal dictionaries which can be taken into account in the analysis. Van den End provides, in his *Juridisch Economisch Lexicon*, the following translations: physical abuse, maltreatment, assault and battery, *assault*, abuse, battery and cruelty. From the example sentences, it appears that cruelty is mostly to animals, and not human beings. Here, one can also find some example sentences containing *eenvoudige mishandeling* and *zware mishandeling*, which are translated as “simple/common assault” and “aggravated assault/grievous bodily harm/gross maltreatment” respectively. *Zware mishandeling de dood ten gevolge hebbende* (*mishandeling* leading to death) is translated as “gross maltreatment with fatal consequences/gross maltreatment resulting in death” by Van den End. In the English-Dutch *Juridisch Economisch Lexicon*, one can also find translations for *assault*. These are “*aanranding, aanval, aanvallen, mishandelen* and *mishandeling*.” *Aanranding* implies, however, an offence of a sexual nature, which need not be the case in an *assault*. In all the other examples, such as simple assault and serious assault, Van den End uses *mishandeling*.

IATE, the InterActive Terminology for Europe, also provides translations for legal terminology. To obtain a clear overview, these translations are listed in schedules below.

Term	Translation	Implications
Mishandeling Slagen en verwondingen	Assault and battery	Violence, resulting in wounding of the victim.
Mishandeling	Ill-treatment	Not necessarily an act of violence, need not result in long-term injuries.
Zware mishandeling	Grievous bodily injury	Long-term injuries resulting from violence.
Zware mishandeling Slagen met bloedstorting	Battery occasioning bloodshed	Violence, resulting in wounding of the victim.
Lichamelijke mishandeling	Physical violence	Violence, resulting in wounding of the victim.
Vordering wegens mishandeling Vordering wegens geweldpleging Vordering wegens feitelikheden Vordering wegens het opzettelijk toebrengen van slagen en verwondingen	Action for assault and battery	Violence, resulting in wounding of the victim.
Marteling en mishandeling	Torture and ill-treatment	Violence is implied, but not necessarily resulting in wounding.

Table 2.2.1.

It is noticeable that *mishandeling* is not once translated with simply “assault,” but only in combination with battery. This implies that IATE maintains that *assault* is not an act of violence, but more of the threat of violence. The same applies for “ill-treatment,” which can be viewed very broadly.

Term	Translation	Implications
Assault	Geweld	Violence, resulting in injury
Physical assault	Fysieke aanval	Violence, resulting in injury
Acts of violence	Feitelikheden	Implies criminal activity,

Assault and battery		violence is also implied.
Assault and battery	Mishandeling Slagen en verwondingen	Violence, resulting in wounding of the victim
Action for assault and battery	Vordering wegens mishandeling Vordering wegens geweldpleging Vordering wegens feitelijkheden Vordering wegens het opzettelijk toebrengen van slagen en verwondingen	Violence, resulting in injury or wounding of the victim.
Assault and battery	Geweld of bedreiging met geweld	Violence, or the threat of using violence
To commit acts of violence, assault and battery	Tot feitelijkheden komen Tot handtastelijkheden jegens iemand overgaan	Violence, may be of a sexual nature.

Table 2.2.2.

In these translations, once again it appears that *mishandeling* and just “*assault*” are not proper translations for each other. There are some new translations for *assault* that are not mentioned yet by other sources: *geweld* (lit. violence), *geweldpleging* (lit. act of violence) and *feitelijkheden* (lit. act of violence). It should be noted, however, that these are translations for “assault and battery,” and not merely “*assault*.”

3. Analysis

In this chapter, *mishandeling*, *assault* and the various terms that were encountered in the legal context are compared with each other, to gain insight in which terms are most equivalent in their denotation and connotation. This is done by applying both the componential analysis by Nida (section 1) and the prototype analysis by Rosch (section 2). These models were selected as they generally result in clear overviews, which can serve as a basis for the term base in the discussion chapter. A further discussion on the results, and the equivalence of certain translations, is also part of the discussion.

3.1 The comparative analysis

As was explained in the previous chapter, this analysis concerns the key features of a term (and its implications) to provide an overview on which terms consist of the same features and how the terms may differ from one another. First, only *mishandeling* in Dutch law and *assault* in British law and American law are compared. The table below shows the result of the comparison. A “+” indicates that the feature is part of the term, a “-“ indicates that the feature is not. The features are based on the legal context of these terms. A “?” indicates that the definition of the term is not specific about whether or not the feature is part of the term.

Term/Feature	Intent	Threat of violence	Violence	Minor injury	Major injury	Death as result	Long prison sentences
<i>Mishandeling</i>	+	+	+	+	+	+	+
BrE Assault	?	+	?	+	-	-	-
AmE Assault	?	+	+	+	+	-	+

Table 3.1.1 Comparative Analysis *mishandeling* and *assault*

This table already illustrates that Dutch *mishandeling* and American *assault* are considerably different from British *assault*. Only Dutch *mishandeling* may also lead to death (*zware mishandeling met de dood tot gevolg*, see legal context).

In the next table, some of the other terminology found in the legal articles on *mishandeling*, the UK Acts on *assault* and the U.S. Code Chapter on *assault* are compared with the same features as the above table. This comparison may lead to more subtle differences between the three main terms.

Term/Feature	Intent	Threat of	Violence	Minor injury	Major injury	Death as	Long prison
---------------------	---------------	------------------	-----------------	---------------------	---------------------	-----------------	--------------------

		violence				result	sentence
<i>Eenvoudige mishandeling</i>	+	+	+	+	-	-	-
<i>Zware mishandeling</i>	+	+	+	-	+	-	+
<i>Zware mishandeling de dood tot gevolg hebbende</i>	+	+	+	-	+	+	+
BrE Common Assault	?	+	?	?	-	-	-
BrE Actual Bodily Harm	?	+	+	+	-	-	?
BrE Grievous Bodily Harm	?	+	+	-	+	-	+
AmE Assault with intent to commit murder	+	+	+	?	?	+	+
AmE Assault to commit any felony	+	+	+	?	?	-	+
AmE Assault with a dangerous weapon, with intent to do bodily harm	+	+	+	?	?	-	?
AmE Assault by striking, beating, or wounding	+	+	+	?	?	-	?

AmE Simple assault	?	+	+	+	-	-	-
AmE Assault resulting in serious bodily injury	+	+	+	-	+	-	+
AmE Assault resulting in substantial bodily harm of an intimate partner	+	+	+	?	?	-	+

Table 3.1.2 Terminology in law systems

This table demonstrates a more nuanced division of the main terms, where the resulting injuries and intent provide a clearer distinction between the different terminology. Dutch *mishandeling*, for instance, is always with intent, even *eenvoudige* (lit. simple). In American law, this is also the case, as only simple assault may be without intent. It is undefined in British law whether intent is always or never a feature of *assault*. British *assault* does have a clear distinction between terminology for resulting injury of *assault*, but none of the terms imply death as a result. In Dutch and American law, there are separate terms for this occurrence, namely *zware mishandeling de dood tot gevolg hebbende* and assault with intent to commit murder. These terms dictate that none of the other terms can therefore have death as a result.

In this next table, some of the terminology in relation to the main terms mentioned in the previous chapter, acquired in the law articles of Dutch, English and American law, is compared to each other. These translations may link closely to the terminology already compared in the previous tables. One feature was added, because this table also contains terminology about taking another's life. This feature is "criminal intent," and is crucial in defining these crimes.

Term/feature	Intent	Criminal intent	Threat of violence	Violence	Minor injury	Major injury	Death as result	Long prison sentence
---------------------	---------------	------------------------	---------------------------	-----------------	---------------------	---------------------	------------------------	-----------------------------

<i>Belaging</i>	+	?	+	?	?	?	?	?
<i>Bedreiging (met misdrijf)</i>	+	+	+	?	?	?	?	?
<i>Doodslag</i>	+	-	+	+	?	?	+	+
<i>Moord</i>	+	+	+	+	?	?	+	+
<i>Dood door schuld</i>	-	-	-	?	?	?	+	-
<i>Zwaar lichamelijk letsel door schuld</i>	-	-	-	?	-	+	-	-
BrE Battery	+	?	+	+	?	?	-	?
BrE Threat to kill	+	+	+	?	+	?	-	+
BrE Involuntary Manslaughter	-	-	-	+	?	?	+	-
BrE Voluntary manslaughter	+	-	?	+	?	?	+	+
BrE Murder	+	+	+	+	?	?	+	+
BrE Felony murder	-	+	+	+	?	?	+	+
AmE Maiming	+	?	+	+	?	?	-	+
AmE Torture	+	+	+	+	?	?	?	-
AmE Involuntary Manslaughter	-	-	-	+	?	?	+	+
AmE Voluntary manslaughter	+	-	?	+	?	?	+	+
AmE murder	+	+	+	+	?	?	+	+

Table 3.1.3 Relating crimes in law

The major difference between these crimes seems to be intent (*opzettelijk*) and criminal intent (*voorbédachte rade*). Another major difference is whether there is actual violence involved, which is not necessary for every term above. Consequently, these crimes need not necessarily lead to major injury or death, as was the case with *assault* in British law in table 3.1.1.

The next table shows the terminology extracted from Van den End, the bilingual legal dictionary. Only the terms that have not yet been discussed were included in the table.

Term/Feature	Intent	Threat of Violence	Violence	Minor injury	Major injury	Death as result
Physical abuse	+	+	+	+	?	-
Maltreatment	+	+	?	?	?	-
Assault and battery	?	+	+	+	?	-
Aggravated assault/gross maltreatment	+	+	+	-	+	-
Gross maltreatment with fatal consequences	+	+	+	-	+	+
<i>Aanval</i>	+	+	+	+	?	-
<i>Aanranding</i>	+	+	?	?	?	-

Table 3.1.4 Translations provided by van den End

These terms are all less formal than the previous terminology, as they are not necessarily based on legal terminology. Nevertheless, they may still be considered as translations if they convey the same implications as *mishandeling* and *assault*. It should be noted, however, that *aanranding* is mostly used for sexual crimes, called “*zedendelicten*” in Dutch. What is apparent from this table, is that these terms are less clear about the level of injury that is inflicted, but that only “gross maltreatment with fatal consequences” results in death. They all do seem to imply an intent to hurt the victim.

Table 3.1.5 below contains the translations provided by IATE. As with Van den End,

the terms that were already considered in table 3.1.1 to 3.1.3 were disregarded.

Term/Feature	Intent	Threat of violence	Violence	Minor injury	Major injury	Death as result
Assault and battery	+	+	+	+	?	-
Ill-treatment	+	+	?	?	?	-
Battery occasioning bloodshed	+	+	+	-	+	-
Physical violence	+	+	+	+	?	-
<i>Geweld</i>	+	+	+	+	?	-
<i>Fysieke aanval</i>	+	+	+	+	?	-
<i>Feitelikheden</i>	+	+	?	?	?	-
<i>Slagen en verwondingen</i>	+	+	+	+	?	-
<i>Geweld of bedreiging met geweld</i>	+	+	?	?	?	-

Table 3.1.5 Translations provided by IATE

None of the terms in this table imply death as a result. On the other hand, they all imply intent, and at least the threat of violence. The injuries resulting from violence are not clearly indicated by most terms, except by “battery occasioning bloodshed” and *slagen en verwondingen* (lit. beatings and wounding).

3.2 Prototype analysis

In this section, the prototype analysis by Rosch is applied. There are multiple features of *msihandeling* and *assault* which may be considered the most important one. Violence, as can be inferred from the legal context and the tables above, seems to be a key feature, as well as the result of *mishandeling* and *assault* (minor or major injury). Intent, or even criminal intent, can be also be examined, as some differences between the terms were already established in the section above. These key features were selected according to the number of mentions in

the legal context of both *mishandeling* and *assault*.

3.2.1 Violence

In the table below, the results for all terminology considered so far are regarded for only violence as the major feature.

Term	Violence	Term	Violence
<i>Mishandeling</i>	+	Involuntary manslaughter	+
<i>Eenvoudige mishandeling</i>	+	Voluntary manslaughter	+
<i>Zware mishandeling</i>	+	Murder	+
<i>Zware mishandeling de dood tot gevolg hebbende</i>	+	BrE Felony murder	+
<i>Belaging</i>	?	AmE Assault	+
<i>Bedreiging (met misdrijf)</i>	?	AmE Assault with intent to commit murder	+
<i>Doodslag</i>	+	AmE Assault with intent to commit any felony	+
<i>Moord</i>	+	AmE Assault with a dangerous weapon, with intent to do bodily harm	+
<i>Dood door schuld</i>	+	AmE Assault by striking, beating, or wounding	+
<i>Zwaar lichamelijk letsel door schuld</i>	+	AmE Simple Assault	+
<i>Aanval</i>	+	AmE Assault resulting in serious bodily injury	+
<i>Aanranding</i>	?	AmE Assault	+

		resulting in substantial bodily harm of an intimate partner	
<i>Geweld</i>	+	AmE Maiming	+
<i>Fysieke aanval</i>	+	AmE Torture	+
<i>Feitelijkheden</i>	?	Physical abuse	+
<i>Slagen en verwondingen</i>	+	Maltreatment	?
<i>Geweld of bedreiging met geweld</i>	?	Assault and battery	+
BrE Assault	?	Aggravated assault/gross maltreatment	+
BrE Common Assault	?	Gross maltreatment with fatal consequences	+
BrE Actual Bodily Harm	+	Ill-treatment	?
BrE Grievous Bodily Harm	+	Battery occasioning bloodshed	+
BrE Battery	+	Physical violence	+
BrE Threat to kill	?		

Table 3.2.1 Prototype feature: violence

From this table, one can establish that there is a distinction between the terminology where violence is always implied by the term, and terminology where violence is not necessarily part of the implications of the term. However, even the latter category may refer to a crime including violence. Violence is thus a key feature, but it cannot provide clarity on whether certain terms can be used as translations, as they all seem more or less equivalent here.

3.2.2 Resulting injury

Another key feature of *mishandeling* and *assault* may be the injuries resulting from the crime. In the next table, an overview of this feature is presented. Death is regarded here under “major

injury.” As there needs to be a distinction between the injuries inflicted, this table may deviate from the tables in section 3.1. Only when the level of injury inflicted is not clearly deductible from the term, a ? is implemented.

Term	Minor injury	Major injury	Term	Minor injury	Major injury
<i>Mishandeling</i>	+	+	Involuntary manslaughter	-	+
<i>Eenvoudige mishandeling</i>	+	-	Voluntary manslaughter	-	+
<i>Zware mishandeling</i>	-	+	Murder	-	+
<i>Zware mishandeling de dood tot gevolg hebbende</i>	-	+	BrE Felony murder	+	?
<i>Belaging</i>	?	?	AmE Assault	+	+
<i>Bedreiging (met misdrijf)</i>	?	?	AmE Assault with intent to commit murder	-	+
<i>Doodslag</i>	-	+	AmE Assault with intent to commit any felony	+	+
<i>Moord</i>	-	+	AmE Assault with a dangerous weapon, with intent to do bodily harm	-	+
<i>Dood door schuld</i>	-	+	AmE Assault by striking, beating, or wounding	-	+
<i>Zwaar lichamelijk letsel door schuld</i>	-	+	AmE Simple Assault	+	-
<i>Aanval</i>	+	+	AmE Assault resulting in serious bodily injury	-	+
<i>Aanranding</i>	?	?	AmE Assault resulting in substantial bodily harm of an intimate partner	-	+
<i>Geweld</i>	+	+	AmE Maiming	+	+

<i>Fysieke aanval</i>	+	+	AmE Torture	+	+
<i>Feitelijkheden</i>	?	?	Physical abuse	+	+
<i>Slagen en verwondingen</i>	+	+	Maltreatment	?	?
<i>Geweld of bedreiging met geweld</i>	?	?	Assault and battery	+	?
BrE Assault	?	-	Aggravated assault/gross maltreatment	-	+
BrE Common Assault	+	-	Gross maltreatment with fatal consequences	-	+
BrE Actual Bodily Harm	+	-	Ill-treatment	?	?
BrE Grievous Bodily Harm	-	+	Battery occasioning bloodshed	-	+
BrE Battery	+	+	Physical violence	+	+
BrE Threat to kill	?	?			

Table 3.2.2 Prototype feature: resulting injury

In this table, the distinctions between the terms are more apparent. Some terminology implies only minor injuries, some only major injuries, and some refer to either minor or major injuries. Finally, there are also terms as “threat to kill” and “ill-treatment,” for example, which do not clearly signify the level of injury that is inflicted on the victim, nor whether there was any infliction of injury at all.

3.2.3 Intent and criminal intent

The third and final key feature of *mishandeling* and *assault* which is considered in this section is intent and criminal intent, the difference being that in criminal intent, an offender planned the crime in advance and was aware that he or she was committing a crime. Intent only indicates whether the offender intended to hurt his victim. In the table below, the results for this key feature are displayed. As with resulting injuries above, the results may differ slightly from those in section 1, to clearly establish whether the feature is part of the term or its implications.

Term	Intent	Criminal intent	Term	Intent	Criminal intent
------	--------	-----------------	------	--------	-----------------

<i>Mishandeling</i>	+	-	Involuntary manslaughter	-	-
<i>Eenvoudige mishandeling</i>	+	-	Voluntary manslaughter	+	-
<i>Zware mishandeling</i>	+	-	Murder	+	+
<i>Zware mishandeling de dood tot gevolg hebbende</i>	+	-	BrE Felony murder	+	+
<i>Belaging</i>	+	+	AmE Assault	+	?
<i>Bedreiging (met misdrijf)</i>	+	+	AmE Assault with intent to commit murder	+	+
<i>Doodslag</i>	+	-	AmE Assault with intent to commit any felony	+	+
<i>Moord</i>	+	+	AmE Assault with a dangerous weapon, with intent to do bodily harm	+	+
<i>Dood door schuld</i>	-	-	AmE Assault by striking, beating, or wounding	+	+
<i>Zwaar lichamelijk letsel door schuld</i>	-	-	AmE Simple Assault	+	?
<i>Aanval</i>	+	-	AmE Assault resulting in serious bodily injury	+	?
<i>Aanranding</i>	+	+	AmE Assault resulting in substantial bodily harm of an intimate partner	+	?
<i>Geweld</i>	+	-	AmE Maiming	+	+
<i>Fysieke aanval</i>	+	-	AmE Torture	+	+
<i>Feitelikheden</i>	+	?	Physical abuse	+	-
<i>Slagen en verwondingen</i>	+	-	Maltreatment	+	-
<i>Geweld of</i>	+	+	Assault and battery	+	-

<i>bedreiging met geweld</i>					
BrE Assault	?	-	Aggravated assault/gross maltreatment	+	?
BrE Common Assault	+	-	Gross maltreatment with fatal consequences	+	-
BrE Actual Bodily Harm	+	-	Ill-treatment	+	-
BrE Grievous Bodily Harm	+	-	Battery occasioning bloodshed	+	-
BrE Battery	+	-	Physical violence	+	-
BrE Threat to kill	+	+			

Table 3.2.3 Prototype feature: intent and criminal intent

This table reveals that, with some exceptions, most of these crimes consist of intent, but not all crimes also consist of criminal intent. It is mostly the fatal crimes where the difference between intent and criminal intent becomes apparent. However, *assault* in American law seems to connote criminal intent more so than *assault* in British law and *mishandeling* in Dutch law.

Both the componential analysis and the prototype analysis signify the differences and distinctions between the terminology that was established in the legal context of this thesis. In the next chapter, the results are discussed in more detail, as well as how these analyses demonstrate equivalence of the terminology.

4. Discussion

In this chapter, the results of the previous chapter are discussed in further detail. The aim of this chapter is to establish which terms are sufficiently equivalent to serve as a translation for each other. In the second part of this chapter, a terminological overview of the terms is attempted.

4.1 Discussion of the componential analysis results

From table 3.1.1, one can establish that British *assault* is equivalent to neither Dutch *mishandeling* nor American *assault*. Especially the result differs significantly, as there need not be violence involved in British *assault*. If there is a degree of violence involved, it can only concern minor injury, not major injury or death. As can be determined from the legal context in chapter two, *assault* is usually referred to when it concerns solely the threat of violence. American *assault* and *mishandeling* seem to share multiple features, as the only real difference between the two terms might be “intent.” Intent is crucial for *mishandeling*, but less vital for American *assault*.

The terminology from the law articles concerning *assault* and *mishandeling*, as listed in table 3.1.2, provide more nuance to these broad terms, and may therefore be more conclusive about the equivalence of aspects of *assault* and *mishandeling*. *Eenvoudige mishandeling* and British Common Assault, for example, share most features, though British Common Assault is less specific about intent, whether violence is involved and whether minor injury is inflicted upon the victim. British Actual Bodily Harm solves the ambiguity of violence involved, but not that of intent. *Zware mishandeling* and British Grievous Bodily Harm share the same set of features as the previous two terms, but here also, whether intent is necessary is not specified for British Grievous Bodily Harm. American *assault* is very specific about the means used to commit *assault* and the outcome of the *assault*. American assault resulting in serious bodily harm seems to share exactly the same features here as *zware mishandeling*. American assault with intent to commit murder shares most features with *zware mishandeling de dood tot gevolg hebbende*, but the first is less specific about the severity of the injury inflicted upon the victim before the life is taken. In general, both *mishandeling* and American assault imply that intent is a crucial element of the crime.

The relating crimes in law from table 3.1.3 also add to the nuance of equivalence between the main terms. The crimes relating to homicide – *doodslag*, *moord*, *dood door schuld*, British (in)voluntary manslaughter, British murder, British felony murder, American (in)voluntary manslaughter and American murder – are included, as in Dutch *zware*

mishandeling de dood tot gevolg hebbende, *mishandeling* may actually result in the death of the victim. (In)voluntary manslaughter, in both American and British law, consists of violence resulting in death, as is the case for *zware mishandeling de dood tot gevolg hebbende*. However, for the latter, intent to inflict violence upon the victim is crucial (as with all cases of *mishandeling*), which excludes involuntary manslaughter. Murder on the other hand includes intent to hurt the victim, but also includes premeditation. Premeditation is not a part of *zware mishandeling de dood tot gevolg hebbende*, as *de dood tot gevolg hebbende* implies that death may not be the desired outcome for the offender.

The lesser crimes – meaning here a less severe outcome than death – in table 3.1.3 may relate more to British *assault*, as this term need not include actual violence or injury. *Bedreiging (met een misdrijf)* (lit. threatening (with an offence)) fits the same description as British *assault*, for it also need not include violence, but might result in it anyway. American maiming and torture are two terms that also include a degree of violence and injury, intentionally inflicted upon the victim, as with *mishandeling* and American *assault*. From the table itself it appears these terms are equivalent to those main terms, as they tick all the same boxes. However, as was explained in the legal context, maiming may only be referred to when the injuries are inflicted in the victim's face. Torture is mostly used when law enforcing agencies use a degree of violence to extract information from the victim, and may therefore be illicit. This last term may also be applied for mental torture, which is not the case for *mishandeling* and British *assault*.

Van den End's terminology (table 3.1.4) can be used more broadly, and is not necessarily restricted to legal texts only. Maltreatment seems too broad to use as a translation in a legal context, as it is not clear if violence is involved and if there are injuries as a result. Gross maltreatment, on the other hand, is very specific about the level of injury inflicted, and may be linked to *zware mishandeling*. Assault and battery may be best used in British legal texts, as British *assault* does not necessarily include violence (which is then compensated for by "battery") and American *assault* does. With the addition of battery, the equivalence between British *assault* and *mishandeling*, and also American *assault*, seems to be sufficient. The Dutch terms are also quite broad, and *aanval* seems to imply more violence than *mishandeling* does. *Aanranding* entails a sexual aspect in the *assault*, which does not hold true for neither British nor American *assault*.

IATE's translations in 3.1.5 seem to be, as with Van den End's terms, more broadly applicable than just in a legal context. As the many question marks indicate, not all terminology is specific about the level of violence or injuries involved in the offence. Assault

and battery was discussed in the previous paragraph. Ill-treatment, as with maltreatment, appears to be too inconclusive to serve as a translation. Battery occasioning bloodshed is, as with maiming, too specific about the type of injury that is inflicted. Physical violence ticks the same boxes as *mishandeling*, and also American *assault*. *Geweld* is a literal translation of violence, and is therefore applicable in the context of *assault*. However, as with physical violence, it seems a more general term, and can also be used as a description of something other than *mishandeling* or *assault*. *Feitelijkheden* seems a very broad term, but is actually very constricted to the legal context. *Feitelijkheden* implies an offence and violence, but the degree of injury is not necessarily apparent. *Slagen en verwondingen* (lit. beating and wounding) is, on the other hand, too specific about the manner of application of violence, and too vague about the degree of injury: it simply states that there are injuries as a result. *Geweld of bedreiging met geweld* can be linked to British *assault*, as there is the threat of violence, which may result in actual violence. However, British *assault* can only result in minor injuries, and *geweld* is unclear about the degree of physical injury.

4.2 Discussion of the prototype analysis results

The prototype analysis yields less specific results as the componential analysis, but with terminology that is as specific as legal terminology, this may be conclusive enough to establish the equivalence between the terminology. The prototype feature “violence” filters out the terminology that need not involve a degree of violence. From the table it can be established that *belaging*, *bedreiging (met misdrijf)*, *aanranding*, *feitelijkheden*, *geweld of bedreiging met geweld*, British *assault*, British common *assault*, British threat to kill, maltreatment, and ill-treatment are inconclusive about the application of violence. British *assault* should therefore not be considered equivalent to *mishandeling* and American *assault*. Also striking is that all American legal terminology involves some degree of violence. When translating this type of terminology, thus, one must opt for a translation that adheres to the violent aspect of the offence.

The second prototype feature, resulting injury, creates more categories for the terminology. Some terms suggest both minor and major injury, such as *mishandeling*, *aanval*, *geweld*, *fysieke aanval*, *slagen en verwondingen*, battery, American *assault*, American assault with intent to commit any felony, American maiming, American torture, physical abuse, and physical violence. As both *mishandeling* and American *assault* occur in this category, this may be another indication that these terms are equivalent. The other terms here are equivalent according to this analysis, but the componential analysis above adds some nuance to this assumption. The second category are the terms that need not include violence, and therefore

need not result in injuries. Belonging to this category are *belaging, bedreiging (met misdrijf), aanranding, feitelijkheden, geweld of bedreiging met geweld*, British *assault*, British threat to kill, maltreatment and ill-treatment. From this category, it would seem that maltreatment and ill-treatment are the best translation options when comparing British *assault* to an American offence, and either *bedreiging (met misdrijf)* or *geweld of bedreiging met geweld* is the best translation option for Dutch legal translators. The third category is minor injury, and belonging to this are *eenvoudige mishandeling*, British common assault, British Actual Bodily Harm and American simple assault. Comparing these terms in the prototype analysis yield the same results as comparing these with the componential analysis; these terms seem to be sufficiently equivalent to serve as translations for each other. The final category is major injury as a result, and is the largest category: *zware mishandeling, zware mishandeling de dood tot gevolg hebbende, doodslag, moord, dood door schuld, zwaar lichamelijk letsel door schuld*, British Grievous Bodily Harm, (in)voluntary manslaughter, murder, American assault with intent to commit murder, American assault with a dangerous weapon with intent to do bodily harm, American assault by striking, beating or wounding, American assault resulting in serious bodily injury, American assault resulting in substantial bodily harm of an intimate partner, aggravated assault/gross maltreatment and battery occasioning bloodshed. As so many terms fit this category, the analysis may not be sufficiently conclusive to determine equivalence for these terms.

The last prototype feature that was considered, intent and criminal intent – the latter referring to premeditation – also results in multiple categories. First there are the terms that signify both, such as *belaging, moord, aanranding, geweld of bedreiging met geweld*, British threat to kill, murder, American assault with intent to commit murder, American assault with intent to commit any felony, American assault with a dangerous weapon with intent to do bodily harm, American assault by striking, beating or wounding, American maiming and American torture. This category seems to be too large to resolve the issue of equivalence. However, it does become apparent that for most American felonies, criminal intent is a key feature. The second category is when there is intent, but not necessarily criminal intent (premeditation), as is the case for *mishandeling, eenvoudige mishandeling, zware mishandeling, zware mishandeling de dood tot gevolg hebbende, doodslag, aanval, geweld, fysieke aanval, slagen en verwondingen*, British common assault, British Actual Bodily Harm, British Grievous Bodily Harm, voluntary manslaughter, physical abuse, maltreatment, assault and battery, gross maltreatment with fatal consequences, ill-treatment, battery occasioning bloodshed and physical violence. This category is also very large, and thus seems too broad to

establish equivalence. What is noticeable, though, is that most Dutch terminology fits this category, as well as the British legal terminology in proximity to *assault*. A third category is when intent is clear, but criminal intent is not apparent from the term. This holds true for *feitelijkheden*, American *assault*, American simple assault, American assault resulting in serious bodily injury, American assault resulting in substantial bodily harm of an intimate partner and aggravated assault/gross maltreatment. This category also contains some American legal terminology from the law articles, for which there seem no obvious Dutch and British alternatives. The general *feitelijkheden* appears to be the only general term in Dutch to imply the same intent and unclear criminal intent. Finally, there is one term that is not clear about the intent of the offender, but does imply a certain criminal intent: British *assault*. As there is no other terminology in this category, this might suggest that there are no equivalent terms according to the prototype analysis. One would need to refer to another model – such as the componential analysis – to acquire a suitably equivalent translation for this term.

4.3 Terminology

In this section, an attempt to construct a term base – more on this in the theory chapter – is made, based on the componential analysis (table 4.3.1) and the prototype analysis (table 4.3.2). The term base is created for the three main terms; *mishandeling*, British *assault* and American *assault*. For both the term and each translation, a short administrative explanation is provided.

Term	Applicable when:	Translation	Applicable when:
<i>Mishandeling</i>	Intent, violence and infliction of injury occur. Has two levels of injury, minor and major (<i>eenvoudige</i> and <i>zware mishandeling</i>). May result in death (<i>zware mishandeling de dood tot gevolg hebbende</i>). Need not be premeditated.	American assault	There is intent, violence and injury. Is mostly equivalent to <i>zware mishandeling</i> , as the resulting injury is usually severe.
		British Actual Bodily Harm	Intent is unclear, but there is violence and injury involved. Usually results in minor injury, so fits

		<hr/> British Grievous Bodily Harm	best with <i>eenvoudige mishandeling</i> . <hr/> Intent is unclear, but there is violence and injury involved. Usually results in major injury, so fits best with <i>zware mishandeling</i> . <hr/>
		Voluntary Manslaughter	<hr/> There is intent, violence and major injury involved. As it results in death of the victim, this term fits best with <i>zware mishandeling de dood tot gevolg hebbende</i> . <hr/>
		American Maiming	<hr/> There is intent, violence and injury involved. The type of injury is very specific, so this term is not applicable to all cases of <i>mishandeling</i> . <hr/>
		Maltreatment	<hr/> Intent, violence and injury is unclear. Can be used generally when no other term is applicable. <hr/>
		Assault and Battery	<hr/> Intent is unclear, but

			there is violence and injury involved. Can only be used in British legal texts, as American assault already includes violence and British assault does not.
British assault	Intent is unclear, violence and injury need not be involved. Usually results in minor injury. Need not be premeditated.	<i>Bedreiging (met misdrijf)</i>	Intent is involved, but no actual violence and injury.
		<i>Eenvoudige mishandeling</i>	Intent, violence and minor injury are involved.
		<i>Geweld of bedreiging met geweld</i>	Intent is unclear, violence and injury need not be involved. May only result in minor injury.
American assault	Intent, violence and infliction of injury occur. May result in death (assault with intent to commit murder). Is usually premeditated.	<i>Mishandeling</i>	Intent, violence and injury occur. May result in death. Need not be premeditated.
		<i>Zware mishandeling</i>	Intent, violence and injury occur. Major injury as a result, not death. Need not be premeditated.
		<i>Geweld</i>	Intent is unclear, violence and injury are involved. May result in major

			injury. Need not be premeditated.
		<i>Feitelijkheden</i>	Intent, violence and injury may be involved. Unclear what degree of injury this may result in. Is usually premeditated.

Table 4.3.1 Term Base Componential Analysis

Term	Applicable when:	Translation:	Applicable when:
<i>Mishandeling</i>	Intent, violence and infliction of injury occur. Has two levels of injury, minor and major (<i>eenvoudige</i> and <i>zware mishandeling</i>). May result in death (<i>zware mishandeling de dood tot gevolg hebbende</i>). Need not be premeditated.	American assault	Prototype feature(s): intent, violence, injury
		American maiming	Prototype feature(s): intent, violence, injury
		British Common Assault	Prototype feature(s): violence, injury
		British Actual Bodily Harm	Prototype feature(s): violence, injury
		British Grievous Bodily Harm	Prototype feature(s): violence, injury
		Assault and battery	Prototype feature(s): violence, injury
British assault	Intent is unclear, violence and injury need not be involved. Usually results in minor injury. Need not be premeditated.	<i>Bedreiging (met misdrijf)</i>	Prototype feature(s): intent, no violence or injury
		<i>Geweld of bedreiging met geweld</i>	Prototype feature(s): intent, no violence or injury
		<i>Eenvoudige</i>	Prototype feature(s):

		<i>mishandeling</i>	intent, violence and injury
		<i>Feitelijkheden</i>	Prototype feature(s): unclear intent, violence and injury
American assault	Intent, violence and infliction of injury occur. May result in death (assault with intent to commit murder). Is usually premeditated.	<i>Mishandeling</i>	Prototype feature(s): intent, violence and injury
		<i>Feitelijkheden</i>	Prototype feature(s): unclear intent, violence and injury.

Table 4.3.2 Term Base Prototype Analysis

Both analyses result in nearly the same translations. By categorizing the terms and their translations in these terminological tables, the equivalence between the term and the translation is instantly apparent. In a Dutch to American English or American English to Dutch translation, *mishandeling* could be translated with *assault* and vice versa, as they share all the same features. For British *assault*, either *bedreiging (met misdrijf)* or *geweld of bedreiging met geweld* may be used, as both these terms appear to be equivalent enough according to both the componential analysis as well as the prototype analysis.

5. Case Examples

In this chapter some case examples from Dutch, British and American law are discussed to illustrate how the context may influence the translation of a term. The examples were chosen from actual cases tried in Dutch, British or American Courts. For the Dutch cases both the British and American alternatives are given, for British and American law only the Dutch translation.

5.1 Case Example 1

BA1351

Datum uitspraak: 2007-03-15

Datum gepubliceerd: 2007-03-22

Rechtsgebied: Straf

Soort Procedure: Eerste aanleg - meervoudig

Instantie naam: Rechtbank Zutphen

Zaaknummers: 06/460473-06

Status: gepubliceerd (Wetboek Online)

In this case there are multiple offences committed by the offender. The offences are provided in the Dutch legal context, and then translated one by one with an indication of which British and American translation should be regarded and why.

[h]ij op of omstreeks 5 en/of 6 september 2006 te Lichtenvoorde, gemeente Oost Gelre, ter uitvoering van het door verdachte voorgenomen misdrijf om opzettelijk [slachtoffer A] van het leven te beroven, met dat opzet op korte afstand van die [slachtoffer A] meermalen, althans eenmaal met een mes , althans met een scherp en/of puntig voorwerp naar/in de richting van de halsstreek en/of het gezicht van die [slachtoffer A] heeft gestoken[.] (Wetboek Online)

The first offence consists of the offender attempting to take someone's life intentionally. The offence was not completed (Wetboek Online). In American law, this would connect to "assault with intent to commit murder," as the offender is attempting to take the victim's life by assaulting him with a knife or other sharp object. The offence may also connect to "assault with a dangerous weapon, with intent to do bodily harm," because the offender is using a knife or other sharp object. In British law, the offence is less clear, as there is only the attempt to take a life, and though that offence is not completed, it is not clear (yet) if the victim is injured in a lesser way. "Assault" may fit here, as there is no indication of whether there is actual violence with injury as a result, but there is the threat of the infliction of violence and

injuries.

[h]ij op of omstreeks 5 en/of 6 september 2006 te Lichtenvoorde, gemeente Oost Gelre ter uitvoering van het door verdachte voorgenomen misdrijf om aan een persoon genaamd [slachtoffer A], opzettelijk zwaar lichamelijk letsel toe te brengen, met dat opzet op korte afstand van die [slachtoffer A] meermalen, althans eenmaal met een mes, althans met een scherp en/of puntig voorwerp naar/in de richting van de halsstreek en/of het gezicht van die [slachtoffer A] heeft gestoken[.](Wetboek Online)

Here the offence consists of intentionally inflicting major injuries onto the victim. This was also an attempt, as the offence was again not completed (Wetboek Online). The attempt was done with a knife or other sharp object. In American law, this would again connect to “assault with a dangerous weapon, with intent to do bodily harm.” As with the previous offence, in British law “*assault*” would be applicable, as there is no indication of actual violence resulting in injury, but there is an attempt to do so.

[hij] op of omstreeks 5 en/of 6 september 2006 te Lichtenvoorde, gemeente Oost Gelre, [slachtoffer A] heeft bedreigd met enig misdrijf tegen het leven gericht, althans met zware mishandeling, immers heeft verdachte opzettelijk dreigend op korte afstand van die [slachtoffer A] meermalen, althans eenmaal met een mes, althans met een scherp en/of puntig voorwerp naar/in de richting van de halsstreek en/of het gezicht van die [slachtoffer A] gestoken[.] (Wetboek Online)

The third offence consists of the offender threatening to either kill or inflict major injury upon the victim. For British law, this would again relate to “*assault*,” as there is a threat of violence and injury, but no actual violence and injury. In American law, the best option may be “assault with intent to commit murder” or “assault with intent to commit any felony, except murder,” as those are the intended offences for the offender.

[h]ij op of omstreeks 08 januari 2006 te Lichtenvoorde, gemeente Groenlo, opzettelijk mishandelend [slachtoffer D] met een door hem bestuurde auto die [slachtoffer D] heeft aangereiden en/of omvergereden heeft en/of die [slachtoffer D] (met gebalde vuist) (meermalen) op het gezicht en/of het hoofd en/of het lichaam ge[s]lagen en/of gestompt heeft, waardoor deze letsel heeft bekomen en/of pijn heeft ondervonden[.] (Wetboek Online)

Another offence by this offender was the hitting of a victim with a car with intent to inflict major injury, and afterwards beating the victim on his face and body. In British law, there is now a need for a term that implies actual violence and injury, as the victim was hit by the offender’s car and was beaten by the offender. This could result in either Actual Bodily Harm

or Grievous Bodily Harm, depending on how severe the injuries actually were. A third option could be “(assault and) battery,” as the offender also beat the victim. This would exclude the act of hitting the victim with a car, and as such should be combined with either of the previous translations. In American law, there are also multiple options. One option is “assault by striking, beating or wounding,” where wounding may imply any injury occurring as a result from the hitting with a car, and beating referring to the beating of the victim afterwards. Another option may be “assault resulting in serious bodily injury,” depending on how severe the actual injuries are.

[h]ij op of omstreeks 01 februari 2006 te Lichtenvoorde, gemeente Groenlo, [slachtoffer E] heeft bedreigd met enig misdrijf tegen het leven gericht, althans met zware mishandeling, immers is hij opzettelijk dreigend (met hoge snelheid) in een door hem bestuurde auto ingerezen op die [slachtoffer E] en/of heeft hij opzettelijk dreigend die [slachtoffer E] de woorden toegevoegd: "Wacht maar ik krijg jullie nog wel" althans woorden van gelijke dreigende aard en strekking[.] (Wetboek Online)

This last offence by this offender consists of the offender threatening the victim with a fatal crime or infliction of major injury, by driving onto the victim with a car and adding threatening comments afterwards. In British law, this may connect to “assault” or “simple assault,” as there is a threat of violence but there may not be actual violence or injury. If any injury results from this offence, “simple assault” should be used. In American law, “assault” would be too heavy for a threat of violence. Therefore, one of the translations coined by the legal dictionaries may fit better. “Maltreatment” could be one such translation, as the intent and threat of violence are implied here, but not the severity of any actual injury.

5.2 Case Example 2

BI2397

Datum uitspraak: 2009-04-28

Datum gepubliceerd: 2009-04-28

Rechtsgebied: Straf

Soort Procedure: Eerste aanleg - meervoudig

Instantie naam: Rechtbank Maastricht

Zaaknummers: 03/700459-07,

Status: gepubliceerd

The second case example is another Dutch case. The summary of the offence is given below.

[V]erdachte onder andere veroordeeld wegens zware mishandeling met voorbedachten rade, terweil dit feit de dood ten gevolge heeft gehad. Volgens deskundigenrapporten

is het slachtoffer een niet natuurlijke dood gestorven, maar is zij overleden aan de verwickelingen van herhaaldelijk op haar uitgeoefend excessief en zeer heftig geweld. Dit geweld heeft geleid tot het Crush-syndroom, waarna zij in een shocktoestand kwam te verkeren en is overleden. Er zijn geen aanwijzingen dat een ander dan verdachte het slachtoffer zou hebben mishandeld. De rechtbank gaat bij de strafoplegging boven de eis van de officier van justitie uit, nu het in deze zaak gaat om een serie van drie ernstige mishandelingen, waartussen verdachte telkens genoeg tijd had om over zijn handelen na te denken en ermee te stoppen. Hij wist dat het slachtoffer in toenemende mate pijn leed. Dat weerhield hem er niet van om verdere mishandelingen te plegen[.]

The offence consists of three severe acts of violence against the same victim, which caused the victim to enter a state of shock and eventually to the victim's death. It is added that there was plenty of time for the offender to reconsider hurting the victim between the acts of violence, and that the offender knew the victim was hurting. That information indicates that the acts of violence were committed intentionally.

There are multiple contending translations for both American and British law. In both legal areas, "voluntary manslaughter" is an option, because there is an intent to hurt the victim and this results in the victim's death, but there is no premeditation to actually take the life of the victim. Another translation that is applicable in both British and American law is "gross maltreatment with fatal consequences," coined by van den End. This descriptive translation expresses the severity of the violence and the injuries ("gross maltreatment") and also the imminent death of the victim ("with fatal consequences"). For American law, one can also try to incorporate "assault," by translating with either "assault by striking, beating or wounding," given that this was the manner in which the violence was inflicted, and "assault resulting in serious bodily injury," where the "serious bodily injury" would eventually result in death. In British law, a translator may opt for "Grievous Bodily Harm," where "occasioning in death of the victim" could be added for clarity.

5.3 Case Example 3

SUPREME COURT OF THE UNITED STATES
 VOISINE ET AL. v. UNITED STATES
 CERTIORARI TO THE UNITED STATES
 COURT OF APPEALS FOR THE FIRST CIRCUIT
 No. 14–10154.
 Argued February 29, 2016

Decided June 27, 2016

This case is an American appeal court case where the offender charged with the *assault* of his girlfriend appeals against his sentence in the U.S. Supreme Court. As seen in the legal context, the assault of an intimate partner is a separate part of *assault* in the U.S. Code. The offence in the previous court case is as follows:

[P]etitioner Stephen Voisine pleaded guilty to assaulting his girlfriend in violation of §207 of the Maine Criminal Code, which makes it a misdemeanor to “intentionally, knowingly or recklessly cause [...] bodily injury” to another. When law enforcement officials later investigated Voisine for killing a bald eagle, they learned that he owned a rifle. After a background check turned up Voisine’s prior conviction under §207, the Government charged him with violating §922(g)(9). Petitioner William Armstrong pleaded guilty to assaulting his wife in violation of a Maine domestic violence law making it a misdemeanor to commit an assault prohibited by §207 against a family or household member[.] (U.S. Supreme Court)

From this case it is apparent that the offender applied violence upon the victim intentionally, which resulted in “bodily injury.” It remains unclear whether this violence occasioned minor or major injury, but it may be assumed that, as the word “serious” is lacking, minor injury is implied. A Dutch translation that implies intent, violence and injury is *mishandeling*, with the addition of *eenvoudige* (lit. simple) to indicate that there was only minor injury as a result. If a translator wishes to avoid any complications of equivalence between “*assault*” and *mishandeling*, the translator could also opt for *geweld* (lit. violence), but this term is less transparent about the resulting injury.

5.4 Case Example 4

SUPREME COURT OF THE UNITED STATES
 UNITED STATES v. BRYANT
 CERTIORARI TO THE UNITED STATES
 COURT OF APPEALS FOR THE NINTH CIRCUIT
 No. 15–420
 Argued April 19, 2016
 Decided June 13, 2016

This case also concerns an appeal to a conviction for domestic violence, or as it is termed here; “domestic assault”(U.S. Supreme Court). This case is particularly interesting, as it is used to establish jurisprudence for these types of domestic assaults.

[I]n response to the high incidence of domestic violence against Native American

women, Congress enacted a felony offense of domestic assault in Indian country by a habitual offender. 18 U. S. C. §117(a). Section 117(a)(1) provides that any person who “commits a domestic assault within . . . Indian country” and who has at least two prior final convictions for domestic violence rendered “in Federal, State, or Indian tribal court proceedings . . . shall be fined . . . , imprisoned for a term of not more than 5 years, or both . . .” Having two prior tribal-court convictions for domestic violence crimes is thus a predicate of the new offense[.] (U.S. Supreme Court)

It appears from this section that two earlier convictions for “domestic violence” accumulate in “domestic assault.” If one were to translate “domestic violence” literally, it would result in *huiselijk geweld*, a term that is also frequently applied in the Netherlands. This would exclude the translation *geweld* for “assault,” because “assault” and “violence” are not the same in this conviction. Inevitably, the translator should regard *mishandeling* as a translation, as that term may also be an accumulation of multiple acts of violence. For completeness, the addition “domestic” could be translated with *huiselijke*, similar to “domestic” in “domestic violence.” This part is crucial, as in American law there is a distinction between assault to an intimate partner or child, and any other person. This would result in the translation *huiselijke mishandeling*. One may also opt for *huiselijke geweldpleging*, which indicates multiple acts of violence, as is the case here with “violence” and “assault.”

5.5 Case Example 5

R v Lamb [1967] 2 QB 981

This case concerns a British court case involving two boys. Whilst playing, they stumbled upon a gun, and assuming there were no bullets in the gun, one shot the other involuntarily.

Summary:

[T]wo boys were playing with a revolver. There were two bullets in the chamber but neither were opposite the barrel. The two boys believed that this meant it would not fire. One of the boys pointed the gun at the other and fired. As he pulled the trigger the chamber turned and the gun went off killing the boy. The other was charged with unlawful act manslaughter[.] (E-Law Resources)

Mishandeling is not applicable here, as there is no intent. The offender shot the other boy involuntarily, *moord* and *doodslag* are also not appropriate. The Dutch term that fits a description of involuntarily taking a life is *dood door schuld*, implying that the offender did not mean to take a life but acts by the offender resulted in death of the other party.

5.6 Case Example 6

R v Constanza [1997] Crim LR 576

The second British case consists of the offender repeatedly harassing the victim, resulting in mental injury. Summary:

[T]he defendant mounted a campaign of hate against an ex-work colleague over a period of 20 months. He sent over 800 threatening letters, would follow her home, wrote offensive word on her front door, drove past her house, stole items from her washing line. As a result she suffered clinical depression. He was charged with ABH under s.47 OAPA 1861. The defendant contended that words alone could not amount to an assault and that the letters could not amount to an assault as there was no immediacy[.] (E-Law Resources)

In this case, *mishandeling* is not relevant, because there is no act of violence. As follows from the legal context in the theory chapter, injuries resulting from *mishandeling* are always physical injuries and not mental injuries – such as clinical depression. A Dutch translation that would fit here is *belaging*, which, as stated in the legal context, provides that the offender continually violates someone's personal life in order to force someone to do or not do something, or to scare someone.

5.7 Case Example 7

R v Parmenter [1991] 94 Cr App R 193

The final example consists of a British court case where the defendant handled his baby son incorrectly, resulting in injuries of the baby. Summary:

[T]he defendant was convicted on four counts of causing GBH under s.20 in relation to injuries on his baby son . The baby suffered injuries to his boney structures of his legs and forearms due to the heavy handed way the defendant handled the baby. The defendant was not used to handling young babies and did not know that his actions would result in injuries. The trial judge directed the jury that they were to convict if the defendant should have foreseen that his handling of the child would result in some harm albeit of a minor nature. The defendant appealed contending that it was necessary to establish that the defendant appreciated the risk and it was not sufficient that he should have foreseen a risk of injury[.] (E-Law Resources)

Here *mishandeling* would not be suitable if the translator would regard the actual offence, because the offender claims not to have intended to injure the child. However, the trial judge implored the jury to state a verdict as if the offender did have an intent. If the translator adheres to this element, (*eenvoudige*) *mishandeling* would be an adequate translation. However, if the translator tries to exclude that element, less transparent terms may be used, such as *feitelijkheden*, where the amount of violence and injury is less discernible.

6. Conclusion

In this final chapter, an overview of the previous chapters is provided, as well as the answers to the research questions proposed in the introduction. Finally, an overall conclusion about the equivalence of *mishandeling*, British *assault* and American *assault* is drawn.

6.1 Overview

First the equivalence theories by Nida and Baker were discussed, to establish a definition for equivalence. Nida divided equivalence into two general approaches: formal and dynamic equivalence. The first may be considered a source-oriented approach, the latter a target-oriented approach, which indicates that the translation is adapted to the target-language norms, such as grammar, vocabulary, etc. This would eventually cater a natural translation, which Nida regards as the best type of translation. Baker develops her idea of equivalence by stating what “meaning” actually entails. She proposes four different kinds of meaning: propositional, expressive, presupposed and evoked. When a term and a translation share all features of meaning, they would be perfectly equivalent. However, when this is not the case, there is non-equivalence, which may be due to multiple factors. Finally, Baker also concludes that a translation should adhere to target-language norms.

The models that are used in the analysis of the main terms and their possible translations are the componential analysis and the prototype analysis, coined by Nida and Rosch, respectively. The componential analysis consists of a number of terms being compared with each other on the basis of multiple meaning components. By comparing how each term scores on the components, one can achieve a clear overview of how the meanings are similar and how they differ. The prototype analysis focusses more on how one particular aspect, the prototype component of the meaning, compares between the terms. When the terms do not share this prototype aspect, that implies that the terms are not sufficiently equivalent.

The second part of the theory chapter concerns the legal context of *mishandeling*, British *assault*, American *assault* and relating crimes. *Mishandeling* provided at least three components that are part of the meaning: intent, violence and injury. It also became apparent that *mishandeling* could potentially be fatal for the victim, which required the inclusion of some other fatal crimes in the comparison. From British *assault*, one may deduce that this crime need not include actual violence, which suggested that some non-violent crimes that may potentially lead to actual violence should be considered in the Dutch system as well. In the surrounding law articles near *mishandeling* in Dutch law and *assault* in British and American *assault*, these other crimes were defined. Finally, the proposed translation from two

bilingual legal dictionaries, Van den End and IATE, were considered.

In the analysis, the componential analysis and the prototype analysis were applied. For the componential analysis, multiple features were selected, based on the legal context for the legal terminology. The main terms, surrounding legal terminology and the dictionary terms were set out in different tables, to maintain a clear overview. For the prototype analysis, the terms were compared using three different prototype features. Here the tables did include all the terminology in one table per prototype feature, as the table then still allowed for a clear overview.

The results from both analyses were discussed in the next chapter, to avoid large tables combined with large portions of text. The componential analysis specified which translations shared most features, and could therefore be considered equivalent. It seemed that *mishandeling* and American *assault* shared most of the features, but the translator should be wary of the different types of *assault* that are defined in American law. British *assault* was significantly dissimilar to the other main terms. *Bedreiging (met een misdrijf)* and *geweld of bedreiging met geweld* were both more similar to this main term than the other main terms. However, it should be noted that these translations are more generally used terminology, and not restricted to a legal context. *Eenvoudige mishandeling* solves this problem, but does include violence and injury in all cases. Translating from Dutch to British English, one may consider assault and battery, where battery indicates that actual violence was attempted, if one insists on using *assault*. From the surrounding legal terminology, however, Actual Bodily Harm and Grievous Bodily Harm appear sufficiently similar to *eenvoudige mishandeling* and *zware mishandeling*, respectively.

The prototype analysis led to similar results. From the tables, one could easily establish which terminology should be classified together when it concerned certain prototype features. These features were: violence, injury (minor and major), and intent and criminal intent. By sorting these terms together according to the model, a clear indication of which terms may be equivalent and which may not was developed. As with the componential analysis, American *assault* and *mishandeling* shared most features, but for American *assault*, criminal intent is usually a criterion. *Feitelijkheden*, a more general term provided by the dictionaries, would also seem to fit for American *assault*, according to the prototype analysis. For *mishandeling*, maiming and torture also seemed to be sufficiently equivalent, but it should be noted that the injuries caused by maiming are only inflicted in the facial area. The British translations could be Actual Bodily Harm, Grievous Bodily Harm and assault and battery. Translating from British English to Dutch, one may opt for *eenvoudige mishandeling* if actual

violence is involved, or *bedreiging (met misdrijf)* or *geweld of bedreiging met geweld* if this is not the case. One must be wary, though, that the last two translations are from the legal dictionaries, not Dutch law itself. It should also be observed that some of the prototype feature categories had too many terms included that it could not provide any conclusive result for the equivalence of these terms.

These results were collected separately in a term base: one for the componential analysis, one for the prototype analysis. This produced an overview for when the main term is applicable, and when a certain translation are applicable. The componential analysis yielded a table that still needed plenty additional information for the applicability of the translation. For the prototype analysis, the additional information is easily summarized by stating which prototype feature is implied by a term and which is not.

6.2 Answers to the research questions

The first sub question, question 2 in the introduction, was what equivalence was, and how this is established. This question was answered by discussing the theories by Eugene Nida and Mona Baker in the theory chapter. Baker provided a preliminary account for “meaning” and how non-equivalence may be solved. Nida discusses source-oriented approaches and target-oriented approaches. Both scholars derive at the notion that a translation should adhere to target-language norms, but must convey the same message as the original. This principle was therefore the basis of when a term and a translation may be considered equivalent, and correct.

The second subquestion (question 3) is whether terminology can help establish equivalence between the terms. In the legal context, the context of the main terms and relating crimes was established, which is a more theoretical approach of terminology according to Thelen. In the results, the translational approach to terminology is conducted, as the translation are paired with a short explanation of when a certain term is applicable and when it is not. This resulted in two term bases, one for each of the models used in this thesis. Especially the discussion of the context resulted in a thorough background of the individual main terms, and therefore a solid basis to compare them with each other. The resulting term bases supply the translator with a clear overview of the context in which two terms can be considered equivalent. Terminology is thus a good starting point for establishing equivalence, and grant a translator a quick and clear overview of the translations.

The third subquestion (question 4) is whether the legal dictionaries supply equivalent translations for the three main terms. For *mishandeling*, this is not the case. *Assault* is not provided as a translation, but American *assault* is sufficiently equivalent according to both the

componential and the prototype analysis. The British legal terminology surrounding the term *assault* in the legal articles is also not given, while Actual Bodily Harm and Grievous Bodily Harm do share similar features. The translations that are provided, such as maltreatment, are generally too broad to serve as translations, and are also not extracted from actual British or American law articles. For British *assault*, there is one translation that seems to fit this term, as catered by the analyses: *geweld of bedreiging met geweld*. However, there is also a Dutch term from the *Wetboek Strafrecht*, namely *bedreiging (met misdrijf)*. As both these terms are equally equivalent to British *assault*, the translator should decide whether he or she prefers a broader term or a term that is used in Dutch law. American *assault* also does not yield *mishandeling* as a translation in the dictionaries, but as previously stated, these terms do seem sufficiently equivalent. Another translation that was equivalent to American *assault*, according to the prototype theory especially, was *feitelijkheden*. This term is, as *geweld of bedreiging met geweld*, a very general term, and may be considered too broad for *assault*. Thus, the bilingual dictionaries Van den End and IATE suggest some good alternatives if the translator wants to opt for a more general translation, but lack the proper legal context of the terminology to supply the translator with actual legal terminology from the law articles.

Finally, the main question, question 1, was: are *mishandeling* and *assault* equivalent? *Mishandeling* and American *assault*, as previously stated, share enough features according to the analyses that these terms may be considered equivalent. A translator must always recognize the context of the offence, as American *assault* is generally based on criminal intent, or premeditation. British *assault* is significantly different from *mishandeling* and American *assault*. British *assault* need not involve violence nor result in injury, which are both criterion for *mishandeling*. When translating in this language pair, the translator should best favour one of the other translations that was discussed in this thesis. If a translator is keen on translating British *assault* with *mishandeling*, *eenvoudige mishandeling* may be an option; but this translation can only be used when there is actual violence involved in the *assault*.

6.3 Uitleveringswet (Extradition Treaty)

As mentioned in the introduction, the comparison of offenses in Dutch, British and American law is especially valuable for international law. The “*sinnegemäße Umstellung*” principle requires the home country of the offender to consider the offense both in the legal system of the foreign country as well as their own legal system, because the sentence must be transformed (Handboek Strafzaken). In this subsection, the extradition treaty between the Netherlands and the United Kingdom and the extradition treaty between the Netherlands and the United States are considered, and especially how the offenses are stated and translated in

the Dutch and English texts. The offenses are taken from *Uitleveringswet: Uitleveringsverdragen*.

In the treaty between the Netherlands and the UK (340-351), “murder” and “manslaughter” are simply translated with “*moord*” and “*doodslag*.” Following this are two offenses that result in bodily harm, namely “assault occasioning actual bodily harm” and “maliciously wounding or inflicting grievous bodily harm.” These offenses are stated in the Dutch text as “*mishandeling zwaar lichamelijk letsel ten gevolg hebbende*” and “*verwonding met voorbedachte rade of het toebrengen van zwaar lichamelijk letsel*,” respectively. The first translation seems to conform to the findings of this thesis, insofar as the *assault* results in injury, and thus *mishandeling* may be used. However, Actual Bodily Harm should be minor injury, not major injury, as “*zwaar lichamelijk letsel*” implies. This also becomes evident when one considers that “grievous bodily harm” in the latter offense is also translated with “*zwaar lichamelijk letsel*.” This problem could be solved by translation the first offense with “*eenvoudige mishandeling*,” which implies minor injury.

In the treaty between the US and the Netherlands (474-499), *assault* is mentioned only in “murder; assault with intent to commit murder.” Furthermore, there is the offense “malicious wounding; inflicting grievous bodily harm.” These offenses are translated in Dutch with “*moord; aanslag met het oogmerk tot het plegen van moord*” and “*opzettelijke verwonding; het toebrengen van zwaar lichamelijk letsel*.” The first translation equals “*assault*” with “*aanslag*,” a translation that is not provided in any of the legal context considered for this thesis, nor any of the bilingual legal dictionaries. *Aanslag* seems less transparent as a term than *assault*, and may have different connotations in other contexts – such as terrorism. *Mishandeling* would also not suffice, as there is no intent to solely injure someone, but to actually take a life. In this particular case, one would need an abstract term with less connotations as *aanslag* but is less specific than *mishandeling*. One option would be “*poging tot moord*” (lit. attempted murder), because this offense is ultimately murder or an attempt to commit murder. The second translation equals “*zwaar lichamelijk letsel*” to “grievous bodily harm,” which is conform to the findings in this thesis. “*Malicious wounding*” could also be translated with *mishandeling*, as both imply intent, violence and injury.

6.4 Overall conclusion

In the introduction, it was assumed that *mishandeling* and *assault* were not equivalent. This should be nuanced to *mishandeling* and *assault* in British law are not equivalent. These terms are significantly different in their implications, and can therefore not function as translations

for each other. *Mishandeling* and *assault* in American law, however, seem sufficiently equivalent as translations. A translator should always consider the context in which the term occurs to determine the translation, as it differs per case which features of the offences are of paramount importance. The overall approach in this thesis was based on the comparative approach by Koster, which allowed for a framework but did not result in any conclusive answer to research questions. To determine the equivalence between the term and the translation, the componential analysis may be more conclusive in its results, as one can compare multiple features at the same time. However, the prototype analysis may provide a more concise overview in a terminological overview, as it is easily established which prototype feature is shared by a translation and which one is not.

7. Works Cited

- Baker, M. *In Other Words: A Coursebook on Translation*. London: Routledge, 1992.
- BA1351. *Jurisprudentie. Rechtbank Zutphen*, 2007. Wetboek Online. Web.
- BI2397. *Jurisprudentie. Rechtbank Maastricht*, 2009. Wetboek Online. Web.
- Burgerlijk Wetboek. wetten.overheid.nl. Accessed 21 Feb 2017.
- Caspel, van R.D.J. and C.A.W. Klijn. “*Mishandeling.*” *Fockema Andreae’s Juridisch Woordenboek*. Groningen: Noordhoff Uitgevers, 2012.
- Garner, Bryan A. “Assault.” *Black’s Law Dictionary*. 10th Edition. US: Thomson Reuters, 2014.
- Handboek Strafzaken. Ed. prof. mr. Jan Boksem, prof. mr. Paul Frielink. prof. mr. Paul Mevis and dr. mr. Cornélie Waling. Deventer: Wolters-Kluwer. Web.
- IATE – InterActive Terminology for Europe. “Assault.” Web. Accessed 21 Feb 2017.
- IATE – InterActive Terminology for Europe. “Mishandeling.” Web. Accessed 21 Feb 2017.
- Koster, Cees. “Comparative Approaches to Translation.” Ed. Yves Gambier and Luc van Doorslaer. *Handbook of Translation Studies Vol 2*. Amsterdam: John Benjamin’s Publishing Company, 2011.
- Legal Information Institute. “18 U.S. Code Chapter 7 – ASSAULT.” Cornell University Law School. Web. Accessed 21 Feb 2017.
- Legrand, Pierre. “Comparative Legal Studies and Commitment to Theory.” *The Modern Law Review*, 2015. Web.
- Lyons, John. *Semantics*. Volume 1. Cambridge: University Press, 2012.
- Nida, Eugene. “Principles of Correspondence.” *The Translation Studies Reader*. Lawrence Venuti. London: Routledge, 2004. pp. 153-167.
- Nida, Eugene. “The Science of Translation.” *Language*, Vol. 45, No. 3. Washington: Linguistic Society of America, 1969. pp. 483-498.
- Nolo Legal Encyclopedia. “Assault and Battery: Civil vs. Criminal Cases.” Web. Accessed 23 May 2017.
- Proz.com. “Assault and Battery: *Mishandeling en Geweldpleging*”. Accessed 28 June 2017. Web.
- Ramos, Fernando Prieto. “Quality Assurance in Legal Translation: Evaluating Process, Competence and Product in the Pursuit of Adequacy.” Dordrecht: Springer Science Plus Business Media, 2014. Web.
- Rosch, Eleanor. “Prototype Classification and Logical Classification: The Two Systems.”

- New Trends in Conceptual Representation: Challenges To Piaget's Theory. New Jersey: Lawrence Erlbaum Associates Inc., Publishers, 1983.
- R v Constanza. E-Law Resources. United Kingdom, 1997. Web.
- R v Lamb. E-Law Resources. United Kingdom, 1967. Web.
- R v Parmenter. E-Law Resources. United Kingdom, 1991. Web.
- TerminOrgs. "Terminology Starter Guide." Nedterm, Taalunieversum.org. Accessed 21 Feb 2017.
- "*Tekst en Commentaar Strafrecht.*" red. prof. mr. Tineke Cleiren, prof. mr. Jan Crijns, dr.mr. Rino Verpalen. Deventer: Wolters-Kluwer, 2016. Web.
- The Crown Prosecution Service. "Offences against the Person, incorporating the Charging Standard." cps.gov.uk. Accessed 21 Feb 2017.
- United States v. Bryant. 579 U.S. Supreme Court, 2016. Web.
- Van den End, A. "Assault." Juridisch-Economisch Lexicon. Deventer: Wolters-Kluwer, 2016.
- Van den End, A. "*Mishandeling.*" Juridisch-Economisch Lexicon. Deventer: Wolters-Kluwer, 2016.
- Voisine et all. v. United States. 579 U. S. Supreme Court, 2016. Web.
- Uitleveringswet: Uitleveringsverdragen.* Ed. mr. M.H.F. Knaapen. Zwolle: W.E.J. Tjeenk Willink, 2001.