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A Dutch to English Terminology of Mutual Legal Assistance

MA Thesis

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Abbreviations

Awb – Algemene wet bestuursrecht

BW – Burgerlijk wetboek

CTSP – Convention on the Transfer of Sentenced Persons

DCC – Dutch Criminal Code

DCCP – Dutch Civil Code of Procedure

ECE - European Convention on Extradition

ECIVCJ – European Convention on the International Validity of Criminal Judgements

ECSCSCRO - European Convention on the supervision of conditionally sentenced or conditionally released offenders

EVIG – Europees Verdrag inzake de internationale geldigheid van strafvonnissen

EVTVVVVG - Europees Verdrag inzake het toezicht op voorwaardelijk veroordeelden of voorwaardelijk in vrijheid gestelden

Gw- Grondwet

ISO – International Organisation for Standardisation

SC – source culture

SL – source language

Sr – Wetboek van Strafrecht

Sv – Wetboek van Strafvordering

RI - Wet op de rechterlijke indeling

RO – Wet op de rechtelijke organisatie'

Rv – Wetboek van de Burgelijke Rechtsvordering

TN Code – Tennessee Code

TC – target culture

TL – target language

USC – United States Code

VCLT - Vienna Convention of the law of treaties

VOGP – Verdrag inzake de Overbrenging van Gevonniste Personen

VWV – Verdrag van Wenen inzake het Verdragenrecht

WETS – Wet Wederzijdse Erkenning en Tenuitvoerlegging Vrijheidsbenemende en Voorwaardelijke Sancties

WOTS – Wet Overdracht Tenuitvoerlegging Strafvonnissen

Introduction

Mutual legal assistance (Dutch: *internationale rechtshulp*) is an interesting area of law for the translator. It is, first of all, part of the international domain, which makes it subject to many different languages and legal systems – interesting aspects for the linguist as well as the lawyer. Furthermore, mutual legal assistance is regarded as a very important right. The Dutch constitution already refers to it in the second article, where it states that “Extradition may take place only pursuant to a treaty” (Gw 2:3).

Van Caspel & Klijn (2012) define *internationale rechtshulp* with: “plicht van staten tot medewerking aan elkaars straf- en burgerlijke rechtspraak ten opzichte van bijzondere personen, als geregeld door volkenrecht en internationaal privaatrecht” (p. 304). In the Netherlands, mutual legal assistance is regulated by treaties and by national law, which describe the same substance but from a different angle. The Dutch national laws on mutual legal assistance are the Wet Overdracht Tenuitvoerlegging Strafvonnissen (WOTS) and the Wet Wederzijdse Erkenning en Tenuitvoerlegging Vrijheidsbenemende en Voorwaardelijke Sancties (WETS). The WOTS has been written in order to implement multiple conventions into national law, including the Convention on the Transfer of Sentenced Persons (CTSP) (WOTS intro). The CTSP is an important multinational convention, signed not only by members of the EU, but also by other states such as the US, Canada and Australia. The more recent European counterpart of the WOTS is the WETS. This law has as its purpose to implement European framework decisions which make it easier to enforce foreign judgements. For the linguist, both laws are interesting because they both cover legal terminology. However, under recent developments, i.e. the Brexit, the WOTS will probably be the law used in most requests for mutual legal assistance to and from English countries.

Mutual legal assistance is a legal area using terminology relating to criminal law and terminology which is specific for mutual legal assistance. Existing terminologies and lexicons such as Foster (2009) and Van den End (2010) cover terms regarding mutual legal assistance, but their coverage is not extensive. The WOTS is one of the areas that still needs to be explored. Therefore the purpose of this thesis is to produce a terminology of mutual legal assistance with the WOTS as a primary source. The need for a terminology of mutual legal assistance is probably greatest among legal translators who translate prisoner transfer files and other documents regarding mutual legal assistance. The terminology is therefore aimed at them.

The primary purpose of this thesis is to provide a terminology, but it will also discuss the different practices regarding terminology, legal translation and equivalence. Combining these three areas results in a solid foundation for terminological work which is not only relevant for the terminology in this thesis, but also for other terminologies.

The primary source of the terminology in this thesis is the WOTS. This law is an accurate source to find the Dutch terms regarding mutual legal assistance, because it is the most relevant law on the subject. The English equivalents can be found in related conventions and treaties. An important one is the CTSP, which will be an excellent starting point for the English terms. However, it is important regarding equivalents to realise that English is used in more than one legal system and that these legal systems all have their own terminology. The most significant of the legal variants of English are the American variation and the British or European variation. I will describe and compare the Dutch and English terms in this thesis and discuss differences in British and American terms when this is necessary. In my search for equivalents, I will examine multiple sources of Dutch, British and American legislation.

This thesis is structured as follows: chapter 1 discusses the most important concepts relating to legal terminology. It examines the view of scholars on legal translation regarding legal terms, the reliability of translations, and the reliability of legal texts. It also discusses the most important theories on terminology and the use of terms and concepts. Chapter 1 ends with a discussion of the theories regarding equivalence, including a discussion of the problems and solutions of non-equivalence. Chapter 2 presents the methodology and discusses the reliability of the sources and chapter 3 presents the terminology. A conclusion follows to discuss remarkable tendencies and translation strategies frequently used in the terminology.

1. Theoretical Background: Terminological Issues in Legal Language

This chapter provides a background for the various theories that this thesis is founded on including the use of legal language, legal translation and terminology. It also provides a discussion of the concept of equivalence and its use in legal terminology.

1.1 Legal language

Before starting on the more general concepts of translation and terminology, it is important to consider the peculiarities of legal translation. Legal language is a Language for Special Purposes (LSP) and the translation of LSP is often seen as quite straightforward. All texts – even in science – have some culture-specific elements, but specialised terminology in science is mostly monosemic (one term for each concept) which makes translation fairly simple. However, this is not the case in the field of law (Šarčević, 1997, p. 67; Schöpping & Weyers, 1993, p. 95).

Legal language is connected with a legal system and these systems differ from nation to nation. Therefore, each country has its own terminology (De Groot, 1993, p. 26). This also means that there can be more legal languages originating from one general language. For example, the Dutch language serves not only as a legal language in the Netherlands, but also in Belgium, Aruba, the Netherlands Antilles and Suriname. It is even possible to argue that the Dutch used in the European Union is different from the national legal Dutch (Florijn, 1993, p. 7). These Dutch legal languages have some apparent legal differences among each other. For example, the Belgian terms *hof van assisen*, *procureur des konings* and *verlengde minderjarigheid* are unknown in the Dutch legal system and – maybe even more important to the legal translator – some terms have developed a different meaning in Belgium, e.g. *arrondissements-rechtbank* and *emancipatie* (De Groot, 1993, p. 27).

De Groot (1993) states that full equivalence is only possible when the source language and target language concern the same legal system, for example in Belgium or Canada. Otherwise the underlying legal concepts will always differ between the source text and target text. Even simple concepts like *huwelijk* and *marriage*, which are equivalent enough to serve as each other's translations, differ from each other when examining them further. The concepts are very similar, but requirements regarding prenuptials, a legal marriage or divorce differ (p. 28). De Groot points out that one should always translate from one legal system to another, but – when a concept does not exist – another legal system can be used to for borrowing terms (p. 31). An example of this is the lack of a jury-system in the Netherlands.

When translating a text with terms of a jury trial into Dutch, terms can be borrowed from the Belgian system, which does have a jury trial.

The paragraphs above all relate to the strong tendency of legal languages to be system-bound. It is important to realise that some systems are more similar to each other than others. Every nation has its own laws, but the legal systems can be categorised in types of systems. David and Brierley (1985) classify the different legal systems as follows: Romano-Germanic law (continental civil law), common law, socialist law, Hindu law, Islamic law, African law, and Far East law (pp. 20-31). For this thesis, the Romano-Germanic law and the common law are most relevant. The systems of the United Kingdom, United States of America and the Netherlands may appear to be similar because they are all based on western ideas, but the Dutch legal system is based on Romano-Germanic law and the systems of the UK and USA are common law systems. This may be the cause for great differences between the Dutch civil law system and the common law systems of the UK and USA. Therefore, it is also expected that the systems of the UK and USA are more similar to each other than they are to the system of the Netherlands. When concepts are built on different systems, the search for an equivalent may prove to be more difficult.

The civil law system is characterised by its tendency to specify its laws in a code or similar form and view this as the primary source of law (David & Brierly, 1985, p. 108). These laws do not have to be overly specific, because the judge can interpret them with the intention of the lawmakers in mind. The common law system often has a constitution and may have other laws (like the acts of parliament in the UK), but the main body of laws consists of the precedents of judges, whose judgements form the basis for future judgements in similar cases. The law in the UK and in the US has developed under the process of codification, so it can no longer be said that codified law is only a secondary source of law, but the status of codified law is still different from the status of laws in civil law systems (p. 366).

Besides being system-bound, legal language differs in more respects from 'normal' LSP. Rayar (1993) makes the distinctions that legal language has to be interpreted more intensively than normal texts and that the legal content of a term is not fixed because of the dynamic nature of law (p. 64). Rayar probably means with 'interpreting more intensively' that legal language is part of a complex legal system, which must be taken into account when interpreting a legal term. Other LSPs are also built on elaborate systems, but the culture-bound nature of law makes the interpretation more complex. Florijn (1993) states relating to the dynamic nature of law that legal terminology may seem (overly) precise. It seems to be a

characteristic of legal language that the terminology is created with care. This would mean that the use of terms is unambiguous. However, the frequent semantic shifts in laws are the cause for the shift in meaning of legal terms. Florijn points out that a clearly defined term is an island of precision in an ocean of vagueness which consists of “homonyms and (quasi-) synonyms, archaisms, Latinisms and strange words” (p. 15).

Florijn (1993) points out that not all legal texts have the same status. Laws and decisions (*arresten*) have the most authority, followed with some distance by lower decisions (*beschikkingen*) and contracts, and even lower are recommendations and legal scholarly work (p. 12). This difference in importance seem to be linked to the purpose of the texts. Cao (2007) and Šarčević (1997) both name three separate branches which can be distinguished in law.

According to Šarčević (1997) legal translation can be classified according to the functions of the legal texts in the source language into the following categories:

- (1) primarily prescriptive, e.g. laws, regulations, codes, contracts, treaties and conventions. These are regulatory instruments containing rules of conduct or norms. They are normative texts;
- (2) primarily descriptive and also prescriptive, e.g. judicial decisions and legal instruments that are used to carry on judicial and administrative proceedings such as actions, pleadings, briefs, appeals, requests, petitions etc.; and
- (3) purely descriptive, e.g. scholarly works written by legal scholars such as legal opinions, law textbooks, articles etc. They belong to legal scholarship, the authority of which varies in different legal systems (p. 11).

The importance of the different text types is that they can have a different authority and may be translated in a different way. Šarčević links this to the extent to which a text is prescriptive or descriptive. She ends this trichotomy with ‘purely descriptive’, which may be a too strong expression to describe the work of legal scholars. Scholars may present their work as prescriptive, but in this context it may signify that these texts are not legally binding in any way. Furthermore, it is remarkable that Šarčević studied the functions in the source language and not the functions of the target language. Whether a law will be translated for a merely informative purpose or whether it will be treated as an authentic text makes a difference for the translation strategy. It can influence the choice for a more SC-oriented approach or a TC-oriented approach, because a TC-oriented approach may be clearer to the reader, but may result in less legal equivalence. This should be avoided when translating towards a normative text, but may be slightly less important when translating towards a more informative text.

Cao (2007) classifies legal translation into three categories in the light of the purpose of the target text.

1. normative purpose (laws and contracts; the translations are equal to the original and legally binding)
2. informative purpose (statutes, court decisions, scholarly works, etc.)
3. general legal or judicial purpose (documents that may be used in court proceedings as documentary evidence, but are not legally binding) (pp. 10-11)

Cao (2007) does not differentiate the multiple purposes that a text type may have, but she does make a difference between texts that are legally binding and texts that are not legally binding. When translating, it is important to take the purpose of the text into account, but this would normally not be as strict as Cao presents it. Theories about text types often point out that most texts are hybrid forms and do not belong to one particular text type, i.e. the theory of Reiss (in Munday, 2008, p. 113). However, a legal text has the element of being legally binding or not. This effects the translation more than other elements, because it cannot only result in a translation that is less accurate, but can also have legal consequences.

Florijn (1993, pp. 7-10) and Cao (2007, p. 18) claim that legal language is a register. Catford (1965) defines register as “a variety correlated with the performer’s social *rôle* on a given occasion” (p. 89). A register depends on the role of the speaker, the moment of utterance and the situation surrounding the utterance (Catford, 1965 in Florijn, 1993, p. 6). Florijn (1993, p. 6) points out that legal language is different in different situations. The characteristics of a register are firstly lexical and secondly grammatical (Halliday and Hasan, 1985 in Cao, 2007, p. 18). The lexical features of legal language are noticeable in the prominent place of legal terminology. Grammatical features are also present, for example in the tendency of lawyers to nominalise (Florijn, 1993, p. 7). Cao (2007) distinguishes between four major variants in legal text: “(1) legislative texts, e.g. domestic statutes and subordinate laws, international treaties and multilingual law; (2) judicial texts; (3) legal scholarly texts; (4) private legal texts, e.g. contracts, leases, wills, litigation documents, private agreements, witness statements” (pp. 9-10). She points out that these varieties all have their own peculiarities. Therefore, it is important to consider which text is used when a translation is made, because using terms from private legal texts to translate legislative texts may create problems.

Another side of translation in a particular context is the ability to recognise a legal text. Florijn (1993) states that, especially in legal translation, it is important to observe the whole situation in which the translation will be interpreted. In particular, it is important that

the text will be recognised as a legal text. The text is translated from one legal language to another legal language and this must be apparent to the lawyer (p. 20). This means that the terminologist should extract from legal sources that relate to the same area of law as the ST. The reader should be able to recognise the text as a text belonging to the right domain.

1.2 Terminology

Terminology is of vital importance to a good legal translation. Terminological incongruency presents the greatest single threat to the uniform interpretation of parallel legal texts (Rosenne, 1987 in Šarčević, 1997, p. 229). An important question to start with is: what is terminology exactly? Sager (1990) defines it as “the study of and the field of activity concerned with the collection, description, processing and presentation of terms, i.e. lexical items belonging to specialised areas of usage of one or more languages” (p. 2). He does not view terminology as a separate discipline, because everything of importance that can be said about terminology is said more appropriately in the context of linguistics, information science or computational linguistics. He sees terminology as “a number of practices that have evolved around the creation of terms, their collection and explication and finally their presentation in various printed and electronic media” (p. 1). His view is shared by the International Organisation for Standardisation (ISO), which claims that “terminological work is multidisciplinary and draws support from a number of disciplines (e.g. logic, epistemology, philosophy of science, linguistics, translation studies, information science and cognitive sciences) in its study of concepts and their representations in special language and general language. It combines elements from many theoretical approaches that deal with the description, ordering and transfer of knowledge” (ISO 704:2009).

However, there are also scholars who claim that terminology is a separate discipline. These differences in perception of terminology are linked to a different approach. Scholars, like Sager, who claim that terminology is mainly a practice, are interested in a methodology to produce good terminology, but are less interested in creating a theory for terminology as a separate discipline (Sageder, 2010, p. 126).

During the first half of the 20th century, the view on terminography has changed from a mainly prescriptive approach towards a descriptive approach (Sager, 1990, p. 8). This change also instigated the development of methodologies for compiling terminologies. More and more emphasis was put on the role of adding information to an entry and not simply suggesting a term for translation. Automated terminologies made it easier to realise and develop this approach (p. 138). Eurodicautom and Euroterms (nowadays fused together with

other EU terminology banks in IATE) were examples of this approach. The sources of the terms can be found by the translator and the entries also indicate how reliable a translation is and sometimes add information about the context in which it is used. Cabré & Sager (1999) note about terminography that it “does not mean translating a term from one language into another based on supposedly equivalent designations, but gathering the designations that users of a language use to refer to a concept and ultimately, if necessary, proposing alternatives in those cases where speakers' designations are unsatisfactory.” (p. 115). De Groot (1993, p. 33) also supports this approach in which a legal terminology does not only give terms, but also provides information for the translator to make a decision.

Terms

NED-term (a Dutch organisation for terminology) defines a term as “a linguistic expression of a concept from a specific domain” (Görög & van der Vliet, 2016). The International Association of Terminology describes what terms are in the context of terminology: “the systems of symbols and linguistic signs employed for human communication in specialised areas of knowledge and activities” (cited in Sager, 1990, p. 4). These descriptions both emphasise the place of terms in a special area of knowledge. NED-term also states the importance of the concept behind the term. In this definition, it seems that the International Association of Terminology omits the concepts, but it states later on that the discipline of terminology is primarily a linguistic discipline “with emphasis on semantics (system of meanings and concepts) and pragmatics” (cited in Sager, 1990, p. 4).

In the context of legal terminology, it is also important to take into account what a *legal* term is. Florijn (1993) gives five criteria for a legal term:

1. The term has to refer to a legal concept.
2. The meaning of the term is different in a legal context than in regular use.
3. The term is in general use, but lawyers have specified the meaning.
4. The term is archaic in the regular legal language or has its origins in a foreign (legal) language and the use of it is (almost completely) restricted to legal texts.
5. The term only occurs in a legal context (as far as known) (p. 13).

These criteria are similar to the definitions from NED-term and the International Association of Terminology, but specified for legal language. For example, it may occur more often in legal language than in other areas of language that archaic words are used as terms since legal language is known for its use of archaic language. The other criteria may be equally relevant to other areas of terminology. Florijn's criteria make more specific than the earlier definitions

of a term, what makes a term different from a word. His approach is more practical and therefore easier to apply during the selection of terms.

De Groot (1993) establishes a number of criteria for a good legal dictionary including that it should have a preface which warns for the view that the suggested translations are always equivalents. In the entries, it should be indicated whether the translation is a partial or near equivalent, whether a neologism is used and the motivation for this choice should be present. The status of terms and suggestions for translation should be supported by quotations from the context or by references to literature to give the translator the opportunity to check the translation. Suggestions for translation should be reconsidered when there is a change in the legal system of the SL or TL and the term or suggested translation should not be reversed without thought (pp. 33-34). These criteria are aimed at the reliability of a dictionary, because full equivalence is not always within reach and transparency about the translation choices is important. A good dictionary or terminology can be a helpful tool for translators, but it is important that the translator can also verify the selected terms. Providing sources, context and a motivation are crucial in this respect.

Concepts and definitions

Besides the selection of terms, the creation of definitions is also essential. A definition starts with a concept, which can be defined as a “unit of knowledge created by a unique combination of characteristics” (ISO 1087-1:2000). When trying to describe a concept, it is therefore important to focus on the unique elements of the concept, which can also be concluded from the definition of *definition*, namely a “representation of a concept by a descriptive statement which serves to differentiate it from related concepts” (ISO 1087-1:2000). It is important to consider the related concepts. NED-term (2016) calls this a conceptual field. Rossini (1998) used this approach for her lexicon which she ordered in a thematic manner to give the user easy access to related concepts and has provided the lexicon with an alphabetic register – a useful tool for users who want to use the terminology like a dictionary or thesaurus (p. xxi). This approach is very worthwhile, because it gives the reader both a thematic and an alphabetic option to use.

NED-term provides a more comprehensive approach towards terminology resulting in three components that a terminology should have: conceptual fields (=conceptual level); source and target language terms (=term level); references and definitions and/or contexts and/or examples optionally with collocations and grammatical information like word class, plural etc. (Görög & van der Vliet, 2016). NED-term emphasises that the first component, the

conceptual field, is an important part of terminology. The organisation states that a concept should be established and that it should be part of a conceptual structure when describing the domain. So, concepts should be clearly marked out, should be specific for a discipline and should in relation to other terms form a description of the discipline (Görög & van der Vliet, 2016). NED-term also gives indications for the description of a concept in a good definition. It recommends LSP sources wherein the terms are explained in the text. These explanations are called contextual definitions. Good contextual definitions are written by experts in a discipline, are recent, and authoritative (Görög & van der Vliet, 2016).

NED-term gives indications for reliable sources for definitions and terms. It states the following guidelines:

1. A scientific or technical edition is often more reliable than a general edition.
2. A scientific or technical edition is more reliable in the source language than in the translation.
3. A piece in a specialist journal is more reliable than an article on the same subject in a newspaper or magazine.
4. A normative official text is often more reliable and more binding than a non-normative official text.
5. A scientific or technical edition that is focused on the terms and concepts of the discipline is more reliable than a similar edition that only superficially touches the discipline.
6. Authors of LSP texts are more credible when they write in their mother tongue.
7. Information that is supported by independent sources gives more certainty (Görög & van der Vliet, 2016).

When applying these guidelines to legal sources, the result is that legislative texts are probably the closest to these criteria, because they are specific editions and normative. Laws and treaties often start with definitions of the terms they will use later on and are therefore good sources for conceptual definitions. It is important to take into account that authentic texts are more reliable than translations. When using a treaty as a source, it is essential to know whether it is an authentic text or a translation.

Besides a good definition, additional information is also needed to create a good entry. NED-term (2016) states that references, context, examples, collocations and grammatical information are optional elements of an entry. Sager (1990) points out some other aspects that may be present in an entry. Besides definition and context, entries may contain information about the language or country the term is used in. Sager gives the example of French from

France or French from Canada (p. 148). Sager also points out three different types of entries: simple, compound or complex terms, i.e. fully lexicalised units; phrases regardless of lexicalisation; and sentences. Most term banks concentrate solely on fully lexicalised units (p. 146), but the European term bank IATE is an example of a term bank that also accepts phrases and sentences. An example of a phrase in IATE is *bij verstek veroordelen* translated as *to sentence by default* (IATE ID: 1427610) and an example of a whole sentence in IATE is *verweerder word indrukkelijke veroordeeld tot het afleggen van de hem gevraagde wilsverklaring* translated as *defendant ordered to produce the declaration of intent required of him* (IATE ID: 1113432). It is important to realise that not only single words can be terms, but that collocations and sentences are also relevant.

1.3 Equivalence

Theories on equivalence

A concept often dwelled upon in works on legal translation is equivalence (Florijn, 1993; Cao, 2007; Šarčević, 1997). The foundations for the theory of equivalence were laid by Saussure, whose central idea was that a word consists of a ‘signifier’ (the spoken and written signal) and the ‘signified’ (the concept). It is crucial to this theory that the signifier and the signified are arbitrary (in Munday pp. 58-59). Munday (2012, p. 59) gives the example of *cheese*. *Cheese* is the signifier of the concept ‘food made of pressed curds’ (the signified) although there is no apparent reason for that to be so. Some later linguists (Jakobson 1959/2004 in Munday p. 59) have built on this theory and said “there is ordinarily no full equivalence between code-units”. An example of a legal term that may seem similar, but has some primary conceptual differences is *barrister*. A barrister is a lawyer, so the Dutch *advocaat* is its equivalent. However, the profession of an *advocaat* encompasses the activities of a *barrister* but also the activities of a *solicitor*. Where the Dutch language does not know a separated profession for both types of lawyers there is a difference in concept, which makes this example not fully equivalent.

Another important linguist who built on the idea of equivalence is Nida. Earlier theories focused mainly on the arbitrariness of the signifier and signified, but Nida reflected on differences between equivalent and non-equivalent terms that he encountered as a translator. He distinguishes between formal equivalence and dynamic equivalence. A translation that aims at formal equivalence stays as close as possible to the original meaning and form of the source text and a translation that aims at dynamic equivalence tries to retain

the original message and tries to create an equivalent effect (1964, p. 159). Nida discusses problems and solution for both approaches. The problem of aiming for formal equivalence is that such a translation may be difficult to comprehend; cultural elements, puns and idioms would be difficult to understand. The solution in a formal equivalence approach would be a note with an explanation (p. 165). De Groot (1993) considers this approach to be a ‘surrogate-solution’ in legal translation and states that this strategy should only be used when no other equivalent can be found (p. 29).

Dynamic equivalence is an approach with more choices for the translator; the translator can be more creative in his work. There are two main areas that the translator can adapt: grammar and lexicon. Nida points out that the grammar does not pose the greatest problem, because most grammatical changes are obligatory when the translator wants to create a natural target language grammar, but the lexicon poses more problems. Nida differentiates between three lexical levels:

1. terms for which there are readily available parallels, e.g. *river, tree, stone, knife*, etc. ;
2. terms which identify culturally different objects, but with somewhat similar functions, e.g. *book*, which in English means an object with pages bound together into a unit, but which, in New Testament times, meant a long parchment or papyrus rolled up in the form of a scroll; and
3. terms which identify cultural specialties, e.g. *synagogue, homer, ephah, cherubim and jubilee* (p. 167)

The first set of terms are fairly simple to translate because a near equivalent is already present in the TT, but the second set gives the translator options. The translator has a choice in the second case: he can use another term which reflects the form of the referent, but does not possess the equivalent function, or he can choose for a term that reflects the equivalent function, but at the expense of the formal identity (p. 167). Terms identifying culturally different objects can also be found to some extent in the WOTS. The *bijzondere kamer* is a special division in the Dutch court system, which is so specific that a related division in a TC court would not be useful as a translation. However, the English and American legal systems are familiar with divisions in the court system, but they differ to such an extent that they cannot be used interchangeably. A term which identifies cultural specialties is also known – to some extent – in the WOTS. *Beroep in cassatie* is a term that is known in the English language area, but not relevant to its own legal reality. It is a term not only culture specific for the Netherlands, but also known in other civil law areas, like France (Gubby, 2016, p. 72; Garner, 2004, p. 286). This is an imperfect example, because the concept is already known to

some extent in the common law areas, but a choice for the translator remains open, because the term might be unfamiliar to a lawyer who has not encountered it in his/her own legal system.

Different levels of equivalence are also distinguished by Šarčević (1997) who suggests that terms can be (near) equivalent, partial equivalent or non-equivalent. She uses the term near equivalence, because – as the theories of Saussure and Jakobson also point out – terms can never be fully equivalent. In translation studies, equivalence is not meant in the ordinary sense of ‘of equal value’ or ‘the same thing’, but an equivalent term designates that term Y and term X can be used to translate each other “without implying that they are the same at the contextual level” (p. 234). When discussing equivalence, it is important to realise that equivalence is always relative, because of the influence of a variety of linguistic and cultural factors (Baker, 1992, p. 6). Šarčević uses the example of mortgage and *hypothéc* to illustrate the problem of partial equivalence. Mortgage and *hypothéc* have the same function in France and in England: they provide a loan for a house. However, the crucial difference between these two terms is that a mortgage transfers the legal ownership, but a *hypothéc* does not (p. 245). Partial equivalents can be used in certain contexts, but the translator has to be very careful with these equivalents.

Šarčević (1988) makes a distinction between two types of partial equivalents: intersection and inclusion. Intersection occurs when concept A and B have shared characteristics and characteristics that are not present in the other concepts (p. 440). This can be illustrated by the example that is also used in the paragraph above. *Hypothéc* and *mortgage* have similar functions, but they also have distinct features that are different for both concepts. Intersection can also be illustrated by *double criminality* and *dubbele strafbaarheid*. These concepts encompass that the sentenced person must have committed a crime / must be punishable in both countries. The concepts both envelop that the law of both countries must condemn a certain act, but one concept focusses on the criminality of the act and the other on the punishability. The other type of partial equivalence, inclusion, occurs when A has all the characteristics of concept B and some additional characteristics (p. 440). This may happen when a superordinate is missing in a language. Inclusion can be illustrated by the example *maatregel*. The Dutch *maatregel* only encompasses non-punitive measures, but the English *measure* includes both non-punitive measures and punishments.

De Groot (1993) points out that the nature of the document should be considered. The purpose of the translation can determine whether a particular equivalent is acceptable in the context. It makes a difference whether the translation is meant to give a superficial impression

of the text or whether the text will get an authentic status (p. 28). Rayar (1993) states that functional equivalence is not the same as suitability for translation. She gives the example of *district attorney* as a translation for *officier van justitie*. These terms could be said to be functional equivalents, but Rayar suggests that the term *public prosecutor* might be a better translation, although it is a superordinate. This example shows that although a term might be a functional equivalent, the translator has to consider other options that may be a better equivalent (pp. 78-79).

I will end this section on equivalence in legal translation with a remark of Florijn (1993), who points out that the different terms in a semantic field should not be seen as equivalents, but direct the translator in his search for suggestions for translation. The best choice is the one that does justice to the original semantic difference and meets the expectation of the target audience. There should be a connection that is as simple as possible between the translated and established terms (p. 23). All these important reasons for a translation choice are linked to the concept of equivalent, which will be discussed further in the next section.

Non-equivalence: problems

Baker (1992) differentiates between the various ways in which a word can be non-equivalent. She names the following varieties of non-equivalence:

- (a) culture specific concepts;
- (b) the source-language concept is not lexicalised in the target culture;
- (c) the source-language word is semantically complex;
- (d) the source and target languages make different distinctions in meaning;
- (e) the target language lacks a superordinate;
- (f) the target language lacks a specific term (hyponym);
- (g) differences in physical or interpersonal perspective;
- (h) differences in expressive meaning;
- (i) differences in form;
- (j) differences in frequency and purpose of using specific forms;
- (k) the use of loan words in the ST (p. 21-25).

I will discuss the varieties of non-equivalence and their importance to the translation of legal terms. First, I will discuss culture specific concepts, i.e. concepts that are unknown in the target culture (Baker, 1992, p. 21). This type of non-equivalence is similar to Nida's "terms which identify cultural specialties" (1964, p. 167). These terms may occur in legal translation

when the legal system of the target culture has certain gaps. An example is the lack of terms relating to trial by jury in the Dutch legal system. Most countries know a form of trial by jury, but this concept is not legally relevant in the Dutch system.

Baker's (1992) second type of non-equivalence (the source-language concept is not lexicalised in the target culture) is probably less common in law. Baker (1992) gives the example *savoury*, which is not known in all languages, but the concept is quite easy to grasp (p. 21). An imperfect example from the terminology below is *behandeling*. English has the means to express this concept, but does so less explicit, which results in a paraphrase or omission when translating *behandeling*.

The third type (the source-language word is semantically complex) might be quite frequent in legal translation. The notion that legal language is highly system-bound, as elaborated on above, causes many legal terms to be semantically complex, because there often are many laws and legal writings involved in the development of a term. The court systems of different countries illustrate this effectively. The terms for specific courts are often not interchangeable, because they are part of an elaborate court system and often have different jurisdiction than similar courts in other countries.

The fourth type (the source and target languages make different distinctions in meaning) can also be found in legal translation. Legal terms are part of a larger legal system and legal cultures differ in the way they make distinctions between legal terms. A problem caused by this type of non-equivalence in legal translation is how to translate the Dutch term *moord*. *Murder* might seem to be a very near equivalent, but the requirement of *voorbedachte rade* before a killing is classified as murder, does not correspond to the British or American systems, which know related concepts like *criminal intent* and *malice aforethought*. However, there are small differences, which makes translation in this field difficult. Another example is the English *law* as an equivalent for either *wet* or *recht*. Legal Dutch makes distinction between these two, but legal English does not, however, the English equivalent *justice* may also be used in other context for *recht*.

Types (e) and (f) are caused by a gap in the semantic field. Either a superordinate or a hyponym is lacking. It is more common that a hyponym (a specific term) is omitted, than that a superordinate (a general term) is (Baker, 1992, p. 23). An example of differences in a semantic field are the synonyms is the example of Florijn (1993, p. 18), who discusses the Dutch legal hyponyms for the *intrekking van beschikkingen*. Dutch has seventeen different term for this and German has eleven. Since they belong to different legal systems, these terms

all have a different relationship to each other. Another related example is *uitspraak*, a term that is related to *vonnis* and *beslissing*, but does not have a straightforward English equivalent.

Differences in physical or interpersonal perspective (g) may be important in legal translation in general, but probably not for legal terminology. When translating legal texts it may be very important to translate the right perspective. Mistranslating a physical perspective like *come* and *go* might have serious consequences for the interpretation of facts in a case, but this will probably not pose problems for legal terminology in general or, in this case, to terminology of mutual legal assistance.

Differences in expressive meaning (h) in terms that do have the same propositional meaning can cause problems relating to legal terms. Baker (1992) gives the example of the English verb *batter*. A translation towards Japanese would probably make use of a more neutral verb that means 'to beat'. In this case a translator can solve the problem quite easily by adding an adjective like 'savagely' or 'ruthlessly' (p. 24).

Varieties (i) and (j) both relate to form. There is often no equivalent in the target language for a specific source language form. For example, English makes use of affixes to create meaning. Suffixes like *-ish*, *-able*, and *-ese* create certain forms that are not always translatable. Arabic does not have these kind of constructions and therefore has to paraphrase these word (e.g. 'can be retrieved' for *retrievable*) (Baker, 1992, p. 24). Languages can also differ in how often they use a certain form. Baker (1992) gives the example of the English *-ing* form. An equivalent form exists in German and the Scandinavian languages, but it is used less often (p. 25). An example from the terminology in chapter 3 – although this is not a general grammatical construction as the example of Baker – is the use of *court* instead of *judge* for many instances of the Dutch *rechter*. In this case, legal English prefers to refer to the institution, where Dutch prefers to refer to the person.

The last type of non-equivalence (k) is the use of loan words in the ST. Although these words were once borrowed from another language, their meaning may have developed in another direction. Baker (1992) warns for these loan words, because an unwary translator may not realise that they often are false friends (p. 25). In legal translation, this is also a frequent phenomenon. Many legal systems use Latin words and phrases as terms for certain concepts. However, this does not mean that a particular Latin phrase means exactly the same in a different legal system. The Latin terms are borrowed and afterwards they get a particular national colour (Šarčević, 1997, p. 264). *Ne bis in idem* is such a term relevant to international criminal law. The phrase refers to a concept better known in the English speaking world as *double jeopardy*.

Equivalence and non-equivalence: strategies

Various scholars (Baker, 1992; Florijn, 1993; De Groot, 1993; Rayar, 1993) dealing with translation in general or with legal translation, give solutions for the problems that may occur in translation. Especially in the field of legal translation, scholars like Florijn, De Groot and Rayar give advice about which strategy to use. I will discuss the solution these three scholars offer, because their approaches are most relevant to legal terminology. De Groot (1993) recommends to use a functional equivalent, but when this is not possible he lists three surrogate strategies:

- a) one does not translate, but uses the term from the source language in the target language. Possibly with a 'literal translation' or a remark like 'similar to' in a footnote or between brackets.
- b) one describes the term from the source language in the target language.
- c) one creates a neologism, i.e. one introduces a new word in the legal system of the target language, possible again with an explanation in the footnotes.

(pp. 29-30)

These solutions are avoided as much as possible in the terminology in chapter 3, but can be seen in the translations that the Dutch government has chosen for its institutions. For example the *meervoudige kamer* and the *politierechter*, which are given a descriptive translation in the form of *three-judge division* and *single-judge division*.

Rayar (1993) gives the same solutions as De Groot for terms with no equivalent in the target language (pp. 81-82). She also suggests translation strategies in case of near equivalence or partial equivalence. When a term is equivalent, the term can be borrowed from the legal system of the target language. Again, Rayar points out there may be a difference in the kind of equivalence: lexical equivalence, i.e. *murder* and *moord*, or functional equivalence, i.e. *verrichten van onbetaalde arbeid ten algemene nutte* and *community service* (p. 80). Her solutions for partial equivalence are extensive or restrictive interpretation. An extensive translation widens the definition, for example the translation of *maatregel* with *measure*, which not only includes *maatregel*, but also *straf*. Rayar warns that extensive interpretation can lead to a translation where certain aspects that may not be illegal in the source language may seem to be so in the target language (p. 80).

Rayar also proposes the strategy of 'stretching', a form of generalisation. In this strategy, a superordinate is taken from the target language and the terms from the source language are translated with this more general word. The superordinate may be modified by adding another word. Rayar gives the example of the Dutch to English translation of terms

relating to *belediging*. The Dutch system distinguishes five different terms to differentiate between the forms of *belediging*. In contrast, the English system divides defamation into *libel* and *slander*. For the translation of the Dutch terms, *defamation* can be used to translate the five different forms. This has resulted in *aggravated defamation*, *simple defamation*, *libellous defamation* and *defamatory accusation*. So, the superordinate is used to create neologisms that are recognisable (p. 80). A simpler example is *uitspraak* translated with *decision*. A term that includes *uitspraken*, but also includes *beschikkingen* and is more equivalent to the Dutch superordinate *beslissing*.

Translation strategies and the problems regarding equivalence are important when compiling a terminology. It is important to realise that the terms are often not full equivalents and these differences in equivalence can have consequences for the translation choices that are supposed to be made.

1.4 Conclusion

This chapter has discussed the most important aspects regarding a legal terminology. The translation strategies described above are of importance when searching for equivalents for the terminology. The information on specifically legal translation and equivalence will help to find the best equivalents in the right context and the information on terminology will help to establish a reliable terminology.

2. Methodology

Important aspects of a methodology when compiling a terminology are how the selection of terms occurs, including the sources they are selected from, the selection of equivalent terms, and the assembling of definitions. These aspects are discussed below.

Materials

In the previous chapters, the reliability of certain sources has been discussed. In a legal context, normative sources are regarded as the most reliable (Šarčević, 1997, p. 10; Cao, 2007, pp. 10-11). Sources with the most authority include laws (Florijn, 1993, p. 12). Furthermore, sources that are written in the source language are more reliable than translations (Görög & Van der Vliet, 2016). My preliminary source to extract the Dutch terms from was the *Wet Overdracht Tenuitvoerlegging Strafvonnissen* (WOTS), an authentic legislative text. I used the Convention on the Transfer of Sentenced Persons (CTSP) to extract English equivalents.

Regarding these sources, it is also important to consider the system-bound nature of legal language (De Groot, 1993, p. 26). The CTSP is written in an international context and therefore is an example of ‘international English’. When the CTSP did not contain a term, related treaties were used, like the European Convention on the International Validity of Criminal Judgements or the European Convention on Extradition. The use of authentic sources from the United Kingdom and the United States provided for a reliable reflection on this. These sources include bilateral treaties, to make sure that the authentic text is not a mixed variant of English. A reliable document regarding American English is the bilateral treaty between the US and the Netherlands. For the UK, I considered the most recent bilateral treaty from the UK, the treaty between the UK and Kazakhstan. National legislation is a reliable source to extract terms from. National legislation of the US is found in the U.S. Code. The most interesting part for the terminology is title 18, which covers criminal law. For the UK, the criminal law is covered by multiple acts. The act most similar to the WOTS is the Repatriation of Prisoners Act 1984. Furthermore, there are the Crime (International Cooperation) Act 2003, the Proceeds of Crime Act 2002 and the Criminal Law Act 1967.

Additional information was taken from legislative texts whenever possible. Treaties and laws often give definitions of terms and these definitions can be helpful information for the terminology. The treaties and laws mentioned above were used, but related legislation was also useful, like the *Wetboek van Strafrecht* (Sr) and the *Wetboek van Strafvordering* (Sv).

Scholarly work was also used in this respect. Works on mutual legal assistance, like the *Handboek Internationaal Strafrecht* (2015), are reliable sources when establishing a definition. Other sources, like legal dictionaries, may also be useful sources, but the legislative texts are preferred for definitions.

I used WordSmith Tools 7 to make a selection of the terms in the WOTS. The wordlist option can establish the frequency of words in a text file.

Method

First of all, I analysed the WOTS using WordSmith Tools 7. The wordlist option was used to establish the frequency of words. The most useful terms had to be selected manually, in order to remove the words which are not terms. When selecting the terms, I considered the definition of a term by NED-term (2016) (see section 1.2) and the criteria for legal terms of Florijn (1993) (see section 1.1). A difficulty in this approach is that WordSmith only selects separate words on the basis of orthography. Terms that orthographically consist of two words are analysed as separate terms by the program. I took the list of most frequent words and considered the context in the WOTS to select these terms and use them in their compound form when adding them to the terminology. If the WOTS did not contain all terms relevant to mutual legal assistance, I added these terms to the terminology.

When the list of terms was established, I considered the Convention on the Transfer of Sentenced Persons (CTSP) and analysed it for equivalent terms. The authentic text of the Convention is English, but there is a Dutch translation, the *Verdrag inzake de Overbrenging van Gevonniste Personen* (VOGP). The VOGP is a useful starting point to examine the Dutch terms and find their equivalents in the CTSP. The CTSP is a treaty between the member states of the Council of Europe, but also signed by other states, including the English-speaking countries Canada, Australia and the United States. Therefore, the terms in the treaty may be an example of ‘international’ English. The text is aimed at the countries in Europe, so the influence of British English may be the most significant. However, the US and Canada both signed the Convention directly when it came into force, so their language variant may have influenced the drafting as well.

I started searching for equivalents in the CTSP. When there were equivalents in the Convention, I tried to verify them by searching for the terms in legal documents and other sources that document legal terms (Garner, 2004; Martin, 2003). Whenever the CTSP and other treaties did not contain near-equivalents, I searched for equivalents elsewhere. Van den

End (2010) and IATE were useful sources to start in this respect. I also examined the translations of Dutch legislation, for example the translations of the Dutch Criminal Code and the Dutch Code of Criminal Procedure. For the English verification, I considered the difference between the legal English of the United States and the legal English of the UK. I did this by means of authentic US or UK documents, using the legislation mentioned above and other legislation when necessary.

When a term is found and established, the definition is the next step. I used a contextual definition when possible. Contextual definitions were found in the WOTS itself, in related legislation, for example in the *Wetboek van Strafrecht* (Sr) and the *Wetboek van Strafvordering* (Sv) which are often referred to in the WOTS, and in case law and doctrine. I used the handbook from Van Elst & Van Sliedrecht (2015) for contextual definitions in doctrine in the Dutch system. I used the CTSP, related treaties and legislation from the UK and US. When it was hard to establish a definition only using contextual sources, I made use of dictionaries (Garner, 2004; Martin, 2003; Van Caspel & Klijn, 2012). The definitions are well-referenced in order to make it easy for users to verify the terms. I also added contexts when this was necessary. In this regard, I gave the definitions found in normative texts (e.g. laws and treaties) priority above other sources.

The entries are modelled after the entries in IATE (figure 1) which are consistent with the requirements of De Groot (1993, pp. 33-34), it will include both terms, their definition, information about context and an number indicating the reliability of the term. Figure 1 does not include a definition, but I compiled a definition for all source and target language terms.

(Sub)domein		RECHT, Europese Unie
nl		
Term	wederzijdse internationale rechtshulp	
<i>Betrouwbaarheid</i>	3 (Betrouwbaar)	
<i>Termreferentie</i>	Verslag Jenard-Schlosser i.z. Executieverdrag 1968, PBEG C 59/1979, blz. 4	
<i>Context</i>	de inleidende dagvaarding is aan de gedaagde niet betekend door een Duitse autoriteit in het kader van wederzijdse internationale rechtshulp	
<i>Contextref.</i>		
<i>Datum</i>	24/09/2003	
en		
Term	mutual assistance in judicial matters	
<i>Betrouwbaarheid</i>	3 (Betrouwbaar)	
<i>Termreferentie</i>	Jenard-Schlosser Report, OJEC C 59/1979, p.4	
<i>Context</i>	the document instituting the proceedings was not served on the defendant by a German authority under the system of mutual assistance in judicial matters	
<i>Contextref.</i>		
<i>Datum</i>	24/09/2003	

Bron: COM

IATE ID: 1129478

Figure 1: IATE entry

The reliability number will be a number between 1 and 5 – 1 indicating not very reliable and 5 indicating very reliable – based on the reliability of the sources in the definitions. As discussed in section 1.2, not all sources are equally reliable. I used the distinction made among legal sources by Janssen (2016). She differentiates between *verdragen* (En: treaties), *wetten in formele zin* (En: acts), *wetten in materiële zin* (En: law or statute), *jurisprudentie* (En: judicial decisions/case law) and *gewoonte* (En: custom). Definitions that are based on treaties or acts get a 5; definitions based on law or statute, or on case law when other laws do not exist get a 4; other judicial decisions and customs get a 3; doctrine (the work of legal scholars) gets a 2; other sources get a 1.

Some comments on this differentiation are necessary. The choice to make a distinction between judicial decisions with and without a relevant law on the subject is initiated by the fact that the common law is often based on judicial decisions. Therefore, this area is too important to give a low reliability. Furthermore, I will regard legal dictionaries as the work of legal scholars, because these dictionaries are written by scholars specialised in law. A work that is a translation is regarded as less reliable and is therefore downgraded with 2 points, e.g. the translation of the Dutch Civil Code gets a 3, because it is a code (*wet in materiële zin*) and a translation. ‘Other sources’ include websites and information sheets of governmental or judicial organisations and non-specialised dictionaries. Some definitions consist of multiple sources with different reliability. In those cases, the reliability number is the average of the sources used and rounded down when needed.

3. Terminology

The terminology is structured in a thematic manner. The sections are:

1. The parties (p. 27)
2. At the court (p. 33)
3. Sanctions (p. 42)
4. Decisions and procedures (p. 46)
5. Legislation (p. 54)

An alphabetically ordered Dutch to English index can be found in the appendix.

The parties

Aangezochte staat – Requested state

Aangezochte staat

Term reference: VOGP, EVIG, ECIVCJ

Reliability: 5

Definition: A state that has received a request for mutual legal assistance (ECIVCJ 11).

Requested state

Term reference: CTSP, ECIVCJ

Reliability: 5

Definition: A state that has received a request for mutual legal assistance (ECIVCJ 11).

Verzoekende staat – Requesting state

Verzoekende staat

Term reference: WOTS, VOGP

Reliability: 5

Definition: A state that issues a request for mutual legal assistance (CTSP 5, 22:4; Uitleveringswet 1).

Requesting state

Term reference: CTSP, treaty US-NL 1981, treaty UK-Kazakhstan 2016

Reliability: 5

Definition: A state that issues a request for mutual legal assistance (CTSP 5, 22:4).

Staat van veroordeling – Sentencing state

Staat van veroordeling

Term reference: VOGP, EVIG

Reliability: 5

Definition: The State in which the sentence was imposed on the person who may be, or has been, transferred (CTSP 1c).

Sentencing state

Term reference: CTSP, ECIVCJ

Reliability: 5

Definition: The State in which the sentence was imposed on the person who may be, or has been, transferred (CTSP 1c).

Note: Both *staat van veroordeling* and ‘sentencing state’ are only found in conventions and not in national legislation or bilateral treaties. Probably, because national legislation can easily describe the state using the names of the national state and the foreign state, for example in the WOTS: *Nederlandse verzoeken* and *buitenlandse verzoeken*.

Staat van tenuitvoerlegging - Administering State

Staat van tenuitvoerlegging

Term reference: VOGP, Verdrag tussen de Lid-Staten van de Europese Gemeenschappen inzake de tenuitvoerlegging van buitenlandse strafvonnis

Reliability: 5

Definition: The State to which the enforcement of the sentence has been or may be transferred in order to serve his sentence (CTSP 1.d; CEFCS 1.d).

Administering state

Term reference: CTSP, Convention between the Member States of the European Communities on the Enforcement of Foreign Criminal Sentences

Reliability: 5

Definition: The State to which the enforcement of the sentence has been or may be transferred in order to serve his sentence (CTSP 1.d; CEFCS 1.d).

Note: Both *staat van tenuitvoerlegging* and ‘administering state’ are only found in conventions and not in national legislation or bilateral treaties. Probably, because national legislation can easily describe the state with the national state and the foreign state, for example in the WOTS: *Nederlandse verzoeken* and *buitenlandse verzoeken*.

Vreemde staat – Foreign state

Vreemde staat

Term reference: WOTS, Uitleveringswet

Reliability: 5

Definition: A foreign country

Foreign state

Term reference: US code – foreign authority; DCC – foreign country; Garner (2004, p. 676) – foreign state

Reliability: 2

Definition: A foreign country (Garner, 2004, p. 676).

Note: The repatriation of prisoners act 1984 (UK) uses ‘places outside the British Isles’ to refer to foreign states. This descriptive term is broader than *vreemde staat*, because it does not refer to a country. The US Code uses ‘foreign authority’ meaning “a foreign authority responsible for the investigation or prosecution of criminal offenses or for proceedings related to the prosecution of criminal offenses, or an authority designated as a competent authority or central authority for the purpose of making requests for assistance pursuant to an agreement or treaty with the United States regarding assistance in criminal matters” (18 U.S. Code § 3512). This term does not refer to a country, but to an organisation from a foreign country. However, it may be used as a functional equivalent in some contexts. State is chosen instead of country, because it corresponds closer to the other uses of state, e.g. requesting state, administering state, etc.

Veroordeelde – Sentenced person

Veroordeelde

Term reference: WOTS, VOGP, Sr, Sv

Reliability: 5

Definition: Degene aan wie een sanctie is opgelegd (WOTS 1:1).

Note: *Veroordeelde* is very frequent in the WOTS, Sr and Sv. It is remarkable that *veroordeelde* is used only a few times (5) in the translation of the CTSP. The translator has been creative in his translations of ‘sentenced person’. *Gevonniste persoon* is a solution he uses next to *veroordeelde*, probably because *gevonnisse persoon* a more SL-oriented approach.

Sentenced person

Term reference: CTSP, ECIVCJ

Reliability: 5

Definition: A person who is punished by any punishment or measure involving deprivation of liberty ordered by a court for a limited or unlimited period of time on account of a criminal offence (CTSP 1:a).

Note: A more TC-approach may result in ‘person in custody’ for the US and ‘prisoner’ for the UK (USC; Repatriation of Prisoners Act 1984). These translations are only partial equivalents, because they emphasise a different aspect of a *veroordeelde*. The definition of *veroordeelde* does not include being in custody, but in the context of the WOTS, this will probably be the case.

Veroordeelde may also be translated as ‘convicted person’, as is done in the USC (18 USC § 3621). English and American trials have a moment between the conviction – the moment that the suspect is found guilty – and the imposition of the sentence. The term ‘convicted person’ can be used in that context and is also often used interchangeably with ‘sentenced person’. However, in the context of mutual legal assistance, it is common and reasonable to use ‘sentenced person’. Persons who may request for transfer are always sentenced with a sanction involving deprivation of liberty. Therefore ‘sentenced person’ is always at its place in this area of law.

Officier van justitie – Public prosecutor

Officier van justitie

Term reference: WOTS, Sv, Sr

Reliability: 5

Definition: The public prosecutor is the officer “charged with the detection of criminal offences which are tried by the District Court in the district in which he is appointed, and with the detection of the criminal offences within the area of jurisdiction of that District Court, which are tried by other District Courts” (DCCP 148:1).

Public prosecutor

Term reference: DCCP, DCC

Reliability: 2

Definition: ‘[A] legal officer who represents the state or federal government in criminal proceedings’ (Garner, 2004, p. 1258).

Note: The term is SC-oriented. The US and UK are familiar with the function of a public prosecutor, but the prosecutor in the US is called a district attorney, who is ‘a public official appointed or elected to represent the state in criminal cases in a particular judicial district’

(Garner, 2004, p. 510). The USC uses the term ‘United States attorney’, who is appointed by the president. The US attorney can appoint Assistant US attorneys, who also are public prosecutors (28 U.S. Code § 541-542). In the UK, this would be a Crown Prosecutor (Prosecution of Offences Act 1985).

Minister van Veiligheid en Justitie – Minister of Security Justice

Minister van Veiligheid en Justitie

Term reference: WOTS, Sv

Reliability: 5

Definition: The minister of the Dutch Department of (Security and) Justice. This minister can decide to refuse a request for mutual legal assistance (WOTS 13:4).

Note: Since 2010, the name of the department (and minister) has changed into *Ministerie / Minister van Veiligheid en Justitie*. The terminology has been adapted in the Sv and partly in the WOTS, but not yet in the Sr.

Minister of Security and Justice

Term reference: DCCP; government.nl

Reliability: 3

Definition: The minister of the Department of Security and Justice. The Dutch minister of Security and Justice can decide to refuse a request for mutual legal assistance (WOTS 13:4).

Note: Similar responsibilities in the context of mutual legal assistance were given to the Secretary of State for the Home Department in the UK (treaty UK-Kazakhstan art. 3), but the responsibilities regarding justice have been transferred to the Department of Justice in 2007. The Lord Chancellor and Secretary of State for Justice is now the person responsible for matters of justice (gov.uk)

In the US, requests regarding mutual legal assistance are sent to the Attorney General (treaty US-NL 1981: 14; 18 USC § 4102).

Openbaar ministerie – Public Prosecution Service

Openbaar ministerie

Term reference: WOTS, Sr, Sv

Reliability: 5

Definition: The *openbaar ministerie* is the prosecution service of the Netherlands. It is entrusted with the enforcement of the criminal law and other tasks appointed by the law (RO 124).

Public Prosecution Service

Term reference: om.nl, DCC, DCCP

Reliability: 2

Definition: The party (government attorney in the US) who initiates legal proceedings, particularly criminal proceedings (Garner, 2004, p. 1258; Martin, 2003, p. 390).

Note: This term is SC-oriented. The UK equivalent is the Crown Prosecution Service and US equivalent are the district attorneys (Prosecution of Offences Act 1985; Garner, 2004, p. 510).

Raadsman – Counsel

Raadsman

Term reference: WOTS, Sr, Sv

Reliability: 5

Definition: A lawyer who helps defend a suspect of an offence in a criminal case. According to the EHRM, the counsel must be able to be present during the questioning by the police (EHRM 6:3c).

Counsel

Term reference: US-NL treaty 5(3), Vienna Convention of the law of treaties (annex 9)

Reliability: 3

Definition: One or more lawyers who represent a client/suspect in a criminal case (Garner, 2004, p. 374; ECHR art 6:3c). In the UK, a barrister is called counsel when representing a party in court and an attorney may be referred to as counsel or counsellor (Gubby, 2016, p. 39).

Note: *Raadsman* is used in the ECIVCJ (article 27) as a translation for legal assistance. So, this term is used quite general.

Autoriteiten - Authorities

Autoriteiten

Term reference: WOTS, VOGP, Sr, Sv

Reliability: 3

Definition: A governmental institution that has jurisdiction to make certain decisions (Van Dale, 2009; WOTS 13a).

Authorities

Term reference: CTSP, Treaty US-NL, Crime (International Co-operation) Act 2003, 5 USC § 551

Reliability: 3

Definition: A governmental agency or corporation that administers a public enterprise and has jurisdiction in a certain area (Garner, 2004, p. 143; treaty US-NL).

At the court

Meervoudige kamer – Three-judge division

Meervoudige kamer

Term reference: WOTS, Sr, Sv

Reliability: 5

Definition: A division of the court with more than one judge, which rules on more complicated cases than the single judge division (RO 6:2).

Three-judge division

Term reference: DCC, DCCP

Reliability: 3

Definition: A division of the court with more than one judge, which rules on more complicated cases than the single judge division (RO 6:2)

Note: This is a very SC-oriented translation, because the system of the Netherlands differs too much to find a sufficient equivalent in the court systems of either the UK or the US. The nearest equivalent court in the UK is the Crown Court, which hears indictable and either-way offences, but this court makes use of juries, which is not the case in the Netherlands (Barker, 2014, p. 42).

Hoge raad – Supreme court

Hoge raad

Term reference: WOTS, Sv

Reliability: 5

Definition: The highest court of the Netherlands (RO 72). The court only takes appeals in cassation. It does not consider the facts of cases which have already been judged by a district court or court of appeal (RO 78).

Supreme court

Term reference: rechtspraak.nl, DCCP

Reliability: 2

Definition: An appellate court existing in most states, usually as the court of last resort (Garner, 2004, p. 1481).

Note: The supreme courts in the US and the UK have jurisdiction over both law and fact (US Supreme Court (n.d.); Supreme Court of the UK, 2014). Therefore this term is not an equivalent in that respect. However, the *Hoge Raad* uses this term itself and a term like *cour de cassation* (as the French supreme court calls itself) would be rather foreignising in the English speaking systems.

Politierichter – Single-judge division

Politierichter

Term reference: WOTS, Sv

Reliability: 5

Definition: The title of a judge in an *enkelvoudige kamer* at the district court appointed for the examination of simple criminal cases, of which the sanction does not exceed one year of imprisonment (RO 51; Rv 367-9).

Single-judge division

Term reference: DCCP section 282a

Reliability: 3

Definition: An *enkelvoudige kamer* at the district court appointed for the examination of simple criminal cases, of which the sanction does not exceed one year of imprisonment (RO 51; Rv 367-9).

Bijzondere kamer – Execution of Sentences Division

Bijzondere kamer

Term reference: WOTS, ECLI:NL:GHARL:2016:6540

Reliability: 5

Definition: The *bijzondere kamer*, also known as the *penitentiaire kamer*, is a full-bench division which hears and decides applications for conditional release. This division also decides whether a request for mutual legal assistance can be taken in consideration, which offence in Dutch law would be the ground for the foreign conviction and which adjustment (reduction or conversion) of the sentence is necessary (WOTS 43b 1-3; RO 67:1-2).

Execution of Sentences Division

Term reference: WOTS information sheet for prisoners abroad (2016)

Reliability: 1

Definition: The execution of sentences division is a full-bench division which hears and decides applications for conditional release. This division also decides whether a request for mutual legal assistance can be taken in consideration, which offence in Dutch law would be the ground for the foreign conviction and which adjustment (reduction or conversion) of the sentence is necessary (WOTS 43b 1-3; RO 67:1,2).

Note: The term used above is the translation maintained by the court itself. It does not have a specific counterpart in either UK or US law.

Rechtbank – District court

Rechtbank

Term reference: WOTS

Reliability: 3

Definition: The lowest court in the Netherlands. The eleven judicial districts in the Netherlands have their own court. Therefore the courts are also called *arrondissementsrechtbanken* (rechtspraak.nl; RI).

District court

Term reference: uscourts.gov; rechtspraak.nl

Reliability: 1

Definition: A trial court that has general jurisdiction within its judicial district (Garner, 2004, p. 380), used as a name for these kind of court in the US (uscourts.gov).

Note: This term, which is directed towards the US system, is chosen because the Dutch government already uses this term and the US system is more similar to the Dutch system than the UK system in this respect.

Arrondissement – District

Arrondissement

Term reference: WOTS, Sr, Sv

Reliability: 5

Definition: Unit of judicial organisation, the jurisdiction of a district court (Dutch: *rechtbank*) (RI).

District

Term reference: DCCP section 9 lid 1, DCC section 15d lid 5, 28 USC § 132

Reliability: 3

Definition: A territorial area which is divided for judicial, political, electoral or administrative purposes, for example a legislative district with the purpose of electing legislative representatives (Garner, 2004, p. 507-8; Martin, 2003, p. 157). The United States knows judicial districts, with in each district a district court (28 USC § 132).

Ter terechtzitting – At the hearing

Ter terechtzitting

Term reference: WOTS, Sv

Reliability: 3

Definition: A, in general, public hearing by a judge of a criminal court; the final part in a criminal law procedure (Sv 258; Van Caspel & Klijn, 2012, p. 351).

At the hearing

Term reference: ECIVCJ 21, treaty UK-Kazakhstan, 18 USC § 3593, DCCP

Reliability: 2

Definition: A judicial session, usually open to the public, held for the purpose of deciding issues of fact or of law (Garner, 2004, p. 737; Martin, 2003, p. 228).

Onderzoek - Hearing

Onderzoek

Term reference: WOTS

Reliability: 5

Definition: Examination of the case at the court (WOTS).

Context: onderzoek ter terechtzitting (WOTS)

Hearing

Term reference: 18 U.S. Code § 3190, DCC 14h, DCCP 12c, treaty UK-Kazakhstan 10

Reliability: 2

Definition: A judicial session, the trial of a case before a court, usually open to the public, held for the purpose of deciding issues of fact or of law, sometimes with witnesses testifying (Garner, 2004, p. 737; Martin, 2003, p. 228).

Note: This term is certainly not fully equivalent, but it is used by the DCC and DCCP. The English term ‘hearing’ focusses more on the actual event, while the Dutch term *onderzoek* emphasises the act.

Tenuitvoerlegging - Enforcement

Tenuitvoerlegging

Term reference: WOTS, VOGP

Reliability: 3

Definition: Execution of a sentence enforced by the Public Prosecution Service or on his proposal by the minister of Security and Justice (DCCP 553; Van Caspel & Klijn, 2012, p. 350).

Enforcement

Term reference: CTSP; treaty US-NL 1984 (6:2.b.); Crime (International Cooperation) Act 2003

Reliability: 2

Definition: The act or process of compelling compliance with a law, mandate, command, decree, or agreement (US) (Garner, 2004, p. 569) or the processes by which the orders of a court may be enforced. These processes can be orders or writs in the UK (Martin, 2003, p. 174).

Note: The USC also uses ‘execution’ in the context of a request for mutual legal assistance (USC 18 4101(j)). Execution is defined as “the act of carrying out or putting into effect (as a court order) (Garner 2004, p. 609).

Note 2: When translating *tenuitvoerlegging*, it is important to take the context into account. Phrases like *staat van tenuitvoerlegging* may be translated differently, in this case the CTSP opts for ‘administering state’ (CTSP 1.d.).

Wederrechtelijk verkregen voordeel – Criminally derived property

Wederrechtelijk verkregen voordeel

Term reference: WOTS

Reliability: 5

Definition: Profit that the sentenced person gained from the offense. The *wederrechtelijk verkregen voordeel* can be confiscated with a measure (Sr 36e).

Context: ontneming van een wederrechtelijk verkregen voordeel

Criminally derived property

Term reference: 18 USC § 1957

Reliability: 5

Definition: Any property constituting or derived from proceeds obtained from a criminal offense (18 USC § 1957 f 2).

Note: This term is used in the US, but elsewhere this concept is described by various terms, for example ‘proceeds from crime’ (European Convention on Laundering) or ‘property obtained through unlawful conduct’ (Proceeds of Crime Act 2002). The DCC and DCCP use ‘unlawfully obtained gains’.

Bestuur – Board of directors

Bestuur

Term reference: WOTS, Sr, Sv

Reliability: 5

Definition: The governing body competent to represent the juridical person (BW 2:45; BW 2:5 e.v.).

Context: bestuur van een rechtspersoon (WOTS)

Board of directors

Term reference: 49 USC § 24302, Companies Act 2006

Reliability: 2

Definition: The governing body of a company which makes all major business and financial decisions and determines the delegation of powers (Gubby, 2016, p. 242; Garner, 2004, p. 184).

Beroep in cassatie – Appeal in cassation

Beroep in cassatie

Term reference: WOTS, Sr, Sv,

Reliability: 5

Definition: *Beroep in cassatie* can be lodged by a defendant or the Public Prosecution Service after a judgement of a court of appeal (Dutch: *gerechtshof*) (RO 427). The *beroep in cassatie* is judged by the supreme court (Dutch: *Hoge Raad*), who only decides whether the earlier judgement is in violation of the law (Gw 18:2). The supreme court can either declare the appeal inadmissible, dismiss the appeal or fully or partially quash the judgment or appeal judgment, either on the grounds adduced or on other grounds (DCCP 440:1).

Appeal in cassation

Term reference: DCC, DCCP

Reliability: 2

Definition: An appeal that can result in quashing a decree of an inferior court. A court of cassation is only competent to make a decision upon a point of law. A court of cassation is not known in the legal systems of the UK or US (Gubby, 2016, p. 72; Garner, 2004, p. 286).

Verstek – Default judgement

Verstek

Term reference: WOTS, EVIG

Reliability: 5

Definition: The failure of appearance of a suspect at a hearing in a criminal case. The court can either continue the hearing or order that the suspect must be brought forcibly (Sv 278-280). *Verstek* is also used in civil procedure when the defendant is not present the decision will be in favour of the claimant (Rv 139-142). It can also refer to the decision in a criminal case when the sentenced person is not at the hearing (EVIG 21).

Context: bij verstek gewezen beslissing

Default judgement

Term reference: Federal Rules of Civil Procedure, rule 55; procedure rules, practice direction 12 (UK)

Reliability: 1

Definition: A judgement used when the defendant in a civil procedure does not appear. It can also be issued when a defendant failed to file either an acknowledgement of service or a defence in the UK. (Federal Rules of Civil Procedure, rule 55; Procedure rules, practice direction).

Note: In the UK and US, this term is mostly used in the context of civil procedure.

Bevoegd - Competent

Bevoegd

Term reference: WOTS, VOGP, Sr, Sv, EVIG 7

Reliability: 3

Definition: The capacity of a court or other governmental authority (this may also be a country) to decide on certain issues (Sv 2, 6; Sr 8b; Van Caspel & Klijn, 2012, p. 53).

Competent

Term reference: CTSP, ECIVCJ 7, treaty US-NL 1bis (b), Crime (International Co-operation) Act 2003 48(4), 18 USC § 3512

Reliability: 3

Definition: The capacity of an official body - court, state or other authority - to do something e.g. decide in cases of mutual legal assistance (18 USC § 3512; Garner, 2004, p. 302).

Note: capacity of states (VCLT 6)

Behandeling –

I recommend to paraphrase or omit this term, as often happens in the translation of the Sv.

Behandeling

Term reference: WOTS, Sv

Reliability: 5

Definition: Treatment of a request or criminal case by a *officier van justitie* or judge (WOTS 13f).

Deal with

Term reference: DCCP

Reliability: 1

Definition: To act in regard to, administer, handle, dispose in any way of (a thing) (OED, deal vb, 16a).

Handling

Term reference: DCCP

Reliability: 1

Definition: The action or an act of dealing with a person or thing; treatment; management; especially treatment in speech or writing, discussion (OED handling 2).

Note: ‘handling’ is also used as a translation for *afdoening* in the DCCP.

Rechter – Court / Judge

Rechter

Term reference: WOTS, VOGP, Sr, Sv

Reliability: 3

Definition: Anyone who administers justice, especially in a court. A person competent to make decisions in court (WOTS 1; Van Caspel & Klijn, 2012, p. 300).

Context: door de Nederlandse rechter opgelegde straf of maatregel (WOTS)

Court

Term reference: CTSP, ECIVCJ, Crime (International Co-operation) Act 2003, USC

Reliability: 2

Definition: A governmental body consisting of one or more judges who sit to adjudicate disputes and administer justice (Garner, 2004, p. 378).

Note: This is not a full equivalent in the sense that this term does not mean a person, but the governmental body that administers justice. This term is often used in a context where *rechter* would be more standard in Dutch.

Context: ordered by a court (VOGP)

The court shall impose a sentence (18 USC § 3553)

Order made by a court (Crime (International Co-operation) Act 2003 20 (1))

Sanctions

Advies - Recommendation

Advies

Term reference: WOTS, Sr

Reliability: 1

Definition: An official recommendation (WOTS).

Context: met redenen omkleed advies (door de officier van justitie) (WOTS 51)

Recommendation

Term reference: 18 USC § 3553 (f), Repatriation of Prisoners Act 1984 section 3.2

Reliability: 5

Definition: An advise (by a governmental authority) (18 USC § 3553).

Context: A recommendation by the government 18 USC § 3553 (f)

Toezicht - Supervision

Toezicht

Term reference: WOTS, Sr, Sv, EVTVVVVG

Reliability: 5

Definition: The supervision on sentenced persons for the social rehabilitation of said persons and the supervision on a good execution of the sanction given by an official authority, like the prosecution service or a court (WOTS 38; EVTVVVVG 1).

Supervision

Term reference: DCC, DCCP, European Convention on the supervision of conditionally sentenced or conditionally released offenders (ECSCSCRO), treaty UK-Kazakhstan, Crime (International Co-operation) Act 2003 schedule 2 part 1 (6)

Reliability: 2

Definition: “The act of managing, directing, or overseeing persons or projects” (Garner, 2004, p. 1479). The term is often used in the context of supervised release, for example in 18 USC § 3583 and in the Crime (International Co-operation) Act 2003 schedule 2 part 1 (6).

Sanctie - Sanction

Sanctie

Term reference: WOTS, VOGP, ECIVCJ

Reliability: 5

Definition: Every by judge-made decision imposed punishment, including every measure imposed next to or instead of a punishment. This punishment or measure should be expressly imposed on a person, in respect of an offence, in a European criminal judgment, or in an "ordonnance pénale" (WOTS 1:1; ECIVCJ 1.d).

Sanction

Term reference: CTSP, ECIVCJ, 50 USC § 1809

Reliability: 3

Definition: ‘A penalty or coercive measure that results from failure to comply with a law, rule or order. This punishment or other measure should be expressly imposed on a person, in respect of an offence, in a European criminal judgment, or in an "ordonnance pénale"’ (ECIVCJ 1.d; Garner, 2004, p. 1368; Martin, 2003, p. 445).

Note: Penalty is more frequent in legislation than sanction. Penalty occurs in the Crime (International Co-operation) Act 2003, treaty UK-Kazakhstan, Criminal Law Act 1967 and has multiple instances in the USC. However, a sanction includes measures, which a penalty does not.

Straf - Punishment

Straf

Term reference: WOTS, VOGP, EVIG

Reliability: 3

Definition: A sanction, an instrument to punish violation of certain norms by law or rule. A *straf* does not include a *maatregel*, but can be accompanied by one (WOTS 1:1; Van Caspel & Klijn, 2012, p. 341).

Punishment

Term reference: ECIVCJ 1.d, 18 U.S. Code § 371, Criminal Law Act 1967

Reliability: 2

Definition: A penalty imposed on a defendant duly convicted of a crime by an authorized court. The punishment is declared in the sentence of the court. A punishment can be a fine, penalty, confinement, or loss of property, right or privilege (Garner, 2004, p. 1269; Martin, 2003, p. 397).

Maatregel – Measure

Maatregel

Term reference: WOTS, VOGP, Sr, Sv

Reliability: 3

Definition: A sanction in criminal law other than a punishment. The court can impose it next to or instead of a punishment. A *maatregel* can be in the form of withdrawal from circulation, special confiscation of unlawfully obtained gains and compensation (WOTS 1:1; DCC title IIA; Van Caspel & Klijn, 2012, p. 218).

Measure

Term reference: CTSP, DCC, DCCP, European Convention on the international validity of criminal judgments

Reliability: 5

Definition: A sanction which can be of another nature than a punishment (CTSP, ECIVCJ).

Note: In the VCLT, *maatregel* is used as a translation for detention order.

Vrijheidsbenemende / Vrijheidsbeneming - Deprivation of liberty

Vrijheidsbeneming

Term reference: WOTS, Sr, Sv

Reliability: 3

Definition: *Vrijheidsbeneming* of a suspect or defendant happens during the pre-trial investigation, and is also the term for the execution of the *vrijheidsstraf* after a person is sentenced. A measure can also involve *vrijheidsbeneming*, called a *vrijheidsbenemende maatregel* (Sr 11; Van Caspel & Klijn, 2012, p. 402).

Context: vrijheidsbenemende sanctie (WOTS)

Deprivation of liberty

Term reference: CTSP, ECIVCJ, 18 USC § 3583, DCCP 451a, treaty US-NL 6(1), DCC 77ff, DCCP 451a.

Reliability: 3

Definition: The act of taking away the freedom to move around freely linked to a sentence.

This does not necessarily have to encompass imprisonment, because it may also be used in the context of supervised release (Garner, 2004, p. 473; 18 USC § 3583 d.2)

Note: Deprivation of liberty should not be used in a translation aimed at the UK. Deprivation of liberty is mostly used for persons who lose mental capacity (Deprivation of Liberty Safeguards, 2017). A functional equivalent for *vrijheidsbeneming* could be imprisonment (used in the Criminal Law Act 1967 and Crime (International Co-operation) Act 2003).

Voorlopige aanhouding – Provisional arrest

Voorlopige aanhouding

Term reference: WOTS, Sv, EVIG 13 3d

Reliability: 5

Definition: An arrest of a sentenced person on the request of a foreign state, or on request of the Netherlands to a foreign state, when the decision of a foreign state constitutes that the remainder of the sentence is at least three months if there are reasonable grounds that the sentence will be enforced in the Netherlands on a short notice. This term is solely used the context of mutual legal assistance (WOTS 8; Sv 559).

Provisional arrest

Term reference: DCCP section 559d, ECIVCJ 13:3d, 18 USC § 3187

Reliability: 2

Definition: The apprehension of someone who is suspected of criminal activities for the purpose of securing the administration for the law. A request for a provisional arrest is usually made when it is known that a sentenced person is in a particular country and there is insufficient time to issue a full order request, because there might be a flight risk (Garner, 2004, p. 116; Martin, 2003, p. 32; gov.uk, 2016; 18 USC § 3187).

Bewaring – Remand in custody

Bewaring

Term reference: WOTS, VOGP

Reliability: 5

Definition: A form of deprivation of liberty lasting fourteen days at most fourteen days. This is a form of pre-trial detention (Dutch: *voorlopige hechtenis*) (Sv 64:1, 133).

Remand in custody

Term reference: Bail Act 1976

Reliability: 1

Definition: A form of deprivation of liberty until a hearing (gov.uk - remand).

Note: There are some variations on this term, for example ‘custody on remand’ (Crime (International Co-operation) Act 2003) and ‘remand to custody’ (TN Code § 29-21-122 (2016)). The DCC translates *bewaring* with ‘police custody’ (76a) and ‘custody’ (198:2). The term ‘custody’ is more general than *bewaring*, because it encompasses many forms of deprivations of liberty or control of somebody’s freedom through a legal authority (Garner, 2012, p. 412).

Bevel - Order

Bevel

Term reference: WOTS, VOGP, EVIG 46

Reliability: 5

Definition: Order by a court or other competent authority, e.g. the *officier van justitie* (WOTS 13a).

Order

Term reference: ECIVCJ 46, Crime (International Co-operation) Act 2003, treaty UK-Kazakhstan 17, 18 USC § 3512

Reliability: 3

Definition: A written direction or command delivered by a judge. In the context of mutual legal assistance a US federal judge can issue orders to enforce the request of a foreign authority. In the UK, the orders can be made either by a court, prosecution authority or other authority which has the specific task to issue orders (18 USC § 3512; Repatriation of Prisoners Act 1984 20:3; Garner, 2004, p. 1129; Martin, 2003, p. 347).

Decisions and procedures

Bezwaarschrift – Notice of objection

Bezwaarschrift

Term reference: WOTS

Reliability: 3

Definition: The means to make an objection against an administrative or judicial decision, when *voorziening* is possible. A *bezwaarschrift* is in writing and should be send to the judicial body that made the decision. A *bezwaarschrift* must include a description of the decision it

object against and the grounds for the objection (Awb 6:4 1:1, 6:5:1; Van Caspel & Klijn, 2012, p. 57).

Notice of objection

Term reference: DCCP 15, DCC 22f, UK Borders Act 2007, UK supreme court form 3, objection and appeal notice form, VCLT (objection – bezwaar).

Reliability: 5

Definition: A notice of objection can be lodged after a decision and must specify the grounds of objection, comply with any prescribed requirements as to form and content, and be given within the prescribed period (UK borders act 2007 10:2).

Note: The above is based on UK sources. In the US, ‘objection’ is mostly used in court as ‘a formal statement opposing something that has occurred, or is about to occur, in court and seeking the judge’s immediate ruling on the point’ (Garner, 2004, p. 1102). A written objection is found in the context of bankruptcy (11 App. USC Rule 3007).

Omzettingsprocedure (exequatur) - Conversion procedure

Omzettingsprocedure / Exequatur procedure

Term reference: VOGP (omzettingsprocedure)

Reliability: 3

Definition: The procedure which establishes whether a decision made in the requesting state is enforceable in the requested state. If this is established a judge also regards the sentence given by the requesting state. This may result in the substitution of the sanction involving deprivation of liberty imposed in the requesting State by a sanction prescribed by the law of the administering state for the same offence. This sanction may, if it does not aggravate the penal situation of the sentenced person, be of a nature or duration other than that imposed in the requesting State. If this latter sanction is less than the minimum which may be pronounced under the law of the requested State, the court shall not be bound by that minimum and shall impose a sanction corresponding to the sanction imposed in the requesting State (ECIVCJ 44 lid 1,2; WOTS 31; Van Elst & Van Sliedrecht, 2015, p. 437).

Note: This concept is explained in the WOTS, VOGP and EVIG but the terms themselves are not used often in legislation. The terms are used more often in the work of legal scholars (Van Elst & Van Sliedrecht, 2015, p. 437) and was used in the discussion regarding the abolition of exequatur in the European Union (Timmer, 2013).

Conversion procedure / Exequatur procedure

Term reference: CTSP (conversion procedure), Timmer (2013)

Reliability: 5

Definition: The substitution of the sanction involving deprivation of liberty imposed in the requesting State by a sanction prescribed by the law of the administering state for the same offence. This sanction may, if it does not aggravate the penal situation of the sentenced person, be of a nature or duration other than that imposed in the requesting State. If this latter sanction is less than the minimum which may be pronounced under the law of the requested State, the court shall not be bound by that minimum and shall impose a sanction corresponding to the sanction imposed in the requesting State (ECIVCJ 44:1,2).

Note: The conversion procedure or *omzettingsprocedure* is also called exequatur procedure.

Voortgezette tenuitvoerlegging - Continued enforcement

Voortgezette tenuitvoerlegging

Term reference: WOTS, VOGP

Reliability: 5

Definition: The enforcement of a sentence without conversion of the sentence. The administering state shall be bound by the legal nature and duration of the sentence as determined by the sentencing state (CTSP 10:1; WOTS 43).

Continued enforcement

Term reference: CTSP

Reliability: 5

Definition: The enforcement of a sentence without conversion of the sentence. The administering state shall be bound by the legal nature and duration of the sentence as determined by the sentencing state (CTSP 10:1).

Overdracht - Transfer

Overdracht

Term reference: WOTS, EVIG

Reliability: 5

Definition: The transfer of the enforcement of a judgement in a criminal case to another state (Sv 552u; WOTS introduction).

Context: overdracht van de tenuitvoerlegging

Transfer

Term reference: Section 1 (b) ECIVCJ; Tribunals, Courts and Enforcement Act 2007 (67)

Reliability: 5

Definition: The transfer of enforcement of judgement in criminal cases to another state; or the transfer of a person to another state (CTSP).

Dubbele strafbaarheid – Double criminality**Dubbele strafbaarheid**

Term reference: (Van Elst & Van Sliedrecht, 2015, p. 279)

Reliability: 2

Definition: Extradition can only be granted when the offence is punishable under the laws of the requesting state and of the requested state (WOTS 3:1c; ECE 2:1; UW 5:1a; VOGP 3:1e).

Double criminality

Term reference: O’Keefe (2015, p. 35), Agel, Boman & Jareborg (1989)

Reliability: 2

Definition: Extradition can only be granted in respect of offences which are punishable under the laws of the requesting party and of the requested party (ECE 2:1; CTSP 3:1e)

Note: As can be deduced from the term references, both the English and Dutch term are not represented in the relevant legislation. The concept is known and described in the legislation, but the terms are only used by legal scholars. Double criminality is the most frequent term, but there used to be inconsistency in the use of an English term for this concept, which all deviated somewhat in meaning (Agel, Boman & Jareborg, 1989, p. 104). Such a difference can still be seen in the difference between ‘double criminality’ and *dubbele strafbaarheid*. The OED defines criminality as: “the quality or fact of being criminal. Also: criminal activity” (OED, n.d., criminality). However, *strafbaar* betekend “voor straf in aanmerking komend” (Van Dale, 2009). So, there is some deviation in meaning, but the terms nowadays are used for the same concept, which is possible because crimes are often subject to a punishment. The treaties define the concept which is named ‘double criminality’ with whether its punishable.

Verzoek – Request

Verzoek

Term reference: WOTS, VOGP, Sr

Reliability: 3

Definition: A request from a competent authority to a foreign state for a matter of mutual legal assistance (WOTS 12; Sliedrecht, Sjöcrona & Orië, 2008, p. 289).

Request

Term reference: CTSP; US Criminal Code; Crime (International Cooperation) Act 2003

Reliability: 5

Definition: Requests from foreign authorities that are competent in their jurisdiction to issue a request for mutual legal assistance (Crime (International Cooperation) Act 2003, section 13; 18 USC § 3512).

Opgelegd(e) - Imposed

Opgelegd(e)

Term reference: WOTS, VOGP, Sr, Sv

Reliability: 5

Definition: The imposition of a sanction or judgement including a sentence, measure, restriction, provision or task (WOTS; VOGP; Sr ; Sv).

Imposed

Term reference: CTSP, 18 USC § 3553; 5 USC § 558; Crime (International Cooperation) Act 2003.

Reliability: 5

Definition: The imposition of a sanction or judgement, including a sentence, measure, penalty, restriction, requirement (CTSP; 18 USC § 3553; 5 USC § 558; Crime (International Cooperation) Act 2003. 51 (1)).

Strafbaar feit – Offence / Offense

Strafbaar feit

Term reference: WOTS, VOGP, EVIGSV

Reliability: 5

Definition: An act that is held punishable by criminal law, if the person concerned has the opportunity to bring his case before the court (EVIGSV 1.b; Sr 1).

Offence (UK)

Term reference: CTSP, Crime (International Co-operation) Act 2003

Reliability: 2

Definition: An offence is often used as a synonym for crime: an act or failure of an act that is deemed by statute or by the common law to be a public wrong and is therefore punishable by the state in criminal proceedings (Martin, 2003, pp. 340, 128).

(Criminal) offense (US)

Term reference: Treaty US-NL, 18 U.S. Code § 371

Reliability: 2

Definition: A violation of the law, a crime, often a minor offence – a more serious offence is called a criminal offense or crime (Garner, 2004, p. 1110).

Note: The United States ‘offense’ is not as neutral as *strafbaar feit*, although it is possible to use in in that sense (see 18 USC § 371). Therefore it is recommended to make a decision between ‘offense’ and ‘criminal offense’ or ‘crime’ depending on the context.

Uitspraak - Decision

Uitspraak

Term reference: WOTS, Sv, Sr

Reliability: 5

Definition: A general term for an utterance of a judge at trial which includes a judgement.

Uitspraken include *vonnissen* and *arresten*, because those decisions are made at trial. They do not include *beschikkingen*, because those decisions are not made at a trial (Sv 138).

Decision

Term reference: CTSP, 28 USC § 1291, DCCP

Reliability: 3

Definition: A judicial determination after consideration of the facts and the law. It includes a ruling, decree, order, or judgement pronounced by a court when considering or disposing of a case (28 USC § 3002; Garner, 2004, p. 436).

Note: Uitspraak can – depending on the context – also be translated with judgement: “a court’s final determination of the rights and obligations of the parties in a case” (Garner, 2004, p. 858) as is also done in the DCC. The meaning of decision and judgement may vary among courts, for example the ECHM explains the difference between decision and judgement as “A decision is usually given by a single judge, a Committee or a Chamber of the Court. It concerns only admissibility and not the merits of the case. Normally, a Chamber examines the admissibility and merits of an application at the same time; it will then deliver a judgment” (ECHR, 2014, p. 9).

Beslissing – Decision

Rechterlijke beslissing – Decision by the court

Beslissing

Term reference: WOTS, VOGP

Reliability: 5

Definition: A decision by the court by means of either a *vonnis* or an *arrest* for an offence in the context of the WOTS. In other contexts, it can include *beschikkingen* and *uitspraken*. So, this is the most general term possible for decision made by a court (WOTS 1:1; Sv 138).

Decision

Term reference: CTSP, 28 USC § 1291

Reliability: 3

Definition: A judicial determination after consideration of the facts and the law. It includes a ruling, decree, order, or judgement pronounced by a court when considering or disposing of a case (28 U.S. Code § 3002; Garner, 2004, p. 436).

Vordering – Application

Vordering

Term reference: WOTS, Sr, Sv

Reliability: 5

Definition: A request/claim by the public prosecutor, for example for the provision of documents or the custody of a suspect (WOTS 10).

Context: op vordering van de officier van justitie (WOTS)

Application

Term reference: DCC, DCCP, Crime (International Co-operation) Act 2003

Reliability: 2

Definition: A request or petition (Garner, 2004, p. 108).

Context: application of the requesting state (treaty US-NL article 15)

application by the Director of Public Prosecutions (Crime (International Co-operation) Act 2003 11G(4)).

Termijn – Time limit**Termijn**

Term reference: WOTS, Sr, Sv

Reliability: 2

Definition: The time limit in which a legal or other action has to be completed (Van Caspel & Klijn, 2012, p. 351).

Time limit

Term reference: VCLT

Reliability: 2

Definition: A point in a period of duration at which something is alleged to have occurred (Garner, 2004, p. 1520).

Note: The use of a term for *termijn* is inconsistent among many sources. The USC uses ‘time limitations’ (28 USC § 1658), the Crime (International Co-operation) Act 2003 uses ‘period’, the CTSP uses ‘period of time’, the DCC ‘period’ and the DCCP ‘time limit’.

Stukken – documents**Stukken**

Term reference: WOTS, VOGP

Reliability: 5

Definition: Documents used in court or in the assessment of a request for mutual legal assistance. *Stukken* are mostly in writing, but it may also refer to evidence not in writing (WOTS 15; Sv 552a).

Documents

Term reference: CTSP, Treaty US-NL art. 16, Treaty UK- Kazakhstan art. 8

Reliability: 2

Definition: Something that records or transmits information in writing or in more specific situations (in court) the deeds, agreements, title papers, letters, receipts, and other written instruments used to prove a fact (US) in the UK items like maps and photographs are also regarded as documents (Garner, 2004, p. 519; Martin, 2003, p. 160).

Note: Relating to evidence ‘records or articles of evidence’ (US) or ‘records or items’ (UK) is also used (Treaty US-NL 16; Treaty UK- Kazakhstan 8).

Legislation

Wetboek van Strafvordering – Dutch Code of Criminal Procedure

Wetboek van Strafvordering

Term reference: WOTS, Sv, Sr

Reliability: 2

Definition: The Dutch code which describes the general part of the Dutch law regarding criminal procedure (Van Caspel & Klijn, 2012, p. 411).

Dutch Code of Criminal Procedure

Term reference: DCCP, DCC

Reliability: 3

Definition: The Dutch code which describes the Dutch laws regarding criminal procedure (DCCP).

Note: This is the term maintained by the translation of the Sv.

Wet - law

Wet

Term reference: WOTS

Reliability: 2

Context: *Wet* refers to the WOTS and other specific laws of the Netherlands.

Definition: A rule that is related to an aspect of society and imposed by a governmental body (Janssen, 2016, p. 32).

Law

Term reference: 18 USC § 3512, Crime (International Co-operation) Act 2003

Reliability: 2

Definition: A statute / one of the rules making up the body of law, which is imposed by an authority (e.g. a monarch or parliament), with as its purpose the guidance of human conduct (Barker, 2014, p. 2; Garner, 2004, p. 900; Martin, 2003, p. 280).

Note: ‘Law’ is a term with multiply meaning, which are covered by multiply Dutch words (e.g. *wet* and *recht*). Two specific meaning are presented in this terminology, but it is always important to look at the specific context before translating ‘law’.

Recht - Law

Recht

Term reference: WOTS, VOGP

Reliability: 2

Definition: Body of rules and norms relating to any aspect of communal life (Van Caspel & Klijn, 2012, p. 300).

Law

Term reference: CTSP, 5 USC § 558, Crime (International Cooperation) Act 2003

Reliability: 2

Definition: The enforceable body of rules (e.g. legislation, judicial precedents, and accepted legal principals) that govern any society (Martin, 2003, p. 280; Garner, 2004, p. 906).

Note: ‘Law’ is a term with multiply meanings, which are covered by multiply Dutch words (e.g. *wet* and *recht*). Two specific meaning are presented in this terminology, but it is always important to look at the specific context before translating ‘law’.

Verdrag - Convention / Treaty

Verdrag

Term reference: WOTS, VOGP, VWV

Reliability: 3

Definition: A *verdrag* is an agreement between two or multiple states and/or international organisations. An important, solemn *verdrag* can be called a *conventie*, *pact* or *tractaat*, but this is not frequent in the Netherlands (Gw 91, 92; Van Caspel & Klijn, 2012, p. 373).

Treaty

Term reference: CTSP, VCLT

Reliability: 5

Definition: An agreement formally signed, ratified or adhered, or an internal agreement concluded between two or more nations or sovereigns governed by international law (VCLT 2:1a).

Convention

Term reference: CTSP, VCLT

Reliability: 2

Definition: An agreement among nations, a treaty. Conventions are usually a multilateral treaty. This can also be called a treaty (Garner, 2004, p. 355; Martin, 2003, p. 116).

Note: 'Convention' is used more often than *conventie*, for example in the translation of Vienna Convention of the law of treaties: *Verdrag van Wenen inzake het verdragenrecht*.

Conclusion

A terminology does not necessarily call for a conclusion, because it is not a search for a general tendency and needs a more practical approach than most theses. However, I think it is important to discuss the results of the terminology and regard the most used and most remarkable translation strategies and tendencies at the end of this project.

First of all, the ideas of Florijn (1993, pp. 7-10) and Cao (2007, p. 18) regarding legal language as a register proved to be relevant to my thesis. I started out with the WOTS as the best source for terms relating to mutual legal assistance, which is to be expected from a law on the subject. However, some terms which are known to be frequent in mutual legal assistance were not present in the WOTS. An example of this is *dubbele strafbaarheid*, which is described in the WOTS, but the term itself is not present. The same is true for related treaties and legislation from the UK and US. Apparently, *dubbele strafbaarheid* and similar terms are only used in the work of legal scholars.

Šarčević (1997), Cao (2007) and Florijn (1993) discussed the authority of different legal documents and the reliability of the translation taken from these documents. I concluded in section 1.2 that laws and treaties are reliable sources for legal terminology, based on the work of Šarčević, Cao and Florijn, and consistent with the guidelines of NED-term. I succeeded in establishing the equivalents for most Dutch terms solely with laws and treaties with as an exception some term that are only used in scholarly work, as discussed in the previous paragraphs. However, establishing definitions without the help of less reliable sources proved to be difficult. Legislation often gives indications of the meaning of the terms used, but it assumes more often that the reader will know what a particular term means. The sources that describe these terms are scholarly work and legal dictionaries. These works are therefore often referred to in the definitions. The numbers I gave for reliability are linked to the reliability of sources. However, a low reliability does not necessarily mean that the term should not be used. Terms that are less frequent in law, as discussed above, are not unreliable, but merely used in a different text type.

Furthermore, I encountered the vagueness of legal terms which Florijn (1993, p. 15) discusses. Homonyms and (quasi-)synonyms among different texts make it harder to establish a reliable term. This was a problem both in the SL and the TL. A SL related problem was the *bijzondere kamer*, better known as the *penitentiare kamer*. These terms appear to be used side by side, although the second occurs more frequently. A TL problem can be illustrated by the multiple English variants for the Dutch *termijn*. The variations were: period, period of

time, time limit, and time limitations. *Termijn* is a fixed term in Dutch, however, the English equivalents are not so well-established.

Another relevant notion in this terminology was the system-bound nature of legal language that De Groot (1993, p. 26) and others discuss. The WOTS is not necessarily a law that is expected to be specifically culture-bound. It has been made to implement international treaties and therefore a clear link with international law is expected. This link does exist, but the international input of the treaties has been implemented in national law and therefore got the national colour of the Dutch legislation. Furthermore, many terms used in the WOTS are related to criminal law and are often linked to sections in the *Wetboek van Strafrecht* and *Wetboek van Strafvordering*. Therefore, the Dutch terms are firmly imbedded in the culture-bound Dutch legal system. The terms that are highly culture-bound are often linked to criminal procedure. Courts and other authorities are very specific to the Dutch system and often deviate in meaning from their closest English equivalents. The terminology in this field is affected by the English names that the Dutch authorities have already given to themselves. The English translations are not always fully equivalent and care should be taken when using these terms in legal translation. I often used these terms as equivalents in the terminology, because they are already established translations for the Dutch terms. However, that does not mean that they are necessarily the best equivalents, as I have commented on in the terminology.

Terms which are less culture-bound also appear in the terminology. Legal terms like *aangezochte staat* and *verzoekende staat* are similar to their English equivalents, because they refer to a legal entity used in international law and are therefore often formed in the same context as the English terms. This does not mean that they are perfect equivalents, but there are less culture-bound problems regarding these terms.

The last problem I will address is equivalence. I tried to use as many accurate functional equivalents as possible as De Groot (1993) recommends. My approach was primarily aimed at finding equivalent terms in legislation of the TC. This approach succeeded in most cases, but some equivalents had to be taken from translated Dutch sources because deviation from those sources would contradict the translation maintained by the organisations themselves. In some cases, I based my choice on the comments of Rayar (1993) on the choice between a functional equivalent or a superordinate, for example in the equivalents for *openbaar ministerie* and *uitspraak*. The surrogate solutions of De Groot (1993) were not necessary in the sense that I did not have to create neologisms or descriptions, because other

sources like the DCC, DCCP and the websites of the Dutch courts and government had already created these neologisms.

Recommendations

This terminology is not extensive in its coverage of terms. Further research for more terms can certainly be done. Small additions to terms on the Dutch court system and the specific procedures, i.e. *inbeslagneming*, *gevangenhouding* can be made. This terminology has primarily covered the terms used in legislation. Some comments on use in other areas of law are already made, but further research is needed to determine whether these terms are used in a similar manner in other legal texts, i.e. requests for mutual legal assistance, judicial decisions and scholarly work.

The terminology can form a reliable basis for the translator of texts relating to mutual legal assistance and other areas of international criminal law. This terminology gives referenced reasons for the choices made and can thus be a useful tool for the translator when difficult translation choices have to be made. It is important to regard all the information in the entries to establish for oneself which equivalent is the best in a particular context.

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