



NEDERLANDSE VERENIGING VOOR RECHTSVERGELIJKING
NETHERLANDS COMPARATIVE LAW ASSOCIATION

Interpretation of Multilingual Texts in the UK

Report to the XVIIth International Congress of Comparative Law, July 2006

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The responses this Report provides to the questions posed by the General Rapporteur Professor Antonio Gambaro for this topic (I.C.2.), apply throughout the United Kingdom.

1. Is any legislation, regulation or subordinate legislation published in more than one language in the UK?

There are two features of the United Kingdom constitutional framework: the doctrine of the sovereignty of parliament and unitarism. The Westminster Parliament is sovereign and the unitary character of the state is the structural necessity of parliamentary sovereignty. The Union is an incorporating union and although there are five legal systems in the UK, the UK is a unitary state and not a federation, and the working language of the Westminster Parliament, the executive and the courts is English.

In spite of the fact that the Act of 1942 permitted the use of Welsh in Welsh courts by a party or a witness and, by the Welsh Language Act 1967, the use of Welsh was guaranteed in courts and public administration, and the Welsh language was seen to be in need of promotion and protection, it was not until 1998 that there were changes in any of the British constitutional structures.

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1998 brought devolution to the UK, a form of self-government in varying degrees to Wales, Scotland and Northern Ireland and it is only from then on that we can speak of legislation and regulations published in more than one language. There is today a more pluralist environment. It is therefore appropriate to look at these regions separately.

Let us consider first the *Westminster Parliament*. This is the sovereign Parliament of the UK making laws normally for England and Wales, and also for Scotland and Northern Ireland, usually by mentioning the name of the region in the name of the Act, such as Contract (Scotland) Act 1997. This legislation is in English. However, some Welsh may be found in, for example, Companies Act 1985 and regulations made under it.

In *Scotland*, devolution is full, in the sense that there is a Scottish Parliament that can pass Acts of Parliament in areas that are devolved matters. There has always been legal autonomy in Scotland, and since 1998 there has been a kind of political autonomy. Devolution brought to Scotland legislative and executive institutions (Scotland Act 1998). This is a modest measure of self-government within the unitary conception of the British state, however flexible the unitary constitutional structure is.¹

English is the normal working language of the Scottish Parliament and it legislates in English only. But, for strong historical and cultural reasons the Scottish Parliament may also carry out its work in Gaelic and encourages the use of Scots.

When Gaelic is used, in the meetings of the Parliament and committee meetings, the Official Report incorporates the Gaelic text before the report of the English interpretation. When Scots is used in the meetings of the Parliament and committee meetings, the Official Report incorporates that language in the body of the text.²

In order to make the Scottish Parliament accessible to the people of Scotland, information is translated from English into the 'Scottish Citizen languages': Arabic, Bengali, British Sign Language, Chinese, Gaelic, Punjabi, Scots and Urdu. The Gaelic pages of the Scottish Parliament website are 'comprehensive and mirror the English language pages as far as possible.' In Scotland French, German, Italian, Spanish and

¹ See N. Walker, 'Scottish Self-Government and the Unitary Constitution' Ch. 6 in L. Farmer and S. Veitch (eds) (2001) *The State of Scots Law* (Butterworths), 97-119 at 101.

² From SPCB Language Policy of the Scottish Parliament, 2004.

Russian have been deemed 'Visitor Languages' and some information is available in these languages. The Scottish Parliament is also a member of the NORPEC (the Network of Regional Parliamentary European Committees) and therefore minutes and newsletters are published on the Scottish Parliament Website in Basque, Catalan, German and Spanish.

The Gaelic Language (Scotland) Act 2005 recognises in legislation Gaelic as an official language of Scotland 'with equal respect' to English, establishes the Gaelic development body to promote the use and understanding of Gaelic (preparing a National Gaelic language plan and producing guidance on Gaelic Education for education authorities), and requires public bodies in Scotland, both Scottish public bodies and cross border public bodies insofar as they carry out devolved functions, to consider the need for a Gaelic language plan in relation to the services they offer. However, in legislation Gaelic was not given 'equal validity' with English, thus it has a weak position.

Devolution brought legislative and executive institutions to *Northern Ireland* (Northern Ireland Act 1998) also, but because of the political problems they are not as yet fully operative. As to language, in the Northern Ireland Assembly the official language is English. However the Standing Order 73 contains one statement on language: 'Members may speak the language of their choice', and the languages promoted are Irish and Ulster-Scots (Gaelic).

Devolution brought to *Wales* a deliberative and executive Assembly (Government of Wales Act 1998). This devolution is executive in form. As mentioned above, already in 1967 there was a Welsh Language Act for the use of Welsh in courts. The Welsh Language Act passed in 1993 by the Westminster Parliament further guaranteed the use, protection and the teaching of the Welsh language before the devolution of 1998.

The Government of Wales Act 1998 has one section on the language (sec. 47). This section brings 'equal treatment' of English and Welsh languages. It reads:

(1)The Assembly shall in the conduct of its business give effect, so far as is both appropriate in the circumstances and reasonably practicable, to the principle that the English and Welsh languages should be treated on a basis of equality. (2) In determining how to comply with subsection (1), the Assembly shall have regard to the spirit of any guidelines under section 9 of the Welsh Language Act 1993. (3) The standing orders shall be made in both English and Welsh.

Also section 122 provides that the English and Welsh texts of bilingual legislation are of 'equal status'. The 1993 Act places a duty on the public sector to treat Welsh and English on an 'equal basis', when providing services to the public in Wales, gives Welsh speakers an absolute right to speak Welsh in courts and establishes the Welsh Language Board to oversee the delivery of these promises and to promote and facilitate the use of the Welsh language. The primary duty of the Board is to implement the 1993 Act.

Among the functions transferred to the Welsh Assembly created under the 1998 Act is the making of Assembly general subordinate legislation under enabling primary legislation passed by the Westminster Parliament. So, though the Assembly is executive it is also legislative using delegated powers. 'Unless in a particular circumstance it is inappropriate or not reasonably practical' for the draft subordinate legislation to be in both languages, it may only be approved by the Assembly if the draft is in both languages (sec. 4). Treating the two languages 'on a basis of equality' applies to the courts also.

In addition, a large proportion of Welsh subordinate legislation has either no English equivalent or differs significantly in provisions from parallel English orders. Further, a few Acts of the Westminster Parliament apply to Wales only, such as the Children's Commissioner for Wales Act 2001 and Health (Wales) Act 2003.

1.1. Which are the languages used?

In its instrument of ratification of the 2001 European Charter for Regional or Minority Languages (the Language Charter), the UK recognised that there were five regional or minority languages in the UK: Welsh, Scottish Gaelic, Irish, Scots and Ulster-Scots with English being the main language. In 2003 the UK also recognised Cornish and Manx as languages to which the Charter applied. However, of all these, only Welsh has the status of being regarded as equal to English and this only in Wales.

1.2. Which is the working language normally used in drafting texts?

The normal working language is English. In Northern Ireland, the only working language is English and all legislation is drafted in English. In Scotland, the working language is English though Gaelic and Scots are also used. However, the use of

Gaelic in parliamentary debates and before committees is limited by the necessity of obtaining permission of the Presiding Officer. There is no reference in the standing orders to the use of Gaelic in parliamentary motions, petitions, questions and legislation passed. The Gaelic translation has no legal force or effect. However, for Wales, all subordinate legislation is drafted both in English and in Welsh as both languages have equal status and the Assembly is bilingual. This making of legislation in bilingual form is unprecedented in the UK.

1.3. How are translation services organised?

In Scotland the translation service is contracted out and there are three contracts: for translation, for transcription and for interpretation.

In Wales there is a National Assembly of Translation Service founded within the Welsh Office, with a remit both to carry out written translation of documents, simultaneous translation during Assembly proceedings and also legal translation of Assembly subordinate legislation. The Office has 50 members of staff. The drafting of such subordinate legislation is undertaken by a single bilingual draftsman. When subordinate legislation amends primary legislation, the single bilingual drafter consults with the Office of Parliamentary Counsel and the Scottish counterparts. 'Except where the Assembly cabinet determines that it is inappropriate or not reasonably practicable, all Assembly legislation must be made bilingually in English and Welsh. The exception is extremely rarely invoked'.³

The Welsh Assembly adopted the Canadian practice of a two-column format, setting out the two languages side by side, thus underlining visually the equal status of the two languages. Another practice borrowed from Canada is the inclusion, in the respective texts of the interpretation clause in each language, of a reference to the version of the term in the other language. This bilingual legislative drafting began in Wales in 1999, though the translation of such material into Welsh has been taking place for at least two hundred years.⁴

³ K. Bush, 'New Approaches to UK Legislative Drafting: The Welsh Perspective' (2004) 25 *Statute Law Review*, 1- 44 at 2.

⁴ *Ibid.* at 3.

As bilingualism does not mean translation, the Welsh language is considered at the point of construction. The practice of co-drafting is adopted, that is contemporaneous drafting in both languages through the legislative process. Texts are drafted side by side, one text influencing the other as the drafting process progresses. The implementation of this approach has advantages: Both the Westminster Parliament and the Welsh Assembly are bound by the wording used in terms of grammar and syntax; neither language is categorised as second class, the appropriate legal structure is set up and each version developed from instructions which make it efficient since problems related to meaning can be explored early. This improves the quality of both versions and there is active involvement of all persons in the legislative process.⁵ In addition, where appropriate, the Assembly can in its own legislation apply 'with modification' the provisions of an English statute or discard some provisions or make separate provisions for Wales.

1.4. What happens when errors and omissions in the translated text are discovered?

The most important issue is the standardisation of terms. The two versions (English and Welsh) must be accurately mirrored and reconciled. In some translations produced between 1967-1987 there were errors and omissions and a lack of consistency.⁶ These are to be reviewed for the accuracy of the Welsh translation.

1.5 Who corrects relevant errors?

In the case of relevant error, the text would have to be regarded as mandatory though erroneous, since an error cannot be corrected by an interpreter but by the courts. However, courts as interpreters of a text must aim to assign to the text a meaning derived from the nature and the content of the text, an objective meaning, without looking into subjective intent. The point of departure being the official text itself, the contextual materials are to be used only as aids to the interpreter. That is, the extrinsic material is subordinate to the text. In the domestic scene, the official language would have priority over working languages, except in the case of Welsh in Wales, where

⁵ I. Davies, 'The challenge of legal Wales' *Lecture: The Law Society*, National Eisteddfod of Wales, (Denbeigh 2001), 11.

⁶ See *ibid.*, 10-11.

both languages are official. The intent of the framers is irrelevant to interpretation. The paramount criterion then is ‘common sense’, that is determining what can a word or phrase be reasonably taken to mean, how language would have been understood by a ‘reasonable man’.

Language is regarded as connected to context and dictionaries cannot be regarded as solving problems of interpretation. However it is well established that ‘in the context of statutory interpretation, that prima facie, the instrument is to be considered “an always speaking statute”.’⁷ Also ‘words should be given their “natural and ordinary meaning” [which] reflects the “common sense” proposition that we do not except easily that people have made linguistic mistakes in formal documents.’⁸

2. Are normative acts of supranational sources officially published in the national language?

Even before this question is considered, a number of issues must be addressed. The first issue is the mode by which supranational sources (except EC law) become applicable in domestic courts in the UK. The next issue is whether and for what purposes a treaty provision can be invoked in a domestic court. (This could also raise the issue of ‘direct effect’, which in turn raises complex issues related to the effect of treaties on domestic law). Another issue is the rank of treaties in the hierarchy of the norms applied in domestic courts, and the last issue is the interpretation of treaties.

In the UK treaty making is a prerogative of the Crown (the Government). Parliament has no function in treaty making apart from passing implementing legislation, since a treaty which has been approved by the State and has entered into force in the international arena does not become part of the law of the land automatically, a separate ‘incorporation’ Act being required. Thus the effect of a treaty is dependent upon the process of ‘transformation’: the treaty as such has no effect, the effect is produced only by the national rules which incorporate the treaty.⁹ This means that an unincorporated treaty has no formal standing at all in Britain. For

⁷ J. Steyn, ‘Interpretation: Legal Texts and their Landscape’, Ch 5 in B.S. Markesinis (ed) *The Clifford Chance Millennium Lectures; The Coming Together of the Common Law and the Civil law* (Hart Publishers: Oxford, 2000) 79-90, at 81.

⁸ Ibid.

⁹ F.G. Jacobs, ‘Introduction’ in F.G. Jacobs & S. Roberts (eds) *The Effects of Treaties in Domestic Law*, UKNCCL Vol: 7 (Sweet and Maxwell: London, 1987) xxiii-xxxi, at xxv.

instance in *British Airways v Laker Airways*¹⁰, the House of Lords declined to construe *Bermuda 2* saying: ‘The interpretation of treaties to which the United Kingdom is a party but the terms of which have not either expressly or by reference been incorporated in English domestic law by legislation is not a matter that falls within the interpretative jurisdictions of an English court of Law’. As per Lord Denning’s dictum in *Blackburn v Attorney General*,¹¹ ‘it is elementary that the courts take no notice of treaties as such. We take no notice of treaties until they are embodied in laws enacted in Parliament.’

One consequence to flow from this is that if such an unincorporated treaty conflicts with statute or even common law, the latter will prevail. Treaties that are ‘incorporated in terms’, by being appended to a statute and forming a substantive part of that statute will have the most unequivocal status in domestic law. However, even such incorporated treaties have no special position. The concept of ‘higher law’ does not exist in the UK. An Act of Parliament may simply give effect to a treaty the full text of which appears as a schedule to the Act. However, it is more often the case that Parliament embodies the treaty provisions in different terms and sometimes without even referring to their treaty origins. It is also possible that the terms of the treaty become distorted by the specific implementing legislation in the process of incorporation. It could be asked why, knowingly, the Government would choose to incorporate in terms that are different, when it could so easily have followed the terms of a treaty? It could be that the legislation is not *de novo* legislation and therefore already contained established terminology and that that wording might have been followed. However, the domestic courts can also use *travaux préparatoires* when looking at a treaty or a convention in order to give effect to its terms.¹²

In addition, as Parliament is supreme it can pass legislation inconsistent with international treaty obligations, though the assumption is that it will not do so lightly. If this were to happen, then the treaty obligations would only bind the UK at the international level. It is noteworthy that British courts follow the terms of the Vienna Convention on Treaties (Articles 31-33) on rules of interpretation though that treaty is not incorporated into domestic law.

¹⁰ [1985] A.C.58 at 85-86.

¹¹ [1971] 1 W.L.R. 1087

¹² *Fothergill v Monarch Airlines* [1981] A.C. 258.

It is also worth mentioning that prior to the incorporation of the European Convention of Human Rights by the Human Rights Act 1998, some judges used the unincorporated Convention as an aid to construction, in relying on the principle that, where the meaning of a statute is concerned, it is to be presumed that Parliament legislates in conformity with our international obligations. For instance in the interpretation of immigration cases the Convention was found to be relevant by Lord Scarman.¹³

Thus, before the Human Rights Act 1998, the European Convention of Human Rights could be deployed for the purpose of the resolution of an ambiguity in domestic primary or subordinate legislation.¹⁴ It was accepted that domestic law should develop alongside ECHR, as stated by Lord Scarman in *Home Office v Harman*:¹⁵

We believe the true path forward is to ensure that our law develops in a way which is consistent with the obligations accepted by the UK in the European Convention and with the developments of the common law achieved in America [...]. Of course, neither American law nor the convention can be decisive of this appeal. But both are powerfully persuasive, the convention because its observance is an obligation of the United Kingdom, and American law because of its common law character. Each reinforces conclusions which we draw independently from our own legal principles.

Other such cases are *Re D and another (minors)*,¹⁶ and *R v Secretary of State for the Home Department, ex parte Wynne*.¹⁷

In *R v Secretary of State for the Home Department, ex parte K*,¹⁸ ECHR was relied upon by counsel, but failed to convince. At times, it furnished 'valuable guidance' as in *Attorney General of Hong Kong v Lee Kwong-Kut*¹⁹ and *R v Brown*,²⁰ and sometimes could be 'relied upon' as in *L'Office Cherifien des Phosphate and another v Yamashita - Shinnihon Steamship Co Ltd, The Boveraa*.²¹

¹³ See *R. v Secretary of State for Home Affairs*, ex p. Phansopkar [1975] 3 All ER 497 at 510.

¹⁴ *Rantzen v Mirror Group Newspapers* (1986) [1993] 4 All ER, 975 Neill LJ at 993 (Court of Appeal, Civil).

¹⁵ [1982] 1 All ER, 532 (House of Lords).

¹⁶ [1995] 4 All ER, 385 at 397 (House of Lords).

¹⁷ [1992] 2 All ER, 315 (Court of Appeal, Civil).

¹⁸ [1990] 3 All ER, 562 (Court of Appeal, Civil).

¹⁹ [1993] 3 All ER, 939 (Privy Council).

²⁰ [1993] 2 All ER, 75 (House of Lords).

²¹ [1993] 3 All ER, 686 (Court of Appeal, Civil).

In *R v Secretary of State for Scotland*,²² it was pointed out that the ECHR decision referred to would have been relied upon if there had been ambiguity in Scots law, where the case being referred to was *X v UK*.²³ Here, English cases and legislation were looked at for the ‘assistance to be derived’ from them. However, differences of terminology meant that it was better to concentrate on Scottish legislation.²⁴ Later, in the House of Lords it was pointed out that although their Lordships in the Inner House regarded the *Canons Park* as irrelevant on the ground that the ‘terminology’ of the English Mental Health Act differed from that of the Scottish Act, now both parties before the House recognised that there was no substantial difference in effect between the provisions of the two Acts and ‘were at one in accepting that the English case could not be distinguished.’ So *Canons Park* was followed.²⁵ In *Anderson v HM Advocate*,²⁶ the High Court of Justiciary was referred to the ECHR and said that although its provisions were not part of domestic law, ‘the principles which they describe have, for a long time, been established as part of the law of this country.’ Furthermore, ‘it is well settled that, in construing any provision in domestic legislation which is ambiguous in the sense that it is capable of a meaning which either conforms to, or conflicts with, the Convention, the courts will presume that Parliament intended to legislate in conformity with the Convention, not in conflict with it’.²⁷

Today, the view is, as we see in *R (ProLife Alliance v BBC)*,²⁸ where Lord Laws states:

The English court is not a Strasbourg surrogate. The very difference between the international margin of appreciation and the municipal margin of appreciation illustrates the confusion that would arise if the court so regarded itself. Our duty is to develop, by the common law’s incremental method, a coherent and principled domestic law of human rights. In doing it, we are directed by the HRA (s.6) to insist on compliance by public authorities with the standards of the convention, and to comply with them ourselves. We are given new powers and duties (ss 3 and 4 of the HRA) to see that that is done. In all this we are to take account of the Strasbourg cases (s.2, to which I have already referred). [...] Treating the ECHR text as a template for our own law runs the risk of an over-rigid approach. [Otherwise this smacks of] ‘austerity of tabulated legalism’ [...] While great respect is to be paid to the way in which the ECHR is framed, [...] I think the court’s duty on confronting the claims of free speech, [...] in

²² 1998 SLT 162 (also 1998 S.C. 49).

²³ (1981) 4 EHRR 188.

²⁴ Also see 1998 SLT 162 at 167, 173; and 1998 S.C. 49 at 65.

²⁵ 1999 S.C. 17.

²⁶ 1996 S.C. 29 at p. 34 (C J).

²⁷ *Ibid* at 34, where the cases the court was referred to were *Granger v UK* {1990} TLR 256, *Boner v UK* 1995 SCCR1 and *Maxwell v UK* 1995 SCCR1.

²⁸ [2002] 2 All ER 756, at 571-572.

a context like that of the present case is very far distant from any exercise of textual interpretation. [...] It has often been said that the core rights enshrined in the ECHR by and large reflect principles which the common law itself espouses.

However, it is also well established that treaties must be implemented according to the standards of international, not municipal law.²⁹

There is yet another context in which the impact of this Convention could be discussed. In *R v Secretary of State, ex parte McQuillan*, Sedley J³⁰ looked at the Convention through the jurisprudence of the Court of Justice of the European Community and said:

[I]f on the wider scale it is for the courts of the United Kingdom to apply principles of European law whenever appropriate, the principles and standards set out in the convention can certainly be said to be a matter of which the law of this country now takes notice in setting its own standards. [...] Once it is accepted that the standards articulated in the convention are standards which both march with those of the common law and inform the jurisprudence of the European Union, it becomes unreal and potentially unjust to continue to develop English public law without reference to them.

When there is an involvement of EC law, English courts look at ECJ cases and via these to cases involving foreign systems of law, this, being done within the scope of ECJ decisions. The courts are keen to keep to meanings explained by the ECJ, especially if the matter is not covered by English authority. ECJ decisions give guidance, and a judgment obtained in a member state on a matter of EC law has a special weight, particularly again if not covered by English authority. For instance, in *Arkwright Mutual Insurance Co v Bryanston Insurance Co Ltd and others*,³¹ the English court compared English law and EC law in determining *lis alibi pendens*, as one aspect of *forum non conveniens*. Lord Goff remarked in *Woolwich Building Society v Inland Revenue Commissioners (No 2)*: 'I only comment that, at a time when Community law is becoming increasingly important, it would be strange if the right of the citizen to recover overpaid charges were to be more restricted under domestic law than it is under Community law.'³²

In the UK normative acts of supranational sources are officially published only in English. As English is also one of the official languages in most international normative acts, the question of translation does not usually arise. However, though not

²⁹ See Vienna Convention Article 27.

³⁰ [1995] 4 All ER, 400 (Queen's Bench) at 422.

³¹ [1990] 2 All ER, 335 (High Court, Queen's Bench).

³² [1992] 3 All ER, 737 (House of Lords).

a product of the domestic drafter, there are some parallel treaty texts in both English and French, for instance, where the French text is the authoritative one, such as Carriage by Air Act 1961 s.1.³³

Again, for instance, in *Morris v KLM Royal Dutch Airlines; King v Bristow Helicopters Ltd*,³⁴ it was considered to be important that the Warsaw Convention (as set out in Schedule 1 to the Carriage by Air Act 1961) should have a common construction in all the jurisdictions of the countries that have adopted the convention. At 590-591 Lord Hope stated:

We are concerned in this case with the meaning of words used in an international convention. The convention must be considered as a whole, and it should receive purposive construction [...]. The ordinary and natural meaning of the words used in the English texts in Pt 1 of the Schedule provides the starting point. But these words must also be compared with their equivalents in the French text in Pt II of the Schedule, as s.1(2) of the 1961 Act tells us that if there is any inconsistency the text in French shall prevail. As the language was not chosen by the English draftsmen and was not designed to be construed exclusively by English judges, it should not be interpreted according to the idiom of English law. What one is looking for is a meaning which can be taken to be consistent with the common intention of the states which were represented at the international conference. The exercise is not to be controlled by technical rules of English law or domestic precedent. It would not be right to search for the legal meaning of the words used, as the convention was not based on the legal system of any of the contracting states. It was intended to be applicable in a uniform way across legal boundaries. [...] It is legitimate to have regard to the *travaux préparatoires* in order to resolve ambiguities or obscurities. [...] In an ideal world the convention should be accorded the same meaning by all who are party to it. So case law provides a further potential source of evidence. [...] Considerable weight should be given to an interpretation which has received general acceptance in other jurisdictions. On the other hand a discriminating approach is required if the decisions conflict, or if there is no clear agreement between them. [...] The question was raised whether the convention must be approached on the basis that it is a document of the 'always speaking' type [...], whose meaning should be interpreted in the light of the current scientific evidence. [...] Statutes are generally always speaking and ought therefore to be interpreted in light of the contemporary social and scientific world. This is not a rule of law but a principle of construction, which may be displaced by contrary intent revealed by a particular statutory context. Given that the rationale of the principle is that statutes are generally intended to endure for a long time, one can readily accept that multilateral international trade conventions, which are by statute incorporated in our law, should be approached in a similar way.

Lord Steyn opined at 578:

The criterion of approaching the interpretation of a multilateral trade convention must be "unconstrained by technical rules of English law, or by English legal precedent, but on broad principles of general acceptance: *James Buchanan & Co v Babco Forwarding and Shipping (UK) Ltd* [1977] 3 All ER 1048 at 1058". [...] The equivalent phrase in the French text is [...] defined in the *Le Petit Robert* (1970 edn) as [...]. The phrase '*lésion corporelle*' in the French text seems to convey the same meaning as that which I would be inclined to draw from the English text. [...] There is no inconsistency between the French and the English texts.

³³ See *Fothergill v Monarch Airlines* [1981] AC 251, 272, per Lord Wilberforce.

³⁴ [2002] 2 All ER, 565.

Lord Nicholls said at 569: ‘It goes without saying that international uniformity of interpretation of article 17 is highly desirable.’

Lord Mackay stated at 589:

Because I consider it important that the Warsaw Convention (as set out in Sch. 1 to the Carriage by Air Act 1961) should have a common construction in all the jurisdictions of the countries that have adopted the convention, I attach crucial importance to the decisions of the United States Supreme Court in [...], particularly as the United States is such a large participant in carriage by air.

The general rule is that treaties and international conventions can be considered when following the presumption that Parliament does not legislate in such a way that the UK would be in breach of its international obligations.

2.1. In case of divergence between the international text and the national language:
Which meaning prevails?

When there is a conflict between a treaty norm and a norm of domestic law, an incorporated treaty will have the same rank as any other statute, in which case it will prevail over a conflicting subordinate norm, whether prior or subsequent to the treaty, but will not prevail over a conflicting subsequent treaty. Obviously when the statute is open to more than one interpretation, the courts should try to interpret the statute so as to avoid a conflict with the treaty, so that the State does not become liable for breach of its treaty obligations.

Correct interpretation is what is expected. However, the practice of domestic courts varies. The rules in the UK are rather idiosyncratic. When counsel tries to introduce treaties into the legal arguments ‘the attitude of the British courts is a lottery. The approach will vary from judge to judge; and the case law to date shows striking and unacceptable inconsistencies’.³⁵

³⁵ R. Higgins, ‘United Kingdom’, Ch 7 in F.G. Jacobs & S. Roberts (eds) *The Effects of Treaties in Domestic Law*, UKNCCL Vol: 7 (Sweet and Maxwell: London, 1987) 123-139 at 131.

Where there exists a statute or statutory instrument bringing a treaty into effect in domestic law, the courts will much prefer to look at the English legal instrument rather than the treaty. When incorporation has been through appending the full text of the treaty, that is unproblematic. But where the statute merely refers to a treaty or where the statutory instrument uses its own language to bring a treaty into English law, problems may arise.³⁶

A problem arises if the dispute turns on the language of the statute. The rule is that the courts will not look at a treaty if the language of the statute is unambiguous.³⁷

However, if the court is persuaded that the statute is not unambiguous, then the treaty will be looked at, regardless of the method of incorporation. This means that the whole of the treaty will be looked at rather than those clauses that are incorporated. In addition, if there is an ambiguity, the English legal instrument will be interpreted in a manner consistent with the international obligations of the UK. At times this has been undertaken even in cases of unincorporated treaties.

Since treaties are incorporated by Acts of Parliament, courts may be inclined to use the same methods of interpretation and construction as for Acts of Parliament. This means that the traditional approach of literal and restrictive interpretation would apply. Some statutes have obvious meanings and little interpretation is required. However, most statutes contain sections that are somewhat ambiguous or whose effect is doubtful.

Over the years, the courts have adopted a number of conventional practices to resolve ambiguities (rules of interpretation and construction). For example: the text must be examined objectively as it stands by itself; if the words are clear, no problem of interpretation arises; it is for the courts to decide whether the wording of a section is ambiguous, and if so considered, which of the many rules of interpretation to apply, or reject the rules and construe the text itself. There are also various parts of the statute that can be referred to generally as 'internal aids' and also some accepted 'external aids' such as dictionaries, reports of parliamentary debates and reports of Royal Commissions. Also, decisions of appellate courts on the interpretation of statutes are binding on other courts, thus a body of case law around statutory sections grows over time. However, it is the statute itself that must be construed each time. In addition, decisions on different statutes may be referred to as aids to interpretation. Language judicially interpreted in one statute is usually given the same meaning where repeated in later statutes on the same subject.

³⁶ *Ibid.* at 137.

³⁷ See *Solomon v Commissioners of Customs and Excise* [1967] 2 Q.B. 116.

The contemporary approach approved by the House of Lords in *Maunsell v Olins*,³⁸ is ‘the unified contextual approach’ devised by Professor Cross.³⁹ Though this approach gives primacy to the literal meaning of words, this is within the context, to be established by a preliminary reading of the Act as a whole and permitted external aids to interpretation. Recourse to Hansard (debates in Parliament) is now permitted.⁴⁰ The Human Rights Act 1998, s.3, brings in an overriding requirement that so far as it is possible to do so, legislation must be read to give effect in a way which is compatible with the ECHR.

Approaches to interpretation include the literal rule, that is, all the words should be given their ordinary and natural meaning, even if the result is manifestly absurd or creates hardship. The only remedy is an amending statute. If the wording of a statute is equally susceptible of two interpretations, the golden rule applies and the court will adopt the one that avoids an absurd result. This rule can also be of use if the literal rule gives an absurd result which Parliament could not have intended. Then, and only then, can the judge substitute a reasonable meaning in the light of the statute as a whole. The mischief rule, laid down in the sixteenth century in the *Heydon’s Case*, is to be used whenever the meaning of a statutory provision is ambiguous, whereupon the judge can look at the defects of the old law, the problem (mischief) the statute was trying to solve, and what remedy Parliament was trying to provide. This rule allows the judge to interpret the statute so as to put a stop to the problem that was being addressed. More recently, a purposive and dynamic approach is being used in interpretation, which can be regarded as a variation on the mischief rule.

There are also the following rules of language to aid the judges: *ejusdem generis* (general words which follow specific ones are taken to include only things of the same kind); *expressio unius est exclusio alterius* (express mention of one thing implies the exclusion of another); *noscitur a sociis* (a word draws meaning from the other words around it). In addition there are presumptions to aid the judges such as ‘statutes do not change the common law’, ‘there can be no fundamental changes in the common law by implication’, ‘the legislature does not intend to remove any matters from the jurisdiction of the courts’, ‘existing rights are not to be interfered with’, that a ‘person’ includes a ‘corporation’ and ‘the crown is not bound by statute unless

³⁸ [1975] AC 373.

³⁹ R. Cross, *Statutory Interpretation*, 3rd edn, 1995.

⁴⁰ *Pepper v Hart* [1992] 3 WLR 1032, HL.

named in it'. Furthermore, most statutes contain useful interpretation sections, and define the most important terms used, subject to contrary intention appearing from the context.

However, different approaches to interpretation can also be observed according to the types of treaties. For instance, approaches to the EEC Treaty or other European Community law will be different. As Community law is automatically binding in the UK, judicial notice is taken of this law. Multilateral treaties may be approached in a different way from bilateral ones. In addition how the courts approach decisions of foreign courts is also not fixed. It is expected that legislation is designed to give full effect to supranational sources, so as not to distort their terms.

If the above example of *Morris v KLM Royal Dutch Airlines; King v Bristow Helicopters Ltd*,⁴¹ is used again, we see that in the event of inconsistency between the English and the French texts of the Warsaw Convention, s 1 of the 1961 Act, which incorporated the Convention into the law of the UK, provides that the French text shall prevail. It was held that the official German translation was of no greater weight than the English translation and of less weight than the French text. It was also thought that the German version was a somewhat free translation.⁴² Thus this would be one type of situation where the foreign language text would of necessity be consulted with priority.

The only other type of situation where foreign texts would have of necessity to be consulted would arise under European Community Law where, for example, according to the European *acte clair* doctrine,⁴³ domestic judges must be satisfied that the European document is clear in all Union languages before they can decide that the meaning of the document is clear. Looking only at the text in English would not satisfy the European criteria set. As stated in this case: '[...] it must be borne in mind that Community legislation is drafted in several languages and that the different language versions are all equally authentic. An interpretation of a provision of Community law thus involves a comparison of the different language versions.'

However, even when the different language versions accord, it must be borne in mind that Community law terminology is peculiar to it and does not necessarily have the same meaning in Community law as it does in the laws of the member states. Thus

⁴¹ [2002] 2 All ER, 565.

⁴² *Ibid*, at 596.

⁴³ *CILFIT Srl v Ministry of Health*, Case 283/81 [1982] ECR 3415, [1983] 1 CMLR 472.

provisions of Community law must be placed in the context of the specific document and the Community law as a whole. Obviously when each text is to be interpreted in the light of the other versions, with the view of not giving preference to any one of the texts involved, this could be best undertaken by the ECJ and not by national courts.⁴⁴

In addition, in order to interpret the international agreement, the court may resort to the foreign text (in this case the French) even if only the English text is scheduled to the legislation.⁴⁵ Courts look at foreign law and the conventions concerned, to understand its application or for the sake of comity - an idea frequently referred to by British courts.⁴⁶ For instance, in *Michael Galley Footwear Ltd (in liq) v Iaboni*,⁴⁷ Belgian, Dutch and German cases were looked at to understand the application of the Contract for the International Carriage of Goods by Road, in view of comity. In *T v Secretary of State for the Home Department*,⁴⁸ Lord Lloyd said in view of the Convention Relating to the Status of Refugees, 1951: 'In a case concerning an international convention it is obviously desirable that decisions in different jurisdictions should, so far possible, be kept in line with each other.' In *Re A and another (minors)*, for example, Balcombe J said:

Since French and English are both official languages of the Hague Convention, we were referred also to the French version of art 13(a). [...] Since we are here concerned with the meaning of 'acquiesced' in an international convention to which many countries, not only those with a common law background, have adhered, it cannot be right to attempt to construe 'acquiesced' by reference only to its possible meaning at common law or equity.⁴⁹

In all other instances the courts would opt for the English language rather than the other language or languages of the international text. For instance, in a case, where the defendant relied on the French text of a Community directive, to narrow the expression 'when the company has not been formed', so that he would not be liable, Lord Denning MR rejected this argument saying that the French text was drafted with regard to a different system of company law and that the English courts should go by s 9(2) of the 1972 Act: under article 189 the directive was only binding in so far as the spirit and intent were concerned.⁵⁰

⁴⁴ See opinion of Lord Diplock in *Henn and Darby v DPP* [1981] AC 850 at 906.

⁴⁵ *James Buchanan & Co Ltd v Babco Forwarding and Shipping (UK) Ltd* [1978] AC 141.

⁴⁶ See for example, *Hewitson v Hewitson* [1995] 1 All ER, 472 (Court of Appeal, Civil).

⁴⁷ [1982] 2 All ER, 200 (High Court, Queen's Bench).

⁴⁸ [1996] 2 All ER, 865, at 889 (House of Lords).

⁴⁹ [1992] 1 All ER, 929 (Court of Appeal, Civil).

⁵⁰ *Phonogram Ltd v Lane* [1982] QB 938.

The general rule is: ‘If the terms of the legislation are clear and unambiguous they must be given effect to’.⁵¹ This is so whether or not the legislation carries out a treaty obligation, since in the UK everything yields to statute law. In *Cheney v Conn*,⁵² Ungood-Thomas J said:

First, international law is part of the law of the land, but it yields to statute. That is made clear by *IRC v Collco Dealings Ltd* where Lord Simonds quoted with approval, and in accordance with the decision of the House of Lords in that case, Maxwell on the Interpretation of Statutes. I quote 10th edn (1953) at p 148: “But if the statute is unambiguous, its provisions must be followed even if they are contrary to international law.”

However, if the legislation is ambiguous or unclear, the text of the treaty will be resorted to in order to clarify the meaning. Many recent cases indicate that the courts will adopt a liberal approach in deciding whether or not to look at the treaty or convention and that, further, the interpretation should be free of the technicalities of English law, with a ‘purposive’ and ‘teleological’ approach adopted.

2.2. Are there unofficial translations?

These could be summaries or newsletter items in other languages (see for instance under 1. above). Otherwise unofficial translations have no weight.

3. The problem of translated words which imply juridical concepts unknown to the juridical tradition

‘The fundamental difficulty in translation of any kind is how to overcome conceptual difference.’⁵³ An object or institution peculiar to the source-language-culture is said to be ‘more or less untranslatable’, all else being ‘more or less translatable’. It is true that legal language (legal register) may be regarded as having a system-specific nature, and intra-linguistic translations deal with a source language (SL) and at least one target language (TL) in the case of multilingual supranational texts. In addition, in legal language, problems that may exist with translating for instance frozen metaphors

⁵¹ *Salomon v Customs and Excise Commissioners* [1967] 2 Q.B. 116 at 143 per Diplock L.J.

⁵² [1968] 1 All ER 779.

⁵³ M. Weston, *An English Reader’s Guide to the French Legal System* (Berg: Oxford, 1991), at 9. In relation to this topic also see, G.R. De Groot, ‘Legal Translation’ in J.M. Smits (ed) *Elgar Encyclopedia of Comparative Law* (Edward Elgar: Cheltenham, 2006) 423-433.

and idioms of one language to another, do not exist, since such terminology is not used. Obviously when culture-specific institutions, procedures or official bodies are involved there could be problems. Then, the untranslatable can be transcribed or explained, as no two languages are sufficiently similar as to be considered to represent precisely the same social reality. However, in many legal systems, especially those that portray socio-cultural and legal-cultural affinity, the 'legal register' may have become naturalised as a result of 'sufficient similarity'.

In spite of this, to translate technical words used by lawyers in France, in Germany or elsewhere on the European continent into English would be in many cases an impossible task, as would expressing most of the elementary notions of English law in the languages of the continent. The best approach is to keep the original word and provide an explanation.⁵⁴ However, in the preparation of supranational multilingual texts, English is normally one of the basic languages and therefore problems of translation do not arise in the UK itself, the problem having been already tackled elsewhere at the international level.

One good example of a 'naturalised' foreign word in the English legal lexicon is 'cassation', a French calque in the name of *cour de cassation*, translated habitually as 'court of cassation'. This is an instance of word-for-word translation and of neologism.

Transcription or borrowing is not translation, but 'an alternative way of dealing with culture-specific terms when translation in the narrower sense is not possible.'⁵⁵

The rules suggested by Weston - a one time translator in the Secretariat of the Council of Europe in Strasbourg and Senior Translator in the Registry of the European Court of Human Rights - in order of precedence, are first, a word-for-word translation if 'this yields a functional equivalent'; 'a non-literal translation representing a functional equivalent in the TL'; 'a word-for-word or non-literal translation that represents a semantic equivalent but is not the label of a functionally equivalent referent in the TL culture (because there is none)', 'transcription'; and finally, 'neologism'.⁵⁶

⁵⁴ Weston, *ibid* at 17.

⁵⁵ *Ibid.* at 30.

⁵⁶ *Ibid.* at 31.

Any translation into English from languages of the civilian tradition is helped by looking at the legal lexicon in English-speaking or bilingual 'mixed jurisdictions', such as Quebec, Louisiana, Scotland, Mauritius and Seychelles, and with caution, to bilingual and multilingual dictionaries. Suitable terminology can be found in all these. It is also assumed that between European languages the difficulties may be less pronounced than between European languages and the rest of the world, related to the presence or absence of common cultural denominators.

3.1. Have neologisms been created in the UK legal language?

Neologisms are the last resort in any translation activity in law and translators generally refrain from creating neologisms. The mandatory test would be that of necessity. As Weston says, 'it is no business of the translator's to create a new word or expression if the SL expression can be adequately and conveniently translated by one of the methods already described.'⁵⁷ Old words may be combined to form new compounds or phrases. Normally, neologisms would not enter the UK law via a treaty or supranational text. For example, even when the concept 'proportionality' entered the UK legal lexicon, for quite a while it was regarded as a version of 'reasonableness' and the use of the word 'proportionality' was avoided.

Any neologism created must satisfy the requirements of conformity with regular TL grammatical, morphological and phonological patterns, that is, naturalness, as well as economy and succinctness. Again, Weston gives examples of this in the legal field: 'decriminalisation' for *décriminalisation* (a morpheme-for morpheme calque) and 'continuing effect clause' for *clause de rémanence* (a functional equivalent), in international investment treaties.⁵⁸

3.2.1. Are there foreign words in national normative texts that are not translated?

Many Latin words remain in Latin usually in maxims such as '*lis alibi pendens*', '*forum non conveniens*', '*ejusdem generis*', '*negotiorum gestio*', '*status de manerio*', '*sine die*', '*sic utere tuo ut alienum non laedas*'. Other foreign words not translated

⁵⁷ Ibid. at 28.

⁵⁸ Ibid. at 30.

include French and German concepts such as ‘*travaux préparatoires*’, ‘*Rechtsstaat*’ and ‘*acte clair*’.

3.3. How are ambiguous words translated?

Ambiguity is defined as a double meaning. It is accepted that there can be two types of double meaning, doubt or uncertainty: ‘patent ambiguity’ is obvious on the face of the instrument; ‘latent ambiguity’ becomes apparent only when the surrounding circumstances are known. The general rule is that to resolve patent ambiguity extrinsic evidence is admissible to enable the court to ascertain the meaning, but not to give a meaning to a word or phrase capable of being given an ordinary interpretation. Extrinsic evidence is admissible to explain a latent ambiguity. Ambiguities in the meaning of a statute or other legislation are resolved by recourse to rules of construction and interpretation. The current preferred approach is ‘the unified contextual approach’ *Maunsell v Olins*.⁵⁹

3.4. How does the legal language treat foreign words with cultural features?

It is true that the word is an essential vehicle of cultural influence, however, cultures are not necessarily coterminous with languages though the language of a particular society is an integral part of its culture. The lexical distinctions drawn by each language do reflect the culturally important institutions and activities of that society. In the process of legal translation therefore, what is sought is functional equivalents. It is also assumed that there is much ‘cultural overlap’ though it is also to be accepted that most legal terminology is system specific. There may be no synonymy between words of different languages, but a greater or lesser degree of equivalence can be found in the ‘application’ of the word. However, these can only be intuitive judgements of equivalence in the areas of cultural overlap. The general assumption is that exact equivalence cannot be obtained and that validity can be achieved only through control of factors that affect equivalence. Weston however, suggests five possible options open to translators facing culture-bound source language: use of a TL expression denoting the nearest equivalent concept (functional equivalence); word-

⁵⁹ [1975] AC373 at 391. Also see information under 3 above.

for-word translation, making adjustments of syntax and function words if necessary; borrowing of the foreign expression, adding a TL explanation if the concept is unlikely to be familiar to the TL readership; creation of a neologism in the form of a literal translation, a naturalisation or a wholly non-formal translation; or lastly, use of an existing naturalisation.⁶⁰

It must be remembered that the reading is related to ‘conceptual content’, and it is often impossible to give the meaning of a word without ‘putting it in context’. Therefore a word-for-word translation, that is ‘literal translation’ (formal lexical equivalence), can be criticised, and yet in multilingual supranational texts it is the predominant method used. It is true that if there are SL expressions that defy translation in the narrow sense, literal translation makes no sense, in which case, transcribing or paraphrasing (glossing) is recommended, with the SL term being given in italics or between inverted commas and followed in brackets by the TL gloss.⁶¹ However, in the translation of multilingual supranational texts this method is seldom seen, as it would lead to ambiguity. Wittgenstein’s famous slogan, which diverts semantics, ‘Don’t look for the meaning of the word, look for its use’ can hardly be appropriate in this context.

One other suggestion is to use ‘back translation’.⁶² This is a simple technique and though inadequate for dealing with linguistic comparability, may help in writing multilingual texts. It would serve as a detector of problems however, rather than offering solutions. Comparison of the two texts can show the sources of difficulty and inconsistency. However, a given item in the SL may give rise to more than one version in a TL and re-translation may give rise to multiple SL versions. This approach, valuable in the writing of the texts, may not be so useful in the interpretation of them.

If no acceptable equivalent is found in the legal system, subsidiary solutions have to be sought: no translation may take place, paraphrasing may be used or neologisms have to be created. This would lead to a problem for interpretation as in the UK it is assumed that there are no neologisms in different texts. The answer is to regard one text (the English) as the basic text.

⁶⁰ See Weston above n 53, 19-21.

⁶¹ *Ibid.* at 26.

⁶² See, D. Hymes, ‘Linguistic Aspects of Comparative Political Research’ Chapter 7 in R.T. Holt and J.E. Turner (eds) *The Methodology of Comparative Research* (The Free Press: New York, 1970) 296-341 at 324-327.

On the whole, it could be said that ‘loanwords’, recognisable from the language of origin, borrowed from other European languages are regarded in the UK as indications of cultural transformation and therefore less desirable. Whereas a ‘calque’ - loan translation - that is, using an original indigenous word but giving it a new meaning, may be more acceptable, as this would only reflect a similar parallel pattern of semantic evolution.

3.5.1. How are legal institutions not considered in the translation language translated?

See the information provided in 3 and 3.4 above.

3.5.2. Which is the adopted syntax?

English syntax is the adopted one.

3.5.3. Does the translation language assume a different style or lexicon?

No it does not. Vocabularies of different languages in the legal lexicon may be non-isomorphic, semantic distinctions may be made in one language that are not made in another or are categorised in a different way. This is not a concern in legal translations in UK practice. In English translations, lexical (material) meaning and grammatical (formal) meaning have always to be matched.

4. Which linguistic text is used as a base in courts and by the legal profession?

The rule is that lawyers, judges and officials use the English text in their interpretive activity in England, Scotland and Northern Ireland.

In the domestic scene, in Wales, because of the ‘equal treatment of English and Welsh’, both texts should be consulted. Government of Wales Act 1998 (Ch 38) section 122: English and Welsh texts of any subordinate legislation are in both English and Welsh and of equal standing. Any Welsh word or phrase is taken to mean the same as the English word. (See for various other rules of interpretation 1.5 and 2.1. above). Here, it may be interesting to note a question posed:

If UK primary legislation is amended by Welsh Assembly general subordinate legislation (with equally authoritative English and Welsh language texts) what authority will the courts give to the Welsh language version of the subordinate legislation in construing the amended monolingual primary legislation: or will this be a circumstance in which it will inevitably be considered inappropriate to draft the subordinate legislation in both languages?⁶³

Further, ‘Will it be considered appropriate to use Assembly subordinate legislation at all as an aid to the interpretation of primary legislation enacted by the UK Parliament?’⁶⁴

In the case of supranational sources generally, see the information given under 2 and 2.1. above. In addition, it must be said that language is regarded as connected to context and dictionaries are not seen as solving problems of interpretation.

‘Dictionaries, a grammar book, and precepts of syntax, will not by themselves yield the contextual meaning of words and sentences. It is true that in a dictionary words are given a limited range of conventional meanings. But in a legal text a word forms part of a sentence and sentences are unlimited in their variety of the arrangement of words’.⁶⁵ However, it must also be remembered that in the UK there is no integrated theory of interpretation, and this would apply to international treaties and conventions as well as statutory texts.

One rule that is well settled is that ‘in the context of statutory interpretation, that prima facie, the instrument is to be considered “an always speaking statute”’.⁶⁶ Whether this would be applicable to treaties and conventions is an open question. Another rule that ‘words should be given their “natural and ordinary meaning” reflects the “common sense” proposition that we do not except easily that people have made linguistic mistakes in formal documents.’⁶⁷

4.1.1. Are there cases where there is reference to the text in a different language?

Yes, though rarely. See under 2 and 2.1 above: *Morris v KLM Royal Dutch Airlines*; *King v Bristow Helicopters Ltd*.⁶⁸

⁶³ Editorial, ‘Bilingualism in Legislation’ (1999) 20 *Statute Law Review*, 105 at 106.

⁶⁴ *Ibid.* at 106.

⁶⁵ Steyn above n 7 at 90.

⁶⁶ *Ibid.*, at 81.

⁶⁷ *Ibid.*

⁶⁸ [2002] 2 All ER, 565.

- 4.2. How are foreign words and neologisms treated in interpretation and inserted into the text?

Neologisms, if any, are naturalised and foreign words are either given a word-for-word translation or borrowed and naturalised. Seldom do we see a foreign word inserted into an English text in a foreign language apart from, for instance, '*acte clair*'. However, Latin maxims are kept in Latin. In fact, a Roman Law word such as '*in rem*' is used (as in 'rights in rem') as a neologism, for want of an equivalent word to '*droit réel*' or '*dingliches Recht*', in the English text of Article 22(1) of the European Regulation on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters.

- 4.3. Are there special rules of hermeneutics for the interpretation of normative supranational texts with consideration given to uniform interpretation?

Yes, when there is ambiguity in the national text or where an EC directive or regulation, or an international treaty is applied, uniform interpretation is desirable and is sought 'in the name of comity'. See examples given under 2 and 2.1. above.

- 4.4. Are the same criteria applied in interpreting domestic law enacted in more than one language?

Yes. This would only be a problem between English and Welsh. See for a discussion 1. and 1.3. above.

- 4.5. What hermeneutics policy is followed in filling the gap in the multilingual text?

The gap is filled by assigning to the text a meaning derived from the text's nature and content. This inquiry is an objective not a subjective one. The enacted text controls, therefore the point of departure is the text, and extrinsic material is subordinate to the text, though the texts are construed against contextual settings, especially when correct interpretation is uncertain.

That a subtle interplay between word, sentence and text is involved is always remembered. The judge will also ‘weigh consequentialist arguments in search of the best interpretation of the legal text’.⁶⁹ Therefore, the ‘teleological’ or ‘purposive’ approach becomes dominant, and is essential in the interpretation of ambiguous multilingual texts or texts with gaps. This approach is less precise than the ‘textual’ approach used in interpretation of the UK domestic texts. Though there should always be a comparison of different language versions, the UK courts rarely resort to this, unless of necessity.

Abstract notions such as ‘the presence or absence of a word in a language may have a special significance which may even reflect national character’, are not the kind of considerations the courts would indulge in.

4.5.1. Is the gap filled following the common rules?

Yes, the gap is normally filled following the common rules. See the information under 2.1. above. Take note especially of rules of interpretation and construction and presumptions aiding judges presented above under 2.1. and 1.5.

4.5.2. Is it normal to refer to the same act enacted in another language?

This is not normal practice, as discussed above under 2.1. See the instances cited there.

Cite as: Esin Örüücü, *Interpretation of Multilingual Texts in the UK*, vol. 10.3 ELECTRONIC JOURNAL OF COMPARATIVE LAW, (December 2006), <<http://www.ejcl.org/103/article103-9.pdf>>.

⁶⁹ Steyn, above n 7 at 90.