

Legal Translaboration for Effective Intercultural Communication

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« C'est malheureusement l'impression que donnent trop souvent les textes publiés par les organisations internationales [...] dont les membres exigent par ignorance ou un souci mal placé de littéralité des traductions aussi calquées que possibles. Le résultat est un galimatias [...]. Un texte ne doit être un calque, *ni sur le plan structural, ni sur le plan métalinguistique.* »²

Abstract: The European-inspired bilingualism and bi-legal system in Cameroon lead to an irregular profile and may be interesting for the European Union (EU) in its quest for preservation of intercultural processes through translation. The Organization for the Harmonization of Business Law in Africa (OHADA) of which Cameroon is part is only affiliated to Civil Law. However, the two legal systems employed in Cameroon (where both Civil Law and Common Law are used) are based on a balance in what concerns the conceptual, epistemic and stylistic representation. Intercultural dysfunction is the consequence of the lack of methodology in legal translation. Collaboration between legal translators and practitioners is key to adopt an agreed-upon model in multilingualism.

Keywords: legal translaboration, OHADA, culture, history, intercultural communication

I. Introduction

The historical odyssey of European nations allows a comparison and experience-sharing between former colonial masters affiliated in the European Union (EU) and erstwhile colonized nations which were superimposed with ontological traits, i.e. language and legal systems that became the backdrop against which daily issues are being dealt with (see in this respect Saussure³, Harvey⁴ and Way⁵). Indeed, language policy and (legal) translation in the EU are of major

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² J.-P. Vinay, J. Darbelnet, *Stylistique comparée du français et de l'anglais*, Didier, Paris, 1958, p. 53.

³ See F. de Saussure, *Cours de linguistique générale*, Éditions Payot & Rivages, Paris, 1916.

⁴ See M. Harvey, *What's so Special about Legal Translation*, in *Meta*, volume 47, no. 2/2002, Presses de l'Université de Montréal, pp. 177-185.

⁵ See C. Way, *The Challenges and Opportunities of Legal Translation and Translator Training in the 21st Century*, in *International Journal of Communication*, volume 10/2016, pp. 1009-1029.

importance in peacekeeping and identity convergence.⁶ Dysfunctions recorded in European-shaped territories are therefore of importance to prevent the rise of similar breakdown in Europe. The legal translation of OHADA uniform acts did happen amid what has been commonly referred to as the Anglophone crisis.⁷ The Organization's legal conceptualization is tailored to the dimension of Civil Law States⁸, being therefore unresponsive to English-speaking legal conceptualization and representation. Indeed, amid the seventeen Member States of the Civil Law-designed Organization, Cameroon is the only bilingual (English and French are official languages) and bi-legal country (civil law and Common Law are both used on its territory). Cameroon's legal profile encompasses a great deal of complexities ranging from epistemic, technical to historical. In this regard, the country ushers in an intercultural demand to be addressed in legal translation. Unlike other African nations, Cameroon was instilled with a double cognitive paradigm which later on yielded an internecine conflict for the adoption of a standard model for legal representation in bilingual, bicultural and bi-legal institutions.⁹ French and English imbued Cameroon's cognitive and institutional structure. Indeed, the historical facsimile tells the story of an unequal coverage of the nation, with France (where civil law is used) having the lion's share in the legal and institutional network and Great Britain (a Common Law country) assuming the position of the minority power in the nation. Methodologies used in legal translation to secure identity convergence are of relevance, but they could potentially entail fallouts at the social level. Every community is homesteaded on a specific physical and semantic territory. The sustainability of social life within the borders of a community is guaranteed by the abidance to an agreed-upon sociocultural model constructed over time. Local episteme and cognitive patterns of thinking are enshrined in the legal gestalt and materialized in fined-grained segments of social life (trade, justice, business, social affairs, etc.) through specific references mentioned in the legal text. Terms and concepts aligned following syntactical conventions and expressed in abidance to stylistic tradition¹⁰ are the artefactual

⁶ See S. Ferreri, *Studies on Translation and Multilingualism: Document Quality Control in Public Administrations and International Organisations*, Publications Office of the European Union, Luxembourg, 2013.

⁷ See A. Bell Mandeng, *Évaluation de l'effectivité de la communication interculturelle dans la traduction juridique des Actes uniformes OHADA*, Mémoire, University of Yaoundé I, 2019. See also S. Engola & A. Bell Mandeng, *Cross-Cultural Aspects of the Translation of the OHADA Uniform Acts in Cameroon*, in *Analele științifice ale universității „Alexandru Ioan Cuza” Iași*, tomul LXV, Științe Juridice, Supliment/2019, pp. 101-117.

⁸ See J.-J. Ndongo, *Les actes uniformes de l'OHADA en traduction*, in *Parallèles*, no. 25/2013, Université de Genève, Suisse, 2013, pp. 31-41.

⁹ See P.-É. Kenfack, *La gestion de la pluralité des systèmes juridiques par les États d'Afrique noire: les enseignements de l'expérience camerounaise*, in *CRDF*, no. 7/2009, Université de Yaoundé 2-Soa, Cameroon, pp. 153-160.

¹⁰ See J.-C. Gémar, *Traduire le texte pragmatique. Texte juridique, culture et traduction*, in *Institut des langues et cultures d'Europe, Amérique, Afrique, Asie et Australie*, volume 3/2002, pp. 11-38.

realization of collective identity avowed by a legal community in the course of its sociohistorical journey. In this regard, literal translation and the systemic search for terminological/conceptual equivalence are detrimental to the role of legal translators as cultural actors and intercultural negotiators, because these strategies superimpose an epistemic standpoint to a minority culture. Collaboration among legal translators appears essential to secure effective intercultural communication.

II. Theoretical framework

1. Neumann's game theory

Legal translation is of major importance as it encompasses cross-cultural and territorial range of interests – historical, sociocultural, normative, commercial – being, nevertheless, institutionalized.¹¹ This painstaking task that is carried out by legal translators is based on a set of methodological technics tailored to the complexity of multi-legal, multilingual and multicultural areas like the European Union or countries faced with high-stake identity issues like Cameroon and South Africa.¹² In this regard, the minimax strategy, the lodestar of game theory proposed by Neumann, can be of relevance in translation.¹³ It can be implemented by a collaboration between legal stakeholders in order to find a consensus in what concerns intercultural diversity to be adopted in legal translation. The legal system and the linguistic diversity in Cameroon are both a legacy and an epitome of European countries.

In fact, the link between language and culture is well-known in the field of cultural studies, linguistics and intercultural communication.¹⁴ In line with Durkeim's views on the coercive aspects of culture, Sinha¹⁵ and Bruner¹⁶ both

¹¹ See J.-C. Gémar, *L'analyse comparée en traduction juridique, ses enjeux, sa nécessité*, in *International Journal for the Semiotics of Law*, no. 31/2018, Springer, pp. 957-975.

¹² See J.-C. Gémar, *Traduire le droit. Lettre, esprit et équivalence*, in *Traduction du droit et droit de la traduction*, Dalloz, Paris, 2011, pp. 129-144. See also J.-J. Ndong, *Le bijuridisme camerounais face à l'harmonisation et à la traduction des lois*, Thèse de doctorat, Université de Genève, 2013.

¹³ See M. Guidère, *Introduction à la traductologie. Penser la traduction : hier, aujourd'hui, demain*, Éditions De Boeck, Collection Traducto, Paris, 2010, p. 176. See also J. Munday, *Introducing Translation Studies: Theories and Applications*, Routledge Taylor & Francis Group, 2008 and Z. Raková, *Les théories de la traduction*, Masarykova univerzita, Brno, 2014, p. 260.

¹⁴ See J. Martin, T. Nakayama, *Intercultural Communication in Contexts*, fifth edition, McGraw-Hill Higher education, Avenue of the Americas, New York, USA, 2010, p. 500. See also J.-R. Ladmiral, E.-M. Lipiansky, *La Communication interculturelle*, quatrième édition, collection Traductologiques, Les Belles Lettres, Paris, 2015, p. 327.

¹⁵ See C. Sinha, *Signification et matérialités, le langage au fondement des artefacts symboliques*, in C. Moro, N. Muller Mirza (ed.), *Sémiotique, culture et développement psychologique*, Presses Universitaire du Septentrion, Villeneuve d'Ascq, France, 2014, pp. 117-138.

¹⁶ See J. Bruner, *Culture et esprit: une féconde incommensurabilité*, in C. Moro, N. Muller

support the idea that culture is endowed with deontic and restrictive epistemic truth framing the mind and engaging the community to perceive the world through filtered lenses. Law is indeed the immaterial substance connecting members of a community and regulating their action-perception model in the course of their daily experience. Therefore, law is the cornerstone undergirding the sociocultural model implemented in a community at a specific time. Language is an important lever for intercultural communication as the immersion in a material world calls for material references expressing the cognitive truth implicitly shared by cultural insiders. In this regard, language is an identity displayer or a sociocultural manifesto expressing specific truths. Translation, in particular legal translation, does require an immersion into the Other's framework of references and ethnographic standards of representation and communication. Gémard suggests that one should resort to a specific field commonly referred to as jurilinguistics to secure sociocultural symmetry and identity convergence through an apt management of semantic tools (terms, notions, concepts) in the target text.¹⁷ In this regard, Garzone states that: "[...] the distinctive quality of the language of law, which marks it off from ordinary language and makes it a case apart in the field of special languages, has been recognized and legal translation is no longer regarded simply as a particular case within the general framework of LSP [Language for Specialized Purpose] texts. A certain reluctance has emerged to accept the application of a general translation theory to include the translation of legal texts."¹⁸

Actors molded within the framework of specific communities anchored on geographical territories are world citizens taking part in the circulation and mobility of ideas and paradigms undergirding the mental infrastructure which is home to the global mind. However, different geographical settings and historical routes direct communities to represent the shared experiential truth using ever-specific artefactual resources and ethnographic conventions. The representation of sociocultural models is evidenced in the process of (legal) translation. Legal translation, especially in intercultural and multilingual spheres, is sometimes a process whereby the majority holding power imposes its aspectual truth (textual, semantic representation) over the Other in order to drive him out from the conscience of commonness/sameness to meet a sociocultural and economic agenda through cultural alienation. The legal translation of OHADA uniform acts is a demonstration of the attempt of civil law actors (legal translators) assuming the majority position in Cameroon in order to create a representational model. Martin & Nakayama support the view that "translation is more than merely switching

Mirza (ed.), *Sémiotique, culture et développement psychologique*, Presses Universitaires du Septentrion, Villeneuve d'Ascq, France, 2014, pp. 33-52.

¹⁷ J.-C. Gémard, *De la traduction juridique à la jurilinguistique : la quête de l'équivalence*, in *Meta*, volume 60, no. 3/2015, pp. 476-493.

¹⁸ G. Garzone, *Legal Translation and Functionalist Approaches: A Contradiction in Terms?*, in *La traduction juridique: histoire, théorie(s) et pratique*, ASTTI, Bern, 2000, p. 1.

languages; it also involves negotiating cultures [...]. One part of our cultural identity is tied to the languages(s) that we speak.”¹⁹

Methodology is the result of a specific negotiation with an aim to find a consensus. Without ignoring the cultural aspect, people can negotiate in order to attain a commonsensical view of reality. Linguistic aspects are the surface structure representing communities in what makes their specificity and identity. In the domain of legal translation, textual elements (terms, notions, concepts and syntax) are the elements pertaining to the community’s surface structure. These elements are the result of the cultural appropriation of the shared conceptual substance at the very basis of universal culture. Being acquainted with the Other’s culture is therefore of major importance for identity convergence. Collaboration among legal translators emerging from distinctive cultural settings is crucial in order to capture different (legal) identities.

2. Critical approach to intercultural communication

Being aware of the multiple implications of the ethnographic imprint of languages, especially in multicultural and multilingual areas, extended the epistemic scope of translation beyond the borders of linguistic territorialities, reaching the sphere of the sociopolitical arena.²⁰ The institutionalization of multilingualism and multiculturalism is most of the time the result of campaigns led by minority groups for identity recognition, be it at the local, national or transnational levels. The clash of cultural perspectives between majority group members – releasing a set of references extracted from the shrine of history and represented through a wide array of identity diffusion like language and text – and minority groups endowed with ecocultural truth running counter the prevailing literature spread by institutions seems to be unavoidable. As the receptacle of experience, ecocultural and historical truth, language is indeed an ontological and identity displayer in the face of alterity. It is also a facsimile of the sociocultural and political model in force in specific/local territories. The relation between languages of various communities during the intercultural contact result into the triumph of one over the Other, the latter tending to be disregarded by institutions.

The experience of African countries, especially of countries where a colonial master overpowered the Other, is emblematic of the attempts aiming at homogenizing the cognitive truth nationwide through linguistic and translation policies adopted by institutions. Krog & al tell the story of tug-of-war between languages in South Africa resulting into the victory of English.²¹ Social resistance

¹⁹ J. Martin, T. Nakayama, *Intercultural Communication in Contexts*, *op. cit.*, p. 245.

²⁰ See M. Baker, *Translation as an Alternative Space for Political Action*, in *Social Movement Studies: Journal of Social, Cultural and Political Protest*, Routledge Taylor & Francis Group, 2013, pp. 23-47. See also W. Hui, *Postcolonial approaches*, in M. Baker and G. Saldanha (ed.) *Routledge Encyclopedia of Translation Studies*, Routledge Taylor & Francis Group, 2011, pp. 200-204.

²¹ See A. Krog & al, *Translation as a Reconciliation: A Conversation about Politics, Translation and Multilingualism in South Africa*, in H. Tonkin & M Esposito-Frank (ed.)

against the homogenization of experience and epistemic truths calls for the intervention of specific actors apt to achieve betweenness. In this regard, Krog & al support the view that “translation might mediate [...] as a form of reconciliation in which the periphery talks to the center as well as the center to the periphery and through which all languages are enriched as a result”.²² Legal language/text is an offshoot of specific culture.

Legal translation of OHADA uniform acts is an epitome of ideological annexation and sociocultural resistance. As the verbalization of experience and historically-constructed anthropological truth, the legal text and the semantic tools (terms and concepts) contained therein are the avatar of identity. In this regard, Krog supports the idea that “every term in translation has an ideological freight”²³. Ideologies are nurtured on a political ground over time. The historical facsimile reveals the central position occupied by civil law with regards to the conceptualization of law. French is being considered the language of law in Cameroon. The translation workload carried out in the administration is most of the time from French into English, being usually performed for informative purposes. This tendency is observed in legal translation strategies paralleling/drawing correspondence between both epistemic standpoints. Schweda Nicholson suggests that “Common Law and civil law are quite different in their approaches.”²⁴ In this regard, legal translators should engage into an overarching reconciliation process ranging from the epistemic to the sociocultural and historical level.

Recognition of historically-constructed identity representation, including language, is an underlying element of the concept of power. Terms, notions, concepts, the language structure are items endowed with both prescriptive and anthropologizing properties unveiling sociocultural norms and directing individuals towards an epistemic source of action and perception.²⁵ The case of representation of the legal system is one of the kind. The country is home to competing sociocultural and normative models enshrined in legal systems. In this regard, Pelage’s viewpoint is the following: “Ne correspondant à aucune notion connue de nous, les termes du droit anglais sont intraduisibles dans nos langues comme sont les termes de la faune et de la flore d’un autre climat. On en dénature le sens le plus souvent quand on veut, coûte que coûte, le traduire.”²⁶

Translator as a Mediator of Cultures, volume 3, part I, chapter I, John Benjamins, Amsterdam, 2010, pp. 17-37.

²² *Idem*, p. 17.

²³ A. Krog & al, *Translation as a Reconciliation: A Conversation about Politics, Translation and Multilingualism in South Africa*, in *op. cit.*, p. 18.

²⁴ N. Schweda-Nicholson, *Interpreting at the International Criminal Tribunal for the Former Yugoslavia (ICTY): Linguistic and Cultural Challenges*, in H. Tonkin & M. Esposito Frank (ed.), *The Translator as a Mediator of Cultures*, volume 3, part I, chapter 2, John Benjamins, Amsterdam, 2010, p. 38.

²⁵ See C. Lévi-Strauss, *Le totémisme aujourd’hui*, Paris, PUF, 1962.

²⁶ J. Pelage, *La traduction des discours juridiques: problématique et méthodes*, Fontenay-sous-Bois, 2007, p. 259.

Indeed, civil law and Common Law are legal systems expressing antinomic social norms. Methodology used in legal translation is therefore of major importance to bridge the gap amid the legal divide. The legal text is an anthropological field where experiences are verbalized through specific symbols canonized by the community. Terms, notions, concepts and syntactical conventions are the sociocultural avatar of reality taking part in the institutional game where no cultural actor is supposed to take the lead over the Other. The textual correspondence in legal translation is a tacit institutionalization/standardization of the sociocultural hegemony of the source language over the target culture. Each semantic item (term, notion and concept) translated following a nominalist approach is tantamount to advancing a pawn on a chessboard without allowing the Other's camp to play, i.e., to communicate its ontological specificity. The case of the legal translation of OHADA is an emblematic example of irrelevance of what shall commonly be referred to as a (bi)lingual approach to legal translation. Indeed, languages are the representation of distinctive ontologies/identities molded within the framework of cultural references. Translation plays the role of watershed during the cultural divide, each culture using (legal) language as a megaphone of its specificities. Edwards talks about the lack of betweenness in bilingualism.²⁷ Legal language in OHADA represents the anthropological model nurtured by communities in a specific geographical area during specific trade activities. In the case of Cameroon, Common Law and civil law are legal systems covering the anglophone regions, which are a minority, and the francophone regions, which represent the majority. The intellectual dimension of translation is not realistic in what concerns the representation of the sociocultural model corresponding to local identities.

III. Legal texts and intercultural communication

Diversity is an emblematic feature of the world. In this regard, the necessity to communicate, i.e., to find the common substrate irrespective of the rhetoric/ethnographic specificities, is a vital one.²⁸ The legal text is both the cultural and institutional verbalization of the anthropological dimension characterizing specific communities engaged in the communication and negotiation in view of meeting economic, political, and sociocultural agendas. Undoubtedly, languages are the most important channels of the identity of a community. Organizations are most of times multilingual by nature. They are therefore the scene hosting multicultural systems of representation. Thus,

²⁷ See J. Edwards, *The Treason of Translation? Bilingualism, Linguistic Borders and Identity*, in H. Tonkin & M. Esposito-Frank (ed.), *The Translator as the Mediator of Cultures*, volume 3, part II, chapter 5, John Benjamins, Amsterdam, 2010, pp. 89-106.

²⁸ See M. Saville-Troike, *The Ethnography of Communication*, third edition, Blackwell publishing, UK, 2003, p 325. See also E. Bielsa, *Globalization and Translation: A Theoretical Approach*, in *Language and Intercultural Communication*, volume 5, no. 2/2005, pp. 131-144 and E. Bielsa, A. Aguilera, *Politics of Translation: A Cosmopolitan Approach*, in *European Journal of Cultural and Political Sociology*, 2017, pp. 17-24.

translation issues are of paramount importance for identity convergence and intercultural communication. The strategies used therein are vital to secure the abovementioned imperatives. In line with the ideas supported by Pelage²⁹, an adaptation effort and groundbreaking methodologies are essential for the gap-bridging process.

1. Legal translation and ideology

Culture, language, ideology and law are pervasive elements framing identity, perception and communicative patterns used during the intercultural contact with the alterity.³⁰ The Whorfian tradition supports the view that language is the receptacle where the abovementioned patterns of identity are showcased ahead of the intercultural encounter with the Other. It is a record of the sociocultural and normative models adopted by a community in the course of its historical experience (time) in a specific ecology (space). Issues of time and space take center stage in the investigation of meaning construction and representation.³¹ Indeed, meaning and sociocultural models conveyed in legal language are embedded in an ecocultural network of reference.³²

Concepts are the mental representation of ever-specific sociocultural models anchored on a physical ground. They gain a territorial seat and an institutional status through their enshrinement in legal systems. Europe offers a fair view of the territorialization of meaning and concepts. Through its historical and philosophical tradition and its power of diffusion, Europe has been the leading light spreading the diversity of its epistemic vision across the world. Colonization has been the event through which local ontologies were reframed. In this regard, the existing divide between legal systems is a consequence of this event. The ideological bias is a common and, at times, inevitable flaw in the practice of (legal) translation.³³ In fact, as Aristotle stated, every human being or citizen in a society is “a political animal” i.e., s/he partakes in the sustainability of a cultural approach through politics fueled by ideologies. Prominent among stakeholders in the sociopolitical game is the legal translator. He/she has a specific set of references received from his/her experience accumulated across history and within a particular ecology.

²⁹ See J. Pelage, *La traduction des discours juridiques: problématique et méthodes*, op. cit.

³⁰ See C. Moro, N. Muller Mirza, *La culture au cœur du développement psychologique*, in C. Moro, N. Muller Mirza (ed.), *Sémiotique, culture et développement psychologique*, Presses Universitaires du Septentrion, Villeneuve d'Ascq, France, 2014, pp. 13-32.

³¹ See M. Cole, *Cultural psychology: an once and future discipline*, Harvard University Press, Cambridge, 1996, p. 110.

³² See F. Rastier, *La traduction: interprétation et genèse du sens*, in M. Lederer, F. Israël (ed.), *Le sens en traduction*, CNRS, Lettres Minard, Paris, 2006, pp. 1-10. See also I. Hostová, *Of Ecosystems and Translations: Some Ways of Translating non-traditional Texts*, in Discussion, *World Literature Studies*, volume 8/2016, pp. 74-85.

³³ See A. Berman, *La retraduction comme espace de la traduction*, in *Palimpsestes*, no. 4/1990, pp. 1-7. See also C. Schäffner, *Third Ways and New Centres, Ideological Unity or Differences*, in M. Calzada Perez (ed.), *Apropos of Ideology, Translation Studies on Ideology – Ideologies in Translation Studies*, Routledge Taylor & Francis Group, 2014, pp. 23-41.

Schäffner supports the view that “decisions at the linguistic micro-level have had effects for [...] society debating its identity due to the textual treatment of ideological keywords”³⁴. Legal translation, especially in bilingual spaces, is a process through which identities are negotiated on the balance of translation subjectivity. The translator’s abidance to a normative model directs him/her to misplace legal terms, therefore perpetrating cultural/ideological annexation. Elements of micro-linguistics (terms and concepts) bear the sociohistorical and ideological load of a specific community. Relying on morphological resemblances in order to draw equivalence in the translation process is a misleading method igniting social resistance.

2. The epistemic place of the legal translator

Each physical territoriality is stamped with an epistemic seal standardizing the cognitive substance adopted by the community at a specific period of its historical experience. The neural apparatus of community members receives the set of cognitive references released in the specific setting. The said references pattern the mind and frame their perception. Thus, the discourse on norms in translation is closely tied to issues of geography and the environment.³⁵ Since its colonization, Cameroon may be seen as a battleground between citizens located in distinctive epistemic and geographical areas. From a historical and legal viewpoint, one can say it is the scene of an institutional contest between followers of the French ideology enshrined in civil law and of the English philosophy materialized in Common Law. Cameroon has 10 Regions. North-West and South-West regions are English-speaking areas. Both regions were historically under the English rule during the colonization process and therefore formed the minority group. At the same time, the other part of the country, which forms the majority, was ideologically framed by the French mainstream culture. Civil law then became the legal system of French-speaking Cameroon and the dominant system of law in its institutions.

IV. Methodological considerations and comparative analysis

The relevance of the methodology used in legal translation is measured following the yardstick of epistemology.³⁶ In fact, epistemology provides handy hints on the gap-bridging strategies to be used for smooth communication in legal translation. The ontology used by cultural stakeholders in multicultural organizations is also of relevance, as it provides the guiding lines for the optimization of receptivity.

³⁴ C. Schäffner, *Third Ways and New Centres, Ideological Unity or Differences*, in *op. cit.*, p. 41.

³⁵ See F. Italiano, *Translation and Geography*, Routledge Taylor & Francis Group, 2016. See also J. House, *Translation as Communication across Languages and Cultures*, Routledge Taylor & Francis Group, 2016.

³⁶ See G. Saldanha, S. O’Brien, *Research Methodologies in Translation Studies*, Routledge Taylor & Francis Group, 2013, p. 270.

In order to establish a legal translation methodology in bilingual areas, one has to analyze the specificities of the legal cultures that are studied. In this respect, we present below the profile of OHADA members:

<i>N°</i>	<i>Member States</i>	<i>Official language (s)</i>	<i>Legal system (s)</i>
1	Benin	French	Civil Law
2	Burkina Faso	French	Civil Law
3	<i>Cameroon</i>	<i>English and French</i>	<i>Civil law and Common Law</i>
4	Central African Republic	French and Sango	Civil Law
5	Comoros	French, Arabic and Comorian	Civil Law
6	Congo	French	Civil Law
7	Ivory Coast	French	Civil Law
8	Gabon	French	Civil Law
9	Guinea-Conakry	French	Civil Law
10	Guinea-Bissau	Portuguese	Civil Law
11	Equatorial Guinea	French, Spanish and Portuguese	Civil Law
12	Mali	French	Civil Law
13	Niger	French	Civil Law
14	Democratic Republic of Congo	French	Civil Law
15	Senegal	French	Civil Law
16	Tchad	French and Arabic	Civil Law
17	Togo	French	Civil Law

OHADA is predominantly composed of civil law-affiliated countries owing to colonization and ontological superimposition. Lambert supports the view that French ideology is characterized by a universalist approach in communication. He suggests that “the Napoleonic Code [...] is heavily inspired by the idea of standardization and homogenization: all in one movement the dispersed legal traditions were meant to be unified in one single formulation that became a model of the French community.”³⁷

This ideological trait that marks legal translation is materialized by conceptual cleansing and nominalist approaches. We may find in Cameroon the European-inspired bilingualism (through the use of English and French) and the legal biculturalism (as both civil law and Common Law are employed). The superimposition of the legal structure through the footbridge of language is therefore at the basis of (social) resistance.

In what follows, we will carry out a comparative analysis in order to underline several translation issues in OHADA texts. Terms, concepts and notions

³⁷ J. Lambert, *The Status and Position of Legal Translation: A Chapter in the Discursive Construction of Societies*, in F. Olsen *et alii* (ed.), *Translation Issues in Language and Law, Language and Different Law Cultures*, Palgrave MacMillan, United Kingdom, 2009, pp. 82-83.

arranged in a conventional syntactic structure in the legal text are the avatar of the sociocultural truth in the game of institutional representation.

a) Terms

Table 1: Procédure d’alerte (translated in 2016)

<i>Original version</i>	<i>English version (first translation)</i>
Partie i – dispositions générales de la société commerciale – livre 2 – fonctionnement de la société commerciale – titre 4 – <i>procédure d’alerte</i> – chapitre 1 – alerte par le commissaire aux comptes – section 1 – sociétés autres que les sociétés par actions/article 150 (p. 38)	Part 1 – general provisions governing commercial companies – book 2 – functioning of a commercial company – title 4 – <i>alarm procedure</i> – chapter 1 – alarm by the auditor – section 1 – companies other than public limited companies/article 150 (p. 143)

In the text above, the phrase “procédure d’alerte” is translated by “alarm procedure”. The translation of the term is carried out following the onomasiologic approach in terminology, which goes against the universal truth. Each legal community avows a specific conceptualization of reality.³⁸ This translation is realized following a nominalist approach to language, i.e, without any consideration to the Other’s epistemic truth as to how accurate a symmetric process is termed into the network of representation of the target community. According to the Companies and Allied Matter Acts (C.A.M.A³⁹), the cultural equivalent of the phrase “procédure d’alerte” in the trade field is “early warning procedure”. The failure to keep the balance in the representation of both legal cultures can be perceived as a cultural annexation.

Table 2: Procédure d’alerte (translated in 2019)

<i>Original Version</i>	<i>English Version (First translation)</i>	<i>English Version (Second translation)</i>
Partie i – dispositions générales de la société commerciale – livre 2 – fonctionnement de la société commerciale – titre 4 – <i>procédure d’alerte</i> – chapitre 1 – alerte par le commissaire aux comptes – section 1 – sociétés autres que les sociétés par actions/article 150 (p. 38)	Part 1 – general provisions governing commercial companies – book 2 – functioning of a commercial company – title 4 – <i>alarm procedure</i> – chapter 1 – alarm by the auditor – section 1 – companies other than public limited companies/article 150 (p. 143)	Part 1 – general provisions governing commercial companies – book 2 – operation of commercial company – title 4 – <i>alert procedure</i> – chapter 1 – alert by the auditor – section 1 – companies other than share companies/article 150 (p. 224)

³⁸ See M.-C. L’Homme, *Sur la notion de terme*, in *Pour une traductologie proactive – Actes, META*, volume 50, no. 4/2005, Presses de l’Université de Montréal, Montréal, Canada, pp. 1112-1132.

³⁹ *Companies And Allied Matters Acts*, Olakanni & Co., Panaf press, Panaf house, Abuja, Nigeria, 2009, p. 172.

The second version of the translation of OHADA uniform acts was published in 2019. A formal change may be observed, but the version does not include the functional equivalent of the French phrase. The term “procédure d’alerte”, wrongfully translated as “alarm Procedure”, was changed to “alert procedure”. The cosmetic change applied to this retranslation does not achieve terminological symmetry as the items used in this version refer to a different meaning, out of the scope of specialized language.

Table 3: Dissolution de la société (Translated in 2016)

<i>Original Version</i>	<i>English version (First translation)</i>
Partie i – dispositions générales de la société commerciale – livre 7 – dissolution-liquidation de la société commerciale – titre 1 – <i>dissolution de la société</i> – chapitre 1 – causes de la dissolution/article 200 (p. 51) La société prend fin : 1°) par l’expiration du temps pour lequel elle a été constituée ;	Part 1 – general provisions governing commercial companies – book 7 – dissolution – liquidation of a commercial company – title 1 – <i>dissolution of the company</i> – chapter 1 – causes of dissolution/article 200 (p. 153) A company shall come to an end: 1°) on the expiry of the period for which it was formed;

The phrase “dissolution of the company” fails to achieve both conceptual and semantic equivalence. The French term refers indeed to the process whereby a company goes through a liquidation process as a result of economic failure, bankruptcy or end of its objects. The English “equivalent” in this translation does not pertain to specialized language, but to general language. This translation is therefore a mix between specialized language and general language. According to the C.A.M.A, the terminological item likely to realize cultural equivalence is “winding up of the company”.

Table 4: Dissolution de la société

<i>Original Version</i>	<i>English Version (First translation)</i>	<i>English Version (Second translation)</i>
Partie i – dispositions générales de la société commerciale – livre 7 – dissolution-liquidation de la société commerciale – titre 1 – <i>dissolution de la société</i> – chapitre 1 – causes de la dissolution/article 200 (p. 51) La société prend fin : 1°) par l’expiration du temps pour lequel elle a été constituée ;	Part 1 – general provisions governing commercial companies – book 7 – dissolution – liquidation of a commercial company – title 1 – <i>dissolution of the company</i> – chapter 1 – causes of dissolution/article 200 (p. 153) A company shall come to an end: 1°) on the expiry of the period for which it was formed;	Part 1 – general provisions governing commercial companies – book 7 – dissolution – liquidation of commercial company – title 1 – <i>company dissolution</i> – chapter 1 – causes of dissolution/article 200 (p. 237-238) The company shall cease to exist: 1°) by expiration of the period for which it was formed;

The retranslation of this article cannot meet the semantic and conceptual representation of the target community. The issue is, indeed, rather epistemic than stylistic. The proposed equivalent, namely “company dissolution”, is nothing but a syntactic inversion of the initial proposal, “dissolution of the company”. The semantic gap remains as wide as it previously was. The research of formal equivalence therefore cannot create legal symmetry. “Winding up” or “liquidation of the company” is the terminological equivalent that can create convergence with the right modulation of concepts.

b) Concepts

Concepts are core elements of identity. They refer to the specific understanding one community has of cross-cultural and transnational elements. The literal translation of concepts from one language to the language of the Other can be considered as an identity superimposition, as the specificity of the target culture is not taken into account. Relevant methodological translation strategies should therefore be found for an efficient gap-bridging process between stakeholders in a multicultural network of representation.

Table 5: Durée de la société

<i>Original Version</i>	<i>English version (First translation)</i>
Partie i – dispositions générales de la société commerciale – livre 1 – constitution de la société commerciale – titre 3 – statuts – chapitre 6 – durée-prorogation/article 28 (p. 13) Toute société a une durée qui doit être mentionnée dans ses statuts. <i>La durée de la société ne peut excéder quatre-vingt-dix-neuf (99) ans.</i>	Part 1 – general provisions governing commercial companies – book 1 – formation of a commercial company – title 3 – articles of association – chapter 6 – duration-extension/article 28 (p. 121) Every company shall be set up for a duration which shall be indicated in the articles of association. <i>The duration of the company may not exceed ninety-nine (99) years.</i>

The conceptual projections both legal communities have on this phrase are divergent. The civil law community supports the view that a company’s timespan should not go beyond the critical threshold of 99 years. As opposed to that epistemic stance on the issue, Common Law does not set any limitation to a company properly incorporated. Owing to its historical and colonial past, Cameroon is home to two legal systems having a range of divergence. The text is the verbalization of the cultural truth upon the sociocultural and normative patterns of identity. This state of affairs must be taken into consideration in the translation process. Literal translation done for informative purposes imposes cultural untruths in the network of representation of the target culture. In this regard, legal translation stakes go beyond legal and textual frontiers. Negotiation on the epistemic content to be proposed for identity convergence is to be carried out by translators coming from different cultural networks of representation.

Table 6: Durée de la société

<i>Original version</i>	<i>English version (first translation)</i>	<i>English version (second translation)</i>
Partie i – dispositions générales de la société commerciale – livre 1 – constitution de la société commerciale – titre 3 – statuts – chapitre 6 – durée-prorogation/article 28 (p. 13) Toute société a une durée qui doit être mentionnée dans ses statuts. <i>La durée de la société ne peut excéder quatre-vingt-dix-neuf (99) ans.</i>	Part 1 – general provisions governing commercial companies – book 1 – formation of a commercial company – title 3 – articles of association – chapter 6 – duration-extension – section 1 – duration/article 28 (p. 121) Every company shall be set up for a duration which shall be indicated in the articles of association. <i>The duration of the company may not exceed ninety-nine years.</i>	Part 1 – general provisions governing commercial companies – book 1 – formation of a commercial company – title 3 – articles of association – chapter 6 – duration-extension/article 28 (p. 196) Every company has a duration which must be stated in its articles of association. <i>The company's existence shall not exceed ninety-nine (99) years.</i>

The retranslation of this article does not solve the epistemic issues. The use of the phrase “company’s existence” and of the modal verb “shall” does not give a fair account of the meaning of the concept in the Common Law representation.

c) Syntactic Structure

Syntax plays a key role in the verbalization of sociocultural paradigms chosen by communities in the course of their separate historical experience. Issues related to syntax are inextricably tangled to patterns of culture, thought and identity emerging in a local network. There is a sameness of structure between language and experience. Communication with alterity bears the seal of agreed-upon conventions adopted by individuals. The position of the subject in the sentence is the mirror of the philosophical representation a community has of the role played by individuals. Vinay & Darbelnet suggest that French and English social positions are different.⁴⁰ The rationalist position of French ideology engage linguistic communities to give center stage to individuals (subjectivism) in the representation of experiential truth. Conversely, English gives precedence to sociohistorical determiners (objectivism) influencing individuals immersed in an empirical setting. Within the framework of communication and translation, syntactical structure is the iceberg submerging the cultural, ideological and philosophical underpinnings of communities involved in intercultural relations.⁴¹ Therefore, it is of relevance to make an adaptation in the process of translation to

⁴⁰ See J.-P. Vinay, J. Darbelnet, *op. cit.*, p. 331.

⁴¹ See J.-C. Gémar, *Traduire le droit. Lettre, esprit et équivalence*, in *op. cit.*

secure intercultural communication.⁴² Legal translation of OHADA uniforms acts offers an illustration of what could be considered as cultural annexation.

Table 7: Encourir une sanction pénale

<i>Original Version</i>	<i>English Version (First translation)</i>	<i>English Version (Second translation)</i>
Partie iii – dispositions pénales – titre 2 – infractions relatives à la gérance, à l’administration et à la direction des sociétés/article 890 (p. 218)	Part 3 – penal provisions – title 2 – offences relating to the management and administration of companies/article 890 (p. 294)	Part 3 – penal provisions – title 2 – offences relating to the management and administration of the company/article 890 (p. 419)
<i>Encourent une sanction pénale les dirigeants sociaux qui ont sciemment [...]</i>	<i>Any company executives who, knowingly, even without any sharing of dividends [...]</i>	<i>Shall face a criminal charge company management who has knowingly [...]</i>

The sociocultural substance is ethnographically converted in the syntactical structure of the legal text. The French sociocultural tradition places the subject at the helm of the historical process through which evolution is experienced. This state of affairs directs the linguistic community to distance itself from the convention (Subject + Verb + Object). The syntactic structure “encourent une sanction pénale les dirigeants sociaux qui ont sciemment [...]” is a demonstration of the hegemonic position of the subject who (re)shapes the normative convention of the life of a community in a specific institutional network. The precedence of the verb in the sentence is the expression of the activity (as opposed to passivity) and the preeminence of individual rationality in the shaping of a new social contract.

The English mainstream culture envisions legal norms as an assemblage in motion.⁴³ As the language of institutions, legal language is the verbalization of the evolving states of the normative model. The jurisprudence is a conceptual reform experienced by a community in the course of its historical evolution. It is the verbalization of the superorganic paradigm engaging community members to shift from one position to the Other. In this regard, the individual’s willingness is not of paramount value in the emergence of the new social convention. At the level of syntax, the subject keeps a passive position in the syntactic structure. The structure “Shall face a criminal charge company management who have knowingly [...]” gives center stage to the verb representing the instrument shaping the willingness of the community. This syntactic convention runs counter to local representation.

⁴² K. Sturge, *Cultural Translation*, in *Routledge Encyclopedia of Translation Studies*, Routledge Taylor & Francis Group, 2011, pp. 67-70. G. Bastin, *Adaptation*, in *Routledge Encyclopedia of Translation Studies*, Routledge Taylor & Francis Group, pp. 3-6.

⁴³ See S. Glanert, *Law-in-translation: an Assemblage in motion*, in *The Translator*, volume 20, no. 3/2014, pp. 255-272.

d) Style

The ethnographic process whereby specific communities represent their ontology is subjective. Indeed, communities have a local and subjective view of reality. Terms, concepts, notions in the text are artefactual representations of the local and experiential truth of communities. These semantic items appear following a specific design uncovering the traditional representation of the perceptual stance advocated by each community. The elected design of representation of identity and perception is referred to as style. The respect of style is of paramount importance for the optimization of receptivity in the target community. Legal communities (civil law and Common Law) have their respective traditions in the representation of truth. Vinay and Darbelnet support the following view: “le français préfère le présent au futur dans les avis où interviennent des considérations juridiques [...]. Mais l’anglais, plus empirique, met le verbe au futur.”⁴⁴

Table 8: Style

<i>Original Version</i>	<i>English Version (First translation)</i>	<i>English Version (Second translation)</i>
Partie i – dispositions générales de la société commerciale – livre 1 – constitution de la société commerciale – titre 3 – statuts – chapitre 6 – durée-prorogation/article 29 (p. 13) <i>Le point de départ de la durée de la société est la date de son immatriculation au registre [...]</i>	Part 1 – general provisions governing commercial companies – book 1 – formation of a commercial company – title 3 – articles of association – chapter 6 – duration-extension – section 1 – duration/article 29 (p. 121) <i>Except otherwise provided for by this uniform act, the existence of a company shall commence [...]</i>	Part 1 – general provisions governing commercial companies – book 1 – formation of a commercial company – title 3 – articles of association – chapter 6 – duration-extension/article 29 (p. 196) <i>The starting date of company’s existence is the date of its registration with the registry of commerce and securities, unless [...]</i>
Partie i – dispositions générales de la société commerciale – livre 1 – constitution de la société commerciale – titre 3 – statuts – chapitre 7 – apports – section 3 – réalisation des apports en numéraire/article 42 (p. 15) <i>Ne sont considérés comme libérés que les apports en numéraire correspondant à des sommes dont [...]</i>	Part 1 – general provisions governing commercial companies – book 1 – formation of a commercial company – title 3 – articles of association – chapter 7 – contributions – section 3 – realization of cash contributions/article 42 (p. 123) <i>The only cash contributions that shall be considered as fully paid up are those over [...]</i>	Part 1 – general provisions governing commercial companies – book 1 – formation of a commercial company – title 3 – articles of association – chapter 7 – contributions – extension – section 3 – payment of cash contributions/article 42 (p. 198) <i>The only cash contributions considered as fully paid up are sums over [...]</i>

⁴⁴ J.-P. Vinay, J. Darbelnet, *Stylistique comparée du français et de l’anglais*, op. cit., p. 131.

The literal translation is par excellence the demonstration of a Universalist approach in identity negotiation through text. The correspondence between the French present tense (“*Ne sont considérés comme libérés que les apports en numéraire correspondant à des sommes [...]*”) and the simple present tense in English (“The starting date of company’s existence is the date of its registration with the registry of commerce and securities [...]”) can be regarded upon as a stylistic annexation. It sustains a feeling of oddness. The modulation is therefore of major importance for the identity convergence.

V. Collaboration among legal translators

1. Legal translation and bilingualism

Language is the expression of culture and local experience in specific settings energized by distinctive sociohistorical headlines and artefactual processes used to represented collective identities. Bilingual areas, especially those bringing antinomies together, are intercultural hotspots encompassing a great number of stakes ranging from textual, to identity and social issues.⁴⁵ With regards to social uproars triggered by translation-related issues in bilingual areas, it becomes imperative to negotiate (legal) identities in the textual game.

The traditional methodological options (strategies and techniques) used to secure receptivity, inter-comprehension and, most importantly, intercultural communication seem to be outdated within the framework of an ever-changing world. Indeed, the immersion of translators in a local network of representation subsuming dynamic patterns of history, ideology, sociocultural and normative models constructed over time, along with artefactual resources (ethnographic conventions in language), determines them to bias the intercultural negotiation in translation. Multilingual countries and organizations are intercultural hotspots requiring efficient methods to secure intercultural communication and taper the social resistance which might derive from identity ascription. In this regard, Cameroon is an emblematic case of the necessity to bridge the gap between contrasting traditions of law, language and ethnographic conventions. This special status is due to the tug-of-war inside and outside Cameroon at a specific point in its history.

The colonial experience in Europe resulted in the defeat of Germany and the disruption of ideological and cultural patterns related to the existence of sociocultural models and the legal system. France and Great Britain took the lead and reframed the legal systems. Therefore, Cameroon, just like other multilingual countries and organizations, became the scene of an epistemic showdown. Polezzi suggests that: “The Latin word ‘*translatio*’ indicates the movement or transfer of objects and people across space [...]. Travel and its textual accounts are associated with a form of translation of the Other and the new in terms familiar to a home

⁴⁵ See V. Dullion, *Traduire les textes juridiques dans un contexte de plurilinguisme officiel: quelle formation pour quelles compétences spécifiques ?*, in *META*, volume 69, no. 3/2014, Presses de l’Université de Montréal, 2014, pp. 636-653.

audience. Translation, in turn, is configured as a form of transportation or appropriation of the foreign within the language and culture of the nation. The coupling between the figures of the traveler and the translator (or interpreter) is also well established and encompasses historical as well as phenomenological parallels.”⁴⁶

The complex historical background ensuing the travel of epistemic substance calls for a set of innovative methodologies to secure a fair negotiation and intercultural communication. There are historical and phenomenological parallels between Cameroon and the European countries pertaining to the European Union (EU). The negotiation of (trans)national unity and identity calls for a set of methodological strategies likely to achieve epistemic conversion. In this regard, collaboration with actors emerging from different local networks is an imperative for intercultural communication in translation.

2. Legal translaboration

In a globalized world, minority groups try to resist, expressing their identities through dedicated social and anthropological channels like text. Thus, the reach of a sociocultural consensus in a multicultural network of representation can be achieved only through collaboration between actors pertaining to distinctive cultural and sociohistorical micro-worlds constantly involved in interaction in institutional settings and organizations. Languages are tools expressing the identity, anthropological, sociohistorical, normative and esthetic model advocated by communities and their local setting. In this regard, translation is undoubtedly the in-between allowing intercultural communication to take place.

However, the case study of OHADA texts reveals that effective intercultural communication in translation, in particular in legal translation, cannot take place unless the content (epistemic truth conveyed through terms and concepts) and the cover (style and ethnographic convention) match the expectations of target communities. The results observed in the retranslation of legal texts reveal the dysfunction of the processual strategies implemented in order to achieve intercultural communication. It is of relevance to mention that ideologies determine translators to maintain an imbalance in what concerns terminological and conceptual representations. A groundbreaking methodology likely to secure sociocultural and institutional consensus by mobilizing actors pertaining to cultural micro-worlds is therefore required.

Translaboration, i.e the collaboration between actors belonging to distinct micro-worlds, is crucial in translation in order to reach the sociocultural consensus and an identity convergence. Alfer suggests that collaboration in translation is necessarily conducive to epistemic and stylistic decentering and conversion.⁴⁷ The

⁴⁶ L. Polezzi, *Mobility*, in *Routledge Encyclopedia of Translation Studies*, Routledge Taylor & Francis Group, 2011, pp. 172-173.

⁴⁷ See A. Alfer, *Entering the Translab: Translation as Collaboration, Collaboration as Translation, and the Third Space of Translaboration*, in *Translation and Translanguaging in Multicultural contexts*, volume 3, no. 3/2017, pp. 275-290.

experience-sharing in intercultural milieus allows the construction of an agreed-upon model in particular through techniques like the corpora-based approach.⁴⁸ The collaboration of stakeholders in multicultural networks of representation is a guarantee of sociocultural convergence, especially if the architecture of the participation is balanced.

VI. Recommendations

The receptivity of the legal text in translation is conditioned by the accuracy of the epistemic offer and the appropriateness of the stylistic approach especially in a high-stake domain like commercial translation.⁴⁹ In this regard, four stakeholders should be mobilized:

1. Legal practitioner(s) of civil law. They should provide the right interpretation of law ahead of re-verbalization by the Other.
2. Legal translator(s) having French as first language and a great deal of experience in legal translation. They should come up with the ethnographic specificities of French legal language.
3. Legal practitioner(s) of Common Law. They should play a key role by providing solutions to find a middle ground between static civil law and dynamic Common Law, giving an indication of the necessary adaptations to be carried out.
4. Legal translator(s) having English as their first language and a great deal of experience in legal translation. They should propose a stylistic offer likely to meet the expectations of the target culture.

VII. Conclusion

The current status of multilingualism and the plurality of legal cultures in African organizations like OHADA is the result of conceptual and epistemic travel across history, specifically during the colonization by European powers. Therefore, the identity and legal translation challenges encountered in European-designed Organizations, as well as in bilingual and bi-legal countries like Cameroon, are of great interest, including for European countries grouped in the European Union (EU). The results of our study indicate that intercultural communication in legal translation lies on the sociohistorical and cultural approach of the text. The efficiency of the traditional methodology in legal translation, in particular of literal translation, is called into question as it maintains the power gap between legal and cultural stakeholders. The ideological pattern resorted to by legal translators leads to cultural bias. Sociocultural consensus can therefore be found through experience-sharing in collaboration. Legal transloration, i.e, collaboration

⁴⁸ L. Biel, *Researching Legal Translation: A Multi-perspective and Mixed-Method Framework for Legal Translation*, in *Revista de Llengua i Dret/Journal of Language and Law*, Issue 68/2017, pp. 78-88.

⁴⁹ M. Olohan, *Commercial Translation*, in *Routledge Encyclopedia of Translation Studies*, Routledge Taylor & Francis Group, 2011, pp. 40-43.

among legal translators and legal practitioners coming from different communities, is the solution to secure the receptivity of translation and identity convergence.

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