



ISSN : 1875-4120
Issue : Vol. 17, Issue 2
Published : February 2020

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Summary of Young-OGEMID Symposium No. 8: "Doubletalk: The Problems and Pitfalls of Bilingual Lawyering (September 2018)" by J. Lowther

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TDM is linked to **OGEMID**, the principal internet information & discussion forum in the area of oil, gas, energy, mining, infrastructure and investment disputes founded by Professor Thomas Wälde.

Summary of Young-OGEMID Symposium No. 8: “Doubletalk: The Problems and Pitfalls of Bilingual Lawyering (September 2018)”

By Jake Lowther, LL.M. (Berlin)*

General Summary

*Young-OGEMID’s (YO) eighth virtual symposium advised junior practitioners, academics and law students on the problems and pitfalls of bilingual lawyering. While conversational fluency is nothing to be sniffed at, true legal fluency remains elusive for many practitioners. As YO moderator **Prof. S. I. Strong** stated in her introduction, “[b]ilingual lawyering is often much more difficult than it seems.” During the discussion, academics and practitioners from around the world discussed the problems associated with bilingual lawyering and how to move from conversational fluency to legal and business fluency. Although officially running from 5 September to 14 September 2018, the level of interest in the symposium was such that the final post was received on 18 September 2018. The eighth YO virtual symposium featured the following speakers:*

- **Prof. Nicolás Etcheverry**, Dean of the University of Montevideo Law School, Uruguay;¹
- **Prof. Katia Fach Gómez**, Professor of the University of Zaragoza, Spain;²
- **Prof. Veronica Taylor**, Professor of the Australia National University;³
- **Ms Salua Kamerow** of Penn State University;⁴ and

* Jake Lowther is an Australian-qualified lawyer who recently completed the Humboldt-University of Berlin LL.M. Program in International Dispute Resolution.

¹ Prof. Dr. Nicolas Etcheverry is the Dean and Professor of Legal Philosophy, Ethics and Rhetoric at the University of Montevideo Law School in Uruguay and a member of the Instituto de Filosofía del Derecho of Uruguay, the Asociación Argentina de Filosofía del Derecho and the International Academy of Comparative Law. This past summer, he was the General Reporter for the General Topic of “Bilingual Legal Education: The Need and the Challenges” at the 2018 Congress of the International Academy of Comparative Law in Fukuoka, Japan. He holds a doctorate in law and social science from the Universidad de la República (UdelaR).

² Prof. Katia Fach Gómez is a Profesora Titular de Derecho Internacional Privado at the University of Zaragoza in Spain and the author of two books on bilingual lawyering: *Comparative Law for Spanish-English Speaking Lawyers: Legal Cultures, Legal Terms and Legal Practices / Derecho comparado para abogados anglo- e hispanoparlantes: Culturas jurídicas, términos jurídicos y prácticas jurídicas* (Edward Elgar Publishing Ltd., 2016, with S.I. Strong and Laura Carballo Piñero) and *El derecho en español: terminología y habilidades jurídicas para un ejercicio legal exitoso* (University of Texas Press, 2014). She was Adjunct Professor at Fordham University (New York), Visiting Scholar at Columbia Law School (NY), and Pre- and Post-Doctoral Grantee at the Max-Planck Institut (Germany). She has also lectured at numerous European and Latin American Universities (Germany, France, Czech Republic, Mexico, Brazil, Guatemala, Chile, Colombia and Peru).

³ Prof. Veronica Taylor joined the School of Regulation and Global Governance (RegNet) at Australia National University (ANU) in 2010 as Professor and was Director until July 2014, at which time she took up the Deanship of the ANU College of Asia and the Pacific. Prior to joining the ANU she was Director of the Asian Law Center at the University of Washington, Seattle (2001-10) and remains a Senior Advisor to that Centre. In 2010 she was the inaugural Hague Visiting Professor in Rule of Law (HiiL/Leiden University). In addition to her academic expertise, Professor Taylor has over twenty-five years’ experience designing and leading rule of law and governance projects for governmental, inter-governmental and non-governmental organizations from around the world.

⁴ Salua Kamerow works as a Spanish linguist for Penn State University – Berks campus. She is a Colombian lawyer with a Master of Laws from Penn State University and Master of Science in Translation from New York University. Her interests vary among contrastive stylistics and terminology. She has extensive expertise translating and interpreting in the fields of Energy, Community Justice, and Alternative Dispute Resolution.

- Mr Anees Naïm of Bablex.⁵

Speaker 1: General Reflections on Bilingual Legal Education

Prof. Etcheverry began the symposium with a reflection on the recent congress of the International Academy of Comparative Law in Fukoka, Japan (Congress), which in part discussed the needs and challenges of Bilingual Legal Education with reference to several jurisdictions. It appears the situation varies considerably between those jurisdictions, but the full reports are yet to be published.

Prof. Etcheverry then presented four of the key topics discussed during the relevant sessions of the Congress:

1. If there is a trend towards the promotion of an ‘International Legal Education’ (as an expanded Bilingual Legal Education) among law schools worldwide, what challenges do students and academics face in building on this trend?
2. Given the return of nationalism to certain regions of the world, does this constitute a roadblock in terms of pursuing an International Legal Education?
3. How does one separate the political and the academic issues in today’s interdependent world?
4. How many hours per course or per semester should be taught in another language so as to be considered bilingual (or multilingual)? Could such requirements be standardized?

Q&A Session

In the Q&A session that followed, Prof. Strong referenced Prof. Etcheverry’s introduction to the General Report from the Congress and his opinion that it is outdated to consider the bilingual legal education debate in terms of nationalism versus internationalism, as each needs to complement the other in order to survive and develop into the future. Prof. Strong also referenced Prof. Etcheverry’s recognition of the possibility that bilingual lawyers are needed not only for cross-border practice but also in domestic cases where parties or witnesses are not fluent in the majority language.

Given that many countries are experiencing a surge in nationalism that could thwart any efforts to increase bilingual legal education in that jurisdiction, Prof. Strong then asked whether the participants at the Congress shared the perspective that Bilingual Legal Education was a national as well as an international issue.

In response, Prof. Etcheverry stated that the perception at the Congress was that attitudes to globalization are in a ‘tug of war’, pulling either towards an ‘open internationalization in order to find new markets’ or towards a ‘more protective, sheltered nationalization’. He also noted that the populist and the nationalist agenda typically targets the emotions as opposed to the rational, which leads to more easily manipulated societies.

⁵ Anees Naïm is founder and CEO of Bablex, a London/Beirut based start-up in the alternative legal support area specializing in providing bilingual Arabic-English assistance on international disputes matters. Before pursuing Bablex, Anees trained as an English solicitor and practiced for a number of years as an international arbitration associate with the international law firm Herbert Smith Freehills in London and Dubai.

Another issue raised by **Prof. Etcheverry** was the number of different dialects spoken in certain countries. Information was presented in relation to developments in “vast areas of China” as well as in smaller states such as Belgium and Italy. In those examples, the use of English as the *lingua franca* was not seen as a solution, but rather a faster and more dangerous way of losing ‘autonomy or independence’.

Participant **Cristina Montes**, a lawyer and academic from the Philippines, referenced her experience of a multi-lingual legal education and in particular, her exposure to the Spanish ‘notion of law as both *derecho* and *ley*’. While the law is made up of ‘statutes and legal precedents’, fundamentally it is about ‘the allocation of rights and duties between the parties’.

In response, **Prof. Etcheverry** agreed with the distinction between *derecho* and *ley*. He then referred to an idea referencing St Thomas Aquinas and expressed in Spanish as ‘*¡No hay derecho!*’, which refers to laws that may provide the ‘appearance of justice’, but in reality ‘do not reflect the proper idea of justice’. Such laws become ‘anti-laws or non-laws’ because they fail ‘to protect the rights and duties’ of relevant persons.

Participant **Ms Montes** then responded with references to the hybrid common and civil law legal traditions of the Philippines and the contemporary relevance of commentaries by Spanish jurists on the Spanish Civil Code (approved by Royal Decree of July 24, 1889) (*Código Civil*) to legal education in the Philippines.

Speaker 2: Difficulties in Drafting or Finding Materials to Teach Bilingual Lawyering

Second speaker **Prof. Gómez** continued the discussion on bilingual legal education by sharing her experiences of the difficulty in matching legal materials to the readers or students. This difficulty arises from the diversity of persons interested in pursuing a bilingual legal education course. Any generalizing and simplifying by resorting to a random selection of materials has a detrimental effect on ‘quality and effectiveness of both individual and collective learning’. **Prof. Gómez** suggests that, ‘like a good couturier’, instructors tailor their course materials to the language and legal skills of the students as well as their preferences and objectives. The ‘good number’ of available materials means that such preparation need not be a ‘Herculean’ task.

Given that a report presented to the Congress ‘explicitly refers to the importance of supporting trilingual education’, **Prof. Gómez** posed three questions to the hypothetical students in her trilingual legal course.

1. Do you understand the following:
 - a. *Dado el anterior traslape entre algunas causales para aceptar una tutela y para negar un exequatur*; and
 - b. *Haciendo nugatoria la intención de las partes de pactos arbitrales de que sean expertos y no jueces los que resuelvan sus controversias?*

If yes, where did you study Spanish (Spain or Latin America)? Can you find the words *traslape* and *nugatoria* in both legal and non-legal dictionaries?

2. Do you think that *et oui c’est ce qui s’est produit* is the right translation of *si es que esto es así*?
3. Can you explain the legal meaning of *los méritos del laudo* in English?

Q&A Session

In the Q&A session that followed, participant **Michael McIlwrath**, Global Chief Litigation Counsel of Baker Hughes GE Oil & Gas, reflected on the challenges faced when he and fellow organizers presented the Global Pound Conference. Taking place in 29 countries around the world, the same 20 questions were put to counsel, judges, arbitrators, mediators and academics, among others, to obtain ‘comparable data’.

The questions were usually translated into the language of the location in which each event was held. A multi-national group of leading academics and practitioners assisted with the difficult tasks of drafting and translating the questions. Some linguistic compromises were ‘less than ideal’, and particular challenges included definitional and political. Indeed, **Mr McIlwrath**, even wondered whether it was possible to genuinely translate information with 100% effectiveness.

For example, the definitions of ‘mediation’ and ‘conciliation’ might vary across languages and jurisdictions and this posed a problem in generating comparable questions and answers. Further, finding a universal description of different forms of alternative dispute resolution (ADR) could prove challenging. In one jurisdiction, ‘binding’ versus ‘non-binding’ procedures might prove sufficiently descriptive of certain ADR methods, but such a description could not necessarily be applied in other jurisdictions or might be resisted by practitioners who insist that mediation is binding when it results in a settlement and therefore the distinction can be misleading to others.

Participant **Ms Montes** then responded by reference to legal principles that exist in one legal system and language but not in other systems or their respective languages. For example, English trusts law versus the *fideicomiso* in Spain.

Prof. Etcheverry considered the concept of ‘trust’ as a translation of the term *confianza*, or ‘confidence’. He then developed on the duality that one is either trusting or mistrustful, depending largely on the individual’s educational, ethical and cultural background. The sanctions for breaking that trust will differ accordingly, but the mistrustful person employs more complicated rules and is therefore less efficient. Indeed mistrustfulness is more expensive, demanding ‘more cameras, more mechanical and technical controls, more stamps, signatures and double signatures’ to assuage that mistrust. In the Latin American context, **Prof. Etcheverry** then referred to the politically and economically damaging effects of *la viveza criolla*, loosely translated as ‘national (or regional) wickedness’, which has eroded citizens’ trust in one another.

Writing from his new office, independent arbitrator **Mark Kantor** wondered how one might identify in advance the characteristics of individual students. In response, **Prof. Gómez** stated that she prepares a test for her students on the first day to ascertain the level of knowledge and determine any specific interests. There is also more flexibility with course syllabuses in Spain in comparison to other jurisdictions.

Following on from **Mr Kantor**’s question, **Prof. Strong** wondered about the size of the typical bilingual legal education course. The smaller the class, the easier it is to tailor the materials to the students.

In direct response to Prof. Gómez's questions, Prof. Etcheverry provided some answers, to which Prof. Gómez in turn provided some comments:

1. *Traslape* might be translated as 'to cover one thing with other things', while *nugatoria* might be translated as 'false' or 'frivolous'. However a Spanish jurist conducting a peer review suggested not to use either term as 'a Spanish reader wouldn't understand them', suggesting difficulties even in using their 'common language'.
2. The controversial⁶ translation of *et oui c'est ce qui s'est produit* to *y sí, esto es lo que ocurrió* leads to a discussion of various legal issues such as the ethical duties of lawyers, the legal regime applicable to sworn translators and comparative law.
3. One translation of *los méritos del laudo* might be 'the persuasive or convincing arguments of the arbitral award', but this may lead to reflections on 'the influence of legal English in other languages' as well as 'false friends' in the 'legal-linguistic context'.

Speaker 3: ANU's "Negotiating with Japan" program

The third speaker in the symposium, Prof. Taylor, Professor of the Australia National University, shared her experiences from the Australian bilingual legal education context. The trend there, in part due to government support, has been away from teaching 'law and language x' courses to 'blending law and language through in-country, intensive courses', for example in Indonesia or Myanmar.

Government support is utilized in one of Prof. Taylor's skills programs, 'Negotiating with Japan'. In that course, a number of final year law students from around the country are recruited to compete in 'an annual Intercollegiate Negotiation and Arbitration Competition (INC) held annually in Tokyo', a bilingual English-Japanese competition. The aim is to bring students to a functional language level so as to make a cogent argument in front of professional arbitrators, among others, within five months.

Referring to the previous topic, Prof. Taylor listed the course materials used, including 'legal terminology lists, dictionaries and reference books' as well as 'corporate manuals designed for Japanese professionals entering large firms, which cover topics such as how to bow correctly and how to use honorific language appropriately'.

As a social-legal scholar who trained as a legal interpreter in Japanese, Prof. Taylor explained that she takes a socio-linguistic approach, interviewing Japanese attorneys, judges and businesspeople to learn 'what they say when they want to make a point, or nudge a counterpart, or subtly signal disagreement'. In addition, by filming the students' practice sessions and the competition sessions, there is an opportunity to consider 'how to "perform" socio-linguistically by, for example, analyzing our own and our counterparts' body language, or working on our own verbal tics'.

⁶ See, e.g., https://www.eldiario.es/politica/denuncia-Puigdemont-Llarena-traduccion-declaraciones_0_808419254.html; <http://www.expansion.com/economia/politica/2018/08/28/5b8503a946163f7f658b45a9.html>; <https://www.elindependiente.com/politica/2018/09/01/denuncia-abogado-gonzalo-boye-manipulacion-demanda-llarena/>; <https://www.laverdad.es/murcia/traductora-murciana-apunta-20180830170150-nt.html>.

Given that one of the ‘ethical norms’ of the competition is the obligation of native speakers to help their non-native speaker counterparts, a lot of work goes into developing arguments in ‘plain’ English (or Japanese). According to **Prof. Taylor**, this training is as much needed by the native speaker students as the second-language students.

Prof. Taylor concluded by acknowledging that while success at the competition is welcome, the ‘real prize’, is that students learn that it is possible to succeed in a second language by, ‘having a go’ (making an attempt). Success is achievable through preparation, being ‘flexible and warm’, ‘treating language and cultural norms as equally important’ and not becoming ‘paralyzed’ by any linguistic errors.

Q&A Session

In the Q&A session that followed, **Prof. Strong** referred first to the need to ‘have a go’ (meaning simply to make an effort) and the generosity of native speakers in relation to linguistic mistakes when speaking another language, noting that ‘the key is to just start - if you wait until you’re perfect, you will never get started’.

Prof. Strong then turned to the idea of ‘supplementing linguistic fluency with cultural fluency’. Given the existence of certain key cultural differences, such as ‘high context’ cultures where ‘many things of importance are left unspoken’ (e.g. Japan) and ‘low context’ cultures ‘where people often say exactly what they mean’ (e.g. the US or Australia), such supplementary courses are ‘critical for non-native speakers to catch on to the hidden nuances’. Similar, the difference between ‘polychronism’, where deadlines are more fluid and personal relationships are key (e.g. in Latin America and the Mediterranean) and ‘monochronism’, where deadlines are valued highly (e.g. in Germany or the US) can lead to ‘significant problems’ where international parties fail to appreciate their cultural differences.⁷

Prof. Strong concluded her response by asking whether other law programs offer a similar type of class to ‘Negotiating with Japan’ where ‘cultural norms are included as part of the linguistic instruction’ and querying whether legal practitioners might achieve such socio-legal fluency through other means.

Responding to **Prof. Strong**’s reflections, **Prof. Taylor** stated that the polychronic versus monochronic difference frequently manifests in transactions with Japanese parties. For example, being ‘on time’ in a Japanese business context ‘means arriving ten to fifteen minutes ahead of the appointed time and being seated, with bag and coat neatly folded, composed and ready to start’. In a transaction, the delivery of documents or goods is also expected ‘ahead of the appointed time’. This can also impact on negotiations, where in the Australian English context, would-be reassuring phrases such as ‘we’ll cross that bridge when we come to it’ can ‘provoke anxiety in counterparts’.

In respect to the instruction of students in ‘the socio-linguistic aspects of transnational lawyering’, **Prof. Taylor** referred to two techniques:

1. employing mentors and guest speakers in ‘enrichment sessions’, who are typically alumni willing to share their experiences of legal and business practice in the target country; and

⁷ For additional information, see, e.g. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2884126.

2. promoting internship possibilities in local firms in the target country.

Prof. Taylor concluded her response with an old Japanese saying: 若い時の苦勞は買って
もせよ [*wakai toki no kurou wa katte mo se yo*], which means ‘endure hardship when you
are young, even if you have to purchase it yourself’.

Speakers 4 and 5: The Arabic-English Perspective

Speaker 4

The final part of the eight YO virtual symposium featured two speakers, **Ms Kamerow** of Penn State University and **Mr Naïm** of Bablex, paired due to their somewhat similar professional experiences, in spite of different linguistic and geographic backgrounds.

Ms Kamerow kicked off the discussion by sharing her insights on bilingual lawyering from the ‘applied linguistics perspective’ and by describing how translations in the legal field are dealt with. By way of historical background, **Ms Kamerow** pointed out that ‘the translation of legal texts is not a modern activity and one of the oldest such translations known is the *Corpus Iuris Civilis*.⁸ First translated into Greek before several other languages followed, these translations had a significant influence many legal systems.

Ms Kamerow continued her reflections on the history of legal translation, a task that ‘exposed the methodological issues associated with the complexity of the source texts and the equivalent concepts in the target text’. A focus on ‘the terminological perspective’ meant that comparative law became a ‘reliable discipline providing proper answers’.

According to **Ms Kamerow**, there are two main ways to view legal linguistics from a translator’s perspective:

1. Register and Genre; and
2. Terminology.

The Register and Genre perspective holds that text is a ‘natural language used for communication’.⁹ Thus emails or telephone conversations are text and foreign lawyers need to understand how certain texts are more appropriate according to their context. For example, a native English speaker when visiting a colleague’s office will not say: ‘Dear colleague, I hope this visit finds you well’, because such a text is more typical of an email. The texts set the tone of the register and the register is ‘those specialized words of a field that you combine in a text to express its meaning; usually high or low’.

Register is taught in universities at undergraduate level, but at post-graduate level (e.g. the LL.M. level), it is assumed knowledge. This poses challenges to foreign students, but these can be resolved with recourse to ‘parallel texts’, being ‘texts of the same genre that provide solutions on how the terms and language patterns are used’. The genre is similar to the register, but it ‘focuses on the conventional structures commonly used when building a text’ (e.g. the structure of an academic article versus an email). **Ms Kamerow** suggested that where

⁸ A collection of jurisprudence ordered by Emperor Justinian, of the Eastern Roman Empire.

⁹ D. Biber and S. Conrad, *Register, Genre, and Style* (Cambridge University Press, 2009).

foreign lawyers are facing problems with document drafting, they should ‘ask a friendly associate’ for help.

Ms Kamerow then turned to the ‘serious business’ that is Terminology. There are many available resources that present ‘terms in the legal context, from one system to another, from one language to another’. However these definitions are not always clear. Translators organize ‘term bases’ at three levels: the language, the concept, and the term. This is because a concept that exists in one part of the world may not exist in another, or may vary drastically to the point that it results in different terms. By way of example, **Ms Kamerow** cited the English term ‘worthier title’, a concept she defines as:

[a] common-law doctrine providing that an heir receiving a devise of an estate that is the same as the estate he or she would receive by descent if the grantor died without a will receives the property by descent rather than by devise since descent has been thought to convey a better title.

Ms Kamerow then posed the question: ‘Can you think of a term in your own country/legal system that uses that concept definition?’ If yes, how would you deal with it in an international setting? Translators solve these problems with ‘ISO guided term-bases’, such as the following built in Interverbum Tech:

1. CONCEPT LEVEL

Section Kamerow Dictionary

Definition One of the key instruments in international arbitration. It applies to the recognition and enforcement of foreign arbitral awards and the referral by a court to arbitration.

Definition Source <http://www.newyorkconvention.org/>

Example 2003 U.S. Dist. LEXIS 9122, 2003 Westlaw 21254261

Example source http://www.uncitral.org/clout/clout/data/usa/clout_case_577_leg-1396.html

Subject field ADR

2. TERM LEVEL

English

Convention on the Recognition and Enforcement of Foreign Arbitral Awards

Term type Full form

Context Recognizing the growing importance of international arbitration as a means of settling international commercial disputes, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the Convention) seeks to provide common legislative standards for the recognition of arbitration agreements and court recognition and enforcement of foreign and non-domestic arbitral awards.

Context source http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention.html

Part of speech Proper noun

Grammatical number: Mass noun

Geographical usage US

Process status Finalized

Spanish

Convención de las Naciones Unidas sobre el Reconocimiento y la Ejecución de las Sentencias Arbitrales Extranjeras

Term type Full form

Context Al menos que entre las partes en un acuerdo sobre arbitraje exista un compromiso expreso en contrario, cuando se cumplan los requisitos para la aplicación tanto de la Convención Interamericana sobre Arbitraje Comercial Internacional como de la Convención sobre el Reconocimiento y la Ejecución de Sentencias Arbitrales Extranjeras, si la mayoría de dichas partes son ciudadanos de un Estado o Estados que han ratificado o hayan adherido a la Convención Interamericana y sean Estados miembros de la Organización de los Estados Americanos, se aplicará la Convención Interamericana. En todos los demás casos se aplicará la Convención sobre el Reconocimiento y la Ejecución de las Sentencias Arbitrales Extranjeras.

Context source https://www.poder-judicial.go.cr/escuelajudicial/archivos/documentos/revs_juds/revista%2099/pdf/art_10.pdf

Grammatical gender Feminine

Part of speech Proper noun

Grammatical number: Mass noun

Geographical usage LATAM, ES

Process status Finalized

Finally, and given the many grammatical changes between languages, **Ms Kamerow** suggested that foreign practitioners maintain their own ‘term bases’ to promote consistency throughout their texts.

Legal Translations

At this point, and following on from the discussions of the difficulty in obtaining accurate translations, **Prof. Strong** forwarded a link to a report about the unfortunate translation attempts by the United Kingdom in its White Paper on Brexit.¹⁰

¹⁰ Available here: <https://www.euractiv.com/section/uk-europe/news/translations-of-british-brexit-plan-provoke-ridicule/>.

Speaker 5

The fifth and final speaker in the symposium was Mr Naïm, an international arbitration lawyer who left to set up a company that provides specific Arabic-English legal language support. In his post he reflected on some of his experiences of practice as well as offering some practical advice.

Mr Naïm began with an introduction to Arabic, ‘the primary language of 25 countries in the Middle East and North Africa’. He explained that Arabic dialects (*ammiya*) differ from country to country and are often only spoken dialects. The ‘common dialect’ ‘used, written and understood by the majority of Arabic speakers’ is Modern Standard Arabic (MSA) or *fusha*. MSA is the language used in law, business and most media.

Mr Naïm noted that Arabic is written from right to left, but numbers are written from left to right. When writing a word, letters need to be joined and most letters change depending on their position in a word. For example, the word ‘law’ is ‘قانون’ and the individual letters are ق ن و ا ن و ن . It is not possible to capitalize letters in Arabic. Arabic is also the authoritative language of many bilateral and multilateral treaties.¹¹

Mr Naïm then turned to some examples of the difficulties faced in his practice, first mentioning ‘limited feedback’. International practitioners often lack sufficient knowledge of Arabic to provide the necessary input or supervision when drafting critical documents or considering evidence. In such cases, it is suggested that lawyer-linguists should be involved as well as providing translators with a comprehensive brief on the objectives, potential pitfalls and key legal and factual issues of the matter.

Secondly, Arabic’s use of lengthy sentence structures results in having ‘run-on sentences’ by English standards. Such long sentences are particularly common in local court judgments in the UAE and Egypt. Consequently, it takes more time and experience to properly understand and accurately translate such sentences. Mr Naïm suggested that in such cases, lawyer-linguists are needed and translators ‘should not be afraid to use plain English’, so long as the integrity of the translation is maintained.

Thirdly, defined terms in a text cannot be distinguished by capitalization, as it does not exist in Arabic. As a solution, Mr Naïm suggested adding ‘this will be referred to below as “x”’ in the definitions section, or to use **bold** or *italics* for defined terms, or to include a schedule of defined terms.

Fourthly, Mr Naïm referred to the use of acronyms, which while possible is less common in Arabic and more difficult to read. The solution is to use Arabic acronyms only where the letters ‘can connect and form a legible word for the Arabic reader’ (e.g. UNCLOS can be translated as (الانكلوس).), or alternatively to use English acronyms in the Arabic text.

Finally, there are issues of consistency where more than one translator is involved. Mr Naïm suggested that there should be an agreed glossary and a case or transaction manual and client input and agreement obtained ‘early on’ in the process. Such manuals should provide sample

¹¹ See, e.g., *Agreement on Promotion, Protection and Guarantee of Investments amongst the Member States of the Organization of the Islamic Conference* (signed 5 June 1981, entered into force February, 1988) UNTS 1495.

translations and include key terms and general drafting rules (e.g. how to address Islamic dates and their corresponding Gregorian dates in the text).

Turning to the future, **Mr Naïm** anticipates increasing cross-border investment in the Arab region and therefore more disputes. He cited the Saudi Arabian ambition to construct a new city and free trade zone, Neom,¹² which may even provide for bilingual legal services. He also expects the use of English and Arabic together to continue both within the Arabic region as well as elsewhere in respect to issues relating to the Arab world. As a result, **Mr Naïm** considered that ‘much more can be done in the bilingual Arabic-English legal linguistics sphere’ and there is a corresponding need for more Arabic-English legal linguists. He was not aware of any bilingual legal education programs in the Arab region and suggested this as a ‘potential step forward’ which he hopes to be able to contribute to.

Q&A Session

In the Q&A session that followed, participant **Orlando Cabrera** asked about MSA and, given that it is used, written and understood by the majority of Arabic speakers, in which Arabic countries is MSA not used. In response, **Mr Naïm** clarified that while MSA is the official language in *all* Arab states, its usage is not as a conversational language and knowledge of MSA depends on the individual and their level of education. MSA and regional dialects can vary widely and those who grow up speaking Levantine Lebanese Arabic with their parents will likely need to learn MSA separately.

The fourth speaker of this symposium and non-native Arabic speaker **Ms Kamerow** confirmed that ‘the struggle is real’ in respect to learning Arabic. She then asked fifth speaker **Mr Naïm** follow up questions regarding the proportion of legal documents written in MSA and what a lawyer might do with an affidavit written in a dialect. In response, **Mr Naïm** stated that approximately 95% of the documents he sees are in MSA. The situations in which he has seen *ammiya* dialects include:

1. transcripts of police interviews in the Egyptian dialect;
2. transcripts of a TV interview in the Iraqi dialect as evidence; and
3. Whatsapp messages in the Saudi dialect in English Court proceedings for disclosure purposes.

Although **Mr Naïm** stated that he has not seen affidavits given in *ammiya*, his approach would be to ‘stay as true as possible to the linguistic features of the source text’, which would probably result in a ‘more colloquial and less formal’ text in the target language.

Prof. Strong then asked the speakers about the interpretation of oral testimony or negotiations and the difference between interpretation and translation. She also asked for advice on how to select the right translator and of any particular questions to ask before retaining a translator’s services.

Ms Kamerow then explained that interpretation is oral whereas translation is written. She also mentioned ‘sight translation’, often used in court, in which a document is read silently by the interpreter who then reads it aloud in the target language. The difficulty with legal

¹² www.neom.com.

interpretation is that ‘there are so many subject-matter fields that it is almost impossible to know all the terminology by heart’.

Adding to the previous response, **Mr Naïm** stated that legal interpreters need a lot of experience as well as a higher level of business and legal fluency, given the limited time they receive to process what is said. They need to have studied all the particular issues and terms relevant to the matter. He then recounted a recent experience in which he conducted an interpretation from Beirut over Skype of an interview with a witness sitting in Egypt, typing a live feed of the witness’s answers in English to lawyers sitting in London, who were then able to respond with questions which were then relayed to the witness in real time.

As for finding the right translator, **Mr Naïm** suggested that the best way was to test candidates and have an expert in the source and target languages to evaluate their work. In the case of lawyer linguists, his key criterion is whether the candidate was exposed to the legal languages for at least five years in a professional or academic setting.

Ms Kamerow advised YO members that, if hiring via an agency, they make sure that the same translator works through the whole document. This is because agencies can divide a document between translators, affecting consistency. They should also be sure that the agency employs the translator with the most relevant experience. If hiring a translator directly, **Ms Kamerow** also recommended that YO members ensure that the translator has insurance, which they will if they consistently work for large clients, as ‘protection’ in the event of litigation. She also advised YO members to be sure that the translator is willing to testify if required, given the usage of ‘forensic transcription translation’.

Participant **Karim Mariey**, a lawyer in London, echoed many of **Mr Naïm**’s observations on bilingual legal practice in the Arabic world. For him, the main issue is that ‘Arabic does not translate particularly well to English’. When providing feedback to translators, the nuances of the Arabic language can result in lengthy debates regarding the correct translation of certain key terms. Due to difficulties with Arabic to English interpretation during hearings, **Mr Mariey** suggested that interpreters be:

1. fluent in MSA;
2. fluent in the relevant dialect; and
3. sufficiently familiar with the Arabic legal language.

To mitigate the risk of incorrect interpretations, **Mr Mariey** stated that he personally interviews prospective interpreters and asks them to interpret an extract of text.

Finally, **Prof. Strong** thanked the participants for their input before adding four additional points:

1. that legal practitioners should provide their interpreters with a ‘list of key terms and names’ likely to come up during the discussion;
2. to never assume that a person does not speak the language on the basis that they have hired an interpreter and be careful of what you say within hearing distance of any relevant parties;
3. to ensure your own translator looks over documents submitted from the other side; and

4. to make use of bilingual lawyers on the team who can ‘double-check’ each others’ work and perform ‘rough, preliminary’ translations of documents.

Law and Corpus Linguistics Technology Platform

Following the final Q&A session of the eighth YO virtual symposium, moderator **Prof. Strong** brought a new program to the YO members’ attention. The Brigham Young University Law School’s ‘Law and Corpus Linguistics Technology Platform’ claims to use ‘naturally occurring language in large collections of texts called “corpora” to help determine the meaning of words and phrases’. According to the press release,¹³ the ‘user-friendly’ interface offers the ability to search corpora by terms and phrases with various filters. The corpora also offer ‘collocation searches’, for insights into the meanings of words as well as their relationships. **Prof. Strong** considered the program to be a potential ‘recipe for disaster when used by non-specialists’. (see last paragraph below).

In response, participant **Damien Charlotin**, an academic based in the UK, stated that he did not expect the program to be a ‘game-changer’ and that it is better to inform a debate with empirical data. **Mr Charlotin** stated that he is a user of ‘Natural Language Processing’ (NLP) in the context of his PhD, but in his experience a ‘corpus-based approach’ can be useful to:

1. confirm conclusions reached by other means;
2. inform the debate in conjunction with empirical evidence; and
3. obtain ‘big-picture’ insights that would be otherwise unavailable

However he notes that people are often skeptical of conclusions reached by data analysis alone and those conclusions are often hard to come by because the data is ‘blurry’. Thus such methods will remain ‘ancillary’ and are unlikely to displace ‘other “legal” arguments’ needed by lawyers.

Consequently, the relevance of the program depends on the ‘interpretative philosophy’ and position in a given case. For example, in respect to constitutional issues it will be more relevant to originalists. However **Mr Charlotin** then opined that even non-originalists should ‘cheer the availability of clean, more complete datasets’. Although this may only prove that it is ‘hard to reach a conclusion and other interpretative means should be preferred’.

Mr Charlotin concluded by acknowledging the problem that ‘NLP techniques rely heavily on the data that is analyzed’, which means that ‘the decision as to what enters the dataset and what is left out is crucial’.

In the final post of the symposium, **Prof. Strong** considered that she and **Mr Charlotin** adopt a very similar view on this issue. Her major concerns were:

1. not knowing or being able to control the inputs or not knowing how relevant they may or may not be to the issue at hand; and
2. people trying to force the data to do something that it was not really designed to do simply because the program is new and supposedly objective.

¹³ Available here: <http://src.bna.com/BRj>.

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