

Michigan Journal of International Law

Volume 11 | Issue 4

1990

Translation of Legal Texts: Three English Versions of the Swiss Federal Statute on Private International Law

Walter König

Follow this and additional works at: <https://repository.law.umich.edu/mjil>



Part of the [Comparative and Foreign Law Commons](#), and the [Legislation Commons](#)

Recommended Citation

Walter König, *Translation of Legal Texts: Three English Versions of the Swiss Federal Statute on Private International Law*, 11 MICH. J. INT'L L. 1294 (1990).

Available at: <https://repository.law.umich.edu/mjil/vol11/iss4/8>

This Article is brought to you for free and open access by the Michigan Journal of International Law at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Journal of International Law by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mLaw.repository@umich.edu.

TRANSLATION OF LEGAL TEXTS: THREE ENGLISH VERSIONS OF THE SWISS FEDERAL STATUTE ON PRIVATE INTERNATIONAL LAW

*Walter König**

I. THE SWISS FEDERAL STATUTE ON PRIVATE INTERNATIONAL LAW OF 1987

Notwithstanding the importance of private international law, international civil procedure, international enforcement law and international arbitration law in Switzerland, access to these fields used to be quite difficult. Diverse rules were contained in numerous multilateral and bilateral international treaties, in some federal statutes, in 26 cantonal codes of civil procedure, and in an intercantonal treaty on arbitration, but mainly in the extensive case law of the Swiss Federal Tribunal. It took Switzerland 140 years after its first Federal Constitution to adopt a comprehensive code, which now supersedes much of the old law. This code was enacted on December 18, 1987, and took effect on January 1, 1989. The official titles are:

Loi fédérale sur le droit international privé (LDIP)

Bundesgesetz über das Internationale Privatrecht (IPRG)

Legge federale sul diritto internazionale privato (LDIP)

Like all Swiss federal statutes, the Private International Law Statute ("PIL Statute") was enacted in three versions of equal authenticity, i.e., in the German, French and Italian languages. However, none of these national languages of Switzerland is predominantly used in international private relationships—particularly not in commerce, industry, banking, insurance, finance or transportation. In dealing with most parts of the world, Swiss lawyers must correspond in English. Accordingly, the demand for a reliable English translation of the PIL Statute is particularly acute. Three teams of practicing attorneys, working independently, anticipated this demand and have prepared and published English translations.¹

* Walter König, a graduate of the Universities of Zurich (Dr. Jr. Utr. 1967) and Michigan (M.C.L. 1969), practices law in Zurich.

1. P. KARRER & K. ARNOLD, SWITZERLAND'S PRIVATE INTERNATIONAL LAW STATUTE (1989); F. THOMANN, B. MEYER-HAUSER, A. REBER & G. INSLEY, SWISS FEDERAL ACT ON INTERNATIONAL PRIVATE LAW (1989) [hereinafter Swiss-American Chamber of Commerce translation]; UMBRIGHT, BADERTSCHER & JAAG, FULBRIGHT & JAWORSKI, LDIP-IPRG-

II. THE DIFFICULTIES OF LEGAL TRANSLATIONS

Working with translated legal materials can be frustrating and treacherous. Lawyers who are regularly forced to do this soon realize their limitations and end up wishing they had taken the trouble to study the original language. They also appreciate the difficulties confronting the translator. Mastery of the languages involved is necessary, but not sufficient, particularly where the user of a translation expects a literal translation, the legal systems of the starting languages and target language differ fundamentally and the subject matter is highly abstract.

A few examples will illustrate the particular difficulties which the translators of the PIL Statute had to overcome. They also show that the three translations deviate in their terminology, sometimes significantly. The PIL Statute contains many legal terms which either do not exist in common law jurisdictions or have different connotations in the case of literal translations. Resort to a dictionary does not help, and explanatory footnotes do not solve the problem. The following is a list of some of the terms used in the PIL Statute, together with the equivalents proposed by each of the three translations. Readers familiar with German, French or Italian can test their ability by covering up the three right-hand columns below and making their own attempts at translation.

Original versions (German/French/ Italian)	Translation: Swiss- American Chamber of Commerce	Translation: Karrer/ Arnold	Translation: Umbricht/Fulbright
Notzuständigkeit/for de nécessité/foro di necessità	jurisdiction of last resort	subsidiary jurisdiction	emergency jurisdic- tion
Persönlichkeits- verletzung/atteinte à la personnalité/ lesione della per- sonalità	violation of personal rights	violation of the right of personality	infringement of per- sonal rights
Gegendarstellung- srecht/droit de réponse/diritto di riposta	right to publication of a counterstatement	right to present an opposing view	right to reply

LDIP-CPIL (1989) [hereinafter Umbricht and Fulbright translation]. (Official French, German and Italian text of the Swiss Private International Law Statute, with an English translation prepared by Umbricht, Badertscher & Jaag and Fulbright & Jaworski).

Verfügungen von Todes wegen/dispositions réciproques pour cause de mort/disposizioni reciproche a cause di morte	dispositions for cause of death	dispositions <i>mortis causae</i>	dispositions by reason of death
Klagen betreffend dingliche Rechte an beweglichen Sachen/actions réelles mobilières/azioni concernenti diritte reali su cose mobili	lawsuits on real rights in movable goods	actions concerning rights in rem to movable property	actions concerning interests in movable property
Anfechtungsklage/action révocatoire/azione revocatoria	action to set aside	lawsuit for avoidance of undue preference	action in rescission
Kollokationsklage/action en contestation de l'état de collocation/azione di impugnazione della graduatoria	action to contest the schedule of admitted claims	lawsuit on the schedule of claims	action to contest the schedule of creditors
nach Billigkeit/en équité/secondo equità	principles of equity	<i>ex aequo et bono</i>	equity
vorbekaltlose Einlassung/procède au fond sans faire de réserve/l'incondizionata costituzione in giudizio	appearance without reservation	unconditional appearance	proceed to the merits without objecting to the court's jurisdiction
. . . bleiben vorbehalten/ont réservées/sono fatte salve	. . . are not affected	. . . are reserved	. . . take precedence
Vorentscheide/décisions incidentes/decisioni pregiudiziali	interlocutory decisions	preliminary awards ²	interlocutory awards
Einlassung/acceptation tacite/costituzione in giudizio del convenuto	appearance	unconditional appearance	waiver
ordentliches Rechtsmittel/recours ordinaire/remedio giuridico ordinario	ordinary appeal	ordinary judicial remedy	suspensive appeal

2. In article 190, paragraph 3, the translators apparently felt the need for an explanation: "where the tribunal decided *on its constitution or on its jurisdiction* in a preliminary award." The italicized words do not appear in the original versions.

Verkehrerschutz/ sécurité des transac- tions/protezione del commercio giuridico	protection of legal transactions	protection of legal transactions	estoppel
Erbvertrag/pacte suc- cessorial/contratto successorio	contract of inheritance	successorial pact	testamentary contract
Begriffe/notions/ definizioni	terms	definitions	notions

All three teams of translators have managed to formulate the text in precise, grammatically correct and intelligible sentences — no small achievement in view of the complexity of some of the provisions. They obviously worked not only from *one* of the original texts but simultaneously from the German, French and Italian versions. Karrer and Arnold take a further step and point out where the three original versions contain discrepancies. Even in Switzerland, with its long tradition of producing trilingual statutes, such discrepancies are inevitable. Here are a few examples from the PIL Statute:

—Article 107 contains a reservation for the provisions of other laws with respect to rights in ships, aircraft and other means of transportation. The reservation is to “*andere Gesetze*” (German) and “*autres lois*” (French); the Italian version, however, speaks of “*altre legge federali*.” Karrer and Arnold prefer the Italian text, arguing that conflict of laws is exclusively a federal matter; the other translators follow the German and French text.

—Article 65, paragraph 2, lists the conditions under which a foreign divorce decree rendered in a State of which neither spouse or only the plaintiff spouse is a citizen shall be recognized in Switzerland. According to subparagraph (c) of this provision, consent of the defendant spouse is sufficient for recognition. The German and Italian versions speak merely of consent (“*Anerkennung*,” “*accordo*”); the French version requires *express* consent (“*a expressement consenti*”). This discrepancy is not flagged by Karrer and Arnold. Here, Umbricht and Fulbright prefer the French text; the others prefer the German/Italian version.

—Article 19 is an important provision that permits the Swiss judge, in choosing the applicable law, to deviate from the provisions of the PIL Statute and to apply mandatory provisions of another law instead. According to the French version, such deviation is possible if legitimate and manifestly preponderant *interests* with respect to the Swiss legal concepts so require. The German and Italian versions provide for the legitimate and manifestly preponderant *interests of a party*. All three translating teams here opt for the German/Italian version,

although legal writers have already opined that the French version more accurately reflects the true intent of the legislators.

III. THE PRECISION OF THE TRANSLATION

The user of a text edition of a statute, whether in the original language or a translation, primarily demands precision as to both content and form. In this respect, the two non-annotated translations deserve unmitigated praise. The edition of the Swiss-American Chamber of Commerce ranks among its best translations. Starting about fifteen years ago, this organization has published numerous English translations of Swiss statutes and ordinances which are of interest to its members and to the public, in particular most of Switzerland's statutory commercial and corporate law. The translation prepared by Umbricht and Fulbright in a four-language edition also meets the highest standards for precision, and it will be difficult to comply with the translators' request to recommend improvements. Regrettably, such compliance is easier with respect to the commentary of Karrer and Arnold, whose book would have gained from a further round of proof-reading. Errors in the text (e.g., PIL Statute article 155(d); Law on the Organization of the Federal Judiciary, article 49, paragraph 2, and article 50, paragraph 1); wrong cross-references (PIL Statute, article 87, paragraph 2 and article 166, paragraph 1(b); Law on the Organization of the Federal Judiciary, article 48, paragraph 1 and article 68, paragraph 1(e)); and an excessive number of printing errors (about one every third page) undermine the reader's confidence and detract from the book's obvious practical and theoretical value.

IV. MORE THAN A TRANSLATION — A SHORT COMMENTARY IN ENGLISH

The three translations overlap only in part. The publication of the Swiss-American Chamber of Commerce follows the format of its earlier English translations of Swiss statutes and ordinances: it consists only of the text of the statute (without footnotes) and a short introduction by Felix Thomann. The booklet is accordingly handy and easy to read and can be recommended to foreign lawyers without any knowledge of French, German or Italian.

The Umbricht and Fulbright edition offers a novel format: on each double page the reader finds a reprint of the French, German and Italian official text of the PIL Statute together with the unofficial English translation. Although this edition also contains no footnotes or expla-

nations, the four-language feature will make it a most useful tool, both in Switzerland and internationally.

Karrer and Arnold have gone far beyond a mere translation; they present an English commentary to the PIL Statute. In 282 pages — the Swiss-American Chamber of Commerce edition has only 58 — the reader finds, in addition to the translation of the Statute, a bulk of additional information useful both for the practitioner and the legal scholar. A 19-page introduction is addressed primarily to the non-Swiss reader. It summarizes the history, the concept, and the policies of the PIL Statute. The appendix contains additional relevant translations, i.e., parts of the Federal constitution and of the Federal Statute on the Organization of the Federal Judiciary, as well as the Inter-cantonal Treaty on Arbitration (which now is no longer directly relevant in international arbitration).

Karrer and Arnold offer a great deal of additional information in the footnotes to each article of the PIL Statute: references to constitutional and treaty law, to the old law, to the genesis of the PIL Statute, to Swiss substantive private law and occasionally to the procedural law (of the Canton of Zurich). The book contains a wealth of interesting details on the most diverse aspects of the Swiss legal system. In the footnotes, the authors manage to rid themselves of the straitjacket of the statutory text, and they revel in the complexity of the various legal sources. They demonstrate not only scholarship and precision, but also imagination and a certain delight in research and combination. Study of the footnotes — normally a tedious task — becomes fascinating. A good example is the footnote to article 154 (Applicable Law for Companies). Under the heading “Swiss substantive law,” the reader is referred to:

—Article 38, *et seq.*, of the Commercial Register Ordinance which regulates the use of firm names and in particular territorial components;

—“Lex Friedrich,” the Federal Statute restricting the acquisition of Swiss real estate by foreigners — relevant because this Statute contains detailed provisions on the “Swiss” or “foreign” nature of a company;

—a leading case of the Federal Tribunal on Lex Friedrich;

—the Federal Statute on Maritime Navigation (here exceptionally without translation and reference); and

—a treaty with Ecuador for the protection and encouragement of investments.

Today’s practitioner of international private law will perhaps consider many of the citations esoteric and will not necessarily share the

authors' delight in the unusual. Treaties dating back to 1825 and 1834 with countries which have long ceased to exist as sovereign states (Württemberg and Bayern), a federal ordinance of 1917 on the pledging of cattle, a treaty with Germany on the Boards of Directors of the companies operating the Rhine power plants, the Foreign Resident Corporation Act of New Brunswick, treaties with Lithuania, Nauru, Swaziland, Tanzania, Uganda and the Charter of the Bank of International Settlements are examples. In the footnote to article 32, the reader learns about a treaty with Germany and Austria concerning the civil status of persons born or dying on Lake Constance and the legal problems arising when a dead body is retrieved from these waters. The foreign lawyer can gather the basic information on the Swiss attachment pursuant to the Law on Enforcement of Debts and Bankruptcy ("*séquestration*" — similar to Mareva injunctions), the concept of Federal, Cantonal, and Community Citizenship, or the special difficulties encountered in Switzerland when serving foreign court documents. The book contains addresses and telephone numbers of important Swiss embassies overseas (where, pursuant to PIL Statute article 12, filings with Swiss courts and administrative authorities may be made). The reader learns in which cantons the Commercial Register is organized by districts and is directed to a publication where the competent bankruptcy office is listed. The book also mentions which other Swiss statutes and ordinances have been translated into English.

Perhaps of more immediate use than many of these details is the novel idea of annotating the translation systematically with the original versions of the key terms of the Statute. The authors supplement this with Latin terms which have been accepted and are generally used internationally, i.e., *ultra petita*, *actio Pauliana*, *lex rei sitae*, *exequatur*, *favor matrimonii*, *locus regit actum* and *professio iuris*. For the terms used in the Statute, Karrer and Arnold's book thereby approaches a five-language edition. It is fair to point out, however, that the simultaneous reprint of the full original versions in the Umbricht and Fulbright edition will, in this respect, be even more useful to those practitioners and theoreticians who work in more than one language.