A Legal and Lexical Analysis of Non-profit Organizations' Governing Documents in the U.S.A., England, and France

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Introduction

Democracy is about community and our communities have a great many non-profit organizations, both large and small, that impact lives every day. We are their members, customers, supporters, and neighbours. As the world becomes more globalized, more and more non-native speakers will engage in this aspect of democracy and need material to help them navigate cultural and linguistic differences. Such material could greatly facilitate their participation in civic life.

The goal of this paper is to analyze the bylaws of non-profit organizations in three different national legal systems - the United States, England and Wales, and France - with a view to informing translation of French bylaws into English. Bylaws are the governing documents of corporations and are therefore legal texts, their translation falling under legal translation. Translation studies has long been recognized as an interdisciplinary field and it will therefore be necessary to review comparative law, linguistics, and semiotics to put them in relation with translation studies as concerns legal translation. While bylaws are the subject of this paper, this extremely specific and specialized translation project has not been subject to much if any, academic study. Both this and the interdisciplinary nature of this task necessitate reviewing a broad range of literature in order to understand the texts' legal and sociological function and then situate translation of bylaws in relation to this literature in order to understand what is being kept and what is being lost in translation. I will first review the legal systems in question, both generally and as concerns bylaws, then legal translation and its linguistic features.

1 Legal Systems

To paraphrase Justice Oliver Wendel Holmes, the life of law has been experience (Holmes, Jr., 1881, Lecture 1); that experience is highly dependent on the national and regional socio-historic contexts of a nation's development. These different socio-historic contexts have produced the plethora of laws and legal systems which span the world over. This is why law is a social science whose concepts, while perhaps universal in goal, are geographically specific. These geographically bound legal systems have all developed over time and are unique to the jurisdictions in which they operate and the terms they use therefore usually have long histories that have shaped their use (Cao, 2007, p. 34).

This results in each nation having its own independent legal system with its own terminological and conceptual structure, rules of classification, sources of law, and methodology (Šarčević, 1997, p. 13). These different legal systems have often been described in terms of families according to their socio-historic commonalities and the number of those legal families varies depending on who is counting. David and Brierly counted seven (1985, pp. 20-31), Zweigert and Kötz eight (Zweigert & Kötz, 1998).

Their main difference is whether Romano-Germanic Law, also known as Civil Law, is one family or should be split up into three different ones. The other system of concern here is the Common Law; these two families make up about 80% of the world's legal systems.

Common law refers to a large variety of systems that generally exist in English-speaking jurisdictions of the world, especially those of Great Britain, the USA, Canada, Australia, and New Zealand. The genesis of these systems harkens back to 11th century England, where its legal principles were mostly developed through judicial judgments that slowly formed from the specific facts of the particular cases that were brought before the courts. As such, Common Law is based on a system of judicial precedent, relying on hierarchy and analogy (Cao, 2007, p. 24). For the purposes of this paper, references to Common Law are made to provide context for the American and English legal systems and generally concern elements they have in common.

By Civil law is generally meant the jurisdictions of continental Europe and their former colonies. This system originated in Roman law, especially the Justinian Code, and was then further developed by legal scholars. While originally one system, it fractured with the advent of nationalism and the new national codes that came with it. The legal system from this family that is within the purview of this paper is the French legal system and further references to Civil Law will concern features that provide context for that system. Whereas Common Law focuses on facts of cases and comparing them to previous judgments, Civil Law concentrates on applying general principles, and judicial decisions are considered only a secondary source of law alongside legal scholarship. So, it is said of Civil Law jurisdictions that judges only have "the task of applying the law (Cao, 2007, p. 26)."

Because of their different histories, each has concepts, whole areas of law, that have no equivalent within the other system. This is one of the major challenges when translating legal documents (Scott, 2017. p. 39). Not only must the various general definitions of words be taken into account, but their legal definitions in the context of their legal systems as well. These legal definitions are governed by and interdependent with their system-bound legal concepts (Weisflog, 1987, p. 207). These conceptual legal incongruencies between systems often make finding equivalent terms when translating legal documents nigh impossible (Olsen et al., 2009, p. 7).

1.1 The American Legal System

A particularity of the American legal system concerning both for- and non-profit corporations, associations, and other organizations is that the laws and regulations are divided between the State governments and the federal government (*Corporations*, n.d.). With its somewhat contradictory definitions, the word "state" can be confusing; to avoid this confusion, I shall only use it in reference to a

State that is part of the United States of America. A reference to the Secretary of State is thus the Secretary of a State and not the equivalent of the American Minister of Foreign Affairs. When considering State laws, a potentially unclear term is the word "foreign." In this context, it means an organization that has not been incorporated in that State, even if the organization has been incorporated in another State of the United States of America.

The layers and divisions of jurisdiction concerning organizations in the USA sometimes overlap; however, even when this is not the case, they are highly interdependent. Despite the federal government's involvement being generally limited to certain areas such as federal tax regulation (*Non-Profit Organizations*, n.d.), applying for federal tax-exempt status is in most States an integral part of registering a non-profit at the State level. An important aspect of this analysis will be identifying in which domains the State and federal governments have jurisdiction and how they work together and complement each other.

The Federal Tax Code mandates that an organization must apply to the IRS to be recognized as tax-exempt and qualify for tax-deductible donations that are also tax-deductible for the donor. An organization being declared tax-exempt at the Federal level does not necessarily mean it is non-profit. That designation does not exist on the federal level; it is declared at the State level (*Frequently Asked Questions About Applying for Tax Exemption | Internal Revenue Service*, n.d.). Organizations that have one of these designations, also generally have the other; but that is not always the case.

One could reasonably infer from the designation non-profit, that such an organization does not earn profit; however, this term refers to the fact that they are prohibited from earning profit for the individuals who control the organization. The tax-exempt status means that such organizations are exempt from paying the federal corporate income tax on income related to its tax-exempt purpose. Federal tax-exempt status generally also leads to exemption from state corporate income tax (Constantine et al., 1999).

To receive the federal tax-exempt status, an organization must be organized as a corporation, a limited liability company (LLC), an unincorporated association, or a trust (*Instructions for Form 1023 (01/2020) | Internal Revenue Service*, n.d.) formed for a purpose listed in the Federal Tax Code 501. This means that the first steps of founding an organization are under the supervision of the State governments, as this is where an organization is legally formed and registered (*How to Start a Nonprofit | Step 3*, n.d.). Indeed, one of the six categories of information that must appear on the articles of incorporation of an organization is a statement limiting its purpose.

1.1.1 State Legislation

There is a great deal of variety concerning State legislation in this area; however, most States have adopted, many with their own alterations, one of two versions of model legislation endorsed by the American Bar Association (ABA). The first version is the 1952 Model Nonprofit Corporation Act (MNPCA), which has been adopted by at least 12 States, and the second is ABA's 1988 Revised Model Nonprofit Corporation Act (RMNPCA), which has been adopted by at least 26 States (Malamut, 2008, p. 8). The ABA revised the model act in 2008, which only the District of Columbia has adopted, and in 2021. For the purposes of this paper, I have chosen to focus on the 1988 RMNPCA as the hypothetical legislation governing the drafting of bylaws. The State administrator tasked with overseeing organizations of all kinds is the Secretary of State (American Bar Association, 1988, 1.20). All documents filed with him or her must be typed or written in English and executed by an officer of the board or an incorporator, depending on whether the organization has already been incorporated or not. This person must sign the document and indicate the capacity under which they are signing.

1.2 The Legal System of England and Wales

The United Kingdom, especially as concerns its legal systems, consists of several different countries. England and Wales share a legal system and, as the vast majority of British economic activity and the British population exist here, it shall serve as a reference as concerns this paper. Under this system, there are five different types of not-for-profit organizations: companies limited by guarantee, unincorporated associations, trusts, registered societies (formerly known as industrial and provident societies), and charitable incorporated organizations. Most of the newly registered charities are charitable incorporated organizations (*Nonprofit Law in England & Wales*, 2013). Because of this and its similarities with the other organizations already analyzed, I will focus on the Charities Act 2011 and the regulations of the Charity Commission that govern the drafting of the governing documents for this type of organization.

The Charity Commission's guidance is not legally binding. It contains both explanations on the content of the applicable legislation and case law and how the Commission interprets and applies these laws. It compliments and supplements the charitable model constitution which has been written and made available to charitable organizations. In the model, which I shall from now on refer to as the charitable model, the commission explicates which provisions in the constitution are required by law, which should be included because it is considered good practice or to remind trustees of the legal requirements, and what is simply recommended. While the law may require certain provisions to be part of a constitution, particular wording is not necessary. All the same, the Commission sees standardized wording as an advantage and following their model as closely as possible greatly facilitates the approval process the

constitution must go through to enter into force. For charitable organizations of the type being analyzed, there are two possible models: one for organizations whose membership is limited to the trustees, and one for those with a larger membership. It is the latter that I will analyze.

1.3 The French Legal System

In France, the law of 1 July 1901 created the right of free association. This means that people are free to create an association whose purpose is not to earn money for its members. This is done by the *déclaration d'association* and the law requires only that it contains the name, head office, the object of the association, and a list of the association's administrators (*Déclaration association*, n.d.). This is sent to the courts' administration service in the area of the head office and is published in the JOAFE.[1] Also rendered at this time are the *statuts* of the organization. That is what is required to create the legal entity of the association.

This type of association is free to organize itself and define its internal functioning; however, the management and administration must be unpaid; there cannot be any profit or distribution of assets. This freedom of organization is usually limited in practice because non-profit organizations hope to one day be recognized as serving the public good.[2] This is an official designation and having it confers a legitimacy and greatly facilitates receiving government subsidies.

There are several prerequisites to applying for this designation (*Association reconnue d'utilité publique (ARUP)*, n.d.). The organization must have existed for at least three years, have at least 200 members, and have an influence that is more than merely local. The finances must be sound, the last three years in the black, with an annual budget of at least 46,000 € of which subsidies may not represent more than half.

For an association to be so designated, the *statuts* are submitted to the Ministry of the Interior for review. Once approved, the Ministry sends them to the *Conseil d'État* for further review. This court is the highest court for all matters in which the government may be a defendant and it also advises the executive branch on interpreting the law. Because this designation is potentially so important for an association, and because it rigorously defines how an organization should be governed, I will review these requirements for their rough comparability with what has already been reviewed.

There are two main official reference documents concerning the content of the *statuts* of an organization that seeks to receive the designation of serving the public good. There are the model *statuts* published by the Ministry of the Interior and the *Conseil d'Etat* and a collection of jurisprudence

[1] *Journal officiel des associations et fondations d'entreprises*
[2] Association reconnue d'utilité publique

published by just the *Conseil*. The latter seeks to expound and clarify the former through clear principles exemplified by real-world rejections of applications for the official designation. The model, from here on referred to as the public model, is meant to be both informative and constraining. It need not be followed to the letter, but diverging from it, especially to a great degree, necessitates an important reason for doing so.

2 The Articles

Incorporation provides protection from legal liability(*How to Start a Nonprofit | Step 4*, n.d.) by creating a legal person. Similar to the *déclaration d'association*, the documents that found an incorporated entity go by many names in English, obviously depending on the jurisdiction; even within the United States, there is no unanimity. They can be named the articles of association, the memorandum of association, the articles of incorporation, the charter of incorporation, the corporate charter, and there are probably more than this. This especially can cause confusion in the American system because there are very few requirements for the content of the articles and the bylaws individually. Much, if not all, of what can be written into the bylaws can also be written into the articles (American Bar Association, 1988, 2.02). One reason for this is that incorporating an organization in the United States is often a step that is taken before many decisions about its internal workings have been made. Similarly, one of the purposes of the RMNPCA is to set forth rules for the internal functioning of an organization, some that must be followed and which the articles or bylaws cannot contradict, and others that need not be followed if the articles or bylaws provide differently.

In England, the articles are generally called the memorandum of association, but the requirements as to their content changed in 2008 (Charity Commission for England and Wales, 2016, p. 2). Under these previous regulations, it was necessary to include a provision for dissolution; this mirrors the requirements in the American system. Now, however, the English procedure is closer to that of France where the governing documents, the constitution in the English system and the *statuts* in the French, must be given when officially registering the organization (*Set up a Charity*, n.d.) (*Je crée une association*, n.d.). The term bylaw has two meanings: a local law or ordinance and a rule governing the member of an organization (*Bylaw*, 2023). I have been using the second meaning which is American usage; the other meaning is British usage and also is more commonly spelled byelaw or by-law.

Going forward I will refer to the founding documents of the anglophone jurisdictions as the articles; the bylaws will refer to American bylaws and the constitution to the English governing documents. These two are functional equivalents because they generally have a similar level of detail and length, despite a

large amount of diversity. It is possible to translate *statuts* as bylaws but there is a problem of scope. The final article of the public model compels the Board to prepare a *règlement intérieur*, to be approved by the general assembly, that cannot contradict the articles and specify how to implement and apply them. This must be done within six months of the approval of the articles and this document can only enter into force or be amended upon approval by the Minister of the Interior.

Because of stylistic differences between the legal cultures and systems, *statuts* are generally shorter and less precise than bylaws and constitutions because they are meant to establish basic guidelines and principles and therefore leave precision to the *règlement intérieur*. So both of the documents together are more functionally equivalent to bylaws or a constitution than either by themselves. This does not mean that neither one should ever be translated as bylaws; however, there is a problem of comparison. In a document where both terms appear, it would be improper to translate them both as bylaws. For these reasons, it is better to call the *statuts* the constitution and the *règlement intérieur* the bylaws, especially since the word itself implies the existence of a first, primary document.

3 Equivalence

As concerns this project, I will now address literature translation in general and legal translation in particular. The translation challenge of equivalent legal terms and systems takes place in the context of the more general debate in Translation studies over the definition, types, and even existence of equivalence. Even when restraining oneself to the modern era, this debate has been long and winding; from Nida (1964) seeking an equivalent effect, in opposition to the competing ideas of literal/formal and liberal/free equivalence, to Toury (1980) trying to escape prescriptivism, founding the school of Descriptivism at least in part to describe equivalence by type and degree through predominant norms. Reiss and Vermeer(1984) even declared as part of creating the Skopos theory the “dethronement” of the source text in translation studies. While this is an extreme statement, Garzone established (p. 2) that Vermeer himself showed restraint when applying his theory.

In all, the functional theories have put forth the need to broaden the idea of the equivalence of the target text from being wholly dependent on the source text to include the function and purpose of the target text because more than one translation project is possible (Garzone, 2003, p.2). Furthermore, the difference in possible interpretations between the target and source language, depending also on the difference in audiences, must be taken into account when considering legal equivalence in translation.

4 Uncertainty and Indeterminacy

Law requires the use of generality in order to encompass all the possibilities envisioned by the authors; however, this generality is in danger of being or becoming ambiguous. Language is at times inherently ambiguous and vague and, since law relies on language, when there is linguistic uncertainty, it can become legal indeterminacy. When linguistic uncertainty occurs in legal documents, it causes legal indeterminacy if it is unclear how the law applies to the facts (Cao, 2007, p. 75). This uncertainty is intralingual, within a single language, and it is a challenge in legal translation to not introduce any interlingual uncertainty between the source and target texts. This means identifying both the existing intralingual uncertainty and the possible interlingual uncertainty in order to find strategies for preserving the former and avoiding the latter in the target text (Cao, 2007. pp. 77-80). While resolving ambiguity is not the task of legal translators, they must be allowed to interpret a text linguistically and identify possible legal interpretations in order to produce a quality translation. This is the only way to identify ambiguity, determine whether it was intended, and decide how much of it should or can be retained (Harvey, 2002, p. 182).

Two issues relating to equivalence in general and to equivalent legal terms in particular are polysemy and synonymy. Polysemy is the phenomenon where the concept a word is referencing depends on the context because the term encompasses several such concepts. On the other hand, synonymy is when there is more than one word, perhaps many, that refer to the same concept. Polysemy is a major cause of linguistic uncertainty, and therefore legal indeterminacy, and it must be examined in both the source and target language and text. Synonymy is often a potential solution to this problem and can provide options as to what kind and to what extent of uncertainty or ambiguity can be introduced or avoided in the target text; however, the specific terms used cannot escape the inherent linguistic uncertainty of language and legal systems are expected to resolve disputes that arise therefrom.

5 The Legal Translator

The legal translator has many competing demands, all of which necessitate different abilities and experience. Smith (Morris, 1995, p. 181) sets forth three prerequisite characteristics for legal translators: basic knowledge of the source and target legal systems; familiarity with the terminology; and competence in the source language writing style. This is so that they can understand the nuances of the drafting, interpretation, and application of legal practice in the Source Text and then reproduce them in a natural way in the Target language (Wagner, 2003). According to Weisflog (1987), the ideal legal

translator is the exception as opposed to the rule and Šarčević (1997, p. 114) goes so far as to say that this person does not even exist.

All of this stands in contradiction to the reality that there are in fact successful legal translators around the world, often vital to the functioning of legal systems (Cao, 2007, p. 38). The necessary knowledge and experience are not just an ideal, but an attainable goal. The legal translator must however remain sensitive to the tension between the various competencies that are needed to achieve a quality result.

6 Classification of Texts

When classifying legal documents for translation purposes, several different approaches have been used and among these the orientation towards the source text was predominant (Cao, 2007, p. 9). When considering the role that the source text plays in its legal system, they can be categorized as follows: domestic statutes and international treaties, private legal documents, legal scholarly works, and case law (Cao, 2007, p. 9). These categories also generally imply different translation environments: statutes and treaties are usually translated within institutions; scholarly works and case law are often translated by the authors themselves, or in close collaboration between the translator and them; and private legal documents are usually outsourced (Scott, 2017, p. 53), probably because they are often used for a specific purpose by a specific person in contrast to statutes and international agreements (Cao, 2007, p. 84). It is said however that drafting private legal documents is like drafting statutes between private parties, setting out the relationships and ground rules in a formal or written form (Dick, 1985, p. 1). So, the difference in purpose resides more in the scope of who is concerned by the documents rather than in the fundamental nature of the documents.

This is more evident when considering the classification of translations according to the role the source text plays in the source system. Šarčević (Šarčević, 1997, p. 9-11) uses the categories of primarily prescriptive, primarily descriptive, and purely descriptive to classify legal documents accordingly. Under primarily prescriptive are listed laws and treaties, but also contracts; all three seek to establish norms of conduct. This is closely linked to how the source text's status can be categorized as either enforceable law or non-enforceable law (Cao, 2007, p. 9). A factor in making this system of classification is the register, or type of legal language, and language use; it is this factor that should be considered when classifying bylaws and founding documents with statutes and treaties.

While generally being considered a contract between the organization and its members (Nerlinger, 2012), articles and bylaws are similar to laws, legislation, and treaties in general. More specifically, they found an organizational structure and are thus much like constitutions that found governments and

treaties that found international organizations; their language use is therefore also similar. Their general purpose may be to regulate behaviour, but they do this mainly through their organizational structures, setting out rights and obligations for entities within those structures. For these reasons, bylaws are primarily prescriptive enforceable law.

Target texts can also be categorized by their role in the legal system (Cao, 2007, pp. 10-11): normative, informative, and legal system documents. Under the first rubric, the target text can only be normative if it has a normative status under the law equal to that of the source text. Examples of this are equally authentic legal texts in multilingual nations and international legal instruments. Such texts are not translations of the law but the law itself (Šarčević, 1997, p. 20), thus the need for an official translation. This category can include contracts and agreements that have multilingual texts of equal authenticity. This may mean they were the subject of intense multilingual negotiation or, despite having equal authenticity, have been translated. This was the case for Hong Kong whose laws were translated from English when Chinese was given official status and all laws were required to be enacted in both languages (Cao, 2007, p. 102). This type of translation is generally carried out by the institution itself (Scott, 2017, p. 53). As such, it is official a may require a more literal approach as might be produced for a study of comparative law (Scott, 2017, p. 40). This approach is also described in terms of “fidelity” to the source text, which is traditionally the first concern of a translator in this scenario (Leung, 2014, p. 226).

On the other hand, translations of legal documents can be of an informative nature, and as such their language is not legally binding. This is mostly found in monolingual jurisdictions (Cao, 2007, p. 11) and is consistent with many of the translation projects one is likely to receive. They may require more explicative strategies (Scott, 2017. p. 40), especially if the intended reader is not expected to be well versed in their own national legal system much less that of the source text. Lastly, legal translation can serve a role in a legal system, whether to inform people who taking part in legal proceedings but do not speak the language of the court or to give lawyers and courts access to original documents (Cao, 2007, p. 11). In this case, a main concern can be avoiding that a legal professional does not misunderstand the translation because of their expertise.

Since all of the countries being studied in this paper are monolingual, the first scenario is very unlikely. As such, a translation of bylaws would not be subject to legal interpretation in the way the source text would. It can also be presumed that lawyers and courts in France would not need an English translation of the bylaws. So, the purpose of such a translation would be informative, either for general purposes because a person, probably a member whose mother tongue is not French, wishes to understand how

an organization functions or because a member of the same kind is subject to legal proceedings resulting from their actions and it must be determined what they misunderstood, if anything, about the functioning of said organization. So, while the translation is not normative in legal terms, it informs the reader's perceptions of the norms in place. The most likely translation project would be that a non-profit organization in France, which has a considerable number of foreigners or people for whom French is not their mother tongue as members, commissions a translation of their governing documents. This translation would be unofficial in a legally normative sense, but official in the sense that this is the organization communicating its norms to its members. This is the scenario under which I will operate going forward; as such, I will focus on the linguistic characteristics of legislation in order to inform the translation of bylaws.

7 Linguistic Features of Legal Language

7.1 Nature of Legal Language

There are some that consider legal language to be a technical language; however, others contend that there is no such thing as a legal language and that it is simply part of ordinary language (Tiersma, 2000, p. 49). On the other end of that spectrum, there are those who argue that legal language is at least a sub-language or social dialect if not an entirely different language. Legal language uses both everyday definitions and terms alongside specialized definitions and terms, which can be a source of both misunderstanding and contention (Cao, 2007, p. 53). Arguing for the view of technical language, Caton (1963) puts forth that the main difference between a technical language and ordinary discourse is the vocabulary, the syntax remaining the same; however, the syntax of legal English is markedly different from that of normal usage (Cao, 2007, p. 21). The meaning of these legal terms is dependent on the context of the legal system (Hart, 1994, 1954) because a legal language is autonomous in the sense that its lexicon is chosen by its legal institutions. This results in a complete universe of legal meanings the individual components of which imply the existence of the others and the choice of one excludes others (Cao, 2007, pp. 16-17). This argument for a technical language is supported by the fact that legal language may appear to be intelligible to a layperson when that is not the case, even when a person is highly competent in the language (Jackson, 1985, p. 47). Ordinary meanings of words are of course used in legal English, but one must have knowledge of the legal system in order to determine whether or not these meanings are being used in a particular context (Jackson, 1985, p. 48).

A helpful concept in this discussion is the idea of register. A register is a language variety that depends on the time, subject, and nature of the activity (Halliday & Hasan, 1991, p. 41). Legal language can more

simply be considered a register that varies from the highly complex to normal formal usage, technical in nature, and dependent on the common core of general language (Danet, 1980, p. 472). Its meaning as concerns legal English has gradually been restrained to "specific syntactic, lexical (including collocational), textual (e.g. cohesive devices), and sometimes phonological features, which correlate with situational settings (Kurzon, 1997, p. 123)". This concept sometimes blends or is synonymous with genre or functional style.

Complicating this matter is the somewhat recent movement, the Plain English Movement, to reduce the overly complicated and opaque legal terms and style, as these characteristics hinder comprehension for the general public (Cheng et al., 2014, p. 72). Lay people's lives are greatly affected by legal texts, contracts, and legislation in particular, which can be largely incomprehensible to them. It is debated how necessary the characteristics of legal language are; some advocate that they serve a purpose and that important nuance or precision would be lost in doing away with them, while others argue that they are unneeded and that protecting them is motivated by fear of change (Cheng et al., 2014, p. 73).

7.2 Pragmatics

Classifications of the source text are closely related to and to a large extent determine the register and terminology which is used. When writing laws, for instance, the normative use of legal language is "predominantly prescriptive, directive and imperative. Laws are written in language the function of which is not just to express or convey knowledge and information, but also to direct, influence, or modify people's behaviour (Cao, 2007, p. 13)." The effect that is sought is normative in that they create or reinforce legal norms and regulate the behaviour of either the general public or a more restrained group of people. Because founding documents and bylaws act as the constitution of an organization, the language they use is similar in these dimensions in particular.

This is linked to the idea that language is performative, a speech act, and that words can also be actions. Both legislation and contracts are examples of how words in legal language depend on the speaker/writer and thus the context (Hart, 1954). Under Austin's conception (Austin, 1975) of performatives, such statements are neither true nor false, which differentiates them from constatives. Legal performative action includes conferring rights, granting permission, and prohibiting behaviour (Cao, 2007, p. 14). This nature is indispensable when the goal is regulating human behaviour. According to Searle's conception, performatives are declarative statements with the intention to change the world in a certain way (Searle, 1989, p. 541). In making this statement, a proposition has been made, with which someone will either comply or not. Whether or not this person will comply is partially dependent

on how much the person feels compelled to do so; this is the illocutionary force of the statement. As concerns laws, Jackson equated this illocutionary force with legal norms (Jackson, 1985, p. 241).

Performatives as speech acts depend on necessary conditions to give them the proper illocutionary force. These are called felicity conditions (Nordquist, 2019). The speech act must be done in the proper context by the proper person or body, otherwise, illocutionary force is missing and people do not feel compelled to comply.

Bylaws and founding documents create these legal norms by nature of their role in establishing a legal entity whose norms are subject to those of the larger legal system, both of which are ultimately enforced by the courts, even if the first entity to enforce these norms is the organization itself. This is part of what is implied in the statements in the documents, and that adds to their illocutionary force. A member's perception of this will contribute to how much their decisions are governed by these documents.

7.3 Lexicon

We have already seen that legal terms are inherently tied to legal concepts and therefore the lexicon is very complex and extensive. Furthermore, this lexicon "is the most visible and striking linguistic feature of legal language as a technical language (Cao, 2007, p. 20)." In particular, the English legal lexicon has a great many archaic words (Tiersma, 2000, p. 87), word strings (p. 61), and common words with uncommon meanings (pp. 87-97).

All legal languages have their own unique lexicon and this is a major source of the difficulty concerning legal translation. Some Legal Languages tend to use common terms that have specific legal meaning that differs from everyday use; others use terms that only exist within a legal context (Cao, 2007, p. 20). In the background is the fact that lexical ambiguity can exist in legislation and contracts and is a common source of litigation and contention (Tiersma, 2000, p. 79).

Generally, system-bound words are a significant component of legal terminology and can become an issue for the translator. Words associated with legal professions are inherently tied to the legal systems in which they work. For example, the simple term "lawyer" could have several different meanings when translated into French.

The structure of the components of a legal system are usually themselves unique. Using a term or name that already exists in the target language is generally not a viable option because this term evokes a role within a system and can give a false impression of familiarity. In these cases, it is often better to create a descriptive term that is markedly different from anything that could cause confusion. The layperson will not be led astray and the expert familiar with the source system will easily recognize the meaning. This is what Venuti (1995) refers to as foreignization, retaining foreign elements instead of the opposite process

of eliminating them which is named domestication. Domestication can be dangerous; the more the translation follows the target language style and appears like an “original” document, the more invisible the translator is and the more likely that it will be viewed and interpreted as originating in the target system.

Concerning bylaws, they create a democratic organization and therefore partially reflect the national democracies of the countries in which they exist. While ideas are often borrowed from one system to the other, this terminology is also system-bound and can evoke different expectations depending on the cultural background of the reader. This translation challenge is similar in many ways to that of translating statutes and legislation, but it more specifically relates to that of bylaws.

7.4 Syntax

Because of the complexity and detailed content of legal documents, most legal languages employ long sentences with extensive use of exceptions, qualifications, and conditions, especially legislative documents. This often contributes to the difficulty of understanding them. There are also often syntactical particularities to each legal language; in English for example, the passive voice and multiple negations are used with much greater frequency than in other domains (Cao, 2007, p. 21).

7.5 Style

Legal style is not only a linguistic feature but also a manner of thinking and problem-solving that is dependent on the legal system in which it exists (Morris, 1995, p. 190). For instance, the very order in which ideas and themes are introduced can indicate priorities, hierarchy, and ways in which the content should be interpreted. While a general rule in legal translation is to keep the original form of the source text, it may be useful to consider how transposing elements of the source text style could engender different interpretations than were originally there or intended. At the very least, the different styles should be analyzed to take note of the differences and potential legal and referential incongruencies that can be inferred.

According to Hart (Hart, 1994) there are two types of legal norms: duty-imposing and power-conferring. The former concerns obligations and sanctions and the latter is the source of legal power within a structure. As such, Watson-Brown (1997, pp. 38-39) describes two basic types of legislative statements: substantive and adjective. Substantive is used to describe any statement that confers a benefit on a person or persons, whether duty-imposing or power-conferring, the highest level of which is a declaration and its qualifications, if there are any. Adjectives are basically every other statement. They

are essentially descriptive in nature and aid reading and comprehension of the document; they include titles and notes.

Any action to create a legal norm is by its nature performative, seeking to perform the social act of seeking to change human behaviour. Bowers (1989, pp. 30-31)(1989 p30-31) has three classifications of speech acts concerning illocutionary forces of legislative texts and their corresponding linguistic markers in legal English: facultative language that gives permission by conferring a right, privilege, or power through the use of the word “may”; imperative language that gives a command by imposing an obligation through the use of the “shall”; and prohibitive language that creates a negative obligation through the use of the words “shall not.” When translating such words, these lexical elements are also speech acts that have effects and engender consequences and an understanding of this nature and function of law in society must be kept in mind when translating such documents.

Dale (1977) identified certain such characteristics of legislation in England. Legislative English uses prepositions and nominalization to a much greater extent than general language use. This is in combination with an extensive use of the conditional in statutes (Cao, 2007, p. 117). The sentences and details tend to be lengthy, including interpretation sections, extensive definitions, and frequent cross-referencing. Repetitions, unnecessary words, and too many exceptions can increase how difficult it is to understand (Dale, 1977). The presence of these lists of definitions that are often quite extensive is a significant stylistic difference between Common and Civil Law (Cao, 2007, p. 106).

These definitions fall into one of two main categories, exhaustive or non-exhaustive. Exhaustive definitions are intended to create a more concise form for easy reference or to reduce the field of applicable possibilities, and thus the ambiguity (Sullivan & Driedger, 2002, p. 51). They are normally introduced by the verb “means.” Non-exhaustive definitions are used to expand the ordinary scope of a word or expression, deal with borderline cases, and give illustrative examples. They are usually introduced by the verb “include.” Non-exhaustive definitions can also be negative, usually introduced by “does not include.” These definitions often have many references to other parts of the document, and also to other laws, and may include common words (Cao, 2007, p. 111).

Dale (1977) also did a study of French, German, and Swedish legislation to look for common features in these Civil Law nations. It was found that they started with statements of principles that are fundamental to the object of the law, something that was completely lacking in England. The prose was simpler and less awkward, flowing concisely from one logical step to another; all of this made the documents much more accessible to the average reader.

These differences are tied to how each legal system goes about interpreting laws that have been enacted. In England, Parliament's acts were originally only supplemental to the Common Law which developed over centuries and had more force. They were of an exceptional nature and applied only to specific situations, anything outside of its narrow scope being left to the Common Law (Zweigert & Kötz, 1998, p. 274). In contrast, any piece of Civil Law legislation is interpreted by the same legal principles, a major one being the purposive approach, where it is important to understand the original intention of the legislators. This is a central reason in Civil Law for having a provision, normally the very first provisions in the document, that explicates the purpose, scope, and general principles of the legislation. In order to be exhaustive, Civil Law legislation must be concise; in Common Law however, the opposite is the case (Tetley, 2000, p. 704).

8 Strategies

8.1 Concepts and Terms

Legal concepts can be considered as three dimensional: linguistic, referential, and conceptual (Cao, 2007, p. 55). This line of thinking envisions main two possibilities: first, that a concept in the source language has no equivalent in the target language and therefore a term must be created or borrowed; second, that there are existing terms in the target language that may only be partially equivalent in terms of law or not equivalent at all (Cao, 2007, p. 55). Using these dimensions, I will take a term and analyze it first on a linguistic basis and then on a conceptual basis, both the concept of the term and the system of concepts, and lastly, the possible effects the term and the concepts could have on the reader as well as possible interpretations.

8.2 Style

Style is a major concern of the proposed translation project. In bylaws, the French legislative language use, form, and style are much closer to that for which the Plain English Movement advocates. It has already been established that changing the form of the source text is generally outside the purview of the legal translator; because this translation would be meant for informational purposes, it is possible, and to some point perhaps inevitable, to also translate with more simplified language use and more direct style. Literal or word-for-word translation is frequently the best strategy but must be used with caution (Cao, 2007, p. 60).

The use of "shall" or "shall not" for example, which is not current in ordinary language use, and has no direct equivalent in French, is not absolutely necessary for the overt meaning being translated. Because

of the cultural differences, however, the absence of linguistic features characteristic of these documents in English could reduce the illocutionary force of the speech acts. This would not necessarily be a conscious process, but a more relaxed, less formal translation might also cause the target text to be regarded more laxly. I therefore find it necessary to include at least some of these features as markers of the type of speech act being expressed in order to conserve as best as possible their illocutionary force.

9 Trusts, Trustees, and the Board

The concept of a trust is essentially the same in both the American and English systems (*Trust*, n.d.) (*Trusts*, n.d.). A person transfers assets of some kind to a trust, the ownership of which goes to a third party named a trustee, and the beneficial enjoyment goes to a beneficiary. This could be an endowment, which is for an institution (*Endowment*, n.d.), and if it is for charitable purposes then it can be called a foundation (*Foundation*, n.d.) (Charity Commission for England and Wales, 2016, p. 1). This is all important for this paper because the group of people who are vested with the power, responsibility, and control of charitable organizations or foundations in the English system are called the board of trustees. Other terms for this type of administrative body are board of directors, board of governors, and board of regents, which are sometimes used synonymously (Chen, 2021). In the RMNPCA (American Bar Association, 1988, 8.01) this body is called the board of directors. This seems to be more common in the U.S.A. because of the possible confusion from the term trustees referring to a trust. In the public model, the equivalent body is the *conseil d'administration* (Conseil d'Etat, 2020, art. 7). Like the board of directors in the U.S.A., this is the term used for all corporations whether non-profit or for-profit (*Conseil d'administration*, 2022). For all of these reasons, it is much better to translate *conseil d'aministration* practically every time as board of directors.

9.1 American Law

Every corporation is required to have a board of directors, which is vested with the corporate powers of the organization (American Bar Association, 1988, 8.01). They have the power to do everything that is necessary to carry out the affairs of the corporation, including buying, selling, and signing contracts, without the immediate approval of the members. It is presumably for this reason that the largest chapter of the RMNPCA is dedicated to the subject of the board. A person or persons may be authorized to exercise some or all of the powers of the board, but only the articles may provide for this. An organization cannot be a member of the board (American Bar Association, 1988, 8.02). The articles or bylaws must specify the number of directors which cannot be less than three. If there is not a prescribed manner in the articles or bylaws, only an amendment may change the number of directors.

9.2 English Law

Section 12 of the charitable model concerns trustees' duties and eligibility. The duties are statements that reflect the statutory requirements on how a trustee is to act in their position (Charity Commission for England and Wales, 2016, p. 21). As such, these provisions are not necessary for the constitution. There is also no legal requirement for a CIO to state in its constitution who is eligible to be a trustee; however, because the Commission does not advise a CIO to have minors or corporations who are members as trustees, both of these are excluded from eligibility in the charitable model. The third criterion is that a person must also have "expressly acknowledged, in whatever way the charity trustees decide (Charity Commission for England and Wales, 2016, p. 21)," their acceptance of the position.

This section of the charitable model provides several options for how many trustees there are. The General Regulations of the Commission provide that the constitution must state the minimum number of trustees, otherwise the minimum is one and there is no default maximum. Despite this, they recommend a minimum of 3 and a maximum of 12 (Charity Commission for England and Wales, 2016, p. 22).

9.3 French Law

Articles seven through nine of the public model (Conseil d'Etat, 2020) concern the board and, while clarification on many other things may be left to the *règlement intérieur*, the process for selecting members for the board must be completely defined by the constitution and the number members limited. Their number cannot be fewer than six nor greater than twenty-four, thirty for a federation. The board's duties include deciding what projects to submit to the assembly for deliberation and/or approval, including preparing a budget and financial report to submit to the general assembly for approval.

The board must meet at least once every six months, or when its chair, a quarter of its members, or a quarter of the assembly call for a meeting. The board has a quorum of two-thirds, proxies not included. A simple majority of the counted votes wins; abstentions and blank ballots do not count, and the chair's vote breaks a tie. The board must take minutes and any member of the board may ask for private deliberations.

10 Election and Removal of Board Members

10.1 American Law

If elected by the members, a director may only be removed by a vote in the same manner that they were elected at a meeting called for that purpose (American Bar Association, 1988, 8.08). If the board elects the directors, then a vote of two-thirds or more is required, unless the articles or bylaws provide for a greater number. It is not necessary for the members to elect the directors, the articles or bylaws may provide otherwise, but if left unspecified, they must elect the directors at each annual meeting (American Bar Association, 1988, 8.01). This could seem very undemocratic; however, the members cannot be prohibited from removing a director, even without cause. So, this balances out the possibility that the directors can have the power to appoint or designate directors, and then remove them without cause. The articles or bylaws must specify the terms of directors, which cannot exceed five years, and if they do not then their terms are for one year. The terms of directors may be divided into staggered groups that need not be the same length (American Bar Association, 1988, 8.02).

The RMNPCA also defines what can reasonably and legally be expected from directors with terms of good faith and prudence and also specifies a director is "entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data," provided this information comes from a person who meets certain criteria (American Bar Association, 1988, 8.30).

10.2 English Law

The constitution is required by law to provide for the appointment of trustees (Charity Commission for England and Wales, 2016, p. 22). The Commission provides two options in the charitable model for the appointment of trustees. One allows for trustees to be appointed simply because they hold a certain office in the community, such as the local vicar, and also for another body to appoint trustees. The other option is practically identical except for these aspects. The members elect one-third of the trustees every AGM. Vacancies may be filled until the next AGM by the trustees themselves. They may even appoint a new trustee as long as the doing so would not exceed the maximum outlined in the constitution. The Commission says that is intended to allow the trustees "to bring additional skills and experience on the trustee board (Charity Commission for England and Wales, 2016, p. 23)."

The General Regulations require that the constitution have a provision on how and when trustees may cease holding office (Charity Commission for England and Wales, 2016, p. 25). The circumstances pertaining to this enumerated in the charitable model are: retiring by writing, being absent during six months of trustee meetings, death, medical reasons, and disqualification through unlawful action. There

is an optional provision where the members may remove a trustee with a resolution at a general meeting with a two-thirds majority, provided that the trustee in question has been given 14 days' notice of the resolution and has received the opportunity to defend themselves.

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10.3 French Law

The public model provides that directors are elected by secret ballot, for terms that may not exceed six years, all at the same time or in staggered groups, and eligible for re-election completely, partially, or not at all (Conseil d'Etat, 2020, art. 7). The public model provides that the board may remove, with a two-thirds majority or more, one of its members for good cause or for repeated absences, with the possibility of appealing to the general assembly.

11 Officers of the Board

11.1 American Law

The only required officer is that one to be responsible for the minutes and records delegated by the bylaws or the board, but if there are no officers defined by the articles or bylaws then there must be a president, secretary, and a treasurer (American Bar Association, 1988, 8.40). For a contract to be binding it must be signed by the president and the presiding officer of the board or one of these and either the vice-president, secretary, treasurer, or executive director.

11.2 English Law

The only mention of officers in the charitable model simply states that minutes must be kept of "appointments of officers made by the charity trustees (Charity Commission for England and Wales, 2016, p. 29)."

11.3 French Law

11.3.1 *Bureau*

Articles 11 through 13 of the public model concern the *bureau* of the board. Apart from its ever day meaning of an office, Larousse has two definitions for *bureau* for this context: the "organe directeur d'une association (*Définitions : Bureau - Dictionnaire de Français Larousse*, n.d.)" and the "organe chargé d'assurer le fonctionnement des assemblées parlementaires et d'en diriger les débats. (Il est composé, en France, d'un président, de vice-présidents, de secrétaires et de questeurs élus par chaque assemblée en son sein (*Définitions : Bureau - Dictionnaire de Français Larousse*, n.d.)." This first definition seems more in line with the concept of the board; however, since the board can be considered a small deliberative assembly, the *bureau* fills this roll for the board. This term is similar to the word "cabinet", which the Cambridge Dictionary defines as "a small group of the most important people in government, who advise the President or Prime Minister and make important decisions (*Cabinet*, 2023)." This term is however not mentioned in the charitable model or in the RMNPCA, so it is simpler to translate it as "the officers."

The public model provides that the number of officers must not exceed one-third of the board and nor be fewer than three (Conseil d'Etat, 2020, art. 11). The two officers explicitly mentioned by the public model are the *président* and the *trésorier*. It can be inferred from the provision necessitating the taking of minutes that a secretary would be the third mandatory officer (Conseil d'Etat, 2020, art. 9). The officers prepare the necessary elements for the board, but the *président* decides the order of business and has the power to convene the meeting.

Like members in general, officers can be removed from their office by the board for just cause, and they must have the possibility of defending themselves, and simply being removed from office does not relieve them of their position as member of the board. The *président* officially represents the organization in all legal matters (Conseil d'Etat, 2020, art. 12). He or she decides on expenditures according to the directions of the general assembly and within the limits of the approved budget. It is permissible for the *règlement intérieur* to provide a process for delegating these powers.

11.3.2 *Directeur*

In the public model, the several optional provisions concerning the appointment and powers of the position of *directeur*. A *directeur*'s main duties are to oversee and manage the paid employees and ensure the organization functions properly (Conseil d'Etat, 2020, art. 12). Except when it concerns the director personally, he or she attends the meeting of the board and the cabinet in a consultative capacity. This position is filled by the president's appointment, after consultation with the board. The *Conseil d'État* mentions in its advisory document two cases of particular interest. While the appointment process previously mentioned was explicitly stated in the advisory document, they allowed an exception to the French Red Cross so that the *directeur* could be appointed by the *président* upon the assent of the board (Conseil d'Etat, 2022, p. 69). The reasons given are the size and importance of the organization. In the other case, they refused to provide an exception for an organization to have the board appoint the director after consultation with the *president* (Conseil d'Etat, 2022, pp. 63-64). The stated reasons for the refusal were a fear that this process could be ineffective and there could be choice made by default. Perhaps this would give too much power to the *président*.

11.3.3 *Président*

According to Larousse, *président* can mean: a person who presides over an assembly, meeting, or court; a person who represents an association, organization, or corporation; or the title of certain chiefs of state (Larousse, n.d.). This last meaning would correspond in large degree to president in English, but the first meaning corresponds exactly to the meaning of chairperson in English. The Cambridge Dictionary defines the chair as "(the official position of) a person in charge of a meeting, official group or organization (*Chair*, 2023)." Any person who is in charge of the meeting, regardless of what title they hold, is the chairperson of that meeting (*Robert's Rules of Order Online - Officers and the Minutes*, n.d., 58.) and the terms chair and president are often synonymous with each other and the more generic term of presiding officer. Other the other hand, some distinguish the position of chairperson of the board from that of president, who runs the day-to-day operations of the corporation (Ellis, n.d.), and sometimes these positions are held by the same person (mark.koo@crederelaw.com, 2020). In this conception, a president corresponds to a *directeur*, whose duties we have already reviewed. Under another conception, *directeur* corresponds to the chief executive officer, who is described as having control of the day-to-day operations of a corporation (Zane, 2023). Because of the ambiguity of the term president, it is best to avoid using it in translation in this context and opt for the more clearly defined terms of chairperson for *président* and CEO for *directeur*.

11.3.4 *Trésorier*

In the public, model there is but one provision relating to the *trésorier* that states this person shall collect and note the revenues and pay the bills and expenditures of the organization (Conseil d'Etat, 2020, art. 13). Delegation of these powers is possible by a process left to be defined by the *règlement intérieur*. The Conseil d'Etat adds that they did not approve an amendment to the *statuts* of an organization that gave the responsibility for "à la mise en œuvre de la politique budgétaire et financière de l'association proposée par le conseil d'administration et approuvée par l'Assemblée Générale (Conseil d'Etat, 2022, p. 72)." They found that this was the purview of the *président* and, upon delegation from the *président*, the *directeur*.

11.3.5 Finances

Articles 14 to 16 of the public model concern the finances of the organization (Conseil d'Etat, 2020). In 2000, the *Conseil d'État* recommended that public utility organizations no longer be allowed to have an endowment, that being one of the principal differences between an organization and a foundation (Conseil d'Etat, 2022, p. 73). Since that time, the public model no longer has provisions for endowments, although there are organizations that have been grandfathered in. Article 14 contains only a list of the possible sources of income for an organization and nothing else. Article 15 simply indicates the provision of the Insurance Code[3] that states what companies and organizations are allowed to invest in. Article 16 simply states that the organization must publish an annual profit and loss statement, an account statement, and a detailed annex. The advisory document also states that any grants from the government must undergo an audit (Conseil d'Etat, 2022, p. 73).

12 Managing Conflicts of Interest

12.1 American Law

The board may, unless otherwise provided for, fix the compensation of the directors (American Bar Association, 1988, 8.12). No more than 49 percent of the board of a public benefit corporation may be financially interested, meaning that a director or one of their family members having received any direct or indirect compensation outside of that for being a director (American Bar Association, 1988, 8.31). These types of transactions may be approved by the board of a public benefit corporation if the conflict of interest is disclosed beforehand, but this approval requires the majority of directors without interest in the transaction.

[3] Codes des assurances

12.1.1 Indemnification

The RMNPCA defines what can reasonably and legally be expected from the officers in the course of their duties (American Bar Association, 1988, 8.42). Presumably, part of the reason for defining this is that it is possible to indemnify a director against liability if they acted in accordance with this section. Also, unless provided for otherwise, a director who has successfully defended themselves in legal proceedings pertaining to their role as director must be indemnified (American Bar Association, 1988, 8.52).

12.2 English Law

Section six of the charitable model is recommended by the Commission, and if it or something similar is not included then the default legal position of section 185 of the Charity Act 2011 is in effect (Charity Commission for England and Wales, 2016, pp. 9-10). This default is that a trustee of a person connected to a trustee, who thereby may receive some benefit, may provide services to the CIO in exchange for remuneration if certain conditions are met: the board of trustees must decide that this is in the interest of the CIO; they must set forth the agreement in writing with the price or maximum price; and only a minority of the trustees can thus be concerned by any such agreement and as long as no provision in the CIO's constitution prohibits such a transaction.

Generally speaking, it is possible to pay a trustee for being a trustee; this power is neither explicitly granted nor restricted in the Charity Act 2011, doing so requires authorization by the Commission, a court, or a provision in the CIO's constitution (Charity Commission for England and Wales, 2022, 5. Paying for trusteeship). Considering however that a CIO's constitution must receive approval from the Commission to enter into force, their assent is necessary in most cases if not all cases.

Section six of the charitable model also contains a general prohibition (Charity Commission for England and Wales, 2016, pp. 9-11), unless authorized by sub-clause 2, on remuneration for employment, goods, or services of a trustee or connected person, such a person being defined later in the constitution with the content of section 188 of the Charitable Act 2011. Sub-clause 2 contains both some of the content of sections 185 to 188 of the Charitable Act 2011 as well as states that these sections must be followed in all transactions for services and goods. It also permits cases that are specifically mentioned in the Act such as a trustee: loaning money to the CIO for interest, renting or leasing property to the CIO, and participating in normal trading and fundraising activities of the CIO on the same terms as members of the public.

Subclause three (Charity Commission for England and Wales, 2016, pp. 10-11) specifically concerns remuneration for goods not in connection with services provided and states more of the content of

sections 185 to 188. It is also more specific in some cases. Section 186 prohibits trustees from being involved with any act of the board concerning the matter they would receive benefit from. Subclause three states that they cannot vote, be part of related discussions, or even be counted as part of the quorum as concerns such matters. Subclause four simply expands the definition of the CIO, a trustee, and a person connected to a trustee to include companies controlled by them through the ability to appoint one or more directors or through control of 50% of stocks or voting power. Section seven is only a restatement that trustees must disclose any conflict of interest in any of the CIO's transactions and also be absent from any discussions, voting, or the quorum count concerning said transactions.

12.3 French Law

Article ten of the public model deals with conflicts of interest, especially as concerns the board (Conseil d'Etat, 2020). There must be a system in place to prevent conflicts of interest and the most important principle to achieve that end is that members of the board may not receive remuneration for their duties. An exemption may be provided by the board if the disinterested nature of the management of the organization can be assured. While many aspects of the *statuts d'association* do not have specific provisions in the law to govern them, there are two provisions that lay out the requirements that must be met for an organization to financially compensate members of the board.

Article 261-7-d of the French tax code (*Article 261 - Code Général Des Impôts - Légifrance*, n.d.) states that an organization can still be considered to have disinterested management if the articles assure financial transparency, regular elections of the board, effective supervision of management by the members, and the balancing of the compensation with constraints on the directors in question. The provision goes on to provide conditions based on the finances of the organization in question that determine how many executive members that may receive compensation. Also, compensation of board members must either be explicitly prohibited or allowed in the articles of association and the organization cannot distribute, either directly or indirectly, any profits.

Annex 2 article 242 C of the French tax code (*Article 242 C - Code Général Des Impôts, Annexe II - Légifrance*, n.d.) enumerates the conditions to be met in order for financial transparency to be fulfilled. An annex to the financial records must state the compensation of each of the executive members in question; the statutory representative or the auditor must present a report to the deliberative body; and the financial records must be certified by an auditor.

The public model provides in article 10 (Conseil d'Etat, 2020) that all members of the board, as well as anyone attending a meeting, are compelled to use discretion as regards information of a confidential nature and information so designated by the chairperson. The directors, and members of any

committee, are also compelled to disclose any conflict of interest concerning themselves or any other director as soon as they receive knowledge thereof.

13 Name

It is an understandable commonality amongst all of the systems here analyzed that the name of the organization must be distinguishable from that of any other. As such, verifying the availability of a name and reserving the intended name are the very first step in the process of founding an organization. This is addressed in the American system by both the RMNPCA on the State level, whose first statutory requirement is that the name must appear in the articles and comply with section 4.01 of the Act (American Bar Association, 1988), and the United States Patent and Trademark Office on the federal level. If a suit is filed against an organization for using a name already in use, it can be assumed in court that the organization knew the name was registered (Laurence, n.d.). Under the RMNPCA, reserving the name in a State is only effective for 120 days and it must then be renewed or registered (American Bar Association, 1988, 4.02). This must be done in all States where the organization intends to operate and corporations foreign to the State must renew the registration every year. The RMNPCA also provides for the possibility of a "fictitious name," (American Bar Association, 1988, 4.01) under which an organization may do business but that is different from its legal name, perhaps because it is a foreign corporation and its real name was unavailable in this State. These provisions mirror the State law governing for-profit corporations after which the RMNPCA was modelled (Malamut, 2008, p. 16). It provides that the organization's name cannot imply that it engages in unlawful activity or activities contrary to the purpose stated in the articles of incorporation (American Bar Association, 1988, 4.01). Similarly, the English regulations provide that the name cannot be misleading or offensive (Charity Commission for England and Wales, 2016, p. 9). The *Conseil d'État* simply says that the name must correspond with the purpose of the organization (2022, p. 17).

14 Purpose

14.1 American Law

The purpose of a non-profit organization is important in all three systems for obvious reasons; however, the place the purpose occupies in the governing document differs greatly between the European systems and the American. While the Federal Tax Code explicitly defines all of the permissible reasons for which an organization may be declared tax-exempt, charitable being one of them (*26 U.S. Code § 501 - Exemption from Tax on Corporations, Certain Trusts, Etc.*, n.d.), the RMNPCA only requires that a

statement in the articles of incorporation specifying whether the corporation is religious, public benefit or mutual benefit (American Bar Association, 1988, 3.01). There are exemptions to some provisions of the RMNPCA for religious corporations, but I have excluded them from the purview of the paper to focus on public benefit. For all other intents and purposes, religious corporations are also considered public benefit corporations under the RMNPCA. All of this is to say that the purpose of a non-profit organization is important in the United States because of the financial and tax implications that will have in the way it is classified by the various governments; however, the place of the purpose of the organization in both the articles and bylaws is minimal in comparison to the other systems.

14.2 English Law

In the English system, the designation of not-for-profit is not synonymous with the designation of charitable (*Nonprofit Law in England & Wales*, 2021, I. A.). The one type of not-for-profit that is not charitable is a community interest company. They "benefit the public through their actions, and any profits made by the organisation help to provide a tangible benefit to the community… founders can receive payments and control the organisation's operations, unlike in a charity (*How to Start a Nonprofit Organisation in the UK (with Types) | Indeed.Com UK*, 2022)." It is consequently not eligible for the tax breaks that charitable organizations are. So this is a somewhat significant terminological difference between the two English-speaking systems; nonprofit in the U.S.A. is largely equivalent to charitable in England, whereas charitable in the U.S.A. is only one type of nonprofit.

The charitable organizations are governed by the Charities Act 2011, which states the purposes for which these organizations can be founded and operated. These purposes are similar, if not nearly identical, to the purposes listed under the other legal systems analyzed, the tax-exempt purposes in the American system, and the organizations for public benefit in the French. The list is not exhaustive, as the Charity Commission or the High Court may recognize more (Charity Commission for England and Wales, 2013a). Moreover, to qualify as charitable, an organization must also be for the "public benefit (Charity Commission for England and Wales, 2013b)." This is a two-part requirement set out by the Charities Act to define charitable. It may be necessary to provide evidence of the benefit of the purpose, as it cannot be based on personal views, although in most cases this is obvious (Charity Commission for England and Wales, 2016, p. 8). It must also benefit the public in general or a sufficiently large section thereof. In the charitable model, the object of the organization must contain three parts: the purpose(s) of the organization, who it benefits therefrom, and any geographic limits to its benefits.

14.3 French Law

The first article of the public model published by the Ministry of Interior concerns the purpose of the association (Conseil d'Etat, 2020). According to the Conseil d'état, the name, classification, and functioning of the organization must be in line with its purpose, which must be distinctly different from the personal interest of its members (2022, p. 17). This purpose cannot enter into conflict with a mission for the public good as defined by law, but the fact that it coincides with that of the jurisdiction government does not automatically exclude recognition. Political and religious organizations are not necessarily excluded either. An organization can participate in a public service, and even manage it if so delegated, but in this case the organization must remain politically neutral. The first article also specifies the address and administrative region of the home office and that to change this the board has the authority to move the home office within the administrative region, but the decision to move outside of it must be taken by the general assembly and the Ministry of the Interior must be immediately informed thereof.

14.3.1 *Moyens d'actions*

Article two of the public model concerns the *moyens d'action* of the organization (Conseil d'Etat, 2020). Compared to the other systems here analysed, the public model is uniquely concerned with this issue and this section is very small because it is of course the most case-specific part of the *statuts*. This article is very important in the review process for public recognition because the Conseil d'état wants to make sure that the resources and financial situation of the organization are commensurate with the actions it wishes to undertake (Conseil d'Etat, 2022, p. 27). This balances out, in the Court's reasoning, the stated purpose of the organization, which is very often much too broad.

15 Powers

Section four of the charitable model both enumerates specific powers and states that the organization has all the powers it needs to further its objectives (Charity Commission for England and Wales, 2016, p. 8). This section is not necessary as the Charities Act 2011 gives the powers to a charitable organization to do "anything which is calculated to further its purposes or is conducive or incidental to doing so (Charity Commission for England and Wales, 2016, p. 9)." Still, the Commission states that it can reassure lenders to enumerate specific powers such as borrowing, acquiring property, disposing of property, hiring employees, and depositing or investing funds (Charity Commission for England and Wales, 2016, pp. 8-9). Concerning their review of constitutions, it is possible to restrict the general powers of the Charities

Act; however, restrictions must be in the organization's interest and cannot prevent the disposal of property.

The charitable model also mentions sections 124 and 125 of the Charities Act 2011 (Charity Commission for England and Wales, 2016, p. 8). When acquiring a mortgage, section 124 states that the trustees must get proper advice in writing from a person that can reasonably be considered to be knowledgeable in financial matters and has no financial interest in this matter (*Charities Act 2011*, n.d.-a). This person can be an officer or employee of the organization or board of trustees. The trustees must certify that this procedure has been followed. In the absence of completing these requirements, the organization must receive permission from the court or Commission to acquire a mortgage. Section 125 adds to this by requiring that any mortgage of land held by a charitable organization must state this fact. Furthermore, even if the process has not been properly followed, the mortgage is still valid if a person in good faith acquired an interest in the land (*Charities Act 2011*, n.d.-b).

All those enumerated powers, but not the procedural restraints, also appear in the RMNPCA (American Bar Association, 1988, 3.); it is not a requirement to explicitly enumerate them in the articles or the bylaws, but some guidance suggests doing so (*Not_for_profit_organizations_legal_guide.Pdf*, n.d.). These issues are completely missing from the public model and the government guidance on drafting *statuts*.

15.1 Property and Income

Section five of the charitable model is a reminder that reflects the content of the law governing the management of a CIO's property and income and is not necessary. The trustees are accordingly entitled to receive reimbursement for expenses incurred in the execution of their duties (Charity Commission for England and Wales, 2016, p. 9). Section 189 of the Charities Act 2011 is referenced specifically because it allows CIOs to obtain insurance from which the trustees may benefit. Section 189 states that this insurance may cover the trustees for personal liability concerning breach of trust or duty in their capacity as trustee or negligence, default, breach of duty, or breach of trust in their capacity as an officer. The terms of such insurance must however exclude reimbursement for fines, penalties, liabilities, or legal expenses when this person's actions were the result of fraud, dishonesty, or misconduct (*Charities Act 2011*, n.d.-c). The determining factor for reimbursement in these cases is whether a conviction with no further possibility of appeal has been handed down. More generally, no member may receive any of the CIO's property or income by way of profit, however, this clause does not affect the content or implementation of the next section.

16 Membership

A major difference between the French system and the others is whether a non-profit organization must have members other than the board itself. The absence of members is not given as an option in the readily accessible resources from the French government (Conseil d'Etat, 2022) (Conseil d'Etat, 2020). The American and English requirements explicitly state that having a membership broader than the members of the board is optional. This decision must be stated in the articles under the RMNPCA (American Bar Association, 1988, 2.02), but the Charity Commission requires this information in the constitution (Charity Commission for England and Wales, 2016, p. 12).

A throughline of all the systems concerned is the commitment to the principle of democratic governance, embodied in the membership itself. Ensuring a fair admission process is therefore of great importance to the proper functioning of incorporated entities and the documents governing them.

The RMNPCA does not require organizations to collect dues and states that the articles or bylaws may establish criteria or procedures for members and their admission (American Bar Association, 1988, 6.). Thus, such criteria and procedures seem not to be a major concern of the American system. On the other hand, the Commission explains that it is a legal requirement to explain in the constitution the criteria for admission as a member, and section nine of their charitable model explains who may become a member of the CIO. Otherwise, provisions in the constitution restricting membership are permissible, but the Commission is concerned about the possibility of the membership being too closely linked or associated with the group of the public benefiting from the actions of the CIO (2016, pp. 12-13).

The charitable model provides for a membership admission procedure in which the charity trustees: “may require applications for membership to be made in any reasonable way that they decide;” shall give notice of their decision to approve or refuse the application within 21 days and, in the case of refusal, give the applicant the opportunity to have a fairly considered appeal before the board; may refuse an application if they believe it is in the best interest of the CIO (Charity Commission for England and Wales, 2016a, p. 13).

Article three of the public model specifies that the approval of the board is all that is required to be admitted as a member; however, this can be done by the general assembly or a member of the board, although this duty cannot be delegated to the chairperson of the board alone (Conseil d’Etat, 2020, art. 4). Furthermore, members must pay dues unless they are honorary members (Conseil d'Etat, 2022, p. 31).

16.1 Member Rights

Under the RMNPCA, members have certain rights that cannot be infringed upon. A person cannot be made a member without their consent (American Bar Association, 1988, 6.01) and may resign their membership at any time (American Bar Association, 1988, 6.20). While they may become liable to the corporation, no act or amendment may create an obligation and they are not liable for the corporation (American Bar Association, 1988, 6.12). While the other systems do set forth particular rights of the members, they do so in more of a piecemeal fashion as opposed to the American legislation which explicitly groups these rights together. In the charitable model for example, this is no section such section; there is however simply a statement of members' duty, under the law according to the corresponding note from the Commission, to decide in good faith for the best interests of the CIO (Charity Commission for England and Wales, 2016, p. 13).

16.2 Termination

The RMNPCA provides that members may not be terminated, expulsed, or suspended without a procedure that is fair and reasonable and carried out in good faith(American Bar Association, 1988, 6.21). In this context, fair and reasonable is defined as at least 15 days prior written notice and the opportunity for the member to be heard, orally or in writing, not less than five days before the effective date. All relevant facts and circumstances must be taken into account and any challenge must happen within one year.

The charitable model has a subclause that is dedicated to termination of membership (Charity Commission for England and Wales, 2016, pp. 13-14); its content is not required by law, but the constitution must contain a provision on termination and retirement membership. The reasons given for termination are death or dissolution of an organization; written notice from the member; not paying a sum within six months of it being due; and a decision by the trustees that this is in the best interest of the CIO. In this last case, the trustees must give the member 21 days' notice of the reason for the proposed termination and, during this time, provide the opportunity for the member to appeal this decision at a meeting of the board of trustees, in person if so requested. The charitable model provides a space to set membership fees in the constitution; however, it is not required content of the constitution.

In contrast to these more detailed approaches, the public model simply lists for what reasons a member may lose their membership (Conseil d'Etat, 2020, art. 4). In keeping with the democratic spirit of governance, this process must include a way to contest the loss of membership, including noting objections and observations, and the possibility of appealing to the general assembly. While the public

model makes all that much clear, it leaves to the *règlement intérieur* explanation of the process by which the person presents a defence prior to the final decision.

16.3 Classes of Members

The RMNPCA permits the creation of different classes of members with different rights and obligations, even for special actions, in either the articles or the bylaws but in the absence of such a provision all members are equal (American Bar Association, 1988, 6.10); however, if an amendment changes rights of a class or classes more than another, the affected classes must vote on its approval (American Bar Association, 1988, 10.04). The articles or bylaws may also create delegates with all or some of the members' authority (American Bar Association, 1988, 6.40). If there are no provisions in the articles or bylaws, the RMNPCA sets the default as one member one vote (American Bar Association, 1988, 7.21). Because there is no approval process in the American system, there is no negative context or dissuasion for having such classes.

In contrast to this, the Commission makes it clear that the law permits CIOs to have classes of members with different voting rights (Charity Commission for England and Wales, 2016, p. 14); however, they strongly advise against it and the charitable model contains no optional provisions concerning this subject. If the CIO does choose to have different classes, their rights must be set out in the constitution. The charitable model does contain optional provisions concerning classes of non-voting members, who are not considered members under the law.

In the French system, categories of members may exist, but all members must be equal when votes are taken and all categories must be eligible to be members of the board and/or officers thereof (Conseil d'Etat, 2022, p. 40). Furthermore, creating a new category of members can only be done through amending the *statuts* and not through the *règlement intériorieur* (Conseil d'Etat, 2020).

16.4 Representatives

Elected representatives for the members are possible under all three systems (American Bar Association, 1988, 6.40) (Conseil d'Etat, 2020, p. 5) (Charity Commission for England and Wales, 2016, p. 20). In France, this requires a special dispensation from the *Conseil d'état* (Conseil d'Etat, 2022, p. 44). This is illustrated in their jurisprudence on the French Committee for UNICEF. In this case, the Court considered that UNICEF's strong local connection with more than 150,000 in France alone, its international and federal organizational structure, and other democratic aspects of the organization merited a dispensation. Normally however, for such a representative organizational structure, the members of the organization would be the local chapters/organizations themselves. This last part is also what the

charitable model provides for, however, the RMNPCA simply states that the articles or bylaws may provide for delegates with some or all of the members' powers (American Bar Association, 1988, 6.40).

16.4.1 Incorporated Bodies as Members

The RMNPCA does contain any provisions pertaining to incorporated entities being members of a non-profit organization (American Bar Association, 1988). The charitable model leaves membership open to any person, corporation, or unincorporated body (Charity Commission for England and Wales, 2016, pp. 12-13); the notes on this section in the model define unincorporated bodies in this situation as local associations that are part of a national federation. It is mentioned that there is disagreement between legal experts on this subject but that charities asked that this possibility not be excluded by default in the charitable model. In the event that unincorporated bodies are permitted as members, the Commission recommends making rules to govern how their rights and duties are exercised. In the public model, incorporated entities as members are allowed but the particulars of their voting and representation must be specified (Conseil d'Etat, 2020, p. 5).

16.4.2 Transferals

Transferal of membership appears to be a concern only in the anglophone systems. Under the RMNPCA, a corporation for public benefit may not have transferable memberships (American Bar Association, 1988, 6.11). Similarly, the charitable model prohibits the transferal of memberships (Charity Commission for England and Wales, 2016, p. 13). The Commission says that this is so that control of membership admission remains in the control of the CIO. This subclause of the model also has an optional part exempting incorporated and unincorporated members for the transferal of membership from an old to a new representative.

17 Member Actions

17.1 Member Meetings

17.1.1 Regular Meetings

Requiring annual meetings is a common point among all the legal systems and so is the most important business on the agenda (American Bar Association, 1988, 7.01) (Charity Commission for England and Wales, 2016, p. 16) (Conseil d'Etat, 2020 art. 5-6). It is interesting to note that for some reason the RMNPCA allows only the bylaws, and not the articles, to fix a date or procedure for annual and regular meetings. It also states explicitly that failure to hold an annual or regular meeting at a time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

The regulations of the Commission require that the constitution set out the procedures for calling and holding general meetings, quorum, whether a poll can be demanded and, if so, conducting a poll or written ballot. As such, the content of this section of the charitable model is strongly recommended and reflects what the Commission considers to be best practices. The charitable model diverges from the other two systems in specifying that the “annual general meeting"(AGM) must be held at intervals of not more than 15 months. Presumably, this is to give some leeway to the organizations, but this element is still unique to the English system.

The required orders of business in common are that the annual meeting must hear the yearly financial report, the report from the board, and elect members of the board. The RMNPCA is the only one to specifically these the president’s report and the chief financial officer’s report; one can presume that this is essentially the same as the trustees’ report and the annual statement of accounts, but perhaps it gives more power to the individuals of the president and the CFO or treasurer.

Other general meetings may be held at any time. The power to call general meetings rests with the board and they must do so within 3 months of receiving an authenticated request from at least 10% of the members in which the general business to be addressed and potential resolutions are stated. If there has been no AGM in the last 12 months, the required percentage is 5%. Such a meeting must be held within 28 days of being called and can be called by a member if the board fails to do so.

The *Conseil d’État* goes much further than the other systems by stipulating that the general assembly must approve all acts that have a significant impact on the functioning of the organization; the general definition thereof is left to the *règlement intérieur*. This does include however hearing and deciding the budget, acquisition and sale of property, mortgages thereon, rent agreements of more than nine years, loans of more than one year, and guaranteeing loans. The representative of the French government in the administrative region of the head office must approve all decisions to take out loans of more than a year for them to be valid. In the public model, the general assembly must meet at least once a year and also when either the board or one-fourth of the members convoke it.

17.1.2 Special Meetings

All of the systems give the power to call special meetings to the Board (American Bar Association, 1988, 7.02) (Charity Commission for England and Wales, 2016, p. 17) (Conseil d'Etat, 2020, art. 5). Otherwise the members may call for a meeting but the number of members required to do this vary between the systems. Under the RMNPCA, there can be no higher or lower threshold than 5% of the voting power (American Bar Association, 1988, 7.02). The charitable model sets the threshold at 10% unless no annual meeting has been held in the last 12 months, then the requirement is 5%. The members demanding a

meeting can require it to happen within 28 days, but, if this is not the case, it must take place more than 3 months after the demand. The meeting must be called within 21 days and can be called by a member if the board fails to do so. The public model simply provides that one-fourth of the members may demand a meeting (Conseil d'Etat, 2020, art. 5).

17.1.3 Member Proposals

As part of the members calling a meeting under the RMNPCA, they can have written demands describing the purpose of the meeting (American Bar Association, 1988, 7.02). This provision also sets the record date for this meeting and says that if no notice of a special meeting is given within thirty days, then a person signing the demand may give notice and set the time and place. The charitable model provides that the board present a proposal for decision by the members if 10 % or more of the members have requested it (Charity Commission for England and Wales, 2016, p. 15). In the public model, does not explicitly say that members may propose measures, but it could be implied that, since they have the power to call a meeting, they may also set the purpose of this meeting (Conseil d'Etat, 2022, art. 5).

17.1.4 Notice

A substantial concern in the RMNPCA is that proper notice be given for the meeting, including any actions that are to be discussed or approved. Frequently referred to throughout the RMNPCA, section 7.05 (American Bar Association, 1988) requires that members receive at least 10 days' notice and no more than 60 days' notice of members' meetings. This notice must contain the time, date, place, and business of the meeting. Members must also be informed if there will be votes to approve an indemnification, a director's conflict of interest, an amendment to the articles or bylaws, an act of merger, or an act of dissolution. These are all of the actions that require member approval under the RMNPCA. A member must be able to waive the right to notice and, if they attend the meeting, their right to object due to lack of notice is invalid unless they raise that objection at the beginning of the meeting or when the unannounced matter is raised (American Bar Association, 1988, 7.06).

For member voting under the RMNPCA, it is important to fix a record date (American Bar Association, 1988, 7.07). A record date is the time and date when the list of members eligible to vote for a meeting or action is fixed. It also requires that such an alphabetical list be made available, upon written request, at least 2 days after notice is given but no more than 70 days before the meeting or action. The bylaws, and not the articles, may fix the record date, or a process for it, and if it does not the board may do so. Otherwise, the record date is the day before notice is given.

The English system is also concerned with giving proper notice but not to the same extent as the RMNPCA (Charity Commission for England and Wales, 2016, p. 19). The charitable model requires the

same content for the notice of meetings and also requires that the annual reports be included for the notice of annual meetings and that it be given 14 clear days before the meeting; however, a resolution for which there was no notice given can be passed if 90% of the members approve it. Proof of sending the notification, either by post or electronically, must be obtained and kept.

In stark contrast to this detailed treatment of this issue, the public model simply states that documents necessary for deliberation are made available to the members in a timeframe and manner to be defined in the *règlement intérieur* and that the general assembly consists of members up to date on their dues (Conseil d'Etat, 2020, art. 5).

17.1.5 Records and Communication

All of the systems (Charity Commission for England and Wales, 2016, p. 29) (Conseil d'Etat, 2020, art. 5, 16) require nearly the same records to be kept: financial reports and records, minutes of all meetings, membership register, appointments, elections, decisions. The RMNPCA is however much more specific and demanding in this area, mandating that records of all communications with members over the past three years also be kept at its principal office (1988, 16.1).

The rest of these provisions in the charitable model are simply reminders of duties under the General Regulations. They include: the right of a member to receive a hard copy of any information sent to them; and "any requirements to provide information to the Commission in a particular form or manner (Charity Commission for England and Wales, 2016, p. 29);" keeping and providing access to registers of members and trustees; keeping minutes of all meetings, appointments, and decisions; preparation of annual reports and returns.

17.1.6 Registration in the French System

Article 21 of the public model references the law concerning the registration of organizations and states that any changes in the administration of the organization must be communicated to the government representative in the administrative region of the home office (Conseil d'Etat, 2022). It also grants to the Minister of the Interior, and perhaps another Minister who has jurisdiction over their activities, the right to visit the organization as well as obtain the documents necessary to keep track of its operation. The annual report, list of administrators, and the summary of accounts, including any secondary organizations or local committees, must be sent to the local government representative and the Minister of the Interior.

17.2 Quorum

Quorum is a central concern of procedure for any deliberative body and therefore is addressed by all three systems. The English-speaking jurisdictions give however more details than the French on this issue, which the public model simply sets at one-tenth of the members (Conseil d'Etat, 2020, art. 5). The RMNPCA also sets a default quorum of ten percent of possible votes, which may be decreased by an amendment to the bylaws with the approval of the members or, unless prohibited by the bylaws, the board; however, only member approval can increase member quorum (American Bar Association, 1988, 7.22). Unless one-third of the voting power is present, no matters may be voted on that were not in the meeting notice. An affirmative vote is a majority of quorum, unless provided for otherwise, and a bylaw amendment to increase or decrease the required vote must be approved by the members. Aside from this, the RMNPCA lays out the procedure for accepting votes, consents, and waivers.

Quorum is defined in the charitable model as 5% of the membership or 3 members, whichever is greater (Charity Commission for England and Wales, 2016, p. 19). If quorum is not reached within 15 minutes of the announced time of the meeting, then it must be adjourned and postponed. The membership must receive at least seven days' notice of the time and place of this postponed meeting. If there is no quorum at that time, then the members present represent a quorum. If at any meeting a quorum ceases to be present, then only discussion is permissible and no decisions may be taken.

17.3 Chair Meeting

There is no provision of the RMNPCA as to who should chair member meetings (American Bar Association, 1988). The charitable model says that the chair of the board will also serve as chair of these meetings (Charity Commission for England and Wales, 2016, p. 19). If this person is absent, then the members elect one for the meeting. The public model is a little more expansive, giving the members the possibility to elect a *bureau* for the meeting (Conseil d'Etat, 2020, art. 5).

17.4 Voting for Regular Business

All of the systems agree on a simple majority of members present to decide on regular business (American Bar Association, 1988, 7.23). The tie-breaking vote is that of the chair of the meeting in both the charitable model (Charity Commission for England and Wales, 2016, p.20) and the public model (Conseil d'Etat, 2020, art. 5). The charitable model also specifies that voting at a general meeting is done by a show of hands unless a poll, a secret ballot, is demanded by the chair or 10% of the members present. Polls on electing a chair or adjourning the meeting must be carried out immediately; otherwise,

polls may be carried out immediately, at some other time and place determined by the chair, or through postal or electronic communication.

17.4.1 Action in Writing or Remotely

The public model is singular in providing for the possibility of electronic meetings, discussion, and voting; this is however an optional provision (Conseil d'Etat, 2020, art. 5). The president even has the initiative for the general assembly to meet electronically, by means that are left to the byelaws to define, unless one-fourth of the board or one-tenth of the members oppose this action. This is all conditional on the proper documents being made available, the ability to have debates amongst all the members of the assembly, the announcement of the results after the vote, and guaranteeing the "sincérité du scrutin et, le cas échéant, le secret du vote (Conseil d'Etat, 2020, art. 5)."

In the English-speaking jurisdictions, there is no reference to electronic means of action. This is less surprising for the RMNPCA, since it was written before the internet as we know it; however, it is surprising that no provision exists in the charitable model. The RMNPCA sets a default requirement of the approval of eighty percent of members may take any action requiring member approval, unless limited or prohibited by the articles or bylaws (American Bar Association, 1988, 7.04). The charitable model simply states that decisions may be taken by a simple majority of all members if: a written resolution is sent to all members; the required votes are received within 28 days of circulating the resolution; the documents are authenticated, including signatures(Charity Commission for England and Wales, 2016, p. 15). The charitable model also has an optional provision for communicating electronically and part of the provision is a reminder of the Commission's regulations requirements that every member has the right to request and receive, within 21 days of the request, a hard copy of any document or information sent to them (Charity Commission for England and Wales, 2016, p. 29).

17.4.2 Employees

The public model is singularly concerned with the prospect of employees being members of the Board. Employees that are members may be elected to the Board, but they must not make up more than one-fourth of its membership (Conseil d'Etat, 2020, art. 7) nor can they be officers thereof (Conseil d'Etat, 2020, art. 11).

17.5 Special Actions

17.5.1 American Law

In the RMNPCA, there are individual provisions for amendments to the articles, amendments to the bylaws, mergers, sale of substantially all assets, distributions to members, and an act of dissolution

(American Bar Association, 1988, 9.-14.). All of these actions require a higher minimum affirmative two-thirds of the quorum or a majority of voting power, whichever is less. The articles, bylaws, or the members may stipulate more; the board may also do so if they initiate the amendment.

17.5.2 English Law

The two provisions on special decisions that appear in the charitable model concern amending the constitution and dissolution of the CIO. Their content is not, with one exception, required and simply, with two exceptions, restates the content and references some, but not all, of the laws and regulations applicable to these actions (Charity Commission for England and Wales, 2016, p. 30). Amending the constitution is subject to 224-227 of the Charitable Act 2011 which states an amendment that would not result in the CIO ceasing to be a charity can be agreed to in writing by all the members or passed by a majority of 75% at a general meeting. A CIO must obtain prior approval from the Commission if the amendment alters any provisions pertaining to its purpose, the direction of the application of its property upon dissolution, or authorization of anything that would benefit any trustee, member, or person. This is also the case for any amendment to the section on dissolution or any amendment to the section on amendments. A copy of the amended constitution, and any other documents they may require, must be sent to the Commission within 15 days of passing the amendment. Amendments do not take effect until they have been registered (Charity Commission for England and Wales, 2016, p. 30).

A resolution for dissolution is passed in essentially the same way as a normal amendment (Charity Commission for England and Wales, 2016, pp. 30-31). The constitution of a CIO must contain a provision governing how assets and property will be wound up in the event of dissolution. The charitable model provides simply that a resolution for dissolution may provide directions for winding up, the trustees may make those decisions otherwise, and "in either case the remaining assets must be applied for charitable purposes the same as or similar to those of the CIO (Charity Commission for England and Wales, 2016, p. 31)." The charitable model goes on the state some of the requirements of the Dissolution Regulations; namely, the trustees must send an application to be removed from the Register of Charities with: a copy of the resolution, a declaration by the trustees that the CIO has settled all debts and liabilities, a statement of how the CIO's property has been or is being applied before its dissolution. The last provision of this clause is a reminder to the trustees that there are other regulations governing other circumstances of dissolution such as not being unable to meet financial obligations.

17.5.3 French Law

In the French system, any amendments to the constitution passed must be submitted to the Conseil d'Etat which will check that the amendment does not change the nature of the organization, particularly as it concerns the reason for which it was designated a public utility (Conseil d'Etat, 2022, p. 77). The Conseil d'Etat will also make sure, regardless of the amendment, that the organization still merits this designation. The public model provides that the board or one-tenth of the members can propose an amendment (2020, art. 17). The amendment is then put on the orders of business for the next general assembly which has the sole authority to approve amendments. At least 15 days of notice of the amendment must be given to all the members before the meeting. The quorum for such a meeting is one-fourth of the active members; A two-thirds majority of the members present is required for approval. If quorum is not attained, then another meeting of the assembly must be held in no earlier than 15 days.

Articles 18 through 20 concern the dissolution of the organization (Conseil d'Etat, 2020). Notice the motion for dissolution conforming with article 17 must be given. While the two-thirds majority of members present is also required for the approval of this act, a much higher quorum of one-half of the current members is set. These voting requirements are only in force for the act of dissolution itself. After dissolution has been approved, it must then be decided which organizations or government agencies shall benefit from the liquidation of this organization's assets. This is decided by the normal voting requirements provided for in article 5. Whatever organization or organizations are chosen, they must have the same purpose as this organization; otherwise, the monies devolve back to the government. The minutes of deliberation on amendments and dissolution must be sent without delay to the Minister of the Interior and dissolution can only be approved by the Conseil d'Etat (Conseil d'Etat, 2020, art. 20).

18 Délibération

Having reviewed both academic literature with a view to translating bylaws and the legal systems within which bylaws operate, I will now present certain terms and concepts from the public model and argue how they should be translated. While my purpose here is not to translate whole provisions of the public model, the following excerpt is for context as I will translate part of it:

"L'ordre du jour et les documents nécessaires aux délibérations, dont, le cas échéant, le rapport du commissaire aux comptes, sont mis à la disposition des membres par le conseil d'administration dans les délais et les conditions définis par le règlement intérieur (Conseil d'Etat, 2022, art. 5)."

The concept that I will focus on here is *les documents nécessaires aux délibérations*; *Délibération* comes from the Latin root *deliberare* which originally had the meaning of carefully and completely weighing a matter in the mind (Harper, 2018). As concerns this matter, voting entails more than just holding a vote; it also implies a form of democratic governance and the concepts that come with that. Because these concepts are interdependent, they can be used to define or qualify each other. This is the case with the word *délibération* in French; it can mean both the process of collectively considering and examining a question and the resulting decision itself, usually in the plural when referring to decisions (Éditions Larousse, n.d.-a). This can be in a general sense but can also be in connection with a court or legislature. This is practically the definition in English of deliberation, except that it does not mean the decision resulting from this process (Dictionary.com Unabridged, n.d.-a). How closely these words are tied to the democratic process can be seen in the term for a group of people who vote to take decisions, a deliberative body/assembly (STANDS4, n.d.) in English, and an *assemblée/organe délibérant(e)* (Van der Feer, 2022). There are also elements of intentionality and oral discussion in both languages as can be seen in the words deliberate and *délibéré*.

The different meanings of the *délibération* can cause confusion in practice, which is the case with *les documents nécessaires aux délibérations*. This use could mean deliberative discussions, the resulting decisions, or both, as one generally leads to the other. Possible confirmation of this can be found in the note from the same article that states the conditions for distance voting;

“Les conditions portent notamment sur la mise à disposition des documents nécessaires aux débats, l’instauration d’une période de débats préalables entre tous les membres de l’assemblée et le dévoilement des résultats après la clôture des votes (Conseil d’Etat, 2022, p. 5).”

This seems to be a breakdown of the elements of *délibération* at play and shows that the public model uses *les débats* to specify deliberative debate.

So, the use of the plural form cannot simply be a shorthand for determining which meaning of *délibération* is intended. Perhaps it does not matter, as the same amount of information is required in any case; on the other hand, debate may imply a need for more information than just voting. Voting yes or no could be a simpler proposition than having all the details one would need to propose amendments and change functional aspects of a measure. There could also be a debate on the merits of the proposal without the possibility of changing it.

The two (Conseil d’Etat, 2020, art. 10) other uses of *débats* in the public model concern the possible conflict of interest of a board member who must then abstain from participating in *les débats* and from voting on *la délibération* or *l’affaire* that is concerned. There is no appearance of the word debate in the

corresponding part of the charitable model, nor in the whole text for that matter, but the word discussion is used to require that the person with the potential conflict of interest must abstain from the deliberative debate (Charity Commission for England and Wales, 2016, pp. 10-12).

There is overlap between the English word “debate” and that of *débat*. Both can mean oral deliberation and discussion, but it is more often in that case for them to refer to the act or event rather than the action. *Débats*, in the plural, means the discussion of a question in a deliberative body whereas the singular, debate, is used in English. In both languages, it can also have a more adversarial meaning, as in the case of a political or televised debate. The original meaning of *débattre* was to fight down or completely, so there may be more antagonism implied with this word. The ideal of *deliberare* is difficult to maintain in real-world situations and so how much antagonism or controversy an issue can generally be expected to evoke could corollate with the use of the word debate. Using the word discussion may therefore help to avoid mentioning potential contentiousness. Since the charitable model uses the word discussion to achieve the same effect as *débats* in the public model and *débats* is closely tied to *délibération*, then this could be used to translate the concept of having completed the approval process in “les documents nécessaires aux délibérations.”

18.1 Debate and the Chair

An analysis of the concept of debate would be incomplete without examining the legal and cultural expectations of the deliberative process on a governmental level. This is both a practical example within a specific culture and an aspect that can inform on the cultural expectations associated with the democratic process. Democracy, at least in its Western modern conception, is inherently tied to the concept of justice (*Rule of Law | Definition, Implications, Significance, & Facts | Britannica*, 2023) on a theoretical level and to fairness (*Justice, Western Theories of | Internet Encyclopedia of Philosophy*, n.d.) on a philosophical level. People’s expectations operate on a psychological and emotional level and are the lens through which they perceive the illocutionary force of the speech acts the witness.

An important organizational example in the U.S.A. is Robert’s Rules of Order. Approximately 80% of organizations in the U.S.A. use these rules as their authoritative parliamentary manual. It is also common for organizations to make specific rules departing from this as necessary (Lane, n.d.). I was unable to find such a resource for either the English or French systems. From an American point of view, I would be remiss not to use these rules as an example of their cultural expectations even if there is no direct cultural equivalent available for comparison.

Robert’s Rules of Order provides that everyone entitled to vote has the opportunity to take the floor twice, ten minutes each time, concerning a question before a vote is taken (Robert’s Rules Online:

RulesOnline.com, n.d.). These rules may be suspended by a majority of two-thirds. Similarly, the president of the National Assembly has the duty to "déterminer l'ordre des orateurs et de leur donner la parole (Assemblée nationale, n.d.-c)" and does not decide if a member speaks, and it is another body that decides the time allotted to the different parties (Assemblée nationale, n.d.-a). This may indicate a more restrictive interpretation of *projets de délibération* in favour of more debate.

This gives the chair much less power than in the British Parliament where a member after or during the speech of another member may move for closure of the debate (Erskine May, n.d.-d), meaning an immediate vote without the possibility of further amendments or debate. The chair has the power to refuse this motion if it appears that it infringes the rights of the minority (Erskine May, n.d.-c). This is similar to how the Speaker of the House of Representatives' role is described as well (U.S. Government Publishing Office, n.d.). The reality of the chair having more power does not necessarily mean less or more debate; it could very well lean towards more depending on how earnestly the chairperson takes the mandate of protecting the rights of the minority parties or opinions. It could however show more willingness or expectation in the British mind that speech may be constrained.

While the Speaker of the House has a similar role to their counterpart in the British Parliament, and there can be a manager with the power to close debate on a specific bill (Brown et al., 2017, sec. 11), the idea of debate in Congress is intimately tied in the mind of the general public with the idea of the filibuster. The filibuster (United States Senate, n.d.) is part of the Senate tradition of unlimited debate, whereby a senator may literally talk as long as they are able to stand. Currently, there is a procedure to end debate, but for much of American history there was not, and the filibuster is one of the most famous, and perhaps strangest, elements of the American political system.

Considering this in combination with the prominence of the First Amendment and freedom of speech in American society and culture, expectations in an American nonprofit organization may imply a longer, more extensive debate than those in an English one. To be clear, freedom of speech is a democratic ideal in which all three countries place a great value; however, as concerns the length of speeches permitted in a deliberative group and procedural constraints thereon, American expectations are most likely higher than their counterparts.

18.2 Resolution

In the parallel section of the charitable model pertaining to distance voting, action through written resolution without a general meeting, the requirement is that a copy of the resolution has been provided to all the members (Charity Commission for England and Wales, 2016, p. 15). That is practically the same requirement that is given for distance voting for the Board under the charitable model (Charity

Commission for England and Wales, 2016, p. 26). It may be logical that the documents *nécessaires aux délibérations* are the proposal that is itself the subject of the deliberation, so this may be what is implied in the public model. The difference between the two usages is of course that a resolution is already a document and that it is waiting for approval.

The dictionary entries consulted (Cambridge Dictionary, n.d.; Dictionary.com Unabridged, n.d.-b) concerning the word resolution concur on the definition of a formal or official statement of decision, intent, or opinion by a group, especially one agreed upon by a vote. The charitable model shows however that a "resolution may be proposed and passed (Charity Commission for England and Wales, 2016, p. 18)," and therefore the definition does include the possibility that a resolution may not receive approval. The very use of the adjectives formal or official may imply the probable completion of a process to receive this quality. There may be no significant difference between a formal statement and an official statement. If it is a statement of a group of people and is considered as such, then it is in a way inherently both formal and official. If a political party in a legislature proposes a resolution, it still needs the consent of the larger deliberative body to become official. On the other hand, if a resolution has gone through the drafting and proposal process, especially in a legislature where only members may make proposals, then it might be in some way official and formal despite not having received approval.

Since it is generally subject to a vote by a group, it is no stretch to say that deliberative debate may also be implied in this context, and in this way, resolution is very close to *délibération*; however, in some uses a resolution implies being proposed in its final form excluding the possibility of amendments (Testbook Edu Solutions, 2023) and the image evoked by one of its other main meanings is a virtue, ideal, or psychological state and in that case does not have a context as rooted in an action, such as is a deliberative debate with *délibération*. Complicating this is the relation between motions and resolutions.

A motion is also defined in terms of a formal proposal, but oral discussion is an integral part of this context. This word is associated with being spoken aloud during debates in front of deliberative groups. It is also frequent that motions require another member of the group to say "second" or "I second that motion" in order to even be considered. To anyone who has attended with any regularity the proceedings of a deliberative group, especially a smaller assembly, hearing the word motion evokes that image and can create auditory anticipation of the next successful step in the process.

Whereas resolution is more connected with written documents, a motion retains its orally deliberative context, especially because motions tend to be smaller than resolutions (Lane, n.d.). On the other hand, motions can become resolutions after having been approved (Government of Western Australia, n.d.) and are perhaps more associated with statements of opinion or statements that something must be

done (Parliament of the Republic of Uganda, n.d.). So in English, all approved formal proposals are resolutions. Generally, a written document is submitted for consideration and then there is an effort to gain support, but when member opinion moves faster than written proposals a motion may be passed and then its resolution is written afterwards. Resolution's association with the concept of motions and therefore debate gives it an orally deliberative aspect that is similar to *délibération* and can partially explain why a resolution is sometimes associated with having successfully completed the approval processes.

There is the possibility of the British usage of the word motion having remained closer to that of the French. *Motion* as a French word means a text that is a proposition to an assembly as an expression of the opinion or the wishes of the assembly, or it is text that has been voted on and passed by the assembly (Éditions Larousse, n.d.-b). An argument for this is that a *motion de censure* of France's National Assembly (Assemblée nationale, n.d.-d) is practically equivalent to a motion of censure in the British Parliament (UK Parliament, n.d.). There is currently no equivalent measure that can be brought before the U.S. Congress (Greenfield, 2022); however, a proposed constitutional amendment from 1974 would have allowed Congress to adopt a "Resolution of No Confidence in the President (Rep. Reuss, 1974)." It is called both a motion and a vote of no confidence in Canada (Gao, n.d.). So American usage may slightly prefer resolution and the British motion.

18.3 Projets de délibérations

Another concept that I shall translate and that is tied to the concept already being considered is that of *projet de* délibération. Speaking of the board, the only appearance of this term in the public model is:

"Outre les compétences qu'il tient de l'article 3 et de l'article 4 des présents statuts, il arrête les projets de délibération soumis à l'assemblée générale (Conseil d'Etat, 2020, art. 8)."

They have this power even though the assembly may elect its own officers and not accept the officers of the board to serve those roles as concerns the meeting. I shall also translate part of the following excerpt empowering the general assembly:

"Elle définit les orientations stratégiques de l'association (Conseil d'Etat, 2020, art. 5)."

The only use of *projet de délibération* in the French constitution is in article 72-1 which provides that the voters of every local and regional governmental authority that is distinct from the French national government (République Française, 2022) must have the possibility for voters to put "une question relevant de sa compténce" on the agenda for discussion and "les projets de délibération ou d'acte relevant de la compétence" may be put to a referendum (Assemblée nationale, n.d.-b). Instructions written for departmental functionaries for writing *projets de délibération* for the departmental councils

clearly defines this as a written proposal (Direction de la vie institutionnelle des Pyrénées-Atlantiques, 2021, p. 2), the initiative for which comes from the executive branch, but they also says that may be modified whether in committee or in session, implying the concept of motions. They also define a *délibération* as a document that has completed this process and has received the force of law. So, the term *projet* represents here procedural incompleteness and alterability. So considering what has already been reviewed, a possible equivalent for *projet de délibération* is the term "resolution" and/or "motion."

It begs to question, however, whether in this case it is just the final draft of a written instrument, which is *arrêté,* or the process of debate and parliamentary procedure such as motions. In the first case, the board has simply finished drafting a proposal or the power to preclude further amendments to a text. In the second case, it is the power to close debate or at the very least a large amount of agency over whether or not to accept motions to that effect. Either way, this would put a significant amount of power in the hands of the board and that seems to run counter to the indication in the public model's note on distance voting where the debate must be "entre tous les members (Conseil d'Etat, 2020, art. 5)." In the second case particularly, it is not like the power of the President of the National Assembly as concerns debate and, in both cases, it is at loggerheads with the right make amendments that elected members of government deliberative bodies in France at any level have (Éditions Weka, n.d.), a right which may however be "encadré."

The individual's right to debate may need to be constrained in favour of exigency due to the number of individuals. For example, this is the case for corporations with a large number of shareholders in the U.S.A.; the American Bar Association's handbook on corporate governance recommends abolishing regular parliamentary procedure for shareholder meetings and placing significant power in the chair (Bowne, 2001). The democratic counterbalance in this system is the democratic election of the chair.

I believe, however, that a *projet de délibération* is the organizational equivalent of a *projet de loi*. A *projet de loi* is a text from the government, written to become law (La langue française, n.d.), that must pass the council of ministers before being presented to the National Assembly (La Toupie, n.d.). The board would then play the role of the executive in drafting a proposal, which would of course need the approval of the assembly to come into effect and to which they could make amendments to it before giving their approval. The board does seem to be the only entity in the public model capable of drafting a proposal, as the assembly simply "définit les orientations stratégiques de l'association (Conseil d'Etat, 2020, art. 6)" and there is no mention of member submitted proposals.

Simply translating *projet de délibération* as a resolution in every context would be inappropriate because of the relationship between it and motions. So, it would be better to translate it as a written resolution

to distinguish it from resolutions that originated as motions. Thus, “définit les orientations stratégiques” could be translated as “passes resolutions to define the association’s strategic goals,” which would include written resolutions from the board and motions coming from the assembly itself that have then become resolutions. That may however emphasize without need an aspect that is implied by the context but does not exist in the text.

The rest of the sentence from the public model that is here being analysed is the board “arrête les projets de délibération soumis à l’assemblée Générale.” This is important because, in order to use resolution in a translation, it would be necessary to avoid implying the board has more power than is the case. To say the board “drafts/writes the resolutions of the association” could be read as giving the board a large amount of agency in interpreting the wishes of the assembly when writing the resolutions that originated as motions; however, since it says the resolutions submitted to the assembly, and the board is the only entity that can submit resolutions, it is clear that these are proposals and that the board’s drafting power is limited to proposals.

18.4 Decisions

The word decision may be the simplest way to express the completion of a deliberative process. It does not have negative or positive connotation like resolution does with the concept of approval since a decision can be for or against a measure and is not ambiguous concerning its finality. In the charitable model or instance, the use of “decisions that must be taken in a particular way (Charity Commission for England and Wales, 2016, p 15)” is similar to the use of “délibération spéciale” in the public model (Conseil d’Etat, 2020, art. 10). It also avoids implying a written document; however, it lacks an oral dimension and is only connected to the deliberative process in a vague conceptual way. This is perhaps why the charitable model often uses “decision” in conjunction with “resolution.” For example, the title of the section on voting is “Taking ordinary decisions by vote” and in the body of the text it says “any decision … may be taken by a resolution at a general meeting (Charity Commission for England and Wales, 2016, p. 15).” The role here played by “decision” and “resolution” with the verb “to take” is very similar to those of *délibération* and *prendre* in this example from the public model, “les délibérations de l’assemblée générale sont prises à la majorité (Conseil d’Etat, 2020, art. 5).” The charitable model does seem to prefer a resolution when referring to a written instrument as shown in this example, “a resolution in writing agreed by a simple majority … shall be effective (Charity Commission for England and Wales, 2016, p. 15).”

There are instances in the charitable model though, where it uses the concept of a resolution is used when it would have been simpler to use the concept of a decision instead. In the section on termination

of membership, the trustees can decide that it is in the best interests of the CIO to terminate someone's membership, and to do this they "pass a resolution to that effect (Charity Commission for England and Wales, 2016, p. 14)". This use of a noun to set forth that some matter be decided deliberatively is similar to some usage in the public model; in Article 7 for example, it says that the number of board members "est fixé par délibération de l'assemblée générale." Here, resolution and *délibération* both mean the deliberative process, but the first is an object and needs a verb to indicate its successful completion of the process and the second can be an action or a document, both of which imply completion of the approval process. Decision could also be used in this case, but, seeing as it lacks the debate context, resolution is a better choice and it could mean both written resolutions and motions that have become resolutions. This would therefore be translated as "shall be set by resolution of the general assembly," adding the "shall" that is so common in constitutions and legislative texts when creating an obligation.

Decision in its singular form appears 35 times in the charitable model and 11 of those are preceded by the qualifier "any"; in its plural form, it appears 29 times. So, it seems that the charitable model has a preference for using decision in more general cases and then has a preference for resolution when it is necessary to reference a specific case. The quote above from the voting section and the following example are evidence in support of that argument, "a resolution put to the vote of a meeting shall be decided on a show of hands (Charity Commission for England and Wales, 2016, p. 20).

The verbal form of decision also seems at first glance to be a good candidate for the verbal form of *délibération*. For example, the public model says of the general assembly that:

"Elle délibère sur les questions mises à l'ordre du jour par le conseil d'administration et sur celles dont l'inscription est demandée, selon les modalités définies par le règlement intérieur, par un dixième au moins des membres de l'association (Conseil d'Etat, 2020, art. 5)."

To use "debate" or "deliberate" here for *délibère* would not necessarily imply a decision having been taken; it does logically follow that there is a vote of some kind even if that is to put the matter to the side; however, it leaves too much ambiguity for the reader, especially in a legal context, even if the translation would not have the force of law. Resolution would need a verb to qualify it and has the problem of possibly inferring a written document. To use the verb "to pass" in conjunction with the noun "resolution" would imply that the assembly simply rubber stamps the questions that the board brings before them. So, decision is the most unambiguous word to communicate the finality of the action. It could be used to qualify resolutions, but resolutions, if they are being decided upon and have yet to receive approval, would potentially exclude motions and infer a written instrument. To avoid complicating the matter the best translation would be, "the general assembly decides on the questions

that the board brings before it" is the best translation possible. Similarly, for "définit les orientations stratégiques de l'association", the better translation would be "the general assembly shall decide the association's strategic goals." This accomplishes the same effect as "passes resolutions" without needlessly introducing the concepts of the deliberative process that are at best only implied in the source text.

18.5 Open Debate

"Resolution" seems at first glance like an acceptable translation for *délibération* in "les document nécessaires aux délibérations;" however, in order to use this word, others would have to accompany it to encompass all the possible types of documents being here referred to. The public model makes it certain that financial reports can be included in this category and the meeting agenda is mentioned in the same sentence (Conseil d'Etat, 2020, art. 5). The agenda is not mentioned in the note on distance voting concerning *les documents necessaries aux débats*, but there is no reason to suggest that in this case the members would not require the same information as a meeting in person. In the end, the amount of information and which documents are required is ambiguous in need of precision. The public model is only meant to set out the basic ground rules and so it is written a more accessible manner than the charitable model; part of this style is leaving much to be explained in the *règlement intérieur*, so any translation must not constrain the possible interpretations. This is why listing different types of documents would be unacceptable.

Debate is also a good candidate; it has the oral dimension and would allow keeping the inherent ambiguity, but it has a combative element that should perhaps be avoided. The charitable seems to use discussion to avoid this problem; however, discussion as a word is much further removed from the deliberative process and "the documents necessary for discussion" does not sound procedural nor formal enough for the situation.

I propose qualifying the word "debate" so as to keep the inherent orally deliberative dimensions while toning down the combative nature by using the adjective "open." An open debate (ACGMUN, n.d.; ENIMUN, n.d.) is firstly contrasted with a closed debate, which is where a debate has time limits for speakers for and against an amendment, and the debate is close, meaning done and over with. An open debate does not have these restrictions and also implies that debate can be closed, but without any specification as to the procedure. Lastly, an open debate (Bokat-Lindell, 2020) in more common use means a free exchange of ideas and has a generally positive connotation. So, with this in mind, the best translation for this phrase would be "the documents necessary for an open debate."

19 Quorum

The word quorum is used to a much greater extent in the charitable model than in the public model. In fact, quorum is only used once in the public model and 23 times in the charitable model, although some of those are in the notes from the Commission that are attached. This does not necessarily indicate that the public model is less concerned with this subject, as it is addressed several more times, albeit without using the word itself.

When the public model establishes quorum for the general assembly, it does so with the verb *délibérer*:

"Elle délibère sur les questions mises à l'ordre du jour par le conseil d'administration et sur celles dont l'inscription est demandée, selon les modalités définies par le règlement intérieur, par un dixième au moins des membres de l'association (Conseil d'Etat, 2020, art. 5)."

While the deliberative discussion may be implied here, the effect of this clause is to grant the assembly the power to decide and approve questions brought before it by the Board; it then qualifies at the end of the sentence that one-tenth of the members are necessary to do this.

In the articles establishing quorum for meetings considering amendments or dissolution, the word quorum is not used and, when describing the exception to the quorum requirement, it is stated that is:

"Si cette proportion n'est pas atteinte, l'assemblée est de nouveau physiquement réunie à quinze jours au moins d'intervalle. Elle peut alors valablement délibérer, quel que soit le nombre de membres presents (Conseil d'Etat, 2020, art. 17-18)."

Further on, it is stated that:

"Les délibérations de l'assemblée générale relatives à la modification des statuts ne sont valables qu'après approbation donnée par décret en Conseil d'Etat ou par arrêté du ministre de l'intérieur pris après avis conforme du Conseil d'Etat (Conseil d'Etat, 2020, art. 20)."

The quorum for a Board meeting is also described in terms of the number of Board members necessary for the *validité des délibérations* (Conseil d'Etat, 2020, art. 9).

In the only use of the word quorum, it is stated that:

"La participation du tiers au moins des membres du conseil d'administration est nécessaire pour la validité des délibérations. Pour le calcul de ce quorum, les pouvoirs ne comptent pas (Conseil d'Etat, 2020, art. 9)."

The word quorum in English has a set of words and structures that are used in conjunction with it. Quorum in both languages is of course a specific number of people and can therefore be calculated; in English however, it retains in usage the aspect that these are people. Thus, a quorum being present, not being present, or ceasing to be present are employed to describe situations and their effects. Whereas

the public model speaks of the validity of the *délibérations*, the charitable model states that "no business may be transacted" unless a quorum is present at the beginning of a meeting and that if quorum ceases to be present at the meeting, then no decisions may be made. Similarly, when defining quorum at a board meeting, "[N]o decision shall be taken at a meeting unless a quorum is present at the time when the decision is taken (Charity Commission for England and Wales, 2016, p. 19)." Lastly, there is one instance in the charitable model of the term "quorate meeting" being used (Charity Commission for England and Wales, 2016, p. 28).

Quorum is a word of Latin origin that was first used in English to mean "the number of justices of the peace who had to be present to constitute a legally sufficient bench (Merriam-Webster, 2023)." It is therefore more integrally tied to English and its longer democratic history, having entered French at a later date. It is technically possible to talk about the validity of a decision or vote as concerns an insufficient number of voting members being present, but the word quorum is so deeply rooted that not to use it would at the very least seem odd and might cause confusion as to if that is what is meant and, if so, why the word was not used. Another possible reason the public model seems to avoid using the word quorum is the previously discussed difference in style between French and English legal texts. Since the French texts are intended to be as accessible as possible to the wider public, the authors may have opted against this somewhat technical term. Lastly, this may simply be an example of elegant variation and thus the authors avoiding the repetition of the word more than the word itself; however, an argument against this is that the language use that does show through consists mainly of the same terms. So, if elegant variation was a major concern, then they would have used the word *quorum* more than once.

A potential problem with introducing the word quorum into a translation when it was not originally in the source text is the difference in legal writing styles between source and target languages. Legal English is so preoccupied with complete, detailed definitions for even simple or common terms that, if one were to truly reproduce the source style, it would require a section unto itself with a dedicated definition. This is the case in the charitable model, where there is a whole section dedicated to quorum and the first clause of that section, previously quoted hereabove, forbids business at non-quorate meetings. If a translation's purpose was to create a document that works within the source language's legal system, then such stylistic changes would be called for; however, it is far more likely that it is for some informational purpose and not a legal instrument itself.

A substantial change of the source text's structure is therefore not called for; however, the usage of quorum should when possible be introduced into translations of sections whose purpose is to define

quorum. Thus, the following sentence from the public model describing a meeting with amendments on the agenda, “A cette assemblée, au moins le quart des membres en exercice doit être physiquement present (Conseil d’Etat, 2020, art. 17),” should be translated as “A quorum of one-fourth of the active members must be present at such a meeting.”

20 Casting Vote

Whenever there is a vote, there is of course also the possibility of the votes being tied; this situation and handling it go at least as far back as ancient Greece and the roots of Western democracy (Hester, 1981). In the public model, that situation as concerns the general assembly is governed by the following clause, “En cas de partage égal des voix, celle du président est prépondérante (Conseil d’Etat, 2020, art. 5).” This language use appears to be relatively standard; for instance, the French constitution when describing the *Conseil constitutionel* says, “En cas de partage, la voix du président est prépondérante (nationale, n.d., art. 56).” This language is however not used to give such a power to either the president of the National Assembly or the French Senate and, according to the internal regulations of the National Assembly, the chair of committees also do not have this power (Assemblée nationale, n.d.-e, art. 44). All members of an association, including the president, vote when there is a secret ballot, but in that case, unless there is a clause governing this situation, the president cannot “faire valoir la prépondérance de sa voix” because that supposes that the vote is public (Cour d’appel de Bordeaux, 2017).

In Great Britain and North America, this concept has a long history with both common points and significant divergences. We have seen how the Speaker of the British House of Commons has a significant amount of power as concerns debate. This is one of the many reasons for which it is traditional for the Speaker to maintain an appearance of impartiality. Part of this tradition means that the Speaker does not generally vote (Erskine May, n.d.-a; Stanford, 1995). When the votes are tied, the Speaker then exercises what is called a casting vote, or the decisive vote, which is governed by three different traditions. These traditions are not necessarily binding and have not always been followed consistently, but consistently enough for them to in large part be the norm. The three rules are that: the Speaker always votes to continue discussion, decisions are taken by a majority, and the casting vote does not approve an amendment to a bill (Erskine May, n.d.-b). This has been described as part of the Westminster system and is used in varying forms by Canada, Israel, India, and others (National Democratic Institute for International Affairs, 1996). These traditional restrictions and norms on the Speaker voting are also in effect for chairs of committees. In Canada however, the chair of a committee may vote on bills introduced by private citizens and, if there is a tie in this case, the chair has a second

(casting) vote (Bosc & Gagnon, 2017, Amendments). A second, casting, vote seems to be a pretty standard concept that can also exist without restrictions; this is the case with the chair of meetings of the Church of England (The Church of England, n.d., Chair).

The concept of a second or casting vote is common in Canadian corporations, but it must be stated in the bylaws (Nathan, n.d., p. 1); the chair must however act in good faith when using the casting vote (Nathan, n.d., p. 2). For example, Canadian courts have ruled that a director was in breach of duty for using the casting vote to give himself control of the Board. Similarly, a court ruled against a shareholder with 50% of the shares in a company for using the casting vote to exclude the other shareholder from control of the company.

In the U.S.A., the Speaker of the House was originally barred from voting, but this is no longer the case (Brown et al., 2017, sec. 5). The Speaker is now allowed to vote freely and must vote when it would be decisive and when there is a ballot. In the event of a tie, the question is lost (Rybicki, n.d.). This is different from the Senate, where the Vice-President presides as the chair and only has a vote when they are equally divided (U.S. Constitution, Article I, section 3). Although not governed simply by tradition, this is essentially a casting vote under its first definition; however, it is not named as such in the constitution and, when referred to by the government, they are called either votes to break ties or tie-breaking votes (*U.S. Senate: Votes to Break Ties in the Senate*, n.d.). This does not mean that Vice Presidents vote is not sometimes called a casting vote (*United States Congress*, n.d.), but that is not the standard.

American corporations seem to follow Robert's Rules of Order on this subject (PRP, 2022; Slaughter, 2015). According to these rules, the chair protects their impartiality by abstaining from voting unless it would affect the outcome of the vote is by secret ballot. A question is lost in the event of a tie vote and the chair does not have a casting vote (*Robert's Rules of Order Online - Voting Procedures and Voting Methods*, n.d.). The Chair can however vote freely, causing a tie, breaking a tie, or simply abstaining and letting the result stand (*Robert's Rules of Order Online - Voting Procedures and Voting Methods*, n.d.).

So, both these terms could communicate the concept of a "voix prépondérante;" however, in the case of the casting vote, it must be specified by the formulation that it is the second definition that is being used. Thus, eight the president would have "a second or casting vote" or "a second, casting, vote." Even in this case, there might also be either the implication or the question in the mind of the reader as to whether the chair normally refrains from voting in order to maintain the appearance of impartiality. For both of these reasons, it would be much better to translate "En cas de partage égal des voix, celle du président est prépondérante" as "The chair's vote shall break any ties that arise." This also avoids the

misunderstanding that could result from implying American parliamentary procedure where the chair has more agency in this situation than they do in France.

21 Conclusion

While the governing documents of a non-profit organization may function under the law as a contract, they are like no other contract in our lives. We may not pay attention to them until there is a problem, but governing documents provide a supposedly fair, probably democratic, process that affects us by nature of the organizations they founded. They are our ideals at work.

I have shown the principal differences between the three legal systems as concerns these governing documents. There were many similarities, but interesting divergences. This informed my textual analysis of documents from these systems. My most important findings, however, were the intricate web of relationships of similar concepts that help to communicate the proper illocutionary forces across languages and cultures. They inform on the democratic expectations of the cultures in question, showing us how to live with others.

22 Articles 5 of the Public Model – the General Assembly

Article 5

L'assemblée générale de l'association comprend les membres à jour de leur cotisation [OPTIONNEL] et les membres honoraires/d'honneur/de droit.

Les salariés qui ne sont pas membres de l'association n'ont pas accès à l'assemblée générale, sauf à y avoir été invités par le président. Ils y assistent alors sans voix délibérative.

L'assemblée générale se réunit physiquement au moins une fois par an et chaque fois qu'elle est convoquée par le conseil d'administration ou à la demande du quart au moins des membres de l'association.

A l'initiative du président et sauf opposition d'un quart des membres du conseil d'administration en exercice ou d'un dixième des membres de l'association, elle peut se réunir par voie dématérialisée dans des conditions, définies par le règlement intérieur, permettant l'identification et la participation effective des membres et la retransmission continue et simultanée des délibérations.

Elle délibère sur les questions mises à l'ordre du jour par le conseil d'administration et sur celles dont l'inscription est demandée, selon les modalités définies par le règlement intérieur, par un dixième au moins des membres de l'association.

L'ordre du jour et les documents nécessaires aux délibérations, dont, le cas échéant, le rapport du commissaire aux comptes, sont mis à la disposition des membres par le conseil d'administration dans les délais et les conditions définis par le règlement intérieur.

Elle choisit son bureau qui peut être celui du conseil d'administration.

[OPTIONNEL : Le vote à distance peut être prévu, dans des conditions définies par le règlement intérieur, propres à garantir la sincérité du scrutin et, le cas échéant, le secret du vote.]

Le vote par procuration est autorisé [OPTIONNEL : sauf pour les délibérations donnant lieu à un vote à distance]. Chaque membre présent ne peut détenir plus de < > pouvoirs en sus du sien.

OU

Le vote par procuration est interdit.

A moins que les présents statuts n'en disposent expressément autrement, les délibérations de l'assemblée générale sont prises à la majorité des suffrages exprimés.

Les abstentions ne sont pas comptabilisées comme suffrages exprimés, de même que les votes blancs ou nuls en cas de scrutin secret.

En cas de partage égal des voix, celle du président est prépondérante.

Il est tenu procès-verbal des séances.

Les procès-verbaux sont signés par le président et le secrétaire du bureau choisi par l'assemblée générale. Ils sont établis sans blanc, ni rature, sur des feuillets numérotés et conservés au siège de l'association.

Le rapport annuel et les comptes approuvés sont mis chaque année à disposition à de tous les membres de l'association. Ils sont adressés à chaque membre de l'association qui en fait la demande.

23 Section 10 of the Charitable Model – General Meetings

10. **Members' decisions**

(1) **General provisions**

Except for those decisions that must be taken in a particular way as indicated in sub-clause (4) of this clause, decisions of the members of the CIO may be taken either by vote at a general meeting as provided in sub-clause (2) of this clause or by written resolution as provided in subclause (3) of this clause.

(2) **Taking ordinary decisions by vote**

Subject to sub-clause (4) of this clause, any decision of the members of the CIO may be taken by means of a resolution at a general meeting. Such a resolution may be passed by a simple majority of votes cast at the meeting [(including votes cast by postal or email ballot, and proxy votes)].

(3) **Taking ordinary decisions by written resolution without a general meeting**

(a) Subject to sub-clause (4) of this clause, a resolution in writing agreed by a simple majority of all the members who would have been entitled to vote upon it had it been proposed at a general meeting shall be effective, provided that:

(i) a copy of the proposed resolution has been sent to all the members eligible to vote; and

(ii) a simple majority of members has signified its agreement to the resolution in a document or documents which are received at the principal office within the period of 28 days beginning with the circulation date. The document signifying a member's agreement must be authenticated by their signature (or in the case of an organisation which is a member, by execution according to its usual procedure), by a statement of their identity accompanying the document, or in such other manner as the CIO has specified.

(b) The resolution in writing may comprise several copies to which one or more members has signified their agreement.

(c) Eligibility to vote on the resolution is limited to members who are members of the CIO on the date when the proposal is first circulated in accordance with paragraph (a) above.

(d) Not less than 10% of the members of the CIO may request the charity trustees to make a proposal for decision by the members.

(e) The charity trustees must within 21 days of receiving such a request comply with it if:

(i) The proposal is not frivolous or vexatious, and does not involve the publication of defamatory material;

(ii) The proposal is stated with sufficient clarity to enable effect to be given to it if it is agreed by the members; and

(iii) Effect can lawfully be given to the proposal if it is so agreed.

(f) Sub-clauses (a) to (c) of this clause apply to a proposal made at the request of members.

(4) **Decisions that must be taken in a particular way**

[(a) Any decision to remove a trustee must be taken in accordance with clause [15(2)].]

(b) Any decision to amend this constitution must be taken in accordance with clause [28] of this constitution (Amendment of Constitution).

(c) Any decision to wind up or dissolve the CIO must be taken in accordance with clause [29] of this constitution (Voluntary winding up or dissolution). Any decision to amalgamate or transfer the undertaking of the CIO to one or more other CIOs must be taken in accordance with the provisions of the Charities Act 2011.

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