Bilingual legal dictionaries : criteria for assessment

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1. Introductory remarks

Bilingual legal dictionaries are often no more than glossaries: lists of terms to which suggestions for their translation have been added. In such cases, little thought and room has been afforded to the systematic order of terms, the legal systems to which they belong, their use according to legal area and the type of document in which they occur. Suggestions for their translation frequently lack references as to the provenance of the suggested translation and the reasons for suggesting them in the first place. In the hands of inexperienced translators, these dictionaries constitute dangerous tools. They also fail to enable experienced translators to make a reasoned choice. In order to discuss a set of *desiderata* for the compilation of reliable bilingual legal dictionaries, the authors have formulated a number of principles relating to the translation of legal information. The *desiderata* discussed below are intended as guidelines in testing the reliability and practical effect of bilingual legal dictionaries.

2. Translating legal information[1]

System-dependency

The language of the law is very much a system-bound language, i.e. a language related to a particular legal system. Legal systems differ from state to state, each country employing its own legal terminology. Even within a state, several legal systems may exist, such as those based on territory or particular categories of persons[2], each with its own special terminology. A term may have different meanings even within one system, according to the legal area in which it is employed. An international technical (legal) language only exists in so far as specific legal areas have been "internationalized". This holds true in particular for international law and European Community law. An international (multilingual) terminology is gradually developing in these areas. Inasmuch as legal areas such as constitutional, administrative, criminal or civil law are related to specific legal systems, an international terminology is basically non-existent for these areas.

The foregoing should make sufficiently clear that a uniform Dutch, English, French or Spanish legal terminology does not exist. As regards the Dutch language, which is used as a legal language in the Kingdom of the Netherlands, Belgium and Surinam, there are at least five, perhaps even six, distinctive technical languages. Within the Kingdom of the Netherlands, three different legal systems exist: the legal system of the European part of the Kingdom of the Netherlands, the system of the Netherlands Antilles, and that of the island of Aruba. We can therefore conclude there is a Dutch-Dutch, a Belgian-Dutch, a Surinamese-Dutch, an Antillian-Dutch and an Aruban-Dutch legal language, all of which, in principle, are autonomous. One could argue that a special EC-Dutch (supranational) legal terminology exists, as well.

1 For the purposes of this review, the term `translating' is used in a broad sense. Translating legal information involves not only the more or less literal rendering of the contents of a particular text in another language, but also the acts of speaking and writing about aspects of a legal system in a language other than the legal language of that system.
2 E.g. Canada.

The strong system-boundness of legal terminologies may be exemplified by the terminological differences between the property laws of the old Dutch Civil Code of 1838 and the new Dutch Civil Code which came into force on 1 January 1992. ° 90 of the German *Bürgerliches Gesetzbuch* (Civil Code) reads:

> "*Sachen im Sinne des Gesetzes sind nur körperliche Gegenstände.*"
> (Things within the meaning of the law are only physical objects)

Article 555 of the 1838 Dutch Civil Code qualified all objects and rights that could be the subject of a property right "*zaken*" (things). The German term "*Sache*" represented, therefore, a different concept than the Dutch term "*zaak*", although these words could be regarded as each other's equivalents at a colloquial level. Consequently, it used to be fundamentally wrong to translate the German (technical) term "*Sache*" by "*zaak*", and vice versa. In such a legal context, the German term "*Sache*" had to be translated by "*goed*" (object) or by "*stoffelijk voorwerp*" (physical object).
After Book Three of the new Dutch Civil Code came into effect on 1 January 1992, it became necessary, however, to come up with a different translation for "*Sache*". Article 1 of Book Three book reads:

> "*Goederen zijn alle zaken en alle vermogensrechten.*"
> (German equivalent: "*Gegenstände sind alle Sachen und Vermögensrechte*")
> (Property comprises all things and all property rights)

As a result, under the new Dutch Civil Code, the term "*zaak*" -like the German term "*Sache*"- refers exclusively to physical objects. Consequently, the German word "*Sache*" can be used now, without objection, as a translation for the Dutch concept of "*zaak*", also in a legal context, whereas translating it by "*goed*" would be inaccurate.

A term may have different meanings within a single legal system[3]; it can have even more divergent meanings, if it is also used as a legal term in another legal system. This can be illustrated by a term that is used in both the Dutch-Dutch legal language and the Belgian-Dutch legal language. Both Belgium and the Netherlands have a judicial institution called the *arrondissementsrechtbank*. In Belgium, however, the court corresponding with the Dutch *arrondissementsrechtbank* (district court), is called the *rechtbank van eerste aanleg* (*tribunal de première instance*: court of first instance).[4] The Belgian *arrondissementsrechtbank*, by contrast, is composed of the Presidents of the *rechtbank van eerste aanleg*, the *rechtbank van koophandel* (*tribunal de commerce*: commercial court)[5] and the *arbeidsrechtbank* (*tribunal de travail*: industrial court).[6] It resolves jurisdictional disputes between the three courts whose presidents are on its bench. Clearly, the terms "*arrondissementsrechtbank*", as used in the Belgian and Dutch legal language, are not equivalent, because these courts differ in function and hierarchy. Such differences in meaning call for "intra-linguistic" translation in order to render Belgian legal texts genuinely -not just spuriously- comprehensible to Dutch jurists, and vice versa.

3 E.g. `warranty' in English law.
4 See artt. 76, 568 ff. of the Belgian *Gerechtelijk Wetboek* [Judicial Code]).
5 Artt. 73, 573 ff. *Gerechtelijk Wetboek.*
6 Artt. 73, 578 ff. *Gerechtelijk Wetboek.*

Translating legal terminology
Ideally, terms should be translated by the legal terms of the target language[7], the terms with which the TL-user is familiar. If the target language is used as a legal language in several legal systems, a choice for the terminology of one particular system has to be considered, depending on the users of the translation. The choice for either using or rejecting a system-bound legal TL-term as a translation for a SL legal concept can only be made after a careful study of that SL concept and a subsequent search for a TL-term representing the same or a similar concept. Consequently, comparative law is a core activity of legal translation. Terms must be interpreted on the basis of the legal systems to which they belong; they should not be chosen merely because they are target language-related. At issue here are criteria for establishing equivalence.

The problem of equivalence
When the target language and source language relate to different legal systems, full equivalence between the legal terms of the source legal system and those of the target legal system is out of the question. Nevertheless, some terms relating to different systems are generally considered as each others so-called "equivalents", in spite of systematic and conceptual dissimilarities. In the German, French and Italian systems, the grounds for divorce differ. Furthermore, there are essential differences in the area of matrimonial property law. Inasmuch as no absolute equivalence exists between the concepts of ("matrimony" and) "divorce" in these systems, it is questionable whether the meaning of the German word "*Ehescheidung*" can be adequately rendered in French by "*divorce*", or in Italian by "*divorzio.*" Yet it is generally accepted that the terms "*divorce*" and "*divorzio*" are used as translations for the German term "*Ehescheidung.*" How else could we communicate in French about "*Ehescheidung*" (as used in Germany), if we did not use the word "*divorce*"? We would like to designate these terms "acceptable equivalents." In a famous essay, Isaac Kisch stressed that such a translation was admissible, because the concepts involved are similar "*quant à la substance.*"[8] From this it would follow that we need only to establish a conceptual "approximate equivalence" in order to conclude that we can adopt the one term as a translation for the other. But what is the yardstick for determining such "approximate equivalence"? On this Kisch writes: "*C'est une question d'ordre pragmatique*" (it's a pragmatic question). Hardly a satisfactory answer, when not further developed, but perhaps true. It does depend on such pragmatic circumstances as the availability of alternatives, the specific purpose of the translation and the user category. When translating for the legal profession, for instance, a certain measure of conceptual knowledge may be presumed. Some conceptual frameworks even transcend the legal systems involved.

As has been said earlier, full equivalence is only possible if the source- and target-language terms are expressions of the same legal system. Logically, they must represent the same concept to be fully equivalent. This is the case when translating within a bi- or multilingual system, such as that of Finland or Switzerland and, to some extent, Canada and Belgium. Conversely, if source and target language relate to different

7 Target language (TL): the language into which a text is translated. Source language (SL): the language from which a text is translated.

8 Isaac Kisch, Droit comparé et terminologie, in: Mario Rotondi, *Inchieste di diritto comparato*, Padova, New York, 1973, 407-423.

legal systems, full equivalence of legal terminology is less frequent, although the one system may have adopted or "borrowed" a concept from the other.[9]

Context
In choosing the "right" translation, the context and purpose of the translation are of fundamental importance. The linguistic context gives clues as to the area(s) of law in which the term occurs. Such factors as time, place, readership and purpose are extra-linguistic contextual factors. The type and nature of the document to be translated are also relevant. It is likely that, in one particular context, certain terms are acceptable "equivalents", whereas in others they are not.[10] As regards purpose, it makes a considerable difference whether a translation is made merely for the purpose of providing those who do not understand the source language with a rough idea about the contents of the original document, or whether, at the other end of the scale, it is to receive the status of "authentic"[11] text, i.e. having the same legal status ("binding authority") as the original. In the latter case, it is of paramount importance to avoid that the terms used in the translation have a narrower or broader scope than those of the source text. At this point, we can draw the conclusion that the number of "acceptable equivalents" is commensurate with the conceptual proximity of SL- and TL-legal system, the concept of "acceptable equivalence" being a very relative concept.

On the basis of the above, the following principles may be formulated in respect of legal terminology and its translation:

a) Legal terminology is system-bound;
b) Full equivalence between legal terms of two languages only exists where these function as the legal languages of one and the same legal system, or where a concept belonging to the one system has been adopted from the other and the term representing it is a loan translation of the original term;
c) "Acceptable equivalence" between two legal terms depends on the relationship between the two legal systems of which they form a part, rather than on the relationship between source and target language as such;
d) Depending on the (extra)linguistic context, a term belonging to the source legal system can have various (acceptable) equivalents in the target legal system;
e) If there is no (acceptable) equivalent, a secondary solution needs to be sought:
   1. a description or paraphrase by itself or followed by the original term in brackets or added in a footnote;
   2. a neologism by itself, or followed by the original term in brackets or added in a footnote, or accompanied by an explanatory footnote;
   3. leaving the original term: only in very exceptional cases can the original source- language term remain in the target-language text. An explanatory footnote should preferably be added.

9 E.g. the Dutch term `*rompbevrachter*' (8:990 BW) is a loan translation. The concept was borrowed from the English `bareboat charterer.'
10 E.g. `*rechter-plaatsvervanger*' (lit.: substitute judge) could be translated in a judgment by `judge', because the person serves as a judge, whereas in a *curriculum vitae* the term should be thusly translated as to reflect that person's (hierarchical) position within the judiciary.
11 See for the term "authentic text" and the status of legal translations: Mala Tabory, *Multilingualism in international law and institutions*, Alphen a.d. Rijn, Rocheville, Md, 1980, 36, 37.

This last point (e) needs some explanation. Maintaining the original term (e 3.) is the least desirable option: leaving terms untranslated should be avoided for the simple reason that the purpose of translation is to make the source language text accessible to those who do not master this language. Leaving terms untranslated does not accomplish this purpose. Furthermore, if original terms were frequently left untranslated, the resulting translation would be a string of foreign-language terms joined by target-language prepositions, adverbs and verbs. If the reader is not familiar with the structure of the original language, he or she will not be able to pronounce these words, let alone be able to recall them. Unless there is etymological and morphological similarity between languages (e.g. German and Dutch), such use should be avoided. And even in cases of linguistic similarity, there may be conceptual differences rendering them legal-technical "*faux amis*".
Description (e, 1.): if it is possible to provide a near-perfect definition of a SL-term in the foreign language, description may be the solution. In such cases, the description amounts to a multi-verbal equivalent. Although such description should not fit any term of the target language, its combination of descriptive elements must render it comprehensible for lawyers trained in the TL-related system. The desirability (and effect) of using a description depends on such factors as its length and complexity.
A third solution is to create a neologism (e 2.): one should use a word that is not, or no longer, used in the TL-system. Will any other word do? Of course not. The word chosen must "ring a bell." Neologisms must be created in such a way that the contents of the source-language term are somewhat revealed[12], without using a term that is already in use as a technical term in the TL. One must, for example, not use the French term "*droit commun*", as a translation for "common law."[13]

Irreversibility
Since often only partial equivalence exists between SL- and TL- terms, in many cases, translations are irreversible. Where it is possible to translate a SL legal term by a TL legal term without causing too much confusion, that same SL-term may not be suited to be used in a reversed situation, one in which the SL has become the TL and functions as a translation for the original TL- term.[14]

3. Desiderata for bilingual legal dictionaries
On the basis of the above principles, the following criteria for reliable bilingual legal dictionaries can be worked out:

a) In a preface, users of this type of dictionary should be alerted to the problems involved in translating legal terminology and cautioned as to its use.[15]

12 In other words, a neologism should have a descriptive quality.
13 In this case, it would, in fact, be advisable to leave the term `common law' untranslated, as it would probably make more conceptual sense to a lawyer (`common law' as opposed to continental `civil law') than would a neologism.
14 E.g. `barrister' (English law) by `*advocaat*' (Dutch legal term), but not `*advocaat*' (Dutch law) by `barrister' (English legal term).
15 See, e.g. the preface to Black's Law Dictionary, 6th ed., St. Paul, Minn., 1990, characterizing a legal dictionary as a "starting point", and to Åge Lind, Norsk-engelsk juridisk ordbok, Oslo, 1992, qualifying (translating) legal terminology a "minefield", and Lind's careful user instructions in which culture-specificity is pointed out, pp. 7, 8, and 9.

b) Ideally (but perhaps not always commercially feasible), the dictionary should contain a separate section introducing the legal systems involved.[16]
c) The relation of the entries and their proposed translations to their respective legal system must be made explicit by offering linguistic context, encyclopedic[17] and bibliographic references, thus ensuring verifiability.
d) Compilers of bilingual dictionaries should not present their proposed translations as "standard" equivalents. Alternatives should be identified according to area of law, system and use.
e) Mention should be made of the absence of an equivalent term in the legal system(s) related to the target language.
f) The dictionary should indicate the degree of equivalence: whether the translation suggestion is a full equivalent, the closest approximate equivalent (acceptable equivalent) or a partial equivalent.
g) Neologisms[18] must be identified as such, so as to avoid that these will be used by those consulting the dictionary as terms belonging to the legal system related to the target language. Ideally, the suggestion for a particular neologism should be reasoned.
h) Bilingual legal dictionaries should be restricted to offering suggestions for translations based on legal areas, tying both SL-term and TL-term to a particular legal system. If this is not complied with, the make-up of the dictionary becomes unclear and precludes easy and reliable consultation.
i) Source terms and their proposed translations are not suited to reverse use. Reversing the functions of source terms and their partial equivalents, descriptions or neologisms will create false translation suggestions.
j) The proposed translations must be reconsidered in the event of changes in either the legal system related to the source language or that related to the target language. In other words: legal dictionaries must be frequently reassessed and updated.

The compilation of a bi-lingual legal dictionary that makes a serious effort to comply with these *desiderata* is a great accomplishment, which deserves the qualification of academic work. As has been said earlier, very few legal dictionaries published so far have attempted to meet these requirements.[19] The majority fail to offer much more than glossaries containing unsubstantiated translations.

Conclusions

When translating legal information, as done in bilingual legal dictionaries, it should be borne in mind that legal terms are system-specific. Legal languages are bound to a specific system, be it national, supranational or international. For the Dutch language alone up to six different legal languages can be distinguished.

16 It will probably make the book more expensive, but also more `valuable' to the user.
17 A random example of a linguistic context from Åge Lind, op. cit., p. 14: under ***Aktorat** (prosecution)*: *Aktoratet la ned påstand om 2 års fengsel for tiltate nr.* 1/The prosecution asked (argued) for two year's imprisonment for the first defendant. For encyclopedic information see, e.g., p. 199, under the entries `***tinglysing***' and `***tinglysingsattest.***'
18 Lind uses the symbol //.
19 For an excellent example see: M. C. Oosterveld-Egas Repáraz and J.B. Vuyk-Bosdriesz (red), *Juridisch woordenboek Nederlands-Spaans. (Diccionario jurídico neerlandès-español)*, Antwerpen/'s-Gravenhage, 1990. This dictionary offers academically sound suggestions in Spanish for Dutch legal terms. It also allows for the new terminology under the 1992 Dutch Civil Code.

Before choosing a particular TL-term as translation, we have to establish its suitability. For this purpose, we need to engage in comparative law, since terms have to be interpreted within the context of their legal system. Finding the right criteria for establishing equivalence is not easy. Full equivalence is only possible, in the authors' view, if the source- and target-language terms are expressions of the same legal system or if the one system has "borrowed" a concept from the other. When choosing translations, in addition to the linguistic context indicating the area of law in which the term occurs, extra-linguistic contextual factors, such as time, place, readership, purpose, type and nature of the document to be translated, should be taken into consideration.
It is felt that the majority of dictionaries of this type do not satisfy the professional needs of legal translators, inasmuch as they offer mainly unsubstantiated translation suggestions. On the basis of a number of principles as to the nature of legal language, the (lack of) equivalence between SL- and TL-terms, and a modest methodology for choosing translations, the authors have formulated a number of *desiderata* for the organization of bilingual legal dictionaries. Some deficiencies and omissions encountered in bilingual legal dictionaries can be easily remedied, for instance, references as to areas of law or statutes.
A more uniform and universal approach towards comprehensively presenting information in legal dictionaries would greatly enhance reliability in consultation. It is hoped that the principles and criteria formulated in this review will contribute towards achieving this aim.

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