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Guidelines for choosing neologisms

GERARD RENÉ DE GROOT[1]

1. Preliminary general remarks

Translators of legal documents should *not* translate from one language into another language, but from one *legal language* into another *legal* language. This sounds rather obvious, perhaps, but it must be realised that in many languages there is *more than* one legal language. There exist as many legal languages within a particular language as there are legal systems using that language as its legal language. Let me illustrate this with some examples. To my knowledge, Polish is only used as a legal language for the Polish legal system. Consequently there is just one Polish legal language. With respect to the Dutch language, the matter is more complicated. Dutch is used as a legal language in the Kingdom of the Netherlands, Belgium and Surinam (in South America). Within the Kingdom of the Netherlands, there are again three separate legal systems: the legal system of the European part of the Kingdom, the system of the Netherlands Antilles and the system of the island of Aruba. In all, there are five legal systems using Dutch as a legal language and consequently five legal languages within the Dutch language.

The fact that legal texts must be translated from one legal language into another causes the following problem: if Dutch is the target language into which a legal text must be translated one has to decide which jurisdiction's terminology should be used in translation. The choice for a particular legal terminology depends on the purpose of the translation and is based on the translator's knowledge, skill and experience.
With regard to the English language, the choice for a particular target legal system is often a very difficult issue, because English is the legal language of many legal systems. Quite often, the translator does not know who exactly his target readers are or -even worse- the target reader may be any lawyer who is able to read English. Even in the latter case, however, one cannot escape the important choice for a particular target legal system.

In the course of the translation process, the translator needs to compare the content of notions used in the source language with the content of potential equivalent notions belonging to the target legal system. In some cases, it will be possible to find acceptable equivalents. An interesting question is whether such equivalents are available. This depends on many different factors. In this paper, I will not elaborate on this.
If one has reached the conclusion that an equivalent of the source-language concept cannot be found in the target legal system, a subsidiary solution must be sought. Various subsidiary solutions can be distinguished. The three main possibilities are:

i) to preserve the source language term in the target language;
ii) to describe (paraphrase) the content of the source-language term in the target language;
iii) to create a neologism.

This publication focuses on the third possibility: the creation of neologisms as a subsidiary solution.

2. Definition of 'neologism'

For the purposes of translating legal information, a neologism must be defined as *any word not belonging to the legal vocabulary of the target legal system chosen.* I stress that this definition

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of a neologism is a very restricted one. Whether a certain word exists or not in the target *language* is not my concern, but I must find out whether the word is part of the legal terminology of the target legal system. This narrow definition of the concept of 'neologism' logically and necessarily derives from the principle that one must translate from legal system into legal system and not from language into language.

Of course one has to realise that it is not easy to exactly establish the boundaries of the legal terminology of the target system. Within a certain legal system, various categories of legal terminology can be distinguished:

i) the vocabulary used by the legislator in statutes and other regulations. Within this category, a remarkable subcategory can be observed: words expressly defined by the legislator;
ii) the vocabulary used by lawyers of the target system or used in commentaries on that legal system;
iii) (a subordinate category of) words used in general publications dealing with the legal system in question.

Words used by lawyers of the target legal system in publications on foreign law written in their own (here: the target) language do not really belong to the target legal terminology. Not all texts written by lawyers of the target legal system in their own language therefore contain words of the target legal system only. We must keep this in mind when developing ideas on the choice of neologisms.

3. The choice for a neologism

If one has to create a neologism in order to translate a term from the source language, it is unwise to randomly choose any word not yet used in the target legal terminology. The purpose of a translation is after all to provide the reader of the target text with information. Therefore, in choosing a word to serve as a neologism, one should be aware that the word chosen must contain information relevant to the target reader. The word chosen should allow the target reader at least a glimpse, a partial view of the content of the source-text concept. The core consideration here is how to enable the target reader to obtain such a glimpse.

Various categories of words can be distinguished which could be used as neologisms. Often words which refer to concepts of Roman Law are quite useful. Allow me to illustrate this with an example: the continental European concept of '*dingliches Recht*', '*zakelijk recht*', '*droit réel*', '*derecho real*', '*diritto reale*', and so on, has been translated by 'right in rem' in article 16 of the Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters. Of course, one must make sure that the readers of the target text have some knowledge of Roman-Law concepts. In many countries, this is (still) the case. Inasmuch as an important part of the gradually developing new *ius commune Europaeum* is rooted in Roman Law, it is very likely that in the future knowledge of Roman Law will become much more important than it was in the recent past.
A second category are words referring to legal institutes which used to be part of the terminology of the target legal system. Again, one must verify whether such historical legal concepts are still known and will be recognised.
Another important possibility is using words of a jurisdiction other than the target system; a jurisdiction in which the target language is also used as a legal language. A case in point would be a translator who has chosen to translate into the terminology of the legal system of England and Wales and is unable to find an acceptable equivalent. He could select a word from the Scottish legal system to serve as a neologism. As you may know, the law of Scotland

is much closer to the Roman-Law tradition and, as a result, contains many concepts which are acceptable as translation equivalents of continental-European concepts. But also in these cases one has to ensure that the target reader is familiar with such a third-system concept. I offer another example as an illustration of this point: on the 1st of January 1992, a new Civil Code came into force in the Netherlands. In order to acquaint the world with the contents of this remarkable code, French and English translations have been published. Most readers of the English translation have -to put it politely- been confounded by it. One English colleague confided: "I am greatly puzzled by this translation and I am so glad that the French translation is printed directly beside the English one. Now that I have read the French version, I am able to understand the English translation." A Danish colleague said in a lecture that the English translation is completely idiotic. I beg to disagree, however. In my opinion, it is a good translation, but for a specific target readership only. The translators decided to translate into the English vocabulary of the new Civil Code of Quebec which came into force on the 1st January of 1994. This choice is expressly mentioned in the translators' introductory remarks. Nevertheless, only a very restricted percentage of potential target readers are familiar with the vocabulary of this new Civil Code of Quebec. Others are just bewildered to see such words as 'hypothec' (as a translation for the Dutch term '*hypotheek*' , instead of 'mortgage') and 'compensation' (as a translation for the Dutch term '*verrekening*', the French term '*compensation*' and the German term '*Aufrechnung*'). They simply conclude that the translation is bad. The same conclusion would probably have been reached, if some words of the Civil Code of Quebec had been used as neologisms. To the average target reader these are unfamiliar words. The word selected fails to provide him with any information.

It stands to reason that I must also answer the question whether a certain order should be observed when investigating the possibilities for choosing neologisms, or, to put it in other words: should some alternatives be preferred over others? In my opinion, there is no preferred order. The key to the best solution is the question which of the alternatives will provide the best information to the target reader, or phrased differently: which alternative is best understood by the target reader.

Another, related question needs now to be raised. In many cases, it will not be the first attempt at translating a certain word of the source language into the terminology of the target legal system. What then is the status of earlier translations of a certain word or term? One may very likely discover that another author/translator has already used a certain neologism in order to 'describe' a notion of the source legal system in the language of target legal system. In some cases, this translation/neologism has been used on so many previous occasions that users of the target language recognise the neologism in question as a current translation of a certain notion of the source-language legal system. If this is the case, we are dealing with a 'naturalisation'. If, while looking for a neologism, one comes across such a naturalised word, one should as a rule use that same neologism. If not, the target reader, familiar with the neologism, will probably conceive of the new word you are using as a translation as a different concept of the source legal system. And so we have arrived at the feasibility of standardisation of translations. However, I will not go into this now, but rather return to naturalisations.

Admittedly, in some cases even original, i.e. untranslated, words of another language can be naturalised. Examples are such words as 'trust', 'common law' and 'ombudsman'. In the case of a translation solution derived from a third language, such foreign words can be used as a neologism in the target language. For example: if we were to translate the French-Canadian Québecois term '*fiducie*' into the legal terminology of the Netherlands, no acceptable equivalent is available. We need to use a neologism. Fortunately, most Dutch lawyers will understand the

use of a concept of the English legal system, namely 'trust', because this word is naturalised in the Netherlands.
In my view, however, a naturalised word is not part of the target legal language, because it does not refer to the target legal system. The word may, on the other hand, cross the borderline between the concepts of the target legal system and the vocabulary of foreign law, if legal commentaries introduce the foreign concept as a description of rules, legal institutions or legal constructions of the target legal system. This has happened with the English terms 'lease', 'financial-lease' and other 'lease'-constructions. Also in the Netherlands, we have seen many examples, for instance, '*Normzweck-regel*' derived from Germany, or '*règles d'application immediate*' derived from France.

But one must operate with caution. If a naturalised word has crossed this borderline between foreign and domestic concept, it becomes in effect part of the target legal system and therefore part of the legal vocabulary of that system. And it may happen that such a naturalised word gradually acquires a new meaning and loses its links with the legal system of origin. If this happens, an odd situation may arise: the word in question can no longer be used in translation as an equivalent for the identical word of the legal system of origin. A new '*faux ami*' is born.