The challenge of legal lexicography: Implications for bilingual and multilingual dictionaries

Susan Šarčević

Legal lexicographers had been making bilingual dictionaries for centuries when René David attacked their reliability, denouncing them as inevitably inaccurate and often downright misleading (1974: 346). Since David's detrimental statement, efforts on the part of legal lexicographers to improve user reliability have led to new methods of combatting the special problems of interlingual transfer encountered in the field of law. Thus it can be said that legal lexicography has finally come of age, or as J.-Cl. Gémar put it: "A special method in legal lexicography has been established" (written communication of 13 May 1986; see also Gémar 1986: 448–453).

Problems of interlingual transfer

In order to appreciate the new methodology, one must be aware of the special challenge of legal lexicography. As a rule, the search for equivalents in law begins as a search for the closest equivalent concept in the TL. This is known as a functional equivalent, i.e., a corresponding term in the TL designating a concept or institution, the usage or function of which is the same or similar to that of the source term. Ideally, the conceptual features of the equivalent should correspond exactly with those of the SL concept; however, exact equivalence in this sense can never be fully achieved (Nida 1975: 120), and thus lexicographers must be content with basic equivalence instead. Unlike other fields of specialized lexicography, especially the natural sciences and technology, in law even basic equivalence is difficult to achieve. Due to differences in the legal systems, cultures and languages in question, the degree of semantic equivalence between the legal terminology of two countries is greatly restricted. As a result, in the majority of cases the conceptual features of corresponding word pairs are only partially equivalent.

Accordingly, the use of functional equivalents in law has aptly been described as translation by analogy (Pigeon 1982: 280). This is especially true in the case of technical terms which are system-bound. For historical reasons, different legal systems with distinct characteristics have developed, notably common law and civil law. The differences between these two systems are sometimes so great that a functional equivalent may be similar to the source concept only as far as its general function or usage is concerned, whereas the legal concept it denotes in the restricted sense is different.

Aware that their equivalents were often mere approximations, legal lexicographers used to warn their users to refrain from reading the notions of the source term into the equivalent. Whenever possible, several near synonyms were cited in addition to the functional equivalent. Frequently, these terms were more general so as to focus on the conceptual similarity between the functional equivalent and the source concept. According to the usual practice, the string of potential equivalents was separated by commas. This, however, implied that the terms were true synonyms and thus proved to be misleading.

It should also be pointed out that even general legal concepts may be misleading. This is due to the fact that the level of generality of legal concepts tends to vary. For example, the concept of *décision* in French corresponds with two, more specific concepts in German: *Entscheidung, Beschluß* and three in Dutch: *Beschikking, Besluit, Beschlissing* (Bauer-Bernet's examples 1982: 192).

Furthermore, interlingual transfer is made more complicated by the fact that, contrary to the exact sciences, the language of the law is polysemous. As a rule, lexicographers simply used semicolons to separate the various equivalents into groups corresponding to the different meanings of a polysemous source term. Accordingly, a reader who was not familiar with the terms was obliged to consult a monolingual law dictionary before making a choice among the groups of potential equivalents.

The same often applied when there is diversity in the geographical usage of TL terms. Although English is the major language of the common law countries, even they do not have a uniform legal terminology. Not only do American and British terms vary, but within the United Kingdom itself there are considerable differences in the legal terminology of England, Northern Ireland and particularly Scotland, whose legal system is a mixture of common law and civil law. The same is true in civil law countries or regions where the same language is spoken, especially Spanish, German and French but also Dutch/Flemish. The problems of interlingual transfer become even more complex in countries with bilingual legislation and dual legal systems, for example, Canada, South Africa and, to a certain extent, Israel.

Methods of improving user reliability

Today, bilingual legal dictionaries are usually scholarly reference books with a more or less elaborate documentary apparatus. The first obvious step towards achieving a greater degree of accuracy has been to include brief definitions of the source institutions and concepts as well as explanatory notes on comparative law. Sometimes definitions of the TL equivalents are also provided. In the case of polysemous terms, the field of usage is often indicated or there may be a separate entry for each meaning. Even in some specialized dictionaries, the terms are grouped into smaller areas of specialization. Ursula Becker's RECHTSWÖR-

TERBUCH FÜR DIE GEWERBLICHE WIRTSCHAFT, for example, contains 15 subdivisions covering specialized areas of commercial law.

1. Placing meaning in context

Still plagued by the problems of ambiguity inherent in legal terminology, bilingual lexicographers began to document their entries with contextual data. In numerous cases, the term in question is cited as a collocation taken directly from the source text, which is usually a law or other legal instrument. This is the common practice, for example, in the legal glossaries prepared by the terminology divisions of the European Communities (EC) such as the Court of Justice and the European Parliament. In exceptional cases, the entire sentence of the source text is cited, e.g., in the first two volumes of the VOCABULAIRE BILINGUE DE LA COMMON LAW: DROIT DE LA PREUVE and DROIT SUCCESSORAL, prepared by the Canadian National Program for the Integration of the Two Official Languages in the Administration of Justice. Regardless of the method used, the exact reference is cited by a predefined code or system of abbreviations, thus enabling the user to consult the source text, e.g.: "Anknüpfungspunkt zum Gemeinschaftsrecht/Lien de rattachement avec le droit communautaire (48/75-Rec. 1976; 510)" (in Le Tellier 1985: 10).

The task of supplying contextual data becomes more difficult when the source text is not a bilingual or multilingual document. In such cases the sources of the SL and TL terms differ, thus requiring that dual references be cited. This is especially useful since it proves the authenticity of both the source term and its equivalent. As early as 1978, bilingual references were cited in the DICTIONNAIRE JURIDIQUE NÉERLANDAIS-FRANÇAIS AVEC VOCABULAIRE FRANÇAIS-NÉERLANDAIS (DROIT PRIVE), prepared by the T.M.C. Asser Institute of The Hague (Tebbens 1982: 176–179).

2. Diversity of usage

Previously it was not uncommon for lexicographers to state in the introduction that their equivalents were restricted to a certain geographical area, for example, to the Spanish in Spain. On the other hand, if diversity of usage was taken into account, the TL variants were identified by indicating the respective country or region of usage. Today, this practice has been expanded to include explanatory notes and sometimes even charts or entire pages. In this context it may be worth mentioning the United Nations glossary DERECHOS HUMANOS (Spanish/English/French) which contains a chart listing variations in the basic terminology of criminal procedure used in 13 Spanish-speaking countries (1985: vii).

Some bilingual dictionaries may devote special attention to usage to the extent that they resemble a dictionary of usage. This may be said, for example, of

J.A. Clarence Smith's DICTIONNAIRE JURIDIQUE FRANÇAIS-ANGLAIS, ANGLAIS-FRANÇAIS. Although most of the French terms are "universal French", as the author refers to them, legal terms used strictly in Quebec and elsewhere in Canada are also included. Moreover, diversity in the use of English terms is indicated by specifying the place of usage: North American or Great Britain, or more specifically, the United States, Canada, Quebec, England or Scotland (forthcoming: i–xii).

3. Acceptability of functional equivalents

Another method of improving user reliability involves establishing a criterion to measure the acceptability of functional equivalents. For the sake of accuracy, it is generally agreed that there is a certain point beyond which a functional equivalent can no longer be considered acceptable. As yet, however, no consensus has been reached as to where this point actually is.

About 15 years ago, the Internationales Institut für Rechts- und Verwaltungssprache in Berlin, which has published a series of 28 glossaries since 1966 (see list in Lane 1982: 231), began using methods of comparative conceptual analysis to determine the accuracy of functional equivalents. In essence, the properties and relationships which characterize the SL and TL concepts are divided into two groups – essentialia and accidentalia – depending on whether the particular conceptual feature is essential. If all the essential characteristics of the source concept match up with those of the functional equivalent and only a few of the accidentalia do not, the concepts are considered to be basically "identical". In such cases the mathematical symbol "=" precedes the entry, thus expressing a state of basic equivalence. On the other hand, if most of the essentialia and only some of the accidentalia are the same, the concepts are regarded as only "similar" and the symbol "±" is used to indicate partial equivalence. Finally, if only a few or none of the essential features coincide, the two concepts are considered nonequivalent. In such cases, the functional equivalent is discarded and the symbol "≠" designates the lack of an acceptable functional equivalent (Lane 1982: 224–225).

At this point it should be noted that the question of whether partial equivalence suffices for acceptability is not purely a legal matter but also involves two basic principles of lexicography: the purpose of the dictionary and the intended readership. Generally speaking, partial equivalence is sufficient in dictionaries written exclusively for information purposes and intended for readers of diverse legal realities. On the other hand, there are also dictionaries whose sole purpose is to standardize terminology, for example, for use in domestic bilingual legislation. Since their main concern is accuracy, it is only natural that these lexicographers are satisfied with nothing less than basic equivalence. This is the case, for example, in the Canadian vocabularies of common law terminology in

French mentioned above. Accuracy is also of utmost importance in the glossaries prepared by the Language Services of the UN. Since these equivalents are often used in authentic documents and legal instruments, it follows that they must basically correspond with the source concepts in order to be acceptable.

Alternative equivalents

If there is no acceptable functional equivalent, most legal lexicographers are content to define or paraphrase the source term. Others who insist on offering an equivalent for every term are forced to use one of the following types of equivalents: borrowings, literal equivalents, descriptive substitutes, neologisms.

In order to avoid possible misunderstandings, bilingual lexicographers sometimes use borrowings as a last resort; in other words, the source term is simply borrowed into the TL. For example, the UN DERECHOS HUMANOS glossary cites the term *amparo* as a borrowing with the following instructions to translators: "Leave in Spanish, underline and add in parenthesis 'enforcement of constitutional rights'. . ." (1985: 10). The use of borrowings depends not only on the purpose of the dictionary and the intended readership, but also on the SL in question, a fact which is often overlooked. As a rule, legal terms of languages with limited diffusion are not borrowed into the TL (Šarčević 1985: 129).

Other lexicographers prefer to use literal equivalents whenever the source term is semantically motivated or transparent. Although the Canadian standardization program uses a large number of literal equivalents, its members sometimes disagree among themselves as to their acceptability. The program justifies its choice of disputed literal equivalents such as *bien réel* and *bien personnel* for the common law terms *real property* and *personal property* on the ground that the standardized terms are intended strictly for domestic use (VOCABULAIRE BILINGUE 1984: xi; on dissenting views see Pigeon 1982: 280 and Smith 1984: 755). Whereas the Canadians do not expect outsiders to use their literal equivalents, they do, however, believe that they should be at least able to identify the source term by back translation, thus presupposing that the literal equivalent is reasonably understandable.

In other cases, acceptability may depend not only on the languages in question but also on the subjectivity of the lexicographer regarding the importance of the term for his own system. For example, Canadian lexicographers unanimously agree that, for the sake of accuracy, the term *common law* should be cited as a borrowing in French (Smith 1984: 760). On the contrary, other lexicographers often prefer to use the literal equivalent *droit commun* (e.g., in Herbst 1979: 205; Le Docte 1978: 194–195).

In cases where a literal equivalent is unacceptable or clearly impossible, lexicographers sometimes use descriptive substitutes, i.e., an expression which describes the term or function of the particular institution or concept (Šarčević

1985: 132). For example, the glossary on *Kraftfahrtversicherung* prepared by the Internationales Institut für Rechts- und Verwaltungssprache lists the equivalent *"third party" cover* for the source term *Haftpflichtdeckung.* The use of the descriptive substitute "third party" is clarified by the definition, which informs the reader that the main function of the German concept "is to cover the policyholder against his liability for the death of or bodily injury to other persons and for damage to third party property" (1980: 45).

Some lexicographers believe that it is up to them to create a new term if there is no acceptable equivalent in the TL. Although the creation of neologisms is highly disputed in legal lexicography, the view prevails that the lexicographer's task is to "record", not to "create" terminology (Le Tellier: written communication of 12 June 1986; cf. Weston 1983: 209). In this sense, the Terminology Services of the EC and particularly the Language Services of the UN oppose the creation of neologisms. On the other hand, UN glossaries do list neologisms which have already been verified by the competent national institution. In the case of legal terminology, neologisms for new concepts in international law are usually created by the International Law Commission (ILC) or the UN Commission on International Trade Law (UNCITRAL).

Is there an ideal dictionary?

Finally the question arises as to whether the new methodology of bilingual legal lexicography has given rise to an "ideal" dictionary. If "ideal" presupposes that the dictionary combines all of the procedures mentioned above, then, to our knowledge, there is still no "ideal" bilingual legal dictionary. Surely one of the best documented dictionaries is Francesco de Franchis's DIZIONARIO GIURIDICO INGLESE-ITALIANO, a scholarly work containing detailed definitions supported by citations to authority. It totals 1545 pages, including a 250 page introduction explaining, among other things, diversity of usage in common law countries as well as a 60 page bibliography of works cited in the text. According to T. Reynolds, this dictionary "will become the standard for the future" (1986: 552). It should, however, be pointed out that this dictionary is clearly intended as a reference book for comparative lawyers and not as a linguistic tool for translators who expect to find an equivalent for every source term.

In conclusion, it can be said that in assuming the descriptive tasks of the monolingual dictionary, the bilingual legal dictionary is beginning to verge on the encyclopedic. Regardless of whether the dictionary is intended as a scholarly reference book or as an aid for translators, the new methodology of bilingual legal lexicography requires that it contain a more or less elaborate documentary apparatus.

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