

Chapter 9

Multinational Legal Terminology in a Paper Dictionary?

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The intentional scepticism of the title expressed by the question mark at the end raises the question whether terminology from different legal systems can be conveyed successfully in a paper dictionary. The following draws on terminology theory and the specific character of legal reasoning and legal language in an attempt to settle the debate over the feasibility of presenting legal concepts from diverging legal traditions and their linguistic representations in an alphabetical paper-bound dictionary.

Our arguments in support of this derive from the following central tenets of terminology theory:

1. the centrality of the concept
2. the interrelatedness of concepts
3. the principle of univocity

In the following, these three basic beliefs of terminology theory will be discussed with special regard to what is meant by legal terminology and different legal traditions. The consequences for the compilation of terminological products will be assessed in the context of the current lexicographical approach to the representation of equivalence.

Terminology

Terminology theory was founded long before lexicography started to deal with language for special purposes (LSP) (Picht 1998, 117) and many of its early researchers were not linguists but practitioners (for example Eugen Wüster, see Lang 1998). They felt the necessity to document and harmonise the terminology they were using in their specific disciplines so that communication could be optimised and strengthened within their working environment as well as at international level. This is why they were so concerned about the concepts of their disciplines: identical things must be named with the same words and words in foreign languages must refer to these same things. Therefore, language, words and terms are mere instruments to help experts in their communication about the

concepts of their disciplines. From this starting point, terminology has looked for ways to control, systematise and master concepts and their denominations in the various subject fields by developing an adequate methodology: (See also Wright 1991):

Terminology has developed theories and methods that are distinguishable from those of its most related discipline, lexicology. Terminology deals with concepts and their designations, whereas lexicology deals with words and their meanings. Terminology produces conceptually-based resources, usually in the form of a database, whereas lexicology produces dictionaries. These two diametrically-opposed perspectives require equally distinct methodologies (<http://www.ailia.ca/Terminology>, accessed 7/2012).

1. Centrality of the Concept

As a consequence of the centrality of the concept, the basic unit of description in terminology is the concept, never a term or a word. This results in some fundamental differences between terminology and lexicology in terms of their methodology, as well as between terminography and lexicography in the layout of dictionaries, glossaries and term banks.

Terminology tries to analyse, document and describe the concepts of a specific discipline, in the case of legal terminology, the concepts of a branch of law or legal discipline. Discussions about legal language and the importance of language in law should not distract from the fact that legal concepts pre-exist and predate language, e.g. as codes of action, signs and ethical concepts (Sacco 2000). Law is a subject field and discipline in its own right, as Sacco, a well-known scholar of comparative law, put it: “Il diritto non ha bisogno della parola. Il diritto preesiste alla parola articolata” (Law has no need of language. Law precedes the spoken or written word) (Sacco 2000, 122). Legal concepts exist independently of language and assigning a term is arbitrary. As such, a term is the designation of a concept belonging to a specific legal subject field; it is, therefore, part of a “Language for Special Purposes” (LSP) or legal language: each term is a lexical unit, but not all lexical units are terms. Legal concepts represent units of knowledge that are part of a system of law which has evolved over time in a specific society. Mattila (2006) defines legal concepts as “crystallisations of legal rules” (Mattila 2006, 105). Today such legal systems are confined to political entities, but there were times when Roman Law was common to all European countries, for instance, or Islamic Law was applied in many African and Arab political units.

Legal concepts, their definition and scope are essentially characterised by their being part of a legal system and as such they are defined by their legal context, i.e. their relation to neighbouring concepts as well as their embeddedness in a specific legal setting. Terminology holds that concepts should be viewed from the perspective of a subject field. The relations between concepts of a

certain subject field may be illustrated in graphical concept maps or represented as specific links in terminological products. In Law the subject field may be a specific branch of law, such as the law of successions, business law, electoral law, etc. It is, however, most important to determine the general framework of the legal system in which such a division can be made. Apart from a handful of internationally established branches of law, there is no general electoral law and hence no common or universal terminology, but only the electoral law of the USA, of Italy or of any other country-specific legal system.

This system-specificity, as de Groot/ van Laer (2008, FN1) calls it, brings forth a fundamental disparity between concepts of different legal systems, because every concept will be embedded in a system of other concepts of the same legal system, which may greatly differ from the apparatus of concepts of another legal system. Affiliation to a legal system is therefore the key parameter for legal terminology, more crucial than the language or subject field. It governs the process of establishing equivalences between concepts, since we may compare concepts belonging to different legal systems independently from the language of their terms: e.g. German vs Austrian vs Swiss hereditary law concepts in German only but with regard to three distinct legal systems, or we may compile a terminology of succession law in German, Italian and French related to Switzerland, i.e. within one legal system.

2. Interrelatedness of Legal Concepts

A legal system may be viewed as a network of beliefs, ideas and moral notions that govern a society. All legal concepts form part of this system and it is therefore of utmost importance in terminology to interconnect concepts and to represent them as part of a network of concepts. Full understanding of a legal concept and interpretation of its meaning may only be achieved by differentiating it from the concepts surrounding it and framing it on the basis of its function and position within a legal setting. Concepts act as constitutive elements of a legal solution to a social problem. A good dictionary should provide information on this interdependence of concepts. Indeed, it is a special characteristic of terminological products to include concept relations, either in the form of concept maps used as a tool that may be adjusted in the course of the research or as data categories that reflect the specific relation to a super-/co- or subordinate concept in term bases.

3. The Principle of Univocity

The third pillar of terminology concerns the relation between concept and term. The necessity for unambiguity and precision in LSP communication in the subject fields makes synonyms and homonyms an obstacle and the unambiguous assignment of a term to a concept the proper remedy accomplished either by

linguistic usage, experts or terminology commissions. Univocity refers to the notion that each concept should be designed by only one term and one term should only refer to one concept. This would eliminate all cases of synonymy and homonymy/polysemy.

Many linguists have opposed this terminology principle, arguing that language cannot be standardised and that synonyms may be functional in LSP discourse (Temmerman 2000, 12). Wüster himself saw the principle of univocity not so much as an ideal state of terminology but rather as a goal to strive for, keeping in mind that it will always remain an impossible task: “Auch in der Terminologie muss das Verlangen nach vollständiger Eineindeutigkeit ein frommer Wunsch bleiben“ (Wüster 1991, 79) (Even in terminology the quest for complete univocity must remain wishful thinking). One of the most important functions of a terminological product or a dictionary is to convey the meaning of a legal concept as well as to present the term or terms used for it. In legal language, synonymy plays a major role only when different layers of language are used, as is the case in English, whereas polysemy and homonymy are more widespread: “The phenomenon of polysemy is rather the rule than the exception in legal language” (Mattila 2006, 109). Univocity is of special importance in legal language as the precise understanding of normative concepts is a prerequisite for legal certainty. In legal language we have thus an intrinsic conflict between the broad applicability of a norm or a concept, which would require it to be as general as possible, i.e. between vagueness on the one hand and legal certainty on the other, which would require precisely defined concepts (for a more detailed discussion of the notion of vagueness in normative texts, see Bhatia et al 2005, for some insights into the notion of indeterminacy in terminology, see Antia 2007).

Although univocity seems to constitute a worthwhile goal for terminology projects in the sciences, it should be emphasised that in law the concept of univocity is confined to each individual legal system. This is important for languages that are used in more than one legal system: each country using German as a legal language, for example, chooses its own terms and would not let itself be restricted in its choice by the fact that another German-speaking country uses the same term in another context, i.e. for a concept with other features. If legal terms are system-bound it makes no sense to pursue univocity internationally within one language.

Functional Requirements for Legal Dictionaries

Who are the users of dictionaries and what are their needs or what kind of information do they need? We may identify three major user groups for legal dictionaries: translators who need to translate a legal text into another language, legal experts who need to understand a legal text from another legal system, lay persons needing to use a legal text in their everyday life as persons affected by contracts, online terms and conditions, or other legal acts written in a foreign language.

The differences between those user groups with respect to legal dictionaries are smaller than their common requirements: all of the groups of users need to fully understand the legal concepts present in the source text, their legal implications and the way the concepts influence the meaning of the text. These concepts and their terms may be unfamiliar to them where they belong to a foreign legal system or the foreign terms refer to familiar concepts, in the case of a multilingual legal system. Both translators and legal experts establish a cognitive relation between the concepts in the foreign language text and the knowledge elements they are familiar with. Translators, for example, must be familiar with the legal system to which the concepts in the source text belong as well as the legal system to which the concepts in the target text belong.

One Concept – One Entry

To help users understand legal terms it must be clear what concept the term is referring to. This is the main task of a work of reference, keeping in mind that understanding is the main requirement for any reader.

Terminography is concept-oriented. Each concept will be described and documented in a single entry with a specific set of data categories. The dictionary user is interested in the meaning of the concept within a specific legal topic, i.e. the subject of the text they are trying to interpret. So the dictionary user is not looking for the general linguistic meaning of a term, nor for potential homonyms in general language or other subject fields, but principally for the specific legal concept that constitutes part of the cognitive structure of the text. A useful work of reference explains the concept as a knowledge unit within the legal system, it allows the user to access the concept using the term or using a hierarchical concept system or a knowledge classification which illustrates the network of relations within a legal system.

Starting from the recognition of the concept, a user may need to know all the terms that are used for this concept in one language and in a specific legal system. Synonyms refer to the same concept and belong to the same entry whereas homonyms are to be treated in different entries. This principle is very unfamiliar to multilingual dictionaries in general. So, for example, in the Conte/Boss Dizionario giuridico ed economico we find the entry

licenziamento m Entlassung f Kündigung f;

where the two German terms refer to two distinct concepts in German Labour Law and the dictionary user is given no information that might help him/her to discriminate between them and determine which might be the correct solution for his/her particular text.

Thorough Documentation of the Concept

The understanding or interpretation of the source text, a common need for all user groups of legal dictionaries, may differ between the groups only in terms of their extent (Engberg 2002, 376). There is, however, no doubt that translators need to interpret the source text to be able to make decisions about the target text.

Legal dictionaries must therefore convey the concept behind a term, they must be able to situate the legal concept within the framework of the legal system it belongs to. With regard to the first terminological principle, the centrality of the concept, an entry in a legal dictionary has to delineate what the term in question is referring to and in what context. An intensional definition with the properties of the legal concept or citing a definition from a statute may characterise the concept. To specify clearly what the entry is referring to, however, it is also necessary to indicate the legal system the concept belongs to and give information about its usage within a specified branch of law (Simonnæs 2010, 40). Such an entry would more or less resemble the data found in a monolingual specialised dictionary, with the exception that extensive encyclopaedic information would be kept to a minimum.

All the collected information about a concept is structured according to specific data categories. This can be attributed to the fact that terminology adopted the use of electronic media at a very early stage, so much so that today almost every terminographical product is computer-based, with paper output as a secondary format (Lauren/Myking/Picht 1998, 306). The importance of a thorough concept documentation is underlined by the multiplicity of terminographical data categories available; these are compiled in a particular database called ISOCAT (see isocat.org).

The question is where does the meaning of a legal text come from? Is there objective meaning or does meaning come from language and its use, i.e. context? Much has been written about meaning in law and we will not enter into this debate here as it would divert from our main topic: what and how can paper dictionaries contribute to our understanding of legal texts? Nonetheless, a critical analysis of the concept of context seems important for our line of argumentation. Overall we agree that meaning as well as understanding is context-dependent:

This means that the translator must be aware of the fact that he cannot depend solely on context-free knowledge of what specific words mean in legal texts. He must at all times discover what specific words and terms mean in the concrete situation (Engberg 2002, 385).

The different aspects of context have been clearly set out by Melby and Foster who propose a five-part definition of the concept: co-text - the surrounding text within a specific document; chron-text - diachronic versions of the document; rel-text - related documents and other resources; bi-text – aligned bilingual information; non-text – real-world setting of a document including technical

knowledge (Melby/Foster 2010). The meaning of specific words and terms in the concrete situation of a text comes from the function of the text, from its embeddedness in a specific legal context which is why the fifth type of context is the most relevant one from a conceptual perspective.

It is this legal aspect that can be covered in a lexicographical/terminographical product by the documentation of the concept. All other aspects of context are contingent upon the text and have to do with the concrete communicative situation, unknown and unpredictable to the terminographer or lexicographer.

The Misconception of Equivalence

Decisions about which words and terms to use in a particular communicative event are based on situational parameters; in a multilingual setting equivalence is one of these. Multilingual paper dictionaries are based on equivalences insofar as each term or word from the source language has a direct counterpart in the other language(s). This might work within general language, but in a specialised environment such as legal language this approach seems inappropriate: “Where the source and target language relate to different legal systems, equivalence is rare” (de Groot/ van Laer 2008, FN 5) and “virtual full equivalence proves to be a problem” (de Groot/ van Laer 2008, FN 5). Given what we said about legal concepts and especially the terminographical principle of one concept per entry, equivalence between concepts originating from different legal systems becomes impossible:

Where the concepts of two legal systems differ, the semantic domains of legal terms do not correspond with one another (Mattila 2006, 105).

De Groot/van Laer list two exceptions to this general principle or cases in which near full equivalence may still occur between different legal systems: when there is a partial unification of legal areas with regard to the legal systems in question, or when a concept has been adopted from another legal system and still functions in the same way (de Groot/van Laer 2008, FN8). In all other cases it would be impossible to speak of equivalence in the terminological sense.

Terminology defines equivalence as the coincidence of conceptual characteristics. When all concept features overlap, the concepts are considered equivalents or the same, resulting in one concept with its defined set of characteristics, with equivalent terms in two or more languages: “The preeminent goal of descriptive terminology is to describe relations between the concepts of a defined subject field and to identify the terms in two or more languages which designate one concept” (Cole 1991, 400). When we contrast concepts and their terms in law, we cannot identify a common defined subject field, since every legal system is a distinct reality. Furthermore, there can be no common concepts to identify, only idiosyncratic concepts to compare. Compilers of multilingual legal dictionaries are hard pressed to find substitutable equivalents.

Many dictionaries offer a list of equivalents without any indication as to their use or the context in which these terms are used:

Räumung n (f) removal; vacating; clearance; eviction; evacuation;

Bürgschaft n (f) surety; guarantee; guaranty; security; sponsorship; suretyship; warranty obligation; (Schulte 2007)

This not only violates the principle of one entry per concept but also gives the misleading impression that any of these equivalents could be used. Such dictionaries lack a clear basis for establishing equivalence relations and this is indeed the most criticized aspect of legal dictionaries (de Groot/ van Laer 2008, 1999, Sandrini 1996, Šarčević 1988).

Equivalence, however defined, cannot therefore form the basis for the comparison of concepts from different legal systems. Every legal system has its own tradition and each has undergone a unique historic evolution leading to singular notions and a specific array of concepts, which are classified according to idiosyncratic criteria, very different systematic and structural embeddings. Instead of equivalence in law we prefer to speak of comparison. When we cannot establish strict equivalence relations, we need information about the concepts in their legal environment, about differences, common traits in relation to the concepts of another legal system. In electronic media that information can be dealt with in additional data categories (Lauren/Myking/Picht 1999, 309). Strictly speaking, there should not be one common concept entry for concepts from different legal systems because there can never be complete equivalence: a judge, for instance, will have completely different competencies and responsibilities- even the exact moment of the birth or death of a person will be defined according to different criteria in each legal system.

The misconception of equivalence originates from the erroneous belief that a dictionary can suggest immediately substitutable equivalents. For a term to be used in a translation, however, a series of parameters have to be taken into consideration, parameters which relate to the text as well as to the communicative embeddedness of the target text. As we may deduce from the definition of context by MelbyFoster (2010), only the non-text part which refers to the legal embeddedness of a term, can be prepared by the terminographer, as the remaining four parts of context are all subject to situational factors.

A realistic alternative would be to see the function of dictionaries or terminographical products as the provision of as much information as possible. In Law they should provide accurate legal information useful for the understanding of the source text and helpful for the decisions to be taken with regard to situation-dependent communicative factors while composing the target text.

Comparative Approach

A comparative approach to legal terminology may provide just such information. It involves documenting the concepts and terms of one legal system and their structural interrelations independently from the concepts and terms of another legal system as well as comparing the concepts to identify similarities and differences; for a detailed account of such an approach see Sandrini (1996, 1999 and 2009) and the implementation described by Våge (2010). The results of such a procedure would differ from a traditional dictionary entry by the complexity of the information about equivalence relations. While concept documentation data categories are well established in terminography as well as in lexicography, there is no general practice for documenting the complex relations between similar concepts. Some legal dictionaries – all of them – are ranked amongst the best comparative dictionaries by de Groot/van Laer (2008) – use some sort of signs to describe the nature of the equivalence relation: The European Glossaries of legal and administrative terminology published by Heymanns, for instance, apply the following signs: = concepts and expressions are synonymous in the two languages; +/- concepts and expressions are comparable or similar; ≠ no equivalents, explanations and translations underneath

These signs are certainly useful and express the results of a comparative approach; a summary check of the occurrence of each sign in one of the glossaries of this series (Local Government Terminology, Vol. 14) reveals the importance of such a comparison in law: out of a total of 472 entries, 203 or 43% have no equivalents (≠), 72 or 15% are more or less similar concepts (+/-) and 197 or 42% direct matches (=). Even if we take the cases of direct equivalence for granted (which is highly disputable in the case of two different legal systems) for more than half of the concept entries in this dictionary, the user would need additional information, either about the reason why there is no equivalent in the other legal system or on how the other legal system has solved the underlying social problem and with which concepts and terms, and what differentiates the legal concepts which are marked as more or less similar. Explanations and commentaries are essential in this regard, even more than the subdivision of equivalence relations into the three categories expressed by arbitrary signs. However, the representation in a dictionary of the results yielded from such a comparative approach is problematic.

Offering literal translations and other less common solutions when a direct translation is not possible, such as neologisms, etc., as described in de Groot/ van Laer (2008) is not the main focus of conceptual terminology for two main reasons: first, the use of foreign language terms by translators or text producers is heavily influenced by communicative parameters and the function of the text in which they are to be used and therefore outside the scope of systematic terminography; and secondly, if the user is provided with the appropriate legal knowledge of the target legal system and has a good command of the target language, it should be no problem for him/her to find adequate linguistic solutions. Nevertheless, these may

be indicated where appropriate but always with the necessary specification that it is a translation of the source language term or a neologism and not a naturally occurring term of the target legal system.

Conclusions

In light of the above we may formulate the general requirements for the documentation of legal concepts and their respective terms. As a matter of course, every piece of research should adhere to the common principles of the verifiability of information, such as providing sources and references and the necessary diligence in documenting each concept (de Groot/van Laer 2008). The specific information units that the documentation of a legal concept requires are:

1. indication of the legal system
2. indication of the branch of law
3. indication of relevant legal sources
4. explanation of the concept
5. provision of the term and alternative terms used to denote this concept in the same legal system
6. indication of related concepts within the same legal system

These requirements need to be applied to all concept entries for each legal system that is covered by the dictionary. A major advantage of such a conceptual approach and the application of the principle of 'one concept – one entry' is the attribution of each term to a specific concept as well as to a specific legal context within a specific legal system so that the user has a clear image of the structural embeddedness of the concept and the terms used to designate it. This may be implemented in a dictionary without problems as attested by the number of good monolingual works of reference on the market. For multinational legal terminology, however, the concept entries must be compared and contrasted, a process which requires the following relevant information: indication of the most closely related concept in the target legal system; explanation of differences and similarities; where major differences exist, a knowledge link (concept hierarchy, legal classification) to the relevant concepts should be provided.

To represent these requirements in a traditional paper dictionary is a very challenging task, especially the flexible handling of equivalence relations. If the terms and concepts of both legal systems are recorded independently – a long-standing requirement in terminography (see Arntz/Picht/Mayer 2002, 225) – and equivalent relations are recorded afterwards, a lot of possible relationships may occur that have to be documented. Modern tools, such as data banks and digital media, offer better options to represent flexible entry structures and hyperlinks between legal systems avoiding direct equivalents; for a comprehensive model of a legal terminological data bank, see Sandrini (1996). In particular, the linking

features of hypertext and structural flexibility of digital formats such as XML allow for the adequate representation of comparative legal terminology. In the presence of such technical aids and the vast publication possibilities of the world-wide-web, a legal dictionary in paper format no longer seems appropriate to fulfil the requirements of demanding users and the days of the paper law dictionary are definitely numbered.

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