A No-Fuss Approach to the Translation of Legal Terminology: Some Examples from Hong Kong's Law Translation Project

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1. Two hard facts about legal concepts

Let us take a look at two hard facts about legal concepts before we concern ourselves with the translation issues. First, legal concepts are system-specific and as such they have no equivalents in other legal systems. Second, a legal concept, however complex, is represented by a linguistic sign, a verbal label generally called a legal term. To understand the meaning of the term, we must acquire knowledge of the legal concept it designates. Obviously enough, such knowledge cannot be acquired simply by acquainting oneself with the linguistic meaning of the term. In other words, understanding the linguistic meaning of the term is not tantamount to understanding its legal meaning. The term, as a linguistic sign, merely functions as a meaning-pointer to the legal concept it designates. For example, the term *burglary* designates a specific statutory crime in English law.[1] The linguistic (ordinary) meaning of *burglary*, namely, *housebreaking*, does not fully capture the legal meaning of the term, which is defined in, for instance, section 11 of the Theft Ordinance (Cap 210) in Hong Kong as follows:

> *(1) A person commits burglary if-*
> *(a) he enters any building or part of a building as a trespasser and with intent to commit any such offence as is mentioned in subsection (2); or*
> *(b) having entered any building or part of a building as a trespasser he steals*

[1] It was a crime under statute and in common law before 1968.

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or attempts to steal anything in the building or that part of it or inflicts or attempts to inflict on any person therein any grievous bodily harm.

(2) The offences referred to in subsection (1)(a) are-

(a) stealing anything in the building or part of a building in question;

(b) inflicting on any person therein any grievous bodily harm or raping any woman therein; and

(c) doing unlawful damage to the building or anything therein.

(3) References in subsections (1) and (2) to a building shall apply also to an inhabited vehicle or vessel, and shall apply to any such vehicle or vessel at times when the person having a habitation in it is not there as well as at times when he is.

(3A) The reference in subsection (2)(c) to doing unlawful damage to anything in a building includes-

(a) unlawfully causing a computer in the building to function other than as it has been established by or on behalf of its owner to function, notwithstanding that the unlawful action may not impair the operation of the computer or a program held in the computer or the reliability of data held in the computer;

(b) unlawfully altering or erasing any program, or data, held in a computer in the building or in a computer storage medium in the building; and

(c) unlawfully adding any program or data to the contents of a computer in the building or a computer storage medium in the building. (Added 23 of 1993 s. 6)

(4) Any person who commits burglary shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 14 years.[2]

Being system-specific, burglary is a crime that exists only in English law, constituted by a cluster of crimes, namely, trespassing, theft, inflicting bodily harm, criminal damage, rape, and tampering with computer programs or data. While a crime unique to English law in the broad sense, burglary as defined in Hong Kong law is not exactly the same crime as defined in the laws of other common law jurisdictions, England for instance.[3] Also noteworthy is the extended meaning of the crime-scene word *building* under the statute which includes an inhabited vehicle or vessel.

For all its complexity, the concept of burglary is designated by a simple English word *burglary*. Like any other linguistic sign, the fact that it can designate the complex concept of burglary is not due to any property of its physical form, phonetic or graphological.[4] The sign in itself has no magical power of invoking in us the complex concept it designates. Rather it is through the conventional association of the physical form of the sign with its meaning established and acquired through experience, through learning in particular, that it can function as the meaning-pointer of the concept. It is impossible for any person without the knowledge of the nature and scope of burglary as defined in statute to grasp the legal meaning of the term *burglary* merely by understanding its linguistic meaning.

All this is a simple truism.

2. What is all the fuss about translating legal terminology?

2.1 Equivalence

In translating the term *burglary*, into Chinese for instance, there are two things we must bear in mind from the outset. First, it will be futile to ***find*** an equivalent term in Chinese which express the same concept of burglary in English law, for the simple reason that there is no such concept in the Chinese thought-world. Second, no single term in Chinese, however it is arrived at and whatever it looks like, can convey the concept of burglary to any Chinese reader/user who does not already have knowledge of the concept. Just like its

[2] See the website of the Bilingual Law Information System of the Department of Justice, Hong Kong (http://www.legislation.gov.hk/eng/home.htm).

[3] Rape is no longer a specific crime of burglary in England. The words "or raping any woman" in s. 9(2) of Theft Act 1968 were repealed (1.5.2004) by Sexual Offences Act 2003(c.142), ss. 139, 140, Sch. 6 para. 17 (Sch. 7); S.I. 2004/874, art. 2. See changes to legislation on the website of legislation.gov.uk (http://www.legislation.gov.uk/ukpga/1968/60/section/9).

[4] Unlike medical and scientific terms, legal terms are far simpler in morphological structure. A typical example of a complex medical term is *pneumonoultramicroscopicsillicovolcanconiosis*, which refers to a special lung disease. Despite its length, the amount of information (meaning) it conveys through its surface meaning is still limited. People who marvel at the profound meaning a simple word like *Zeitgeist* can express simply forget that the profound meaning attached to the word is not contained in the word itself but in the heads of language users.

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English counterpart *burglary*, all it can do is function as a meaning-pointer of the concept.

The translation of English common law terms into Chinese in Hong Kong can serve as a typical example of the most demanding type of legal translation, namely, legislative translation, the end product of which will become the authentic text of the law. And under the bilingual legal system of Hong Kong, a Chinese term must convey exactly the same legal concept represented by its English counterpart. In the present case, absolute equivalence must be established between the Chinese term for *burglary* and its English counterpart. Equivalence of lesser degrees, whether functional, near, or partial, is not good enough.

Much has been written on equivalence. Many have contended that absolute equivalence is an illusion (Newmark 1981: x; Snell-Hornby 1988: 22; Bell 1991: 6). Ironically enough, Sadrini (1996; 1999) and de Groot (1987; 2006; 2008), who have often been cited to support such contention, expressly state that absolute equivalence is possible when translation is carried out within bilingual or multilingual legal systems, i.e., within the same legal system. What they contend is that absolute equivalence is impossible when translation is carried out between different legal systems. They are right in holding the first view, but wrong in holding the second. In what follows, we will show that absolute equivalence is possible in translation both within the same legal system and between different legal systems. What makes it possible in both cases is the same principle.

As has been noted, a term is simply a verbal label for a concept. The relation between the label and the concept is, as duly emphasized by Saussure (1983), completely arbitrary. The concept of burglary, while system-specific, is by no means language-dependent. That is to say, to understand the concept we don't have to rely on the phonetic or graphological feature peculiar to the English word *burglary*. The word *burglary* in the section cited above can in theory be replaced by an arbitrarily coined word, say *burblary*, without any change to the nature and scope of the crime. To parody Shakespeare's famous lines:

> *What is in a term? That which we call burglary*
> *By any other name would count as criminal*

What we are supposed to do in translating *burglary* into Chinese is simply re-label the concept of burglary in Chinese such that the resultant Chinese term of this re-labeling is ***created*** as an exact equivalent of the English term *burglary*. Whatever linguistic meaning the Chinese term carries, as a common law term in Chinese for the concept of burglary, it must be understood in light of the common law meaning of the concept of burglary. Absolute equivalence between corresponding terms in English and Chinese is established when they are stipulated to designate the same concepts, or in other words, when the common law is adopted as the "semantic reference system" (SRS). There is no magic in giving terms in different languages the same meaning. Equivalents abound in science, medicine, engineering, finance and even culture-laden fields such as philosophy and religion. Absolute equivalence in meaning is established by one simple speech act: Let Term X in Language A mean the same as Term Y in Language B. This is so simple an act that can be performed without fuss. In this connection, we would like to reiterate what we have said regarding the issue of equivalence (Sin and Roebuck 1996: 245):

> *In reviving total [absolute] equivalence as an achievable goal of bilingual legislation, we do not have to presuppose symmetry between English and Chinese, as Snell-Hornby has contended. We do not have to postulate the existence of the abstract entity called 'proposition' in order to establish something like the principle of 'effability' espoused by the realist Katz, which asserts that 'Each proposition can be expressed by some sentence in any natural language' (Katz 1978: 209). We do not have to postulate the mentalist notion of idea (see Ogden and Richards 1949: Ch 1) which finds its expression in different languages and serves as the ground for establishing equivalence in meaning. We do not have to subscribe to what Roy Harris (1981: 9-10) calls 'the language myth' to postulate a determinate correlation between words and ideas whereby the transferability of thoughts from one mind to another, from one language community to another, and from one culture to another, is made possible. Nor do we have to postulate 'linguistic universals' as propounded by Chomsky to justify the possibility of a complete match among different languages at the deepest level of their structures. In short, we need not get tangled in all unnecessary complexities of philosophical doctrines to be enlightened on the crux of the whole issue. All we need to do is to take a closer look at the plain and simple ways in which a language functions…*

We often forget that as language users, we can make language serve our purpose. For one reason or another, whether political or cultural, we need to

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have a legal system that operates in more than one language. Under such system the law has to be enacted in different languages and the different language versions must convey the same legal meaning. And as building blocks of the law, legal terms in different languages must convey the same legal concepts. This is the mandate of a bilingual or multilingual legal system. Complying with this mandate may seem a tall order where the law has to be translated from one language to another. Yet despite the complexity and technicality involved in the translating process, the principle that makes absolute equivalence achievable is a simple one. While legal terms in one language do not have equivalents in another language ***as it stands***, equivalents can be created through a variety of linguistic devices. The translation of legal terminology does not require the availability of equivalents in the target language as a pre-condition. The issue of equivalence is in the final analysis a pseudo-problem.

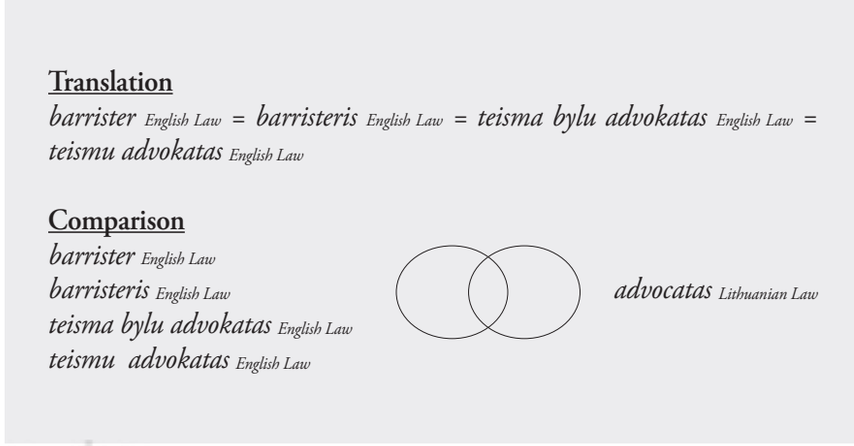
2.2 Translating between different legal systems

As has been noted, scholars such as Sadrini and de Groot, while admitting that absolute equivalence is possible when translating within the same legal system, contending that it is impossible when translating between different languages. The reason for Sadrini is that "legal concepts as part of a national system of laws are fundamentally different across legal systems and that only a comparative approach is possible; the establishing of equivalence is not." In a similar vein, de Groot maintains that "[w]here the source and target language relate to different legal systems, equivalence is rare" or even "proves to be a problem". For them, related but different legal concepts can only be compared such that "partial equivalence or overlapping characteristics" is uncovered.

It is common ground that different legal systems, however closely related, do not have identical legal concepts. As has been noted, the concept of burglary is not exactly the same under English and Hong Kong laws, even though both are common law jurisdictions (see Note 3). And it is also common ground that legal concepts of different legal systems can of course be compared so that the extent to which related concepts overlaps can be ascertained. However, analysis of legal concepts in comparative law does not entail that "we have to abandon the concept of equivalence" as Sadrini argues (1996: 5).

There are two points to note here. First, translation is a question at issue in comparative law because comparative law involves research in foreign law, which in turn often requires translation. Translation is necessary, as noted by Smith (1994: 268), "because we cannot always read the original language of the law or because the original language text is not available to us." Since comparative law relies to a large extent on translation, and since the source concepts must be accurately expressed in the target language before they can be compared with the related target concepts, absolute equivalence must be established between the source concepts and their designating terms in the target language. So it is wrong to assert that the notion of absolute equivalence has no place in comparative law, as has been contended by Sandrini and de Groot.

Let us take a simple example from Januleviciene and Rackeviciene (2011: 1082). If we want to compare in Lithuanian the term *barrister* in English law with its Lithuanian counterpart *advokatas*, we can either make the English term *barrister* a loan word *baristeris* and use it as a neologism in Lithuanian, or give a descriptive translation in Lithuanian as *teismo bylu advokatas* (advocate of court cases) or *teismu advokatas* (advocate in court). In either case the Lithuanian term for *barrister* has to be understood in light of the functions of barristers under English law and their place in the structure of the English legal profession if the comparison with its Lithuanian counterpart is to be of any significance. Put differently, comparative analysis of legal concepts in different languages requires that each of the concepts in question must be understood in light of its legal system. The present example can be illustrated as follows:



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Obviously enough, partial equivalence exists between the English concept of barrister and the Lithuanian concept of advokatas whereas absolute equivalence exists between the English term *barrister* and its Lithuanian translations. Sandrini's contention that "[t]here is no equivalence on the level of terms" (1996: 2) holds true only for terms of different concepts, but not for terms of the same concept. Here we can see that the whole debate over equivalence versus non-equivalence arises purely from a muddled conceptual confusion.

Secondly, there is no *a priori* reason why the language of a legal system must be pegged to that particular legal system. As has been noted, legal concepts are system-specific but not language-dependent. That is to say, legal concepts are not pegged to any particular language, and *vice versa*. A good case in point is the evolution of the common law in England from law Latin through law French and eventually to law English (Mellinkoff 1963), and in Hong Kong, to law Chinese. As a matter of fact, that there is no necessary connection between the language of a legal system and that particular legal system is acknowledged by de Groot himself. He points out that "[a]ny given language can have as many legal languages as there are systems using that language as a legal language" (2008: 2). This flatly contradicts his contention that there can be no equivalence where the source and target language relate to different legal systems, which implies that terms in the source language must be understood in light of the legal system of the source language and terms in the target language must likewise be understood in light of the legal system of the target language. For de Groot, if the English term *barrister* is translated into Lithuanian as *teismu advokatas*, the Lithuanian term *teismu advokata*s must be understood in light of Lithuanian law, and as a result *teismu advokatas* cannot express the English concept of barrister. Likewise, in the case of Hong Kong, translating English law into Chinese would entail that all the translated terms in Chinese must be understood in light of the civil law system, because the legal systems in Mainland China and Taiwan belong to the civil law system. Consequently, there can be no equivalence between the English and Chinese texts of the law. If this line of thinking is followed out, all bilingual and multilingual legal systems would turn out to be castles in the air. In fact, there are many who adopt this line of thinking, arguing against the possibility of absolute equivalence on which bilingual and multilingual legal systems are built. But it is really hard to see why *teismu advokatas* cannot be understood in light of English law, or why it cannot be given an English legal meaning simply because it is expressed in Lithuanian. Neurons won't refuse to process such conceptual adjustment. Nor our brain will blow up. We can't help but wonder why so many brilliant minds have failed to see the allegedly insurmountable difficulty in establishing absolute equivalence just requires a simple conceptual adjustment.

2.3 Comparative law

It goes without saying that translating legal terminology requires not only linguistic skills and knowledge but also legal knowledge. To translate the term *burglary*, we must first understand its legal meaning in English law. Knowledge of similar or related terms, if any, in the target legal language definitely helps, but is not, we would argue, necessary for producing an appropriate target term that can serve as a good meaning-pointer of its source counterpart.

As is widely known, de Groot is a strong proponent of the comparative-law approach to legal translation. For him, "comparative law forms the basis for translating legal texts" (1987: 797):

> *When translating legal texts, one must take into account that the fact that the terminology used deviates from the normal colloquial speech. The manner in which a concept functions within a legal system often causes it to obtain a meaning which deviates from or is more differentiated than colloquial language and which must be expressed when translating. An extra difficulty is that legal documents are often characterized by a usage which has already become obsolescent in colloquial language (1987: 797).*
>
> *As a consequence, it is of primary importance to establish that one legal language must be translated into another* ***legal*** *language. One should not translate from a legal language into the ordinary words of the target language, but also the legal terminology of the target language. If the target language is used in several legal systems as the language of the law, a conscious choice must be made for the terminology of one of the possible target legal languages. One target language legal system must be chosen, that is, a single legal system which uses the target language as its language. The choice of a particular target language contained in the terminology of the source language legal system must be represented by the terminology of the target language legal system (2008: 2).*

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A similar approach has been proposed by Galdia (2003: 4):

> *A legal term under legal system A, understood as a systemic term, is transformed into another term under legal system B by finding a term that corresponds with the function of the legal term under legal system A. This allows, for example, the English legal term to be translated into German as* ***Treuhand*** *in certain instances.*

In a nutshell, the comparative-law approach consists in matching legal language with legal language and legal terminology with legal terminology in the source and target languages. Galdia's approach is also a functional one.

For what it is worth, de Groot and Galdia's approach has several drawbacks. For one thing, the approach presupposes a clear-cut distinction between ordinary language and legal language. But as is evident from the heated debates over what counts as legal language and whether legal language is reducible to ordinary language (see Morrison 1989; Pozzo 2005; Tiersma 2005), it is doubtful whether an approach based on such controversial grounds can be relied upon in legal translation. Without going into the arguments involved in the debate, suffice it to say here for our present purpose that legal language is a fluid and fuzzy concept. Whether a word is an ordinary word or a legal term depends entirely on the context in which it is used. There are indeed words which are mostly used in legal contexts, such as *mens rea, actus rea, estoppel, lien, mortgage,* and *voir dire* in English law. They constitute the small set of technical terms which represents only a small proportion of the entire vocabulary of English law. What is more, it doesn't take much to see that they can be used in non-legal contexts and cease to function as technical legal terms. A good case in point is the term *mens rea* used by Lakambini Sitoy in her story *Mens Rea* in which it is defined by one of the characters as a special kind of "psychological bleeding" (1998: 13). Conversely, an ordinary word can be given a technical meaning in law, as is often the case in English common law. The word *abandon* is a typical example:

> *The word 'abandon' is one in ordinary and common use, and in its natural sense well understood; but there is not a word in the English language used in a more highly artificial and technical sense than the word 'abandon'; in reference to constructive total loss, it is defined to be a cession or transfer of the ship from the owner to the underwriter, and of his property and interest in it, with all the claims that may arise from its ownership, and all the profits that may arise from it including the freight then being earned.*[5]

There are a huge number of ordinary English words like *abandon* which have been involved in lawsuits, judicially interpreted, and given case law meanings. It would be difficult to follow de Groot's approach in such cases as we don't know whether we should translate them into ordinary words or legal terms in the target language. In either case, the approach leads us nowhere. It is hardly conceivable that we could find in any language a corresponding ordinary word for *abandon* or a related legal term which carries a similar, even remotely, technical meaning, ***unless*** it is understood in light of English maritime law, but that is precisely what we propose all along.

The issue of ordinary language versus legal language aside, an obvious drawback of the comparative-law approach, as we have seen above, is that while ***finding*** equivalent terms is bound to be futile, finding comparable terms may also turn out to be fruitless. If we want to translate *burglary* into Chinese by following the comparative-law approach, the closest term we can find in the criminal law of the People's Republic of China (PRC) is *入户盗窃* (ru hu daoqie, meaning *entering a residence to steal*) (Article 264 of Criminal Law (Amendment) 2013). There isn't a similar single term in the criminal law of Taiwan. Article 321 (1) of the Criminal Law specifies the venue and manner in which the crime of 竊盜 (larceny or theft) is committed:[6]

> *於夜間侵入住宅或有人居住之建築物、船艦或隱匿其內而犯之者.*
> *Committing the crime by intruding at night into a dwelling house or an inhabited building or vessel, or by keeping oneself concealed therein (My translation).*

The following is a comparative analysis of the three crimes:

[5] *Rankin v Potter* (1873) LR 6 HL 83 at 144, per Martin B.

[6] Note that the two Chinese terms carry the same meaning of theft, stealing, or larceny but have different written forms. The PRC term is *daoqie* whereas the Taiwan term is *qiedao*. And it is also worth noting that the Taiwan concept still preserves the element of night-time which was part of the archaic meaning of the English concept of burglary.

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Law	Crime	Manner	Venue	Time	Crime Committed	Max Penalty
HK	burglary	trespassing	building; inhabited vehicle; inhabited vessel	unspecified	theft; inflicting bodily harm; criminal damage; rape	14 years' imprisonment:
PRC	入户盗窃 (ruhu daoqie)	entering	residence	unspecified	theft	life imprisonment
Taiwan	竊盜之一項 (a mode of qiedao)	intrusion + / - concealment	residential apartment; inhabited vessel	night	theft	5 years' Imprisonment + NTD$100,000 fine

Since there is no existing term in Taiwan law for the crime under comparison, the PRC term *入户盗窃* would be a reasonable candidate translation for *burglary*. But we will show that we can come up with even a better alternative without going through all the trouble of the comparative analysis.

Yet another drawback of translating a legal term of the source legal system with a comparable term of the target legal system is that the target term may mislead both the translator and the user. A typical example is the translation of the English term *possessory lien* as *留置权* (*liuzhi quan*)[7] in PRC's Maritime Law (see Fu 1999). Under English law, a lien is:

> *A legal right or interest that a creditor has in another's property, lasting usually until a debt or duty that it secures is satisfied. Typically, the creditor does not take possession of the property on which the lien has been obtained (Black's Law Dictionary 9th ed. 2011)*

There are many types of lien, and possessory lien is one of them. Prefixed by the adjective *possessory*, the term refers to:

[7] *留置权* (*liuzhi quan*) is the accepted translation for lien both in PRC and Taiwan law.

> *A lien allowing the creditor to keep possession of the encumbered property until the debt is satisfied (Ibid.)*

By contrast, under PRC civil law, a lien is already a legal right of the creditor to take possession of the encumbered property and hence *possessory lien* is a redundant term. This has led the translator to delete *possessory* in the translated term *留置权* (*lien*) (Fu 1999: 254-5), thus concealing the essential meaning of the right to take possession as a special type of lien under English law from the user and misleading him/her into treating it as a lien under civil law.

We can now see clearly that the comparative-law approach to legal translation suffers from one intrinsic flaw. It deprives translation of the important function of importing foreign law to the target culture and prevents the user from gaining access to new concepts, new ideas, and new ways of thinking.

Well aware of the potential danger inherent in this approach, the translators of the Law Translation Project in Hong Kong exercised great caution against being tempted to adopt PRC legal terms in translating the common law terms appearing in Hong Kong statutes (see Suen 2002).[8] In this connection, we can see the wisdom of the European Union in urging translators "to avoid using terms of national laws to designate EU concepts" (Gibova 2009: 150). Of course, comparative law can play an important role in translating legal terminology–it can warn us what terms to avoid!

3. Two levels of operation in translating legal terminology

Let us be clear. Our goal is to produce a term in the target language which is intended to be the ***equivalent*** for the term in the source language, i.e., with ***exactly the same*** meaning as the source term. As has been noted at the outset,

[8] Wai-chung Suen, currently Senior Assistant Law Draftsman of the Department of Justice, Hong Kong, was actively engaged in the Law Translation Project in the run-up to 1997 before the change-over of sovereignty. In this paper (in Chinese), he explained in detail why the English term *attempt* under Hong Kong criminal law should not be translated as *犯罪未遂* (*fanzui weisui;* meaning *commission of crime not accomplished*), a term which has a similar meaning under PRC criminal law. It is interesting to note that the PRC term has often been translated as *attempt* in English, a potential trap for unaware readers/users who may be tempted to understand the PRC term in light of English criminal law.

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this goal can only be achieved under two conditions. First, the target term must refer to the same concept as designated by the source term. Second, the target term must not be regarded as having the magical power of enabling us to understand in a flash the entire meaning of the source term; rather, it can merely serve as a meaning-pointer that points us to the concept of the source term. Once this is clear, a methodology suggests itself to us.

3.1 The conceptual level

What we do at this level is to establish the conceptual framework within which the whole enterprise of terminological translation is to be carried out. Put differently, it lays the foundation for establishing absolute equivalence in terminological translation and devises strategies for producing appropriate terms. Furthermore, it provides explanatory comments and notes on how the terms are produced, and more important, how they should be used. The operation at this level is essentially brainwork without getting down to the nitty-gritty of translation.

The all-important first step is to fix the ***semantic reference system*** (SRS) (Sin and Roebuck 1996: 247-9). SRS is a very simple notion. It simply serves as a notional shorthand for drawing our attention to the system-specificity of legal terms, i.e., legal terms acquire their meanings from the legal systems to which they belong. In translating English legal terms, English law is the default SRS, regardless of the legal system of the target language. So strictly speaking there is no such thing as translating *between* legal systems. When we translate legal concepts from one language to another, we are translating concepts of a particular legal system. In other words, we always translate *within* the same legal system, the default SRS from which the translated terms acquire the same meanings as the source terms, as already shown in the translation of the English term *barrister* into the Lithuanian term *advokatas*. In the case of Hong Kong, the adoption of the common law as the SRS is enshrined in Section 10C (1) of the *Interpretation and General Clauses Ordinance (Cap 1)* of Hong Kong ordinances:

> *Where an expression of the common law is used in the English language text of an Ordinance and an analogous expression is used in the Chinese language text thereof, the Ordinance shall be construed in accordance with the common law meaning of that expression.*

The section lays down the fundamental principle for interpreting English and Chinese terms of the common law in Hong Kong statute. Absolute equivalence between English terms and their Chinese counterparts is presumed under this principle. This settles once and for all the controversy over the possibility of absolute equivalence in the translation of Hong Kong laws.

The adoption of the common law as the SRS requires that the English terms be translated into Chinese in accordance with their common law meanings. Accordingly, it is not necessary to refer to Chinese law so far as translation is concerned. To translate *burglary* in the context of Hong Kong, the meaning we need to consider is already clearly stated in section 11 of the Theft Ordinance (Cap 210).

3.2 The term-formation level

Once the conceptual framework is established, we can proceed to the term-formation level with a clear understanding as to what translating legal terms is all about. The objective of the whole task before us is to produce appropriate meaning-pointers for source terms.

In this connection, the International Standard Organization (ISO) provides some useful suggestions for term-formation which can be applied to the translation of legal terminology. ISO 704-2009 is a special document on Terminology Work – Principles and methods. Section 7.4 of the document lays down the principles and methods for term-formation. The general principle, stated in Section 7.4.1, is as follows:

> *For a standardized terminology, it is desirable that a term be attributed to a single concept. Before creating a new term, it is required to ascertain whether a term already exists for the concept in question. Well-established usage has to be respected. Established and widely used designations, even if they are poorly formed or poorly motivated, should not be changed unless there are compelling reasons. If several designations exist for a single concept, the one that satisfies the largest number of principles listed below should be selected.*

The general principle comprises two components. First, monosemy: a term

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should preferably designate one and only one concept so as to avoid ambiguity. Second, respect for convention: a well-established and widely used term, even if ill-formed, should still be adopted.

Again, let us take the translation of *burglary* as an example.[9]

The first step is to find out whether there is an existing term for the concept. In Hong Kong, *burglary* is usually referred to as 爆竊 (*baoqie*, meaning *breaking in to steal*) in Chinese and also as 爆格 (*baoge*, a Cantonese slang word, presumably a Cantonese transliteration of the English word *burgle*), though not as often. The compelling reason not to use these two terms is obvious. First, 爆 is a colloquial word for *breaking in* and may also mean *to blow up something*, which is not part of the meaning of *burglary*. Second, both terms refer to only one of the four specific crimes within the statutory meaning of *burglary*. So in terms of style and meaning, neither of the two terms is an appropriate candidate. An alternative term has to be created.

To function effectively as a meaning-pointer, a term should be formed according to seven specific principles, namely, transparency, consistency, appropriateness, linguistic economy, derivability and compoundability, linguistic correctness, and preference for native language.

Transparency

Section 7.4.2.2 states:

> *A term or appellation n is considered transparent when the concept can be inferred, at least partially, without a definition or an explanation. In other words, the meaning of a term or appellation can be deduced from its parts. For a term to be transparent, a key characteristic – usually a defining characteristic – is used in the formation of the term or appellation itself.*

There are legal terms which are opaque, i.e., the concept they designate can hardly be inferred from their surface meanings. For instance, 牙保贓物 (*yabao zhuangwu*). Most Chinese users understand what 贓物 (stolen goods) means, but hardly any can tell from the surface meaning of 牙保 (牙 ya, meaning *tooth* literally, and *bao*, meaning *to keep, to take care of* literally) what it means. As it turns out, 牙保 is an archaic expression for *acting as an agent*. So 牙保贓物 means *acting as an agent dealing in stolen goods*. Another example is the Taiwan legal term 想像競合 (*xiangxiang jinghe*). 想像 means *imaginary*, *imaginative*, *or imagination*. 競合 is a complete enigma to most Chinese speakers. 競 might mean *to compete*, *to race*, and 合 might mean *to converge*, *to meet*, etc. The four characters together don't suggest any clue as to what concept the term can possibly designate. In fact, the term is a literal translation of the German term *Idealkonkurrenz*, meaning *commission of two or more crimes by one and the same act*. Unless you are a Taiwan lawyer, you can hardly infer the concept from the surface meaning of the four Chinese characters. Terms like these are not transparent meaning-pointers. Of course, as the two terms are already well established in Taiwan law, the general principle of respect for convention has to be followed.

Transparency is difficult to achieve. It is never easy to identify the defining characteristic or core meaning of a concept, and even when it is identified, compressing it in a term is no easy task. *Burglary* is a relatively easy case. The essential nature of the offence is clearly shown in section 11 (1) (a) of Cap 210 cited above. It can be characterized as the *trespassing into a building with intent to commit crimes*. The next thing to do is to construct a term in well-structured Chinese, which brings us to the principle of linguistic correctness.

Linguistic correctness

Section 7.4.2.7 states:

> *When neoterms or appellations are coined, they should conform to the morphological, morphosyntactic, and phonological norms of the language in question.*

While this seems the most natural thing to do, there are terms which violate such norms. The Taiwan terms 瑕疵通知 (*xiaci tongzhi; xiaci* meaning *defective* and *tongzhi* meaning *notice*) and 瑕疵擔保 (*xiaci danbao; xiaci* meaning *defective* and *danbao* meaning *guarantee*) are a case in point. According to the morphosystactic rule of Chinese, when the word *xiaci* is placed before the

[9] This is my own reconstruction of the line of thinking which might have led to the finalized translation of the term. As such, it is not intended as a factual report on how it was arrived at by the translators of the Law Translation Project in Hong Kong. Perhaps what qualifies me to suggest this reconstruction is my participation in the project as a member of the Bilingual Laws Advisory Committee (BLAC) from 1990 to 1997. BLAC was a statutory body established to advise the Hong Kong Government on matters relating to the translation of Hong Kong laws into Chinese.
To my knowledge, the terminological principles proposed by ISO were not relied upon at the time of the Project. But this doesn't prevent us from discussing the translated terms in light of the ISO principles.

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nouns *tongzhi* and *danbao*, *xiaci will function as an adjective* modifying *tongzhi* and *danbao* and the two terms are supposed to mean *defective notice* and *defective guarantee* respectively. But as it turns out, *xiaci tongzhi* means *notice made with respect to defective goods* and *xiaci danbao* means *guarantee against defective goods*, i.e., with *tongzhi* and *danbao* functioning as postmodifiers, which is an anomalous structure in Chinese.

In the case of *burglary*, its core meaning *trespassing into a building with intent to commit crimes* can be formulated as follows:

擅自	進入	建築物	意圖	犯罪
shanzi	*jinru*	*jiazhuwu*	*yitu*	*fanzui*
trespassing	*into*	*building*	*with intent*	*to commit crimes*

The formulation is well structured, but is undesirable for two reasons. First, it is a short sentence and cannot be used as a term, which must be a noun. Second, it is composed of 13 characters, much too lengthy for a legal term. So the formulation has to be condensed in line with the principle of linguistic economy.

Linguistic economy

Section 7.4.2.5 states:

> *A term should be as concise as possible. Undue length is a serious shortcoming. It violates the principle of linguistic economy and it frequently leads to ellipsis (omission).*

What to cut out and what to keep can be hard decisions to make. In the present case, the two-character word 擅自(*擅自*) can be shortened to a one-character word 擅 (*shan*), 進入 (*jinru*) to 入(*ru*), and the three-character word 建築物 (*building*) to a one-character word such as 屋 (*wu*), 戶 (*hu*), 室 (*shi*), 樓 (*lou*), 房 (*fang*), 舍 (*she*). 意圖 (*yitu* meaning *with the intent*) can be removed as it is presupposed in a criminal offence. 犯法 (commission of a crime /crimes) is a fixed two-character word and hence not reducible to a one-character word. Accordingly, the formulation can be shortened to 擅入屋犯法 (*shan ruwu fanfa* meaning *trespassing into a house to commit crimes*). But 擅入屋 (*shan ruwu*) is not phonologically neat (even-number syllables are preferred in Chinese), 擅 (*shan* meaning *trespassing*) can be removed to yield a two-syllable word 入屋 (*ruwu* meaning *entering a house*). Although 擅 (*trespassing*) is removed, it is implied in the phrase 入屋 (*entering a house*).[10] As a result, we have condensed the formulation into a four-character term, namely, 入屋犯法 (*entering a house to commit crimes*). As this is an offence, the word 罪 (*zui* meaning *offence*) is included as a suffix and the term becomes 入屋犯法罪 (*ruwu fanfa zui* meaning the offence of entering a house to commit crimes).

One may argue that the term is inaccurate on the ground that the Chinese word 屋 (house) doesn't include inhabited vehicle or vessel as stipulated in section 11 (3) and that 犯法 (to commit crimes) refers to *any* crime, not the four specific crimes as stipulated in the section. But it can never be over-emphasized that the Chinese term is just another linguistic label for the concept of burglary. As such it has whatever meaning the English term *burglary* has, no more and no less. So 屋 (house) includes an inhabited vehicle or vessel and 犯法 (to commit crimes) is confined to the commission of four specific crimes as stipulated in the section, no more and no less. The Chinese term, which consists of only five characters, cannot perform the magic of conveying the entire meaning of the concept to the user. The exact meaning has to be found in the statute and understood in light of its statutory definition. This can be formulated as follows:

入屋犯法罪 Hong Kong Law = burglary Hong Kong Law
Chinese term Hong Kong Law = English term Hong Kong Law

Accuracy (absolute equivalence) is a two-way traffic, so to speak. Nobody can produce an accurate term if the user doesn't understand it in light of the same SRS. Linguistic and conceptual adjustments must be made to the target language in the translation of legal terminology so that the target terms can function as equivalents for the source terms.

The term 入屋犯法罪 can be considered a concise meaning-pointer. But passing the conciseness test is not the end of the matter. We still have to ensure that it satisfies the other terminological requirements.

[10] For the sentence *He entered a house* implies that he entered some else's house, not his. And it doesn't make sense in law to say that one commits burglary in one's own house. So "entering a house" in this particular context implies "trespassing".

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Appropriateness
7.4.2.4 states:

> *Proposed terms and appellations should adhere to familiar, established patterns within a language community. Formations that cause confusion should be avoided.*

We can safely say that the term 入屋犯法罪 doesn't contain any element that causes confusion. But confusion doesn't have to be caused by the surface meaning of a term. It may be caused when the term has the same written form as another word, term or expression in the same language. In this connection, it must be noted that some of the official Chinese terms in Hong Kong laws fail to pass the appropriateness test. Let us just take a look at the term 代價 (*daijia* meaning *price*), which is the Chinese equivalent for *consideration* in contract law. The term itself is transparent, morphologically well formed, and concise, able to serve as a effective meaning-pointer for *consideration*, which, according to the famous leading case (*Dunlop v Selfridge [1915] AC 847 (HL)*), is defined as:

> *An act, forbearance, or promise by one party to a contract that constitutes the price for which he buys the promise of the other.*

The problem with 代價 as a technical legal term for *consideration* is that it may be easily confused with the word 代價 in ordinary use. This is particularly obvious when we are translating texts like the above-cited definition in which both *consideration* and *price* appear. As the English word *price* already has a well-established Chinese translation 代價 in this context, using the same word 代價 as the defined term for *consideration* will render the definition circular. For as a rule the defined term must not appear in its definition. Hence we have to come up with a different Chinese term. This shows that 代價 is not an appropriate term for *consideration*.

Derivability and compoundability
Section 7.4.2.6 states:

> *Productive term formations that allow derivatives and compounds (according to whatever conventions prevail in an individual language) should be favoured.*

A legal term doesn't stand alone in a legal system. It is also connected with other related terms to form a distinctive lexicon of that particular system. The term *burglary* is compounded with other words to form related terms such as *aggravated burglary, common law burglary, statutory burglary, generic burglary, burglary tool, burglarious intent.* To test the Chinese term 入屋犯法罪 for its derivative and compounding power, we can examine the extent to which it can be used in forming analogous terms. As it turns out, it passes the test. All the analogous terms can be formed easily. So we have 嚴重入屋犯法罪 (*yanzhong ruwu fanfa zu*), 普通法入屋犯法罪 (*putongfa ruwu fanfa zu*), 法定入屋犯法罪 (*fading ruwu fanfa zui*), 一般入屋犯法罪 (*yiban ruwu fanfa zui*), 入屋犯法工具 (*ruwu fanfa gongju*), and 入屋犯法意圖 (*ruwu fanfa yitu*) respectively.

In this connection it is worth noting the two competing Chinese terms for *contract* which provide an interesting and illuminating case of how the derivative and compounding powers of terms can make a real difference in term formations. In PRC law the term for contract is 合同 (*hetong*) whereas in Hong Kong law the term is 合約 (*heyue*). As can be seen easily, they differ only in one character, 同 (*tong*) as opposed to 約 (*yue*). 約 (*yue*) is a free morpheme which can stand alone as a one-word term for contract, whereas 同 (*tong*) is a bound morpheme which must be compounded with 合 (*he*) to mean *contract*. As a result, 約 alone can be compounded with other words to form the basic lexicon of contract law, whereas the PRC term 合同 must be used as an inseparable single unit for forming compound terms. This can be shown as follows:

English term	***Hong Kong term***	***PRC term***
contract	合約 (*heyu*)	合同 (*hetong*)
to enter into/sign a contract	定/簽 約 (*ding/qian yue*)	定立/簽訂 合同 (*dingli/qiandinga hetong*); 定/簽 約 (*ding/qian yue*)
breach of contract	違約 (*weiyue*)	違反合同 (*weifan hetong*); 違約 (*weiyue*)
Offer	要約 (*yaoyue*)	要約 (*yaoyue*)

While 合同 (*hetong*) is the established term in PRC law, the Hong Kong terms 定/簽 約 (*ding/qian yue*), 違約 (*weiyue*) and 要約 (*yaoyue*) are also used in PRC for the obvious reason of their conciseness. This clearly shows that a term

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with greater derivability and compoundability can prevail over a competing term even though the latter has a well-established usage. Furthermore, a term with greater derivability and compoundability is conducive to greater consistency between related terms and hence facilitates the construction of "a coherent terminological system corresponding to the conceptual system" (Section 7.4.2.3), another important principle for term formation.

4. Concluding remarks

For much too long we have been engaged in futile discussions on the pseudo-problem of equivalence. Biel reports that translators spend (waste) 75% of their work time looking for equivalents of legal terms (2008: 22). As we have endeavoured to show above, the translation of legal terminology, and for that matter, of any culture-specific concepts, must take the non-existence of equivalents as a point of departure. Its goal is not to find them, because equivalents can only be ***created***, not ***found***. They are created at two distinctive levels of the translating process. At the conceptual level, a meta-translation level, we specify the framework for establishing absolute equivalence. We don't have to settle for functional, near, or partial equivalence. At the term-formation level, we produce meaning-pointers in accordance with terminological principles such as those suggested by ISO. Remember that our task is translating legal terms, not doing comparative law. There is no need whatsoever to go through all the trouble of mapping the terms of one legal system onto those of another, or mapping one legal language onto another. All we need to do is take the legal system as the default SRS to guide us in the translating process. The approach is the same for every task of translation, regardless of its scale and nature, ranging from the translation of multilingual law, to the translation for legal research and even to the translation of private legal documents. The difference only lies in the amount of mental effort required for understanding. If we want for whatever purpose to understand the exact legal meaning of the Chinese term 入屋犯法罪 (*ruwu fanfa zui*), we must look up the law; otherwise, a quick glance at the dictionary will do. But in either case, 入屋犯法罪 (*ruwu fanfa zui*) is the equivalent for *burglary*, carrying whatever meaning *burglary* carries. If we are translating a legal document, private or otherwise, which contains a term not yet authenticated in legislation, e.g., the English term *frolic* in tort, we can produce an equivalent for it by following the terminological principles and make a note in the translation that the translated term is intended to be the equivalent for the source term *frolic*. Our translation may not be the best choice, but it is intended to function as the equivalent term regardless. We don't settle for any lesser degree of equivalence in legal translation.

There are two final points that need to be clarified. First, when we say that equivalents cannot be found, we mean that there are no natural equivalents between languages *as they stand*. They cannot be found when they have not yet been created. In the case of Hong Kong, equivalents did not exist before they were created and authenticated. Today all English legal terms appearing in statutes have Chinese equivalents. There is no need to go through the entire operation and process anymore. Translating legal terms has to a large extent become a look-up exercise. Of course, a great number of case law terms which do not appear in statutes still need to be translated. And the same approach will apply. Second, creating equivalent legal terms is not simply a terminological operation. What counts as an appropriate meaning-pointer must also depend on how well it can convey the core meaning of the legal concept it is intended to designate. In this connection, legal knowledge is essential and legal professionals should play an important role in the term-formation process. After all, given the multifaceted problems involved, law translation must be a multi-disciplinary enterprise undertaken as teamwork. Yet for all the complexities and technicalities, once the conceptual problems are clarified, what remains is the nitty-gritty of translation. No more worries and qualms about equivalence. No more fuss about matching and mapping. All quiet on the translation front.

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