

SENSE AND REFERENCE IN THE TRANSLATION OF LEGAL DOCUMENTS

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Abstract: Legal language, as a language for special purposes, contains terms or concepts that are peculiar to that language because of the history and cultural development of the legal system to which that language pertains. This means that there are terms that can only be understood (or have meaning) in the context of that legal culture and language. Furthermore, a legal term or concept in one language may not have a corresponding term (or *referent*) in another language. Thus, legal concepts or terms have a particular meaning to readers of a particular legal culture, as well as having a referential function, in that they denote a certain legal concept or notion that has developed in that culture, which emphasizes the specialized nature of the relevant legal language. For this reason, scholars have defined legal terms as “cultural items”. Legal translators are faced with the asymmetry of legal systems and the resulting incongruity of legal concepts and terms. This problem arises as legal terms are embedded in the legal culture in which they have developed. Many scholars now assert that a detailed knowledge of both source and target legal terminology *and* cultures is essential when translating legal texts. As a key to obtaining the required knowledge that such an approach demands, this paper will explore the possibility that legal concepts and terms are able to be viewed or treated as if they were proper names, as they have a specific meaning and a referential function to a specific concept, in a given legal language or culture. This possibility emerges from a re-evaluation of the definition of proper names that has been undertaken in recent times. From this re-evaluation a theory has emerged that posits that words or expressions previously not considered as proper names, can now potentially be viewed as such.

With particular regard to the concepts of *sense* and *reference*, I will apply this hypothesis in analysing the translation of legal documents from English to Italian and vice versa.

1. Introduction

Studies of legal translation tend to focus on the notions of language and culture, namely, that the development of legal language is inextricably linked to the legal culture in which that language has developed. Therefore, legal terms can only be understood by those familiar with the legal culture to which they belong. For this reason, scholars have described legal terms as “cultural items” (cf. Viezzi 1996, Salmon Kovarski 2002). This cultural aspect is one of the main reasons why legal translation is considered as distinct from the translation of other text genres. It is no more evident than in an international context (such as European Union legislation and treaties), where translators must bridge the legal and cultural divide without compromising the legal effect of the document in question. In these situations, all language versions of the one document are deemed to have the same

legal status, that is, no language version is inferior to another. In assessing legal translation strategies, scholars assert that a detailed knowledge of both source and target legal terminology *and* cultures is essential (cf. Chromá 2008). Recent scholarship suggests that the quest for “equivalence” in legal translation should be abandoned since there cannot be absolute correspondence or equivalence of legal terms across different legal systems. Sandrini (1996: 346-347) in particular advocates:

Legal concepts are embedded in a specific working environment and in national legal systems [...] each national setting has its own principles for the application of concepts [...] There cannot be absolute equivalence, unless it is a consequence of complete identity of moral values, legal provisions, interpretation rules and forms of application of laws.

This requires a more comparative approach whereby the translator acquires a thorough and complete knowledge about terms and concepts used in both source and target legal systems. He goes on to say:

Only after having described the purpose of the single concepts as components of a national legal solution can we move on to see if there are possible connections to concepts of the other national legal systems.

In order to achieve the required appreciation of source and target legal cultures, it will be demonstrated how legal terms can be viewed as if they were proper names and, as a consequence, the strategies developed in relation to the translation of proper names can be applied to legal translation. The relevance of proper names to legal terms arises as a result of the reassessment of the traditional definition of proper names that has occurred in recent times. In particular, scholars now believe proper names have a specialized meaning derived from the culture in which they have developed. This does not necessarily mean that the label of “proper name”, as traditionally defined by scholars, is to be applied to legal terms. Rather, the point must be emphasised that it will be proposed in this paper that legal terms may be viewed or treated as if they were “proper names” for the purpose of their translation. By doing so, it is hoped that, by identifying what strategies have been applied by translators to proper names, this can give an insight into how translators overcome terminological and cultural difficulties in drafting different language versions of the same legal text. With particular regard to the concepts of sense and reference, I will apply this hypothesis to a corpus of documents consisting of the series of bilateral agreements concluded between Australia and Italy.

2. Proper names vs. common nouns

The traditional distinction between proper names and common nouns centred on the notion that proper names are definite, which means they refer to a unique object insofar as the speaker and listener are concerned (Fromkin, Rodman, Collins & Blair 1984). Conversely, common nouns are universal or general terms: they do not themselves denote individual substances (Lyons 1969). However, the distinction between proper names and common nouns is not always clear-cut

(Lyons 1977). Is it possible, then, to distinguish proper names from common nouns?

In accordance with the theory developed by Allerton (1987) and Van Langendonck (2007), not only names of places, persons or institutions can be classified as proper names. This proposal presupposes that proper names possess special properties compared with common nouns and common noun phrases. These properties may be in part grammatical, a matter of what syntactic and morphological patterns the names use for referring to their referents, and in part semantic, a matter of what referents the names refer to and in what sense they refer to them (Allerton 1987). For example, *the United States* consists of three words, none of which can be substituted in any way without the meaning being destroyed: *the* cannot be replaced with other determiners *some*, or *my*; substituting *United* for *federated* or *independent* changes the nature of the whole phrase, as does replacing *States* with *countries* or *provinces*. Therefore, the internal structure of *the United States* is not that of a regularly generated syntactic unit, but much more like a lexical unit (Allerton 1987). Allerton also cites the example of *the black market*. The adjective 'black' here has a specialized meaning and is not subject to the usual pre-modification with *pitch* or *jet*. There is a fixed morphological pattern here.

Van Langendonck (2007: 249) develops further the concept of what may be classified as a proper name. In his view:

Nouns functioning as terminological items, mass nouns and clauses can be construed as proper names in a limited number of constructions [...] Terms for notions, concepts and the like may figure in apposition, or in sentences in which these words function as subjects and the categorical term is in a predicative position. It seems only then that they are to be viewed as proper names. Semantically, the words in these constructions are focussed on as specific, unique entities with an *ad hoc* reference.

In the sentence "English is a widespread language", 'English' has no definite article, and therefore functions as a proper name, as in this particular construction it is incapable of morphological modification (Van Langendonck 2007). Van Langendonck also cites the use of abstract mass nouns in constructions such as "the notion of liberty". Here too, modification is impossible with the use of either an article or other determiner ('some liberty', 'a liberty'). Särkkä (2007: 2) argues that there is a further category of proper name which he describes as "converted common nouns". These "have all the distinguishing features of proper nouns: *Luonnontieteellinen keskusmuseo* ('Finnish Museum of National History'), *Kansallisarkisto* ('Finnish National Archives'), *Torisilta* ('Market Bridge')." They do not possess the usual characteristics of proper names. Särkkä defines them (2007: 2) as "descriptive proper nouns". Therefore, names which at first glance appear to be common nouns, or that are traditionally considered as such, can have the function of a proper name in certain constructions.

3. *Sense and reference of proper names*

It is argued here that one of the characteristics of proper names is that they have a unique referent. Marmaridou (1989) notes that the referential use of a proper name involves the formation of encyclopaedic assumptions about a referent, based on the retrieval of information associated with it in memory, so that the use of this name can achieve optimal relevance in communication and identify a referent. This leads to the question as to whether the proper name has some kind of *meaning* consisting of the encyclopaedic information which contributes to its relevance. Salmon Kovarksi (2002: 83) asserts that “proper names [...] are meaningful linguistic items”. The concept of *meaning* had been used by scholars interchangeably with ‘sense’ (Lyons 1977). The distinction, though, is an important one to make.

The explanations of *reference* and *sense* proposed by Lyons (1969; 1977) seem useful in the context of the discussion at hand. Lyons regards the sense of a word or expression to mean its place in a system of relationships with other words in the vocabulary. Reference, on the other hand, is where the word or expression in question has been uttered with a particular communicative force in some appropriate context of use (i.e. it has a referent). Two expressions may refer to the same individual but not have the same meaning. The example cited by Lyons (1977) is: ‘the victor at Jena’ and ‘the loser at Waterloo’, both of which may be used to refer to Napoleon, but each has a different meaning as they denote different circumstances, in particular, different battles. This element of meaning is often termed *sense*. *Unicorns* and *hobbits* have sense but no reference (in the real world), as these expressions have a meaning for speakers (Fromkin *et. al.* 2009).

This provides an interesting comparison with the view expounded by Marmaridou (1989) with regard to proper names. She suggests that they may serve different purposes in communication. They are either used to identify referents or to convey implications about some other object the speaker has in mind. Proper names facilitate communication more than common nouns and definite descriptions could do, in that they offer shortcuts for identifying referents. They also function as metaphors, offering shortcuts for whole ideas and thoughts, which emphasizes their role as a more efficient and economical means of communication. Based on these assertions, proper names have two functions. The first is a referential function, which involves the identification of an individual in terms of encyclopaedic information that interlocutors mutually share and which is retrievable and creates the context in which the name achieves optimal relevance in communication, e.g. *Cicero denounced Catiline in the Senate*. The second function of a proper name is connotative. Connotations of proper names usually develop the cultural or historical significance that the entity bearing the name might have acquired at some point in the life of a group of people. This implies that initially there was probably an entity bearing this name as a means of identifying it as a referent. It also implies that there is a specific chunk of encyclopaedic information about this entity which has cultural or historical significance that all members of a group of people share and in terms of which they may use this name connotatively, e.g. *He is no Cicero* (Marmaridou 1989). As proposed by Viezzi (2004: 28):

Ancora, i nomi propri sono significativi in quanto servono da indicatori con riferimento alla sfera sociale, etnica, affettiva, culturale e pragmatica [...] Attribuiti secondo consuetudine e per convenzione (o, al contrario, in deliberata violazione di consuetudini e convenzioni) e interpretati di conseguenza, i nomi propri sono quindi in grado di fornire una serie di informazioni o, quanto meno, appaiono connotati (e, come si vedrà, è la stessa forma del nome a costituire la base delle connotazioni); i nomi propri si prestano dunque a supposizioni e inferenze (ragionevolmente probabili, anche se non necessariamente corrette) che rispondono ad aspettative determinate dall'esperienza o dalla conoscenza.¹

Proper names are therefore cultural indicators, as Salmon Kovarski (2002) suggests. They have a specialized sense, an inherent meaning that is derived from the culture in which they have developed. They can take on a specific semantic/semiotic value, giving rise to *antonomasia*, pseudonyms, nicknames, puns, jokes etc. These are not readily identified without appropriate knowledge of the target culture. People born and bred within a given culture automatically acquire the ability to manage information concerning the use of proper names in their own linguistic system. In light of the observations of numerous scholars with regard to proper names, is it possible that legal terms can also be viewed as proper names in certain circumstances?

4. Legal terms viewed as proper names

Many scholars have made observations with regard to legal terms being culture-bound. Tessuto (2008) notes that legal concepts are intrinsically bound up with the national legal systems and principles in which they are formulated. Chromá (2008) notes that legal terminology consists primarily of abstract terms deeply and firmly rooted in domestic culture and intellectual tradition. It can be argued, therefore, that, just like proper names, legal terms have a 'meaning' determined by the legal culture in which they have developed. They are thus "cultural items" (cf. Viezzi 1996). The category of "cultural items" is not a fixed one. This label has also been applied to proper names, in that an understanding of their meaning can only be gained by acquiring the appropriate knowledge of the culture in which they have been developed (cf. Salmon Kovarski 2002). This appears to reflect the same approach to legal translation that scholars such as Sandrini (1996) and Pommer (2008) have advocated, in that translator acquires a good knowledge of the sense and the function of particular legal terms in the source language before undertaking their translation as there cannot be absolute correspondence or equivalence of legal terms across different legal systems. The translation of proper names presents peculiar difficulties, often linked to their inherent meaning acquired in a given language or culture, hence their consideration as "cultural

¹ "Further, proper names are significant in that they serve as indicators with reference to a social, ethnic, emotional, cultural and pragmatic sphere [...] Attributed according to custom and by convention (or, on the contrary, in direct violation of customs and conventions), and as a consequence so interpreted, proper names are therefore able to provide a series of information or, at least, they appear connoted (and, as will be seen, it is the form of the name itself that forms the basis for the connotation); proper names therefore lend themselves to supposition and inference (reasonably probable, even if not necessarily correct) which respond to expectations determined by experience or knowledge."

items” (cf. Salmon Kovarski 2002). In light of this expanded theory of proper names, it is proposed that legal terms be treated as if they were proper names for the purposes of their translation. That is, approaches used by translators with regard to proper names can also be applied to legal terms. In other words, if legal terms can be viewed as proper names, then identifying what strategies have been applied by translators to proper names can give an insight into how translators overcome terminological and cultural difficulties in drafting different language versions of the same legal text so as to achieve the required appreciation of source and target legal cultures that scholars now advocate as being an essential requirement in undertaking legal translation.

Furthermore, in light of the theories developed by Allerton (1987) and Van Langendonck (2007), who suggest that abstract concepts and notions can be classified as proper names in particular circumstances, is it possible that legal terms can also be viewed or treated as if they were proper names? It seems obvious that the names of institutions can be considered proper names. The hypotheses developed by Allerton (1987) and Särkkä (2007) would appear to confirm this. It is also useful to consider the observations of Sacco (1994) who makes a distinction between abstract notions, such as *contratto* ('contract'), *volontà* ('will'), *danno* ('damage') and other words that:

sembrano indicare categorie assai ampie, e acquistano invece, proprio nei rapporti interlinguistici, un significato strettamente legato all'ambiente d'origine o ad altre circostanze; in casi limite, diventano una sorta di nome proprio, riservato ad una sola persona.

In quel settore del diritto pubblico che si riferisce ai titoli onorifici, noi c'imbattiamo spesso in contrapposizioni nominalistiche che nessuna contrapposizione concettuale può spiegare (conte ≠ marchese; cavaliere ≠ commendatore; licencié ≠ maître ≠ docteur). L'equivalenza rispetto ai termini corrispondenti al latino medioevale, o il valore storico di queste parole, ha permesso a queste contrapposizioni di mettere radici in un numero elevato di lingue.²

Sacco appears to argue that certain legal terms can be viewed as if they were proper names, as they are inextricably linked to the culture in which they have developed (specialized sense) and have a unique reference to a particular social or cultural sphere. So as to better understand the relevance of the concepts of sense and reference to legal translation, let us see how they can be applied to the three potentially problematic translations of legal institutions as discussed by Fiorito (2004).

² “appear to indicate extremely broad categories and instead acquire, precisely in their interlinguistic relations, a meaning that is closely tied to the environment in which they originated or to other circumstances; in limited cases, they become a proper name of sorts, referring only to one person.

In that sector of public law that refers to honorary titles, we often come up against nominalistic contrasts that no conceptual contrast can explain (conte ≠ marchese; cavaliere ≠ commendatore; licencié ≠ maître ≠ docteur). Equivalence with respect to medieval Latin terms, or the historical value of these words, has allowed these contrasts to lay roots in a large number of languages.”

1. Where at the lexical level the terms appear to correspond, yet their legal meaning is different in the respective languages. The examples cited here are *notaio* and *notary*. These can be treated as proper names according to Sacco's (1994) definition, particularly where the term is used with reference to the concept of a 'notary', that is, a person who plays a particular role in the legal system which has a specific or unique function or purpose. *Notaio* and *notary* have a different sense in English and Italian. A *notaio* means one thing to an Italian speaker (a lawyer who drafts contracts and wills, as well as authenticating them as original copies), and *notary* an altogether different thing to an English speaker (one who simply certifies documents, similar to a justice of the peace), because of the diverse functions they perform.
2. Where the term is different at both a lexical and legal level. In such situations it may be that a direct translation of such a term does not correspond to any legal concept in the target language. The Italian *Corte Suprema di Cassazione* is often rendered in English as 'the Supreme Court of Cassation'. But what sense does this have to an English speaker? Often a qualifying sentence will be added along the lines of 'Italy's Highest Court' to assist the target reader, as in the English legal system there is no 'Supreme Court of Cassation'.
3. Where a legal term or institution does not exist in the country of the target language. *Barrister* can be treated as a proper name according to Sacco's (1994) theory for the same reason that *notaio* or *notary* can be so classified. How then would a translator convey the meaning of *barrister* in Italian, when in Italy there is no such thing as a lawyer who specializes in arguing cases in court, that is, there is no referent?

5. Translation of proper names

Various strategies have been developed for the translation of proper names. These include:

1. Repetition, which entails the reproduction of the proper name in its original form in the target text, for example, *British Commonwealth* → *British Commonwealth* (cf. Viezzi 2004; Särkkä 2007).
2. Orthographic adaptation, which is manifested in the introduction of minor spelling modifications for phonetic or alphabetical reasons, for example, *Gaddafi* → *Gheddafi* (cf. Salmon Kovarski 1997).
3. Terminological adaptation, that is, the formal transformation of proper names where there exists a conventional translation in the target language, for example, *London* → *Londra* (Viezzi 2004; Särkkä 2007).

4. Linguistic translation or calque, that is, transferring either wholly or partially, the semantic content of the proper name, for example *The White House* → *la Casa Bianca* (cf. Taylor 1998; Viezzi 2004).
5. Naturalization, that is, the substitution of the proper name in the source text with that which has a referent in the target culture, for example *United States of America* → *España* (cf. Viezzi 2004).
6. Extratextual gloss, such as a footnote or some type of notation in the target text (Viezzi 2004).
7. Intratextual gloss, that is, some form of explanation in the target text (cf. Marellò 1989; Viezzi 2004; Särkkä 2007).
8. Neutralization, that is, adopting a term in the target text that has no relation to a reality in the target culture (cf. Šarčević 1997; Cosmai 2003; Viezzi 2004).

The choice between the various alternatives will be determined by pragmatic factors, paramount among which are the overarching purpose of the text and the translator's assessment of his or her audience (Särkkä 2007).

6. Application of hypothesis: examples of the translation in the Agreements

The corpus the subject of analysis consists of 11 agreements; the first was signed in 1963 and the last in 1996. They are:

- Agreement relating to air services/Accordo relativo ai servizi aerei (1963);
- Migration and settlement agreement/Accordo di emigrazione e stabilimento (1971);
- Agreement for the avoidance of double taxation of income derived from international air transport/Accordo per evitare la doppia imposizione sui redditi derivanti dall'esercizio del trasporto aereo internazionale (1972).
- Agreement of cultural co-operation/Accordo di cooperazione culturale (1975);
- Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income/Convenzione per evitare le doppie imposizioni e prevenire le evasioni fiscali in materia di imposte sul reddito (1982);

- Treaty on economic and commercial co-operation/Trattato di cooperazione in materia di economia e commercio (1984);
- Treaty of extradition/Trattato di estradizione (1985);
- Reciprocal agreement in the matter of health assistance/Accordo di reciprocità in materia di assistenza sanitaria (1986);
- Treaty on mutual assistance in criminal matters/Trattato di mutual assistenza in materia penale (1988);
- Social security agreement/Accordo in materia di sicurezza sociale (1993); and
- Films co-production agreement/Accordo di coproduzione cinematografica (1996).

As with legal documents in other multilingual contexts, each language version of each Agreement has equal legal status (they are legally equivalent). The *Vienna Convention on the Law of Treaties* (1969) provides that texts of treaties in different languages are equally authoritative in each language.

Using the taxonomy of strategies for the translation of proper names cited above, I will cite some examples of translation solutions adopted in the Agreements. The examples cited are set out by comparing what I believe to be the source text first, followed by its translation. This decision was not a simple one, but was based on the following criteria: naturalness of language; appropriateness of lexical and syntactical choices; and overall communicative efficacy of the text.

6.1 Naturalization

- (1) Italian workers shall be eligible [...] to be represented in *Australian courts* → I lavoratori italiani avranno diritto [...] ad essere rappresentati davanti alla *magistratura australiana*

The term that is the subject of analysis in (1) is *Australian courts*. By itself, *courts* would be identifiable as a common noun. However, when the adjective *Australian* is added, according to Allerton's (1987) theory, it can be viewed as a proper name for the reason that *Australian* is a restrictive modifier that reflects a geographical reality, that the courts are located in Australia. Example (1) is problematic since in Australia a magistrate performs functions that are quite different to those of an Italian 'magistrato'. An Italian 'magistrato' has investigative powers; an Australian magistrate has no such powers (Certoma 1985; Marantelli & Tikotin 1985). Therefore, the translation "magistratura australiana" is a naturalization which reflects a diverse referent, that is, diverse legal roles in the two legal systems, stemming from their culture and development.

6.2 Explicative translations

- (2) testimonial privilege → i diritti del testimone
- (3) capofamiglia → head of a family
- (4) Trusteeship Agreement → Accordo di Amministrazione fiduciaria

It can be argued that examples (2), (3) and (4) are cultural items, in that they are legal terms that have developed in a particular legal culture, and, as such, have a specialized meaning that is derived from that culture (cf. Viezzi 1996). However, applying Van Langendonck's (2007) theory, they could be treated as having the function of proper names, being terminological items (legal concepts) with a unique reference. They have the character of a mass noun dealing with a specific notion or concept (i.e. *trusteeship*). With regard to example (2), as far as I am aware, there is no corresponding equivalent in Italian legal language for *testimonial privilege*, a term which refers to communications that cannot be used in court as evidence (for example, between a doctor and patient). The *Dizionario De Franchis* (1984-1996) does not list a corresponding term in Italian. The translation chosen, 'i diritti del testimone', serves as an explanation of the sense of the term for an Italian-speaking reader. It could be considered an illustration of the situation where there is no corresponding terminological equivalent (i.e. referent) in the legal system of the target text, with the consequence that a completely new term has to be created in the translated version in order to achieve uniformity between the two language versions.

The translation of *capofamiglia* as 'head of a family' in (3) would also fall into this category, also on the basis that there is no corresponding term or concept in English legal language, that is, there is an absence of a corresponding referent. The solution adopted – "head of a family" – is of an explanatory/definitional nature, giving the English-speaking reader the sense of the term.

In (4) the use of "Accordo di Amministrazione fiduciaria" for *Trusteeship Agreement* may also be considered to be a translation with an explicative function with reference to the concept of *trusteeship*, which is peculiar to the common law system and thus has no corresponding referent in the Italian legal system. Looking to the three Italian/English legal dictionaries (that I am aware of) as a point of comparison, Mastellone (1980) suggests "amministratore fiduciario" as a translation for *trustee*, Di Stefano and Di Fazio (1985) propose "fiduciario" and the *De Franchis* (1984-1996) suggests "proprietario fiduciario". However, the question must be asked whether the chosen translation fully renders the sense of the concept of *trusteeship* to an Italian speaking reader. *De Franchis* (1984-1996) remarks that it is not translatable ("termine intraducibile").

6.3 Neutralization

- (5) *Partner-related Australian benefits* → *Prestazioni australiane riguardanti il coniuge de jure o de facto*

- (6) A document is duly authenticated for the purposes of this Treaty if [...] it purports to be authenticated by oath or *affirmation* of a witness → Un documento è ritenuto debitamente autenticato, ai fini di questo Trattato, se [...] risulti essere autenticato per mezzo di giuramento o *asseverazione* di un testimone
- (7) rights to *royalties* and other payments in respect of the operation of mines or quarries or of the exploitation of any natural resource → i diritti relativi a *canoni* ed altri compensi dovuti per lo sfruttamento di miniere o cave nonché di ogni risorsa naturale

In these examples we see the use of an already existing word in the target language, attributing to it a different meaning in the translation. With reference to (5), the English word *partner* has taken on a significance which encompasses both married and unmarried couples. It can be viewed as having the function of a proper name on the basis that it refers to a terminological concept with a unique reference (Van Langendonck 2007) and is incapable of being modified in this context. It has a specialized meaning derived from the legal context in which it is used.

At first glance, ‘coniuge’ would appear to be a satisfactory neutral solution, designed to explain to an Italian-speaking reader the sense of *partner* in such a context. However, the *GRADIT* (2000) defines ‘coniuge’ as: “ciascuna delle due persone unite in matrimonio”. Yet here it refers to both married and unmarried persons, thus it has the flavour of the creation of a generic term which does not conform to ordinary language usage in the target language (Šarčević 1997; Cosmai 2003). ‘Compagno’ is usually used in Italian for *partner* in this sense: the *GRADIT* lists it as a synonym for ‘partner’, ‘concupina’ and ‘amante’. ‘Compagno’ would seem to be the corresponding referent, rather than ‘coniuge’, however, the use of the former may not have been considered appropriate by the translator given the nature and status of the document as a bilateral treaty.

Of particular interest at (6) is the use of ‘asseverazione’ for *affirmation*. An affirmation is a form of sworn testimony given by a witness who is atheist or agnostic. It may be viewed as a proper name, being a terminological item with a unique meaning (Van Langendonck 2007), and cannot be pluralized (e.g. “make affirmations”). It also has a cultural aspect which gives it this specialized meaning. As with examples (2), (3) and (4) above, it is on the border between classification as a cultural item and a proper name.

To accommodate non-believers, in the English and Australian legal systems a form of sworn testimony known as an *affirmation* was created, whereby the witness does not place his or her hand on the Bible, and does not “swear by Almighty God” as to the veracity of their statement, but simply “affirms” that it is true. With regard to the choice of ‘asseverazione’ as a translation, it is necessary to refer to the definition of this word. The *Zingarelli* (2008) provides:

(dir.) Certificazione, nei modi previsti della legge, della verità di quanto affermato in una perizia, o della conformità al testo originale di una traduzione, o della verità di fatti determinanti.

The meaning of this term relates to the certification of the veracity of an expert report, of a translation, or of particular facts. Thus, it may have a different referent in Italian legal language than that adopted in this particular Agreement. By way of comparison, Mastellone (1980) suggests a form of explicative definition: “dichiarazione solenne in sostituzione di un giuramento”, which captures the sense of what an *affirmation* is. Di Stefano and Di Fazio (1985) concur with this solution, proposing “dichiarazione solenne” for *affirmation*. The *De Franchis* (1984-1996) provides a more elaborate explanation:

In senso stretto, la dichiarazione solenne consentita al teste [...] nel caso in cui questi si rifiuti di giurare per motivi religiosi.³

Interestingly, none of the three dictionaries contain a reference to ‘asseverazione’.

The choice of ‘canoni’ to translate *royalties* (7) seems to differ from its use in ordinary language when we look to the meaning of these terms. The *Treccani* (1991) gives the following definition of ‘canone’:

Prestazione in denaro o in derrate, che viene corrisposta a intervalli determinati di tempo quale corrispettivo del godimento di un bene, per lo più immobile, in base a un contratto: *canone d'affitto, di locazione*.

Therefore a ‘canone’ in Italian means either a licence fee (as in “il canone della RAI”, the annual licence fee paid for Italian State Television), or rental payments (*canone d'affitto, di locazione*). The concepts of ‘royalties’ and ‘canoni’ have different referents. In English legal language, *royalties* are payments made on a regular basis for the right to extract minerals (generally known as *mining royalties*). For this reason, adopting Van Langendonck’s (2007) theory, it can be treated as if it were a proper name. It cannot be modified utilizing various determiners (e.g. “payment of some royalties”) and has a unique reference derived from the legal culture in which it developed. The corresponding Italian term is “diritti di sfruttamento” (*Oxford-Paravia Italian English Dictionary* 2001). The choice of ‘canoni’ here, when not normally used in Italian in the context of mining royalties, but to denote other types of payments, appears to be a solution of the generic type identified by Cosmai (2003) and Šarčević (1997), that is, applying a new (legal) meaning to a term which does not conform to ordinary usage in the target language. The *De Franchis* (1984-1996) would appear to confirm this by referring to “canone di concessione mineraria” and providing *Royalty (sfruttamento minerario)* as a translation for this term.

7. Conclusion

Recent scholarship suggests that the quest for “equivalence” in legal translation should be abandoned since there cannot be absolute correspondence or equivalence of legal terms across different legal systems. Legal translation scholars now argue that a more comparative approach should be applied whereby

³ “Strictly speaking, a solemn declaration a witness is permitted to make in circumstances where he or she refuses to swear an oath on religious grounds.”

the translator acquires a thorough and complete knowledge about terms and concepts used in both source and target legal systems.

As has been documented in this paper, legal terms have a specialized meaning determined by the legal culture and tradition in which they have developed. As a result of this cultural embeddedness, legal terms are regarded as *cultural items*. In order to achieve the required appreciation of source and target legal cultures, this paper has argued that legal terms may be viewed as if they were proper names for the purpose of their translation. The relevance of proper names to legal terms arises as a result of the reassessment of the traditional definition of proper names that has occurred in recent times. In particular, scholars now believe proper names have a specialized meaning derived from the culture in which they have developed. Consequently, this paper argues that the strategies developed in relation to the translation of proper names can be applied to legal translation. By doing so, identifying what strategies have been applied by translators to proper names can give an insight into how translators overcome terminological and cultural difficulties in drafting different language versions of the same legal text. To assist in this process, I suggest the application of the concepts of sense and reference as defined by Lyons (1969; 1977), as in many cases, the translation of a legal term will not be appropriate in the target language, as it does not make sense to the target reader or has no corresponding referent.

The translation solutions taken from the corpus and cited in this paper seem to lead to the conclusion that the principal translation strategies adopted were chosen with the overarching purpose of guaranteeing linguistic uniformity of both language versions. The result of this is that the translations do not conform to normal language usage in the target language. Therefore, they are not able to be easily understood by the general public but, as is usually the case with legal documents, only by bureaucrats and lawyers.

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