

DOKUMENTATION / DOCUMENTATION

Translation of Japanese Statutes into English

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1. Beginning of the Project

The Internationalization Committee¹ was created under the Cabinet Secretariat along with eight other committees to examine possible legislative measures for implementing the recommendations of the Justice System Reform Council of June 12, 2001 (“Recommendation”).² The purpose of the Internationalization Committee was to examine the possible enactment of a new statute or amendment of existing statutes in order to implement the recommendations relating to internationalization in the above Recommendations. The government especially intended to have the committee examine the appropriateness of the restrictions put upon the activities in Japan of lawyers licensed in foreign countries, and possible legislative measures to promote the internationalization set forth in the Recommendation. At that time, foreign lawyers were under various restrictions, including that they could not form a partnership with Japanese lawyers and could not employ Japanese lawyers. They could form an ad-hoc partnership with Japanese lawyers only with respect to a certain business, such as those brought by a foreign person or corporation or those involving the practice of foreign law. The committee successfully decided that the foreign lawyers should be able to form a partnership with Japanese lawyers and should be allowed to employ Japanese lawyers. That idea was fiercely opposed by the representatives of Japanese lawyers.

After the heated discussion calmed down, the committee members insisted on discussing further problems in the Japanese justice system that might not be taken up by other committees. One of the problems that was pointed out at the time was that there was no reliable and easy-to-read systematic translation of Japanese statutes. Though there had been some translation of Japanese statutes, the translation was often difficult to understand and the translated words would vary according to the translator. For example, the words *kabushiki kaisha* have been translated into either “joint stock company,” “corporation,” “business corporation,” or “*kabushiki kaisha*.” Readers who

1 In Japanese, the committee was simply called *Kokusai-ka I'in-kai*. The chairperson was the author of this article.

2 Recommendations of the Justice System Reform Council – For a Justice System to Support Japan in the 21st Century <<http://www.kantei.go.jp/foreign/judiciary/2001/0612report.html>>.

did not know the Japanese language could not know if these translated words stood for the same type of legal entity or not. Or *saiken* could be translated as “obligation right,” “claim,” “receivables,” “debts,” “choses in action,” “personal right,” or “right in personam.”

The result of the discussion was published by the Cabinet Secretariat, along with the other problems relating to the internationalization of the Japanese judicial system. Then major newspapers reported on this translation problem,³ implying that it was a shame that the government had not even provided an English translation of the major statutes. The Japanese Federation of Bar Associations, *Nippon Keidan-ren* (Japanese Business Federation), the Japanese Chamber of Commerce and Industry, and the Liberal Democratic Party strongly supported the call for a reliable translation of Japanese statutes that would be systematic and easy to read. Propelled by these voices, the Internationalization Committee was re-opened to discuss how to prepare a translation of Japanese statutes that would be systematic, reliable, and easy to read. Finding the reason for why such a translation had not been offered before was easy. Such a translation requires a lot of time and energy from people with a deep knowledge in comparative law. If such a person were a professor, he would have devoted his time and energy to writing academic articles rather than to translation. Translation work is not appreciated at all among academics. If such a person were a lawyer and he calculated the translation cost at his hourly rate, the cost would become enormous. Therefore, the translation of Japanese statutes by lawyers was commercially infeasible;⁴ this kind of project had to be taken up by the government. If the statutes have to be publicized in order for people to understand the law, there is no reason why this publication should be limited only to Japanese. Many persons affected by and required to know the statutes well may not know the Japanese language, including foreigners living in Japan and those who want to do business with the Japanese. Moreover, the Japanese government has been helping countries that need to modernize their legal system. In the course of helping them, those who are actually helping in these countries desperately need the translation of Japanese statutes to show examples.

3 “Panel wants laws to be translated into foreign languages,” *Daily Yomiuri*, October 23, 2004, 3; “*Hōritsu ni eiyaku o – keizai kokusai-ka tsūyō senu*” [English Translation of Laws – Necessary for the Internationalization of the Economy], *Asahi Shinbun* February 4, 2002 (evening), 14.

4 Once prominent lawyers from the famous firm Nishimura & Partners translated the corporation section of the Commercial Code and published it for Yen 12,000 in 2004. Mr. Kazuhiro Takei said at a gathering of an academic association that the project started because each lawyer in Nishimura & Partners had translated the necessary articles of the Commercial Code from scratch because they did not have any reliable published translation. In order to avoid this duplication of efforts, young lawyers in Nishimura & Partners started to make a reliable translation of the corporation section of the Commercial Code by themselves. It was rumored that the total hourly costs of the lawyers spent for the translation exceeded Yen 100,000,000 (almost equivalent to \$1,000,000).

The Committee organized a working sub-committee in order to set a basic policy for the translation. The Committee was to be dissolved by the end of November 2004. Before it was dissolved, the Internationalization Committee concluded, *inter alia*, that:

- (a) It is necessary to continuously offer a translation of statutes that is accurate, easy to read, and consistent. A literal translation should be avoided. Ease of understanding should take priority over accuracy.
- (b) The translated statutes will not be official. This means that they will not have an authoritative value in the interpretation of the statutes. Basic rules and a dictionary of translation will be prepared and followed in order to promote consistency in the translation.
- (c) A committee for the translation will be organized under the Cabinet Secretariat and joined by the representative(s) of all ministries to plan this project.
- (d) The statutes will first be translated into English. After a certain stage, translation into other languages will be considered.

Early in 2005 a Liaison Committee from the related ministries for the Basis of the Promotion of Statute Translation⁵ was established. Under that committee, an Implementation Committee and a Working Committee were established. In March 2006, the Liaison Committee decided:

- (a) When related ministries translate statutes under their respective areas of competency, they must follow the Translation Dictionary⁶ that has been prepared by the Implementation Committee. The Translation Dictionary should be changed and improved from time to time.
- (b) Every ministry should take steps to provide the translation of statutes in accordance with the roadmap prepared by the Implementation Committee. When the ministry procures translation services from the private sector, it must follow a certain procedure in order to secure a minimum quality of translation.
- (c) Products should be published on the temporary website.⁷ A more permanent and user-friendly website will replace it by early in the fiscal year of 2009.
- (d) The permanent organization for the translation of statutes after the first three years should be decided by the end of March 2007. It is very important that the translated statutes in English be maintained, so any amendment should be reflected immediately, new statutes should be translated immediately, and any defects in translation should be corrected immediately. In addition, the Translation Dictionary should be continually improved with the help of various people. This kind of dictionary cannot be completed by one or a few professors. Just like Wikipedia, the web encyclopedia, we have to get the participation of many people with

5 *Hôrei gaikokugo-yaku suishin no tame no kiban seibi ni kan suru kankei shôchô renraku kaigi*

6 <<http://www.cas.go.jp/jp/seisaku/hourei/dictionary.pdf>>

7 <<http://www.cas.go.jp/jp/seisaku/hourei/data1.html>>

various areas of expertise in law and in language. Unfortunately, the Japanese government is pushing forward with budget cuts and it will be difficult to create an independent organization.

Under the implementation roadmap approved by the Liaison Committee, 14 basic statutes, including a part of the Civil Code, were to be translated into English in early 2006 and, within three years about 200 statutes.⁸

In April 2006, the Expert Committee for Statute Translation was established within the Cabinet Secretariat.⁹ Members are professors and lawyers, including foreign lawyers whose native language is English. The purpose of this committee is to improve the Translation Dictionary and oversee the translation done by each ministry in accordance with the above roadmap.

2. *Translation and Accuracy*

(a) *Avoidance of rōma-ji expression*

Several people urged us to use “*jōkoku* appeal” for *jōkoku*, which means the appeal to the last resort court, usually to the Supreme Court. Also they urged us to use “*kōso* appeal” for *kōso*, which means the appeal to the immediate upper instance. The translation of the corporate section of the Commercial Code by Nishimura & Partners uses “*kabushiki kaisha*” for *kabushiki kaisha*. However, the purpose of the translation is to give a reader who does not understand the Japanese language the image that is closest to the original meaning. To those who do not know Japanese, *rōma-ji* – like *jōkoku* – means nothing. It is not a translation. It is only meaningful to those who know both Japanese and English, but those people do not need the translation. Supporters say that *rōma-ji* expressions are more accurate than any other English words. If accuracy is more important than conveying the meaning of the original to those who do not know Japanese, then translation should not be done. Translation inevitably creates inaccuracy. But we firmly decided to avoid the use of *rōma-ji* in the translation. I think it very important that the translators firmly keep in mind that the purpose of translation is to convey the closest image of the original Japanese expression in the English language to those who do not know Japanese. Accuracy should defer to this basic principle.

(b) *Avoidance of difficult words*

Some criticized the translation of *teitō-ken* as “mortgage.” They say that “hypothec” is closer to *teitō-ken*. According to Black’s Law Dictionary,¹⁰ “hypothec” means a mortgage under civil law given to a creditor on property to secure a debt. “Hypothec” may be closer to *teitō-ken* than “mortgage” because it refers to an idea under civil law. The

8 For a list of these statutes see *Jurisuto* 1312 (2006) 24-28.

9 Chairperson is the author of this article.

10 8th ed., St. Paul, Minn. 2004.

problem is that not so many people understand the exact meaning of hypothec. I asked my friends in the United States who know very little of Japanese law or other civil law systems. Most of them did not know the exact meaning of hypothec, though they understood that it means some encumbrance or charge under civil law whether it relates to real estate or personal property. We thought that the word “mortgage” would convey a closer image of *teitô-ken* than the word “hypothec” to ordinary lawyers and businesspeople in the common law countries, Asian people, Latin American people, and all other people in the world. We probably need an explanation in the Translation Dictionary that *teitô-ken* does not transfer the title to the land to the creditor (mortgagee). We have not yet added the necessary explanation to the dictionary.

The target users of the translation are ordinary lawyers and business people who do not know the Japanese language. At this moment, we believe that the word “mortgage” will give these people a closer image of *teitô-ken* than the word “hypothec.”

For the same reason, we are trying to avoid Latin words. For example, *kensaku no kôben* may be translated as “*beneficium excussionis*.” But we translated it instead as “defense of reference.” We do not necessarily adhere to this principle. If the Latin word is easily understood by ordinary lawyers and businesspeople, we use it. For example, the Latin words *mutatis mutandis* and *prima facie* are used.

(c) *Avoiding literal word-to-word translations*

There is an idea that literal word-to-word translations constitute an accurate translation. We do not agree. We believe that the translation should be easy to read; otherwise, the translation will not be used. Sometimes a Japanese sentence may not have a subject; however, when it is translated into English, the subject word should be supplemented.

(d) *After translating some of the statutes, we realized that there are three kinds of translated words:*

- (i) Words that strongly require the use of the translated English word set forth in the Translation Dictionary. An example is *kabushiki kaisha*. If each translator uses a different English word for *kabushiki kaisha*, readers of the English translation will not be able to tell if the original text expresses the same entity or a different entity.
- (ii) Words that appear in the Translation Dictionary as a principle, but for which the translator may substitute other words in accordance with the context if the use of the other words conveys a clearer meaning and makes the translated expression easier to understand. One example is the word *saiken*. It is desirable to use the same translated English word for *saiken* whenever it appears in the statute. However, we thought it impossible to use the same English word of “claim” for *saiken* without regard to the context.
- (iii) Words for which translators may freely choose the corresponding translated words. In the latter two cases, we have listed several choices in the Translation Dictionary and tried to indicate the usages and directions.

(e) *We strongly recommend that translators use footnotes.* We believe that ease of reading and understanding is very important, and preciseness may sometimes have to be sacrificed in deference to ease of reading. Or an English word that is not listed in the Translation Dictionary may have to be used so that a closer image of the original Japanese can be conveyed to the readers. In these cases, deviation from the Translation Dictionary or translation principles should be allowed, with an explanation contained in the footnotes. Footnotes will make the harm smaller. However, we have noticed that translators tend not to use footnotes. We have to urge translators to use footnotes more.

This is a project that requires time. The translated statutes must be maintained at all times. The translation itself should be improved with comments and suggestions by researchers and other users, and the Translation Dictionary should be improved as well. In the future, we would like to coordinate with the people who are translating German, French, Korean, Chinese, and other civil law into English, so that similar civil law ideas can be translated into the same English words. We still have a long way to go. If readers of this article have any comments or suggestions for the Translation Dictionary and the translated statutes, please send them to <kasiwagi@tamacc.chuo-u.ac.jp>.

ZUSAMMENFASSUNG

Im Zuge der Reform des japanischen Justizsystems sollten auch die Übersetzungen der japanischen Gesetzestexte überarbeitet werden. Der zu diesem Zwecke eingesetzte „Ausschuß zur Internationalisierung“ hatte die Aufgabe, für bessere und einheitliche Übersetzungen zu sorgen. Bis dahin waren die Übersetzungen oft nur schwer verständlich gewesen; juristische Fachtermini waren von Gesetzestext zu Gesetzestext bzw. je nach Übersetzer unterschiedlich übersetzt worden. Ein Anfang 2005 eingesetzter „Ausschuß zur Förderung von Gesetzesübersetzungen“ sprach sich im März 2006 dafür aus, daß sich die jeweiligen Ministerien bei der Erstellung von Übersetzungen an einem speziell zu diesem Zwecke zu erarbeitenden Übersetzungswörterbuch orientieren sollten. Das Wörterbuch sollte ständig ergänzt und aktualisiert und fertige Übersetzungen sollten auf einer Webseite veröffentlicht werden. Die Pläne des Ausschusses sahen vor, daß bis Anfang 2006 14 grundlegende Gesetze, darunter auch ein Teil des Zivilgesetzes, ins Englische übersetzt sein sollten, innerhalb der darauffolgenden drei Jahren sollten etwa 200 weitere Gesetzesübersetzungen folgen. Im April 2006 wurde ein Expertenkomitee aus Professoren und Anwälten, darunter auch englische Muttersprachler, eingesetzt. Sie haben die Aufgabe, das Wörterbuch zu verbessern und die einzelnen Übersetzungen in den Ministerien zu prüfen. Generell ist man übereingekommen, bei Übersetzungen japanische Wörter in lateinischer Transkription (rōma-ji), schwer verständliche Begriffe und wörtliche Übersetzungen zu vermeiden. (Zusammenfassung durch d. Red.)