Ambiguity in Legal Translation

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Abstract:

Legal translation refers to the translation of texts within the legal sphere with a particular terminology and special register. It is, therefore, a challenging field in the domain of translation. Its specificity, its linguistic nature and terminology are the major problems that face a legal translator... To have a successful legal translation, the translator must be open and straightforward. He must be familiar with legal terminology in both Source Language Text and the Target Language Text., and have basic law of legal systems in both of them. He should possess, behind his native legal system, a wide knowledge in legal systems of other countries, and be 'aware of' the various contexts which belong to diverse legal systems. He must be competent in legal writing style of the target language. Besides all these, the translator should avoid lexical, semantic ambiguity as well as impressive and irrelevant results.

Key words: Ambiguity; Legal; Translation; Language; Text; Systems.

Legal translation refers to the translation of texts within the legal sphere with a particular terminology and special register. It is, therefore, a challenging field in the domain of translation. Its specificity, its linguistic nature and terminology are the major problems that face a legal translator. Andrei Glèzl warns us of the risk that misinterpretation could cause for the translation of a legal text. He writes:

> **Legal texts contain linguistic mistakes, which cause these texts to have different meaning then purported. In case of law, mistakes may have**

> **severe consequences. Therefore, some theories qualify legal texts as a specific category of texts that require special interpretation in order to avoid the risk of damage created by the application of 'wrong law'**[1]

Legal translation is very complex and complicated. There are issues of equivalence, terminology, stylistic differences and ambiguity in the source text. These factors make the legal text difficult to be reproduced faithfully and unambiguously. Conceptual equivalences between the Source Language Text and the Target Language Text are often not straightforward between two different legal systems and registers. The uniqueness of each legal source language imprisons the translator in its linguistic uncommonness. Subsequently, giving a meaning to a word in legal text could create confusion and probably wrong interpretation. Interpretation of legal texts is considered to be mostly a special semantic matter. Glèzl points out:

> **Interpretation of the law expressed in legal texts depends on the interpretation of the language with which the text is written, therefore, it is not possible to ignore general hermeneutic allocating a meaning to the symbols used-the specific language examined (par. 4)**

Risk of translation, due to misinterpretation, is very recurring. It creates an environment of uncertainty. Such pitfalls may complicate more than facilitate the legal texts for the reader. "There is not interpretation or commentary or summary." Susan Wright claims; "It is transition, reflection, conversion, equivalence, representation, transposition both legal and linguistic. You are aiming to produce a document

which says the same thing, with the same effect, but in different language."[2]

Legal language is different from ordinary language with respect to vocabulary and style. The prominent feature of legal style is very long sentences. Seemingly, the nature of long sentences is due to the need to place all information and avoid any ambiguity in the interpretation and practice of the law. "While lawyers cannot expect translators to produce parallel texts that are identical in meaning," Wright states, "they do expect them to produce parallel texts that are identical in their legal effect." (par. 1) Legal language is conservative. Its phraseology holds some cultural insights specific to the background of the language. Martin Weston underlines that: "The basic translation difficulty of overcoming conceptual differences between languages becomes particularly acute to cultural and more specifically institutional reasons."[3]

Legal language partakes with empiricism, coherence and precision, and with ethics religious respect and historical tradition. These two aspects complicate the job for any translator. The latter is constrained to have a basic knowledge in both legal systems involved. Any experienced translator tries to produce a legal text, which does function as if it was a source text. Such aim enhances him to regard himself as an 'expert wielder of words.' The uniqueness of legal words from one language to another pushes the translator to mine inside his reservoir of terminology and finds out words that fit better the transfer of meaning from the source to the target. But very often, the translator fails in such a choice and gives a terminology that does not correspond to the meaning of the S L T. Gemma Cappellas-Espung points out:

> **Legal concepts, terminology and realities of one society only correspond partially to those of another; that is to say, certain concepts may totally coincide, while others may only partially do so. [….] The major practical difficulty is that of deciding whether a concept is the same in two languages or whether it is different in terms of the consequences which ensure.**[4]

Translation involves more culture-specific components of the legal systems. It is seen as a deposit of knowledge and refers to "conceptual entities, properties, activities or relations which constitute the knowledge of a particular subject field." [5]

The legal register is apparently very complex and difficult to be understood by common public. Companies of insurance, banking, trading and the like are compelled to write their commercial policy in common language and make contract documents clear and short.

Legal language uses a very restricted and self-contained vocabulary that is only communicable between legalese and legal experts. Legal translation, then, comes as an essential activity, which comprises the interpretation of the legal sense and produces it into another language. This is, however, a complex job, full of pitfalls and littered with a series of obstacles. A good translator of legal texts needs to master legal jargons and should be able to express it in a few words. Furthermore, he should be aware of the problems created by the absence of equivalence during the linguistic transfer of meaning. Cappellas-Espung states that:

> **Each legal system is situated within a complex social and political framework which responds to the history, uses and habits of a particular group.**

This complex framework is seldom identical from one country to another, even though, the origins of the respective legal systems may have points in common. (par. 3)

Legal translation is a very diversified and multifarious domain. Some forms of legal translation, especially the translation of statutes and contracts, are very complex. Prototypical instances of legal translation are the translations of birth certificates or judgements in connection with court proceedings, auditor's reports of a company, which is settled in a foreign country for the sake of registration. Sometimes, a particular concept may exist in two different languages systems and refer to different realities: local and foreign. This fact creates a problem of/in documentation and legal lexicography. In this case, identicalness is not possible in legal translation. And the only issue to get out of the trough is the equivalent fidelity to the spirit rather than to the letter of the law or a search of equivalent. Translation strategies range from foreign sing (S.L.-oriented equivalents), to domesticating (T.L.-oriented equivalents) where the former seeks to evoke a sense 'foreign', while the latter invokes assimilation to the T.L. culture as is intended to immediate comprehension. [6]

There are some striking examples that illustrate such complexity of/in translation. In order to have translatable texts, we should have the legal institutions of the two different countries identical and governed in the same way by the same legal laws. This is, however, extremely rare if not non-existent. Frequently, we have legal institutions that look like in two or more countries, but governed by different and differing laws. I mean an institution that exists in one legal system, but does not exist in the other, or an institution that exists in one legal system, but absent in the other.

How could a translator, for example, understand the legal expression that we find in Anglo-Saxon countries as England, Wales, the USA, and Australia? The following expressions: 'common law', 'equity' and 'civil law' differ in contexts from one Anglo-Saxon country to another.

The first expression 'Common Law' seems to be very confusing and problematic in meaning. Does it mean a local law? Does it mean the common law to the whole English people? Does it mean the law, which does not result from legislation (by decision of judges and the custom of people)? Does it mean, then, a common law, which has no relation with equity or developed by the Court of Chancery? Or, it may mean literally the French expression 'le droit commun'. In this context, it deviates from its specificity and becomes only a translation of the French expression, which could be translated in English as "General Law'. Subsequently, we relate it to treaties on French commercial law ('le droit commun') provided by the French civil code. Where is the right interpretation to such expression?

In dictionaries and encyclopaedia, the definition of this expression is very diverse: In Oxford Dictionary, it is defined as a system, which derives its power from the court as well as norms and canons of English tradition. It is an "unwritten law developed from old customs, eg, in Saxon and Danish times, and decisions made by judges." [7]

But according to World Book Encyclopaedia, the expression 'Common Law' has three differing definitions: "1-Law based on custom and usage and confirmed by the decisions of judges, as distinct from *statute law.* 2- The law of all countries whose legal systems derive from English Law, as distinct from *civil law* or *canon law.* 3-Law based on the decisions of judges in actual cases; case law." [8] So, as it is

noticeable through these definitions, the 'Common Law' principles do not only stem from a common codification of the norms and canons of English people, but also and essentially from judicial decisions in the court case by individual judges over a long period of time.

Concerning translation from French into English, there are certain terms that seem similar but might mislead the reader if he tries to understand then literally: The French term 'Hypothèque' and its equivalent in English 'Mortgage'. The Latter is associated with the former, but with so many reservations and caveats. These two terms are tricky and do not equate in meaning. They are far from being similar or even equivalent.

The English word 'Mortgage' means the act of mortgaging. It is the fact "to give somebody a claim on (property) as a security for payment of a debt or loan", i e, by this act, he becomes a conditioned owner of the property mortgaged to him, but not its possessor (Hornby 550). The World Book Encyclopaedia extends more such definition pointing out that this term holds three aspects: 1- claim on property, given as a security to a person , bank, or firm that has loaned money, in case the money is not repaid when due. 2- Document that gives such a claim. 3-The rights conferred by it, or the state of the property conveyed."(CD ROM Encyclopaedia).

The French term 'Hypothèque' means, according to Le Grand Robert, "ce qu'on met en dessous." [9] C'est un "droit réel accessoire (conférant droit de préférence et droit de suite) accordé à un créancier sur un bien (en principe immeuble), sans que le propriétaire du bien grevé en soit dépossédé." Le Grand Robert gives us three diverse definitions of the same word. There is "L'hypothèque légale est celle qui résulte de la

loi. L'hypothèque judiciaire est celle qui résulte des jugements ou actes judiciaires. L'hypothèque conventionnelle est celle qui dépend des conventions, et de la forme extérieure des actes et des contrats."(Code civil, art. 2114).

In French, the term 'Hypothécaire' gains neither ownership nor possession of the mortgaged property, unless he enforces the mortgage. It should be noted that in England a mortgage becomes a conditional owner of the property mortgaged to him, but not its possessor (unless he forecloses, in which case he becomes both absolute owner and possessor). (Cappellas-Espung par. 9) In the words of L. Lauzière:

> **La comparabilité de ces termes [hypothèque' et 'mortgage'] laisse à désirer et il vaut mieux ne pas forcer le rapprochement d'institutions juridiques n'ayant pas la même structure ni la même fonction. Le mieux que l'on puisse suggérer, c'est peut être de renoncer à traduire et de conserver le terme 'mortgage' dans la version française d'un texte de loi. Cette solution, au moins, offre l'avantage d'assurer le parallélisme juridique et linguistique de l'institution désignée dans les deux versions législatives et, encore une fois, d'éviter toute confusion.** [10]

The next example is between English and Danish languages: The English word 'Audit' could not be translated in Danish as 'àrsrapportun'. Though they mean 'annual report' and though they seem to contain similar lexical elements and therefore, on the surface, carry the same meaning, they differ from one another. If we look at the definitions of the two words, we find slight differences that may be of importance when judging the quality of the translation. In the context of the 'auditor's report', the Danish term, 'àrsrapportun', limits

itself to the object of the 'audit' (financial statements, management's review, statement by the executive and supervisory boards—Danish Financial Statements Act, Section 2). The English term 'annual report', on the other hand, refers to "the whole document presented by the company and normally designated 'annual report and accounts'" [11]

The audit: "provides an objective verification to shareholders and users that the financial statements have been prepared properly and in accordance with legislative and regulatory requirements that they present the information truthfully and fairly and that they conform to best accounting practice in their treatment of various measurements and evaluations." [12]

Consequently, the terms do not have identical meaning. Then, how could we translate, or transfer the meaning of S L T to T L T? If the translator judges the difference as important and affects the meaning, then, either he attributes an explanation to the English term relevant section of the Act, or he seeks help in the way the object of the 'audit' is identified in original English auditor's reports.(Leidler 10-1)

Another obstacle, this time, is grammatical. The model "shall" is very significant in English language. It holds multifarious meanings. "Shall" has no identical equivalence in French. There is a very interesting anecdote that illustrates the specificity of "Shall". Susan Wright reports for us an event that happened to the former French president François Mitterrand for the signature of some ordinances.

Article 11 of the 1958 French Constitution empowers the president to sign ordinances: "Le président signe les ordonnances". Could this sentence be translated as, "The president shall sign ordinances?" In 1986, President

Mitterrand refused to sign certain of the Right-Wing Prime Minister's measures, casting doubt on the command nature of 'shall sign'. Such interpretation of "shall", perhaps, could be reversed for the imperative, whereas 'is' can be used for conditions and circumstances (Wright 10). 'Shall' in formal English legal language is used to express authority and obligations, rather than futurity. Memorandum signed in Prague on 19 October 1989 between Czechoslovakia and Turkey stipulates: "The parties shall take the necessary measures to ensure the mutual facilitation of tourism flow in the respective countries." (11)

There are some other examples in British enactment clause, which is found at the beginning of all statutes: "Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Common, in this present Parliament assembled, and by the authority of the same…"[13] In addition to the subjunctive, this clause illustrates several other common features of legal English, such as French word order (Lord Spiritual and Temporal), formal language (Queen's most Excellent Majesty), old word order (in Parliament assembled), and conjoined phrases (by and with, advice and consent).

What are the remedies and the solutions to such disparity and precariousness in translations? Can we allow and open the way to lawyers to be translators? The fact that some lawyers cannot translate does not mean that legal knowledge is detrimental to legal translation. A lawyer cannot translate, unless he acquires a background in translating and translation. Likewise, the translator, whatever is his background, needs to be competent in many ways: he needs a good knowledge of the source language and its culture and proficiency in his native language. He should have a pre-disposition to make

intelligent guesses in his interpretation of texts and an intelligent transfer with equivalent terms.

Having understood S L concept, the translator should ideally be able to make corresponding term from the target language system. Obviously, it involves a conscious, subconscious comparative law analysis in which the translator assesses the degree of incongruity. To overcome the difficulties in/of equivalence and identicalness, it is advisable to use paraphrasing, or to keep the source terminology and explain it to the target reader in the footnote, when there is no equivalent. As an example, the translator may keep the Danish term 'àrsrappotun' but gives at the bottom qualifications to it: financial statements and disclosures. The other possibility is to keep the English term 'Audit' but qualify it with the two elements (financial statements and disclosures) that explain the Danish context.

The translator must develop the following skills: The ability to understand legal texts: their linguistic, semiotic as well as cultural aspects. He should concentrate on the following factors: 1- Clear and unambiguous Interpretation. 2- Contextualisation 3- Style 4-Communicative purpose. 5- Textual / contextual organisation.

The translator must be aware of the linguistic difficulties that often arise when two legal cultures clash during translation. He must be aware of the false friends and sensitive to the fundamental differences of the linguistic systems of the two languages. A successful translation of legal texts should communicate the content of a document, all the while employing equivalent and adequate syntax, semantics and pragmatics.

The translator must have common as well as legal monolingual and bilingual dictionaries. A bilingual dictionary provides T. L. equivalents of S. L. legal concepts. In order to find out a potential equivalent that fits the source term, the translator should be equipped with various and rich resources that enable him accomplish his job successfully. As noted by Susan Sarcevic, "the prevalent opinion in the field of law is that bilingual dictionaries provide little assistance to translators and, owing to the inherent incongruous terms, they are less formative than monolingual dictionaries." [14]

Monolingual legal Dictionaries, like Oxford Essential Dictionary of Legal Words and Longman Dictionary of Law provide definitions of legal concepts. They supply the translator with prototypical senses of the term and suggest synonyms. According to Henning Bergenholtz, et al, brief definitions are suitable for a translator [….] who lacks basic knowledge in legal terminology. [15] The definitions may specify the place of the concept in horizontal and vertical taxonomies and give different cognitive models necessary for understanding it. Besides dictionaries, online tools are very significant; they allow the translator to obtain a bilingual view and retrieve an equivalent from the context.

In the end, I would say, in order to have a successful legal translation, the translator must be open and straightforward. He must be familiar with legal terminology in both S. L. T. and T. L. T., and have basic law of legal systems in both of them. He should possess, behind his native legal system, a wide knowledge in legal systems of other countries, and be 'aware of' the various contexts which belong to diverse legal systems. He must be competent in legal writing style of the target language. Besides all these, the translator should avoid lexical, semantic ambiguity as well as impressive and irrelevant results.

Endnotes

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