

PROBLEMS OF TRANSLATING LEGAL TEXTS

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Abstract: *In today’s globalized world, translation and interpreting are crucial for facilitating international relations, as there is no common language across nations. These services play a vital role in interactions between countries, organizations, and individuals. International law, which governs such relationships, has increased the importance of legal translation, a complex field requiring specialized skills to avoid serious consequences. In Uzbekistan, however, legal translation is underdeveloped, with limited research. This paper seeks to contribute by addressing key challenges in legal translation and offering solutions as a basis for future study.*

Key words: *Translation, legal text, international law, interpreting, translator.*

Introduction

This paper addresses challenges in translating legal texts. It begins by examining legal language, the specific translation category in focus, and outlines its linguistic characteristics. It then explores legal translation as a field, including its various categories, and concludes by discussing issues in translating legal texts, highlighting key requirements for proficient legal translators to produce accurate and professional translations.

Legal language

Legal language is the language used in law and legal processes, suited specifically to legal contexts. Due to its unique features, it is often considered a distinct language, separate from everyday language. Linguistic challenges in legal language stem from the variations across different legal cultures and systems. Legal language has evolved specific characteristics to fulfill the requirements of the legal system it represents. Unlike other technical languages that convey universal information, legal language is unique. Each legal language is shaped by its distinct history and culture.

A primary reason legal language is challenging to understand is that it often differs greatly from everyday language. Legal writing conventions include unique sentence structures, limited punctuation, and foreign phrases replacing common terms (e.g., *inter alia* instead of among others). It also uses unusual pronouns (e.g., *the same, the aforesaid*), set phrases (e.g., *null and void, all and sundry*), technical terms, uncommon and archaic words, impersonal forms, modals like *shall*, multiple negations, lengthy and complex sentences, and poor organization—all of which contribute to its difficulty.

Legal translation

Translation is a form of communication that occurs between text producers and text receivers, with the translator serving as a mediator between the two. Legal document translators do not merely translate from one language to another; they also convert legal language from one legal system to another. The translation of law has



historically been crucial for fostering connections between different peoples and cultures, and it plays an even more significant role in our globalized world today.

Legal translation is a distinct and specialized field within translation activities. This specialization arises because legal translation pertains to law and can result in both linguistic and legal effects due to the unique characteristics of law and legal language. The process of legal translation is complex and necessitates specific skills, knowledge, and experience from the translator to achieve accurate results. It serves as a cross-cultural and inter-lingual communicative act and represents a multifaceted human and social behavior.

Legal translation involves converting legal texts from the source language to the target language. Based on the objectives of the target language texts, legal translation can be categorized into the following types:

Legal translation for normative purposes involves creating equally authentic legal texts in bilingual and multilingual jurisdictions, including domestic laws, international legal instruments, and other legal documents. Typically, these bilingual or multilingual texts are initially drafted in one language and subsequently translated into additional languages. Alternatively, they may be drafted simultaneously in all relevant languages. In both scenarios, the texts in different languages hold equal legal authority, and none is superior to another, regardless of their original status. Examples include legislation in the bilingual jurisdictions of Canada and Hong Kong, the multilingual legal instruments of the United Nations, and the multilingual laws of the European Union. This category of legal translation can also encompass private documents, such as contracts, where the bilingual texts are equally authentic in a bilingual or monolingual jurisdiction. For example, contracts in non-English speaking countries may specify that both the version in the official language and the English version are authentic, even if English is not recognized as the language of the court or the country. In this category of legal translation, the communicative purposes of the texts in the source and target languages are the same.

Then, there is legal translation for informative purposes, which serves constative or descriptive functions. This involves translating statutes, court rulings, academic works, and other legal documents when the aim is to inform target readers. This type of translation is most commonly found in monolingual jurisdictions and differs from the first category, where the translated law is legally binding. In this case, the source language is the only legally enforceable language, while the target language holds no legal authority. For example, a statute written in Uzbek that is translated into English for informative purposes for foreign lawyers or other English-speaking readers is not legally enforceable.

There is also legal translation for general legal or judicial purposes. These translations primarily serve informational and descriptive functions. Such translated documents may be utilized in court proceedings as part of the documentary evidence. The original source texts in this category can include legal documents like statements of claims, pleadings, contracts, agreements, as well as everyday texts such as business or personal correspondence, records, certificates, witness statements, and expert reports. Translated texts in this context carry legal consequences due to their role in



the legal process. Therefore, legal translation encompasses the translation of texts relevant to law and legal environments. It is a broad term that includes both the translation of legal statutes and other communications within the legal context. For a legal translator, it is essential to understand the status and communicative purposes of both the original text and its translation.

Legal translation is often more challenging than other forms of technical translation due to the system-bound nature of legal terminology. Unlike scientific or other technical terms, each country has its own legal terminology, which is based on that country's specific legal system and can differ significantly from the legal terminology of another country, even if they share the same language. Law, as a social phenomenon and a product of culture, takes on a unique character in every society. Each society structures its legislation and legal system based on its own legal concepts. For example, translating Common Law from English to Uzbek or Russian poses challenges due to the differences in legal systems. The Common Law legal system is defined by case law, which is developed by judges through court decisions. This body of precedent, known as Common Law, obliges future rulings. When parties dispute the interpretation of the law, a Common Law court examines previous precedential decisions from relevant courts. If a similar issue has been resolved in the past, the court must adhere to the reasoning of that earlier decision. However, if the court determines that the current dispute is fundamentally different from prior cases, judges have both the authority and responsibility to establish new law by creating precedent.

Due to the growing importance of international relations and the rising demand for the free movement of people, goods, and capital, legal translation impacts everyone in some way. In essence, law is closely intertwined with language, as it cannot exist without it. Mellinkoff (1963, p. 259) states that “Law is a profession of words,” while Arntz suggests that “the law is alive in language” (1986, p. 92).

In legal translation, the differences in legal systems mean that many legal terms in one language do not have equivalents in another. This issue of non-equivalence presents a significant challenge in translation. Smith (1995, p. 60) explains that the system-bound nature of legal texts requires that successful translation into another language involves competency in at least three distinct areas:

1. The legal translator must have a basic understanding of the legal systems in both the source and target languages.
2. They must be familiar with the relevant terminology.
3. They must be proficient in the legal writing style specific to the target language.

As mentioned above, without these competencies, the translator's output will often result in a word-for-word translation that is difficult to understand. Additionally, translating legal texts—whether they are statutes, contracts, or courtroom testimonies—sits at the intersection of legal theory, language theory, and translation theory. Consequently, it is crucial for the legal translator to have a fundamental understanding of the nature of law and legal language and how it influences legal translation.

As Šarčević notes, “legal translators have historically adhered to the principle of fidelity to the source text. Consequently, it has been widely accepted that the transla-



tor's'role is to replicate the form and content of the source text as accurately as possible. Therefore, literal translation (the stricter, the better) has been regarded as the golden rule for legal texts” (1997, p. 127).

However, Schroth argues that “to create a text that yields the same practical outcomes, the translator must comprehend not only the meanings of the words and sentences but also the legal effect they are intended to produce and how to achieve that legal effect in another language” (2010, p. 71).

The role of a legal translator is to accurately convey the content of the source text rather than to interpret what they think it should express. In other words, a legal translator should refrain from offering legal advice or resolving legal issues; instead, they should translate and facilitate communication across linguistic, cultural, and legal barriers using language. Their goal is to create a text that maintains its meaning, legal effect, and intent. Lawyers should not anticipate that translators will create parallel texts that are identical in form. However, they should expect translators to generate texts that are equivalent in legal meaning and effect. Therefore, the primary responsibility of the translator is to produce a text that will have the same legal effect in practice. To accomplish this, the translator must understand not only the meanings of words and sentences but also the intended legal effect and how to achieve that effect in the other language.

Translators need to effectively use legal language to articulate legal concepts to achieve the intended effect. They must be well-versed in the conventional rules and styles of legal texts specific to each area of the individual legal systems. A legal translator must keep in mind that even a 'Will' is not legally valid if it is not written in the proper style.

Translation of ambiguous legal texts

Translating any ambiguous text poses challenges, and in legal translation, these difficulties are heightened. This is primarily due to linguistic uncertainties such as vagueness, generality, and ambiguity. Legal disputes often stem from these linguistic ambiguities found or thought to be present in contracts and statutes.

A key consideration for the legal translator regarding these linguistic uncertainties is to remember their role. A legal translator is not a lawyer, and their main responsibility is to translate rather than to resolve legal issues. Therefore, one important task for the translator in such situations is to identify any linguistic uncertainties that may exist, whether intentionally or unintentionally, in the original text. Whenever possible, the translator should strive to clarify or make the wording more precise and less ambiguous.

For prevention of different interpretations of your writing, it's best to replace ambiguous terms with specific language. For instance, if a local district aims to prohibit heavy trucks on their highways, the legislation would be more effective if it explicitly mentioned “trucks over [x] tonnage” instead of using the vague term “large vehicles.”

Alimi (2013, p. 18) argues that “ambiguous words should be avoided and replaced with another word that is equivalent and unambiguous.” He rightly notes that whenever a translator encounters a term that may appear even slightly ambiguous,

they should promptly seek out and identify the appropriate word for the specific context that removes potential confusion for readers from different social backgrounds (2013, p. 21). He concludes by stating that “the clearer the text is in the translated language, the closer the translator is to successfully fulfilling their role” (2013, p. 22).

Conclusion

This paper began by discussing legal language, defining it as the language associated with law and legal processes, and emphasizing that it is considered a distinct language, separate from everyday language. It was also noted that each legal language arises from a unique historical and cultural background. Furthermore, it highlighted the significant role that legal translation has played in facilitating communication between diverse peoples and cultures throughout history, asserting that it is increasingly vital in our globalized society. Legal translation is characterized as a complex process requiring specialized skills, knowledge, and experience from the translator, as it involves cross-cultural and interlingual communication and embodies complex human and social interactions.

Finally, the paper outlined the translator's role in the translation process, stressing that the primary responsibility of the translator is to translate rather than to address legal issues, and that they should create a text that maintains its meaning, legal effect, and intent.

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