

Translating Legal Texts: Adequacy or Acceptability? Implications for Teaching Legal Translation

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Abstract

Translation is almost always conducted within a certain socio-cultural framework with its particular ideology. In the present study, the application of various shift types in two legal translations was examined to show how socio-cultural and ideological inclinations of the translator affect adequacy and acceptability in translation. Two legal texts in English (the Geneva Interim Agreement and NPT) and their Persian translations released by IRI's Ministry of Foreign Affairs formed the corpus of the study. The analysis of the translations indicated the lack of ideological and cultural shifts and the presence of structural and stylistic shifts. Legal texts are highly sensitive and need the utmost precision in their translation. These requirements could make ideological and cultural shifts out of the question in legal translation. The results, therefore, suggest that in legal translation training, attention should be devoted to structural and stylistic shifts. As for the adequacy and acceptability, it was also observed that translated texts cannot be totally adequate or totally acceptable; the poles of adequacy and acceptability are on a continuum, and translators move between these two extremes.

Keywords: Adequacy, Acceptability, Legal Text, Shift

Introduction

In the act of translation, translators can subject themselves either to the norms realized in the source language or to the norms of the target language (Munday, 2016). Norms are "options that translators in a given socio-historical context select on a regular basis" (Baker, 2009, p. 190). According to Toury (1995), if the translation is towards the source language, then the target text will be adequate; if the target culture norms prevail, then the translation will be acceptable. Adequacy and acceptability can be regarded as controversial concepts which may turn out to be a concern for translators. Inevitably, any translation process is carried out within a specific socio-cultural environment. The more sensitive the text is, the more delicate the translation activity would

be. However, translation theorists and practitioners cannot provide translator trainees with a certain direction regarding this classification; therefore, the question is which direction they should follow: Should a translator or a translator trainee follow adequacy or acceptability or stay somewhere between these two poles?

There are some factors which could affect translators' decision-making process. Sociological approaches to translation which draw on Bourdieu's theories study the agents involved in the production, as well as the reception of translations. Therefore, they may justify the cause underlying the translator's decision for taking the one and ignoring the other. One of the notions of these approaches is 'habitus'. There have been some attempts to integrate this notion which is one of the core notions formulating Bourdieu's theoretical approaches to the relationship between agency and structure into a descriptive approach to translation (Simeoni, 1998 & Inghilleri, 2003). Habitus refers to the subjects' internalized system of social structures in the form of dispositions. Social structure is a lifelong process of interactions between structure and agency. Through various and variable individual and collective past, every cultural actor thus develops a social identity: a certain representation of the world and his position (Bourdieu & Wacquant Loic, 1992). To Bourdieu, individuals act in habitual, conventionalized ways that are, to a large extent, the product of the incorporation of social structures, structures that are themselves the product of historical struggles and are, therefore, subject to change.

The other factor which may shed some light on the underlying translators' inclination to one of the poles of adequacy or acceptability is culture. Culture can be viewed and defined from various perspectives. One of the main aspects of culture is its interconnection with language. Culture is instantiated through language. The structure of a given language determines the ways in which the speakers of that language view the world. In other words, different languages reflect different cultural values. Thus, in translating one language into another language of a different culture, the translator encounters various obstacles (Wardhaugh, 1986). Translation is nearly always conducted within a certain cultural environment, and consequently, translators operate first and foremost in the interest of the culture into which they are translating (Toury, 1995).

In addition to social and cultural factors, ideology is regarded as a powerful framework which plays a determining role in translators' decision-making in the process of translation. According to Mooney et al. (2011), ideology is the way of looking at the world and exists naturally in every individual or group's worldview. Ideology comes into existence through the use of language, which allows it to become internalized and taken for granted as common sense. Paganì (2007) also states that ideologies are ways of thinking and describing the nature of the world-order in a way that make that world-order appear natural.

In the same vein, the status of the source and target language and culture, the status of the translator, translation brief, as well as type of the text could also affect translators' decisions in any act of translation. Regarding text type, since legal texts deal with legal concepts, they are highly sensitive and demand utmost precision in their translations. Generally, "legal language is a type of register, that is, a variety of language appropriate to different occasions and situations of use, and in this case, a variety of language appropriate to legal situations of use. Legal texts refer to the texts produced or used for legal purposes in legal settings" (Cao, 2007, p. 9). Legal translation also refers to the translation of court documents and administrative, commercial, and financial texts as well as legislative texts and international treaties (Way, 2016, P. 1013). Following the general literary and specialist classification of translation, Cao (2007) considers legal translation under the specialist category or technical translation.

It is a type of the translational activity involving special language use, that is, language for special purpose (LSP) in the context of law, or language for legal purpose (LLP). Legal translation has the characteristics of technical translation and also shares some of the features of general translation (p. 8).

Legal translation has been investigated in various languages and from different angles; however, it seems that little research has been conducted on challenges of legal translation in general and legal translation training in particular in the context of Iran. Therefore, the aim of the present study is to investigate two legal texts and their Persian translations to examine the degree to which shifts were applied to translating these texts. The findings could help understand whether the translators were affected by socio-cultural and ideological factors as well as their fluctuation between the poles of adequacy and acceptability. The ultimate objective is to provide some implications for legal translation training.

Background of the Study

Although translation of legal texts "belong[s] among the oldest and most important in the world, legal translation has been neglected in translation studies and studies in the field of law" (Schneiderova, 2016, p. 347). Yet, in recent years various studies have investigated legal texts and their translations from different viewpoints. In some studies, general theoretical issues regarding this kind of translation have been discussed. In this relation, Murici (2016) described categories of legal translation and issues in translating legal texts by providing some of the requirements that good legal translators need in order to render accurate translations. Murici (2016, p. 70-71) classified legal translation into three categories: legal translation for normative purpose (the production of equally authentic legal texts in bilingual and multilingual jurisdictions of domestic laws, international legal instruments and other laws), legal translation for informative purpose (translation of statutes, court decisions, scholarly

works and other types of legal documents if the translation is intended to provide information to the target readers), and legal translation for general legal or judicial purposes (translated documents used in court proceedings as part of documentary evidence). A legal translator, Murici adds, “should not provide legal advice and solve legal problems, but translate and facilitate communication across linguistic, cultural and legal barriers through the medium of language” (p. 72).

There are some studies which analyzed issues such as quality and accuracy as well as the challenges encountered in legal translation. In one of such studies, Kockaert and Rahab (2017) explored “quality in relation to a variety of themes ranging from challenges in the translation of legal documents, aspects of legal translation in the context of EU institutions, legal translator training and the much-debated issues of assessment and evaluation of legal translations” (p. 7). Inspired by the European project, *Qualetra*, which focuses on translation procedural rights in criminal proceedings, they actually situate legal translation in today’s context in the landscape of professional translation and Translation Studies.

Ali (2016) investigated some of the challenges that translators encounter when translating legal contracts between English and Arabic. The results were compared with related findings from empirical literature to see how far translation practitioners' perceptions were similar or different from the existing empirical findings. The findings showed that practitioners' perceptions of challenges they encounter in translating legal contracts, were to some extent, consistent with other relevant empirical findings in the literature in both the Arab world and the international context. The study also revealed that the most apparent challenges are language-related challenges followed by style-related challenges and culture-specific challenges. Finally, it was recommended that “translation competence presupposes not only in-depth knowledge of legal terminology, but also thorough understanding of the communicative legal function of such texts” (p. 138).

Chirila (2014) also emphasized the importance of accuracy in translating legal texts as well as the difficulties encountered in translating such texts. Performing a correct translation, Chirila notes, is one of the most important elements to be considered when discussing legal translation. Dumitrescu (2014) discussed the strategies which should be taken into account by legal translators. These strategies include the borrowing of original terms, the naturalization of specific terms into the target language, the language calques usage, or the introduction of descriptive translation (p. 502). Regarding the style of legal language, Dumitrescu (2014) believes that

the legal translator must be aware of and familiar with these stylistic peculiarities of the legal language in general and with the stylistic features specific to each legal language (source and target) in order to be able to render a functional translation of the original text (p. 506).

In other words, the translator “should obey the stylistic rules at use in the target language and [do] not import the style of the source text” (Dumitrescu, 2014, p. 506). Aghagolzadeh and Farazandeh-pour (2012) applied Systemic Functional Grammar (SFG) Approach to analyze the errors occurred in the translation of legal documents from English into Persian at the sentence level to see whether this approach could be used as an objective criterion for error analysis of translated legal documents. The results demonstrated that SFG is an appropriate criterion for evaluating the accuracy of translations produced by legal translators and those produced by legal translation trainees.

In addition to the above-mentioned studies, issues involved in legal translation training have also been investigated from different viewpoints. In this regard, Way (2016) focused on the important challenges and opportunities for legal translators and for legal translator trainers. Revising the initial steps already taken to address these challenges and to take the opportunities of the 21st century, she discussed that those challenges still require attention. Regarding the practical aspects of legal translation training Biel (2011) proposed how to integrate professional realism in BA legal translation classes at the level of translation competence and translator competence which are claimed to develop concurrently at varying degrees. Biel (2011) suggested that trainers should be practicing translators with some legal background and pedagogical experience, which is rarely the case. Legal translation may require an initial use of teacher-centered methods and a gradual shift to student-centered ones. The trainer’s guidance is crucial at the introductory stage if legal translation is taught to non-legally qualified students (p. 170).

Although the review of the literature on legal translation reveals that it has been investigated from different viewpoints, it seems that little research has been conducted on challenges of legal translation especially the effect of socio-cultural and ideological factors on the translation of legal treaties in the context of Iran. Therefore, the present study aims to study two legal texts and their Persian translations to examine the degree to which shifts were applied in translating these texts. The ultimate objective is to provide some implications for legal translator education classrooms.

Research Method

The corpus

The source texts comprised of two English legal texts as follows: *The Geneva Interim Agreement*, also known as the Joint Plan of Action (released on November 24, 2013) which consists of a short-term freeze of portions of Iran's nuclear program in exchange for decreased economic sanctions on Iran and *The Treaty on the Non-Proliferation of Nuclear Weapons* (NPT) (released on July 1, 1968). The aim of this international treaty is to prevent the spread of

nuclear weapons. The target texts were the Persian translations of these two texts released by Islamic Republic of Iran's Ministry of Foreign Affairs (MFA). The analyzed sentences were selected randomly from this corpus. Randomization was used to reduce bias in sampling.

Also, relevant to the analysis was the classification of legal translation according to the functions of the legal texts in the SL into the following categories (Sarcevic, 1997, as cited in Cao, 2007, p. 8-9):

1) primarily prescriptive, e.g. laws, regulations, codes, contracts, treaties and conventions. These are regulatory instruments containing rules of conduct or norms. They are normative texts;

2) primarily descriptive and also prescriptive, e.g. judicial decisions and legal instruments that are used to carry on judicial and administrative proceedings such as actions, pleadings, briefs, appeals, requests, petitions etc.; and

3) purely descriptive, e.g. scholarly works written by legal scholars such as legal opinions, law textbooks, articles etc.

According to the above-mentioned category, the texts chosen for the study - The Geneva Interim Agreement and NPT - fall into the first category. As mentioned, these normative texts create rights and obligations.

Procedure

Toury's (1995) proposed methodology for descriptive translation studies (DTS) was employed to conduct a parallel analysis of the source texts and the target texts. This three-phase methodology which includes a description of the product and the wider role of the sociocultural system (Munday, 2016), is as follows (Toury's, 1995, p. 36-39):

1) Situate the text within the target culture system, looking at its significance or acceptability.

2) Undertake a textual analysis of the ST and the TT in order to identify relationships between corresponding segments in the two texts. This leads to the identification of translation shifts, both 'obligatory' and 'non-obligatory'.

3) Attempt generalizations about the patterns identified in the two texts, which helps to reconstruct the process of translation for this ST-TT pair.

According to Toury (1995), the occurrence of shifts is a universal of translation, as translation is a kind of activity which inevitably involves at least two languages and two cultural traditions. Generally, there are two kinds of shifts: a) obligatory shifts, which are the result of the difference between grammatical structures of source and target languages, and b) non-obligatory shifts, which are motivated by literary, stylistic, ideological or cultural considerations (Toury, 1995).

The main problem areas were highlighted and the decision-making process was explained according to the factors that prompted the shifts, the way the shifts occurred, and the effects of such shifts on translation. The obligatory and non-obligatory shifts in two translated texts were also examined. Based on the findings of shift analysis, the researchers attempted to reconstruct the probable norms that govern translation behavior. In so doing, a parallel analysis was carried out between the source texts and the target texts released by the MFA.

Data Analysis

The data for this study were analyzed using the above-mentioned framework proposed by Toury (1995). This approach allowed us to categorize any type of obligatory and non-obligatory shifts, and to analyze some selected sentences in detail. First, two examples of obligatory shifts (structural shifts), and then two examples of non-obligatory shifts (stylistic shifts) are provided (see Appendix for additional examples).

Obligatory Shifts

Halliday (1970) states that language gives structure to experience and helps us to determine our way of looking at things. However, the structure is not universal; each language follows a certain structure, and that given structure governs the way people see and express the world (Halliday, 1970). In an attempt to translate from one language into another, translators have to bear in mind what that given structure implies in the source language (SL) and the target language (TL). The grammatical structure of languages differs, and translators are obliged to apply shifts to overcome this obstacle in the translation process.

Two examples of structural shifts which were investigated are as follows:

Example 1:

Source Text (ST): Believing that the proliferation of nuclear weapons would seriously enhance the danger of nuclear war...

Target Text (TT):

با اعتقاد به این که گسترش تسلیحات هسته ای، خطر جنگ هسته ای را به طور جدی افزایش خواهد داد...

Back Translation (BT):

Believing that the proliferation of nuclear weapons will seriously enhance the danger of nuclear war...

According to Swan (1995), the modal verb ‘would’ is used as the softer and less definite form of ‘will’. However, the structure ‘would + verb’ does not exist in the target language. Therefore, the simple future (will + verb) has been used by the translator in translating this structure. This obligatory shift is due to the lack of source language structure in the target language and results in an acceptable translation in the target language.

Example 2:

ST: Iran reaffirms that under no circumstances will ever seek or develop any nuclear weapons.

TT:

ایران اعلام می‌نماید تحت هیچ شرایطی به دنبال دستیابی یا گسترش سلاح هسته‌ای نیست.

BT:

Iran affirms that under no circumstances will seek or develop nuclear weapons.

In example 2, since ‘reaffirm’ has no exact equivalent in Persian, the translator has translated it as ‘affirm’. The result of such an obligatory shift, which is due to the absence of equivalence, is a translation subject to the target norms. According to Cao (2007), lack of equivalence across different languages is a basic linguistic difficulty in legal translation.

Non-Obligatory Shifts

Non-obligatory shifts are usually initiated by literary, cultural or ideological considerations. They occur everywhere and tend to constitute the majority of shifts in any single act of human translation (Toury, 1995).

Shifts Caused by Ideological Manipulation

As it was already mentioned, translator’s ideology or similarly translator’s ‘habitus’ may affect translation. The degree of ideological manipulation would be different due to different factors. Regarding legal translation, the sensitivity of legal texts demands the absence of ideological manipulation on the part of legal translators. In the present study, as it was expected, no cases of ideological shifts were observed.

Shifts Motivated by Cultural Differences

No cases of shifts motivated by cultural differences were found in the analyzed data. This might partly be attributed to the culture-independent nature of international legal treaties or conventions. Such texts are written to address no specific culture. They, generally, refer to specific measures which should not/be taken by countries, clear statements of the points of agreement or disagreement between them, etc. Therefore, the nature of these texts could make such shift types out of the question in their translation.

Shifts Prompted by Stylistic Differences

Stylistic shifts are common because translators develop certain styles during their profession or they are affected by the translation schools where they graduate, etc. Two examples of stylistic shifts have been provided in the following section (example 3 and 4):

Example 3:

ST: There would be additional steps in between the initial measures and the final step, including, among other things, addressing the UN Security Council resolutions, with a view toward bringing to a satisfactory conclusion the UN Security Council's consideration of this matter.

TT:

در فاصله میان گام‌های اولیه و گام آخر، گام‌های دیگری از جمله پرداختن به قطعنامه‌های شورای امنیت با هدف پایان رضایت بخش بررسی موضوع توسط شورای امنیت سازمان ملل متحد وجود خواهد داشت.

BT:

Between the initial steps and the final step, there would be additional steps, including addressing the UN Security Council resolutions, intending to bring a satisfactory conclusion for the UN Security Council's consideration of this matter.

The word 'step' has been used twice in the ST, while it has been used three times in the translation; 'measure' has been translated as 'step' as well. It does not mean that the TT lacks equivalence for the word 'measure', however, this shift emanates from stylistic preferences; the translator has not translated 'among other things' as well. It seems that this stylistic preference aims at creating an acceptable translation in the target language.

Example 4:

ST: the first step would be time-bound, with a duration of 6 months, and renewed by mutual consent, during which all parties will work to maintain a constructive atmosphere for negotiations in good faith.

TT:

گام اول دارای دوره زمانی شش ماهه خواهد بود و با توافق متقابل قابل تمدید می‌باشد. در این دوره همه اعضا، با حسن نیت، در جهت حفظ فضای سازنده در مذاکرات، فعالیت خواهند کرد.

BT:

The first step would be time-bound, with a duration of 6 months, and renewed by mutual consent. During this period, all parties will cooperate to maintain a constructive atmosphere for negotiations in good faith.

As it can be seen in example 4, the ST sentence (the first step would be time-bound, with a duration of 6 months, and renewed by mutual consent, during which all parties will work to maintain a constructive atmosphere for

negotiations in good faith.) has been split into two sentences in the TT; the result is a translation which is subject to the target norms.

Discussion

Translation is a complex process which may be affected by various factors. Among these factors, socio-cultural and ideological ones are highly determining. The aim of the present study was to describe the translation tendency of translators on the basis of Toury's norm theory. To this end, two English legal texts and their Persian translations were analyzed. The results indicate that ideological and cultural shifts do not exist in the translations and only structural shifts (obligatory shifts) and stylistic shifts (a subcategory of non-obligatory shifts) were observed.

Regarding obligatory shifts, two examples were analyzed. In both examples, the translators adopted the TL structure to transfer the content of the source text. This shift is due to linguistic differences across the SL and TL. As Cao (2007) notes, formal and impersonal written style coupled with considerable long and complex sentence structures could be the sources of difficulty in legal translation. This difficulty could, in turn, lead to obligatory shifts which help overcome such obstacles in the process of translation.

As for non-obligatory shifts which were prompted by stylistic differences between languages, two examples were also analyzed. In both examples, the stylistic preferences of the translators resulted in a different target text compared to the source one. It was further observed that, in all examples, the application of the shifts did not affect the source texts' precision.

Regarding adequacy and acceptability, based on a view of translation as part of a complex and dynamic cultural and social system, translation is a norm-governed activity (Toury, 1995). The norms determine the very textual make-up of the product and govern the process of translating. Although they are regarded as independent products of the target culture and system, translators are under various constraints which make them move between the two constraints of adequacy and acceptability; as a result, the translated text, according to Toury (1995), is never totally adequate or totally acceptable. The final product is a combination of acceptability and adequacy. Under different circumstances, inclination toward one extreme may be more than the other. The translator concurrently is concerned with accuracy or adequacy on the one hand, and fluency or acceptability, on the other. Therefore, complete equivalent or adequate translation might be impossible due to language constraints. Complete acceptability is impossible as well. Factors imposed upon translators, such as text type, translation brief, the status of the source and target language, the status of the source and target society, culture, ideology, etc., could force the translators toward the varying degrees of acceptability and adequacy. In the same vein, Bassnett and Lefevere (1998, as cited in Cao, 2007, p. 33) also assert that translation always occurs in a continuum and various textual and extratextual constraints are imposed upon the translator. The translator opts for the specific degree of equivalence s/he realistically hopes to achieve in a

specific text (Bassnett & Lefevere, 1998, as cited in Cao, 2007, p. 33). Hence, “translating legal texts is a relative affair” (Cao, 2007, p. 33).

As it was observed in the present study, in the case of translation of the analyzed legal texts, the factor of text type, and the importance of precision and accuracy forced translators to give almost equal weight regarding these two extremes. However, as it was demonstrated, a slight inclination toward acceptability was observed in the analyzed data. This finding could be in line with Sagger (1993) who believes that the translation of a legal text seeks to achieve identity of meaning between the source and the target text, i.e. identity of propositional content as well as identity of legal effects. Thus, strict literal translation, which is an attempt “to reconstruct the form and substance of the source text as closely as possible”, is no longer ‘the golden rule’ for a legal translator (Sarcevic, 1997, p. 127). “[T]he translator must be able to understand not only what the words and sentence mean, but also what legal effect it is supposed to have and how to achieve that legal effect in other language” (Schroth, 2010, p. 71). In addition, legal translation for a normative purpose requires the production of equally authentic legal texts (Cao, 2007). Such translations which need to have equal legal force in different languages (Cao, 2007) are the law itself, not mere translations of law (Sarcevic, 1997, as cited in Cao, 2007, p. 10). The very requirement justifies the observed inclination toward acceptability in translations in the analyzed data.

Conclusion

In the present study, the researchers examined the application of various shift types in the translation of two legal texts from English into Persian, in order to study the degree to which socio-cultural and ideological factors may affect such translations. The objective was to provide some implications for legal translation training. It was found that ideological and cultural shifts did not exist in the translations, and only structural and stylistic shifts were observed. As it was mentioned, legal texts are highly sensitive and need the utmost precision or accuracy in their translation. These requirements make other shift types out of the question in legal translation. Therefore, ideological and cultural shifts are almost prohibited in translating such texts; the thing which remains is structural or stylistic shifts. Therefore, it may be suggested that, in legal translation training, attention should be devoted to such shifts. Translators should bear in mind that the sensitivity of the legal domain does not allow to include their socio-cultural and ideological inclinations in translation. Legal translators must always be as accurate as possible in their translations. It is important for them to understand “the status and communicative purposes of both the original text and the translation” too (Cao, 2007, p.12). Translation trainees should become well aware of such matters from the very beginning and these points should be carefully taken into account in legal translation training.

As for the limitations of this study, it should be mentioned that the sample was too small to make safe conclusions. Increasing the sample size would lead to more reliable outcomes. The outcomes would also be more dependable if the researchers could include more legal texts and their translations. This, in turn, would increase the sample size too. Future studies are thus suggested to be carried out to investigate more legal treaties or conventions.

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Appendix

Example 1.

ST: Nothing in this Treaty shall be interpreted as affecting the inalienable right of all the Parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes without discrimination and in conformity with Articles I and II of this Treaty.

TT:

هیچ نکته‌ای در این پیمان نباید به گونه‌ای تفسیر شود که حق مسلم همپیمانان در انجام تحقیقات، تولید و استفاده از انرژی هسته‌ای برای مقاصد صلح آمیز را تحت تأثیر قرار دهد. این امر باید بدون اعمال تبعیض و در مطابقت با مواد 1 و 2 این پیمان باشد.

The ST sentence has been split into two sentences in the TT which is regarded as a stylistic shift.

Example 2.

ST: For States whose instruments of ratification or accession are deposited subsequent to the entry into force of this Treaty, it shall enter into force on the date of the deposit of their instruments of ratification or accession.

TT:

در خصوص دولت هایی که اسناد تصویب و الحاق آنها به پیمان، پس از اجرایی شدن این پیمان، تسلیم می‌شود، تاریخ اجرای آن از تاریخ تسلیم اسناد تصویب و الحاق خواهد بود.

Since the structure 'shall+ verb' does not exist in the target language, the simple future (will + verb) has been used by the translator which is an example of a structural shift.

Example 3.

ST: Iran would undertake the following voluntary measures:

TT:

ایران اقدامات داوطلبانه زیر را به انجام خواهد رساند:

Since the structure 'would + verb' does not exist in the target language, the simple future (will + verb) has been used by the translator which is an example of a structural shift.

Example 4.

ST: Iran announces that it will not enrich uranium over 5% for the duration of the 6 months.

TT:

ایران اعلام میکند که برای این دوره 6 ماهه، اورانیوم را به سطح بالاتر از 5 درصد غنی سازی نکند.

The simple future has been translated into the simple present. It does not mean that the target

language lacks such a structure, but it indicates the stylistic preferences of the translator.