

# Issues in Legal Translation: Challenges and Suggestions

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**Abstract:** *Based on the common view that translation, even in the age of Machine Translation, remains as complex and intricate as different human language systems are, this article sets out to pinpoint the main issues and difficulties translators may encounter while carrying out legal translation. In addition to having to deal with linguistic, lexical, structural, and cultural instances of non-equivalence across languages, translators specialized in legal texts have also the burden of dealing with different legal systems. This means that legal translators have to deal with how the target language would “receive” the legal text without distorting its legal interpretation, its system-bound terminology, and its effect. Against that background, the article attempts to explore the different techniques that can be adopted to overcome these difficulties in the area of legal translation.*

**Keywords:** Legal translation, Machine Translation, non-equivalence, legal systems, terminology, source language, target language

## 1. Introduction

Translation has been aptly described as “an imperfect process in an imperfect world” (Hale and Gibbons). This contention, while one might qualify it as mere overstatement at first glimpse, is to a large extent true. Leading translation scholarship today tend to describe translation as communication; a one-to-one operation which brings together culture and language. More often than not, where intersection between the cultural and the linguistic occurs, particularly in multilingual settings, it is miscommunication rather than communication that prevails. Looking at translation from this perspective, it can be argued that if different cultures, through the medium of language, segment semantic space in different ways, translation becomes more of a circumlocutory process than an actual provision of full equivalence.

In the context of legal translation, this situation becomes all the more acute. Given that the quality of legal practice and documentation, within the confines of the same language and the same legal system, depends largely on word selection and sentence structure. By extension, it may as well be established that the trouble will only compound in the cross-border context, where a translator is confronted with the rendering of the text, not only from one language to the other, but also from one legal system to another.

Against this background, this article attempts to provide, first, a brief overview of the factors behind the increasing demand for legal translation, second a description of the requirements of such practice; third, an account of the difficulties that accrue from the existence of different legal systems; and finally, an examination of some of the practices and techniques that leading translation theoreticians have suggested to render the task of legal translation more accurate.

### The need for legal translation

Each legal system is set within specific economic and political frameworks, which have come as a result of the specific histories and habits of a certain group. In fact, taking into account some of the most widely used definitions

of ‘culture’, it would not appear far-fetched to assert that there are probably as many legal systems as there are cultures, and subcultures even for that matter. This becomes more evident when one considers some of the most comprehensive and widely used definitions of culture; Malinowski (1979: 36), for instance, defines culture as “the integral whole consisting of implements and consumers’ goods, of constitutional charters for the various social groupings, of human ideas and crafts, beliefs and customs”. For this author, human impulses and needs are coped with through the creation of artefacts, or cultural products like art, literature, cuisine, architecture, sports, folklore, etc., and also through organization into cooperative groups, in addition to the development of knowledge, of normative, economic, political and educational systems, and of a moral and legal code. Legal systems, therefore, which in essence are historical and cultural products, have developed different conventions, articulated different concepts and therefore formulated different terms. The effect of globalization, however, has been to stretch these legal systems beyond their national borders. As the need for political and economic integration increased (e.g. international business transactions), the integration between legal systems proved unavoidable; this, as a matter of course, could only be done through legal translation. A comparative lawyer (i.e. a lawyer in international practice), for example, may need a legal translator to transfer a legal document, drafted in the country’s national language, into a foreign language or vice versa.

### The requirements of legal translation

Given the complex nature of translation as an intricate task in its own right and the equally complex nature of legal industry, cross-linguistic legal translation is subject to demanding requirements. In fact, the nature of the enterprise, legal translation that is, entails not only knowledge of the legal terminology associated with the source and target languages, but also, and to an equal degree, specialist knowledge of the two legal systems involved. Indeed, unlike other types of translation, rather than having basic knowledge of the concepts relevant to the field, in the case of legal translation the translator should be a specialist in a particular legal area (e.g. insurance law,

civil law, property law, international law, corporate law, etc.).

He, moreover, should be as accurate as possible when dealing with the meanings of legal concepts and the terms referring to them. The translator should be in this sense most alert to formal properties of the text (the use of lexis and word order in particular) and must pay special attention to detail. In fact, a slight paraphrase may cause change in the legal meaning of the concept in question or even of the overall legal meaning of the text. Accuracy is a standard requirement in all technical translations, but in the case of legal translation, the demand for accuracy is higher because such translation often involves high - stake consequences. Two other requirements, often emphasized by translation scholars, are confidentiality and timeliness. Confidentiality issues are foremost in the minds of the legal agents involved; so much so, in fact, that the legal translator is often required to sign a non - disclosure agreement. As to punctuality, even under the tightest delivery schedules, interested legal actors are most stringent as regards delivery deadlines since most legal documents become useless after certain dates. Other than accuracy, confidentiality and punctuality issues, the translator is also required to have an in - depth understanding of the sociological subtleties of the local cultures. These requirements provide evidence that legal translation is far from being mechanical or literal. In the process of translating, the practitioner is confronted with a number of problems, primarily relating to legal terminology.

#### **Problem areas in legal translation**

Problems of linguistic equivalence in legal translation are ones of keen current interest for translation researchers and theoreticians. The difficulty of legal translation lies in fact in the system - bound nature of the terminology. Relevant to this idea is Šarčević's 2000: 13) contention that "the main challenge of the legal translator is the incongruence of legal systems". This means that the degree of translatability of a particular legal text is largely contingent on the degree of relatedness of the legal systems concerned rather than on the languages involved. When rendering a legal document into a foreign language, we are not involved in transferring the text from one language to another, but rather in the translation of the legal text from the legal terminology of one system into the legal language of another different legal system. Gerard - René de Groot (1999) argues, in this respect, that one should not translate from the legal terminology into the ordinary words of the target language, but rather, into the legal terminology of the target language. This happens to be the case because each country has its own legal terminology or legal language, which is based on the particular legal system of the country. And of course, such legal terminology is often different from the legal terminology of another country even when the two countries use the same target language. This means that one target language may be used as the language of the law in several legal systems, which are rarely if ever identical from one country to another. Given this, the content of the legal terminology used in the source language legal system should be represented by the terminology of the target language legal system (de Groot, 2006: 423). Therefore, de Groot (2006: 423) adds that "the choice of a particular target language legal system should depend on the potential users of the translation". One such

choice - that is the choice of the particular target language legal system the translator will use - the translator should study, with scrutiny, the meanings in the source language legal system of the legal terminology to be translated, with a view to finding terms in the target language legal system, wherein is contained the same information, that is terms with the same content. It is the complex nature of this enterprise, de Groot (2006: 424) explains, that makes the study of comparative law a must for every legal translator.

Hence, one major task for the legal translator is to find terms in the target language legal system that correspond in meaning to the terms used in the source language legal system. Very common are cases where one term has no comparable counterpart in the target language legal system (Cappelas - Espuny, 1998), or where a particular term exists in the source as well as in the target legal system, but refers to two different concepts (Kischel). These are called deceptive cognates, terms that appear similar, but which do not cover the same concept in both legal systems. These terms are only seemingly shared between the two legal systems since they have non - shared meanings in related languages or in the dialects of the same language (e. g., German versus Austrian dialects of German, and British English versus American) (Kischel, cited in Olsen, Lorz and Stein, 2009: 162)

Attempts at full equivalence are often doomed to failure where the source and target languages relate to different legal systems (Sandrini, 1994: 109). Where, on the other hand, the source and the target languages relate to the same legal system, as is the case when translating within a multilingual or bilingual legal system (e. g. Finland, Switzerland, Belgium, etc.) De Groot (2006: 424) notes that, when the target and source languages relate to different legal systems, cases of near full - equivalence are possible:

if (a) there is a partial unification of legal areas, relevant to the translation, of the legal systems related to the source language and the target language; and (b) in the past, a concept of the one legal system has been adopted by the other and still functions in that system in the same way, not influenced by the remainder of that legal system.

Apart from these cases, equivalence may also be achieved if a particular term has been embedded in a legal system as a whole (de Groot, 2006: 424).

Achieving equivalence may appear to be the most salient problem at issue when it comes to legal translation. However, the difficulty of this practice extends, in fact, beyond the absence of equivalents or the existence of misleading cognates. Traditionally, translators have used loan words, explanations, adaptations, and footnotes in a bid to 'rectify' the discrepancies existing between legal systems as well as to compensate for the dearth of adequate lexis (Stern, 2010: 163). However, these translation techniques have often resulted in poor translation versions in the target language. Stern (op. cit.) notes by way of example bilingual Canada, where two legal traditions (common law and civil law) exist. In this country, the author argues, the translation approach to legal texts has been one of 'literalism', or even

as Louis Beaudoin put it, of 'servility'. So, rather than an analytical approach, these translations were mechanical. Stern further maintains that:

Parliamentary bills used to abound in literal translations, unidiomatic usage, calques, anglicisms in French to denote common law terms, and gallicisms in English to denote civil law terms: *acte* instead of *loi*, *evidence* instead of *preuve*, and *offense* instead of *infraction* (163 - 164). EU translations include unsatisfactory cognates (eg., *reasonable steps* and *reasonable measures* translated into French as *raisonnable*, or *acteurs sociaux*, *acteurs politiques* translated by a cognate into English) and calques based on a superficial relationship between words"

Of special interest is the commonness of Anglicisms (i. e. words borrowed from English into another language) in Canada as a result of the influence of English as *a lingua franca*. In the case of anglicisms, one should, of course, distinguish between well - established and recognised English borrowings and those 'borrowings' that are considered incorrect. Anglicisms exist for English words as they do for English phrases. One example of the latter is the phrase "Sincèrement vôtre", which is a direct translation of the English phrase used for valediction "Sincerely yours". Also interesting are Calque words, which Chambers (1981) defines as "literal translation into another language (of a complex expression or a word used figuratively). For instance, "*marriage of convenience*" is calqued on the French "*mariage de convenance*". It should be noted however that Calques are among the seven *procédés techniques de la traduction* as described by Vinay and Darbelnet. It is often used as a method that helps solve problems of equivalence. On the other hand, there are instances of calques that are very heavy on the ear, or "painful", in the words of Vinay and Darbelnet (1958), as in *thérapie occupationnelle* (occupational therapy). The same in fact can be said of interlingual cognates, which are not always false friends, but may as well be real friends.

Poor versions of the translated text may also be the result of stylistic issues. Different legal cultures have developed different communicative styles and discourse rules. When translating, the adaptation of one's legal style of communication (be it spoken or written) to that of the target language legal culture would often lead to the creation of less articulate, and less effective translations. Referring to the same idea, Stern (2010: 162) argues that communicative styles in the European tradition are more 'objective' when compared to the American, "having a different length and structure of judgments." These styles, the author adds, are characterized with a more 'scientific' type of argumentation, unlike the American communicative style, which she qualified as more 'practical' than 'objective'. As a result, European lawyers who are required to produce documents in English tend to do so to their own disadvantage as they are, in the author's words, "unable to express themselves adequately and professionally in the non - native language" (Stern, 2010: 162).

The quest for equivalence is obviously well - founded. It is equivalence that gives the target legal text equal meaning

and import. This is true of *all* translation, but is especially true of legal translation. Most legal documents should have an equal status; they should not appear as translations of one original legal text or another, but should equally function as authoritative authentic legal texts, having the same effect that the source text has on the reader.

The problem of equivalence is not at issue when the source language legal term corresponds 'in essence' to the target language legal term (de Groot, 2006: 424). When such is not the case, de Groot (op. cit.) suggests, the translator should evaluate the context and purpose of translation. The author moreover explains "these are the factors that determine whether the differences between source term and target term are of such relevance that the possible target term may not be used as a translation of the source term". In certain contexts, certain equivalents are adequate, where in others they are not. De Groot (op. cit.) adds that it is also relevant to take into account whether the translated text is meant to give a summary of the contents of the source language text to a readership which does not master the source language, or whether on the other hand the translation will have the status of authentic text. These are the factors on which acceptable equivalence is contingent.

One method of translation that is often noted by translation scholars is that of functional equivalence. Referring to this concept, Weston (1990: 21) maintains that "the first method is that of functional equivalence: using a term or expression in the target language which embodies the nearest situationally equivalent concept." Šarčević also (1988: 964) defines the legal functional equivalent as a term in the target legal system referring to a concept or institution, and whose function is the same as that in the source legal system. Most translation scholars would agree that finding a functional equivalent is the ideal method of translation (Weston 1991: 23).

Nida (2001) however adds that one should speak of degrees of functional equivalence given that no translation is ever fully equivalent. The types of equivalence range from near - functional equivalence, partial equivalence to non - equivalence. Cases of full equivalence are rare and occur only when the legal systems are to a large extent identical.

Legal translation is by far the most complex of *all* translation as there are many variables to contend with when translating. However, successful translators are those able to make sound translating decisions, taking account of all the variables involved, yet remaining cognizant that translation can never be perfect or ideal; it is only an approximation.

## References

- [1] De Groot, Gérard - René. 2006. "Legal Translation". In: Jan M. Smits. *Elgar Encyclopedia of Comparative Law*. Cheltenham: Edward Elgar Publishing, 423 - 433.
- [2] Malinowski, B. (1979). *A Scientific Theory of Culture and Other Essays*. Chapel Hill: The University of North Carolina Press, 36 - 38.
- [3] Nida, E. A. (2001). *Language and Culture: Contexts in Translating*. John Benjamins Publishing Co.

- [4] Šarčević, S. (2000). *New Approach to Legal Translation*. London: Kluwer Law International.
- [5] Stern, L. "Translation Issues in Language and the Law." Rev of Language and the Law, dir. Olsen, F., Lorz, A. and Stein, D. *The International Journal of Speech* 17 January 2010, 161–166. New York: Palgrave Macmillan
- [6] Weston, M. (1991). *An English Reader's Guide to the French Legal System*, New York, Oxford: Berg.