Legal translation

Deborah Cao
Griffith University

Legal translation is a type of specialist or technical translation*, a translational activity that involves language of and related to law and legal process. Legal translation refers to the rendering of legal texts from the Source Language (SL) into the Target Language (TL).

Legal translation can be classified according to different criteria. For instance, legal translation can be categorised into the following classes according to the subject matter of the SL texts: (1) translating domestic statutes and international treaties; (2) translating private legal documents; (3) translating legal scholarly works, and (4) translating case law. Legal translation can also be divided according to the status of the SL texts: (1) translating enforceable law, e.g., statutes; and (2) translating non-enforceable law, e.g., legal scholarly works. As well, legal translation can be classified according to the functions of legal texts in the SL: (1) primarily prescriptive, e.g., laws, regulations, codes, contracts, treaties, and conventions; (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, and articles, the authority of which varies in different legal systems (Sarcevic 1997: 11). Legal translation can also be classified in the light of the purposes of the TL texts: (1) normative purpose, i.e., the production of equally authentic legal texts in bilingual and multilingual jurisdictions of domestic laws and international legal instruments and other laws; (2) informative purpose, e.g., the translation of statutes, court decisions, scholarly works and other types of legal documents if the purpose of the translation is to provide information to the target readers; and (3) general legal or judicial purpose (see Cao 2007). In short, legal translation is used as a generic term to cover both the translation of law and other communications in legal settings.

1. Sources of difficulty in legal translation

It is often said that legal translation is difficult and complex. In essence, the nature of law and legal language contributes to the complexity and difficulty in legal translation. This is compounded by complications arising from crossing two languages and legal systems in translation. Accordingly, sources of legal translation difficulty include the systemic differences in law, linguistic as well as cultural differences. All these are closely related (see Cao 2007).
First of all, legal language is a technical language, but legal language is not a universal technical language but one that is tied to a national legal system (Weisflog 1987: 203), different from the language used in pure science, say mathematics or physics. Law and legal language are system bound, that is, they reflect the history, evolution and culture, and above all, the law of a specific legal system. Law as an abstract concept is universal as it is reflected in written laws and customary norms of conduct in different countries. However, legal systems are peculiar to the societies in which they have been formulated. Each society has different cultural, social and linguistic structures developed separately according to its own conditioning. Legal concepts, legal norms and application of laws differ in each individual society reflecting the differences in that society. Legal translation involves translation from one legal system into another. Unlike pure science, law remains a national phenomenon. Each national law constitutes an independent legal system with its own terminological apparatus, underlying conceptual structure, rules of classification, sources of law, methodological approaches and socio-economic principles (Sarcevic 1997: 13). This has implications for legal translation when communication is channelled across different languages, cultures and legal systems.

Law is culturally and jurisdictionally specific. There are different legal systems or families, such as the Romano-Germanic Law (Continental Civil Law) and the Common Law, the two most influential legal families in the world. As David and Brierley (1985: 19) state, each legal system or family has its own characteristics and “a vocabulary used to express concepts, its rules are arranged into categories, it has techniques for expressing rules and interpreting them, it is linked to a view of the social order itself which determines the way in which the law is applied and shapes the very function of law in that society”. Due to the differences in historical and cultural development, the elements of the source legal system cannot be simply transposed into the target legal system (Sarcevic 1997: 13). Thus, the main challenge to the legal translator is the incongruency of legal systems in the SL and TL. As a result, the systemic differences between different legal families are a major source of difficulty in translation.

In addition, linguistic difficulties also arise in translation from the differences found in the different legal cultures and legal systems. Legal translation is distinguished from other types of technical translation* that convey universal information. In this sense, legal translation is sui generis. Each legal language is the product of a special history and culture. It follows, for example, that the characteristics of la langue de droit in French do not necessarily apply to legal English. Nor do those of the English language of the law necessarily apply to French.

A basic linguistic difficulty in legal translation is the absence of equivalent terminology* across different languages. This requires constant comparison between the legal systems of the SL and TL. In terms of legal style, legal language is a highly specialised language use with its own style. The languages of the Common Law and Civil Law systems are fundamentally different in style. Legal traditions and legal culture have had a lasting impact
on the way law is written. Written legal language thus reflects the essential elements of a legal culture and confronts the legal translator with its multi-faceted implications (Smith 1995: 190–191).

Lastly, cultural differences present another source of difficulty in legal translation. Law is an expression of the culture, and it is expressed through legal language. As pointed out, “[e]ach country has its own legal language representing the social reality of its specific legal order” (Sarcevic 1985: 127). Legal translators must overcome cultural barriers between the SL and TL societies when reproducing a TL version of a law originally written for the SL reader. In this connection, Weston (1983: 207) writes that the most important general characteristic of any legal translation is that an unusually large proportion of the text is culture-specific. The existence of different legal cultures and traditions is a major reason why legal languages are different from one another, and will remain so. It is also a reason why legal language within each national legal order is not and will not be the same as ordinary language.

2. Translating different legal texts

Legal translation involves different legal text types. The common legal text types include private legal documents, domestic legislation, and international legal instruments.

2.1 Translating private legal documents

Private legal documents are those that are drafted and used by lawyers in their daily practice on behalf of their clients. They may include deeds, contracts and other agreements, leases, wills and other legal texts such as statutory declaration, power of attorney, statements of claims or pleadings and other court documents and advice from lawyers to clients. The translation of these documents constitutes the bulk of actual translation work for many legal translation practitioners.

Private legal documents often follow certain established patterns and rules in a particular jurisdiction. Agreements and contracts, which are among the most commonly translated private legal documents from and into English, are often written in similar styles. Such documents, for instance, drafted in English, often contain old or archaic words and expressions reflecting the old drafting style, where one frequently finds words such as ‘aforementioned’, ‘hereinafter’, ‘hereinabove’, ‘hereunder’, ‘said’, ‘such’, etc. Another common usage is word strings, for instance, ‘restriction, restraint, prohibition or intervention’, ‘change, modification or alteration’, ‘document or agreement as amended, annotated, supplemented, varied or replaced’, ‘arrangements, agreements, representations or undertakings’. Some describe these collocations as wordiness or verbosity. Still another common linguistic feature found in private legal documents is that sentences are typically long and complex, and passive structures are often extensively used.
2.2 Translating domestic legislation

Under this category, there are two types of situation where municipal statutes are translated. The first type is found in bilingual and multilingual jurisdictions (see Multilingualism and translation*) where two or more languages are the official legal languages. Examples include Canada, Switzerland, Hong Kong, and South Africa. The second type of translated legislation is found in any monolingual country where its laws are translated into a foreign language or languages for information purpose, for instance, the US and China.

Generally speaking, modern statutes consist of a generic structure and standard form with the following common elements:

- title
- date
- preamble
- the enacting words
- substantive body: the parts, articles and sections
- schedules or forms

One prominent linguistic feature of legislative texts is the illocutionary force. A legislative text as a rule-enacting document is a speech act with illocutionary forces (see Kurzon 1986). This pragmatic feature is a crucial and prominent linguistic aspect of statutes, for both domestic or municipal statutory instruments and multilateral legal instruments. It is universally important as the basic function of law is regulating human behaviour and relations by setting out obligation, permission and prohibition in society. These are expressed in language through the use of words such as ‘may’ for conferring a right, privilege or power, ‘shall’ for imposing an obligation to do an act, and ‘shall not’ or ‘may not’ for imposing an obligation to abstain from doing an act.

2.3 Translating international legal instruments

The translation of legal instruments in international or supranational bodies such as the United Nations (UN) and the European Union (EU) forms a special area of legal translation practice (see Cao 2007). Such translational activities can entail translating multilingual documents such as international instruments of the UN involving several languages, and translating bilateral treaties involving two languages. The translation of such legal documents of international nature as opposed to domestic laws has its own idiosyncrasy as well as sharing the characteristics of translating law in general.

One important principle in the practice of multilingual law is the principle of equal authenticity, that is, all the official language texts of an international treaty, whether translated or not, are equally authentic, having equal legal force. As pointed out, the importance attached to the principle of equal authenticity was intended to confer undisputable authority
on each of the authentic texts, de facto eliminating the inferior status of authoritative translations (Sarcevic 1997: 199). This also carries with it the high level requirements for accuracy on the part of the legal translator.

References


Further reading