

Exploring Sudanese Undergraduates Knowledge in Translating Legal Texts

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Abstract

This study aims at exploring the problems encountered by Sudanese university teachers when translating English legal texts. The researcher adopted a descriptive analytical method to collect the data of the study. A questionnaire was used as a tool for data collection, the sample of the study consists of 50 teachers of English language from different universities in Khartoum State. The data were analyzed by using Statistical Package for Social Science (SPSS). The study came out with results that the majority of Sudanese university teachers EFL face problems in translating legal texts. The researcher presented some recommendations: teachers should employ effective teaching techniques to help students in translating legal texts. Students should give more attention to the translation of legal texts.

Keywords: Translation, problems, various reasons, Legal text, legislation, challenging, contexts

INTRODUCTION

Legal translation is one of the most challenging task in the field of translation. It combines the creativity required in literary translation with precise terminology technical translation. Problems may arise due to various reasons like differences in legal systems followed in the countries where the source and target languages are spoken, explicit

nature of legal language etc. Hence there is need to approach service providers when legal documents are required to be translated. Legal terminology by its very nature is subjects to incongruity. Legal terms have basis in country specific national legislation. The latter is a product of historical experiences and hence carries certain degree of regional asymmetry. The incongruity varies from near conceptual equivalence to complete voids. This poses a great challenge to accurate translation of legal documents. Since many source language(SL) expressions may not have precise equivalents in target language(TL) and literal translations may not make sense, sometimes the original expression is reproduced after paraphrasing it. Consequently, the basis issue to be dealt with as far as this part of the thesis is concerned is that students of English Language(EL) and translation in Sudanese universities face problems in rendering Arabic Legal Text into English. The problem with translation is that there are more practitioners of the discipline who picked it up thorough sheer practice without prior thorough training in the linguistics and more particularly the theory of translations. In the present research, the researcher seeks to provide a clear look at the legal translation both in English and Arabic with aim of exploring the possibilities of translating them from English into Arabic and vice versa. So many areas in English and Arabic need to be examined for the purpose of furnishing English Languages Departments(ELD) at Sudanese universities with a sensible translation syllabus. 'Specialized translation can be divided into two categories: technical and institutional translation. Technical translation is non-cultural and therefore universal; therefore the terminology is not culture dependent; it is mostly known internationally. Institutional translation, which includes legal translation, is culture dependent; making it typical for particular culture'(Newmark,1988,p.151). Legal translation is a specialized, culture dependent translation and it is the legal translators' task to stay faithful to the intent, tone and the formal of the original, source legal document, yet make the text clear and understandable to the audience, without taking any creative liberty, which is considered unacceptable at all in the formal constrains of legal language. As an English teachers who has been teaching English in various universities across Khartoum State. The researcher noticed that it is Sudanese undergraduates faced huge challenge in using and understanding English legal test, they also

faced problems in identifying different types of legal text. Moreover, the misunderstanding of legal text affects the cohesion of a written text. This paper contributes to the existing literature in the field of teaching translation. Teachers will have a better understanding of their students' problems in translating English legal texts and examine their own teaching methods and materials accordingly. Learners can identify their problems and be aware of the factors that contribute to their difficulties and can apply the right strategies and techniques of translation. The study shall also form a point of departure for syllabus designers and educators in the field of their specializations. To fully evaluate this, the present paper focuses on exploring Sudanese undergraduates' problem in translating English legal text. The paper attempts to answer the following research questions:

1. To what extent do undergraduate students face problems in translating and understanding English legal text?
2. To what extent can the misunderstanding of the legal texts affects the cohesion of a written text?

What is Translation

Nida states that translation consists of reproducing in the receptor language the closest natural equivalence of the source language message, first in terms of meaning and secondly in terms of style. Newmark in Rudi Hartono states that translation is rendering the meaning of a text into another language in the way that the author intended the text. From the definitions above the translation has the same term "equivalence". The meaning, context, though, or message of both source of reproducing in the receptor language, the closest natural are equivalent to the message of source language. The first is meaning and secondly is style. The meaning of source language must equivalent. The reader of translation who knows the target language only will be confused if the target language is influenced by the source language. Translation is the communication of the meaning of a source- language text (SLT) by means of an equivalent target-language text(TLT). The English language draws a terminological distinction(not all languages do) between translating (a written text) and interpreting(oral or sign-language communication between users of different languages); under this distinction, translation can begin only after the appearance of writing within a language community. A

translator always risks inadvertently (دون قصد) introducing source-language words, grammar, or syntax into the target-language rendering. On the other hand, such “spill-overs” have sometimes imported useful source-language calques and loanwords that have enriched target languages. Translators including early translators of sacred texts, have helped shape the very languages into which they have translated.

Types of Legal Translation

A professional translating a legal document must be knowledgeable about its legal background and terminology specific to the referred field of law. The typical kinds of legal translations are the following:

- Personal identity, individual record and social status papers that legally establish the education or work or identity of an individual. These documents include references or work testimonials, police reports, educational certificates or diplomas, birth certificates, divorce decrees and others.
- Court documents that detail trials or penal proceedings, the translation of which is often requested for international judicial assistance cases. Translators must be able to distinguish between the systems of civil and criminal proceedings as these are not the same despite the terminologies being similar.
- Trade contracts approved by foreign courts; these are necessary for the selling of goods or the granting of a trade license. A company looking to do business in a foreign country must have its Shareholder Books or Articles of incorporation translated on top of its commercial registration documents.
- International treaties (المعاهدات الدولية) that apply the rule of international law, rules and regulations in the signatory countries (الأقطار الموقعة). Because the original language document must have the same legal effect as its official translation in a second language, legal translators here must make sure the text in the target language accurately and transparently conveys the same legal effects in practice.

Legal translations can be difficult to undertake but translators play a critical role in all civilized societies. Because the law affects every area of our lives, from accepting a company’s terms and conditions

when downloading software onto your computer or smart phone to withdrawing money from a cash machine, translated legal terms defining what a government or company or individual can or cannot do has gross implications for modern human society. Because all law shapes the very underlying structure of our societies, the legal translator must have a strong understanding of relevant legal concepts, terms and systems when accepting an important legal document to translate. Notwithstanding, a legal translation can be very difficult, a fact I hope to have properly explored in this (article *مقالة*).

LEGAL TEXTS

The research aims at identifying some of the problems that Arabic translators face in translating legal texts and, as far as possible, suggesting viable solutions. Legal language was originally oral; any writings served only as a report of the oral ceremony (Tiersma, 1999, p. 36). Although the translation of legal texts is among the oldest and most significant and the most immensely produced all over the world, legal translation has long been neglected in both legal and translation studies (Sarcevic, 2000, p. 1).

The legal translator plays a major role in the process of communication within diverse legal systems. "Translation of legal texts leads to legal effects and may even induce peace or prompt a war" (Sarcevic, 2000, p.1). Legal texts are formulated in a special language that is subject to particular syntactic, semantic and pragmatic constraints. Furthermore, legal language is system bound, and hence is perceived of as a product of a specific history and culture. The language of law mainly involves "parole" rather than "langue". Recognizing that "parole" is inseparable from "judicial acts", the language of law can be described as a "language of action". Sarcevic (2000) states that "the primary role of language in normative legal texts is to prescribe legal actions, the performance of which is intended to achieve a specific goal" (p. 133). Similarly, Beaugrande and Dressler also regard a legal text as "a communicative occurrence produced at a given time and place and intended to serve a specific function. It is the function of legal texts that makes them special: they are instruments of law" (1981, p. 3). The written legal text is, above all, intended to be read, and understood perhaps only after several rereading.

Crystal and Davy express this idea as follows:

It is essentially visual language, meant to be scrutinized in silence: it is, in fact, largely unspeakable at first sight, and anyone who tries to produce a spoken version is likely to have to go through a process of repeated and careful scanning in order to sort out the grammatical relationships which give the necessary clues to adequate phrasing (1969, p. 194).

Tiersma (1999: 139) classifies legal texts into three classes according to function: operative documents, expository documents and persuasive documents. Operative documents have a performative function, in other words, the function of performing an act by the very fact of being uttered.

Examples given are pleadings, petitions, orders and statutes, and private legal documents such as wills and contracts. Due to the nature of performative functions, operative documents have a rigid structure as well as formulaic language, and are therefore difficult for lay people to understand. On the other hand, expository documents such as office memoranda and persuasive documents like briefs to court are not as formulaic as operative documents, and have a less rigid structure.

Degree of Difficulty in legal texts

The difficulty in translating a legal text depends on the two legal systems referred to by the source and target language and the nature of the target and source languages themselves. Legal translations are in some ways more complex than other types of translations, although the translator's specialty should fit the project being translated. Translating children's books or movies, for example, require a different skill set from legal translations.

For example, the difficulty of a legal translation may refer to:

- Two legal systems communicated in legal languages that are similar- this may result in an easy translation.
- Two similar legal systems communicated in two legal languages that are different, which may result in a not-too-difficult translation.
- Two completely different legal systems with two legal languages that are closely related. Such a project would be of considerable difficulty for the translator.

- Two distinctly unrelated legal languages and systems. This paring of two cultures and languages is the hardest for a legal translator.
- In other words, the level of difficulty in a legal translation depends completely on the affinity level between the relevant legal systems and source and target languages.

Contrastive Study Between English and Arabic

Stren(1983) insisted that the aim of contrastive analysis is not to present a method of teaching. He showed that it came on purpose of describing across two which can be useful in solving learning problems.

Qualities to Look for in a Legal Translator

Because legal translation is one of the most difficult and complex translation projects to undertake, it is vital that the translator has the following skills:

- Be fully acquainted with the legal writing style of the target language.
- Be knowledgeable of the legal systems of the two countries of the source and target languages.
- Be able to research the legal concept of a term in the source language when the equivalent term in the target language is not obvious.
- Be acquainted with the original document's terminology.
- Be capable of, first decoding the source language text when it is difficult to find an exact translation of a segment of the document, and second, convey the original meaning of the text segment in the target language as much as possible.
- Be fully cognizant of the purpose and intended use of the translated document. This influences both the translation and the translator's approach to it. The translation's terminology, tone, phraseology, syntax and other aspects of the translation depend on the purpose of the translation.
- Be detail-oriented and faithful to the meaning and length of the document to be translated. In legal discourse, details are important and should be properly conveyed in the translation. Translators should not consider cutting text or

shortening the number of words that may come across as redundant, as length and repetition are stylistic features of the original legal text and serve a vital purpose.

REVIEW OF PREVIOUS STUDIES

This part reviews some previous studies similar or related to the present one. It deals with studies carried out both in the Sudanese contexts and outside Sudan so that a global picture of the problem under investigation could be provided. So that translating legal documents is regarded by many researchers as one of the most arduous endeavors; research on legal translation between English and Arabic is predominantly restricted to purely semantic or syntactic issues. For instance, AbuGhazal (1996) outlined a number of syntactic and semantic problems in legal translation from English into Arabic, by analyzing graduate students translations. He primarily aimed at detecting the linguistic and translation problems facing translators in general.

Bentham (1782) developed a radically empiricist theory of the meaning of words, which supported his utilitarianism and his legal theory. He wanted to abandon what he considered to be a nonsensical mythology of natural rights and duties. Linguistic acts struck him as respectable empirical phenomena, and he made them an essential element of his theory of law. He based his "legal positivism" on his claims about the meaning and use of words. Language had not been especially important to the natural law theorists whose views Bentham despised, so philosophy of language has no special role in explaining the nature of law. Bentham (1782), by contrast, needed the "sensible" phenomenon of a perceptible, intelligible linguistic act for his purpose of expounding the nature of law by reference to empirical phenomena.

In 1994, Hart's book "The Concept of Law" raised issues that have occupied legal philosophers ever since and at the same time; he borrowed J.L. Austin's method of "using a sharpened awareness of words to sharpen our perception of the phenomena" (Hart, 1994, p. 14). That method sets the background for the two problems: "Language and the normativity of law", and "The Semantic Sting". Hart's observations about the use of language in law were the basis of an innovative approach to the challenge of explaining the normativity

of law, a problem for legal theory that can be clearly seen, Hart claimed, in the faulty explanation of normative language that had captivated Bentham.

Ronald Dworkin (1968), has opposed Hart's theory of law on the basis that his whole approach to legal philosophy is undermined or "stung" by his approach to words, that he wrongly thought "that lawyers all follow certain linguistic criteria for judging propositions of law" (Dworkin, 1986, p. 45). That is Dworkin's "semantic sting" argument, an argument in the philosophy of language that has set an agenda for much recent debate in philosophy of law.

Mellinkoff (1963) was concerned with what the language of law is and investigated the history of legal language, and brought the language of law down into practice.

In their book, Crystal and Davy (1969) devoted one chapter to the language of legal documents, supported with examples taken from an insurance policy and a purchase agreement. They wrote that "of all the uses of language, it [legal language] is perhaps the least communicative, in that it is designed not so much to enlighten language-users at large as to allow one expert to register information for scrutiny by another" (p. 112).

A legal text for them exhibits a high degree of linguistic conservation, included in written instruction such as court judgments, police reports, constitutions, charters, treaties, protocols and regulation (p. 205). They described legal texts as formulaic, predictable and almost mathematic.

Newmark (1982) is another theorist of general translation to comment on legal translation. He noted a difference in the translation of legal documents for information purposes and those which are "concurrently valid in the TL [target language] community." Concerning "foreign laws, wills, and conveyancing" translated for information purpose only, Newmark suggested that literal or semantic translation, in his own term, is necessary. On the other hand, he stressed that "the formal register of the TL must be respected in dealing with documents that are to be concurrently valid in the TL community." In Newmark's view, such translations require the communicative approach that is target language oriented (Newmark, 1982, p. 47). In this regard, Newmark is one of the few linguists to recognize that the status of a legal text is instrumental in determining its use in practice. Emery (1989) explored the linguistic

features of Arabic legal documentary texts and compared them with their English counterparts.

Emery ended up recommending that trainee translators should develop a sense of appreciation of the structural and stylistic differences between English and Arabic discourse to help produce acceptable translations of legal documents. Though he only made limited inroads into the area of legal translation theory or practice, Emery's article is actually one of the very few works that investigated general features of Arabic legal language, an area of research that has inexplicably been disregarded by Arab translators and theorists.

Al-Bitar (1995) illustrated how legal language differs from other common-core English varieties. In her study, she studied twelve bilateral legal agreements and contracts signed during the years 1962-1993. She investigated two main areas of nominal group in addition to other grammatical units: complexity of the noun phrase and type of modification. Her main conclusions were that the differences lay in the heavy use of complex noun phrases and the high frequency of relative clauses and prepositional relative clauses as post-nominal modifiers of the finite in legal texts (pp. 47- 62).

House (1997) distinguished between two basic types of translation strategies: overt translation in which the target text receivers are overtly not the same as the source text receivers, and covert translation in which the target text receivers are the same as the source text receivers.

According to House, the latter group includes texts that are not addressed exclusively to the source texts receivers, such as commercial texts, scientific texts, journalistic articles ... etc. (pp. 197-194). Although House does not mention parallel legal texts, which would also belong to this group; in fact all special purpose texts would fall under her category of covert translation.

Hickey (1998) argued that any translation of a legal text must be able to affect its readers the way the ST was able of doing to its readers. She states that the translator must ask herself how the original text reader would have been affected and ensure an analogical TT1 reader will be affected similarly by his reading of the text but not by any other means (pp. 224-225). Hickey failed to see that a TT might be directed towards different readers in a different context. In this case, it is pointless to pursue a similar effect on the part of the translator.

Hatim, Shunnaq and Buckley (1995) occupied themselves with listing legal texts and their model translations, without setting foot in the field of legal translation theory.

The above studies ignored the pragmatic factors related to legal discourse. Such an approach, which extensively stresses the sensitivity of legal texts, may contribute to the creation of misconceptions about legal translation. In other words, it helps depict it as a process of interlingual transfer (Sarcevic, 2000, p. 2) within an array of restrictions.

Sarcevic (2000), in her book which has a comprehensive survey of legal translation, wrote in connection with parallel legal texts, "While lawyers cannot expect translators to produce parallel texts which are equal in meaning, they do expect them to produce parallel texts which are equal in legal effect. Thus the translator's main task is to produce a text that will lead to the same legal effects in practice" (p. 71).

As Sarcevic (2000) indicated, "the basic unit of legal translation is the text, not the word" (p. 5). Terminological equivalence has an important role to play, but "legal equivalence" used to describe a relationship at the level of the text may have an even greater importance" (p. 48). The translator must be able "to understand not only what the words mean and what a sentence means, but also what legal effect it is supposed to have, and how to achieve that legal effect in the other language" (pp. 70-71).

Dickins et al (2003) offered a progressive representation of various translation problems, accompanied by lots of practical work in developing underlying principles for solving the problems. Theoretical issues were discussed only in so far as they relate to developing proficiency in method.

Although a wide range of texts were dealt with in this book, little attention was directed towards legal texts in the form of pedagogic practice within a framework of more general linguistic issues ignoring the peculiarity of legal texts.

Butt and Castle (2006) burrowed into the roots of traditional legal language and its peculiar characteristics that make legal documents aloof from its users. They proposed a step-by-step guide to drafting in the modern style, using examples from four types of legal documents: leases, company constitutions, wills and conveyances. Moreover, they emphasized the benefits of drafting in plain language

and confirming the fruitfulness of its use. Like Mellinkoff (1982), they surveyed the reasons for the current alarming state of legal drafting, as well as provided guidance on how to draft well. Their book is the most recent addition to the Plain English Movement that is discussed in the next chapter. It argues that it is actually "safe" and constructive to break away from old ways of legal drafting into simpler, more communicative ones. Making use of the available literature on pragmatics, the concept of legal equivalence, and the changing role of the translator, the study scrutinizes the applicability to the translation of contracts through comparing and analyzing the translation under investigation.

ADOPTED METHODOLOGY

This paper is quasi- experimental research. For achieving its aims, the analytical approach to data collection has been adopted. Specifically, tests were chosen as an instrument of data collection. Numbered data can be analyzed using statistical procedures. Concerning the population of the study, it is conducted on fourth year students in different Sudanese universities in Khartoum State. These students study English as specialized. 50 of them (males and females) were selected as the study sample. Then these 50 students were given tests and it employed in the data collection process. The test was designed on translation. Specifically, legal texts. Students were given four options and were asked to choose the appropriate one. These questionnaires were specially designed by the researcher to measure students' performance on legal texts as it assumed that these legal texts are considered to be challenging for undergraduates in terms of usage. Regarding the analysis of data the test collected and marked and then statistically analyzed using the Statistical Package of Social Science(SPSS) so that accurate results could be obtained.

RESULTS

The data were inserted in the SPSS program and the following results were obtained.

Hypotheses One: At our Sudanese universities settings, courses of translation are introduced only at very scanty level, one or two

courses across the undergraduate years with the effect of having insufficient exposure to such a demanding discipline as translation.

Table (1) One-Sample Statistics

One-Sample Test								
	T	Df	Sig.	Mean	Std. Deviation	Mean Difference	95% Confidence Interval of the Difference	
							Lower	Upper
H	43.841	49	.000	2.6720	.43096	2.67200	2.5495	2.7945

The mean of the mean of the **One-Sample Test** 2.67 with Std. Deviation 0.43 was higher than observed mean witch is ranged in Agree level which is more than 2. Test results, data showed that this different was significantly $t = 43.841$, $df = 49$, $p < 0.05$

Therefore, it was concluded that there was significant courses of translation introduce only at very scanty level in Sudanese universities settings.

Then we accept the hypotheses of the researcher which is (At our Sudanese universities settings, courses of translation are introduced only at very scanty level, one or two courses across the undergraduate years with the effect of having insufficient exposure to such a demanding discipline as translation).

Hypotheses Two: English and Arabic vary quite considerably in view of grammatical categories, gender, number, case, person as opposed to non-person.

Table (2) One-Sample Statistics

One-Sample Test								
			Sig. (2-tailed)	Mean	Std. Deviation	Mean Difference	95% Confidence Interval of the Difference	
							Lower	Upper
H	45.847	49	.000	2.7120	.41828	2.71200	2.5931	2.8309

The mean of the mean of the **One-Sample Test** 2.7 with Std. Deviation 0.41 was higher than observed mean witch is ranged in Agree level which is more than 2. Test results, data showed that this different was significantly $t = 45.847$, $df = 49$, $p < 0.05$

Therefore, it was concluded that there was significant differences in participant’s answers about quite considerable in view of grammatical categories.

Then we accept the hypotheses of the researcher which is (English and Arabic vary quite considerably in view of grammatical categories, gender, number, case, person as opposed to non-person).

Hypotheses Three: differences will pose considerable hurdles when they come to translate legal text from Arabic into English and vice versa.

Table (3) One-Sample Statistics

One-Sample Test								
			Sig. (2-tailed)	Mean	Std. Deviation	Mean Difference	95% Confidence Interval of the Difference	
							Lower	Upper
H	45.645	49	.000	3.0480	.47218	3.04800	2.9138	3.1822

The mean of the mean of the **One-Sample Test** 3.0 with Std. Deviation 0.47 was higher than observed mean which is ranged in Agree level which is more than 2. Test results, data showed that this different was significantly $t = 45.645, df = 49, p < 0.05$

Therefore, it was concluded that there was significant differences in participant’s answers.

Then we accept the hypotheses of the researcher which is (Therefore, these differences will pose considerable hurdles when it comes to translate legal text from Arabic into English and vice versa).

DISCUSSION

This paper aims to explore the problems encountered by Sudanese university students when translating English legal texts. The paper findings show that the responses of the EFL teachers to the test and the performance of the students in translating legal text, the following conclusions were revealed that: The low performance of the students showed that the lack of understanding and translating English legal text lead to semantic problems. The results of ELT teachers’ questionnaire showed that negative transfer from the mother tongue

was one of the major causes of semantic errors made by the students in their translating legal text.

CONCLUSION

This paper mainly aims to explore the problems encountered by Sudanese university students when translating English legal texts. To do so, the following research questions have been raised by the researcher.

- 1-To what extent do undergraduate students face problems in translating and understanding English legal text?
- 2-To what extent can the misunderstanding of the legal texts affects the cohesion of a written text?

The quantitative approach is employed. Specifically, two tools were used in the data collection process; a pre-test and post-test. The population targeted by the study was four year students at different Sudanese universities. The paper findings showed that the experimental group outperformed the control group which clearly indicates that legal texts have the potentiality of enhancing learners' translation competence and thus their language proficiency. In addition to that, the findings have also indicated that translation, specifically equivalence poses some difficulties for EFL learners in terms of usage.

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