

“Textual Fidelity” Challenges for Beginners in Legal Translation Practices

الأمانة النصية في الترجمة القانونية تحديات للمترجمين المبتدئين

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Abstract:

This article examines the issue of textual literalism as a barrier to translating legal documents for Algerian beginner translators. It argues against the assumptions that impose strict literalism in legal translation as being adopted by novice translators. In the same token, legal translation is subject to limitations within restricted stylistic and syntactic scopes, where the aim is to reach literal equivalence that is identical to the source text's qualitative features. This issue is investigated by two methods; first, through Leon Wolff's "textual fidelity" and "equivalent effect"; second, through a qualitative study conducted on beginner translators: that is, legal beginner translators at the office of translation in Rouiba, Algiers. This study revealed that the translation of the target text poses difficulties at the semantic level, where the focus is mainly put on the written form rather than meaning. This study argues that the majority of trainee translators' productions do not go beyond the linguistic patterns of the source text.

Keywords: Legal translation, Equivalence, Textual fidelity, Textual literalism, Linguistic and stylistic patterns, Semantic level.

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ملخص:

تدرس هذه المقالة مسألة الحرفية النصية كحائز في ترجمة الوثائق القانونية لدى فئة المترجمين المبتدئين الجزائريين، تحتج ضد الفرضيات التي تقضي بالحرفية الصارمة في الترجمة القانونية المعتمدة من قبل المترجمين المبتدئين. وفي نفس المنوال، تخضع الترجمة القانونية لقيود ضمن نطاق أسلوبي وتركيبى محدود، إذ يكمن الهدف في تحقيق التكافؤ الحرفي المطابق للخصائص النوعية للنص المصدر. ويجري التحقيق في هذه المسألة بطريقتين، أولاً، من خلال "الأمانة النصية" و "الأثر المكافئ" حسب نظرية وولف، ثانياً من خلال دراسة نوعية أجريت على المترجمين المبتدئين في ديوان الترجمة الرسمية بالروية-الجزائر.

كشفت هذه الدراسة أن ترجمة النص المستهدف تطرح صعوبات على المستوى الدلالي، حيث يتم التركيز بشكل أساسي على النموذج المكتوب بدل من المعنى. وترجح هذه الدراسة بأن غالبية المترجمين المبتدئين لا تتجاوز ترجماتهم الأنماط اللغوية للنص المصدر.

كلمات مفتاحية: الترجمة القانونية، التكافؤ، الأمانة النصية، الحرفية النصية، الأنماط اللغوية والأسلوبية، المستوى الدلالي.

1. INTRODUCTION

Within globalization and universality, the modern system of societies has emphasized the pivotal role of translation in exchanging knowledge and skills related to different domains. Thence, the translators’ ability in both acquiring and transferring such competencies has been enhanced by their proficiency in multilingual fields. For such, according to A. Zarqani (1992, p. 72), people from a variety of social backgrounds agree and acknowledge the traditional understanding of translation. The novice translators often resort to translating the source text by adopting this ‘universal definition’ of translation. To attain such conventional perspective of translation, they tend to rely on synonyms, same lexicons, and paraphrasing to render the source text into a proper target language. Generally, modernization has called for the need of multilingual translation in different domains that facilitate the access to both universality and globalization. More predominantly, legal language, at the first place, has gained prominence in our global world, and has been represented as the mouthpiece of citizens, in this vein, Wolff (2011, p. 5) emphasizes how legal translation can foster respectful dialogue about various normative and regulatory systems while educating people and inspiring respect.

Similarly, legal translation represents a substantial domain for official and novice translators, and translating legal documents is of great importance to novice trainees of legal translation in Algeria. Garzone (2000, p. 395) distinguishes legal translation from general translation since it has a "special status" that excludes it from the scope of general translation theory. That is why; novice translators’ use of unrestricted freedom in translating legal texts causes problems of functionality since ‘the degree of freedom’ may lead to a problem of fidelity to the original text in legal translation. Therefore, novice translators should be prudent in conceiving both the ‘legal’ and ‘general translation’ features in translating legal documents. However, the translation of legal texts has identified many challenges due to its complexity and intricacy. This type of translation represents serious barriers for novice trainees, to be more accurate, the translation from Arabic to English language has opposing linguistic properties and characteristics. Thus for Wolff, this theoretical elasticity should not be over- or

under-stated, so the primary goal must be to convey the contextual meaning while avoiding any deviant practices, rather than just translating the source text (ST) accurately, as that could mislead readers (2011, p. 2).

2. CASE STUDY

This study illustrates the trainees’ leading challenges relying on several case studies including legally translated extracts taken from multiple contracts and agreements. This paper focuses on the approaches adopted by the trainees based on the data collected from their translated versions, where deep analyses have been identified from purely lexical, linguistic, and cultural levels. The trainees’ translated productions show the extent by which both “literalism” and “linguistic fidelity” have been the primary errors that caused an inaccurate translation of the original text. In other words, to obtain an equivalent version of the ST, the trainees believe that lexical correspondence is a fundamental feature to rely on in translating these extracts. Newmark also contests the premise that lexical elements of the translation have to match the original language in every detail, contending that a literal translation is not just the best but the only acceptable approach (1981, p. 39).

3. LITERATURE REVIEW

A plethora of studies has addressed various issues that novice students and trainees may encounter in the process of translation as being applied to legal texts. These studies have shown the many challenges that affect both levels the trainees’ understanding of translation and their translated productions. Alaa Deen Mohammad Al Najjar (2011) in his study has revealed the diverse types of difficulties that novice translators encountered in the translation process of contracts and agreements. For this, he distinguished four different kinds that are related to both linguistic and semantic levels. Thus, he classified them as follows: semantic-related challenges, style-related challenges, grammar-related challenges, and research-related challenges. The findings of this study showed that the novice translators’ lack of training; inadequate knowledge; and their unskillful methods in

research are the outcome of their incompetency to obtain accurate versions of the ST.

Similarly, Holi Ibrahim Ali (2016) in his study has investigated language-related challenges that novice translators face in translating legal contracts from English and Arabic languages. He has also explored the way these difficulties have affected the quality of the product text or TT, and the various methods that have been used to deal with these problems. The findings of this study proved that these challenges are not limited to language-related level but also to semantic and meaning that have ultimately affected the value and the accuracy of the product text. Conversely, very few studies have looked at the novice translators’ inaccurate use and understanding of both “textual fidelity” and “literal equivalence” that have affected negatively the quality of the product text when translating legal texts. The perspectives of this study stemmed from Leon Wolff (2011) who points out to the intricacy of translating legal texts. He thence insisted on the principle of “textual fidelity” and “textual literalism” to attain a faithful version of the ST. In this, Newmark elucidates that despite legal translations adopting a more relaxed or free-flowing approach, faithfulness to the source text still takes precedence as the chief priority in legal translation (2011, p. 3). However, this study shows that even though novice trainees and translators are limited to the theory of “literal equivalence” and “literal translation”; and since “literal fidelity” is taken as elementary to the ST; they may affect wrongly and unintentionally the quality and the value of the TT.

4. DISCUSSION

Building upon the theoretical frameworks that highlight the linguistic complexities involved in translating legal texts—Wolff (2011, p. 6) has described legal language as "archaic, complex, formulaic, and obscure"—this study looks into how some trainees adopt rigid perspectives about translating legal documents, heavily relying on linguistic features that are confined. This latter has allowed those trainees to mistakenly place more emphasis on the formal uniqueness of the ST’s language rather than its semantic properties. Accordingly, they are directed to what is referred to as “literal and formal” translation to reach “textual fidelity” or “the principle of fidelity” in Susan Sarcevic’s words (1997, p. 16). This section

emphasizes that the trainees rely on more conventional and restrictive translation perspectives to achieve a lexical and syntactic version of the ST that ignores its functionality. Furthermore, it has been noted that when these trainees struggle with the concept of equivalency, the translation process has grown more difficult and demanding for them (Wolff 2011, p. 2).

As explained above, the issue of equivalence has become controversial in the trainees’ productions. They investigate the "degree of freedom" (Wolff 2011, p. 2) to create a target version that returns to the default position of linguistic fidelity to the original text. As observed in their productions, the trainees have been limited to the scope of literalism and literal fidelity. In this, all the productions share a common issue, which seeks a pure literal equivalence or word-for-word translation. These perspectives are also rooted in Eugene Nida’s (1964) theory of “equivalence” which has seen light in the twenty century. For him, two different poles; “formal equivalence” and “dynamic equivalence” theory define equivalence theory. While its lexical and syntactic features distinguish the first theory, the second one is characterized by its semantic qualities. For such, this conducted study explains the first theory that is referred to as “formal equivalence,” which is viewed as indispensable in the trainees’ translation task (1964, p. 162).

As previously noted, “formal equivalence” is perceived as the leading theory used in the trainees’ legal translated extracts. Accordingly, their goal is primarily to remain accurate to the ST. For such, legal texts must regard accuracy as a crucial element in the TT as maintained by Sarcevic (1997, p. 16), who asserts that the primary goal of legal translation is to faithfully portray the essence of the source language, a viewpoint shared by both legal practitioners and linguists who agree that legal documents demand a literal translation. Yet, formal equivalence has failed to attain many aspects in the TT, which resulted from the enormous differences between the ST and TT; in this case English and Arabic translation. Thus, the trainees have opted for multiple ways to obtain a pure linguistic version of the ST to avoid syntactic and lexical obstacles. In this regard, they have endeavored to create an identical formal, linguistic, grammatical, and structural rendering that nearly matches the form of the source language, where the translated

version should strictly adhere to the source language's formal qualities (Larson 1984, p. 304).

This latter as assumed in this paper requires meticulous strategies on the part of the trainees to allocate the huge differences that exist between the SL and TL.

As far as the form is concerned, the trainees have disregarded other aspects of the ST, namely the linguistic hierarchy that resulted from the “non-equivalence at word level” (Baker, 1992, p. 20). The non-equivalence at the lexical level has engendered other obstacles that may allude to the trainees’ incompetency in allocating both languages’ linguistic properties. One of these formal barriers is defined by some patterns that are purely Arabic, which do not have their correspondents in the English language. That is to say, the linguistic hierarchy in the ST cannot be manifested in the TT, which may also affect the TT syntactic and lexical arrangements. In the same way, these challenges have been identified as “the lexis-related challenge” and “the structure-challenge” in Abu Al Haijaa’s (2007) conceptualization of “lexical equivalence.” He also refers to both challenges by “referential and style aspects” that the trainees have faced in the construction of sentences and phrases from the ST into the TT. In this, he points out that both languages have different structures that may affect meaning, he also (2007, p.37) emphasizes the structural and stylistic contrasts between Arabic and English, stating that most novice translators struggle to transform Arabic legal writings into appropriate idiomatic English language.

In addition to the previous problems, that “literal fidelity” may expose, and due to the fixed linguistic properties in the ST, the trainees have faced another obstacle; that is of meaning when translating the ST formal features into the TT. As formerly indicated by Baker’s “non-equivalence,” lexical non-equivalence can represent another challenge that is of culture-specific terms. In this, some words and expressions in Arabic cannot be identified in the English language. That is to say, some lexicons that are purely related to the ST, and which are not known in the TT cause this unfamiliarity. This type of lexical challenge may explain that some terms in the ST with different synonyms; may possess specific properties; are misused in the TT, and which sound unfamiliar to the TT. As mentioned previously, to attain “literal fidelity,” the translated versions of the trainees have been amended in accordance with these particular properties, where some expressions

have been placed disregarding the functionality of these words in TT with deviating significance. As shown in the forthcoming discussion, novice translators adopt the principle of fidelity to the source text when referring predominantly to the translation of legal texts. Historically, as contended by Sarcevic, legal translators have been bound by the principle of faithfulness. Legal practitioners and language experts agreed that legal papers required a literal rendering, believing that the primary goal of translation is to precisely recreate the substance of the source text. The main directive for legal translation was absolute adherence to the source text in order to preserve the letter of the law (1997, p. 16).

Sarcevic contends that non-literal translation in both the source language (SL) and the target language (TL) can result in fundamental changes in the meaning of legal texts. To avoid such alterations, Wolff (2011, p. 234) highlights the need of remaining accurate to the source text by reflecting the 'precise or near-exact' meaning in the translation. Novice translators' techniques in retaining literalism are the use of word-for-word translation and the doctrine of equivalent effects. For Wolff (2011), legal translators have the freedom to change wording, sentence length and layout, rearrange paragraph order, and even supplement textual content with additional data to improve comprehensibility (p. 235). Adopting such doctrines might cause problems in legal translation for novice translators. For instance, there is no direct way to translate legal texts from Arabic into English without having recourse to the word-for-word translation and equivalent effects.

Equivalent effect tends to alter the length of sentences and structure, and rearrange paragraphs in which there is no room for any sort of retaining meaning and functionality. Novice translators disregard the use of first person and personal pronouns (I, me, he, she) for they focus on a 'strict and literal translation' (Sarcevic, 1997, p. 24). In Arabic, it is usual for the writer to start the utterance with a certain pronoun and then use another one that does not go with the first one. An example of legal translation is the following: *لمن يهمه الأمر*. This sentence is literally translated "to whom it may concern" The suggested example shows that the novice translator may absorb the word-for-word translation technique, but he may not retain the meaning adequately in the target language. It can be noticed that

novice trainees use different translations for the given example: To the one interested/for the one who is interested in the matter/ for the one who is concerned/ To the concerned. They think that they have chosen the appropriate words, however this may cause problems with meaning. Therefore, it is noticeable too that novice translators resort to word-for-word translation for they believe if the words change, textual fidelity might be lost.

Novice translators conceive that the translation of Arabic legal texts must always fully reflect the stylistic features of a source text. In this respect, they disregard semantic approaches while translating legal texts. Thus, legal beginner translators face challenges and difficulties in translation at the semantic level because they focus mainly on the written one. Such difficulties appear to have a relation with a lexicon in a cultural context, translation of catchwords, and grammatical structures.

The following example: مع وجوب النفقة على الأب shows that the novice translator may be familiar with the legal translation lexicon, but he may not be able to transfer the appropriate meaning in the target text. Notice how he/she used different translations to the above given example “The obligation of **expense** to the father/ the father is obliged to pay the **expenditure**/the father is obliged to pay the **maintenance** /The **pension** is compulsory to the father.” The keyword that concerns us here is “النفقة”, what is the exact translation in this context? The appropriate translation should be: the **alimony** is incumbent on the father. The novice translators' usage of different words such as expense, expenditure, maintenance, and pension for “النفقة” can be related to their attempt to retain “fidelity to the source as the primary consideration in official translation” (Sarcevic, 1997, p. 16). The sentence ‘the **alimony** is incumbent on the father’ cannot be debated as it is regarded as a doctrine. This sentence may be easily understood and translated by professional translators in legal texts since this is the common normal transition in the legal context, but it may be difficult for a novice beginner to find the exact wording. For instance, the word “**maintenance**” cannot be used with “father” because the normal use of the word “**maintenance**” in the social context, which is not consonant with the original Arabic use. In their attempt to reach textual fidelity-

ty, novice translators use a “near exact meaning” for the word “النفقة” which is “**expense.**” According to Merriam Webster’s dictionary, “**expense**” has the following meanings: “financial burden or outlay, an item of business outlay chargeable against revenue for a specific period, something expended to secure a benefit or bring about a result.” This example indicates that the novice translator may think that the different words he has chosen to translate “النفقة” are good equivalents though, in fact, they are not, because literalism can be misleading in particular when the novice translator disregards the cultural context, semantic features and social use of these words.

Another example from a novice translator is the translation of a common Arabic word: الكفالة, this word is common in Arab culture; it is a captivating word and said when a child is supported by a family till adulthood or when a family takes care of a child rather than adopting him/her. Muslims and Arabs easily understand this sentence, but it may be difficult for a foreigner to understand. The novice translator uses different equivalents for the Arabic word الكفالة: The mother will have the **Kafala**/The **caution** returns to the mother/His mother will have the **guarantee**/ The **sponsorship** will be for his mother/The **foster care** will be for his mother. The beginner translator uses the word “Kafala” which is not found in English. A foreign reader in this case may wonder about the meaning of Kafala. The use of “Kafala” is an Arabic cultural usage, but retaining the exact wording of Arabic does not give the English meaning. It can be noticed that the translator is using the equivalent words of the source text since he conceives them to be appropriate for the context. The novice translator’s choice of these words: **caution, guarantee, sponsorship, foster care** reflect his absorption of the source text, cultural context and social connotations. In fact, without having a cultural background of the meaning of “Kafala” in Islamic context, foreigners cannot grasp the cultural meaning of this word. As a result, creating verbatim or quasi-verbatim translations becomes a difficult undertaking that frequently impedes intelligibility, as shown by Tahara (2001) and Wakabayashi (1991, 1992). The appropriate translation should be: the **guardianship** is entrusted to his mother. Thus, the novice translator should be a careful translator and a reader when rendering the source text into the target text.

The following example can be proof that legal translation is not a mere ‘textual fidelity’ between the source text and the target text. Consider the example وكالة خاصة in which the novice translator opted to use the following expressions “Special **procuration**/ Special **authorization**/Special **license**” as translations to “وكالة خاصة.” The previously mentioned examples show how novice translators are confused in choosing the right words for the right meanings. The translations reveal that the chosen expressions may not reflect the exact meaning. For example, in the sentence, the word “authorization” seems an inappropriate substitute for وكالة. The official translator will use the expression “**special power of attorney**” which sounds legal.

In translating this expression “اثباتا لما ذكر” from Arabic to English, the novice translator can find different equivalents because legal translation for him/her is simply substituting a text for text rather than the meaning it holds. The novice translator opted to use the following expressions to translate the given sentence: To confirm what is said/The establishing of the precedent/ As an evidence of the precedent/ To demonstrate what has been said. It is noticeable that the novice translator is using longer sentences than the one produced by the official translator: “**for confirmation.**” In this setting, the inexperienced translator is given more freedom to interfere in the legal text in order to achieve a more idiomatic portrayal in the target language (Leon, 2011, p.234). Nonetheless, the novice translator's translations lack linguistic expertise and clarity, resulting in formulations that are considered suboptimal and less precise when compared to the official translator's version of “**for confirmation.**”

A final example that shows the unfamiliarity of the novice translations with the appropriate lexicon of the legal text is: “الموثق الموقع أدناه.” Consider the English translation “The notary who **signed after**/ the notary who **signed below**/ the notary **signing here after**/The **notary signing hereunder**/ the notary whose **signature follows.**” The novice translator uses longer sentences than the one produced by the official translator: “the **undersigned notary.**” While a judge or legal professional would interpret attempting to faithfully capture the “meaning poten-

tial” of a legal text as it in the source legal system, the novice translator may face difficulties in producing a strictly semantically literal translation of the source text (Leon, 2011, p. 235). The original meaning will be lost in the target text, it can be noticed here that the problem of translation is caused by providing equivalent words that the novice translator believes are adequate terminology in legal translation. From the above analyses of novice translators’ productions of legal sentences, “textual fidelity” and “equivalent effects” theories, seem to be bound to “literalism.” Novice translators have attempted to produce a near translation of the source text, where the adequacy of contextual meaning in the TT has been disregarded.

5. CONCLUSION

As has been elaborated above, the theories of “literal equivalence” and “textual fidelity;” as being adopted by novice translators; are unquestionably controversial in the translation process of legal texts. This paper has also shown that despite the fact that both theories have succeeded to some extent to reproduce an accurate formal and linguistic version of the ST, they have failed to attain the contextual meaning due to the limited grammatical and lexical properties that both theories have imposed. As both approaches reject adjustments, novice trainees have fallen in the trap of reproducing inadequate versions to TT’s properties. Therefore, both types of translation should be used appropriately taking into consideration the linguistic hierarchy in both languages including syntactic and lexical levels. In situations where the trainees confront cultural bond terms, contextual meaning and conventions must be amended with accordance to the ST. In other words, they fail to go beyond their national, cultural and social background because of their ill-knowledge of the semantic patterns and its effects in the target language. In addition, the provided translations lack the accuracy of legal documents and the adequate terminology.

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