Translation Theory and Legal Translation*

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Abstract

In our age of globalization and multilingualism there is a growing demand for competent legal translator. The work attempts to shed light on the sensitivity of legal texts, and how the translation should be reliable, i.e., it must produce the intended legal effects.

The study hypothesizes that legal translation is recognized as an independent area of translation on equal footing with literary translation, religious translation and technical/scientific translation.

The study starts with viewing some misleading ideas by translation theorists about translating legal texts. Then text typologies for translation are fully discussed. The function of legal texts is identified followed by a detailed discussion of legal translation; translation and text type. Finally, the status of legal translation is evaluated on the bases of the recent translation theories, i.e. Hermeneutics.

The paper comes up with some conclusions; the most important of which are that translation theory and legal translation are intertwined and a successful legal translator must develop an interdisciplinary approach to the subject, thus that any theoretical approach to legal translation must take account of the legal factors of the particular communicative situation in the mechanism of law.

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نظرية الترجمة والترجمة القانونية*

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المستخلص

نحن نعيش في عصر العولمة وتعددية اللغات ولذلك تتزايد الحاجة إلى المترجم القانوني المتضلع.

يهدف هذا البحث إلى تسليط الضوء على حساسية النص القانوني وكيفية جعل الترجمة معتمدة أي يجب أن تخرج التأثير القانوني المقصود.

تفترض الدراسة بعدّ الترجمة القانونية مجالاً مستقلاً في مجال الترجمة حالها حال الترجمة الأدبية والدينية والعلمية.

تستهل الدراسة باستعراض أفكار خاطئة لمنظري الترجمة حول ترجمة النصوص القانونية. وبعدها عرجت إلى مناقشة أنواع النصوص. كما تم تحديد وظائف النصوص القانونية فضلاً عن مناقشة تفصيلية للترجمة القانونية ونوع النص. وأخيراً تم تقييم الترجمة القانونية على أساس أحدث نظريات الترجمة أي الهيروميوطيقيا.

ويخلص البحث إلى عدة نتائج من أبرزها أنه على المترجم القانوني الناجح أن يطور منهجاً صارماً في الترجمة، وهكذا فإن أي منهج نظري للترجمة القانونية يجب أن يأخذ بنظر الاعتبار العوامل القانونية لوضع تواصلي خاص بآلية القانون.

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1. Introduction:

Translation theorists who have attempted to apply theories of general translation to legal texts have frequently made misleading statements and even failed to recognize the proper communicative function of legal texts. On the other hand, lawyers who have written on legal translation tend to disregard the text and deal exclusively with terminology. This is also misleading because legal translation involves much more than terminology. Despite the emphasis on preserving the letter of the law, legal translation is not a process of transcoding, i.e. translating a string of words from one language into another. As in other areas of translation, the basic unit of legal translation is the text, not the word. Attempting to fill a gap in translation studies, this study focuses on the translation of legal texts.

Since legal texts are subject to legal criteria, it follows that a theory for the translation of legal texts must take account of legal considerations. In the same token, it cannot disregard basic issues of translation theory. In an attempt to provide a systematic approach to legal translation, this study deals with fundamental issues of translation theory such as text typologies, the communicative function of legal texts, and the classification of legal texts. Attempting to correct misconception about legal texts, it is shown how legal texts differ from other texts and, in particular, how legal translation differs from the translation of other special purpose texts. As in general translation, pragmatic considerations are important in legal translation and should be taken into account when determining translation strategy.

2. Legal Translation and General Translation Theory:

Today, one of the main tasks of translation theory is to define criteria to be used by the translator when selecting an adequate translation strategy (Kussmaul, 1995: 55-72).

This presupposes, of course, that the translator is at liberty to make such a decision. Legal translators have traditionally been bound by the principle of fidelity. Convinced that the main goal of legal translation is to reproduce the content of the source text as accurately as possible, both lawyers and linguists agreed that legal texts had to be translated literally. For the sake of preserving the letter of the law, the main guideline for legal translation was fidelity to the source text. Even after legal translators won the right to produce texts in the spirit of the target language, the general guideline remained fidelity to the source text. Today UN Instructions for translation appear to take a more liberal approach by admitting that there is always room for the exercise of stylistic judgment in the case of draft resolutions, treaties and other legal texts, or technical texts; however, fidelity to the original text must be the first consideration. More recently, the traditional principle of fidelity has been challenged by the introduction of new bilingual drafting methods which have succeeded in revolutionizing legal translation (Covacs, 1980: 32).

Contrary to freer forms of translation, legal translators are still guided by the principle of fidelity; however, their first consideration is no longer fidelity to the source text. Nonetheless, the question remains as to how translators can determine how much fidelity is required to guarantee the effectiveness of plurilingual communication in the law. Moreover, which criteria should be taken into account by legal translation when selecting a translation strategy? Seeking answers to these questions, one should differentiate between various types of legal texts.

3. Text Typologies for Translation:

For a long time it was believed that translation had to be either literal or free and that the type of text is decisive in determining how it should be translated. This led to the creation of text typologies, the first of which were based on subject-matter.

Although legal texts were historically most closely related to biblical texts, they were totally ignored in early text typologies. On the contrary, biblical texts were recognized as an independent text type at least as far back as 340A.D. At that time a distinction was made between biblical texts which were to be translated literally and non-biblical texts which could be translated freely (Kloepfer, 1967: 28).

When attention was later focused on literary translation, theorists spoke of literary as opposed to non-literary texts. Although Pierre-Daniel Huet dealt primarily with the translation of literary texts, he was one of the first to touch upon scientific translation as well. Recognizing that scientific texts confront translators with particular demands, Huet viewed scientific translation as one of the 'foremost tasks of civilization' and one which has been 'absurdly neglected' (Steiner, 1977: 265).

At the beginning of the nineteenth century, Schleiermacher made a distinction between the translation of works of art (literary and scientific texts) and the translation of worldly texts (common matters from 'business and everyday life'). At that time, the Dolmetschen was the 'interpreter' who translated 'commercial documents, the traveller's questions, the exchanges of diplomats and hoteliers' (Ibid: 251).

Regarding the terminology of worldly texts as practically the same in most language, Schleiermacher concluded that such

matters can be translated by a mechanical process of interlingual substitution (cited in Störing, 1963: 42).

As a result Dolmetschen was regarded as an inferior type of translation requiring no hermeneutics or creativity.

According to Schleiermacher's classification, scientific texts included philosophical texts and texts of the humanities as well as texts of the natural sciences (Kloepfer, 1967: 10).

Later a clear distinction was made between literary texts, on the one hand, and technical and scientific texts, on the other. While literary texts included philosophical texts and texts of the humanities, technical texts and texts of the natural sciences were classified as technical and scientific texts. Placing technical and scientific texts on the same level with Schleiermacher's category of worldly texts, these two groups of texts later developed into what is currently known as special-purpose texts.

3.1 Why Are Legal Texts Special?

In special-purpose communication the text is formulated in a special language or sublanguage that is subject to special syntactic, semantic and pragmatic rules (cf. Lerat, 1995: 12; Sager, 1993: 29).

Legal texts are formulated in a special language generally known as the *language of the law* (Mellinkoff, 1963: 3). In keeping with Sager's definition of special-purpose languages, the language of the law is used strictly special-purpose communication between specialists, thus excluding communication between lawyers and non-lawyers. Concerned primarily with language, Gémar identifies six subdivisions of the language of the law: the language of the legislator, judges, the

administration, commerce, private law and scholarly writings (doctrine) (1995-II: 116-122).

Not only are there subdivisions of the language of the law, but as Gémar points out, each legal system has its own language of the law; hence, it is more precise to speak of languages of the law. Bound to a particular legal system, each language of the law is the specific history and culture (Gémar, 1995-II, note 37). Therefore, it follows that the characteristics of the French language of the law described by Gémar (1995: 109-131) do not necessarily apply to English and German, nor do those of the English language of the law described by Mellinkoff (1963: 11-32) apply to French and Spanish, etc. The present paper is not concerned with characteristics of languages of the law but rather with language usage in legal texts or the language of the law in action. Above all, legal translators must be able to use language effectively to express legal actions that achieve the desired legal effects.

4. The Function of Legal Texts:

Like other texts, a legal text is a "communicative occurrence" produced at a given time and place and intended to serve a specific function (Baden, 1977: 183). Although it is precisely the function of legal texts that makes the special, translation theorists tend to place them on equal footing with other special-purpose texts, thus failing to recognize their primary function. In this respect, ReiB continued to regard laws and contracts as informative texts (ReiB and Vermeer, 1984: 208-209).

Although laws and contracts are informative to certain event, this is not their primary function. This fact was recognized by Peter Newmark who also proposed a text typology based on

Bühler's model of language functions. Unlike ReiB, he cited laws and regulations as examples of conative, i.e. vocative texts which he briefly described as "directive" and "imperative" (Newmark, 1982: 13-15).

For some unknown reason, however, Newmark later changed his mind and reclassified statutes and legal documents as expressive text (Newmark, 1988: 39). This is to be regretted because in so doing, he places legal texts in the same category as serious imaginative literature, autobiography, essays, and personal correspondence. While Newmark does not return to this subject in later works (1991 and 1993), ReiB does in her Vienna lectures (1995). Still convinced that laws and contracts can only be informative texts, she repeats the very same passage cited above (1995: 85).

A different approach is taken by Sager. While he does not mention legal texts in earlier works (1986, 1990), he not only refers to laws and regulations in his 1993 book but suggests that they have different functions for different readers. In his words, laws and regulations have an informative purpose for the general reader and a directive one 'for the specific group of people listed', i.e. for those affected by the particular text (1993: 70). Though coming closer to the truth, Sager's conclusion is still misleading.

But why all the confusion over the function of legal texts Taking a closer look at Bühler's tripartite classification?, we see that the informative function dominates texts which focus on objects and/or facts by 'describing' a state of affairs in the 'real' world, whereas the expressive function is characterized by sender-oriented texts intended to 'enrich' the world. Finally, the conative function is addressee-oriented and is used in texts

aimed at 'changing' the world by provoking the addressee to action or by imposing certain behaviour on the addressee (ReiB, 1976: 9).

From the latter examples, it follows that conative texts include not only persuasive but also regulatory texts, a fact that ReiB overlooked in her earlier analysis of conative texts (1976: 76) and again in her Vienna lectures (1995: 83).

Legal instruments such as laws and contracts are primarily regulatory in nature. In this sense, laws are generally defined as rules of conduct or instruments of social regulation, whereas contracts regulate the conduct of the contracting parties. Thus, it follows that regulatory instruments are conative texts and as such are characterized by frequent use of imperative. Without mentioning legal texts, Bühler himself made a point of emphasizing that texts dominated by the imperative are conative. Although ReiB acknowledges Bühler's statement (ReiB and Vermeer, 1984: 207), she fails to recognize the special function of the imperative in such texts (ReiB, 1976: 56). Furthermore, she recently goes so far as to suggest that Bühler was mistaken about the use of the imperative in conative texts. From her point of view, the use of the imperative is typical of informative texts. This time, however, she does not mention laws but rather instructions explaining how to use something (1995: 83).

A philosopher and sociologist, Jürgen Habermas also commences his *Theorie des Kommunikation* (Handlens, 1981) by referring to Bühler's classification of language functions; however, there is no doubt in his mind that legal texts such as laws and contracts have a regulatory function and thus fall under Bühler's category of conative texts (1981: 376).

5. Legal Translation:

The law is always a subject to interpretation. The translation of legal texts of any sort stands at the crossroads of (at least) four areas of theoretical inquiry:

- Legal theory.
- Comparative legal theory.
- Language theory.
- Translation theory.

The following definition nicely summarizes how the bulk of theorists and practioners view legal translation: The translator's main task (in translating legal documents) is to translate a text as precisely as possible. S/he has to find linguistic equivalents which in their legal relevance correspond to both the original text of the source language and the translated text of the target language.

When translating legal texts, the translator must develop some or all of the following skills:

- The ability to understand why legal documents are written the way they are;
- The ability to understand how these documents are constructed, interpreted and used;
- The ability to read and clarify these legal documents for the benefit of lay audience.

Translation of legal texts is not simply a matter of linguistic transference alone. It is an attempt to communicate someone else's message through another language. It is an attempt to communicate one world in terms of another. In order to accomplish it successfully and effectively, the translator must understand two semiotic systems at the same time. When translating legal text one must concentrate on many factors.

Among the most important are:

- interpretation or intended use of the translation,
- easification or facilitation of the original text,
- context of situation,
- rhetorical context,
- communicative purpose,
- textual organization,
- generic knowledge (genre analysis), etc.

Linguistic difficulties often arise when two legal cultures clash during translation. The root of these problems lies in their varying legal histories, cultures, and systems. The task of legal translator, like that of any technical translator, is to transfer one highly technical language (e.g. English legal language), into another highly specialized language (e.g. Arabic legal language). Simultaneously, translators must acquire a basic knowledge of the legal systems of the source and target languages and always be sensitive to the fundamental differences of these systems. One of the principal difficulties in legal translation, regardless of the subject matter, is the question of conceptual differences between the two languages and the absence of equivalent terminology.

Assuming that translators are adequately equipped with linguistic competence in everyday use of language, they still need to be given enough background information about the contexts in which legal rules are drafted, interpreted and used. Particular attention needs to be given to the dual characteristics of legal rules, i.e. clarity, precision and unambiguity, on the one hand, and all-inclusiveness, on the other. The translator also needs to be given sufficient practice in analysis of sentences used in legal texts, especially focusing on the use of lexico-grammatical devices which are typically used to make

interpretation and use of legal texts certain as well as flexible. Particular attention must be paid to the identification and use of complex-prepositional phrases and quailfications insertions to make rules clear, precise and unambiguous and to binomial expressions to make them all-inclusive. A lot of attention can also be paid to cognitive structuring typically associated with legislative sentences.

It appears to be a universal feature of legal style that the author, together with the translator, disappears. Legal translators provide the exact transfer of meaning from the original language into precise conventional formulations of the target language, with no regard for authorial style, or for authorship at all.

It is transparent that legal translation is in many respects the ultimate linguistic challenge. The difficulties involved in this field are aggravated by the limited nature of the traditional tools of the translator's "trade", e.g. dictionaries and glossaries, and require an in-depth knowledge of the subject matter. A successful translation of legal texts should communicate the content of a document, all the while employing equivalent and adequate syntax, semantics and pragmatics.

5.1 Translation and Text Type:

Emphasizing the constraints of legal translation, Didier generally concludes that judgments can be translated more freely than legislative texts; however, he provides no proof or arguments to support his statement (Didier, 1990: 280). For the most part, Didier focuses on translations of legislation which in his opinion, require absolute literalness.

Another lawyer, W. E. Weisflog is more thorough in his differentiation of legal texts; however, in an attempt to draw upon translation theory, he refers to Nida's theory of formal and

dynamic correspondence of the seventies. In regard to translations of national legislation and international treaties, he states that 'there is little or no room for free translation' and claim that 'it is desirable, if not imperative, to have the greatest possible degree of formal correspondence' (1987: 191). In essence, formal correspondence is another expression for literal translation in which the translator reproduces the grammatical and stylistic patterns of the source language as closely as possible (cf. Nida, 1974: 201). Similarly, Weisflog advocates formal correspondence for translations of quasi legislation or recommendation such as the UN, UNCTAD, ILO, OECD, and EEC Codes of Conduct or Guidelines and OECD Model Conventions' as well as 'business contracts, license agreements, general conditions of supply and delivery, Memoranda and Articles of Association, rules and regulations concerning share acquisition schemes' and other business documents (1987: 194). In regard to textbooks, articles in legal journals and lectures, Weisflog remarks that the translator's task is to 'get the author's message-meaning here his thoughts and ideas rather than his words-over to the receptor' (1987: 195). Although he implies that such translations can be less literal, he does not go so far as to advocate dynamic correspondence, in which the message is conveyed in the spirit of the target language.

Finally, it should be noted that Weisflog also mentions legislation (Constitutions, statutes, etc.) translated 'purely for information purposes, i.e. for the information of foreign lawyers, businessmen, and other foreign readers' (1987: 193). This distinction is significant because it is one of the first signs of awareness by a lawyer that the function of a text might also play a role in determining translation strategy. In the end, however, he again recommends the method of formal correspondence or literal translation.

Jean-Clause Gémar, a linguist, who has devoted many years to the translation of legal texts and general translation training in Quebec, divides legal texts into three groups; his first group of texts contains laws, regulations, judgments and international treaties, while the second group consists of contracts, administrative and commercial forms, wills, etc. The third group contains scholary works (doctrine) which, in his view, are the most difficult to translate. In regard to translation techniques, Gérmar mentions literal translation, functional equivalence, and interpretative translation; however, a clear distinction is not made between the latter two (1995-II: 163-166). As a rule, functional equivalence is not a translation technique, and it appears that he is not referring to what is known in modern translation theory as functional translation (Nord, 1993: 8).

5.2 Translation Strategy and Function:

After dominating translation for two thousand years, the traditional view that the translator's primary task is to transfer the meaning of the source text has been challenged. Of the few truly original ideas in translation theory, one of them is surely the 'discovery' that the same text can be translated in different ways for different receivers, as proposed, for example, by House in her notion of overt translation (1981: 185).

This idea liberated the translator, transferring him/her into a text producer whose task is to create a new text by selecting a translation strategy based on an analysis of the particular communicative situation. Above all, the translator should take account of pragmatic considerations: TO whom is the target text addressed? Why is the target text being translated? What are the conventional rules in the target culture for producing texts for that particular purpose? Who wrote the source text? When and

where was the source text written? (Hönig & Kussmaul, 1982: 23).

At first it was believed that translation strategy is determined primarily by the type of audience to whom the target text is directed. For example, the translation of a medical report for layman differs considerably from a translation of the same text for medical doctors. More recently, theorists have shifts the main emphasis to the function of a translation (why), which in turn also determines the target receivers (to whom) (Hönig and Kussmaul, 1982: 40).

Identifying the function of a translation as the main criterion for determining translation strategy, Hans J. Vermeer postulated his *skopos* theory which has modernized translation theory by offering an alternative to meaning-based translation (Vermeer, 1982: 99).

In traditional translation it is generally accepted that the primary task of the translator is to reconstruct the meaning of the source text in the target language (cf. Larson, 1984: 30).

In such translations the function of the target text is always the same as that of the source text. Vermeer's skopos theory departs from tradition by recognizing translations in which the function of the target text differs from that of the source text. Pursuant to the *skopos theory,* the translator's main task is to produce a new text that satisfies the cultural expectations of the target receivers for a text with that particular function. Thus Vermeer shows that the same text can be translated in different ways depending on its function. For example, an advertising text will be translated differently depending on whether the intention is to sell the product to potential customers or to describe it at a marketing convention (Snell-Hornby, 1990a: 82).

Although Vermeer claims that the *skopos theory* applies to all translations (1982: 99), he has had difficulty convincing LSP theorists that it is useful for special-purpose texts as well. This is because the function of special-purpose translations is usually the same as that of the source text.

By suggesting that the translation strategy of a legal translation can be determined solely on the basis of function, Vermeer disregards the fact that legal texts are subject to special rules governing their use in the mechanism of the law. Above all, legal translators must take account of legal criteria when selecting an appropriate translation strategy.

Another theorist of general translation to comment on legal translation, Peter Newmark notes the difference in the translation of legal documents for information purposes and those which are 'concurrently valid in TL community'. In regard to 'foreign laws, wills, conveyancing' translated for information purposes only, Newmark suggests that literal or semantic translation, as he refers to it, is necessary. In this respect, he appears to agree with Weisflog. On the other hand, he departs significantly from Weisflog's view when he stresses that "the formal register of the TL must be respected in dealing with documents that are to be concurrently valid in the TL community (contracts, international agreements)". In Newmark's view, such translations require the so-called communicative approach that is target language-oriented (1982: 47). Newmark is one of the few linguists to recognize that the status of a legal translation in determining its use in practice (Sager, 1993: 179).

5.3 Ambiguity:

Whereas most special-purpose communication is based on empirical knowledge and consequently aims at univocity,

ambiguity can be deliberate in legal documents. In a contract, it can be used to reach a compromise (Doonan, 1995: 95-6) or to create uncertainties which one of the parties will subsequently seek to exploit.

In the case of international treaties, ambiguity can be a diplomatic tactic (Gémar, 1979: 47). The legal text is in this respect comparable to the literary text, in which ambiguity is viewed not a defect but as an inherent feature which should be retained in translation (Posner, 1989: 240-2).

The problem of translating ambiguity leads to the question of interpretation. Again, legal discourse is unusual on that disputes over interpretation are settled by an official body which imposes a legally binding construction of a text. Legal communication thus oscillates between opposing poles: on the one hand, an affinity for ambiguity, on the other hand, the fiction univocal interpretation which can discover the true intention of the legislator (the notion of authorial intent, long derided as the "intentional fallacy" by literary critics, is alive and well in both translation studies and legal studies.

This puts the legal translation in a sensitive position. If decoding a text is problematic for a lawyer, it is even more so for the translator. It is generally emphasised that the translator must avoid 'interpreting' ambiguities since this is a task for trained lawyers (Lane, 1982: 223).

It can be restorted that translation, like any act of reading, necessarily involves interpretation (Gémar, 1995a: 143) and that placing restrictions on this process prevents the translator from producing quality work (Gawron-Zaborska, 2000: 354). Gémar goes as far to suggest that legal translators should first and

foremost be trained to interpret texts (1995b: 154) a position opposed by Sarcevic (1997: 91-2).

If legal translators are truly "text producers" engaged in a dynamic relationship with both sender and receiver, they will inevitably have to tackle questions of interpretation. Perhaps lawyers need to be persuaded that interpretation is part of creative translation: this would free legal translators of the shackles of literal translation once and for all. If translators have a solid grounding in law and interact with both sender and receiver, they should be equipped to interpret the text a producer/ receiver. This proactive role is not incompatible with the technique of deliberate ambiguity: indeed, it requires interpretation to identify ambiguity, decide it is deliberate, and choose to retain it in the translation.

6. Hermeneutics and Legal Translation:

As a result of the increasing emphasis on hermeneutics in modern translation theory, it is generally agreed that the translator must understand the source text in order to produce an adequate translation (Paepcke, 1986: 104). Thus the translator is generally viewed as having a double role as receiver of the source text and producer of the target text (Stolze, 1992: 21).

Since the reception of the source text by the translator is bound to have an impact on translation operations, it is essential for legal translators to determine the intent of the single instrument objectively. As a rule, theorists of general translation cast serious doubts on the translator's ability to ascertain the intended meaning of the source text objectively. In particular, Vermeer regards the reception of the source text by the translator as an act of interpretation on which is a creative act involving the translator's own hermeneutical situation (Vermeer, 1992a: 52, 78).

Similarly, ReiB views the target text as a product shaped by the translator's knowledge of the text, reality in which s/he lives, her/his past experiences, capabilities and even personal disposition (ReiB and Vermeer, 1984: 68).

Thus Vermeer concludes that there is no guarantee that the translator will understand the source text as intended by the author. Thus he postulates his basic presumption that all translation can be regarded only as an attempt to present information about the source text. In other words, a translation inevitably contains 'different information' or a 'different meaning'.

Under Heidigger's influence, Gadamer denied the possibility of any objective interpretation independent of the existential conditions of the receiver. Maintaining that all interpretation presupposes participation on the part of the receiver, Gadamer regarded interpretation as a creative act, a notion that dates back to Kant, but rather in the sense of the notion of Anders-Verstehen: the receiver understand the text differently than the author had intended; in other words, he/she creates a new meaning (Gadamer, 1975: 280).

Whereas Gadamer was referring strictly to texts of the arts and social sciences as opposed to those of the exact sciences (Ibid: 267). Vermeer makes no such distinction. In his attempt to create a universal translation theory, he regards the fact that texts containing primarily factual information can be understood independent of local context. Later Vermeer is forced to acknowledge that such texts do exist; however, he simply notes that they are the exception rather than the rule. Referring to texts which can be understood independent of local context as zero-

situation, he defends his own theory by insisting that theories are based on general rules not exceptions (Vermeer, 1992a: 49, 57).

As early as the nineteenth century, Dilthey had recognized the high level of factuality of special-purpose text (Orth, 1984: 50-54).

Similarly, Wills emphasizes that the aim of special-purpose texts is not to make the "unknown known" but to present scientific and technological knowledge that can be understood by analytic explanation (Wilss, 1988: 113). Unfortunately, Wilss' general conclusion that the interpretation of special-purpose texts does not involve the 'personal participation' of the translation in the hermeneutic sense (Wilss, 1992: 129) applies only to texts of the exact sciences. As for legal texts, translators must constantly be on their guard to avoid relying on value judgments when determining the author intent, i.e. the intent of the legislature, parties, or states parties. In this respect, one of the Dutch translators of the EC Rome Treaty acknowledged that he was constantly conscious of the danger of passing off his own ideas as those of the parties (Ginsbergen, 1970: 14).

Therefore, as a precautionary measure, lawyers discourage translators from using legal methods to interpret the source text. This applies particularly to non-lawyers who are bound to arrive at a different interpretation than lawyers, thus threatening to distort the original intent.

7. The Status of Legal Translations:

The status of a legal translation is important because it determines which translations can be used in specific situations in legal communication. Thus it can be said that the communicative function of a legal translation is determined by

its status, i.e. whether it is authoritative or non-authoritative. Legal instruments translated exclusively for information purposes are non-authoritative: they are not vested with the force of law and are non-binding. Translations of legal documents used as court evidence are also non-binding. Such translations are made by court translators who are required to swear to the accuracy and correctness of their translation. While they may be used for establishing or finding facts in court cases (Jessnitzer, 1982: 66-67), it is not admissible to use them for the purpose of interpreting statutes and other sources of the law. As a rule, only authoritative translations of constitutions, statutes, codes, treaties and conventions may be used by the court for the purpose of interpretation.

Vested with the force of law, authoritative translations enable the mechanism of the law to function in more than one language. Translations of normative legal instruments constituting the sources of law in a particular legal system are regarded as authoritative only if they are approved and/or adopted in the manner prescribed by law.

It is worth mentioning here that in the Translation and Terminology Divisions of the UN Language Service in Geneva, each institution has its own, usually unwritten guidelines for translators. As a result, the same text type may not only look very different but is frequently translated in a different manner at various institutions. Therefore, a generalization such as Didier's that legislation is translated literally and judgments more freely are definitely misleading. As for judgments, not only the format but also the methods of translation vary significantly from institution to institution. Generally speaking, the rigid form requirements of judgments of the Belgian Court of Cassation make it necessary for translators to follow the source text as

closely as possible, whereas decision of the European Court of Justice can be translated almost idiomatically. Even then, such statements are too general. Upon closer examination, one sees that certain parts of judgments of the European Court are less idiomatic than others, depending on whether they are descriptive or prescriptive. Thus function does play a role in legal translation; however, it is only one of the criteria to be taken into account when determining translation strategy.

8. Conclusions:

1. Pragmatic considerations are important in legal translation and should be taken into account when determining translation strategy. While legal translators must understand the source text in order to be effective text procedures, it is shown that they should not overstep their authority and interpret the text in the legal sense.
2. With the help of hermeneutics in legal translation the legal translator succeeded in converting his/her passive role in the communication process into an active one, finally emerging as a text producer with new authority and responsibility.
3. Legal translators are now permitted to make linguistic decisions; however, they should always be aware that even minor linguistic changes can sometimes intentionally alter the substance, thereby changing the meaning and/or effect.
4. Legal competence and a basic knowledge of the characteristics of legal texts are prerequisites of a successful legal translation.
5. Legal translators must be introduced to the structure of most legal texts deal with various forms of legal action. Thus he must be able to formulate legal speech acts which lead to the desired results.
6. The function of a text plays a role in determining translation strategy, e.g. Nida’s formal correspondence is preferred in

the translation of national legislation and international treaties. Dynamic correspondence, on the other hand is more appropriate in the translation of legal journals, legal texts book, i.e. text of an informative function where meaning rather the form (words) is the goal, thus the translations can be less literal.

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