The Challenges of Intercultural Legal Communication

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INTERCULTURAL LEGAL COMMUNICATION occurs among different legal systems using different languages and thus has to take into account the specific demands applying to legal translation. As this kind of communication generally follows a clearly defined purpose, it would certainly benefit from the application of the functionalist approaches to translation. Yet, an indiscriminate application of the principle of cultural embeddedness, i. e. linking the language to the corresponding culture, may prove questionable. In intercultural legal transactions, e. g. international contracts, where only one legal system is defined as the governing law, it may only be applied on the linguistic and not on the cultural (legal) level. Moreover, the level of translatability of legal concepts depends on the relatedness of the legal systems and not of the languages involved. This paper proposes a strategy addressed at the specific requirements of legal translation.

INTRODUCTION

This paper addresses some specific problems arising in the area of intercultural legal communication. The international legal community is the meeting place for experts from different countries, who establish relationships and conduct legal operations. To enable communication across language and cultural barriers either the language of one of the communicating parties or a third neutral language alien to them, but adopted as a common means of communication – a *lingua franca,* has to be agreed upon. In any case, such communication will involve a certain extent of implicit or explicit translating and interpreting.

THEORETICAL FOUNDATIONS FOR TRANSLATION IN LEGAL SETTINGS

Considering the specific character of legal translation, which according to the requirements of the legal environment generally follows a clearly

defined purpose, the functionalist approaches to translation, especially the *skopos* theory by H. Vermeer and K. Reiß (1984), seem to provide an adequate theoretical framework for this specific area of translation. In this respect, the sphere of legal translation would certainly benefit
[54] from a consistent application of the guidelines of the *skopos* theory, such as the importance of a clearly stated purpose of the translation, which Vermeer terms *skopos* (Greek for aim or purpose), which in turn defines the translation techniques and strategies to be used for producing a functionally appropriate translation. Moreover, a precise and complete translation brief/commission could contribute considerably to raising the translation quality and functionality by indicating the intended target-text function, the receiver(s), the prospective time, place and motive of production and reception of the text, etc. (Nord 1997, 137).

If according to Vermeer translation is seen as an intercultural transfer, where both the source and the target language are embedded in their corresponding cultures, it follows that the translator needs to be an intercultural expert, capable of following Nord's guideline that 'translating means comparing cultures' (1997, 34), i. e. interpreting source culture phenomena in the light of one's own knowledge of both the source and target culture for target culture receivers. If we consider the legal system an essential part of a culture, which is confirmed by Vermeer's definition of culture, i. e. 'the entire setting of norms and conventions an individual as a member of his society must know in order to be "like everybody" – or to be able to be different from everybody' (1987, 28), which evokes several generally adopted definitions of law and legal systems, we see that a legal translator needs to be an interdisciplinary expert with thorough knowledge of the legal systems involved in translation.

However, given the specific nature of legal language and the requirements applying to legal communication, the functionalist guideline, according to which language has to be linked to, i. e. embedded in the corresponding culture, in this case in the corresponding legal system, may prove questionable. Legal systems exist independently from the legal languages they use and are created through social and political circumstances. There is no direct correlation between legal languages and legal systems. One legal system may use different legal languages

(Canada, Switzerland, bilingual areas in Slovenia, Austria, Italy, Belgium, etc.), while one language area may be divided into different legal systems, as is the case in the United Kingdom or in the USA (Kocbek 2006, 239). House distinguishes between *languages for communication* and *languages for identification,* i. e. languages used for interpersonal exchange across cultures and for expressing one's identity as a member of a particular cultural community (House 2001). On this account it can be argued that the legal language used in expert legal communication illustrates the former of these two functions. In legal settings, professionals use legal language in order to become members of an international community of experts and to communicate with other members of such a community in the language (i. e. register) of that community about topics of common concern. The function of the *languages for identification* and their relationship to culture are fundamentally different and should be viewed in the light of other areas of expertise such as socio-anthropological and ethno-linguistics, which undoubtedly shed more light onto the complex interrelatedness of language and culture. However, dealing with these aspects does not fall into the scope of this research, which takes the perspective of legal linguistics and translation science applied to legal communication.

In legal communication, the legal systems involved will be considered as the decisive elements of culture affecting communicative practices. In some situations, e. g. when translating within a multilingual legal system (the Swiss, Canadian, or the Slovene legal system in force in bilingual regions) or in legal transactions, such as international contracts, where the parties agree upon the clause on the governing law, only one legal system is adopted as the communication framework. In this respect, when translating, the principle of cultural embeddedness may only be applied with respect to purely linguistic aspects of the text, whereas on a wider scale, i. e. considering the cultural foundation of the text (the legal system), the source and the target text will have the same cultural reference.

In this context, legal transactions conducted in a *lingua franca* present a specific problem, as in this case there is no direct correlation between the language used in the communication and the underlying culture(s) intended as legal system(s).

THE SPECIFIC NATURE OF LEGAL LANGUAGE

Legal language is characterized by certain specific features. Unlike language in general use in its most obvious function, it does not merely convey knowledge and information but it directs, affects and modifies
[56] people's behaviour (e. g. through statutes, court decisions, contracts) and as such contributes to creating and expressing the norms in force in different societies. Furthermore, it has an explicit performative character. No other sphere of language use better renders the idea first proposed by J. L. Austin (1962) in his speech acts theory that by speaking, i. e. using language, we achieve effects and generate consequences in the surrounding world. The legal language used to pronounce judgements in courts, impose obligations and confer rights, grant permission, express prohibition, etc. provides indisputable evidence of its performative power.

Law as a system of rules is bound to language for expressing and enforcing them and is, in a way, limited by it. Accordingly, legal language has to provide targeted linguistic instruments by means of which the specific requirements of legal communication can be met. Some of these linguistic features are common to most legal languages, whereas others are language- and culture-specific and thus have a decisive impact on legal translation.

As a technical language, every legal language has a specific vocabulary, which is marked by its complexity and particularity, as it is bound to a specific legal system. In contrast to other sciences and disciplines there is no universal legal language, describing and expressing universal concepts, such as e. g. in mathematics or medicine. Cao (2007, 23) argues that every legal language reflects the history, evolution and culture of the corresponding legal system. Each society has its own legal concepts, legal norms and ways of applying its laws. According to Šarčević (1997, 13) each national law represents an independent system with its own terminological apparatus, the underlying conceptual basis, rules of classification, sources of law, methodological approaches and socio-economic principles.

De Groot points out that the crucial issue to be taken into consideration when translating legal concepts is the fact that 'The language of the law is very much a system-bound language, i. e. a language re-

lated to a specific legal system. Translators of legal terminology are obliged therefore to practice comparative law.' (1998, 21 ff.)

Every state (sometimes even regions within a state) has developed independent legal terminologies, whereas a multilingual international legal terminology is only being created gradually within international [57] (such as the UN International Law) or supranational legal systems (such as the European Union, where it is being introduced in single areas of the EU as they undergo harmonisation).

Zweigert and Kötz (1992) group legal systems on the basis of their historical development, the distinctive mode of legal thinking, the distinctive legal institutions, the sources of law and their treatment, as well as the ideology. They thus distinguish eight major legal families: the Romanistic, Germanic, Nordic, Common Law, Socialist, Far Eastern Law, Islamic and Hindu Laws (1992, 68–72). The two most influential legal families nowadays are the Common Law ad the Civil Law (i. e. the Romano-Germanic) families, to which 80% of the countries of the world belong. The Common Law family includes England and Wales, the USA, Australia, New Zealand, Canada, some of the former colonies of England in Africa and Asia such Nigeria, Kenya, Singapore, Malaysia and Hong Kong, while the Civil Law countries include France, Germany, Italy, Switzerland, Austria, Latin American countries, Turkey, some Arabic states, North African countries, Japan and South Korea. Some legal systems are hybrids created through the mixed influence of the Common Law and the Civil Law, e. g. Israel, South Africa, the Province of Quebec in Canada, Louisiana in the US, Scotland, the Philippines and Greece. According to Cao the law of the EU is also to be classified as a mixed jurisdiction (2007, 25).

When translating between different legal systems or families, the relatedness of legal systems, rather than the relatedness of the languages involved in translation, will determine the level of translatability of legal concepts. According to de Groot (1992, 293–7) the possible situations are: (1) the legal systems and the languages concerned are closely related, e. g. between Spain and France, or between Slovenia and Croatia, therefore translating will be relatively easy; (2) if the legal systems are closely related, but the languages are not, e. g. translating between Dutch laws in the Netherlands and French laws, this task will not in-

volve extreme difficulties; (3) if the legal systems are different but the languages are related, e. g. translating German legal texts into Dutch or vice versa, the difficulty will be considerable, especially as this relatedness of languages implies the risk of *false friends;* (4) the most difficult
[58] task is translating between unrelated legal systems, as well as languages, e. g. translating Common Law texts from English into Slovene.

I believe, however, that de Groot's categorization of translational situations fails to identify another possible scenario and would thus need to be expanded by adding a further possible situation, i. e. translating between legal systems which are relatively related (e. g. German and Slovene, both belonging to the Civil Law family), but using a *lingua franca* bound to a legal system, which is in fact not relevant to the communication and may even be fundamentally unrelated to the legal systems of the communicating parties, as it is often the case with English used as *lingua franca.* This situation involves specific problems and requires a selective application of the principle of cultural embeddedness. The cultural specifics of the *lingua franca* may therefore be taken into consideration on the syntactical, pragmatic and stylistic levels, whereas on the lexical level there is a risk of introducing terms and thus concepts stemming from the culture/legal system underlying the *lingua franca* (in the case of English the Anglo-American, i. e. the Common Law legal system), which are alien to the communicating parties and their legal systems and may as such prejudice communication.

In this context Weisflog (1987) speaks of the 'system gap' existing between legal systems, which in turn results in the gap dividing legal languages. The wider the system gap, the higher the degree of translational difficulty.

Apart from the (un)relatedness of the legal systems involved in translation, other aspects of the source and target languages will have to be considered, such as the specific syntax, pragmatics and style of the individual legal languages. Legal language is generally characterized by its formal and impersonal style, as well as by the complexity and length of sentences and structures, which reflect the complexity of the subject matters rendered. Bhatia (1997) argues that the extensive use of conditions, qualifications and exceptions for expressing complex contingencies creates barriers to effective understanding

for ordinary readers and thus makes the translator's task all the more difficult.

In addition to the universal features described above, each legal language has its own syntactical characteristics. German legal texts, for instance, are characterized by an extensive use of the passive voice and [59] impersonal verb forms, multiple attributive adjectives, etc., whereas legal English uses complex structures, multiple negations, prepositional phrases and passive voice as well (cf. Cao 2007, 21).

Due to its performative nature, legal language in general uses structures which enable the performing of specific speech acts – establishing obligations, conferring rights, granting permission, expressing prohibition, etc. Documents such as statutes, contracts, wills are speech acts *per definitionem* and one of their distinguishing linguistic features is the use of performative markers, such as the use of the modals 'shall' (to express obligation) and 'may' (to grant permission, express rights) in English and performative verbs such as 'declare', 'adjudge', 'pronounce', 'undertake', 'bind oneself', assume '(the obligation/liability)', 'grant', 'confer', etc., and their corresponding translations in other languages (cf. Cao 2007, 21–2).

A further feature of legal language is its predominantly impersonal style. More specifically, the style of an individual language reflects the corresponding legal culture and logic. De Cruz (1999, 91) states, for example, that the style of German legal texts reflects the systematic and logical development of German law using an abstract conceptual language, based on highly-abstract, system-oriented, deductive thinking, which is not intended to be comprehensible to the layperson, but is meant to be read by experts who can appreciate 'its precision and rigour of thought' (Zweigert and Kötz 1992, 150). With regard to the style of legislative drafting, Tetley (2000, 703) defines the style of Civil Law codes and statues as concise, while he describes the style of the Common Law statutes as precise. The legal English used in Common Law texts is based on inductive thinking and on an empirical approach to legal problems, which is intended to restrict interpretation possibilities to the minimum. For instance, the style of English/American contracts is characterized by wordy, lengthy sentences and the use of word strings, i. e. a number of words with similar meanings, such as 'null and

void', 'give, devise and bequeath', 'costs, charges and expenses', which often present problems when they have to be translated into a target language which may lack the exact corresponding synonyms and thus they are rendered by a single term or shorter structures. In this respect
[60] Hill and King (2004) in their study 'How Do German Contracts Do as Much with Fewer Words', in which they compare German and American business contracts, argue that German agreements are usually only one-half or two-thirds the size of comparable US agreements made for the same or similar purposes.

THE GAPS BETWEEN LEGAL SYSTEMS AND THEIR EFFECT ON TRANSLATION

When translating between legal systems, i. e. from one legal language into another, the gaps between the legal systems, as well as the characteristics of the legal languages on the lexical, syntactical, pragmatic and stylistic level have to be taken into account. The existing gaps between different legal systems certainly affect the lexical aspect of translation, i. e. the translatability of terms from/into different legal languages, as due to the differences between legal systems there might be no (complete) equivalence between legal concepts.

An example of the gap between legal systems, which in turn results in the lack of equivalence between the corresponding terms and concepts, is provided by the two major legal families of the contemporary world, i. e. continental and common law. The dichotomy between these two major legal systems mainly affects three terminological areas (cf. Cao 2007, 60 ff.), i. e. the terms used to define different types of legal professions, the terminology used to render different court structures and the specific terms referring to particular areas of law and institutions.

In the area of legal professions, the legal professional licensed by the state to advise clients in legal matters and represent them in the court of law, who is called *Rechstanwalt* in German, *avvocato* in Italian, *odvetnik* in Slovene and has a basic role in every continental legal system, has no direct equivalent in the Anglo-Saxon system, as it can be translated as *lawyer, counsel, advocate, attorney, solicitor, barrister* or *counsellor.* In the US, lawyers are generally referred to as *lawyer* and *attorney,* or more

formally *attorney-at-law* and they may all plead cases in the courts of the states in which they are admitted. In the United Kingdom, Canada, Australia and several other common law jurisdictions the lawyers are either *barristers* (authorized to appear in a superior court, i. e. to argue cases) or *solicitors* (who generally advise clients and may only appear in an inferior court), while in Scottish law the term used is *advocate.* In England, some other Commonwealth countries and former colonies, *barristers* are further divided into *senior* and *junior counsels,* where *senior counsels* are barristers appointed to the British crown and, when the sovereign is a woman, they are conferred the title *Queen's Counsel* (Q C). [61]

Another area in which terminological problems occur due to differences in the legal system is the terminological sphere referring to judicial officers. In England and Australia the terms *Judge* and *Justice,* as well as *Magistrate* (for magistrate courts) are used. In Germany and Slovenia, however, there is a distinction between professional judges, who are trained as lawyers and are called *Richter* in German and *sodnik* in Slovene, and honorary judges, who are lay judges appointed to assist professional judges and are termed *Schöffe* in German and *porotnik* in Slovene and have no functional equivalent in the Anglo-American legal system.

A further important source of translational difficulties is represented by words used to describe the structure and hierarchy of courts. In English common law jurisdiction two words are used to refer to courts: the general term *court* and a narrower term *tribunal,* which refers to panels and bodies that exercise administrative or quasi-judicial functions with limited or special jurisdictions, whereas in German and Slovene only one term is used (i. e. *Gericht/sodišče*). In England, the court hierarchy comprises the House of Lords as the ultimate appellate court, the Supreme Court of Judicature, the Court of Appeal, the High Court of Justice, the Crown Court, the County Courts and the Magistrates Courts. This structure is hardly comparable with, for instance, the German court hierarchy which includes four hierarchical court levels: *das Amtsgericht, das Landesgericht, das Oberlandesgericht* and, as the ultimate appellate court, the *Bundesgerichtshof.* The Slovene court system is similar to the German one (the corresponding courts being *okrajno, okrožno, višje* and *vrhovno sodišče*), but as most court systems of continen-

tal law countries bears little resemblance to the common law court structure.

The last sphere where the lack of equivalence between the terms and concepts of various continental legal systems and those pertaining to common law is strongly felt is represented by the terminology used to define various specialized fields of law and institutions. Within the continental legal family the same major branches of law are found in all countries: constitutional law, administrative law, public international law, criminal law, the law of procedure, civil law, commercial law and labour law. This division is also to be found at lower levels, referring to institutions and concepts. However, if these domains of law and the corresponding institutions are compared to those of the common law legal systems, many conceptual and structural differences are identified. For instance, there are institutions in continental law which are completely alien to common law, such as *cause, abuse of right, the direct action, the oblique action, the extent of strict liability in tort,* etc. On the other hand, there are common law concepts which do not exist in the continental legal systems, such as *consideration* or *estoppel* in contract law, or the notion of *privity* in different legal contexts. A significant example of a broad and extremely significant concept which is fundamental to continental law, especially to the Romano-Germanic legal systems, but has no equivalent in common law is the *law of obligations,* which has been developed over the centuries on the basis of Roman law elements. Similarly, a part of the English legal structure, i. e. *equity,* has no exact counterpart in continental law, as most of its concepts and legal rules are unique and have no parallels in any other legal system.

[62]

Company law is another field where the lack of equivalence between the two systems is strongly felt. The Anglo-American company law does not distinguish between the categories of *Kapitalgesellschaften/società di capitali/kapitalske družbe* and *Personengesellschaften/società di persone/osebne družbe,* but merely between incorporated, which have the status of legal persons, and unincorporated companies, which have no legal personality.

The terms *public limited company* and *limited liability company* can be used relatively safely when translating the company forms *Aktiengesellschaft/società per azioni/delniška družba* and *Gesellschaft mit beschränkter*

Haftung/Società a responsabilità limitata/družba z omejeno odgovornostjo, but there are no equivalent terms in the English legal terminology for company forms such as *Offene Handelsgesellschaft/società in nome collettivo/družba z neomejeno odgovornostjo* or *Kommanditgesellschaft/società in accomandita/komanditna družba.* [63]

Other cases of non-equivalence derive from the fact that two opposite governance systems are applied in public limited companies, namely the Anglo-Saxon *one-tier* and the continental European *two-tier* systems. The one-tier system has only one governing body, i. e. *the board of directors,* whereas in the two-tier system there are two governing bodies, i. e. the *management board (Vorstand/consiglio d'amministrazione/uprava)* and the *supervisory board (Aufsichtsrat/collegio sindacale/nadzorni svet).* The terms *management board* and *supervisory board* thus do not exist in the Anglo-American legal language and can be classified as neologisms according to de Groot. In practice, the executive (inside) directors have a function similar to the role of the members of the management board in the continental system and the non-executive directors to that of the members of the supervisory board. Similarly, the function of a *Prokurist/procuratore commerciale/prokurist* (a representative of a company holding a special power-of-attorney, i. e. a *procura,* authorizing him/her to act on behalf of the company) does not exist in British and American companies and to describe it either the source-language term or a paraphrase has to be used.

The problems deriving from the discrepancy between common law and continental law are also felt within the European Union where English is most often used as *lingua franca* (cf. Kjaer 1999, 72). When English is used to describe specific aspects and concepts of the European Law or of national legal systems belonging to the continental legal family within the EU, terms are often used, which are tainted by the meaning attributed to them within the Anglo-American legal system. Such terms, tainted by national law, often cause problems in interpreting international or supranational legal texts (cf. de Groot 1992, 283). When for instance the continental concept *bona fides* is translated into English, most frequently the expression *good faith* is used, which, however, does not fully render the continental notion. The English concept of *good faith* excludes negligence, while the continental under-

standing of *bona fides* often regards gross negligence as the equivalent of bad faith. Moreover, the continental concept covers a wider semantic field and includes confidential relationships and a minimal standard of conduct expected of the parties engaging in commercial transaction
[64] (Cao 2007, 57–8).

Thus, according to de Groot, when translating terms/concepts between legal systems, the first stage will involve studying the meaning of the source-language legal term to be translated. Then, after having compared the legal systems involved, a term with the same content must be sought in the target-language legal system, i. e. equivalents for the source-language legal terms have to be found in the target legal language. If no acceptable equivalents can be found due to non-relatedness of the legal systems, one of the following subsidiary solutions can be applied: using the source-language term in its original or transcribed version, using a paraphrase or creating a neologism, i. e. using a term in the target-language that does not form part of the existing target-language terminology, if necessary with an explanatory footnote (cf. de Groot 1998, 25). Mattila (2006, 119 ff.) suggests another quite frequently used translation solution, namely the building of calques and/or borrowed meanings.

Finally, when deciding on the translational solution to be used, the context of the translation, its purpose *(skopos)* and the character of the text play an important role. A wide range of *skopoi* is possible: from mere information on the source text for a receiver who does not speak the target language to a translation which will have the status of an authentic text parallel to the source-text, as is the case with international contracts made in two or even more equivalent language versions.

TYPES OF LEGAL TRANSLATION

These different purposes of translation are reflected in the type of translation to be produced. Nord classifies translation in two basic types: a documentary translation, i. e. a document in the target language of (certain aspects of) a communicative interaction in which a source-culture sender communicates with a source-culture audience via the source-text under source-culture conditions; or an instrumental translation which aims to produce in the target language an instru-

ment for a new communicative interaction between the source culture sender and the target language audience by using (certain aspects of) the source text as a model (Nord 1997, 47).

For translation in legal settings this classification needs to be further elaborated. Cao thus classifies legal translation into three categories: translation for normative purposes, translation for informative purposes and translation for general legal or judicial purposes (2007, 10–2). [65]

Legal translation for normative purposes actually corresponds to Nord's instrumental translation, as it implies producing translations of domestic laws and international legal instruments in bilingual and multilingual jurisdictions, where the source and the target text have equal legal force. This kind of texts are often drafted in one language version and then translated into another language or languages, but the translation is nonetheless considered an authentic legal instrument and is equally binding as the source text. Examples of such translations are legal texts translated within bilingual/multilingual legislations (such as in Switzerland, bilingual areas of Slovenia, Italy, Belgium, etc.), as well as the multilingual legal instruments of the UN and the EU, but also translations of private documents, such as contracts, which are made in two or more equally authentic language versions, all legally binding.

Following Cao's classification, Nord's category of documentary translation needs to be subdivided into two further subcategories. The first is the legal translation for informative purposes, which has constative or descriptive functions and includes translations of different categories of legal texts (statutes, court decisions, scholarly texts), produced in order to provide information (in the form of a document) to target culture receivers, whereby the translations only have informative value and no legal force. Examples of such translations are often found in monolingual jurisdictions, where texts originating from other jurisdictions are translated in order to serve as a source of information on such jurisdictions (e. g. common law texts translated for continental legal experts or students for study purposes).

The second subcategory is the translation for general or judicial

purposes, where original source language texts are translated to be used in court proceedings as part of documentary evidence. These translations have an informative, as well as descriptive function and may include, apart from legal documents (pleadings, statements of claim,
[66] contracts, etc.), ordinary texts such as business or personal correspondence, witness statements and expert reports, etc., which are often not written in legal language by legal professionals, but enter the sphere of legal translation due to the special requirements of legal communication. These translations are meant to be used by parties in proceedings who do not speak the language used in court or by lawyers and/or court officials who need to access the original documents written in a language different from the one used in court.

Experienced translators will usually be able to establish which kind of translation is required in a given legal setting, i. e. identify the *skopos,* while the relevant information may also be supplied in the *translation brief.* According to the Skopos theory, the *translation brief,* i. e. *commission* can contribute considerably to the quality and functionality of the translation by providing the translator with explicit or implicit information about the intended target-text functions, addressees, the prospective time, place and motive of production and reception of the text (Nord 1997, 137). In the case of legal translation, this information should also indicate the legal system to be observed as the communication framework.

A SEVEN STAGES STRATEGY FOR TRANSLATING LEGAL TEXTS

Taking into account the specifics of the above presented communicative situations in legal settings and my own experience, gathered over years of practice as court translator, I became aware of the pitfalls and risks involved in legal translation. I therefore decided to design a translational approach addressing the specific challenges of legal translation. This translational strategy addresses the different aspects and potential problems of legal translation and is aimed at facilitating intercultural contacts in a legal environment. It consists of seven stages each addressing one specific aspect, i. e. problem intrinsic to legal translation and I believe that after due elaboration such a specific strategy could

effectively be incorporated in the training programmes for participants in intercultural legal communication.

Stage 1: Identify the Skopos*/Function of the Translation*

In legal translation, a whole range of *skopoi* is possible. For instance, the translation of the source text may serve as a basis for a new document to be used in a different (target) legal system, in which case it will have to be adapted to, i. e. embedded into the target legal system. Another possible and quite common situation is that the translation will represent one of two or more language versions of a document having equal value and legal force in a multilingual or international legal setting. The translation of a legal source text may also be made for didactic purposes, i. e. for target culture readers who do not speak the source language to enable them to study the characteristics of the source legal system and language. [67]

Stage 2: Establish the Number of Legal Systems Involved in the Translation

When translation occurs within the framework of a multilingual national legal system (as in Switzerland, Italy, Slovenia – into/from minority languages), within an international or supranational legal system such as the UN or the EU, or within international legal transactions (such as international contracts, i. e. agreements), where one legal system is explicitly defined and adopted by the parties as the governing law, there is only one legal system involved, i. e. underlying both the source and the target text.

When texts are translated from a source language pertaining to a monolingual source legal system into a target language, i. e. legal system (e. g. Slovene – Croatian), two legal systems will be involved.

Stage 3: Establish the Degree of Relatedness of the Legal Systems Involved

Identify the legal families to which the legal systems involved in translation belong and establish their degree of relatedness. Consider that the translatability of legal concepts depends directly on the relatedness of the legal systems and not of the languages involved in translation. In case of unrelated legal systems, you might have to cope with the lack

of equivalence between legal concepts, whereas in the case of related languages beware of the risk of using false friends.

Stage 4: Translate Legal Concepts

[68] When translating legal concepts between legal languages and cultures first study the meaning of the source language term within the source legal system, then search for an equivalent in the target legal language by using any available translation tool: dictionaries, glossaries, terminology banks, corpora of related texts or parallel documents (similar to the source language text) in the target language. Sometimes equivalents can be found in the history of a legal language, which was the case with company law terminology in the socialist era in Slovenia. When concepts related to company law, which at that time did not exist in the Slovene legal system, had to be translated, the terminology was drawn from the Slovene legal lexicon used in the period during the wars.

If no equivalents can be found due to the unrelatedness of legal systems, either one of the following three solutions suggested by de Groot (1998, 25) should be applied: using the source-language term in its original or transcribed version, using a paraphrase or creating a neologism (possibly of Latin/Greek origin), i. e. using a term in the target-language that does not form part of the existing target-language terminology, if necessary with an explanatory footnote, or creating a calque or a word with borrowed meaning following Mattila's guidelines.

In this connection, it should be taken into account that when translating into a *lingua franca,* the terms used might be tainted by the meaning attributed to them in the legal system underlying the legal *lingua franca,* which might have no connection to the legal systems actually involved in translation.

Stage 5: Define the Terminology for a Specific Legal Operation

In order to avoid the risk of introducing non-equivalent terms, 'terminologize' the words/phrases to be used in a legal operation. In the case of an agreement or contract, for instance, the meaning of the principle terms to be used in communication can be precisely determined by using the following wording:

> For the purpose of this Agreement, the following words and phrases mean the following: *Invention Rights* means: (1) the discoveries, know-how, information and inventions created by the Inventor(s).

Stage 6: Apply the Culturally Specific Linguistic Features of Target Language Legal Texts

In every legal culture there are specific text norms and conventions applying to legal texts on different linguistic levels. The target text should conform to them on the syntactical, pragmatic and stylistic level. For instance, to express an obligation in English legal texts 'shall' is extensively used. When translating an English text into German this structure should be substituted by other equivalent ones, which are typical of the German legal language ('haben + zu + infinitive', the modal verb 'müssen', lexical verbs such as 'sich verplichten', etc.) , whereas in Slovene the most widely used language means to express obligation in contracts are lexical verbs and expressions such as 'obvezati se', 'prevzeti obveznost' and similar.

Stage 7: Provide for the Legal Security of the Target Text

Considering the performative nature of legal language, i. e. the fact that utterances in legal texts have a decisive impact on reality, a legal translator has to be aware of the risks implied in legal translation and assume the burden of responsibility for potential consequences of (in)adequate translation. In order to reduce this risk, Sandrini (1999, 39) suggests to follow two guidelines, that is to safeguard the legal security of the target text (by double-checking its legal foundations, consulting experts whenever this is necessary) and ensure the transparency of the translational decisions, i. e. account for the solutions adopted in accordance with the *skopos* of the translation.

CONCLUSION

The area of legal translation is a highly specialized one, demanding from the translator an interdisciplinary approach which takes into consideration the specifics of legal science, especially the findings of comparative law, as well as the peculiarities of legal language. It thus has to unite translation science with comparative legal science and con-

trastive linguistics. In years of translation practice I became aware of the pitfalls and risks involved in international legal communication and therefore decided to attempt to design a targeted strategy addressing the special requirements of legal translation. In the light of
[70] the increasing demand for legal translation, I believe that such specific strategies and techniques could effectively be incorporated in training programmes for legal translators and interpreters. However, given the fact that not only professional translators, but also experts involved in other disciplines related to international business and legal communication need to be able to effectively communicate in matters regarding international legal transactions, they would undoubtedly benefit from acquiring the relevant specialized language and translation skills and developing a higher awareness as to the potential problems of such communication. Therefore, targeted modules on legal translation and strategies could also find their place in non-linguistically oriented educational programmes.

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