

Translating contracts between English and Arabic:

Towards a more pragmatic outcome

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Abstract

This study falls into two parts. The first part aims at demonstrating how pragmatic and functional considerations are important in legal translation. The corpus the researchers relied on consisted of nine translated versions of three authentic contracts. A Real-Estate Contract, a Contract of Lease and an Employment Contract were commissioned to be translated by three professional translators certified by the Palestinian Ministry of Justice asking them to translate these texts the way they would usually deal with legally binding, official documents.

The second part explores the relevance of Vermeer's *Skopos* theory to the translation of contracts through a small pilot study that compares the work of translation students with a broad, theoretical background and a professional translator uninformed about theories of translation. A group of graduate students of translation and applied linguistics and a professional translator were assigned to translate a "Power of Attorney" legal text from English into Arabic. They were all asked to translate the same text into a different context where it would be performing a new function.

This study demonstrates how standardized legal language features can still be tamed to serve the ultimate goal of successfully communicating the message across languages as intended and as commissioned. Unlike previous studies that were devoted to systemizing and mathematizing legal translation, this study focuses on communicative and functional approaches to contractual translation between English and Arabic.

Keywords: Translation, Legal translation, Contract translation, Pragmatics.

1.1 Introduction

The approaches to legal translation have been mostly oriented towards the preservation of the letter rather than effective rendering in the target language, legal texts having always been accorded the status of 'sensitive' texts and treated as such. A challenge to the unquestioned application of a 'strictly literal' approach to legal translation came only in the nineteenth and early twentieth centuries (Sarcevic 2000, 24). Thus, a change in perspective occurred with a gradual shift towards a more flexible attitude, increasingly characterized by recipient-orientedness. In this context, the translation of a legal text will seek to achieve the identity of the intended meaning between the original and the translation, i.e. the identity of the propositional content as well as the

identity of the legal effect (Sager 1993, 180) while at the same time pursuing the objective of reflecting the intents of the person or body that has produced the original. This corresponds to identifying the propositional content of the illocutionary and perlocutionary force, and of intentionality (de Beaugrande-Dressler 1981, 3-11; 113).

In actual practice of legal translation, the criteria guiding the translator's choices are prevalently functional, in that account is mainly taken of the function that the translated text will have to perform in the target culture. Hence, in the translation of contracts, regulating the relationships between subjects in different contexts, the original text agreed between the parties is not necessarily authoritative; a contract as such, will be interpreted according to the law governing it, regardless of the language in which it is written, and will be drawn up according to the rules and drafting conventions of the national law applicable to it. The source text offers the input on the basis of which a new autonomous text is created in the translation language taking into account mainly the needs of the final users (Garzone 2003, 8).

1.2 Statement of the Problem

Translating legal texts is regarded by many researchers as one of the most arduous endeavors, "combining the inventiveness of literary translation with the terminological precision of technical translation" (Harvey 2002). This is mainly due to the specificity of legal language and, in particular, the system-bound nature of legal terminology. Legal documents entail specific laws, rights or obligations; their language layout and wording should be precise and expressive and can have no other interpretations apart from the ones stated. Unlike literary language, legal language uses no ambiguity or figures of speech. It is, thus, the least communicative. Written legal documents are characterized by brevity, economy and neatness. Such neatness and clarity is intended to prevent fraud, additions, omissions or alterations in the text (Crystal and Davy 1969).

Like other disciplines, legal translation has its own vocabulary and can be regarded as a discipline on its own. There are specific forms and stabilized procedures for translating court proceedings, law, legal contracts and agreements. "The text is formulated in a special language or sublanguage that is subject to special syntactic, semantic and pragmatic rules" (Sarcevic 2000, 8). Thus, a legal translator must be able to use language effectively to express legal actions and achieve the desired effect. For this to be achieved, the translator's goals should not be confined to lexical or syntactic precision, but, more importantly, he/she should strive to integrate pragmatic considerations into the overall communicative process.

This study aims at demonstrating how pragmatic and functional considerations are important in legal translation and should be taken into account when determining translation strategies. It will argue that legal translation involves more than terminological and syntactic issues. It is not a mere "process of linguistic transcoding" but "an act of communication in the mechanism of law" (Sarcevic 2000, 55). The study addresses the significance of context as a determinative factor in the process of communicating the intended meaning through translation. Another proposition to be examined is that translation commission may entail a change of function of the

source text (ST), which may have several implications for the process and the outcome of legal translation.

1.3 Significance of the Study

The significance of this study lies in the fact that there is a paucity of research on legal translation, especially the translation of contracts, between Arabic and English from a communicative angle. In general, the literature on legal translation is meager indeed. Most of the significant reference textbooks on legal translation are solely devoted to questions of terminology, while textual and pragmatic considerations tend to be overwhelmingly ignored. The discipline of legal translation has so far been theoretical to the extent that no tool for explaining the underlying functional apparatus of legal discourse has been constructed. This study presents a recommendation that may provide for a more adequate and integrated output as regards function and pragmatic considerations. It may conform to previous studies by appraising the language of law, though more thoroughly. However, this is directed towards demonstrating how such standardized legal language features can still be tamed to serve the ultimate goal of successfully communicating the message across languages as intended and as commissioned. Unlike previous studies that were devoted to systemizing and mathematizing legal translation, this study focuses on communicative and functional approaches to contractual translation between English and Arabic.

1.4 Limitations of the Study

The study is only a preliminary step in investigating pragmatic and functional implications for legal translations. The work tackles the modern translation and applied linguistics theories such as those of pragmatics and functional theories that were never considered in relation to contract translation between English and Arabic. The absence of previous studies of such work is the major limitation of this study; hence it is heavily dependent on empirical and observational examination.

1.5 The Corpus and Methodology

The corpus upon which this paper is based consists of nine translated versions of three authentic contracts. The three contracts are a Real-Estate Contract, a Contract of Lease and an Employment Contract. These contracts were commissioned to be translated by three professional translators certified by the Palestinian Ministry of Justice asking them to translate these texts the way they would usually deal with texts of the same type, i.e., legally binding official documents. These translators were chosen based on their long experience with legal translation and the fact that they are certified legal translators, which makes them appropriate subjects for this empirical study. An analysis of each of the three contracts is carried out in order to compare each version's legal validity based on its functional and pragmatic efficiency.

The first part of the paper compares and criticizes the translation strategies used by the three translators to deal with problematic areas of legal translation. Here the paper investigates how each translator handled the purely technical terms, the semi-technical terms and the everyday ones. Other problematic areas such as synonyms and quasi-synonyms, legal formulas, *here-* and

there- compounds have been analyzed. Various sections from all nine versions are selected to be compared and assessed as regards success in reproducing the intended meaning. The proposition to be examined is that pragmatics has potential application to all fields with a stake in how utterances are understood.

This part of the paper also probes the alleged inherent standardization of legal translation. That is to say, if legal translation should be acquiescently compliant to an endless array of restrictions, then all three versions of each contract should be identical. If this did not turn out to be the case, and if all three versions turned out to be different in wording and style yet equally valid, then standardized legal translation is nothing but an artificial assessment procedure. Conversely, this may also shed light on various instances of erroneous translations done by the certified translators.

The second part of the paper burrows into Vermeer's *Skopos* theory and explores its relevance to the translation of contracts through a small pilot study that compares the work of translation students with a broad, modern theoretical background and a professional translator uninformed about modern theories of translation. A group of graduate students of translation and applied linguistics and a professional translator were assigned to translate a "Power of Attorney" legal text from English into Arabic. They were all asked to translate the same text into a different context performing a new function in the target text. This sheds the most revealing light on the interplay between modern translation theories and translation practice.

1.6 Review of Related Literature

The literature on legal translation is meager indeed. Research on legal translation between English and Arabic is predominantly restricted to purely semantic or syntactic issues. For instance, Abu-Ghazal (1996) outlined a number of syntactic and semantic problems in legal translation from English into Arabic, by analyzing graduate students' translations at Yarmouk University of a number of UN resolutions. He chiefly aimed at detecting the linguistic and translation problems facing translators in general and MA students in particular. He concluded that such students should be exposed to intense training in legal translation before practicing it as a career.

One of the pioneering studies in the language of law frequently referred to in the literature is that carried out by Mellinkoff in 1963. In his book, Mellinkoff was concerned with what the language of the law is, describing its characteristics and mannerisms. He also investigated the history of legal language, and then he brought the language of the law down into the practice.

In their book, Crystal and Davy (1969) devoted one chapter to the language of legal documents, supported with examples taken from an insurance policy and a purchase agreement. They wrote that "of all the uses of language, it [legal language] is perhaps the least communicative, in that it is designed not so much to enlighten language-users at large as to allow one expert to register information for scrutiny by another" (p.112). A legal text for them exhibits a high degree of linguistic conservation, included in written instruction such as court judgments, police reports, constitutions, charters, treaties, protocols and regulation (p.205). They described legal texts as formulaic, predictable and almost mathematic.

Farghal and Shunnaq (1992 and 1999) focused on the problematic areas in translating UN legal documents as encountered by MA translation students at Yarmouk University in their comprehensive examination. According to them, these areas fall into three categories: syntax-related problems, layout-related problems, and tenor-related problems.

Emery (1989) explored the linguistic features of Arabic legal documentary texts and compared them with their English counterparts. Emery ended up recommending that trainee translators should develop a sense of appreciation of the structural and stylistic difference between English and Arabic discourse to help produce acceptable translations of legal documents. Though he only made limited inroads into the area of legal translation theory or practice, Emery's article is actually one of the very few works that investigated general features of Arabic legal language, an area of research that has inexplicably been disregarded by Arab translators and theorists.

Almost all of the above mentioned theorists and writers who have tackled the area of legal translation between English and Arabic attached great importance to the letter of the law and thus devoted themselves to questions of terminological or syntactic accuracy, while disregarding pragmatic, functional notions. The following review demonstrates how some other writers and theorists have reconnoitered communicative approaches to legal translation between English and some European languages, but not Arabic.

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

Mellinkoff's (1982) outlined basic rules of Plain English drafting. Most points were illustrated by contrasting samples of poor drafting in briefs, contracts and judicial opinions with versions of the same material rewritten in ordinary English. He wrote describing ready legal forms, "[t]hey are a quick, cheap substitute for knowledge and independent thinking" (p.101). He also defined four elements of legalese: formalisms, such as *now comes*; archaic words, such as *hereby*; redundancies, such as *each and every*; and Latin words, such as *per curiam*.

By the same token, Butt and Castle (2006) burrowed into the roots of traditional legal language and its peculiar characteristics that make legal documents aloof from their users. They proposed a step-by-step guide to drafting in modern style, using examples from four types of legal documents: leases, company constitutions, wills and conveyances. Moreover, they emphasized the benefits of drafting in plain language and confirming the fruitfulness of its use. Like Mellinkoff, they surveyed the reasons for the current alarming state of legal drafting, as well as provided guidance on how to draft well. This book, the most recent addition to the Plain English Movement, argues

that it is actually "safe" and constructive to break away from old ways of legal drafting into simpler, more communicative ones.

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

As Sarcevic indicated, "the basic unit of legal translation is the text, not the word" (p.5). Terminological equivalence has an important role to play, but 'legal equivalence' used to describe a relationship at the level of the text may have an even greater importance (p.48).

Sarcevic suggested that the traditional principle of fidelity has recently been challenged by the introduction of new bilingual drafting methods which have succeeded in revolutionizing legal translation. 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 but to guaranteeing the effectiveness of multilingual communication in the legal field (p.16). The translator must be able "to understand not only what the words mean and what a sentence means, but also what legal effect it is supposed to have, and how to achieve that legal effect in the other language" (p. 70-71).

Making use of the available literature on pragmatics, the concept of legal equivalence, and the changing role of the translator, the study scrutinizes the applicability of pragmatics to the translation of contracts through comparing and criticizing the output of three professional translators. In addition, the relevance of functional theories to the translation of contracts is assessed through assaying the translations of student translators with the translation of a professional translator.

Moreover, the paper also appraises the bearing of functional theories on the translation of contracts through the analysis of target texts (TT's) produced by student translators and the comparison of those with ones produced by a professional translator. The target text is accorded a new function in a new comprehensively different context. For this purpose a newspaper advertisement was selected as an alternative genre harboring new functions and addressed to new receivers.

The translation procedures adopted for contracts, are subordinate to the pragmatic conditions they have to meet. However, strict literal translation is not necessarily the rule for this category of texts. In a context that is characterized by the absence of legal validity of the translated version, there may be situations where a free approach can be taken, if the aim is only that of making the addressee of the target text aware of the function of the original in the source-language culture.

2.1 Pragmatics and Legal Translation

This section scrutinizes the translation of contracts from a pragmatic and functional perspective through an empirical data analysis, incorporating discussion of the findings simultaneously. It investigates the applicability of pragmatics to the translation of contracts through

comparing and criticizing the output of three professional translators. The assessment is carried out by arbitrating their adeptness to maintain the intended meaning and the communicative act effectively, guided by the context and illocutionary force aimed at.

Pragmatics is the study of the relationship between the linguistic sign and its user, that is to say, the study of how people use language to communicate. Pragmatics deals with meaning in context and maybe the study of aspects of meaning not covered in semantics.

If we take legal language to be the sign and society as the user of that sign, we will be looking at elements like function, context and comprehension.

Nord (1997, 35) describes the adequacy of a translation in the following terms:

This means the translator cannot offer the same amount and kind of information as Source-text producer. What the translator does is offer another kind of information in another form [...]. Within the framework of Skopostheorie, "adequacy" refers to the qualities of the Target text with regard to the translation brief: the translation should be "adequate" to the requirements of the brief.

When deciding on the most efficient translation strategy to be used, the context of the translation, its purpose (skopos) and the nature of the text and the text receivers can be quite decisive. However, the translation commission can contribute significantly to the quality and functionality of the translation by providing the translator with 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 translating legal texts, equal intent has priority over equal meaning. There are two forms of intent: macro-and-micro-intent. While the macro-intent of a text is often identified as its general communicative function, the micro-intent is the specific purpose of a particular text, i.e., what it is attempting to achieve or author intent. Hence, legal translators must strive to produce a text that expresses the intended meaning and achieves the legal effects intended by the author. In the legal domain, this is known as legislative intent. In contracts, this is known as the intent or will of the contracting parties.

These observations on the one hand shed light on the markedly sensitive nature of legal texts, which contributes to making their translation particularly critical and challenging, and on the other emphasizes the significance of pragmatic considerations in settling on the right translation strategy to adopt. Accordingly, the translator's primary task is to produce a text that can be interpreted and applied as intended by the legislator. Based on that, a sufficient communication process within the mechanisms of the law can be said to have taken place when the translated versions of a single text are interpreted and applied uniformly as intended by the contracting parties (Sarcevic 2000, 73).

2.2 Contracts

Contracts are agreements between two or more parties to exchange performances in a given situation for a specific purpose. The legal actions to be performed or not performed are set forth in the substantive provisions in the form of obligations, permissions, authorizations and prohibitions, all of which are enforceable by law (Sarcevic 2000, 133-134).

In today's world, contracts are the legal documents ordinary people are likely to be most familiar with. A contract does not have to be formally written down and signed to be legally binding. Oral

contracts are valid in law though there may be difficulty in proving them if there are no witnesses. Given this freedom of form, there are some basics that distinguish contracts from other forms of agreement and which must be present for a contract to be recognized as such and thus enforceable. In the first place, there must be an agreement between two parties, who may be individuals or groups, nonprofessionals or juristic experts. Second, there must be valuable consideration given and received by each party. In other words, each party promises to give something in exchange for the other party's promise to give something else in return. Normally, this consideration takes the form of money, goods or services, but it may be practically anything so long as it has some identifiable worth. Thus, in this mutual offer and acceptance, each of the two parties may be viewed as both or "promisor" and "promisee". Third, the parties must intend their promises to be acted on and to be legally binding. Insignificant or vague actions are not constructible as contracts, nor are promises to undertake the impossible. Fourth, the subject matter of the contract must not be illegal or "tainted with illegality"; so-called "contract killings" are not contracts in law. Fifth, the contract must be freely entered into by both parties and both should be of equal bargaining power. Any agreement brought on by fraud, unreasonable influence or oppressive means may be set aside, as may an unfair bargain or one-sided agreement bargain (Alcaraz and Hughes 2002, 126-127).

3.1 Discussion and Findings

After examining all the source and target texts of the corpus, it can be said that contracts are among the most difficult documents to translate. This is mainly because quite often their authors are not professional writers. Additionally, contracts are known for their stylistic conventions, such as archaisms, synonyms and quasi-synonyms and reference repeating. These factors affect the first part of a translator's work- comprehension. As for the final part of his/her work, production, the temptation to translate literally and to follow the exact style of the original is rather powerful. This may create the risk of making the translation even more incomprehensible than the original, since the style conventions of the original rarely coincide with those of the target language.

An examination of some examples reveals the most common problems in the translation of contracts and how these were dealt with by the three translators. The greatest single difficulty encountered initially by legal translators is the unfamiliarity of the vocabulary characteristic of this type of discourse.

3.2 Purely Technical Terms

These are terms found exclusively in the legal sphere and have no application outside it. Lexical units of this type are distinguished from the others in that they have long remained semantically stable within their field of application. Hence, they may be said to be the least troublesome terms for translators. However, they can be crucial in the context in which they occur, since the rest of the text dealt with will fail to cohere until such terms have been catered for. These terms are recognized as legalisms that are usually listed in legal dictionaries. Table 1 shows some examples on this category.

Table (1)

Purely technical terms

| Original | Translator (A) | Translator (B) | Translator (C) |
|---|---|--|---|
| (بموجب وكالة) منظمة لدى كاتب العدل | Vide a power of attorney duly regulated by the Notary Public | According to power of attorney authenticated by the Notary Public | According to power of attorney arranged with Bethlehem Notary Public |
| من البناء القائم على قطعة الأرض وقف نوع | Of the building erected on the plot endowment | Of the building instructed on a land piece Kind of endowment | Of the building raised on the lot of land Of type: "endowment" |
| إبراء ذمة المستأجر | Lessee shall be discharged | The lessee must get a discharge | Discharging the tenant |

An example on this group is:

- وكالة: which was consistently translated by all three translators as "power of attorney". Regardless of the legal context, such term will only be translated with this functional equivalent.

Another example is:

- كاتب العدل: which was translated by all three translators as "notary public" which is a literal yet functional translation:
- وقف: is another example also unanimously translated as "endowment"
- إبراء ذمة: translated as "discharge".

The term "discharge" can have many other meanings in English such as, dispatch, pour forth or release, eliminate and many other possible meanings depending on the context of occurrence. In this particular context, however, "discharge" is the only English technical equivalent that reproduces the intended meaning. This is an example of a technical term in the source language translated by a semi-technical term in the target language.

In this particular category, pragmatic consideration might not be of much use since such terms are already established and agreed upon and hence are listed in legal dictionaries with one context-independent meaning.

3.3 Semi-technical or Mixed Terms

This second group consists of words and phrases from the common stock that have acquired additional meanings by a process of analogy in the specialized context of legal activity. These terms are much more numerous and are constantly growing in number as the law changes to meet the continuously changing needs of the society. Moreover, they are semantically more complex, presenting the translator with a wider range of choices, since group one words in one language may be translated by group two terms in another. Translators dealing with terms of this kind, face the familiar dilemma raised by connotation, ambiguity, partial synonymy and the fact that the precise nuance is often context-dependent. Table 2 lists some examples on this category.

Table (2)

Semi-technical or mixed terms

| original | Translator (A) | Translator (B) | Translator (C) |
|--|--|--|--|
| مصادق عليها من مكتب منظمة التحرير الفلسطينية | Duly authenticated by the PLO Office | authenticated by the PLO Office | endorsed by the PLO Office |
| مقدمة | Preamble | Introduction | Introduction |
| مدة الإيجار | Tenancy term | Period of rent | Duration of lease |
| وعليه يلتزم المستأجر بما يلي | And hence the lessee shall abide by the following | The lessee must be committed with the following | Therefore, the tenant complies with the following |
| شاهد-كفيل | Witness-sponsor | Witness-sponsor | Witness-guarantor |

An example in this group is مصادق عليها which in text (1) was translated as "authenticated" by two translators while the third translated it as "endorsed" which is a synonym yet a poorer choice given the context. The verb "endorse" can mean, among many other things, to sign one's name as payee on the back of a check in order to obtain the cash or credit represented on the face. In this context, which is the power of attorney being authorized, translator (C) was not context-sensitive and hence, failed to convey the intended meaning.

The word مقدمة in text (1) was translated as "introduction" by two of the translators and as the more formal term "preamble" by the third. Though the second expression is more commonly used in English contracts, however, the back translation of it in Arabic is "تمهيد" and not "مقدمة" (Sabra 2003, 108). Still, one cannot possibly see why "introduction" will not be just as valid and

effective. After having surveyed more than five English contracts ranging from the '80s to very recent ones, we noticed a growing tendency to use "introduction" rather than "preamble".

In text (2), the phrase *مدة الإيجار* was translated differently by all three translators. It was translated as "tenancy term" by one, "duration of lease" by another and "duration of rent" by the third. The three translations can be said to be equally effective. According to Sabra (2003), all three of them can be used interchangeably. However, the term "lease term" is the most traditionally used term.

By the same token, the word *المستأجر* was translated as "tenant" by one translator, while the other two translated it as "lessee". After surveying a number of English contracts cited in Sabra (2003), we noticed that more recently drafted contracts use "tenant" more frequently than "lessee".

كفيل was also translated into three different terms. One is "to render a financial guaranty", the other is "sponsor" and the third as "attorney". Considering the context "فانه يكون ملزم بتقديم كفيل ملئ" "للتوقيع على هذا العقد", the best translation would have been the term guarantor defined by Merriam Webster's Dictionary of 1996 as "a person or entity that agrees to be responsible for another's debt or performance under a contract if the other fails to pay or perform." The terms "sponsor" and "attorney", on the other hand, do not harbor the above intended meaning specific to this particular context.

Surprisingly the same word at the end of the same texts was translated as "guarantor" by the same translator who chose to translate it before as "attorney" though the two refer to the same person.

As revealed by the above examples, in this category of legal vocabulary, pragmatic and textual considerations play a slightly more substantial role than in the first category.

3.4 Everyday Vocabulary in Legal Texts

This third group consists of terms in general use regularly found in legal texts. Such terms are more commonly found in one area of the law or one legal genre rather than others. These terms, which are most frequently used in contracts, are usually easier to understand than to translate because they tend to be contextually bound. In translating such terms, the translator has to observe the potentially intended meaning of the original as well as the stylistic and contextual constraints. It may occasionally happen that a group-three word is best translated by a group-one or a group-three equivalent. There are many examples in this category, from virtually all parts of the three contracts. Such terms were more freely translated by the three translators. Table 3 lists examples on this category.

Table (3)**Everyday vocabulary in legal texts**

| Original | Translator (A) | Translator (B) | Translator (C) |
|---|--|--|--|
| وحيث أن الفريق الثاني يرغب في شراء الشقة المذكورة و توابعها | Whereas the Second Party is desirous of purchasing the said flat and all its appurtenants | And since the second party wants to buy the above mentioned apartment | And since the second party is willing to purchase the aforementioned with its complements |
| وحيث أن لدى الفريق الثاني الرغبة في هذه الوظيفة | And as the second party is interested in this job | And since the second party is completely ready to fill this position | And the second party is willing to practice this post |
| وافق الفريق الأول على تعيين الفريق الثاني | The first party has agreed to hire the second party | The first party has agreed to employ the second party | The first party has agreed to appoint the second party |
| يعتبر يوم الجمعة عطلة أسبوعي | Friday is the official holiday | Friday is a holiday | Friday will be the weekend |
| يتعهد الفريق الثاني بان يكون سلوكه متفقا مع الأخلاق الحسنة | The second party will make a promise to act in good behavior | The second party guarantees to have good conduct | The second party binds himself that his conduct will be applicable to the good morals |

An example is the word شقة which will mean the same regardless of the context of its occurrence. This word was translated with synonymous terms by the three translators. It was translated as "flat" (the British preference) by one and its American kin "apartment" by the other two. Such choice should always be informed by the actual target receiver and the target culture.

Another similar example is the word وظيفة translated with three synonymous variables "job", "position" and "post". In the context of their occurrence, employment contract, all three choices are satisfactory.

The underlined term in the sentence وافق الفريق الأول على تعيين الفريق الثاني was also translated into different terms. These are "hire", "employ" and "appoint". All three translations can be valid with a slight difference in the degree of formality.

Another example is the phrase يوم الجمعة عطلة رسمية translated as "official holiday", "holiday" and "weekend". These are all acceptable variants in view of the relaxed informal context of occurrence.

The same goes for the phrase الأخلاق الحسنة which was also translated as "good behavior", "good conduct" and "good morals".

As illustrated above, the translation of everyday terms found in legal texts is less standardized allowing the translators to choose from a variety of equally functional synonyms.

3.5 Doublets and Triplets

Another problematic area in the translation of contracts is the excessive use of doublets and triplets. Most translators, clients, recipients and lawyers prefer to translate into the same number of words. Still, simplification can be a valid translation procedure here since the intended meaning is the chief criterion for the effectiveness of any translation. For example, in text (1), the doublet تملك وتتصرف was translated as "owns and disposes" by translator (A) and "owning and dealing with" by translator (C). However, translator (B) translated it as "owns" in which the whole set of intended meanings is implied and present.

Another example from text (2) is إشغال المأجور أو استعماله which was translated by translator (A) as "occupying the leased property" and by translator (B) as "to use the rented place" while translator (C) chose to translate it with an equal yet unnecessary number of words "occupying the let and using it".

Another example that illustrates a common case of abusing triplets is حق نزع و فك وإزالة which was translated as "to remove, dismantle and take out" by translator (A) while the other two translators used the economical, less redundant yet efficient one word "remove." According to Garner (2001:256), doublets and triplets that repeat the same concept by using different words should be avoided since they are nothing but "mere redundancies."

3.6 Synonyms and Quasi-synonyms

Synonyms and quasi-synonyms are another case where conventions override reason. Synonymous binominals contain a list of two or more synonymous words. In Arabic contracts, synonymous binominals are frequently used merely for stylistic reasons (Emery 1989). For instance in text (1) the phrase الشروط والأسس was translated by translator (A) as "terms and conditions" and by translator (C) as "terms and bases". Translator B, on the other hand, used only one variant that is "conditions."

Another example in text (2) is the phrase فعلية وواقعية which was again translated by translator (A) as "actual, efficient" and by translator (C) as "practical, real..." while translator (B) used a single word "effectively" to capture all the intended nuances of meaning effectively.

In text 2 the phrase يملك كامل الأهلية الشرعية والقانونية التي تمكنه من إجراء التعاقد was translated by translator (A) as "legal competence". Translator (C) chose to preserve the number of words in the

original using "legal and lawful competence" which has quite the same meaning as that in the original.

Another example is *الاتفاق وإجراء وتنفيذ هذا الاتفاق* which translator (A) translated as "To perform and carry out". Moreover, translator (C) used "To carry out and execute". Translator (B), however, opted for simplification by choosing a comprehensive one-word alternative "To perform".

Most of the binominal synonyms in the corpus are what Mellinkoff (1982) regards as "worthless doubling". Again, simplification is recommended here as well, which in this case means using only one of the variants in the target language.

3.7 Legal Formulas

Most languages have formulas that traditionally separate the different blocks of information in a contract. They announce the information that follows, give internal organization to the text, introduce and close the document, ...etc (Asensio 2003). In many cases such formulas are old and have lost their denotative meaning. To translate their individual words according to their dictionary meaning is liable to produce nonsense; their literal translation is very ineffective. Replacing these with their functional equivalents can be much more efficient. Examples of these formulas and their different renderings by the three translators include *حيث أن الفريق الأول*. While translator (A) used the term that is more formal "whereas", translator (B) used the word "since" which is an everyday, but still a valid, equivalent. Translator (C), alternatively, did away with the whole term and just omitted it altogether. Many legal writing textbooks recommend that "whereas" be eliminated. Moreover, as David Mellinkoff points out in his entry "whereas" in *Dictionary of American Legal Usage*, "[w]orst of all, as lawyers stubbornly cling to *whereas*, it has become an unneeded pejorative for the profession. Those lawyers and their *whereases*."

Again, translator (A) translated the word *بموجب الوكالة* as "Pursuant to", which may sound more impressive than "according to" as translated by the other two translators; nonetheless "according to" is just as valid and efficient.

The word *وعليه* was translated by translator (A) as "In witness thereof" as an attempt to emulate target language conventions which, by the way, are dying out. Hence, it can be considered genuinely superfluous. This does not mean that the two other translations "Thereupon" and "whereof" are less valid or acceptable.

After surveying a number of recently drafted English contracts, it is evident that, in recent legal drafting, such formulas are more growingly abandoned and replaced with more functional, simpler equivalents that do not affect the interpretation or the validity of this part in any particular way. Felsenfeld and Siegel (1981, 64) write in this regard that "the archaic words *whereas* and *hereby* and the wordy phrase pursuant to are three of the worst examples of legalese [...] Yet these words are still prominently used in [...] statutes, honorary resolutions, ordinances, and executive orders. At long last, why not let them die?"

3.8 References

In contracts, references are often highly redundant. For the sake of efficiency in style, we can sometimes omit them or replace them with grammatically simpler, shorter references without affecting the intended meaning. The clause *وحيث أن الفريق الثاني يرغب في شراء الشقة المذكورة و تواجها* was translated as *Whereas the Second Party is desirous of purchasing the said flat and all its appurtenants*.

The rendering is, obviously, too literal and too cautious. The clause was translated in a simpler more relaxed manner using a shorter yet more adequate reference *And since the second party wants to buy the above mentioned apartment*.

In translating this section *استعمال المأجور بالصورة و بالطريقة المطابقة و المحددة بالعقد* once again, translator (A) was too literal and too formal:

-using the leased property in the method and the way complying with and as determined herein.

Instead of just referring to the contract at hand, he, unnecessarily, used the compound particle "herein". A simpler version is

- To use the rented place in the way specified in the contract

A further example of the use of an unusual preposition is in the translation of the clause *أية ضرائب أخرى تفرض على المستأجر وفقا للقوانين المعمول بها* *any other taxes that may be imposed onto the lessee as per the laws in effect*.

Another rendering is *Any other taxes imposed on the lessee according to rules*.

Pragmatically, "on" is just as efficacious; It conveys the same meaning intended in the original.

3.9 Here- and-There Compounds

Here-and-there compounds are usually used to specify every possible interpretation of the legal text. In contracts, hundreds of characteristic compound particles that are seldom used in daily life are excessively and most of the time unnecessarily used since the context can reduce the number of possible interpretations other than the one intended. Deciphering these compound particles according to this simple rule is recommended. Whenever the particle begins with "here", it refers to the document at hand; whenever it begins with "there", it refers to a former document previously mentioned. However, this is not always the case.

Translator A translated the term *وعليه* as "in witness thereof" referring to later parts of the contract not to an aforementioned document. Translator B translated it as "thereupon" expressing the same meaning by using fewer words. In most cases, such particles can be omitted or replaced by simpler terms since they do not add any new meaning.

To conclude, it can be asserted that translating legal jargon in contracts stretches over a continuum that includes both literal or formal translation at one end and free or dynamic translation at the other end. Purely technical terms can obviously be translated more formally, while everyday vocabulary can be translated more dynamically. Semi-technical or mixed terms, however, can be said to occupy the middle ground between the two opposite ends depending on their context of

occurrence. In translating other problematic areas of legal contracts such as synonyms and quasi-synonyms, formulas, *here-and-there* compounds...etc, simplification, paraphrasing and omission can produce more sufficient and more communicatively successful translations.

4.1 Contract Translation and the Change of Function

The 1970s and '80s witnessed a shift from the static linguistic typologies of translation towards more functionalist and communicative approaches. *Skopos* is Greek for 'aim' or 'purpose' and it was first introduced by Hans Vermeer in the 1970s as a technical term referring to the purpose of translation and the process of translating (Vermeer and Reiss 1984). Like other texts, a legal text is a communicative occurrence produced at a given time and place and is intended to serve a specific function (de Beaugrande and Dressler 1981, 3).

Identifying the function of translation as the main criterion for determining the translation strategy, Hans J. Vermeer postulated his purpose-oriented theory, which has modernized translation theory by offering an alternative to traditional translation. 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. According to Vermeer, "the source and target receivers always differ because they inevitably belong to different linguistic and cultural backgrounds" (Nord 1988, 49 cited in Sarcevic 2000, 79). The *skopos* rule reads as follows: translate, interpret, speak, write in a way that enables your text/translation to function in the situation in which it is used and with the people who want to use it and precisely in the way they want it to function" (Vermeer 1989, 20).

Nord (1997, 35) describes the adequacy of a translation in the following terms: "This means the translator cannot offer the same amount and kind of information as the source text producer. What the translator does is offer another kind of information in another form." Within the framework of *Skopostheorie*, "adequacy" refers to the qualities of the TT with regard to the translation brief: the translation should be "adequate" to the requirements of the brief. When deciding on the most efficient translation strategy to be used, the context of the translation, its purpose (*skopos*) and the nature of the text can be quite decisive. However, the translation commission can contribute significantly to the quality and functionality of the translation by providing the translator with information about the intended target-text functions, addressees, and the prospective time, place and motive of production and reception of the text (Nord 1997, 137).

In this connection, Vermeer (1986, 34) proposes the example of an insurance contract which is translated differently depending on its intended function: if the translation is to have legal validity in the target country, it will require a 'legal equivalence' approach, while if it is commissioned by a client who aims at gaining a better understanding of the source text, the translation will simply be a footnoted explanation of the original. In other words, it is the function the target text is expected to perform in the target context that will determine the translation strategy used in the process of translating. "What the *Skopos* states is that one must translate, consciously and consistently, in accordance with some principle respecting the target text. The theory does not state what this principle is: this must be decided separately in each specific case" (Vermeer 1989/2000, 228). Observing a *skopos* during the translation process means ensuring that the TT fulfils the *skopos*

outlined by the commission. If it is functionally and communicatively adequate, the *skopos* model can result in the same text being translated differently in different circumstances.

This section discusses the result of a small pilot study intended to explore the applicability of functional theories to the translation of contracts. The group of subjects for this section comprised a number of graduate students studying Translation and Applied Linguistics at An-Najah National University. The Department of English at An-Najah focuses on teaching language in a contemporary context with a special emphasis on modern theories of pragmatics and discourse analysis, ...etc, as well as practical interpreting skills. All of the students were native speakers of Arabic; none had professional experience in translation, and none were specialists in legal translation. The text chosen for use to be translated into Arabic was an authentic text in English "Power of Attorney", which is a form of contractual text. Students were asked to translate the text within a different context and hence performing a different function in the target language. Each completed the translation individually as homework. The translated version would be used as an announcement by Procter & Gamble in one of the daily local newspaper for making it public.

The same text was commissioned to be translated by a highly esteemed professional translator with a lifelong practical experience especially in legal translation and who is a certified translator acknowledged by the Palestinian Ministry of Justice.

4.2 Legal Texts in Newspaper Advertisement

Newspaper advertising is two types: business and classified advertisements. Business or retail advertisements are usually used to sell something. Classified advertisements, however, are posted by ordinary people who pay to place their classified ads in newspapers in order to offer services, announce an event or to make something public. Such type of advertisements is often written in a journalistic style making it read like an article instead of an advertisement (Keeble 1994).

The following example was published on 1st July 2007 in Al-Quds Daily Newspaper. In this example, a number of legal texts such as the power of attorney texts and agreements were alluded to, though not mentioned. This advertisement is intended to warn, hence the title "Warning", external parties who falsely claim to be the rightful owners of the land specified in the text. In this text, being composed by a lawyer, some features of legal writing are being used. For example, "بموجب الوكالة العامة" or "pursuant to general power of attorney" which is a phrase commonly used in real estate sales contracts. Moreover, the use of quasi-synonyms such as "العطل والضرر" or "breakdown and damage" which is also very common in lease contracts. The text was concluded by the formulaic phrase "لقد اعذر من انذر" or "you are hereby warned" which is typical in this kind of advertisements.

Example (1)

تحذير

أنا الإحامي احمد قنديل بصفتي الوكيل القانوني عن كل من : هشام رشيد محمد صباح من بيت اكسا بموجب الوكالة العامة رقم (٢٠٠٦/٢٤٣٩) تصديق وزارة العدل وعن هاني عزمي صباح من بيت اكسا بموجب الوكالة العامة رقم (٢٠٠٦/٢٤٣٨) تصديق وزارة العدل.

أرجو ان اوضح ما يلي :

أن موكليني هم المتصرفون بقطعتي الارض الاولى رقم (٤٠٨) من حوض رقم (١) سطح القرية والثانية تحمل الرقم (٤٨٩) من حوض رقم (٦) كرم محفوظ وجميعها واقعة في بيت اكسا ، وذلك بموجب اخراجات قيد واتفاقيات ووكالات دورية محفوظة لدي.

لقد بلغني ان هناك بعض الاشخاص ممن لا تربطهم اية علاقة بالارض يحاولون بيع تلك الاراضي عن طريق الاحتيال والتزوير ، لذلك فإنني أحذر هؤلاء من البيع او التصرف بتلك الاملاك لأن أي بيع يتم دون موافقتي او موافقة موكليني يعتبر باطلاً ، لأنه بيع لملك الغير وأحذر أي شخص يدعي بحسن النية من شراء تلك الاراضي ، وسوف أقوم بملاحقة للتورطين في اي عملية بيع قانونياً وابطال اية معاملات تتم بصورة مخالفة للقانون مع المطالبة بكل العطل والضرر الذي يلحق بموكليني.

وقد اعذر من انذر

المحامي الوكيل / احمد قنديل

(٢٠٠٦/١٥)

Example (2) is a translation done by one of the students to function as a newspaper advertisement. This translation may just be a sufficient translation given the function set by the commission or, in this case, the assignment.

Example (2)

تنويه

تنوه شركة بروكتر اند جامبل الدولية ومقرها سويسرا لعمالها في فلسطين بأنه قد تم منح وكالة رسمية للمحامي الفلسطيني---- باعتباره ممثل الشركة القانوني في أية قضايا أو دعاوى قانونية تقام أمام القضاء في فلسطين. كما تم منحه تخويلا كاملا بتمثيل الشركة أمام كافة أنواع المحاكم الفلسطينية بما في ذلك محاكم الاستئناف والمحاكم الابتدائية ومحاكم النقض. هذا بالإضافة إلى استكمال المراجعات القضائية أمام الشفوية. رسمية بما في ذلك الجهات التنفيذية وذلك بما يختص بأية مسائل قانونية أو دعاوى قضائية تقيمها الشركة أو تقام ضدها في فلسطين.

وفي ذات السياق، فان المحامي المذكور أعلاه يتمتع بكافة الصفات القانونية ذات العلاقة لتمثيل الشركة في أية محاكمة قانونية ولديه مختلف الصلاحيات في الدفاع عن الشركة، ما يشمل على سبيل المثال لا الحصر، تسليم كافة البيانات الموثقة، بالإضافة إلى تسمية وفحص و تنفيذ وإعفاء لأي من الخبراء أو إلغاء لتقاريرهم المقدمة. تشمل أيضا تقديم إبراز أو تنفيذ الأدلة المكتوبة أو الشفوية . بالإضافة إلى تقديم كافة أنواع الالتماسات والاستدعاء والمعارضات وأية مسائل قانونية بما في ذلك إقامة دعاوى مضادة أمام أية هيئات قضائية مختصة. و تنوه الشركة أيضا بان المذكور أعلاه يتمتع بصلاحيات تفويض محامين آخرين (تفويضا كاملا أو جزئيا) وذلك بحدود سلطاته المشار إليها في الوكالة الرسمية الموقعة بين الطرفين. ولا تقر الشركة بوجود أي ممثل قانوني آخر لها في فلسطين. لذا اقتضى التنويه.

٤ نيسان ٢٠٠٦

The back translation of example (2) is:

Disclaimer

Procter and Gamble International Company, based in Switzerland, announces to its clients in Palestine that a power of attorney has been officially granted to the Palestinian attorney -----
--- as the legal representative of the company in any trials or legal proceedings before the courts in Palestine. In addition, he has been granted full authorization to represent the company for all kinds of Palestinian courts, including the magistrate court, court of first instance, court of appeal and court of cassation. This is in addition to the completion of the judicial review before the official bodies including the executive bodies, with respect to any claims or lawsuits established by the company or held against it in Palestine.

In the same context, the lawyer mentioned above has all the legal authority to represent the company in any trial in addition to the broad powers that he has to defend the company, including but not limited to, submitting all kinds of documentations and naming, examining, contesting and discharging exemption experts as well as presenting and contesting written or oral evidence, presenting all kinds of petitions, motions, objections or pleas or any other legal or judicial action or procedure including filing counter-claims before any competent judicial bodies. In addition, he is also empowered to authorize other lawyers (in part or in full) with his indicated authorities that stem out of Power of Attorney signed by the two parties. In addition, the company does not acknowledge the existence of any other legal representative in Palestine. Therefore, it was necessary to disclaim.

4th April 2006

In example (2), the student translator was able to approximate the target text to texts of similar nature and function that are often published in Palestinian daily newspapers. Such texts usually appear as classified advertisements the purpose of which is to make an announcement by ordinary people, lawyers or companies to clear disputes caused by false claims or illegal actions or to prevent dispute from happening in the first place. These texts are generally titled with the word "تنويه" which is literally "disclaimer". They also are usually concluded with the formulaic phrase "لذا "افتضى التنويه". The translator of the above text was able to recognize the genre and hence succeeded in molding the target text into it. The text's legal character was also fairly preserved though not with the same degree of intensity and formality as the original or as any other legally binding translation. Again, the company's address was discarded as well as the date and the signature spots at the end. Besides adding a functional title and conclusion, the translator also added the sentence "ولا تقر الشركة بوجود أي ممثل قانوني آخر لها في فلسطين" meaning "And the company does not acknowledge the existence of any other legal representative in Palestine" which is familiarly used in this particular genre. Simplification in this context is highly desirable, taking into consideration its audience, which can be ordinary people such as customers and trailers or other companies' lawyers and advocates.

Another example is **Example (3)**

إعلان

تفويض رسمي

تعلن مجموعة شركات بروكتر وكامبل أن المحامي ----- هو الممثل لهذه الشركات بموجب تفويض رسمي في الأراضي الفلسطينية وهو المخول قانونيا وقضائيا في الدفاع عن هذه الشركات أو رفع قضايا الادعاء والمطالبة القانونية لهذه الشركات وهو المخول بتقديم كل الوثائق والأدلة اللازمة وتعبئة البيانات أمام أي محفل قضائي أو قانوني. وهو مخول بتعيين محامين آخرين للعمل معه.

The back translation of example (3) is:

Announcement

Power of Attorney

Procter and Gamble Group of Companies announces that the lawyer ----- is the representative of these companies according to an official delegation in the Palestinian territories and is authorized legally and judicially to defend of these companies or to file prosecution cases and legal claims for these companies and he is authorized to provide all necessary documents and evidence and to fill out forms before any judicial or legal body. He is empowered to appoint other lawyers to work with him.

In example (3), the student translator did not use the formulaic title and conclusion for such texts. Moreover, he seems to have summarized the original text and have only kept the main points. This may be in harmony with the newspaper advertising genre, which is known for being simple and widely understood by everybody. Given the purpose of such advertisement, it seems that this text can succeed in performing its intended function and be incorporated into its target context, which is, in this case, a different genre.

Another example is **Example (4)**

وكالة عامة

نحن شركة بروكتر وجامبل الكائنة في شارع رقم ٤٧، سانت جورج ، بناية رقم ١٢١٣، بتت لانسيبي ، سويسرا، والتي يمثلها-----و-----
---- نعلن أننا نوكل المحامي----- والذي يحمل بطاقة هوية رقم -----كوكيل و ممثل قانوني للشركة في كل تبعات الدعاوى في الأراضي الفلسطينية، وهو مخول بتمثيل الشركة أمام جميع أنواع المحاكم والهيئات القضائية الفلسطينية بما فيها محاكم الصلح و البداية والاستئناف و النقض ، وجميع المرجعيات القضائية والهيئات الرسمية مثل الحكومة.
وهذه الوكالة تشمل جميع الدعاوى والأحكام وأية أنشطة قانونية وتبعات ضد أو لصالح الشركة في الأراضي الفلسطينية. وبناء عليه فإن المحامي--- يتمتع بكافة السلطات القانونية الممنوحة له بمقتضى هذه الوكالة لتمثيل الشركة أمام الهيئات القانونية وله أيضا كامل الصلاحيات للدفاع عن الشركة بما فيها- على سبيل المثال لا الحصر- تقديم جميع أنواع الوثائق و المسميات والفحص والطعن في أو قبول أو رفض الخبراء وتقاريرهم وتقديم أو رفض الإثباتات المكتوبة أو الشفهية، وتقديم الالتماسات والاقتراحات والاعتراضات والحجج أو أي إجراء قانوني أو عدلي و أي إجراء آخر بما في ذلك رد الدعاوى المضادة أمام أية هيئة قضائية مختصة.
وبموجب هذه الوكالة، يكون لهذا المحامي الحق في توكيل محام آخر أو أكثر (بشكل مؤقت أو دائم)، وذلك بناء على الصلاحيات الممنوحة له في هذه الوثيقة

The back translation of example (4) is:

General Power of Attorney

We, Procter and Gamble Company, located at No. 47, St. George, Building No. 1213 Petit Lancy, Switzerland, represented by ----- announce that we appoint advocate-----the holder of identity card number ----- as an advocate and legal representative for the company as regards the consequences of cases in the Palestinian territories, and he is authorized to represent the company before all kinds of courts and judicial bodies, including the magistrate court, court of first instance, court of appeal and court of cassation., and all judicial authorities or official bodies such as the government.

In addition, this agency includes all cases and regulations and any activities and legal consequences against or in favour of the company in the Palestinian territories. And based on that, this attorney ----- enjoys all the legal powers granted to him under this agency to represent the company before the legal bodies and he also has full powers to defend the company including – providing all kinds of documents and titles, screening and appeal, accepting or rejecting the experts and their reports, providing or refusing written or oral evidence, and providing petition, suggestions ,objections and arguments, or taking any legal or judicial action or any further action, including the responding to counter-claims before any competent judicial body. In addition, under this agency, the attorney has the right to appoint a lawyer or more other (temporary or permanent), based on the powers granted to him in this document.

In example (4), the translator reproduced the original closely and literally. The only indication of a change in function from a legal bidding text to an advertisement in the newspaper is the phrase "نعلن أننا نوكل..." or "announce that we appoint..." Other than that, it is just a legal text that does not adopt any of the features of its target function. Unless it is the company's intention and goal to address specialists in the field of law only, this translation fails to meet the norms of the new genre, which calls for simplification and economy, being addressed to the public.

4.3 A Professional Translation

The final example is a translation done by a professional translator with a Ph.D. degree in translation from the UK and with experience of more than fifteen years in translation in general and legal translation in particular. However, this translator was uninformed about functional theories and, actually, expressed a degree of resistance that stemmed from his deep conviction that a legal text is undoubtedly impervious and unalterable. The commission was the same as the assignment given to the above-mentioned student translators. After completing the assignment, he still felt that the standardization of the legal text is extremely essential. Example (5) is supposed to function as a classified advertisement in a local daily newspaper.

Example (5)

بروكتر & جامبل

وكالة رسمية

بموجب هذا فإننا نحن، بروكتر & جامبل انترناشيونال اوبريشنز إس.إيه.، وبمقر أعمالها المسجل الكائن في ٤٧ طريق سينت جورج، ١٢١٣ بيتيت لانسي، سويسرا، ممثلين من قبل و بموجب هذا فإننا ننصّب ونسمي ونفوض ونعيّن المحامي السيد والذي يحمل بطاقة هوية فلسطينية رقم (.....) كي يتصرف كمحام لنا وكممثل قانوني في أية إجراءات تقاضي في مناطق السلطة الفلسطينية ولكي يقوم بتمثيلنا بشكل كامل أمام جميع أنواع ودرجات المحاكم الفلسطينية والهيئات القضائية والتي تتضمن محاكم التشريع، والمحاكم المدنية، والمحاكم الابتدائية، محكمة الاستئناف ومحكمة التمييز بالإضافة لأية مرجعيات قضائية أخرى أو هيئات رسمية كالإدارات التنفيذية. يأتي هذا بخصوص أية مطالبات، دعاوى، قضايا، أو أي إجراء قانوني آخر أو خطوات إجرائية قانونية قد يتم بروزها والتعامل معها بخصوص أي من المطالبات، الدعاوى، القضايا أو الخطوات الإجرائية القانونية الأخرى، والتي سيتم التعامل معها ورفعها ضد شركتنا في مناطق السلطة الفلسطينية وبخصوص أية مطالبات، دعاوى، قضايا أو أي إجراءات وخطوات قانونية أخرى ربما تظهر أو يتم طرحها أو البدء بها من جانب شركتنا في مناطق السلطة الفلسطينية.

ونتيجة لذلك، فإن المحامي المذكور، السيد.....، سوف يتمتع بكافة السلطات القانونية لتمثيلنا في أي منتدى/محاكم قانونية أو قضائية وأنه بموجب هذا يكون مفوضاً وكافة السلطات والصلاحيات التي تتعلق بالدفاع عن وحماية شركتنا وتتضمن - ولكن ليس مقتصرأ على - تقديم كافة أنواع الوثائق والمستندات، وتسمية، وفحص، ومناقشة وبحث، وإبراء الخبراء أو تقاريرهم بالإضافة لتقديم وبحث ومناقشة الإثبات والأدلة الخطية أو الشفهية، وتقديم وطرح وتبيان كافة أنواع الالتماسات، المقترحات والاستدعاء للمحاكم، الاعتراضات، أو البيئات والذرائع أو أية إجراءات قانونية أو قضائية أخرى أو تصرف قانوني آخر متضمناً تقديم ملفات بقضايا مقابلة أمام أية هيئات قضائية مختصة.

علاوة على ذلك، فإن المحامي المذكور، السيد.....، يكون مخولاً ومفوضاً بالسلطة التي تمكنه من تفويض ومنح السلطة للمحامين الآخرين (بشكل جزئي أو كلي) بما لديه من سلطات وصلاحيات مفوض بها والتي تنطلق وتستند لهذه الوكالة الرسمية.

مؤرخاً في: ٢٤ إبريل ٢٠٠٦

(توقيع)
المحامي الفعلي والقانوني

(توقيع)
المحامي الفعلي والقانوني

Below is the back translation of example (5):

Power of Attorney

Under this we, **Procter and Gamble Company**, located at No. 47, St. George, Building No. 1213 Petit Lancy, Switzerland, represented by -----, under this call and hence we erect, name, delegate and appoint the lawyer Mr., who holds a Palestinian identity card number (.....) to act as our advocate and as our representative in any litigations in the areas of the Palestinian Authority, and to fully represent us before all kinds of courts and judicial bodies, which include the magistrate court, civil courts, court of first instance, court of appeal and court of cassation, and all judicial authorities and official bodies such as the executive department. This

comes about any claims, lawsuits, cases, or any other legal or procedural legal steps that may rise and be dealt with regarding any claims, lawsuits, cases or any other legal proceedings, which will be dealt with and filed against our company in the areas of the Palestinian Authority and regarding any claims, lawsuits, cases or any other legal proceedings that may appear or be raised or initiated by our company in the areas of the Palestinian Authority. As a result, the said lawyer, Mr., will enjoy all the legal authorities of our representation in any forum / legal or judicial courts and that he will be empowered under this and with all authorities and powers of defending and protecting our company including - but not limited to - providing all kinds of documents and documents, naming, and examining, discussing, researching and discharging experts and their reports. In addition to providing, considering and discussing written or oral evidence.

Moreover, to present, introduce and to explain all kinds of motions, proposals, petition to courts, objections, or evidence and excuses or any legal or judicial proceedings or any legal actions including filing counter-claims before any competent judicial bodies. Furthermore, the said lawyer, Mr., is authorized and empowered by the authority that allows him to delegate and grant authority to other lawyers (partially or totally), with his powers and the authorities he is empowered with, which stem of this Power of Attorney.

Dated: 24 2006

(Signature)

Actual and legal attorney

(Signature)

Actual and legal attorney

Example (5) is supposed to be a classified advertisement in the daily newspaper; the translator ignored the commission completely. He reproduced the original literally and even added his own terms sometimes to make it yet more formal. For instance, he added two more synonyms not mentioned in the original text "فإننا ننصّب ونسمي ونفوض ونعيّن المحامي" which translates as "we erect, name, delegate and appoint the lawyer..." the original, conversely, only uses "make, constitute and appoint". Moreover, he frequently repeated the section "أية مطالبات، دعاوى، قضايا، أو أي إجراء قانوني آخر أو" "خطوات إجرائية قانونية". Surprisingly, this repetition was not as frequent as in the original text. The two texts are very similar except for a few instances of addition, which do not affect the legal character of the text since most of them were voluntarily added by the translator. The translator even kept the title "Power of Attorney". Nevertheless, it cannot be considered an indication of the translator's responsiveness to the texts target audience or function specified in the commission.

5.1 Summary and Conclusions

The paper has probed how new trends in translation such as pragmatics and functional theories, which are not exactly mainstream translation theories, can have compelling implications for legal translation.

Long convinced that legal translation has to be literal, translators and linguists frequently focus their attention on terminological issues. Perceiving legal translation as a communication process, this study argued that the role of the translator depends on the specific communicative situation, i.e. how texts are applied by their end receivers in their target context and function.

It must be said that the findings are necessarily tentative, in the sense that the study is entirely based on empirical and interdisciplinary data analysis. Moreover, this study is by no means intended to prescribe rules or remedies for traditional legal translation. The purpose of this study is not to lay down specific guidelines on how to or how not to translate legal texts, but rather to provide tentative criteria to evaluate the pragmatic and functional aspects of the communicative situation of legal translation between Arabic and English. Above all, it attempts to present new approaches to legal translation in which the translator assumes the role of an active participant in the legal communication.

After comparing the translation strategies used by the three translators to deal with problematic areas of legal translation, this study has shown that, in general, mastering the technical terminology of the source and the target languages is insufficient to make a legal translator competent. Thus, pragmatic considerations are important in legal translation and should be taken into account when determining translation strategies.

In translating purely technical terms, literal or standardized translation can be adequate. Hence, pragmatic consideration might not be of much use since such terms are context-independent. On the other hand, semi-technical or mixed terms and everyday vocabulary in legal texts are context-dependent. Consequently, the legal translator should opt for a strategy that will enable him/her to convey the intended meaning.

In translating doublets and triplets, simplification is a valid translation procedure as long as the intended meaning is successfully reproduced. Synonymous binomials are often used for merely stylistic reasons. Therefore, simplification is effective here as well, which in this case means using only one of the variants in the target language. In translating legal formulas, literal translation is very ineffective. Thus, replacing these with their functional equivalents can be much more efficient. References, which are often highly redundant in contracts, can be omitted or replaced by grammatically simpler and/or shorter references without affecting the intended meaning. *Here-* and *there-* compounds are usually used excessively and most of the time unnecessarily. Replacing these particles with their functional equivalents can be much more communicative.

The criteria guiding the translator's choices are prevalently functional, in that account is mainly taken of the function that the translated text will have to perform in the target culture. In translations with a shift in function, the translator has practically much freedom to adapt the text to meet the expectations of the target receivers for a text with a new practical function. Thus,

functional approaches to legal translation are not only feasible, but also effective thanks to their breadth and flexibility.

To develop translation competence, translators need instruction in translation theory. Legal translators in Palestine can benefit from translation training that focuses on the application of pragmatics, which is a relatively modern science, to legal translation. Translation competence presupposes not only in-depth knowledge of legal terminology, but also thorough understanding of the communicative legal function of such texts. The paper has shown that current trends of translator training, such as functional theories, are more effective than training approaches used almost two decades ago. Being exposed to and aware of modern approaches to translation helps translators emphasize more on the communicative and functional nature of legal translation. Consequently, they will be able to focus on "particular instantiations of language use, in specific texts and contexts" (Colina 2002, 6). Such approaches can effectively bridge the gap between academic and professional worlds of translation.

5.2 Recommendation

This is but a preliminary step towards a pragmatic and functional analysis of legal translation, which is an admittedly crude field. A follow-up study taking into consideration our remarks about the quality and qualifications of translators would be extremely useful if applied to other domains of legal translation between English and Arabic.

ترجمة العقود القانونية الى اللغة العربية : نحو ترجمة أكثر صلة بالسياق

عبد الكريم محمد، نبيل علاوي، مرام فاخوري

ملخص

جاءت هذه الدراسة في جزأين متصلين، هدف الجزء الأول منها إلى بيان أهمية الاعتبارات الوظيفية في مجال الترجمة القانونية، وقد تم جمع البيانات لهذا الغرض باستخدام تسع ترجمات لثلاثة عقود هي: عقد بيع عقار، وعقد تأجير، وعقد توظيف. ووزعت هذه العقود الثلاثة على تسعة مترجمين قانونيين مرخصين من وزارة العدل الفلسطينية، حيث طلب إليهم ترجمتها وفق المعايير المتبعة في وزارة العدل والمحاكم التابعة لها.

وبحث الجزء الثاني من هذه الدراسة في علاقة النظرية الوظيفية بترجمة العقود القانونية، حيث قام الباحثون بمقارنة ترجمة وكالة قانونية، قام بتنفيذها طلبة ماجستير في الترجمة توجد لديهم معرفة كافية بنظرية فيرمير الوظيفية - بترجمة أخرى لنفس النص قام بها مترجم محترف، ليست لديه مثل هذه المعرفة بالنظرية الوظيفية. وقد طلب إلى العينة ترجمة الوكالة القانونية بغرض استخدامها إعلاناً في جريدة يومية. وأظهرت الدراسة أنه يمكن للمترجم استخدام استراتيجيات متعددة لنقل النص القانوني من لغة إلى أخرى دون اللجوء إلى خيار الترجمة الحرفية. وخلافاً للدراسات السابقة التي تجعل من الترجمة القانونية عملاً يلتزم بإجراءات معيارية تكاد تكون رياضية، ركزت هذه الدراسة على إمكانية تطبيق النظرية الوظيفية في مجال ترجمة العقود بين العربية والانجليزية دون المساس بجوهر النص المترجم ومحتواه.

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