

FUNCTIONAL EQUIVALENCE AND ITS ROLE IN LEGAL TRANSLATION

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Abstract: Legal translation is a challenging and complex process. Legal translators face numerous factors that influence their ability to translate certain terms. Besides the obvious linguistic side of legal translation, legal translators are faced with challenges, such as cultural and social norms and traditions within legal systems of the country where the text originated, as well as the country for which the translation is prepared. Furthermore, even if the legal translators are skilled linguists, and are familiar with the nuances of the two aforementioned legal systems, they will come across terms that are difficult to translate. In such instances, the translators must employ one of a slew of translation techniques, including the search for terms of functional equivalence.

Key terms: functional equivalent, near-equivalence, partial equivalence, non-equivalence

Introduction

Legal translation is considered by many to be extremely challenging. Particular challenges are posed by the specificity of legal language and, in particular, the system-bound nature of legal terminology and differences between the common law and civil law systems. Martin Weston adds that "the basic translation difficulty of overcoming conceptual differences between languages becomes particularly acute due to cultural and more specifically institutional reasons (Weston 1983:207).

Legal translators are obligated to not only speak the target and the source languages fluently, they must be closely familiar with the law and the legal system in the country where the translated text originated, and the country for which the translation is being prepared. Šarčević's profile of the legal translator is as followed:

(a) translators need subject expertise in addition to translation skills, and (b) translators must be competent in both translation and law to make legal-linguistic decisions. Legal competence presumes (a) indepth knowledge of legal terminology, and (b) a thorough understanding of legal reasoning and the ability to solve legal problems, to analyze legal texts, and to foresee how the courts will interpret and apply a legal text (Šarčević 1997:113).

Legal translation requires usage of methodology according to the challenges it poses; challenges that are different from the ones connected to other types of specialized translation. According to Newmark (Newmark 1988: 151), specialized translation can be divided into two categories: technical and institutional translation. Technical translation is non-cultural and therefore universal; therefore the terminology is not culture dependent; it is mostly known internationally. Institutional translation, which includes legal translation, is culture dependent; making it typical for particular culture.

Legal translation is a specialized, culture dependent translation, and it the legal translators' task to stay faithful to the intent, tone, and the format of the original, source legal document, yet make the text clear and understandable to the receiver, without taking any creative liberty, which is considered unacceptable in the formal constraints of legal language.

Experienced legal translators deal with a plethora of translating challenges. The direct translation of a name of an institution, a concept, or legal terminology, which is understood equally well in the target language (TL), as the original was in the source language (SL) may not be found. The technique employed in such cases is referred to as finding a functional equivalence, and it is described by Newmark as “a procedure that occupies the universal area between the SL and the TL” (Newmark 2005: 83).

Functional Equivalence

Dr. Nida’s theory of functional equivalence has a great influence on translation, including legal translation. The term functional equivalence highlights the impact the message has on the target language and the source language reader. We can use the often quoted diagram to illustrate this theory:

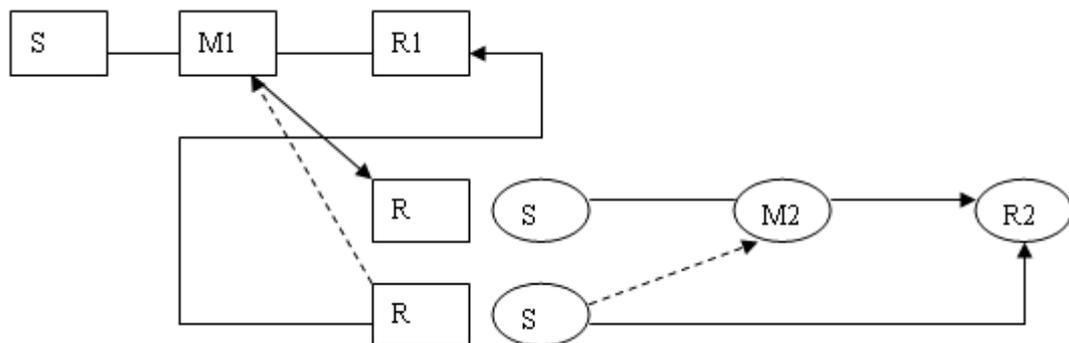


Figure (Nida, 1982:22)

The first box represents the source (S), who sends the message (M1), which is received by an original receptor (R1). The translator, who is both receptor and source, first receives M1, as if he were an R2, and then produces in a totally different historical-cultural context a new message M2, which he wants to be understood by the final receptor R2. The differences between the two languages and the two cultural settings are represented by the different shapes. The squares represent the source-language factors and the circles represent the receptor-language factors.

Šarčević (Šarčević 1988: 964; 1989: 278-279) defines the legal functional equivalent as a term in the target legal system designating a concept or institution, the function of which is the same as that in the source legal system. Weston describes the value of functional equivalence in legal translation by suggesting that the technique of using a functional equivalent may be regarded as the ideal method of translation (Weston 1991:23).

As Dr. Nida (2001) says, “in general it is best to speak of ‘functional equivalence’ in terms of a range of adequacy, since no translation is ever completely equivalent. A number of different translations can in fact represent varying degrees of equivalence” (Nida 2001).

According to Jean-Claude G mar, functional equivalence should be used for translation of contracts (G mar 1995-II: 163 – 166), suggesting that the target term would be understandable to the target reader, as well as close to the source term. Vermeer (2000) further adds:

For instance, in regard to contracts, the decision whether and to what extent target-language formulae should be used is determined primarily by the law governing the contract. This fact is essential because it determines whether the contract will be interpreted according to the source or the target legal system (Vermeer, 1982: 99, as translated in Šarčević, 2000: 19).

Dr. Nida (1993) suggests that functional equivalence is appropriate mostly when application of formal translation would not be adequate, as depicted in these three principles of functional equivalence.

Principle I: Functional equivalence is necessary if a close, formal translation is likely to result in misunderstanding of the designative meaning, certain changes must be introduced into the text of the translation.

Principle II: Functional equivalence is necessary if a close, formal translation makes no sense, certain changes may be introduced into the text.

Principle III: Functional equivalence is necessary if a close, formal translation is likely to result in serious misunderstanding of the associative meanings of the original text or in a significant loss in a proper appreciation for the stylistic values of the original text, it is important to make such adjustment as are necessary to reflect the associative values of the original text. (Nida, 1993:125)

Šarčević (2000: 238) divides functional equivalence into three groups: near-equivalence, partial equivalence, and non-equivalence.

Near-equivalence

Near-equivalence occurs when legal concepts in the source language and the target language have common primary and incidental characteristics or are the same.

To demonstrate near-equivalence, the term ‘common-law wife’ (source term, English being the source language) can be used. It defines a female cohabiting with a male as his wife without being married to him. This term translated into Slovak language (target language in this instance) is ‘družka’. In the context of the legal system in which the source term originated, a ‘common-law wife’ has certain rights and in some aspects of the law she is recognized as equal to a married person to receive protection against domestic violence, for some provisions of the Rent Act or inheritance (Dictionary of Law, 2003). According to the law in Slovakia, ‘družka’ has the same legal rights.

Another example that demonstrates near-functional equivalence is the term ‘annual bonus’ as a source term in English. Within the law of the source country, this term means certain amount of money awarded once a year as a reward for employees for fulfilling their responsibilities and for delivering superior services. The culturally relevant term with the same connotation in Slovak language would be ‘trinásty plat’, which in literal translation into English means ‘thirteenth salary’. However, the term ‘annual bonus’ can also be translated as ‘ročný bonus’, a term that the Slovak speaker will easily understand and for its universality it will become near-equivalent to the source term.

Partial Equivalence

Partial equivalence happens when the source and target language legal concepts are quite similar and the differences can be clarified by methods such as lexical expansion.

One example of partial functional equivalence is the term ‘director’. In Slovak language the equivalent for ‘a director’, ‘riaditeľ’ does not have to be a member of the Board of Directors in order to hold that title. However, in the United Kingdom a non-member would not be able to hold such title. To make the differences in between the source term and the target term clear, a legal translator can add ‘a člen rady riaditeľov’ (and member of the Board of Directors) in parentheses.

The term ‘contract’ can be used as another example of partial equivalence in legal translation. The Slovak meaning of ‘contract’ (zmluva) is much broader than its English equivalent and it can also be replaced by the term ‘agreement’. It is up to the legal translator

to consider the circumstances and decide whether lexical expansion is needed when translating this term into Slovak as the target language.

Non-Equivalence

Non-equivalence happens when a few or none of the important aspects of the source and target language legal concepts coincide or if there is no functional equivalent in the target legal system for a specific source terminology. It is the legal translator's challenge to descriptively paraphrase the term or phrase followed by the original in parenthesis. This particular translating situation requires the legal translator to be closely familiar with the law of the source and target countries, so that the paraphrased term is truly adequate.

A good example of a non-equivalent term is 'severability'. The term does not have a functional equivalent in Slovak legal terminology. Therefore, the translator has to fully understand the implications of the term in English law and then find an adequate concept in the legal terminology of the target language, Slovak in this case. 'Severability' is the name of a contract clause that is meant to condense the meaning of the entire clause and which defines consequences for the entire contract if part of the contract is not fulfilled. Instead of looking for a way to translate this term, it should be replaced by a neutral paraphrase: 'rozdielna interpretácia kontraktuálnych provízií' (separate interpretation of the contract provisions) which has the same legal effect as 'severability', followed by the original term in the source language.

Conclusion

Legal translation is a challenging process. Legal translation, as institutional, culture dependent translation, requires of a translator to be fully linguistically proficient in the source and target languages, as well as to be perfectly familiar with the cultures and legal systems of the source and target countries.

One of the challenges of legal translation lies in the fact that legal terminology is very system and country specific. Many times the legal terminology in the source language cannot be translated directly, or literally. This issue brings forth the functional equivalence. Functional equivalence finding is the process, where the translator understands the concept in the source language and finds a way to express the same concept in the target language in the way, in which the equivalent conveys the same meaning and intent as the original. This can be achieved through finding a phrase of the same meaning, lexical expansion, or descriptive paraphrasing.

Consequently, the method that the legal translator chooses depends on the degree of equivalence within the concept. While near equivalence may require the translator to simply find a phrase in the target language with the same meaning, non-equivalence needs more involvement, where the translator needs to paraphrase carefully, without losing any of the original information and intent.

Inadvertently, legal bodies using the legal translators depend on the translators' abilities to make sound translating decisions, even when the source and target legal systems and legal terminology make it an extremely involved process.

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