

**The Linguistic Features of Legal Documentary Texts with Reference
to English and Kurdish**

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Abstract:

Advanced translation students are routinely trained in texts from a number of registers, to familiarize them with the concept of variation in language use. The term register has often been loosely used, which is not surprising in view of its generality: Halliday (1978: 31/2) characterizes the notion of register as at once very simple and very powerful. It refers to the fact that the language we speak or write varies according to the type of situation. It is also a form of 'prediction' and in order to predict the type of language associated with a particular context of situation, we need to know the field, tenor and mode of the discourse. Field refers to the institutional setting in which a piece of language occurs, tenor refers to the relationship between participants, and mode refers to the channel of communication adopted (id:33). The situational dimensions originally proposed by Halliday et al are still relevant although there has been much subsequent discussions on their scope and nomenclature.

Crystal and Davy (1969:71) introduced the term 'province' for the first dimension, describing it as linguistic variation according to the kind of occupational or professional activity, being engaged in. Mason (1982:24) proposed 'domain' which he defined broadly as 'social context'. A point of contention has been to what extent the subject matter of a text is part of its province.

Crystal and Davy are quite clear that the two are separate, 'province features' should not be identified with the subject-matter of an utterance, but Halliday feels that the subject-matter is an aspect of the field of discourse (1978:33). In the province of written legal texts, however, this is hardly contentious since the **subject-matter**, for all its variety, is generally reducible to an underlying logical structure. Every action or requirement from a legal point view depends upon a set of conditions which must be satisfied before anything at all can happen.

More problematical, perhaps, is the question of sub-classification of the province: the law includes many different activities, from the drawing up of statutes to the contracting of agreements between individuals, all of which need to be recorded in a written form. In addition, there are written instruments such as court judgments, police-report, and process-verbals which self-evidently belong to the legal domain; the latter are less predictable in terms of subject-matter and logical structure than the former, which in addition to statutes and contracts, include constitutions and charters, treaties, protocols and accords, and by-law and regulations.

Key Words: Register, field, tenor, mode, cohesion, coherence, structural, parallelism, context of situation, discourse, text analysis, legal documentary texts.

Introduction

Translation work of any kind is no walk in the park, but legal translation can be especially difficult to get right. For this reason, it is vital to not only legal translations done by translation professionals, but those who are experts specifically in legal translation.

For Newmark, 'Legal documents' require a special type of translation, basically, because the translator is more restricted than any other form (1982:47). The restriction is imposed by the purpose of legal language, which is designed not so much to enlighten language users at large as to allow one expert to register information for scrutiny by another. A legal translation is, thus, the archetypal 'covert' translation (in House's terms), viz. a translation not specifically addressed to a target culture audience i.e. not particularly tied to the source language community and culture (House, 1977:19). Yet, in spite of this and influence of foreign language models, at various linguistic levels, Kurdish legal texts exhibit their own features of structure and style. They make more use of grammatical cohesion, through reference and conjunction, and less use of passives. Also, they are not characterized by the use of archaic vocabulary and morphology. The two languages differ in their patterns of nominalization, creation of binominals and their use of highlighting and text markers. An appreciation of these structural and stylistic differences as well as of language-universal features of legal discourse can help translators produce acceptable translations of Kurdish and English Documents.

Problems of Legal Translation

Legal translation is one of the most challenging task in the field of translation... difficulties may arise due to various reasons like differences in legal systems followed in the countries where the source and the target language are spoken. Legal translation is, somehow, more complicated than other types of translation. In translating a legal documentary text from one language to another, the two legal systems have a bigger impact on the difficulty of the translation than the relatedness of the two languages. Translation should deal with the challenges caused by the incongruity of words' definition once translated. Nowadays, an accurate translation of legal texts has become highly significant. Thus, the translation of English legal texts into Kurdish or vice versa is a discipline in itself, which seeks to determine applicable rules methodology; it gives rise to a great number of problems.

The Aims

The aim of the present study is to investigate the linguistic features of Kurdish legal documentary texts, and compare them with their counterparts in English. The framework and points of departure of analysis will follow that adopted by Crystal and Davy (1969:193-217) for English legal documents. Methodologically, such a procedure is justified by the facts that the situational dimensions are held constant, allowing the linguistic features to be compared interlingually in a valid way.

In the course of analysis, references will be made to translation of these documents as well as to Kurdish versions of certain English original documentary texts in order to make points relevant to 'legal' translation. The purpose of such texts—sometimes represented as documentary, hence documentary translation—can be summarized as: defining entities (e.g. an organization, a federation), setting out fundamental principles and objectives (e.g. in a constitution), and laying down rights and obligations, e.g. of citizens, contracting parties. It, also, aims at creating a text that will be interpreted in the same way by legal professionals in the target legal system, as it would be in the original legal system. Thus, the aim of translation, here, is not to erase linguistic and cultural differences, but to accommodate them, fully and unpolegetically.

What is meant by legal documentary text?

Laws are expressed by language. The range of vocabulary is very wide. Large proportions of words are highly formal. There are many archaic words, borrowed words and technical terms.

During the history, legal English was influenced by Latin and French, following the Norman invasion of England in 1066, Anglo-Norman French became the official language in England.

The Characteristics of Legal Texts in English

Legal English now is regarded as a global phenomenon. It is the style of English used by lawyers and other legal professionals in the course of their work. Legal language includes a number of unusual features which are related to terminology, linguistic structure, linguistic conventions and punctuations (Quwaider 1984). Legal language is one of the many forms of English that is used in the field of law, in other words, it is a technical language specifically originated as a language of legal professionals such as judges, lawyers, legal assistants, etc. (Maley 1994)

The systemic linguistic features of legal texts in English

In general a legal language is a formalized language based on logic rules which differs from the ordinary natural language in vocabulary, morphology, syntax, and semantics, as well as other linguistic features, aimed to achieve consistency, validity, completeness and soundness, while keeping the benefits of a human.

Linguistic difficulties in translation arise from the differences found in the different legal cultures and legal systems. Legal translation is distinguished from other types of technical translation that convey universal information. Each legal language is the product of a special history and culture.

One of the main reasons why legal language is difficult to understand is that it is often very different from ordinary language. In legal language, writing conventions are different from ordinary language. In legal language, writing conventions are different like: sentences often have peculiar structures, punctuation is used insufficiently. Foreign phrases are sometimes used instead of ordinary phrases, unusual pronouns are employed, unusual set phrases are to be found, technical vocabulary, archaic words, impersonal constructions, use of models like "shall", multiple negation, long and complex sentences, and poor organization are all problematic.

Because of the nature and function of law, the legal language has developed linguistic features like: lexical, syntactic and pragmatic to fulfill the demands of law.

A common feature of the syntax of legal language is the formal and impersonal written style joined with considerable complexity and length complex structures, passive voice, multiple negations and prepositional phrases are extensively used in legal language.

Another pragmatic consideration in legal texts is ambiguity, vagueness and other uncertainties found mainly in statutes and contracts. Legal writing is characterized by an impersonal style, with the extensive use of declarative sentences pronouncing rights and obligations.

Adverbial elements are very often coordinated, legal English is highly nominal, the insertion of premodifying elements is restrained. The verbal groups used in legal language are notable for the high proportion of non-finites. Long sentences, repetition of lexical items, complete major sentences, complex sentences are some other syntactic features that can be found in a legal text. The textual features of legal English are: Fewer patterns of spacing, less punctuation, clear logical sequence and initial capitalization.

The Stylistic Features of Legal Texts in English

To know the features and the stylistic characteristics of legal English is one of a great significance to those who work in such a field, as lawyers, judges and translators. Knowing the stylistic features will help them use such a type of register more efficiently. According to linguists, stylistics is not to list the kinds of style, but to observe and ascribe the language features of the main styles that is morphological, lexical and syntactic and also textual features. Concerning the morpho-lexical features of legal English, one can say that the range of vocabulary is very wide, large proportions of words are highly formal. There are many archaic words, borrowed words and technical terms, as well. In legal text analysis, linguistic features will be examined at different levels of language—graphitic, syntactic, lexical and discourse. Insofar as all levels are interrelated and intersect; however, it is a convenient way to consider the material systematically. Regarding Kurdish legal texts, they are similar to their English counterparts in layout-headings distinguished by longer or heavier type, serial numbering of paragraphs and subparagraphs—although, because Kurdish lack capitalization and italics, the graphitic choices are more constrained. In constitutions, the conventions of the preamble are observed (i.e. parties to the document in bold type at the head, followed by a series of non-finite adverbial clauses, of the bearing in mind and type, and declaration of assert).

Translation of Legal Documentary Texts

The main objective translation is rendering the original text in another language clearly, conveying the meaning and preserving style, technical and grammatical norms specific to the target language: to achieve this objective, a translator should not only possess perfect knowledge of languages, but also have special technical background or vast experience in that technical area. Legal translation is the translation of texts within the field of law. As law is cultural-dependent subject field, legal translation is not necessarily, linguistically transparent. Legal translation is, thus, usually performed by specialized law translators. It means translating business and legal documents,(contracts, agreements, business correspondence, articles of association, banking documents etc.) (Rylane, 1994). Translating legal texts, sometimes, can be tricky and often a literal translation is not possible or would not make much sense. Therefore, proper knowledge of the foreign language system is the key. In the process of legal text rendering or translation, one can regard the following steps:

1. Looking for equivalent legal items. If the legal terms are equivalent, they can be translated literally, one should avoid translating legal language into colloquial words.
2. It is obviously essential to have proper knowledge, not only of the meaning of the legal term, but also of its function within the whole system. In fact, full equivalent of legal term is very rare; instead there may be near full equivalence depending on legal development and context.
3. Finding substitute in case of too much discrepancy. If there are no equivalence of legal terms, a translator has to find substitutes, usually, substitutes are expressed either by paraphrasing or by neologism, which is a new term created in the translation usually on the basis of the Roman law terms.(Sarcevic 2000)

Some of the factors that contribute to the difficulty of legal translation work:

- One of the most difficult aspects of legal translations that linguists have to work around is the fact that legal systems across countries can be completely different. This means that legal translations have to contend not just with two different languages and cultures, but two entirely different legal systems to translate between even sometimes it differs within the same country.
- For instance, the word “marriage” might be straightforward enough to translate across language. The laws surrounding ‘marriage’ differ dramatically culture to culture and even marital age differs.
- Thus, it is clear that legal translation is a very complex issue that a translator has knowledge of the source and target languages. They must have knowledge of the legal systems of the two countries in question.

Practical Practice in Translating Legal Document

1. Until the evacuation from Iraq is complete, the American forces shall continue to enjoy.....

(The fronting of adverbial clauses sometimes seems forced and it is possible that the Kurdish text is here being influenced by the translation.)

2. If a dispute arises among them... and should the contending parties apply to the council for the settlement of this dispute, the decision of the council shall then be effective and obligatory.

(It seems that the English text is less lexically cohesive. Lexical repetition in legal English is a reduction in anaphoric links between sentences, however, Kurdish through the greater differentiation of its inflectional morphology, is able to achieve considerable precision of reference through anaphora, while in the following example, Kurdish uses anaphoric reference where the English translation can hardly avoid (lexical) repetition)

3. The employee is entitled to one year leave with a full salary.

(Legal sentences are usually self-contained units which convey all the senses that has to be conveyed at any particular point and do not need to be linked closely either to what follows or what has gone before. Almost the only formal linkage to be found between the long and self-sufficient sentence is the repetition of lexical items. Kurdish legal texts exhibit this type of lexical cohesion)

4. The employee shall be appointed on a probationary basis for a period of six months extendable for a further period not exceeding six months.

(Ellipted passives are one kind of verbal element forming non-finite clauses which so characteristically post-modify nominal elements in legal English. Another kind is the active participle forms, which again generally correspond to finite structures in Kurdish)

5. During the period of probation, the contract may be terminated by either of the contracting parties.

(Because of the lexical statuses of modal verbs in Kurdish, the action may be nominalized, in English text the action would be expressed by a finite passive verb)

6. If the contract is terminated by the government....

(Even in the absence of modality, the nominal structure may be used in a way which avoids a passive form, but enables the agent to be mentioned)

7. The decision of the council, taken by an unanimous vote, shall be binding on all the member states.

(One of the most striking characteristics of written legal English is that it is highly nominal. Long complicated nominals are equally a feature of legal Kurdish Text, although there are differences in internal structuring. The nominal in Kurdish may be introduced by complimenizer L+finite)

8. In a dispute which may lead to war between a member state and another state....

(The English text here is less lexically cohesive, while Kurdish, sometimes, seems demonstrate this feature to excess...)

Conclusion

In rendering an original legal documentary text in another language, the translator needs to convey the meaning and preserve style, technical and grammatical norms specific to the target language. There should be a greater attention of legal texts, because translating law between languages is not a straightforward matter. The legal translator faces a real challenge of translating, not only words, but more importantly, legal concepts. These concepts are deeply rooted in a culture they derive from. Therefore, the legal text should be handled with precision and diligence. In fact, the translation of legal text is a complicated matter, requiring precision and accurateness. It is not enough for a translator to have command of a foreign language. He/she should also have a sound knowledge of the legal systems involved. The study will conclude with some general remarks about translation of texts within this register, some practical practice in translation of the legal documentary texts are given at the end of the study.

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