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The Translation of English Legal Documents of Inland Free Trade Port

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Abstract: *Along with China's free trade port policy, the exchange of legal sense and spirit of legality between China and foreign countries has increased rapidly. To study the experience and technology of legal construction system abroad and reach the international level as quickly as possible, we should focus on the translation of English legal documents. This paper tries to find the importance of the English legal documents' translation, to find the characteristics of English legal documents and to find a solution to the problems and difficulties we usually meet in the course of retrieving foreign language information. This paper analyzes how to translate English legal documents under the guidance of Dr. Eugene A. Nida's translation theory of functional equivalence in three aspects: equivalence in terms of readers' response, equivalence in terms of semantics and equivalence in terms of style.*

Key words: *Inland free trade port; Translation; English legal documents; Functional equivalence*

Introduction

China's free trade port, first established in Hainan, is a pilot area for the reform and opening-up. China's inland free trade port to be built should be defined as a special economic function area. The overall perspective of the rule of law in the reform of China's inland free trade port is still guided by the principle of "significant reform should be based on law". China will speed up the exploration of the building of inland free trade ports with Chinese characteristics, in order to communicate with other countries in the field of law, the translation of legal documents becomes very important. Legal English as a new professional language will develop rapidly, but legal documents of our country lag behind reality and cannot be satisfied in many situations. The requirement of advanced legal spirit and thoughts in foreign countries need legal professional persons to translate English legal documents to do foreign affairs. A good translation of English legal documents has a great influence on the international economy and civilization. It promoted the reform of China's international economic and trade rules. By translation of English legal documents, we can study the advanced legislation experience and technology and revise the law system of our country, which has so many weak points. Only in this way can we make progress in the future. So, this paper sums up the characteristics of English legal documents which include completeness, normalization, strictness, vagueness, and special format. By analyzing those characteristics, this paper finally applies Dr. Eugene A. Nida's translation theory of functional equivalence in the translation of English legal documents. To meet the requirement of a good translation of English legal documents, this paper gives a comprehensive analysis that contains three parts: equivalence in terms of readers' response, equivalence in terms of semantics and equivalence in terms of style. This article makes a probe into the translation of legal documents from English into Chinese.

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The Characteristics of English Legal Documents

Completeness and normalization

The characteristic of completeness of English legal documents requires us to translate all parts of the documents; in other words, we cannot add or miss something: including some mistakes in the original text. When translating legal documents, we will be asked not to add or subtract anything but to translate the content of the original documents completely. The translation is different from creation. Legal translation has long been regarded as one of the most rigid types of translation, and legal translators merely mediate between the text producers and receivers. When we translate literary works or news, sometimes we can add necessary explanations in the translated text, but the legal documents never need to add some explanations, especially the annotations of the translators. For example, "The provisions of paragraph 1 of this Article shall not require the elimination of any preferences in respect of import duties or changes which do not exceed the levels provided for in paragraph 4 of this Article and which fall within the following descriptions" (GATT 1947). The Chinese version is " 任何有关进口关税或费用的优惠待遇，如不超过本条第四款规定的水平，而且在下列范围以内，不必按本条第一款的规定予以取消 ". Here, we cannot give any annotation of "paragraph 1" and "paragraph 4" or try to explain their meanings in our own words. We cannot add anything which we cannot see in the original documents.

Sometimes the original legal documents have mistakes, and in this case, translators are unsuitable for correcting them but have to make the best of a bad job. For instance, in a joint venture contract stipulates that "The joint venture will enroll and register in the State Administration Bureau for Industry and Commerce in Wuhan." It is a mistake here because there is only Administration Bureau for Industry and Commerce (工商行政管理局) in Wuhan not State Administration Bureau for Industry and Commerce(国家工商行政管理局). But during the translation we will still translate "State Administration Bureau for Industry and Commerce" into" 国家工商行政管理局 ", we cannot correct the mistake and leave out or not translate the word "State" (国家). When drafting the legal documents, standard words and complex provisions are always be asked. For example, to put forward the whole business conditions to the buying party, the legal documents must include the name of a commodity, quantity, specifications, price, date of delivery, conditions of payment and so on. The content should be fairly complete because this kind of documents once is accepted by both sides without reservation in the term of validity, namely the documents establish immediately and have the binding force (约束力)to the two parties. So we should make every effort to do complete translation then we can keep the nature of the English legal documents.

One of the characteristics of the English legal documents, which is always connected with the characteristic of completeness is normalization. If the articles of the documents are not normalized, it is probably to cause unnecessary dispute. Here we can see an agreement reaching with the email form, "Commodity Tailai brand domestic water purifiers 200. RMB 2000 each CIF Shanghai Port irrevocable sight LC prompt shipment valid subject reply here 30/1 ". Here is the Chinese version," 泰来牌家用净水器，200 台，CIF 上海港，每台 2000 元人民币，不可撤销即期信用证付款，立即装船，1 月 30 日复到有效 ".

In the text of this email, "sight LC (= sight letter of credit，即期信用证)" and "prompt shipment (立即装船)" generally indicate that the load and transport must be received in 30 days from the date of imposition of tax in

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issuing bank. In this phrase "valid subject reply here 30/1 (1 月 30 日复到有效)", when we draft the English legal document we cannot miss the very essential word"here". If we miss the word "here" and only leave the phrase"reply 30/1", that usually indicates to issue on January 30th. However, if we use the word"here", it indicates that we received the email in reply on January 30th. That is to say the word "here" have shifted the real date of email in reply to an earlier date. So we cannot relax our vigilance to the characteristic of normalization.

Blend of strictness and vagueness

Based on the strict explanation principle, when using the articles of law, the written characters of the legal documents are the only basis to hear and decide a case (审理和判决案件) Therefore the words used in legal documents must be very accurate and strict. To avoid unnecessary ambiguities of various interpretations, the legal documents require strictness to illustrate the prescribed limit, prescribed time, prescribed form, established procedure, and so on. The characteristic of the strictness of legal documents can also be embodied in the adopting of synonyms that differ slightly in what they mean to seek comprehensive demonstration. For example, in " Hong Kong's Aviation Security Ordinance (香港《航空保安条例》)" article 15 stipulates that "it is an offense of endangering safety at aerodromes for any person to commit, whether by means of any device or otherwise, any act of violence which causes or is likely to cause death or serious personal injury; endangers or is likely to endanger the safe operation; destroys facilities in an aerodrome; and disrupts the services of an aerodrome" (“如任何人以物件或行为导致或相当可能导致他人死亡或严重人身伤亡 , 危害或有相当可能危害机场安全运作，或者毁损机场设施，或者令机场服务无法继续进行，则涉嫌危害机场安全”). Here the legal documents use semantically different synonyms. The two phrases "destroys facilities" (e.g., destroying public facilities 例如破坏机场的公共设施) and "disrupts the services" (e.g., blocking elevators and passages with trolleys 例如用行李推车堵机场电梯和通道) are very close in meaning to the phrase "endanger the safe operation", but they still have very subtle differences.

The vagueness of the legal documents refers to some articles or explanations that cannot be confirmed in the semantic meanings. Most people can readily admit that strictness is one of the characteristics of legal documents, but many of them will doubt whether the vagueness is a feature of legal documents. The strictness and vagueness are often brought into the legal documents at the same time. "The circumstances which are generally used involve the quality of the fact, scope, level, quantity, and other things when people do not want to make very specific." (Channell & Joanna, 1994). In reality, the same article in the legal documents can bring different understandings, and the result of judgment just depends on the explanation of the clause. For example, a nongovernmental loan agreement (民间贷款协议) says: "I will pay back in a year". Both parties (双方当事人) hold different understandings of the word "in" . One side takes the meaning as "within (在……之内)”， but the other side holds the meaning as "after (在……之后)" . Here the vagueness is embodied in this example, and we cannot avoid encountering the similar vague articles in the future. So we must pay much attention to the vagueness of the legal documents. The vagueness of the legal documents can usually be seen by some words, phrases and modes of expressions with unique style which include: (1) When we add those special words in front of the common forms which originally can express clear and definite meanings, we will make the precious accurate terms into vague ones, such as "about", "or" and "so". (2) Those words themselves have ambiguous meanings, such as "reasonable" and "good". (3) Vague implication (模 糊 蕴 涵), such as the word "night". Those words have distinct and clear concepts but contain vague meanings. For example, the common law to distinguish burglary (夜盗罪) and house-breaking (为抢劫而侵入住宅罪)

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use the word “night” in the legislation and explain “night” as “the period from sunset till sunrise”. But as we know, various places in the world may have different time zones, so it is still hard to define the exact meaning of the word “night”.

Special format

English legal documents always have a special format. For example, the preface of a contract which has several sections often begins with the word “whereas (因此 , 有鉴于此)” which is called in view of term (鉴于条款). The legal documents usually end with the term “in witness of (以资证明)” or other similar terms. In the English legal documents, the technical terms such as here (指本文件，含法律、合同、条约等), herein (于此文件中), hereafter(自此以后，此后), hereto (至此), hereunder (根据本文件、依本文件), there (指另外的文件) and therein are widely used. Another example is the special forms of legal documents of notarization.

When we translate different kinds of notarizations such as Notarization of Family Relation, Notarization of Marital Status, Notarization of Real Property, Notarization of the Power of Attorney, Notarization of Adoption, Notarization of a Will and so on, we must obey their special formats such as: not use quotation marks or periods in title; the title must be put in the top center of the notarizations; capitalize all letters in the title or capitalize the very first letter of each word; articles in the title and the conjunctions which are less than five letters and the prepositions cannot be capitalized unless they are in the front of the sentences.

The Theory of Functional Equivalence

The Functions of Language

We have already proposed so many theories to solve the problems in translating an English text into Chinese, including how much of what is implicit in the original text should be made explicit in the Chinese version, how to render the predominantly hypotactic structures of the English text into equivalent paratactic structures in Chinese, how to deal with metaphors, puns and forms of address, etc. We know when we do translate, what is carried implicitly in a source language may require explicit expressions in the target language. This is because native speakers of the source language have a different cultural background, history, social situation, religion, etc. from those of the native speakers of the target language. In this case, foreigners reading a literal translation may not understand what is clearly understood by native speakers. Susan Bassnett also points out that “translation involves far more than replacement of lexical and grammatical items between languages and, as can be seen in the translation of idioms and metaphors, the process may involve discarding the basic linguistic elements of the SL (source language) text so as to achieve Popovic’s goal of ‘expressive identity’ between the SL and TL (target language) texts” (Bassnett & Susan, 2010). Therefore, the translator should find ways to make what is implicit in an original text explicit in a translation to help the readers comprehend the text, and in recent years, the theory of language functions applied in translating has been gradually valued. Many translators and linguists believe that an ideal version is the one that is equivalent in function to the source language. Quite a few linguists have made a thorough study of the functions of language and put forth their views. The most accepted view is that the chief function of a language is the communicative function. Maybe the optimal translation is the one that can achieve functional equivalence.

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The Theory of functional equivalence

Equivalence is usually divided into subtypes and usually binary operations, such as formal equivalence and dynamic equivalence. In 1964, Eugene A. Nida, a well-known American translation theorist, put forward the concept of "dynamic equivalence" in his book Toward A Science of Translation (Nida, 1964). His dynamic equivalence focuses on the effect equivalence of the source language to the target language. Dr. Eugene A. Nida published his work From One Language to Another (Waard & Nida, 1986) in 1986. In this book Dr. Eugene A. Nida changed "dynamic equivalence" to "functional equivalence" to emphasize concept to "function", but he also explained that the meaning of "functional equivalence" is nearly equal to "dynamic equivalence". In his later book, Dr. Eugene A. Nida points out that "It is essential that functional equivalence is stated primarily in terms of a comparison of how the original receptors understood and appreciated the text and how receptors of the translated text understand and appreciate the translated text" (Nida, 1993). As to the nature of "functional equivalence", Dr. Eugene A. Nida describes as follows:

Dynamic equivalence has been described in terms of functional equivalence. It should be known that human communication, except simple stimulus-response, is not 100 percent correspondence between input and output, or between verbal production and verbal comprehension due to the differences of cognitive construct and cognitive environment, constrained by factors such as linguistic and cultural differences. Reiss and Vermeer point out that communicative efficacy is dependent on the aim or purpose (Reiss & Vermeer, 1984). Thus, a translator's essential task or responsibility is achieving communicative efficacy. The translation process has been defined on the basis that the receptors of a translation should comprehend the translated text to such an extent that they can understand how the original receptors must have understood the original text.

From the illustration, we know that translation must meet one requirement at least: to guarantee the success of communication. When translating, a translator should try his best to keep in a target text, both form and meaning of a given source text. Also, as Dr. Eugene A. Nida has shifted his attention to the response of the receptor and the comparison between the receptors of the source language and those of the target language, the response is also very important in translation. So we may conclude that Nida's theory of functional equivalence includes three parts: equivalence in terms of readers' response, equivalence in terms of semantics and equivalence in terms of style. This theory also can be applied in the translation of English legal documents of an inland free trade port.

Theory of Functional Equivalence Applied in the Translation of English Legal Documents

Equivalence in terms of readers' response

Nida's theory of functional equivalence gives much attention to the readers' response to a translated text. He says, "This response must then be compared with how the original receptors presumably reacted to the message when it was given in its original setting" (Nida & Liao, 2000). When Nida identifies the "response", he usually refers to the translation of non-legal English documents. Nevertheless, we might well say that Nida's "response" is also of great value in the translation of English legal documents. The translator should keep his readers in mind what the translated texts are. When considering the readers' response, we should

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think about a question: “Who are readers of the translated legal documents?” They are usually lawyers, judges, legislators, law teachers, students of law, and business staff. Such being the case, the translator should use legal terms whenever possible, for the readers are all specialists or familiar with the law. Since the readers of legal documents are acquainted with legal language, the rendition must be like legal language for the sake of functional equivalence. For example, when we say “use a handgun to ward off someone bent on aggravated assault makes the risk of death quite a bit higher (用手枪来阻止某人因被激怒后的攻击只会使死亡的危险加剧)”, to most people, they would hold two usual meanings of the word aggravate:1. make (a disease, a situation, an offense, etc.) worse or more serious; 2. irritate (sb); annoy. But when the readers of the above example are specially designated such as lawyers, judges, legislators, law teachers or students of law, they can easily know that “aggravated assault” is a legal term and when it translated into Chinese it should be “ 加重恐吓行为 ” or “ 加重攻击行为 ”. Then it is easy for them to point out the defect of the original given Chinese version “ 被激怒后的攻击 ”. Because the translated Chinese version may be misunderstood as the victim enrage the attacker, however, the Chinese meaning and the facts do not tally.

As Dr. Eugene A. Nida says, translating means translating meaning, which includes semantic information and stylistic information. So we need to analyze equivalence in terms of semantics and equivalence in terms of style.

Equivalence in terms of semantics

Equivalence in terms of semantics means showing the exact idea as far as possible with the words concrete to concrete, abstract to abstract, vague to vague, distinct to distinct and technical terms to technical terms. Within the basic structure of language, there are at least three fundamental levels. Dr. Eugene A. Nida says “technical language” refers to the language of specialists, “popular language” refers to the language of the common people in their daily activities, and “vulgar language” refers to the language known by all but not used in those circumstances in which it seems inappropriate. From the analysis of Nida’s words, we can consider the language used in English legal documents as “technical language”.

To reach semantic equivalence, we should try our best to embody the characteristics of English legal documents such as completeness, normalization and strictness. When translating, we must distinguish the tiny differences among the words and choose the optimal one in our translated text. For example, here is a sentence in an English legal document: “Mr. Brown died domiciled in England.” Someone translated the sentence into “ 布朗先生死亡时居住在英国 ” or “ 布朗先生死时住在英国 ” or “ 布朗先生死在英国 ”. There are mistakes in all the three given Chinese versions, because the word “domicile” has special meaning in legal documents. We can only translate the legal term “domicile” into“ 住所 ”or“ 住处 ”but not“ 居所 ” or“ 居住地 ”or“ 所在地 ”or“ 住的地方 ”and so on. “ 住所 ”or“ 住处 ”means a person’s fixed place of residence, especially as officially established for purposes of taxation, etc. and “ 住所 ” always contains three parts: domicile of origin (原始住所), the domicile of choice (选择住所) and statutory domicile(法定住所). But “ 居所 ” or “ 居住地 ” or “ 所在地 ” or “ 住的地方 ” do not contain the meaning of “a lasting, fixed and regular place to live” and those words are too colloquial to use in a legal document.

We know that the English language is rich in synonyms and when we translate them, we must distinguish the tiny differences. Such as judgment (指法院的判决), decision and decree (有时指法院的判决、裁决), sentence (专指刑事判决), award (指仲裁裁决), verdict (指陪审团的裁决) and ruling (裁定).

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Maybe there are no differences among certain Chinese words to most common people, but when those words are used in legal documents, different words can cause different results. Still, in the example given above, we would better translate the word “England” into “ 英格兰 ” but not “ 英国 ”. Because “ 英国 ” include England and Scotland and the legal systems between England and Scotland are much different. If we meet a case about the dealing of legacy, the application of law will be very different in England and Scotland.

Sometimes we feel difficult to translate the English legal documents. Because there are two major law systems in the world, one is called the Anglo-American law system (英美法系) or common-law system (普通法法系), and the other is called continental law system (大陆法系) or civil law system (民法法系). Our country belongs to the continental law system in old times, but in modern times China belongs none of them and independently forms a new law system which is comparatively similar to the continental law system. Most of the English legal documents belong to the Anglo-American law system so that many terms and concepts are different from ours. Some concepts and systems do not exist in China, so how to translate them into Chinese is an arduous work. For instance, there are two kinds of lawyers in Britain: barristers and solicitors, but China has only one kind, so what shall we do to do good translation? In China's Hong Kong, people translate “barrister” into “ 大律师 ” , and translate “solicitor” into “ 律师 ” , however, this kind of translation shows a clear height of grade with the two kinds of lawyers and the translation which reflects a sense of hierarchy cannot be accepted by most people. In the mainland of China “barrister” is translated into“ 出庭律师 ”or “ 辩护律师 ”and “solicitor” is translated into “ 事务律师 ” or “ 诉状律师 ” by some translators. Others suggest adopting the way of transliteration to translate the former one into“ 巴律师 ”and the latter one into“ 沙律师 ”. Till now, there is no conclusion of what is the best translated Chinese version.

Here is another example. Usually, we all translate the English word “mortgage” into“ 抵押 ”, but the Chinese term“ 抵押 ”is not equivalent to the meaning of “mortgage”. In Chinese, the word“ 抵押 ”means to guarantee the creditor’s rights with the real estate (“ 抵押 ” 在中文的法律概念中是限于以不动产作为债权的担保), but “mortgage” is not confined to the real estate and any property can “mortgage”. However, until now we haven’t found better translation than this one.

From the analysis of those examples, we can find that we cannot just do the word-for-word translation because that usually affects the original meaning and lead to incorrect understandings.

Equivalence in terms of style

When translating, the translator of legal documents, aside from rendering the meanings of the source language, should primarily focus on the style of legal documents, because the different format of the legal documents often has different usage. The equivalence in terms of style requires the form of legal instruments is formal to formal and standard to standard.

The first person who studied legal papers was a Britain lawyer called George Coode. He proposed that the typical conditional statement in legal documents must have four parts, and every document should embody this special style. The four parts are: case (情形), condition (条件), legal subject (法律主体) and legal action(法律行为) (Coode, 2010). The first two parts are called fact situation (事实情况) and the two latter ones called a statement of law (法律陈述). Such as the following sentence: “Where an application for ancillary relief is made (情形), while there is in force an order for maintenance of a spouse or child (条件),

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the applicant (法律主体) shall file a copy of the order on or before the hearing of the application (法律行为).” The successive order of the four parts cannot be inverted, and when translating, we should obey the special format.

Because this mode has a great influence on the legislation of those countries in the Anglo-American law system, when we translate the English legal documents, we need to pay attention to the style of George Coode’s mode. For example, “Where the company registration authority approves an application for registration which does not meet the requirement as stipulated in this law (case), if the circumstances are serious (condition), the persons in charge and others held directly responsible (legal subject) shall be given administrative sanctions according to law (legal action).” To embody George Coode’s mode in this English legal document we should translate it into: “ 公司登记机关对不符合本法规定条件的登记申请予以登记 (情形)，情节严重的 (条件)，对直接负责的主管人员和其他直接责任人员 (法律主体)，依法给予行政处分 (法律行为)。”

The unique format of English legal documents can be embodied in notarization. We know that there is no punctuation mark for titles in English, but when we translate the italicized, underlined or capitalized titles in English legal documents into Chinese, we should add the punctuation mark “ 《》 ” in the Chinese versions. What is more, the close(落款) of the Foreign-related Notarization(涉外公证) also has a special format which we must pay attention when translating. The close includes:

a. Name of the notary and the signature or stamp
b. Name of the notary office and stamp
c. Model of written characters such as “ The People’s Republic of China ”
d. The format of date is usually written as “ month/day/year ”
e. Printed or written words such as “Notarization of the Conformity of Translated Copy and the Original (翻译件与原件一致公证) ”
f. Oath of the financial sponsor in the Affidavit of Financial Support: “I certify that I will provide full financial support for my wife during her stay in the United States. If she requires any further monetary assistance, I will provide this as well.”

The translation of English legal documents is a complex process that involves a lot of factors. Any careless mistake can bring a negative influence on the translated text. As Alexander Fraser Tytler said in the book The Principles of Translation, “A translation should give a complete transcript of the ideas of the original work; the style and manner of writing should be of the same character as that of the original; a translation should have all the ease of the original composition” (Tytler, 2007). The understandings of the meanings of words, structures, and the original format of the text all have an meaningful bearing on the translation. For example, “This convention is subject to ratification.” Here are three Chinese versions:

a. “ 这个公约服从于批准。”
b. “ 这个公约得经过批准有效。”
c. “ 本公约须经批准方能生效。”

Studying these versions, we find that the first version seems incorrect because the word-for-word translation affects the meaning; the second is understandable, but the stylistic information of the original has

disappeared; the third, however, is superior because it has transferred not only the semantic information but also the stylistic information. Dr. Eugene A. Nida said that translating means translating meaning, which includes semantic information and stylistic information. While we say the third version is superior, it is not translated literally, because we cannot find the equivalents for " 须经 " or " 方能生效 " in the original English sentence. The third rendition has just conveyed the semantic message and the stylistic message of the source language to the target language. Thus, functional equivalence can be achieved in the translation of English legal documents.

Conclusion

This paper focuses on the translation of English legal documents. So only when we convey the semantic message and the stylistic message of the English legal documents to Chinese can we say functional equivalence can be achieved in the translation of English legal documents. According to the specific examples and the illustration, we know when translating English legal documents, we need not only translation skills but also necessary knowledge of the law. Otherwise, we will feel hard to understand the original documents and also cannot express them correctly. It is difficult to translate the English legal documents. Because most of the English legal documents belong to the Anglo-American law system, so many terms and notions are different from ours. Some concepts and systems do not exist in China and how to translate them into Chinese is an arduous work. Though this paper tries to give a comprehensive analysis of translating English legal documents, there still many problems exist in the translation of English legal documents.

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