

Article

The Legal Translator's Approach to Texts

Radegundis Stolze

Technische Universität Darmstadt TUD, Hochschulstraße 1, D-64289 Darmstadt, Germany;
E-Mail: radegundis@stolze-darmstadt.de; Tel.: +49-6151-42-36-38

*Received: 29 November 2012; in revised form: 2 February 2013 / Accepted: 7 February 2013 /
Published: 18 February 2013*

Abstract: Translation can be a basis for humanistic investigations when translation is seen as a personalized activity. The article describes, on the basis of hermeneutics, the specific perspective from which a translator may approach legal texts. Various aspects have to be considered in such texts, since the cultural and legal background is evident in linguistic aspects at the text level. Different text types are rooted in a specific legal system and fulfill their function within a special field of law. Comparative law does research on the differences in legal concepts, whereas translation uses this knowledge as a basis. Legal terminology presents various levels of abstraction and appears in texts besides general language words. Well-grounded understanding along with subject knowledge is necessary for legal translation. This should be combined with proficiency in writing in the legal style. The translator tries to make source cultural and legal aspects transparent for target readers, as translation is always a means of comprehension that furthers communication.

Keywords: comparative law; hermeneutics; legal concepts; legal texts; speech acts; terminology; translation studies

1. Introduction

The humanities deal with persons and their work—in research and in professional practice. Translation as the act of social mediation of messages is thus a core object of humanistic investigations. The translating person is confronted with the task of understanding a given text in order to present its content in another language for readers in a different culture. The focus is on the translator's cognition and activity in relationship to the surrounding cultures and the subject fields represented in texts. The translator needs a special competence, and this situates our theoretical approach within the paradigm of philosophical hermeneutics that reflects on the conditions of

comprehension as a human outlook toward the world [1]. Hermeneutics explores the possibility of understanding otherness, and this is central for the task of translating which cannot be reduced to only an interlingual transfer in the sense of replacing “the chain of signifiers that constitutes the source-language text by a chain of signifiers in the target language” [2].

From the hermeneutical perspective, translational reading has a medial effect and leads to a new formulation of the message understood based on subject knowledge, cultural awareness, and stylistic proficiency. The point of departure for translational hermeneutics is the awareness that a translator can only translate what and how he or she has understood it. Translation, in practice, is a task yet to be performed; no methodological steps can be operationalized. What one can do, however, is to describe some points of orientation in the world of texts for the translator. But before that, it will be useful to first define some important concepts in this field of the hermeneutical dealing with texts.

2. Important Concepts of Translational Hermeneutics

Hermeneutics is characterized by a concept of scholarship different from science, which is stressed again today as modern [3]. It is typical for the humanities. Here, instead of giving an endless continuation of causal relations as a proof, or the logical deduction of truth by inference, authors attempt to reasonably motivate an opinion or argumentation.

Truth is knowledge that is inter-subjectively plausible and is gained by discussion and negotiation. Consensus is construed in dialogue by persuasion and argumentation, and truth exists only as a shared knowledge within a group. Everybody here has a share in it, but with any change in the community, this must be negotiated anew. There is no absolute objective truth that would be valid forever and for everybody. Rather, any subjective conviction must be motivated and explained in order to be acceptable for others. And learning is always possible. Questions of comprehension, of the phenomenology of intercultural differences, of one’s orientation in the world, of translation strategies in formulating, are relevant. In order to better discuss hermeneutics as a research paradigm in translation studies (TS), we will discuss some concepts in this field, such as *subjectivity*, *historicity*, *phenomenology*, *process character*, *holistic nature*, and *reflection*.

2.1. Subjectivity

Subjectivity cannot be excluded from hermeneutical thinking, because the language activity of human beings is at stake here, and this is always determined by their respective historical situation, the given knowledge base, and their own life experience. The intelligibility of a text is relative to the audience and its capability.

2.2. Historicity

Historicity is decisive, as persons change permanently while living together. The language of a people is also evolving constantly. The objects of research in humanities are objects having developed over time ([3], p. 31). There is the “consciousness of being affected by history” [4]. The subjectivity of personal translation strategies, on the other hand, is not merely an individualistic power position [5], but rather a cultural imprint that we cannot obliterate. We have to critically reflect on it. Hence, the

cultural position of translators and their strategies based on knowledge and experience have to be integrated into empirical research.

2.3. Phenomenology

Phenomenology is relevant, as the texts, cultural specificities, and objects are perceived by the individual in a specific way. It is important to be aware of the fact that things (ideas and objects) are not “as they appear to us,” as we can see them. Of course, ontologically, the things have a quasi objective identity on a higher level, but this is not experienced directly—that would be a naïve subjectivity—and then only through an intentional work of transcendence, going from the single to the general. The structures of perception are cognitively the same in all people, but their perspectives are different. Understanding is never a matter of fact, since an author’s task will “always be of relative and subjective value only” [6]. Comprehension is not impossible, as language is a medium of communication; on the other hand, however, encountering with alterity is also subject to the hermeneutical circle of a limited personal pre-knowledge. The phenomenology of things is determined culturally, and the translator is obligated to reflect critically and be critical about his/her own understanding and strategies.

2.4. Process Character

The *process character* is typical for hermeneutical translation. Due to continuous cultural and historical development, a translational solution can never be final. It is always a “hermeneutic sketch,” the attempt to adequately express an utterance. At the same time, there is always and inevitably also the potential of a further improvement: maybe one will find an even better formulation later on. The *holistic nature* is important in this process. Schleiermacher ([6], p. 72) has already pointed out that text elements have their meaning only in the context of the whole of the text. The meaning of a text is more than a simple addition of the single words and sentences. Holistic pre-understanding guides this textual analysis.

2.5. Reflection

A critical *reflection*, finally, is necessary when we try to achieve a responsible translation which gives a loyal presence to the source text and is also geared towards the conditions of comprehension in the target addressees. Translators should be aware of their social and cultural position, whether and how they might motivate the decision for a certain formulation based on factual criteria. The translation strategies will be different in each individual case, depending on the translator’s capacity. This hermeneutical approach is also a basis for translation in the field of law.

3. The Relationship between Law and Translation

In the scholarly discussion about “translation and the law,” the focus is first on two different academic disciplines—translation studies and comparative law. They do specific research—either on translation theories or on legal systems. And the relationship between both the concepts—law and translation—is somewhat unclear at first glance. We might split it up into two questions:

- (1) Where is translation in the field of law?

(2) What are the special problems of translation here?

Law according to its purpose is a system of social convention defined by social agreement and legislation that regulates the orderly living together of people within their culture. It has been created and developed in history. All aspects of life—dealing with offence and crime, trade, family affairs, administration, education, *etc.*—are governed by law and legislation. The fields where such rules apply are both national and international. And there is also supranational law. Furthermore, today there is global interaction in the field of business and commerce, and formation of hybrid societies due to migration. That means that in one country as a political entity there might live persons with divergent legal worldviews as a result of which different concepts of law confront each other.

We cannot translate “law” as such. What we can do at first is to compare legal systems. Comparative law is an important field of research today and it focuses on the differences in legal concepts [7]. At first sight, the human values seem to be the same for all peoples in the world: *Internal peace, justice, status of persons, public order, freedom of speech and of religion, fair trade, recognized education, punishment of crimes, etc.* However, the respective ideas are not identical everywhere, and their legal treatment is different, according to the cultural and political background. The difference between existing legal systems is mainly visible in the central concepts regarding those values.

The link between both areas of research—comparative law and translation studies—is the fact that law is set down, handed down, and interpreted within texts, by language. This is the link to other questions regarding translation. There are texts in various fields of law, such as civil, criminal, trade, administrative, family, international, European law, *etc.* We find a so-called legal language here, and the translator will approach texts with a double perspective: regarding both law and linguistic features. Although there are many obstacles to overcome in the translation of legal texts, translation is possible. It is true that in any translation there are always losses and gains. However, for centuries, countries, peoples, and nations have held political and commercial links and relationships thanks to translation.

The legal backgrounds in different cultures are decisive here as law is an interpretive concept: “The reach of legal hermeneutics is more constrained. Understanding is situated, and the field of application makes a difference as to how meaning in that field is derived” [8].

4. Various Legal Backgrounds of Translation

There is the well-known difference between the common law in the Anglo-Saxon countries with its old history of case law decisions, and the written law in most of the countries on the European continent that derives from the Roman constitutional law of Antiquity. And recently, there is the influence of European legislation in the form of directives that have to be integrated into the national legislation of every member state [9]. On the global level, there is the confrontation, in politics and commerce, with Arabic and Asian law, and with African law traditions, as well.

The British common law has been developing since the 13th century by court days under the King, and through traveling judges. In cases which were similar, they used to decide through analogical comparisons with the precedent. Hence, a case law developed where the law is revealed and evolves by means of judicial decisions ([8], p. 281). This replaced the older local and religious orders and is called common law, *i.e.*, common to all subjects of the crown. The individual judge is free in his or her decision, and the parties try to convince the jury with their arguments. The law is evolving constantly

in a collection of superior court decisions, and judges will have to substantiate their decisions with rational arguments. Their decisions appear in an individualistic style using terminology with general concepts.

Contrary to this, the European continental law, as a civil law, has evolved from the Roman constitutional law. In Germany, there is the constitution in the *Grundgesetz* (“basic law”) and the civil law in the *Bürgerliches Gesetzbuch*. (This was developed in the 19th century on the basis of the Code Napoléon much influenced by the Latin tradition.) This structure of law was developed in the 15th century from the Roman *Corpus iuris civilis*, which was translated into the vernacular languages, e.g., Italian, French, Spanish, and German. A science of legal interpretation called jurisprudence has also developed. A judge is not totally free but has to interpret the given text of the respective code and subsume the contentious case under the law. The judge’s interpretation of the meaning of law is determined by history ([8], p. 282). Articles from the written legislation are mentioned in court sentences, and this practice has led to the fact that they are copied literally with much influence on the style of writing, and it has also introduced antique formulae and Latin words in the legal language in Germany. The terminology is full of specific concepts according to the law.

The European law is a supranational law created to develop the European Union. It has a tendency to unify the regional national laws. The *Aquis communautaire* is valid for all member states, and all legal texts are being formulated in the 23 languages involved. The basic languages for a draft are English and French. All versions are deemed to be equally valid. We see supranational legal concepts in a new terminology.

This rather general overview has two consequences for the text structures possibly found in legal translation texts: English texts will be more individualistic in style than German ones, where the structure is often ruled by official decrees. Moreover, the legal terms for concepts are more general in English than in German, where specific aspects of a case have already been defined by law. When you ask a British lawyer about the correct translation of a certain word, you often hear “it depends on the case.”

The contexts in which legal translations occur have to be distinguished. Translations of legal texts are either done between legal systems or within legal systems which can be national, supranational, or international. In the first case, two different legal cultures are concerned; in the second case, only one, or—in supranational law—rather one primary and several secondary cultures.

5. Focus on Translation Problems in the Law

When we ask how translation might interact with aspects of law, we look at texts that actually have to be translated. Our perspective is reversed from the general characteristics of legal systems to the concrete language level: “The translator of a legal text aims at introducing foreign legal worldviews into a different legal life-world. His task is to make the foreign legal text accessible for recipients with a different (legal) background” ([8], p. 283).

Texts to be translated in the field of law come from various text genres, but are mainly documents by which a person wants to establish a right in another culture: *personal certificates, diplomas, contracts, affidavits, etc.* Court sentences and some articles from legislative codes are also translated sometimes for information. However, in all these translations, the validity and the meaning of those texts are bound to the source language culture, and this cannot be changed. There is no transfer of

culture, but only transparent formulation in a “documentary translation,” what House [10] also calls “overt translation.” The translation is a secondary text to help understanding.

The texts are rooted in one specific law as just described, and law is part of a culture. Culture is the background of every human communication, and the cultural aspects referring to that extra-textual environment are only implicit in the texts. Interpreters must allow themselves to be guided by the nature of what is being understood. They will put aside methods and remain open to the meaning of the text [11].

Legal translation is impossible without a prior understanding of the given text. Hence, hermeneutics is relevant here, because the very problem of understanding is a universal one. The traditional “plurality of specialized hermeneutics” within the humanities, of which legal hermeneutics in jurisprudence is a part just like theology, has been overcome by a general hermeneutics first proposed by Schleiermacher in the early 19th century ([11], p. 357). This hermeneutics reflects on the chance of comprehension.

Understanding is never a matter of fact but has to be searched in a process of interpretation based on relevant, well-grounded knowledge.

Whereas literary interpretation often sees an inexhaustibility of meaning, both in its depths and in the potential proliferation of its diverse interpretations, readings in law, by contrast, are more constrained; they are not free, but must be attentive to, and able to incorporate, existing doctrine, the statutory text, and prior precedent [12]. Legal hermeneutics is a regional form of hermeneutics, but it cannot ultimately be separated from humanistic hermeneutics in general. The translator should have access to legal knowledge, but the process of comprehending a text is the same as in other readings.

Legal texts are for jurists. Law or jurisprudence as a specialist declarative knowledge in its concepts would rather easily function with only an exclusive, fixed technical terminology. Expert communication among lawyers and judges does not require general intelligibility. However, legal texts—such as *codes*, *court sentences*, *certificates*, *trade agreements*—do rule the life and activities of lay persons. Thus these texts must also appeal to general language in order to be understood by the people. Moreover, lawyers also use general language, as it would not be possible to write texts without general language.

Legal language as a specialized language has two kinds of addressees: the lawyer and the general public [13,14]. Its terms have a double coding—not only a specialist concept, but also a lay meaning—and often they use the same linguistic frame. This is true for all fields of legal discourse. Terms designing legal concepts sometimes can be misleading when interpreted from one’s own worldview and based merely on their linguistic appearance [15,16], that is, from the outside [17,18]. This has consequences for the translation work and will be discussed below.

6. Cases of Legal Translation

When it comes to concrete translation of a text, we should be aware of the legal background, either in common law or in civil law. However, any text is also rooted in a specific field of law, such as criminal or civil or international or contract law, *etc.* A special legal terminology is relevant in these fields, dependent on the social function of such texts, both as originals and as translations. There are some typical cases of practical translation:

1. Personal administrative documents are being used to create or establish a right in another country: *Birth certificate* and/or *divorce decree* or *affidavit* for marriage, *education certificate* or *diploma* for studies abroad, *work testimonial* for a new employer, *medical certificate* about an illness during holidays abroad, *police report* of theft abroad for the domestic insurance, *medical certificate* of foreigners for their home pension scheme, and other similar things. The difference of conceptual meanings and the equivalence of terms have to be checked. Sometimes, the acceptance of such documents depends on inter-state agreements.

2. In penal proceedings, there is often the need to translate *court sentences* or *investigation documents* for the request of international judicial assistance. *Summons*, *office texts* and *statements of charge* may be translated for foreigners. The difference between criminal and civil proceedings is important here, e.g., we have to distinguish between *Staatsanwalt / Angeklagter / Verteidiger* (*public prosecutor / accused / counsel for the defense*) and *Klägerin / Beklagte / Prozessbevollmächtigter* (*petitioner, claimant / defendant / counsel for the plaintiff*).

3. Foreign court decisions with included articles of code (*criminal and civil proceedings*) have to be translated. Among others, the linguistic style is a problem here, but it is more or less relevant in all cases.

4. Trade contracts are signed in order to sell goods or transmit licenses. They will be written in one *valid language copy* with a translation for convenience. *Articles of incorporation* or *shareholder books* and *extracts from commercial registers* have to be translated when a company wants to open a business establishment in another country. Cultural differences regarding company forms and publication duties, *etc.* are important here.

5. New law texts from the European Council, *directives, etc.* have to be translated into a local language in order to display their effect in the national legal system. The EU law uses a common social terminology, and its conformance or difference to national terminology is important.

Some countries have long since had several languages in which their law is expressed, e.g., Switzerland, Canada, or South Tyrol. Here, translations are parallel texts, and certificates often are issued in two languages. Identity of conceptual meaning is vital.

6. After political changes, it can be necessary to translate a whole national body of legal texts from the former main language into other local languages, which occurs as an example with the cases of Hong Kong (Chinese), South Africa (Kwa Zulu, Xhosa), or in the former Yugoslavia (and others). Sometimes, words for legal concepts have to be created anew.

7. International treaties are formulated in a general way, open to interpretation following the *political agreements*, and then we have their formulation in a language coherent in both bilateral and multilateral conventions. The divergence of conceptual meanings from national legislation is important.

It has to be checked which kind of translation is relevant in each individual translation commission. The most frequent case, of course, is translation of a national document so that it may deploy its legal effect in another country. In such a case, translation is between two different legal systems. Šarčević [19] stresses the functional effect of legal translations: “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.” This means that even if the translation is not the legal document as such, it should be precise enough to be accepted with its intended legal effect, which is based in the legal system of the issuing state.

The translation does not replace the original text with its legal status, especially in document translation. But translations as secondary texts should be transparent enough to produce the same legal effects in practice. The German translation of an Italian article of statute law, for instance, will give precise information, but it is no German law. Likewise, the English translation of a German school certificate should be clear enough to enable one to study abroad, but it will never be a British certificate. This is different in the case of EU law, where the legal equivalence of texts is top priority.

7. Legal Concepts and Terminology

Given the fact of double legal addressees, we see expert concepts with various levels of abstraction often presented in lexemes from standard language. The specific problem of translating, then, is to recognize in a text such expert concepts which, when first examined, might seem to lend themselves to “normal” understanding. The natural meaning is narrowed by a legal definition [20]; the expert concept constitutes a specification of the stereotypical concept into a specialist one, but it still refers to the former. There are several levels of abstraction to be distinguished with respect to their content:

- Subjects and rights (specified concept in standard lexemes)
- Conditions (vague legal terms)
- Actions and relations (specific legal terms)
- Legalistic ideas (abstract terms of jurisprudence)
- Concepts of European law (multilingual terms)

7.1. Specified Concepts of Subjects and Rights in Vague Standard Lexemes

There are difficulties for the layman if standard lexemes regarding legal subjects like *man*, *woman*, *father*, *animal*, *birth*, *object*, *marriage*, *equality*, etc. are being fixed into some specific usages by legal discourse. A “father,” for instance, is not only somebody who fathered a child, but he is also legally responsible for the child’s maintenance (according to varying national rulings). One might doubt the equivalence of en. *marriage* with fr. *mariage* or de. *Ehe*, as the legal concepts are rather different in the respective civil codes concerning the rights of the persons. Socially, however, it is more or less the same thing. A *dog* is not only a beloved animal, a pet, but also an object with a certain value to be determined in case of damage.

Such terms are much less evident than laymen would believe, as is evident from a commentary of 500 pages on article 3 GG: “*Alle Menschen sind vor dem Gesetz gleich*” (*All persons shall be equal before the law*). The reason is that individual ideas can differ widely even in the same country, in history, and all the more internationally. The designations of the legally protected rights must be interpreted according to the local and temporal opinions and circumstances within the valid legal system [21].

7.2. Vague Legal Terms for Conditions of Life

There are also “vague” legal terms needing interpretation, such as *good faith*, *public decency*, *important reason*, *high value*, *law and order*, *state of the art*, *night-time peace*, *freedom of speech*, etc. We might call them conditions of living together. The opinions regarding *silence in the night* may cause dispute; *freedom of speech* is interpreted differently in a democratic than in a dictatorial regime,

etc. Their schematic concepts are easily inferable at first sight, and the terms might be translated literally, but their legal content is not at all precise. The idea behind these terms may vary from group to group. The choice of target language terms can even require court decisions [17], e.g., when a product is not in the promised “state of the art.” Similarly, what is included in “*Höhere Gewalt*”? (only *Act of God*, or also a *strike*, other *damage*, *political upheaval*, *lack of electricity*, *etc.*). The vague legal terms may have specific definitions in local legislation.

7.3. Specific Legal Terms for Interaction

Lawyers also use so-called “specific” legal terms formally taken from standard language regarding social interaction and relations like *purchase*, *sale*, *debt*, *exchange*, *rent*, *burglary*, *theft*, *offense*, *ownership*, *possession*, *murder and manslaughter*, among others. Their legal meaning is determined by a description of their legally relevant semantic content in the facts of the case ([15], p. 91). The problem, however, is that this semantic content often is not identical in various legal backgrounds, which may cause trouble, especially in international trade. There are many relevant studies, but the dictionaries can only be partly reliable.

Literal translation is not always possible: see en. *ownership* that corresponds to de. *Besitz* (*possession*), *Eigentum* (*property*), *Rechteinhaberschaft* (*title*). The layman concept of such terms may also be deviant, and this will create dispute and the expert meaning has then to be specified in court proceedings.

7.4. Abstract Relationships and Terms of Jurisprudence

On the next level of abstraction, there are terms for phenomena that are only theoretically conceivable, some legalistic ideas in their significance for society. The concepts of such terms are exactly defined by legal provision.

There are, for instance, terms like *Rechtsnachfolger* (successor in title), *Willenserklärung* (declaration of will), *Gläubigerverzug* (creditor’s delay in acceptance), *Mängelhaftung* (responsibility for defects), *Transporterschleichung* (transport obtained by devious means, fare dodging) *etc.* They appear to be easily comprehensible, but they contain a specific legal concept, and this makes such terms difficult to understand for the layperson. Also, they present linguistically the typical technical word compounds that are unusual in general language. As precise terms, they fulfill the requirements of an exact terminology which is also well registered in respective dictionaries.

Finally, there are highly abstract terms of jurisprudence being taught during the respective academic studies, e.g., *desist order*, *concurrency of offenses*, *subsidiarity*, *derogation*, *Buchgrundschuld* (uncertified mortgage), *Faktenbeweis* (real evidence), *Zwangsvollstreckungsklausel* (execution clause), *etc.* Such terms concern theoretical concepts within a law system, and not only interpersonal relationships, as the terms mentioned before. They are hardly accessible for non-lawyers regarding their meaning.

7.5. Concepts of European Law

The law of the European Union is multilingual. All legal acts are being formulated in all 23 official languages, and all text versions in the various member countries have the same validity and

authenticity. In this respect, the linguistic problem is the same as in bilingual countries. On the other hand, this law is detached from any local national law.

The texts are normally translations from the original draft versions in English or French, the primary working languages of the European Community. Equivalence of content is of utmost importance, as this is a supra-national law for all member states presented in texts with an intended identical sense.

European law is above the various national laws in a terminology not derived from them. Even if the exact meaning of a provision of European Union legislation in its abstract nature is never absolutely clear, one must strictly distinguish between national and European terms in the same language. Since the different countries have each their own national law system, the respective correspondence or deviation of a linguistic frame has to be examined.

The writing of legal texts is now being done in the presence of representatives of most of the individual member states. In implementing the EU directives into the national law systems, this later on will have decisive transforming effects within those systems. The formal link of terms to one legal system shall be cut, in order to find independent formulations in the translation [22] using different, new words. Instances of “secondary term formation” [23] may be observed when focusing on the influence of EU law on the creation or development of new terms from already existing concepts and terms within the member states in order to meet the need of finding appropriate designations for EU concepts. Regarding legal concepts in general, the translator will have to be aware of these basic differences between the legal systems involved in the respective language pair. Furthermore, multilingual legal terms can be found outside of European law, as well.

As we are looking at the content of linguistic frames, it seems that lawyers often adopt a purely legalistic point of view. Translational thinking, on the contrary, has the potential of creating a common ground where not only the legal content is taken into account, but also the linguistic features. The results of the comparison of law will be useful here in trying to write adequate translations. And lawyers thus may gain a more conscious usage of their own language that is primarily focused on content rather than on language.

8. Linguistic Features of Legal Translation

Law is a part of culture. Understanding, then, is possible by putting down implicit cultural references to certain structures on the text level [14]. Cultural elements appear in the texts on all levels—from the shape of words for concepts, to the sentences and stylistic text structure, up to pragmatics in its social function. Culture as the background of every human communication is a dynamic phenomenon based on historical tradition, including the individual’s personal development.

When we now look at the concrete translation of legal texts, it is clear that the linguistic aspects come to the foreground. These may be described on various language levels. The question is: How can a translator deal with these aspects which, in every single text, are mixed with one another?

8.1. Standard Macro-Structures

At first, we see some standard macro-structures when we look at the text to be translated as a whole. Every text genre, such as the *paragraph of a code*, a *patent text*, a *school certificate*, a *contract*, a

court sentence, etc. has a specific macro-structure. It is important for a professional translator to know the relevant macro-structures for texts in the languages dealt with.

However, translation is no comparison of texts; translation is a service, a means for understanding when it presents the text precisely. One might refer here to the special status of certified translations, where the source text structure will always remain visible. There is never a cultural transfer in the sense of changing a source text document into a target language document. On the contrary, documentary translation will not change the form, but rather follow its shape in a narrow way. Thus the source text structure will remain visible, and the certificate which contains its legal value only in the source document can be read and understood via the translation. The target text is transparent for the source. In contracts, not only used by jurists, it is adequate to look at idiomatic qualities of language, but we have to keep the amount of sentences identical in the translation. Therefore, readers with different mother tongues will be able to discuss the text, saying for instance: “*in clause 8, the 3rd sentence, etc.*”

The use of expressions which are characteristic for the specific type of text is of great importance in all legal texts.

8.2. A Special Terminology

There is also the special terminology, which we have already mentioned. We find those terms for concepts with different levels of abstraction side by side on the text level. There are various possible reactions to this by the translator:

- Literal translation
- Loanword
- Substitution by a target term
- Use of a hyperonym, which is more general
- Translation with explicative extension
- Target version with source term in brackets
- Use of source term with a footnote
- Original word as a target neologism.

The respective decision has to be made based on subject knowledge.

8.3. Technical Style

What we also have to observe is the technical style, which serves a specific function of speech. Legal texts are specialized communication, and their style is different from the creative language in general utterances used within the family, literature, or newspapers. The characteristics of technical style are anonymity, precision, and, as the key function of the language for special purposes is “specification, condensation and anonymity of the propositions,” [24] economy of expression. This is also true for legal texts, and is thus realized by a special style:

Anonymity: Passive voice, 3rd person in present tense, focus on function not on persons, orders in the infinitive.

Precision: Many nouns focusing on facts, functional verbs with noun, factual adjectives, syntactic appositions, linguistic condensation.

Economy of expression: Word compounding, phraseological forms, series of hypotaxes for explication. This style aimed at achieving the requirement of precision may of course lead to unusually long sentences that are difficult to analyze.

8.4. Legal Speech Acts

A further important feature of legal texts is the fact that there are many speech acts in the legal language, and this is realized by performative verbs. “How to do things with words” (Austin) is a central question in the law, because actions and relations have to be designated verbally. There are five forms of such speech acts:

- Assertive (statements, representation, description)
- Declarative (self-commitment, warranty)
- Directive (orders, recommendations)
- Commissive (binding, obligations)
- Expressive (expression of feelings).

You have to observe the special forms of language relevant here: Orders, for example, are made in the infinitive: *send application*; obligations are indicated in English by “shall”: *the parties shall inform each other . . .* ; descriptions of facts are done by nouns and with infinitive verbs: *the mutual information of the parties is considered effected when . . .* ; and, affirmations of parties appear in indirect speech: *they affirmed that . . .* A self-commitment or warranty is often designated expressly: *person A declares that he warrants to do this . . .* [25]. Finally, the expression of feelings is rarer in legal texts.

The translator has to meticulously observe these aspects, in order to render a transparent, precise legal information in the translation.

8.5. Procedural Repetition of Formulae

As the law and court decisions do refer to relevant other texts, such as previous sentences or statutory texts and codes, there is usually a reference to similar aspects, to analogous procedures, to repetitive activities: “The meaning of a law, if it has one, is to be sought in the text and in its inter-textual connections and not in the will of a legislator” ([8], p. 279). The existence of similar parallel texts is a very important characteristic of specialist texts. Naturally, such reference is made by repeating the same formulation, there is a procedural repetition in formulae. We note:

- The same expression is used for a similar action
- No literal translation is applied, as style is different in cultures
- A bilingual stylistic collection of formulae would be helpful.

For similar actions, the same expression is being used again and again. Some standard formulas have developed, e.g., *die Kosten des Verfahrens werden gegeneinander aufgehoben (costs offset each other)*, and the like. But these aspects have developed differently in various countries. Often a literal

translation of such formulaic expressions is not possible; rather, we should build up bilingual collections of such formulae which, so far, are not well documented in dictionaries. One has to exploit one’s own texts during one’s professional life in order to build-up a collection of repeated formulae.

In translating legal texts, one will also observe the groups of addressees and apply inclusive language, where requested. Technical phraseology enhances the authoritative appearance of legal text types.

9. The Legal Translator’s Approach in a Double Perspective

The translational problem is to bring both these aspects together: looking at the content of the legal background and at the language level. The translator has a double perspective.

The central prerequisite of translation as a dynamic task for the translator is to comprehend the given text within an adequate legal perspective. And specialized translation in the field of law requires the formulation of communicatively adequate technical texts in the other language. For this purpose, one needs a “well-grounded understanding” ([1], p. 68) based on subject knowledge gained through research, since a merely intuitive, naïve interpretation of legal texts would be inadequate.

In the hermeneutical approach to texts, the translators have a double perspective and need a system of orientation. This system is presented in the following Table 1.

Table 1. Fields of orientation in translation.

Positioning of text	Textual background
Legal world	culture with its own law system (European continental/Anglo-Saxon/Arabic/Chinese)
Form of legislation	continental law/ case law/ supra-national law/ law in other regions
Text genre	macro-structure of text type (paragraph of code, court sentence, certificate, contract, document, <i>etc.</i>)
Field of law	criminal, civil, administrative, works, trade, family, international law, <i>etc.</i> of the country
Legal concepts	levels of abstraction of concept and lexis on the text level
Legal style	precision and anonymity in civil law, individual style in common law, standard formulae, speech acts
Rhetoric	Formulating
Text function	transparency for source text function, documentary translation, orientation markers, translation assignment
Terminology	state of equivalence of concepts to be checked, translation principle of “common denominator” of concept, literal translation of terms
Language information	official language, speech acts and verbal tense, sentence perspective, phraseology, technical word compounding, inclusive style
Standardization	archaic forms, standard procedural formulae

For translation in the field of law, we will begin with reading a text as given in its original culture and communicative field. In first positioning the text within its legal system, we will keep in mind the characteristics of the relevant background and its difference from the target situation, as we observe the special language forms on the text level regarding terminology, text genre and formulaic style. And in formulating the translation, one will focus on correct terminology and the due technical style.

All those fields of orientation with the aim of translating as precisely as possible, in a comprehensive form and based on legal knowledge, have to be observed in every single text for its translation and then be combined with adequate formulation. Their combination varies individually.

The issue in legal translation is to exactly render “what is written there,” as the legal value of a text is always bound to its original and the translation is only a means of understanding. A translation is no “cultural transfer” in the sense that the source text would be transferred into the target legal system, even if it may deploy an intended effect therein.

10. Conclusions

Our description of the problems faced by a legal translator in practice may be taken as a basis for further research. The translator applies a double perspective to both the language structure and the content of meaning. Of course, numerous studies on legal language, and also on the translation of legal texts, have been published already. However, often the focus there is only on external subject matters, such as different legal concepts, stylistic features, analysis of macro-structure, the problems of lexicography, *etc.* The point where all these individual different aspects come together is their interrelation in the translator him or herself, as a professional person who acts on the texts and tries to produce an adequate translation apt for further interpretation by jurists.

The legal translator’s work is based in hermeneutics, since one needs to understand the text without necessarily being a full jurist. Comparative law as the field of research regarding legal content finds a concrete application when legal translators can make use of its findings in their translation concerning words and the style of the genre. Whereas jurists focus on the legal consequences of acts and decisions, often speaking intuitively about these aspects, translators will particularly focus on the language form of speech acts, in order to achieve precision in their writing.

Translation studies as the field of research regarding translation as a process and a product might be enriched by integrating the hermeneutical outlook visible in the double perspective of the legal translator.

The translator’s cognition reaches out into various cultures and specialist topics. The specific problem, then, is to combine various aspects in one’s activity.

Translation as a strategic action of persons thus forms a basis for many different humanistic investigations, such as research into cognitive outreach, cultural interaction, learning effects and professional activity. The focus will always be more on action than on structures.

References

1. Radegundis Stolze. *The Translator’s Approach—Introduction to Translational Hermeneutics. Theory and Examples from Practice*. Berlin: Frank & Timme, 2011, 45
2. Lawrence Venuti. *The Translator’s Invisibility. A History of Translation*. London/New York: Routledge, 1995, 17.
3. Marcus Beiner. *Humanities. Was Geisteswissenschaft macht. Und was sie ausmacht*. Berlin: University Press, 2009.
4. Hans-Georg Gadamer. *Truth and Method*, 2nd rev. ed. Translated by W. Glen-Doepel. Revised by Joel Weinsheimer, Donald G. Marshall. New York: Crossroad, 1990, 301.

5. George Steiner. *After Babel. Aspects of Language and Translation*, 3rd ed. Oxford: University Press, 1998, 298.
6. Friedrich D. E. Schleiermacher. "On the different methods of translating." In *Translating Literature: the German Tradition. From Luther to Rosenzweig*. Edited by A. Lefevere. Assen: Van Gorcum, 1977, 66–89, 81.
7. Rodolfo Sacco. *Einführung in die Rechtsvergleichung*. Baden-Baden: Nomos, 2001.
8. Sieglinde E. Pommer. "The Hermeneutic Approach in Legal Translation." In *Unterwegs zu einer hermeneutischen Übersetzungswissenschaft. Radegundis Stolze zu ihrem 60. Geburtstag*. Edited by L. Cercel, J. Stanley. Tübingen: Narr, 2012, 274–87, 276.
9. Pierre Legrand. "European Legal Systems are not converging." *International and Comparative Law Quarterly* 45 (1996): 52–81.
10. Juliane House. *Translation Quality Assessment. A Model Revisited*. Tübingen: Narr, 1997, 29.
11. Teresa Godwin Phelps, and Jenny Ann Pitts. "Questioning the Text: The Significance of Phenomenological Hermeneutics for Legal Interpretation." *St. Louis U.L.J.* 29 (1984–1985): 353–82, 363.
12. George H. Taylor. "Ricoeur and Law. The Distinctiveness of Legal Hermeneutics." In *Ricoeur Across the Disciplines*. Edited by S. Davidson. London/New York: Continuum, 2010, 84–101.
13. Helmut Müller-Tochtermann. "Struktur der deutschen Rechtssprache. Beobachtungen und Gedanken zum Thema Fachsprache und Gemeinsprache." *Muttersprache* 69 (1969): 84–92, 91.
14. Radegundis Stolze. "Dealing with cultural elements in LSP texts for translation." *JosTrans, the Journal of specialized Translation* 11 (2009): 124–42.
15. Matthew Leung. "Assessing Parallel Texts in Legal Translation." *JosTrans, the Journal of specialized Translation* 1 (2004): 1–11.
16. Franziska Zezulka, and Yvonne Helal. "Einbürgern oder verfremden? Besonderheiten bei Übersetzungen juristischer Texte ins Arabische." *MDÜ Fachzeitschrift für Dolmetscher und Übersetzer* 4 (2009): 74f.
17. Anja Drame. "Mehr als eine Geste. Terminologie, Recht und Gerechtigkeit in Südafrika." *MDÜ Fachzeitschrift für Dolmetscher und Übersetzer* 3 (2009): 18–23.
18. King Kui Sin, and Derek Roebuck. "Language engineering for legal transplantations." *Language and Communication* 16 (1996): 235–54.
19. Susan Šarčević. *New Approach to Legal Translation*. The Hague: Kluwer Law International, 1997, 71.
20. Christine Fuchs-Khakhar. *Die Verwaltungssprache zwischen dem Anspruch auf Fachsprachlichkeit und Verständlichkeit*. Tübingen: Stauffenburg, 1987, 39.
21. Els Oksaar. "Sprachliche Mittel in der Kommunikation zwischen Fachleuten und zwischen Fachleuten und Laien im Bereich des Rechtswesens." In *Fachsprachen und Gemeinsprache*. Edited by W. Mentrup. Düsseldorf: Schwann, 1979, 100–13, 102.
22. Anne Lise Kjær. "Überlegungen zum Verhältnis von Sprache und Recht bei der Übersetzung von Rechtstexten der Europäischen Union." In *Übersetzen von Rechtstexten. Fachkommunikation im Spannungsfeld zwischen Rechtsordnung und Sprache*. Edited by P. Sandrini. Tübingen: Narr, 1999, 63–79.

23. Juan C. Sager. *A Practical Course in Terminology Processing*. Amsterdam/Philadelphia: John Benjamins, 1990, 80.
24. Rosemarie Gläser. “Fachsprachen und Funktionalstile. Art. 16.” In *Fachsprachen—Languages for Special Purposes. Ein Internationales Handbuch zur Fachsprachenforschung und Terminologiewissenschaft—An International Handbook for Special Languages and Terminology Research*. Edited by L. Hoffmann, H. Kalverkämper, H. E. Wiegand. Berlin/New York: de Gruyter, 1998, vol. 1, 199–208.
25. Anna Trosborg. “‘Acts’ in contracts: Some guidelines for translation.” In *Translation Studies. An Interdiscipline*. Edited by M. Snell-Hornby. Amsterdam/Philadelphia: Benjamins, 1994, 309–18.

© 2013 by the author; licensee MDPI, Basel, Switzerland. This article is an open access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/3.0/>).