A Study on English Translation of Chinese Legislative Texts:
Situation, Problems and Solutions

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Abstract. The English version of the Chinese legislative texts plays an important role in China's legal diplomacy, but there are many mistranslations which can be categorized into three types from the perspectives of semantics, grammar and pragmatics. In China, numbers of scholars are devoted to improving the quality of legislative text translation. However, the academic achievements are basically limited to published articles and rarely adopted by the competent authorities. Hence the author put forward and expounded three methods to improve the translation quality of the Chinese legislative texts.

Introduction

Sarcevic argued that legal translation was a simultaneously dual task between legal and linguistic conversion. In addition to attaining "the equivalence of linguistic functions," we should also take care of "the reciprocity of legal functions in legal translation", the purpose of which is to "convey the legislative intent" and preserve the original "legal spirit". The ultimate goal of legal translation is "to preserve the uniqueness of a single text under the precondition of ensuring that the translation is interpreted and applied in accordance with the original text." [1] This translation target applies not only to the countries with bilingual legislation (such as Canada and China’s Hong Kong), but also to countries and regions (eg. China) where the translation is only used as a reference to law enforcement or judicial review[2]. China has already translated a large number of laws and regulations into English, which is a remarkable accomplishment in legislative translation. However, on the whole, the translation quality is not good, and there are numbers of mistranslation and mistakes. This article attempts to sort out and comment on the main mistakes in the translation of Chinese legislative texts and points out the practical and feasible solutions for the purpose of providing references to improving the translation quality of Chinese legislative texts.

The Current Situation of Legislative Text Translation in China

In China, law is divided into six levels: the essential law is the Constitution, the basic laws conclude civil and criminal law, the common law consists of contract law, administrative regulations, local laws and regulations (autonomous regulations and separate regulations), and administrative rules. In order to meet the needs of China's opening up and people of all walks both at home and abroad to fully and accurately understand our laws, the NPC Working Committee has translated the Constitution and more than 230 laws in the socialist legal system with Chinese characteristics into English and published them in English. More than 700 administrative regulations have been translated into English by the Legislative Affairs Office of the State Council and 22 copies of the Compilation of Foreign Laws of the People's Republic of China (in English and Chinese) have been published; more than 4,500 local laws and regulations and government regulations have already been translated into English by the relevant legal organs of the local governments.[3]

With the promotion of reform and opening up and the development of globalization, legal diplomacy has increasingly become a necessary choice for enhancing China's international influence. In the field of legal diplomacy, our country has joined such international and regional organizations as the United Nations (UN), the World Trade Organization (WTO) and the World Intellectual Property Organization (WIPO). Only take WTO for example, in accordance with its
requirements of transparency, all the trade-related policies and decrees implemented by the member states and the existing agreements affecting the international trade signed between the member states must be made public so that enterprises and individuals can easily understand them. In 1999, the Chinese government sent the English translation of 180 laws and administrative regulations to the WTO Working Group of China to make it systematically understand our legal system.\textsuperscript{[4]}

Problems in the Translation of Chinese Legislative Texts

Non-standard Translation of Technical Terms

The most important words in legislative texts are legal terminology which is the core and foundation of texts. However, the problems related to terms in legal translation are highly prominent and widespread. The first one is the inaccuracy of terminology translation, and the second is the inconsistency of terminology translation within the same branch of law and between different departmental laws. By contrasting the Chinese and English versions of the Copyright Law of PRC, I have found that in Chinese the noun form of "fa biao" and "chu ban", are all translated into publication or publish. The two very important terms in the field of copyright have become the same word after being translated from Chinese into English.

The definition of Publication as published by the WIPO is "The act of publishing a work; it is also understood as meaning the published work itself, and the word should apparently be used to translate "chu ban" not "fa biao".\textsuperscript{[5]} UNESCO states "the right of publication" as the right of disclosure, meaning that the author is entitled to decide whether her work is to be made available to the public\textsuperscript{[6]}, which is consistent with Article 10 (1) of the Copyright Law of PRC. Therefore, disclosure rather than publication should be used to translate this article's "fabiao".

Lack of Rigor in the Formulation of Sentences

The world of law originated from the language, and the law was made and announced through the words. When we translate the law into foreign languages, the norms of the target language should be strictly followed\textsuperscript{[7]}, but the English translation of the legislative texts in our country is far from accurate. For example, "gou cheng fan zui de, yi fa zhui jiu xing shi ze ren (meaning literally: constituting criminal offenses and pursuing criminal liabilities in accordance with the law)" is a formula in the Chinese legislative texts. However, its expression in the English versions of different legislative texts is not exactly the same. In the following laws of PRC like the Contract Law (Article 127), the Copyright Law (Article 48), and the Patent Law (Article 58), it is respectively translated as follows:

- if a crime is constituted, criminal responsibility shall be investigated pursuant to law.
- where a crime is constituted, criminal liabilities shall be investigated in accordance with law.
- where the infringement constitutes a crime, he shall be investigated for his criminal liability.

The original text of this article can be divided into four main phrases: "gou cheng fan zui (constitute a crime)", "yi fa (according to law)", "zhui jiu (investigate)" and "xing shi ze ren (criminal responsibility)". By comparing these three translated phrases, I can see that the three other terms have different translations except that "zhui jiu" is translated as "be investigated for" and I suggest this formula be translated as if a crime is constituted, criminal liability shall be investigated in accordance with law.

Modal Verbs Used Improperly

The law regulates the behavior of people and the relations among them by stipulating obligations, permissions and prohibitions, which are mainly and respectively marked by the modal verbs "ying ding & bi xu (shall, must)", "ke yi (may)" and "bu de (shall/may not)". The legal translation must have the same norm intensity as the original text, so as to be faithful to the original legislative intent and to "preserve the uniqueness of a single text." When translating the law, people should consider whether the original provision is authoritative or obligatory. According to different situations, the translator can choose to deploy the appropriate modal verb to translate so as for the translation to be
equivalent to the source text. If he used the modal verb improperly, various mistakes might also occur in the translation.

Take the **Copyright Law** of PRC for example, there are 61 articles in total. The verb "ke yi (may)" is used 34 times, and *may* appears 36 times in its English version, which is basically corresponding; "bi xu", "ying dang" and "bu de" are used totally 50 times. Even all of them are translated into *shall*, there ought to be only 50 times. But in fact, *shall* is used 102 times, showing the excessive use of it. In the following, Article 51(2) and (3) of the said Law are taken as examples to illustrate:

(2) After accepting the application, the People’s Court shall make a ruling within 48 hours.

(3) Where it rules to adopt preservation measures, it shall have the measures enforced immediately

The People’s Court may order the applicant to provide a guarantee, and shall reject the application where the applicant fails to do so.

The comparison between the Chinese and English versions shows that there are three modal verbs in the Chinese version. Except that "ke yi" is translated as *may*, both "ying dang" and "bi xu" are translated as *shall*. And the English version has one more modal verb *shall* than the Chinese version, which is stylistically inadvisable.

Based on the foregoing, I find that there are still problems with the translation of the legal provisions that the NPC Law Committee is responsible for, and there may be even more problems in the translation of regulations and rules. With the development of the legal system, the number of laws and regulations enacted in our country has been increasing year by year, putting unprecedented pressure on legal translation.

**Three Methods to Improve the Quality of Legislative Text Translation**

Up to now, quite a few scholars' research achievements, criticisms and suggestions put forward are unkindly unacceptable. However, the old mistranslations of laws and regulations have not been rectified and the new ones still prevail. In the end, the reason is that only certain authority is entitled to translate the legislative texts. Scholars have the right to criticize but they are not entitled to make any changes. They can only wait for the amendments to be made by the functional departments of the state organs with authority. Here, the author tries from the macro to the mid-view, and then to the microcosmic, to put forward three solutions to effectively improve the translation quality of the legislative texts.

**Translation Should Be Organized in Accordance with Law**

According to the principle of "who makes law translates it", the translation division of the legislative texts in our country is as follows: The NPC Law Committee is responsible for vetting law translations; the Law Translation and Foreign Affairs Department of the Legislative Affairs Office of the State Council (hereinafter referred to as LAO) is responsible for vetting the translation of administrative regulations; Departments of the State Council and local governments are responsible for translating the departmental rules and local regulations and rules.

In terms of the information currently available to the public, the **Circular** issued by the State Council aims at the translation of administrative regulations, clarifies the duties and time limits of translation and vetting, standardizes the procedures for translation and vetting, ensures the quality of translation and the practice is to be continuously improved and refined by establishing mechanisms; it points out that translation should be "accurate, standardized and unified"; it shows that "LAO is responsible for examining the official translations of administrative regulations and taking overall responsibility for their quality" and requires all localities and departments to translate the rules released by themselves. However, the translation of the fundamental laws, the basic laws and the ordinary laws that the NPC Law Committee is responsible for has not yet been clearly regulated.

At present, more freedom has been given to the localities and departments to organize the translation of laws and regulations and the roles have been fully played by all the departments and
parties involved in law translation and vetting. What is not perfect is the lack of a unified and coordinated management and translation standard. There is a special "Legislation Law" to regulate Chinese legislation, while the translation of legislative texts, including not only English translation, but also French, Spanish and other one should be organized in accordance with the law. It is suggested that the government should make unified regulations on the translation of official legislative texts at the macro level, clarify the basic principles for translating laws and regulations, stipulate the types of legal texts to be translated and the modes of translation, and unify the procedures for the translation of them. From the national level to ensure the quality of translation, standardize and promote the full utilization of the translation products, and carry out translation continuously.

There Should Be Rules for Translation

The aforementioned Circular of the State Council stipulates the norms and organizations for the examination and approval of translating laws and regulations, but it is only a framework requirement and cannot regulate the translation directly. LAO has authored the Study on Certain Issues in the Translation of Laws and Regulations to explore the basic theoretical issues concerning the translation of laws and regulations, working standards, and basic methods and techniques, and edited the Handbook on Common Sentences for Legal Translation and Examination (unofficial publication, only for the internal exchange of information), for the guidance of practice; and it is regarded as the authority of the English translation of laws and regulations together with the Chinese-English Contrastive Manuals for Laws and Regulations of PRC officially published in 1998, and both of them are often cited by the translators responsible for translating laws and regulations all over the country[8]. LAO has striven to improve the translation quality of laws and regulations, both theoretically and practically. The downside is that the information is not open enough, and therefore it is not only hard to find the aforementioned paper books or information, but difficult to find the electronic version of them even on the Internet. In this respect, we can refer to the practice of Hong Kong's legislature.

The Hong Kong Department of Justice is responsible for all the laws proposed by the Hong Kong government. The Law drafting division has compiled and published many high-quality reference books, which are available online at the Department of Justice's official website for free and are "informative and content-rich, interpreting the law and drafting style and practices in plain language, and enumerating hundreds of examples to illustrate", aiming to "assist law-abiding users in gaining a clearer understanding of the law and in promoting a uniform drafting practice no matter whether or not the law is proposed by the government".

Drawing upon the practice of Hong Kong Department of Justice, we can formulate the Principles for Legal Translation and Guidelines for Practice on the basis of enriching and amending the existing research products, which can be published and issued publicly by the government or be available on the official website to provide comprehensive, systematic and authoritative legal translation rules, so that the translators can follow the rules when translating in order to completely change the current translation situation. After compiling the Chinese-English Standard Translation Dictionary for Legal Terms and accepting the review and corresponding amendments from all parties, the government makes it public for free and uses it as a translation rule to ensure that all relevant regions and departments strictly follow it and provide for individual translators to refer to it, and regularly amends it according to the relevant research results and users’ opinions.

Give Full Play to the Role of Legal Translation Experts

The State Council's Circular stipulates: "The Legislative Affairs Office of the State Council may employ experts proficient both in law and English to give advice on the examination and approval of the official English version of the administrative regulations." In 2007, the Law Nouns Validation Committee formally established in the Chinese Academy of Social Sciences Law Institute discussed and formed a work program, trying to coordinate the overall harmonization of noun terminology, form the final version, and provide authoritative and standardized legal nouns.
However, it is a pity that so far, people have not yet seen any validated legal nouns announced by the Committee.

It is the necessary and feasible way to improve the legislative text translation by relying on professionals. First of all, the existing Law Nouns Validation Committee should actually assume the responsibility of validating and releasing standardized legal terms. Secondly, the competent authorities may, according to the requirements of the Circular, select law translation experts from the law experts and English experts to establish a legal translation think tank. It is best for the experts to also have rich practical experience, as well as being lawyers dealing with foreign affairs, judges, etc., not just researching in the study.

**Conclusion**

In an era of globalization, the international community is becoming more and more integrated, and the international exchange of laws is increasing and deepening. International exchanges and cooperation through legal diplomacy can help enhance China’s soft power. Many scholars devote themselves to improving the quality of legislative texts translation. However, their research results basically ended up in written forms and are rarely adopted by the competent authorities. There should be a benign interaction between the research results and the government decision-making. Authorities should give full consideration to the improvement of the translation quality of the legislative texts, and from macro perspective to mid-term one and then to microcosmic, applying the paths of “basing on law, rule and power”, they should effectively improve the translation quality of the legislative texts, and thus enhance the effectiveness of legal diplomacy and China's international influence.

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