

· 大学本科翻译研究型系列读本 ·

总主编 张柏然

法律英语翻译读本

Translation for Legal Purpose: A Sourcebook

主 编 张思洁



南京大学出版社

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大学本科翻译研究型系列读本

大学翻译学研究型系列教材

顾 问(按首字母排序)

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总 序

张柏然

到了该为翻译学研究型系列教材说几句话的时候了。两年前的炎炎夏日,南京大学出版社责成笔者总揽主编分别针对高等院校翻译学本科生和研究生学习与研究需求的研究型系列读本和导引。俗话说,独木难撑大厦。于是,笔者便千里相邀“招旧部”,网罗昔日在南大攻读翻译学博士学位的“十八罗汉”各主其事。寒来暑往,光阴荏苒,转眼两年过去了。期间,大家意气奋发,不辞辛劳,借助网络“上天”,躲进书馆“入地”,上下求索,查阅浩瀚的文献经典,进而调动自己的学术积累,披沙拣金,辨正证伪,博采众长,字斟句酌,终于成就了这一本本呈现在读者面前的教材。

众所周知,教材乃教学之本和知识之源,亦即体现课程教学理念、教学内容、教学要求,甚至教学模式的知识载体,在教学过程中起着引导教学方向、保证教学质量的作用。改革开放以来,我国各类高校组编、出版的翻译教材逐年递增。我们在中国国家图书馆网站上检索主题名含有“翻译”字段的图书,检索结果显示,1980至2009年间,我国引进、出版相关著作1800余种,其中,翻译教材占有很大的比重。近些年来,翻译教材更是突飞猛进。根据有关学者的不完全统计,目前,我国正式出版的翻译教材共有1000多种。^{*}这一变化结束了我国相当长一段时间内翻译教材“一枝独秀”的境地,迎来了“百花齐放”的局面,由此也反映了我国高校翻译教学改革的深化。

但是,毋庸讳言,虽然教材的品种繁多,但是真正合手称便的、富有特色的教材仍属凤毛麟角。教材数量增多并不足以表明教学理念的深刻转变。其中大多都具有包打翻译学天下的纯体系冲动,并没有打破我国既往翻译教材编写从某一理论预设出发的本质主义思维模式和几大板块的框架结构。从教材建设看,我国翻译理论教材在概念陈设、模式架构、内容安排上存在着比较严重的雷同化现象。这表明,教材建设需要从根本上加以改进,而如何改则取决于我们有什么样的教学理念。

有鉴于此,我们组编了“大学翻译学研究型系列教材”和“大学本科翻译研究型系列读本”这两套系列教材。前者系研究生用书,它包括《中国翻译理论研究导引》、《当代西方翻译理论研究导引》、《当代西方文论与翻译研究导引》、《翻译学方法论研究导引》、《语言学与翻译研究导引》、《文学翻译研究导引》、《汉语典籍英译研究导引》、《英汉口译理论研究导引》、《语料库翻译学研究导引》和《术语翻译研究导引》等10册;后者则以本科生为主要读者对象,它包括《翻译概论读本》、《文化翻译读本》、《文学翻译读本》、《商务英语翻译读本》、《法律英语翻译读本》、《传媒英语翻译读本》、《科技英语翻译读本》、《英汉口译读本》、《英汉比较与翻译读本》和《翻译资源与工具读本》等10册。这两套教材力图综合中西译论、相关学科(如哲学、美学、文学、语

^{*} 转引自曾剑平、林敏华:《论翻译教材的问题及编写体系》,《中国科技翻译》,2011年11月。



言学、社会学、文化学、心理学、语料库翻译学等)的吸融性研究以及方法论的多层次研究,结合目前高校翻译教学和研究实践的现状进行创造性整合,编写突出问题型结构和理路的读本和导引,以满足翻译学科本科生和研究生教学与研究的需求。这是深化中国翻译学研究型教材编写与研究的一个重要课题,至今尚未引起翻译理论研究界和教材编写界的足够重视。摆在我们面前的这一课题,基本上还是一片多少有些生荒的地带。因此,我们对这一课题的研究,也就多少带有拓荒性质。这样,不仅大量纷繁的文献经典需要我们去发掘、辨别与整理,中西翻译美学思想发展演变的特点与规律需要我们去探讨,而且研究的对象、范畴和方法等问题,都需要我们进行独立的思考与确定。研究这一课题的困难也就可以想见了。然而,这一课题本身的价值和意义却又变为克服困难的巨大动力,策励着我们不揣浅陋,迎难而上,试图在翻译学研究型教材编写这块土地上,作一些力所能及的垦殖。

这两套研究型系列教材的编纂目的和编纂特色主要体现为:不以知识传授为主要目的,而是培养学生发问、好奇、探索、兴趣,即学习的主动性,逐步实现思维方式和学习方式的转变,引导学生及早进入科学研究阶段;不追求知识的完整性、系统性,突破讲授通史、通论知识的教学模式,引入探究学术问题的教学模式;引进国外教材编写理念,填补国内大学翻译学研究型教材的欠缺;所选论著具有权威性、文献性、可读性与引导性。具体而言,和传统的通史通论教材不同,这两套系列教材是以问题结构章节,这个“问题”既可以是这门课(专业方向)的主要问题,也可以是这门课某个章节的主要问题。在每个章节的安排上,则是先由“导论”说明本章的核心问题,指明获得相关知识的途径;接着,通过选文的导言,直接指向“选文”——涉及的知识面很广的范文,这样对学生的论文写作更有示范性;“选文”之后安排“延伸阅读”,以拓展和深化知识;最后,通过“研究实践”或“问题与思考”,提供实践方案,进行专业训练,希冀用“问题”牵引学生主动学习。这样的结构方式,突出了教材本身的问题型结构和理路,旨在建构以探索和研究为基础的教与学的人才培养模式,让年轻学子有机会接触最新成就、前沿学术和科学方法;强调通识教育、人文教育与科学教育交融,知识传授与能力培养并重,注重培养学生掌握方法,未来能够应对千变万化的翻译教学与研究的发展和需要。

笔者虽说长期从事翻译教学与研究,但对编写教材尤其是研究型教材还是个新手。这两套翻译学研究型教材之所以能够顺利出版,全有赖各册主编的精诚合作和鼎力相助,全有仗一群尽职尽责的编写和校核人员。特别值得一提的是,在这两套系列教材的最后编辑工作中,南京大学出版社外语编辑室主任董颖和责任编辑裴维维两位女士全力以赴,认真校核,一丝不苟,对保证教材的质量起了尤为重要的作用。在此谨向他(她)们致以衷心的感谢!

总而言之,编写大学翻译学研究型教材还是一项尝试性的研究工程。诚如上面所述,我们在进行这项“多少带有拓荒性质”的尝试时,犹如蹒跚学步的孩童,在这过程中留下些许尴尬,亦属在所难免。作为教材的编撰者,我们衷心希望能听到来自各方的意见和建议,以便日后再版修订,进而发展出更好更多翻译学研究型教材来。

是之为序。

二〇一二年三月二十七日
撰于沪上滴水湖畔临港别屋

前言

“法者,天下之公器也;变着,天下之公理也。”(梁任公《变法通议》),研究法律翻译亦然。近代以降,曾有林则徐延请美籍传教士 Peter Parker(1804—1889)及其幕僚袁德辉节译《各国律例》,以图“师夷长技以制夷”;后有同文馆美籍传教士丁韪良(William Alexander Ravsons Martin, 1827—1916)及何孟师等人翻译《万国公法》;又有江南制造局翻译馆傅兰雅(John Fryer, 1839—1928)传译《各国交涉公法论》及同文馆法籍化学教习毕利干(Anatole Adrien Billequin, 1837—1894)翻译《法国律例》。这些译品,以及戊戌变法前后翻译的宪法类、民商类法律法学著作,不仅对中国传统法律的近代化,而且对近代中国政治变革,产生了重要影响。应该说,无论晚清之“君主立宪”,还是近代之启蒙民主,无不得法律翻译之助益;港澳之回归祖国以及中国之加入世贸组织,法律翻译亦难没其功。

前修宿儒对于法律翻译多有感悟,马建忠标举“善译”主张^①,严又陵提出“信达雅”之说,等等,对法律翻译实践而言,未尝不曾启迪心智,指点要津。时贤博士多有宏论,如杜金榜教授著《法律语言学》,李克兴博士著《法律翻译理论与实践》,宋雷教授著《法律英语教程》、张法连教授编《法律英语翻译》、陆文慧博士编《法律翻译:从实践出发》,等等。宏观立论,高屋建瓴;微观切入,分析透辟。其与后学,多有泽被之功。

本书之辑成,实望以问题为导向,基于前修时贤之既成,采撷佳胜,搜研本正,赍呈读者,冀望读者对当下法律翻译之热点问题有所了悟。本书概分七章:第一章,法律英语特点与法律文体翻译;第二章,法律文体翻译的基本原则探析;第三章,法律文体翻译的相关理论概略;第四章,语言学理论视域下的法律文体翻译;第五章,功能类型学视域下的法律文体翻译;第六章,法律文本中典型词句翻译探析;第七章,法律法规汉英译例对照与赏析。每章遴选三至四篇论文作为“选文”,文前撰述“导言”,扼要介绍选文作者及选文出处,略述选文主旨以及选文撰写之由。后缀“延伸阅读”及“问题与思考”,便于读者钩索事源,探赜索隐,希冀为所探

^① 马建忠在《拟设翻译书院议》中主张:“……一书到手,经营反复,确知其意旨之所在,而又摹写其神情,仿佛其语气,然后心悟神解,振笔而书,译成之文,适如其所译而止,而曾无毫发出入于其间,夫而后能使阅者所得之益,与观原文无异,是则为善译也已”。



讨问题脉络之梳理有所补益。

本书选文之辑出,文字之雠校,多仰赖前修时贤之既成,特此志出,以申敬谢:杜金榜著《法律语言学》,[美]陶博著、龚柏华编《法律英语中英双语法律文书制作》,李克兴、张新红著《法律文本与法律翻译》,张法连编《法律英语翻译》,宋雷等著《英汉对比法律语言学》,陆文慧编《法律翻译:从实践出发》,Eugene Nida 著 *Toward a Science of Translating*, Peter Newmark 著 *Approaches to Translation*, Christiane Nord 著 *Translating as a Purposeful Activity: Functionalist Approaches Explained*, Anna Trosborg 编 *Text Typology and Translation*, 曹菡艾著 *Translating Law* 以及《中国翻译》、《中国科技翻译》等。并向本书选文其他著者 Enrique Alcaraz-Varó、Vijay K. Bhatia、Susan Šarčević、Giuliana Garzone、傅伟良、陆文慧、曹永强、金朝武、傅敬民等学者致以谢意。

本书意脉之梳理、章节之编制,承蒙南京大学张柏然教授耳提面命,提携点拨,特致谢忱。欣蒙南京大学出版社担纲筹划,惠予审校斧正,慨然付梓;承蒙编辑裴维维女士致思设计,悉心雠校,特表谢意。

本书第一章至第六章“导论”及“导言”由中北大学人文社会科学学院张思洁执笔,第七章“导论”及“导言”由中北大学法学系王改琴主笔;全文提纲又蒙中北大学王学良律师刚直诤谏,受益良多。成书之际,编者自审学识浅陋;断章立目、命题设问、缀材编目诸多方面,思虑难周,难厝人意。纰缪舛错多所难免,祈请方家赐教。

编 者

2012 年 10 月于中北大学怡丁苑

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第一章 法律英语特点与法律文体翻译

导 论

有学者认为,法律语言是不同于一般语言的具有权威性和约束力的法律载体;法律语言表现为诸多成对因素的调和:概括性与准确性;一致性与灵活性;明晰性与隐含性;专门性与通用性;简约性与繁杂性;主观性与客观性^①等。还有学者提出,法律语言是以民族共同语为基础,在立法及司法的全过程中逐渐形成的,具有法律专业特色的民族语言的社团分支,它包括规范性法律文件用语以及法律工作者在执法过程中使用的一整套规范化的法律公务用语。其语言特征可概括为词语的专业性、句法结构的模式性、表达方式的特定性、语体风格的庄严性^②。美国学者 David Mellinkoff 研究表明,法律语言的主要特征有以下十个方面:① 使用常用词汇的不常用汉译;② 经常使用中古英语词汇;③ 经常使用拉丁语词汇和短语;④ 使用古法语及法律法语中的词汇;⑤ 使用专门术语;⑥ 使用行话;⑦ 使用官样文章用语;⑧ 刻意使用具有可变通含义的词汇和短语;⑨ 力求表述准确;⑩ 冗长性、保守性和精确性^③。概而言之,我们不妨认为,法律语言是社会活动中某一特定群体(如律师、立法者、法官、执法者等)在从事立法、司法、执法等活动中所使用的一种语域(register);这种语言不仅在词汇层面、句法层面,乃至文本层面具有其显著特征。对这些特征的关注与探索,为法律文本的翻译提供方法论或理论上的启示。

本章所辑曹茵艾(Deborah Cao)博士的“Law, Language and Translation”一文,从法律文本的文本类型、法律语言的本质、法律语言的特征以及法律文本翻译困难之所由四个方面,对法律文本的翻译进行了探究。作者认为,法律文本可分为立法文本、司法文本、法律学术文本以及私人法律文本;依据翻译所承担功能,法律翻译可分为法律法规翻译、法律资讯翻译、司法文书翻译。究其本质而言,法律语言具有规范性、施事性、技术性及不确定性四大特征;法律翻译之难,主要源自源语与目的语在法律法规、法律语言以及法律文化之间所存在的差异等。所辑 Alcaraz-Varó 教授的“Lexical and Syntactic Features of Legal English”一文,对法律英语的语言特征进行了探索。作者指出,在词汇层面主要体现在语篇中使用大量的拉丁语、法语或诺曼语、规范语词与古旧语词、古旧副词及介词短语、双联词或三联词、施事动词,以及委婉修辞词汇等方面;就法律英语句法而言,其特征表现在语句冗长,限制修饰成分纷杂繁复,大量使用

① 杜金榜:《法律语言学》,上海外语教育出版社,2004年,第1-12页。

② 孙懿华、周广然:《法律语言学》,中国政法大学出版社,1997年,第58页。

③ [美]陶博:《法律英语:中英双语法律文书制作》,龚柏华编,复旦大学出版社,2007年,第3-41页。



被动语态,多使用条件和假设句式,等等。

本章所辑巴狄亚(Vijay K. Bhatia)教授的“Translating Legal Genres”一文旨在从文类的角度,探究法律文体翻译过程中译者应具备的理论素养。作者从法律文体翻译的复杂性、文体理论的基本特征、翻译中需要特殊处理的立法文本的撰写特征,以及在文体框架基础上如何维持立法文体翻译的完整性四个方面探讨法律文本的翻译。法律文体翻译过程的复杂性在于,译者不仅须关注源文本、源作者、源读者所在语言的语境,源语言中可资利用的语料与语法手段,以及关注源语言法律文化所依循的文体习性,也须关注这些因素在目的语语境、目的语资源、目的与法律文化中的情形。文体理论借助社会认知领域的各种知识,通过分析语言结构、语言阐释与语言运用,实现法律文化之间的交际目的。这要求译者具有两种语言所涉及法律法规知识、相应的文体知识,熟悉以交际为目的的语言的典型运作方式,以及灵活驾驭语篇的能力。巴狄亚指出,尽管法律文本具有高度名词化、语句杂糅等文体特征,但法律翻译必须顾及目的语文本的接受与理解。



选文一 Law, Language and Translation

Deborah Cao

导 言

本文节选自曹蕾文(Deborah Cao)著《法律翻译》第二章“Translating Law”, by Deborah Cao, Clevedon: Multilingual Matters Ltd., 2007)。Deborah Cao, 澳籍华人, 澳大利亚 Griffith University 语言与语言学学院以及社会法律研究中心教授,《国际法律符号学季刊》(International Journal for the Semiotics of Law)副主编兼主编《法律翻译》(Translating Law)《中国法律: 语言与视角》(Chinese Law: A Language Perspective)《法律解释》(Interpretation: Law and the Construction of Meaning)以及《澳大利亚新西兰动物法》(Animal Law in Australia and New Zealand)等。

作者从法律、语言、翻译三者之间的内在联系出发,从法律文本的文类类型、法律语言的本质、法律语言的特征以及法律文本翻译困难之所由四个方面,对法律文本的翻译进行了探究。基于 Sartorius 等人的研究,作者认为法律文本(legal texts)可分为立法文本、司法文本、法律学术文本以及私人法律文本(legislative texts, judicial texts, legal scholarly texts and private legal texts)。依据翻译所承担功能,法律翻译可分为法律规范翻译、法律术语翻译、司法文书翻译(legal translation for normative purpose, informative purpose and for general



legal purpose)。究其本质而言,法律语言具有规范性、施事性、技术性及不确定性四大特征(normative, performative, technical and indeterminate nature);这些特征通过词汇、句法、语用以及风格显现,使法律语言成为某种别具一格的语言现象。作者指出,法律翻译之难,主要源自源语与目的语在法律法规、法律语言,以及法律文化之间所存在的差异等。

Legal translation is a special and specialised area of translational activity. This is due to the fact that legal translation involves law, and such translation can and often does produce not just linguistic but also legal impact and consequence, and because of the special nature of law and legal language. Moreover, as is noted, the translation of legal texts of any kind, from statute laws to contracts to courtroom testimony, is a practice that stands at the crossroads of legal theory, language theory and translation theory (Joseph, 1995: 14). Therefore, it is essential that the legal translator have a basic understanding of the nature of law and legal language and the impact it has on legal translation.

This chapter begins with a classification of legal translation. This is followed by an analysis of the nature of legal language in terms of its normative, performative and technical character and the tension between legal certainty and linguistic indeterminacy. A characterisation of legal language is also proposed in terms of legal lexicon, syntax, pragmatics and style. Then, the chapter elaborates on the three major sources of difficulties in legal translation, that is, the legal, linguistic and cultural complications. In particular, it offers a comparative analysis of the two major legal systems: the Common Law and the Civil Law. Lastly, the chapter contemplates the possibility and impossibility of legal translational equivalence and whether it is indeed achievable.

Legal Translation Typology

Translation is classifiable into various categories. It can be divided into two general categories of literary and non-literary translation or the categories of ideational (technical and non-technical) and interpersonal (non-fictional and fictional) translation (House, 1977), and the translation of pragmatic texts and literary or artistic texts (Delisle, 1988). Translation can also be classified according to the division of natural and artificial language based on language use, and on the types of translation activities, literary or industrial (Sager, 1993). A commonly used typology is the classification of translation into general, literary and specialist or technical translation.

Relevant to translation typology is how we view the differences and similarities among the different types of translation. In this connection, the prototypology proposed by Snell-Hornby (1988: 27 - 36) is particularly constructive. This is the so-called "natural categorisation," that is, in the form of prototypes that have a hard core and blurred edges



(Snell-Hornby, 1988: 27). The prototypology is a dynamic, gestalt-like system of relationships that covers various types of translation ranging from literary to technical (Snell-Hornby, 1988: 31). In the classification of general, specialist and literary translation, we need to recognise that these categories of translation involve different language uses that have their own peculiarities, but they also share common grounds. As Vermeer (1986: 35, cited in Snell-Hornby, 1988: 51) points out, for instance, the differences between general and literary translation are one of degree, not of kind. It is not a polarised dichotomy, but a spectrum that admits blends and overlapping, a question of quality and intensity, not one of fundamental difference (Snell-Hornby, 1988: 51). As Harvey (2002: 177) puts it, literary and scientific translations are not watertight and they may be in a hybrid form.

For our purpose, if we follow the general, literary and specialist classification of translation, legal translation falls under the specialist category, or technical translation. It is a type of the translational activity involving special language use, that is, language for special purpose (LSP) in the context of law, or language for legal purpose (LLP). Legal translation has the characteristics of technical translation and also shares some of the features of general translation.

Legal translation can be further classified according to different criteria. For instance, legal translation has been classified according to the subject matter of the SL texts into the following categories: (1) translating domestic statutes and international treaties; (2) translating private legal documents; (3) translating legal scholarly works; and (4) translating case law. Legal translation can also be divided according to the status of the original texts: (1) translating enforceable law, e. g. , statutes; and (2) translating nonenforceable law, e. g. , legal scholarly works.

According to Šarčević (1997), legal translation can be classified according to the functions of the legal texts in the SL into the following categories: (1) primarily prescriptive, e. g. , laws, regulations, codes, contracts, treaties and conventions. These are regulatory instruments containing rules of conduct or norms. They are normative texts; (2) primarily descriptive and also prescriptive, e. g. , judicial decisions and legal instruments that are used to carry on judicial and administrative proceedings such as actions, pleadings, briefs, appeals, requests, petitions, etc. ; and (3) purely descriptive, e. g. , scholarly works written by legal scholars such as legal opinions, law textbooks, articles, etc. They belong to legal scholarship, the authority of which varies in different legal systems (Šarčević, 1997: 11). Šarčević (1997: 9) defines legal translation as special-purpose communication between specialists, excluding communication between lawyers and non-lawyers.

One major problem with the existing classifications of legal translation is that they are based on the function or use of the original legal texts in the SL, without due regard to the various TL factors, such as the functions or status of the translated texts. However, there is a need to distinguish the functions of the SL text from those of the TL text (cf. Roberts, 1992). It is necessary to consider the TL variables, in addition to those of the SL. Another



problem of the existing classifications is that many documents that are used in the legal process and translated as such are excluded from the classifications, e. g. , documents used in court proceedings. A third major problem is that some of the classifications such as Šarčević's exclude communications between lawyers and non-lawyers (clients). The restriction in Šarčević's "legal texts for specialists only" disqualifies some text types that make up a large part of the legal translator's workload in real life: private agreements and correspondence between lawyers and clients, for instance (see Harvey, 2000).

Given these reasons, before we offer another classification of legal translation, let us first examine how legal texts may be classified.

In this study, legal language refers to the language of and related to law and legal process. This includes language of the law, language about law, and language used in other legal communicative situations (cf. Kurzon, 1998, who distinguishes language of the law from legal language, i. e. , language about law). Legal language is a type of register, that is, a variety of languages appropriate to different occasions and situations of use, and in this case, a variety of languages appropriate to the legal situations of use. Legal texts refer to the texts produced or used for legal purposes in legal settings.

We may distinguish four major variants or sub-varieties of legal texts in the written form: (1) legislative texts, e. g. , domestic statutes and subordinate laws, international treaties and multilingual laws, and other laws produced by lawmaking authorities; (2) judicial texts produced in the judicial process by judicial officers and other legal authorities; (3) legal scholarly texts produced by academic lawyers or legal scholars in scholarly works and commentaries whose legal status depends on the legal systems in different jurisdictions; and (4) private legal texts that include texts written by lawyers, e. g. , contracts, leases, wills and litigation documents, and also texts written by non-lawyers, e. g. , private agreements, witness statements and other documents produced by non-lawyers and used in litigation and other legal situations. These different sub-text types have their own peculiarities. As noted, legal language is not homogeneous, not just one legal discourse, but "a set of related legal discourses" (Maley, 1994: 13). Legal language does not just cover language of law alone, but all communications in legal settings.

Legal texts may have various communicative purposes. They can be for normative purpose as in the case of bilingual and multilingual statutes and other laws and documents that establish legal facts or create rights and obligations. These are mostly prescriptive. Legal texts can also be for informative purpose as in some legal scholarly works and commentaries, legal advice, correspondence between lawyers, between lawyers and clients, and documents used in court proceedings. These are mostly descriptive. For the translator, it is necessary to ascertain the legal status and communicative purpose of the original texts and the target texts as these may impact on translation. Also importantly for our purpose, the legal status and communicative purposes in the SL texts are not automatically transferred or carried over to the TL texts. They can be different.



Given the foregoing description of legal language and legal texts, legal translation refers to the rendering of legal texts from the SL into the TL. Legal translation can be classified into three categories in the light of the purposes of the TL texts.

Firstly, there is legal translation for normative purpose. It refers to the production of equally authentic legal texts in bilingual and multilingual jurisdictions of domestic laws and international legal instruments and other laws. They are the translation of the law. Often such bilingual or multilingual texts are first drafted in one language and then translated into another language or other languages. They may also be drafted simultaneously in both or all languages. In either case, the different language texts have equal legal force and one is not superior to another irrespective of their original status. Such legal texts in different languages are regarded as authoritative once they go through the authentication process in the manner prescribed by law. By virtue of this process, such texts are not mere translations of law, but the law itself (Šarčević, 1997: 20). Examples of these are the legislation in the bilingual jurisdictions of Canada and Hong Kong of China, the multilingual legal instruments of the UN, and the multilingual laws of the EU. In the case of the EU, the authentic language versions of EU laws, now twenty languages, are equivalent since they have the same legal force and value and can be invoked indiscriminately in appeals to the ECJ by EU citizens or businesses, irrespective of their Member State of origin or that country's official language or languages (Correia, 2003: 41). They are usually drafted in English or French first to be translated into the other official languages. Nevertheless, they all have equal legal force.

This category of legal translation may also include private documents such as contracts, the bilingual texts of which are equally authentic in a bilingual or monolingual jurisdiction. For instance, in a non-English speaking country, contracts sometimes may stipulate that the versions of the contract in the official language of the country and English are both authentic, even though the language of the court and the country does not include English. In this first category of legal translation, the communicative purposes of the SL and TL texts are identical.

Secondly, there is legal translation for informative purpose, with constative or descriptive functions. This includes the translation of statutes, court decisions, scholarly works and other types of legal documents if the translation is intended to provide information to the target readers. This is most often found in monolingual jurisdictions. Such translations are different from the first category where the translated law is legally binding. In this second category, the SL is the only legally enforceable language while the TL is not. For instance, a statute written in French from France translated into English for informative purpose for the benefit of foreign lawyers or other English readers is not legally enforceable. This is different from the first category where, for instance, a statute written in French in the bilingual jurisdiction of Canada is translated into English or vice versa and where both the French and English versions are equally authentic. Sometimes, publishers of translations of



laws in the second category include a disclaimer to the effect that the translation of such and such a law is for reference only, and that in legal proceedings, the original language text of the law shall prevail. Another example is the translation of the legal instruments of the WTO, which has English, French and Spanish as its official languages. Here only the texts written in the official languages have legal force while their translations into other languages are not binding, but for information only. In this category, the SL and TL texts may have different communicative purposes.

Thirdly, there is legal translation for general legal or judicial purpose. Such translations are primarily for information, and are mostly descriptive. This type of translated document may be used in court proceedings as part of documentary evidence. Original SL texts of this type may include legal documents such as statements of claims or pleadings, contracts and agreements, and ordinary texts such as business or personal correspondence, records and certificates, witness statements and expert reports, among many others. The translations of such documents are used by clients who do not speak the language of the court, e. g., statements of claims, or by lawyers and courts who otherwise may not be able to access the originals such as contracts, correspondence or other records and documents. Such translated texts have legal consequences attached to them due to their use in the legal process. In practice, for instance, in Australian courts, a sworn affidavit from the translator is normally required as to the quality of the translation and the competency of the translator. Sometimes, the translator is also called upon as a witness in court regarding the translation, for some of these, the otherwise ordinary non-legal documents written by nonlawyers are elevated to legal status because of the special use of the original and the translation. This is similar to court interpreting. Court interpreters in most cases interpret oral evidence of witnesses who may be retelling ordinary events and answering ordinary personal questions. These witnesses could say the same or similar things outside the courtroom in non-legal settings. The main difference is that interpreting the same story in a non-legal setting is ordinary interpreting while interpreting the same in court is legal interpreting as the interpreted words are used for a legal purpose under special circumstances and conditions. In these situations the language use or translation use is contingent upon the existence of a legal order, which must be considered to be part of the communicative situation. The law's institutional character plays a major part in language use in legal settings (Madsen, 1997b), thus, should be given prominent consideration in our classifications of legal texts and legal translation. Many parts of the court or litigation documents are the closest to resemble everyday language use in all the sub-types of legal texts.

The third type of translation is different from the second category described above in that the third category may include ordinary texts that are not written in legal language by legal professionals, but by the layperson. This type of legal translation is often left out in the discussion and classification of legal translation. However, in fact, in the practice of legal translation, it constitutes a major part of the translation work of the legal translator in