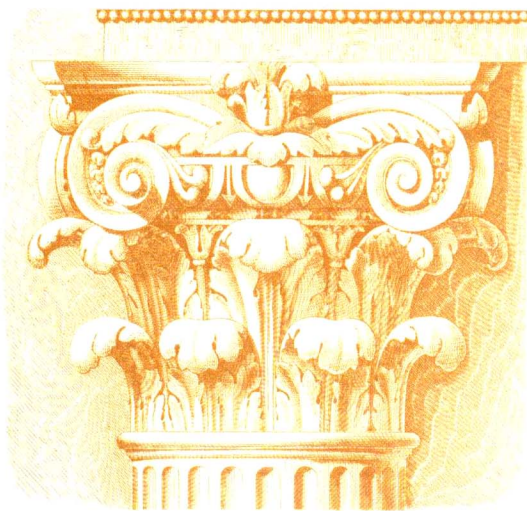


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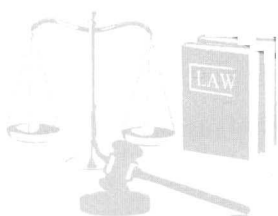
功能主义视角下的法律外宣文本翻译

On the Translation of Legal Texts for International
Communication Purposes: a Functionalist Perspective



暨南大学出版社
JINAN UNIVERSITY PRESS

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前 言

改革开放以来，中国在经济社会发展和法制建设领域取得了长足的进步，但西方世界对于我国司法体制的观感依然极为负面。究其原因，一方面是西方媒体对我国法制仍是一边倒的负面报道；另一方面则是我国司法外宣工作成效不大，效果欠佳。

有鉴于此，本书分析了我国司法外宣的现状，提出我国司法外宣成效之所以不理想，一方面是因为在外宣中过于强调对法律法规文件等硬性法律文本的翻译介绍，导致受众广大、更易于为受众接受的软性法律文本，例如以法律为主题的新闻报道或文学作品的翻译遭到边缘化，没有得到应有的重视，从而导致我国司法外宣的受众面非常狭窄，成效不明显；另一方面则是因为现阶段我国司法外宣文本的译文质量不佳，甚至令受众不知所云，更遑论争取受众的理解与支持，因而也就难以实现向世界客观公正地介绍中国司法现状的外宣目的。有鉴于此，本书选取我国司法外宣中软性法律文本的翻译（以下简称“司法外宣翻译”）作为研究对象，系统地分析我国司法外宣翻译中存在的问题及其成因，并在德国功能主义学派提出的翻译理论的基础上，初步提出了提高我国司法外宣翻译质量的解决方案。

本书在对相关文献进行回顾之后发现，一方面，虽然目前关于中国法律对外译介的研究虽日渐增多，但均以硬性法律文本的翻译为研究对象，并未涉及软性法律文本的翻译；另一方面，虽然目前外宣翻译在国内日益受到重视，但截至本书出版之时，国内还没有以我国法律体系为主题的外宣翻译研究。

因此，本书以德国功能学派提出的功能主义翻译理论，特别是“目的论”作为主要理论依据。原因在于功能主义翻译理论与我国几代从事外宣翻译的译员、记者、编辑和管理人员在多年经验之上总结的翻译规则和规律高度契合。在此基础上，本书对我国司法外宣翻译进行了分析，提出我国司法外宣翻译工作的目的在于以客观公正的方式向目标受众提供关于中国法律体系的信息，从而改变他们对中国法律体系的误解，消除西方媒体



片面报道所带来的消极后果。我国司法外宣翻译译文的功能主要为信息功能，兼有委婉的诉求功能，因此，我国司法外宣翻译应属于以目标受众为中心，以符合目标受众所在文化中的文化规约和语言规则为特征的工具型翻译。

就此，本书提出，我国司法外宣翻译中普遍存在三类问题：语用翻译问题、文化翻译问题和语言翻译问题，并依据我国司法外宣翻译的目的和译文功能提出我国司法外宣翻译工作应采用“自上而下”的功能主义途径：以翻译纲要为基础，通过分析比较原文作者与接收者之间的交际情景和译文作者与译文接收者之间的交际场景上存在的差异，预先发现翻译可能遇到的问题，采用“工具型翻译”策略，在“辅助文本”的帮助下，按照“语用翻译问题”“文化翻译问题”和“语言翻译问题”的顺序，“自上而下”地解决翻译中出现的问题，使译文符合目标文本所在文化中的文化规约、规范以及语言规则，从而使译文能够符合目标受众的心理，满足目标受众的信息需求。

最后本书得出结论，重申了我国司法外宣翻译工作要以“实现翻译目的”作为中心，并指出了在现有条件下本书存在的不足，也对日后的研究工作进行了展望。

在我国经济取得举世瞩目的发展，国际地位大大提高，积极推进“走出去”战略的当代，以介绍中国国情、促进中外交流为首要目的的外宣翻译实践与理论研究大有可为。在这方面，本书仅仅是作者不顾浅陋而进行的极其微小的一次尝试。鉴于作者水平有限，敬请大家指正。

曹志建

2016年4月

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Chapter One Introduction

1.1 Background of the Present Research

Since it started to implement the policy of reform and opening-up at the end of the late 1970s, China has made enormous achievements in its social and economic development. In a relatively short span of just over thirty years, the economy of China has expanded by approximately eighteen times in the real GDP (gross domestic product) terms (Morrison, 2011: 1), while its Human Development Index (HDI), a key indicator of human welfare of a country, has risen from the level of 0.530 before the reform and opening-up to 0.777 in 2005, recording an “impressive” growth of over 30% (Tisdell, 2009) in less than three decades; China’s economy has been growing at an annual rate three times of the world’s average in the thirty years since the year of 1978 (Wearden, 2010); China has overtaken Japan to become the second largest economy of the world and in the process has lifted over 600 million of its citizens out of poverty, which is considered as “an achievement of staggering proportions”^① by the United Nations.

Accompanying such phenomenal achievements in the era of globalization is a rapid increase in the flow of goods, services and personnel into and out of China. According to the government white paper released by the Information Office of the State Council of China in 2011, “by the end of 2010 China had been the world’s largest exporter and second-largest importer for two consecutive years”^②, only less than those after China’s accession to the World Trade Organization (WTO)

① *China’s Progress towards the Millennium Development Goals 2008 Report*, jointly released by the Ministry of Foreign Affairs of the People’s Republic of China and the United Nations System in China (p.6).

② *China’s Foreign Trade* (《中国的对外贸易》) is the first ever government white paper on foreign trade of China, which was released by the Information Office of the State Council on December, 2011. The text quoted in the present book is retrieved from the official website of *China Daily*, the largest English-language newspaper on the mainland of China at http://www.chinadaily.com.cn/china/2011-12/07/content_14226654_3.htm.



in 2001. According to the 2011 edition of *UNWTO Tourism Highlights*, the annual review reported by the World Tourism Organization on the development of international tourism industry, China became the third most popular tourist destination of the world in the year of 2010, receiving a total of 55.7 million international tourist arrivals and garnering \$45.8 billion in revenue^①. In addition, the results of the sixth national population census of China in 2010, the latest of its kind, showed that a total of 201,955 foreign nationals were working on the mainland of China. That demographic figure represented an estimated expat community of 1.02 million in China^②; and finally, according to the annual work report of the Supreme People's Court (which is the highest court of law in China) made before the annual session of National People's Congress, China's national parliament, in March 2011, courts on the mainland of China heard and concluded as many as 20,258 commercial, marine and maritime cases involving foreign individuals and/or entities in the year of 2010 alone. To sum up, with China emerging as an important player on the international arena and the integration of China into the international community, the exchanges and interactions between China and the rest of the world have been expanding rapidly, and it is safe to assume that there is increasing interest and urgent practical need of a proper understanding of China, including its legal system, i. e., the laws, administrative regulations and other regulatory documents and the interpretation and enforcement thereof, which affects almost all aspects of such exchanges and interactions.

On the other hand, since the end of the chaotic years of the Cultural Revolution in the late 1970s, China has made enormous achievements in restoring its legal system and promoting the rule of law. China "has made remarkable progress in introducing a fully functioning civil law system" (Dickinson, 2007), while in the year of 1978, when China started to implement the policy of reform and opening-up, China had two laws only, namely, *the Constitution of the*

① *UNWTO Tourism Highlights (2011 Edition)*, retrieved from the official website of the World Trade Organizations at <http://mkt.unwto.org/sites/all/files/docpdf/unwtohighlights11enhr.pdf> (pp. 5-6).

② The figures were released by the National Bureau of Statistics of China, the Chinese governmental agency in charge of the collection and publication of statistics related to the economy, population and society of China, and were quoted in a report titled "Legal cases involving foreign workers on the rise" posted on the website of *the Global Times*, an English-language newspaper of China.



People's Republic of China and the Marriage Law of the People's Republic of China, due to the damages inflicted on the legal system of China by the chaotic Cultural Revolution. A little more than three decades later, China has established a fairly well-developed legal system on the ruins of a decade of chaos, with the National People's Congress, China's top legislature and its standing committee adopting a total of 239 national laws, 14 judicial interpretations and decisions related to legal issues (侯瑞丽, 2011), to say nothing of any local laws, administrative regulations and other legislations and enactments adopted by local legislatures of the country. With the promulgation of new laws and regulations and amendments to the existing ones, China "is increasingly governed on the basis of publicly promulgated laws" (Peerenboom, 2003). "Even in the eyes of its harshest critics, China's legal system has come a long way in just over twenty years. Two decades of reform has brought remarkable changes in institutions, laws, and practices." (Peereboom, 2003)

However, in spite of the rising profile of China in the world, the phenomenal growth in the exchanges between China and the international community, and the leaps and bounds made by China in promoting the rule of law, the legal system of China remains unfortunately little known by the rest of the world, and the international community's understanding of China's legal system is sketchy, to say the least. As a matter of fact, China was obliged to make a commitment to the World Trade Organization upon its accession to the international trade body in 2001 that it would make transparent to all WTO members its national and local laws, administrative regulations and other measures, especially those "pertaining to or affecting trade in goods, services, trade-related aspects of intellectual property rights (TRIPS) or the control of foreign exchange"^①. To fulfill this obligation, China should make available to all WTO members, upon request, all its trade-related laws, administrative regulations and other measures before such laws, administrative regulations and measures are implemented or enforced. In addition, China is also required to publish all trade laws and regulations and to provide a reasonable period for public comment to the appropriate authorities be-

① *Protocol on the Accession of the People's Republic of China*, retrieved from the website of the United Nations at <http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN002123.pdf> (p. 2).



fore they are implemented. And most significantly, China should translate all such laws, administrative regulations and measures into at least one of the three official languages of the WTO, namely, English, French and Spanish, and make such translation available to all WTO members no later than 90 days after their implementation or enforcement (Qin, 2003). These unprecedented and unique requirements, which are exclusively applicable to the mainland of China (Wu, 2011), underscore the fact that there is an urgent need for knowledge about the legal system of China rendered in internationally accessible languages and that such knowledge is unfortunately in short supply.

What is worse, in spite of all the achievements made by China in improving its legal system, the perception of China's legal system by the international community is still "overwhelmingly and exceedingly negative" (Peerenboom, 2003). Much to the chagrin of those foreign nationals practicing law in China, there still remain some popularly held myths about the current legal system of China, which range from the outdated to the absurd—Myth No. 1: There are no laws in China; Myth No. 2: There are few lawyers in China and they are poorly educated; Myth No. 3: There are few judges in the Middle Kingdom and they are poorly educated; Myth No. 4: The laws adopted in China are meaningless because the Chinese people file few lawsuits; Myth No. 5: Chinese statutes are intentionally vague and there is no guidance on interpretation from judges' commentary or case law (Dickinson, 2007). The fact that such "stale, old myths that can lead business people to make costly mistakes" (Dickinson, 2007) are still very much alive testifies to the sad state of the international community's understanding of the legal system of China.

Such misperceptions and unbalanced views, according to Peerenboom—the author of the 2002 book *China's Long March Toward Rule of Law* and the 2007 book *China Modernizes Threat to the West or Model for the Rest?* —are primarily attributable to the negative portrait of China's legal system by the Western media (2003). When they report on the legal system of China (and indeed China as a whole), Western journalists "tend to report the sensational" (Peerenboom, 2002: 561), often "to the exclusion of other important developments" (Peerenboom, 2002: 560), and they often "impose their own values" (Peerenboom,



2002: 560). Such approaches, according to Peerenboom, account for the “wide discrepancy between the remarkable progress that China has made in establishing a viable legal order and the exceedingly negative portraits of the legal system” (Peerenboom, 2002: 560). And given “the Western monopoly of global news services” (Khattak E. A. , et al. , 2012) and the resulting dominance of “Western viewpoints on world events” (Schenk S. & Ahmed M.), it is not surprising that the outside world’s perception of China, including its legal system, should be negative and biased.

In view of this, it is necessary for China to step up its own efforts to introduce itself, including its legal system, to the rest of the world, in a fair and balanced way, so as to neutralize the adverse effect of the negative coverage by the western media, and thereby create a favorable international environment for its peaceful development. And given the fact that the Chinese language, though boasting of the largest number of native speakers and increasing influence in the world with the steady rise of its speaking population in recent years, is not widely used as a foreign language, such communication must be carried out in the languages of the target audience, especially English, the most widely used language in today’s world and so far the dominant language in international communication (郭可, 2002). In the process, translation from Chinese into foreign languages, especially English, plays a vital role, according to some prominent Chinese scholars and veteran journalists and translators involved in presenting China to the world, and the quality of such translation directly determines the success or failure of the communication (爱泼斯坦, 林戊荪, 沈苏儒, 2000). Therefore, it is urgent to review the current practice and academic studies related to the translation aspect in the international communication of China’s legal system, identify the problems that are holding back China’s publicity efforts to introduce its legal system to the outside world and seek for solutions to such problems. This book is purported to be a tentative attempt in this regard.

1.2 Definitions

Before proceeding to discuss the practice and theory of the Chinese to Eng-



lish translation for the purpose of presenting China's legal system to the rest of the world, it is advisable to define some terms in the specific context of the book.

1. 2. 1 China

In the general context, the term “China” refers to the People's Republic of China, whose territory consists of the mainland of China (the Mainland), the Hong Kong Special Administrative Region (the Hong Kong SAR), the Macao Special Administrative Region (the Macao SAR) and the Taiwan region. However, as part of the legacy of foreign invasions and civil wars in the late 19th century and early 20th century, the aforementioned four parts of China are de facto separate jurisdictions, in spite of certain overlapping claims of jurisdiction. In view of this and for the purpose of the present book, when it is used in the expression “China's legal system”, “the legal system of China” or any other expression of the same effect, the word “China” should be understood as referring to the mainland of China only. This interpretation, however, is strictly only used for academic purposes and should not be viewed as excluding the other three parts from the territory of China in any manner whatsoever.

1. 2. 2 International Communication

In the context of China and for the purpose of the present book, “international communication” refers to communication activities of China that aim at enhancing better understanding of China among vast overseas audiences as well as foreign nationals within the territory of China by presenting them with information from the perspective of China in a fair and balanced way. Such communication is conducted via media channels such as radio, TV, newspapers, news agencies and computer networks.

At present, the aforementioned activities may be designated by a number of terms in China, the most frequently used among which are “对外宣传 (*duiwai xuanchuan*, literally external propaganda)”, “对外报道 (*duiwai baodao*, literally reporting to external audiences)”, “对外传播 (*duiwai chuanbo*, or ex-



ternal communication)”, “国际传播 (*guoji chuanbo*, or international communication)” and “全球传播 (*quanqiu chuanbo*, or global communication)”. Among the five terms, the first one is the traditional term used in China to refer to its efforts to introduce itself to the rest of the world. However, there have been calls for the gradual phase-out of the term, because of the negative association of the literal English translation of the word, namely, “external propaganda” or “external publicity” (赵启正, 2009; 陆地, 高菲, 2005); in response to such calls and with the introduction of modern communication theories into China in recent decades, the latter four of the five terms have been recommended and promoted as more neutral alternatives of the term “对外宣传” (“外宣” for short). The four more favored terms, in spite of slight differences, refer to practically the same activities when they are used in the context of China’s efforts to present itself to the international community, and therefore may be used as synonyms in the present book (unless where it is clearly indicated or purported otherwise). For example, in a news report by the Xinhua News Agency (the official news agency of China that plays an important role in China’s international communication efforts) on the speech delivered by Li Changchun, the most senior government official in charge of China’s international communication, on the 80th founding anniversary of the news agency, *Senior official urges Xinhua to improve global communication capacity*^①, the term “global communication” and “international communication” are used synonymously as the English translation of “国际传播”, “对外报道” and “对外传播” in the Chinese original of the speech^② released by Xinhua.

However, it must be noted here that while the word “propaganda” is strongly derogatory in English, its literal equivalent “宣传” in Chinese is neutral and even positive on most occasions. Therefore, the term “对外宣传” and its short form “外宣” are still used side by side with its promoted replacements and prac-

① Retrieved from the website of the Xinhua News Agency at http://news.xinhuanet.com/english2010/china/2011-11/07/c_131233082.htm.

② 《李长春：在新华社建社 80 周年纪念大会上的讲话》 (*Speech of Li Changchun Delivered at the Ceremony Marking the 80th Anniversary of the Xinhua News Agency*, translation by the author of the present book), retrieved from the website of the Xinhua News Agency at http://news.xinhuanet.com/politics/2011-11/09/c_122252816.htm.



tically interchangeable with them, in a “new wine in an old bottle” way, so to speak. For example, in a Xinhua report^① carried by www.gov.cn, the official website of the Central Government of China, the Chinese terms “外宣”, “国际传播”, “对外报道” and “对外传播” are used synonymously to refer to the notion of “international communication”. And in the context of the translation aspect of such communication, “外宣” remains dominant.

In recognition of the above situation, the traditional term “外宣”, the short form of “对外宣传”, is adopted as an umbrella term for all the above synonymous terms, for the purpose of convenience in the present book, without any negative association.

1.2.3 Translation for International Communication (外宣翻译)

The study of the translation for international communication, as suggested by its very name, is a cross-disciplinary undertaking that combines translation studies and the study of communication. It is relatively a new-comer in translation studies in China, and works in this field are few and far between, in comparison with those on the translation of literary works and even those on “applied translation”, such as law, business, medicine, technology, etc.

The present book adopts the definition by Professor Zhang Jian, a prominent Chinese scholar in the field of theory and practice of international communication and translation—in the context of China, translation for international communication is a special form of translation. It is a communicative activity in which information in Chinese is presented to foreign audiences (including those within the territory of China) through various media in English (or any other foreign languages, as the case may be) for the purpose of facilitating the proper understanding of China by the rest of the world in the era of globalization. [外宣翻译是翻译的一种特殊形式,指在全球化背景下以让世界了解中国为目的,以汉语为信息源,以英语等外国语为信息载体,以各种媒体为渠道,以外国民众

① 《全国对外宣传工作会议1月4日至5日在北京召开》(*National Conference on International Communication Held Between Jan. 4 to 5*, translation by the author of the book) retrieved from the website of China's central government at http://www.gov.cn/jrzg/2011-01/06/content_1779343.htm.