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Faculty of Letters and Languages

Department of Letters and English Language

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Translating System-based Legal Terms between English and Arabic

Case Study : United Nations Publications

Presented and publicly defended by

Fatma Zohra Elbatoul ZABAR & Nadjet BETTAYEB

Supervised by

Mr. Hemza ZEGHAR

Jury

Dr Nourdine Belarbi	KMU Ouargla	Chairperson
Mrs Leila Yahiaoui	KMU Ouargla	Examiner
Mr Hemza ZEGHAR	KMU Ouargla	Supervisor

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DEDICATION

I highly dedicate this work

*To the soul of my beloved, beautiful and angel **MOM** whom I love the most in
my life*

*To the soul of my Dear beloved, **DAD***

*To the soul of my beloved, Dear Grand-mother **YEMA***

*I will never forget **YOU** & I miss **YOU** every single day*

رحمكم الله وجعلكم من أهل الجنة

Especially I dedicate this work to

*The persons who are always besides me and supporting me in my life my dear
brothers **AZIZ & HOCINE***

*To my brothers **ANIS & SAMIR***

*To all my **FAMILY** members*

*To my dear friends **NADJET, MARIA, BOUTHEYNA***

To all people who supported me

THANK YOU

ELBATOUL ZABAR

DEDICATION

*Great thanks to my beloved parents **Sediek** and **Fatiha**, thank you for your support, thank you for being always with me, thank you for being the best parents, I love you from the bottom of my heart, and God bless you.*

*Greater thanks to my lovely brother **ilmai** and **Mailoud** ,to my amazing sisters **Safia** and **karima** for giving me moral support.*

*And big thanks to my faithful and best friends **Batoul** and **Boutheyna** for their encouragement*

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NADJET

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Abstract

Legal translation in international setting is very challenging for translators because of the asymmetry of languages, the cultural differences and the diversity of legal systems. These obstacles should be taken into consideration to ensure achieving acceptable renditions. The purpose of this study is to give insight on how system-based legal terms have been rendered from English into Arabic and vice versa for different audience. The chosen corpus for this research is a set of samples extracted from the United Nations documents. The United Nations publications have been selected to examine the way on how different translators deal with translating system-based legal terms between English and Arabic. This study is descriptive in nature, where it analyzed and juxtaposed those samples, then it studied the procedures that were adopted by translators, based on the model suggested by Bahaa-Eddine Alhassan where he studied the relation between English and Arabic that fits this study. However, the analysis indicates a variety of constraints, which pose huge challenge to translator.

Key words: Legal Translation, Legal Language, Legal Systems, Untranslatability, Translation Procedures.

المستخلص

تعتبر الترجمة القانونية في السياقات الدولية جد صعبة بالنسبة للمترجمين وذلك لعدم تناظر اللغات والاختلافات الثقافية وتعدد الأنظمة القانونية. يجب أن تؤخذ هذه العقبات بعين الاعتبار لضمان تحقيق ترجمة مقبولة لإيجاد مكافئات في اللغة الهدف. الغرض من هذه الدراسة هو إلقاء نظرة ثاقبة على كيفية نقل المصطلحات القانونية في ظل اختلافات الأنظمة القانونية بين مختلف الدول. المدونة المختارة لهذا البحث هي عبارة عن مجموعة عينات مأخوذة من منشورات الأمم المتحدة. تم اختيار هذه الأخيرة لدراسة الطريقة التي يتعامل بها المترجمون في ترجمة المصطلحات القانونية في ظل اختلافات الأنظمة القانونية بين اللغتين الانجليزية والعربية. هذه الدراسة بطبيعتها وصفية حيث قامت بتحليل ومقارنة هذه العينات ووضعها جنبا الى جنب، وبعد ذلك تمت دراسة وتحليل الاجراءات التي تم تبنيها بناء على النموذج المقترح من قبل الباحث العربي بهاء الدين الحسان الذي يدرس العلاقة بين اللغتين العربية والانجليزية والتي تتاسب دراستنا هذه. ومع ذلك، يشير التحليل إلى مجموعة من العقبات التي تشكل مشكل كبير للمترجمين، فالمترجم غير مكلف بمهمتين حسب ما يشاع وانما بثلاث. الكلمات الدلالية: الترجمة القانونية، اللغة القانونية، الأنظمة القانونية، عدم قابلية الترجمة، إجراءات الترجمة.

Résumer

La traduction juridique est considérée comme une tâche particulièrement complexe et éprouvante, le lien étroit entre la langue et le droit, les différences culturelles et la divergence des systèmes juridiques rendent la traduction des termes juridiques dans un contexte international encore plus difficile. Ces spécificités imposent au traducteur une sorte de fidélité tridimensionnelle. Ces obstacles doivent être pris en considération par les traducteurs afin d'assurer un rendement optimal et acceptable. Pour atteindre cet objectif, cette recherche s'est donc dirigée vers un ensemble d'échantillons extraits des documents des Nations Unies pour examiner d'une façon approfondie comment ces termes qui se rattachent à un système juridique donné ont été traduits de l'arabe vers l'anglais et vice-versa, en se basant sur un modèle théorique d'analyse conçu par Bahaa-Eddine Alhassan, un théoricien et didacticien de la traduction, qui a proposé un ensemble de procédés de traduction juridique les plus adéquats à cette situation de traduction spécifique. Cette étude est de nature descriptive, textes et traductions ont été juxtaposés, puis analysés afin de comprendre et de décrire les procédés qui ont été adoptés par les traducteurs. L'analyse a permis de mettre en évidence les procédés les plus fréquemment utilisés par les traducteurs, à savoir la substitution et l'expansion. Ils ont montré une approche similaire en recourant à ces procédés, ce qui reflète une tendance vers la simplification dans la traduction

Mots-clés:

Traduction juridique, langue juridique, systèmes juridiques, intraduisibilité, procédés de traduction

List of Abbreviations

UN: United Nations

ST: Source Text

TT: Target Text

SL: Source Language

TL: Target Language

UK: United Kingdom

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Examples: Related to technical terms

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GENERAL INTRODUCTION

Introduction

Over decades, there used to be a number of studies on Legal translation since it was one of the most challenging issues for translators (both Novice and Professional translators), for the sole reason that legal texts are considered to be authoritative and they follow a rigid structure, and they are produced by legal bodies. Actually, translating system-based legal terms belonging to different legal systems might raise some insuperable obstacles and problems in translation pertaining to the incongruent of languages, the differences between cultures and the divergent of legal systems.

As a case study we have opted for the United Nations publications, due to its importance in the international settings which treats purely legal documents read by delegations, diplomats and representatives who come from different background and countries (more than 193). Due to these constraints, translators at the language section encounter challenges especially when working between two divergent systems and distant and incongruent languages and cultures like Arabic and English.

Objectives of the study:

The main objectives of the study are as follow:

- To investigate the translation of system-based legal terms between English and Arabic languages.
- To study the renditions of those terms in international settings (The United Nations publications and documents and its agencies) and explain the reasons behind the translators' choices and the main difficulties.
- To shed light on the problem of translating legal terms across the diversity of System-based legal terms.
- To highlight the procedures that help the translator overcome the difficulties that might face her/him.

Purpose of the study:

- To study a notion or a concept that was under studied to bridge a gap in the field of research.

- To fill a gap in the field of legal translation and particularly in the differences between system-based legal terms.
- Students of translation need a legal practical guide to do their studies.

Research questions:

-What types of procedures are applied in the translation of legal concepts belonging to different legal systems From English into Arabic and vice versa?

Sub-questions:

- What are the differences between legal systems?
- What are the common difficulties of translating system-based legal terms between English and Arabic?
- What is the general trend opted by translators at the UN's language section in rendering system-based legal terms?

Hypothesis:

- This research is based on the assumption that translating system-based legal terms in international settings where the UN's publications and resolutions are read by diplomats, representatives and delegations who are coming from different countries (more than 193). Thus, it necessitates the adoption of simplification and explicitation in rendering those terms.

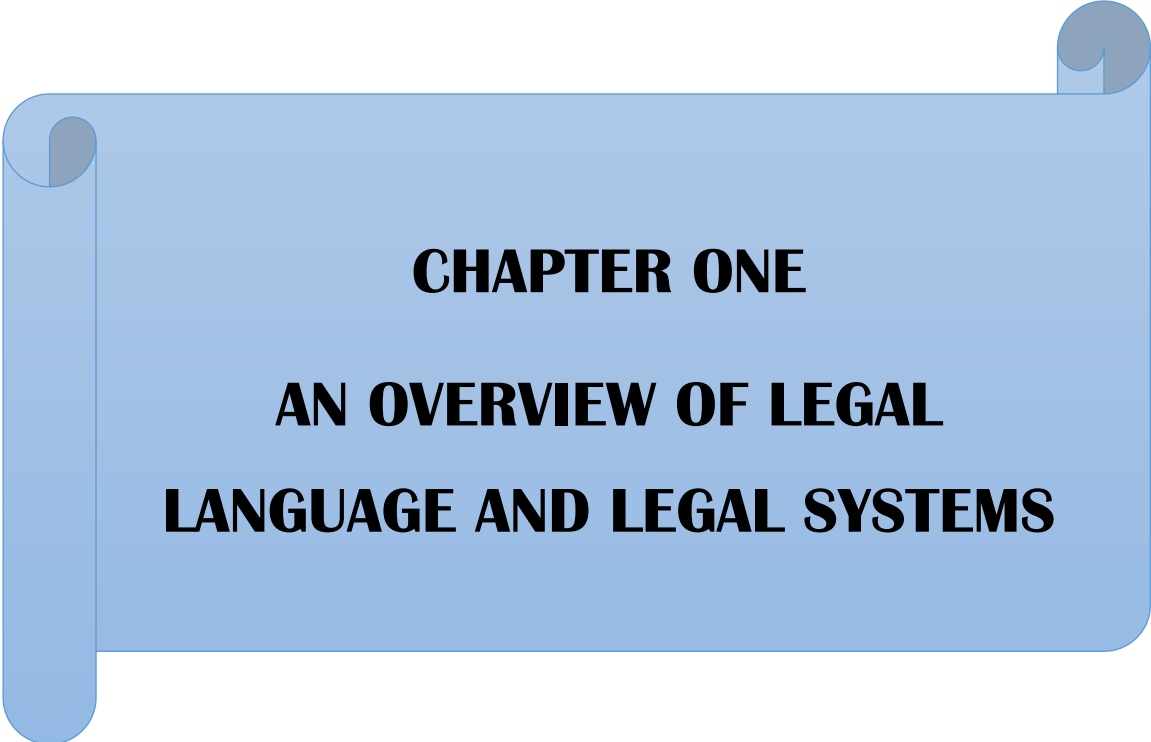
Methodology:

The proposed method of this research is the comparative analytical one. We will compare between translated system-based legal terms extracted from UN's documents between English and Arabic languages and analyze the results that we find.

Structure of the study:

Our study is divided into three chapters, two are theoretical and one is practical. In the first chapter, we will deal with English and Arabic legal language and its main characteristics at the level of lexis and the different legal systems. While in the second one, we will see legal translation and the main difficulties. In the third chapter, we will compare and analyze

between different renditions of system-based legal terms within found in the UN's documents based on the model suggested by Bahaa-Eddine Elhassan where he suggested a set of procedures to help translators in the translation process.



CHAPTER ONE

**AN OVERVIEW OF LEGAL
LANGUAGE AND LEGAL SYSTEMS**

Introduction

This chapter begins by looking at the definition of Law and its branches. Then, we go beyond the definition of legal language, legalese, and features of legal language in both English and Arabic. The chapter concludes by discussing the differences between Legal Systems: Civil Law, Common Law, Islamic Law (Sharia Law).

2. The Definition of Law

In English there is only one term which is ‘**Law**’, but in French there is a difference between the two terms ‘**Droit**’ and ‘**Loi**’. Unlike, in Arabic sometimes this difference is apparent in the current use we say (قانون) and sometimes for instance, we say ‘**Faculté du droit**’ (كلية الحقوق) (**Law school**). The word Law in English originates from the word ‘**lagu**’ (laga in plural) which means old ordinance, rule prescribed by authority, regulation, or district governed by the same laws. According to Law Dictionary the term law is the enforceable body of rules that govern any society. Also, it is one of the rules making up the body of law, such as an Act of Parliament.

In addition, *Cao* defined Law “as a body of rules regulating the conduct of people, delineating the accepted social norms and human behavior. In addition to that, law exists as a set of prescriptions having the form of imperatives, defining and enforcing the arrangements, relationships, procedures and patterns of behavior that are to be followed in (maintain order and harmony among the society”.(Deborah Cao, 2007)

3. Different Branches of Law

Law may be subdivided into a number of different branches according to Peter Strutt (*Terminologie Juridique* (2013) .13) as the followings:

- Criminal law and Civil law
- Public law and Private law

a) Criminal law and Civil law

a.1) Criminal law

Criminal law (القانون الجنائي): is the codes of law concerned with wrongdoings against the state and which disrupts public peace. According to (Baker and Padfield, 1998) committing a crime is an offence; crime is “an act of disobedience of the law forbidden under pain of punishment.”

a.2) Civil law

Civil law (القانون المدني): is primarily concerned with the rights and duties of citizens towards each other. It deals with disputes between individuals, each party has the right to argue their case, the duty of Civil law is to determine who is right.

b) Public law and Private law

b.1) Public law is the state that oversees the activities, and works with the citizens to maintain harmony. As it contains other different special areas divided as follows:

- Constitutional law: (القانون الدستوري) is the codes of law created to distinguish between government power and authority. Its aim is to indicate hierarchy and relationships of power.

-Administrative law: (القانون الإداري) is an aspect of law that oversees the activities of administrative agencies of government. These activities include rule making, adjudication, enforcement of legislation and regulatory agenda. It plays a role in decision making of administrative units of government.

b.2) Private law (القانون الخاص) is the resolving dispute between individuals (citizens), by delivering their rights and duties. Private law is also known as ‘civil law’ and often it is in contrast with criminal law.

4. Legal language

According to the Oxford dictionary, the adjective 'legal' in the expression of legal language refers to a specific type of language with its own features and components. Evidently, legal language is rigid, unlike the ordinary language.

Mattila (2006) considers “legal language as a language for special purposes (LSP), which is distinguished from ordinary language or any other language for specific purposes”. Therefore, a specific legal style may not be comprehensible to the public. In other words, legal language is seen as a particular communication for special purposes among law specialists, in contrast the language of mathematics or physics..etc.

Moreover, the language of law is linked to a group of legal systems for instance, common law group, civil law group, and so on. Within these groups, the legal language is particularized to a national legal system; therefore, legal language is deemed legal ‘systems based’. Legal language is imbued with legal concepts, these concepts are abstract entities the content of which is clearly defined and restricted by the legal system to which these concepts belong.

Legal language is named by many linguists as “register”, “dialect”, or “sublanguage”, as Cao stated in his book (Translating Law,2007) “legal language is a type of register, that is a variety of language adequate to the legal context” (Cao, 2007, p. 09).

3.1. Legalese

Legalese is an English term, which means the formal and technical language of legal documents, the language containing an excessive amount of legal terminology or of legal jargon. It was coined in 1914, from the words “legal“+ “language“, ending in -ese. Long sentences, numerous modifying clauses, complex vocabulary, high levels of abstraction, and a general lack of sensitivity to the needs of the non-legal reader characterize it.

4.2. Characteristics of Legal Language

Each language has certain characteristic features at the levels of structure, semantic, syntactic and lexis. For the purposes of our study, we are going to discuss only Arabic legal language and English legal language at the lexical level.

4.2.1 Features of Arabic Legal Language:

The same as all legal languages, Arabic legal language has peculiar characteristics that distinguish it from other languages and its complicated structure is considered to be one of them. Here are some features of Arabic legal language proposed by Hatim and Mason (1997:14):

a. Common Lexical features

A.1. The use of Doublets

There is a common use of such collocations in which synonyms or near- synonyms are combined in pair “doublets” *Alcaraz& Brian (2002: 9)*

Legal Arabic uses paired words as redundancies for emphasis, such as:

This establishment announces and declares

إن هذه المؤسسة تعلن وتصرح

A.2. The use of Binominals

Emery defines them as collocations of antonyms, synonyms, and binominals are common in Arabic legal text and other Arabic register. Here are some examples:

Safe and sound

مأمون وسليم

Shun and avoid

يتحاشى و يتجنب

Acknowledge and confess

يقر و يعترف

Sabrah (2003: 34)

According to El-Farahaty (2015, pp.31-51):

A.3. Religious, culture-specific and system-based terms and expressions; e.g. (على (كتاب الله و سنة رسوله (according to the Holy book of Allah and the Sunnah of His Messenger)

A.4. Archaic terms

e.g. (المذكور أعلاه): the above mentioned)

A.4. Semantic Range

A word semantic range is the sum of all possible meanings a word possesses in different contexts. Practically, words can be classified as (1) technical, (2) semi technical, and (3) common or everyday vocabulary. Examples of Arabic purely legal vocabulary include:

- الإفراج الشرطي is a technical term used in Arabic legal discourse and its English equivalent is conditional release.

يقصد بالإفراج الشرطي إطلاق سراح المحكوم عليه قبل مدة عقوبته.

Conditional release means releasing the prisoner before the full sentence is served.

- إحالة الدعوى refers to transferring a case from one court to another.

كيف تتم إحالة الدعوى من محكمة إلى أخرى؟

How is a case transferred from a court to another?

- قاضي refers to the officer who is appointed to decide cases in a court of law.

حكم عليه القاضي بالسجن لثلاث سنوات.

The judge sentenced him to a three years imprisonment.

Arabic legalese can contain semi-technical vocabulary where words have certain meanings in everyday language and different meanings in the legal context. Consider the meanings of إقرار and طلب.

بناء على الدعوى والطلب والإقرار

“**The preceding**” is an example of a phrase used in Sharia court documents in Palestine and some Arab countries. In non-legal discourse, the word طلب can mean request or application. The meaning of the word changes to claimant’s statement of claims when used in legal context. The word إقرار generally means adoption, approval, recognition, etc. In Sharia discourse, however, the word refers to the defendant’s admission of claimant’s statement of claims.

3.2.3 Features of English legal language

The English legal language of today includes many different legal discourses, such as the language of statutes or Acts of Parliament, legal documents (contracts, deeds, wills). It is the style of English used by lawyers and other legal professionals in the course of their work. Yet, there are some common features which distinctly characterize the modern legal English. Here are some features:

A. lexical features

A.1 Archaic lexical items

English legal texts are characterized by the use of old vocabulary items (Alcaraz and Hughes 2002). These, as Hiltunen (1990) explains, could have been introduced to resolve Ambiguity. Examples of these include: **aforsaid, hereby, hereinafter, hereof, hereto, therein, thereof, herewith**. Translating any archaic terms can be done by using parallel words such as the word notwithstanding means in English, although or despite. The archaic English terms such as hereunder and hereinafter could be translated as فيما يلي – meaning which follows, thereafter translated as فيما بعد – meaning after that. ‘Set forth’ combined with ‘herein’ is translated as الواردة فيه which means ‘mentioned in it.

A.2. Loan Words from Latin and French

English is a mixed language, and one of these linguistic characters is that this language borrows a large number of words From Latin and French. As one of varieties of English, legal English also loans many words from Latin, Such are this kind of words : *affidavit, alias, alibi, bona fide, proviso, habeas corpus, in flagrante delicto, inter alia, per diem, prima facie, quorum, sine die, versus, writ of fierifacias, etc.* Besides Latin, there are also a lot of words borrowed from French in legal English: *Action, agreement, appeal, arrests, arson, assault, attorneys, battery, bill, claim, condition, constables, contract, counsel, Count, court, covenant, crime , etc...*

A.3. Word pairs (doublets and triplets)

Danet (1984, p. 281) explains that word pairs are “fixed in the mind as frozen expressions, typically irreversible.” Examples of such word pairs include aid and abet, cease and desist, rules and regulations, donations and bequest, will and testament, full, true and correct.

A Cease and Desist letter.

رسالة للكف عن أداء ما والامتناع عن مباشرته لاحقاً

Rules and regulations are made to enforce the law.

تسن القواعد و الوائح لإنفاذ القانون

A.4. Technical terms

In every profession, there are technical terms or terms of art actually referring to a group of words with specific meanings to describe concepts in the field of some profession. Technical terms in the field of law refer to terms of legal art, which have their own special connotation and extension in the legal sense. These kinds of words are frequently and massively used to more concisely express complex concepts.

Examples :

General meaning	Legal meaning
Assignment. مهمة، واجب.	تقويت العقد للغير. Assignment.
Maintenance. صيانة، محافظة على، إبقاء على.	Maintenance نفقة
Consideration. صيانة، محافظة على، إبقاء على.	Consideration مقابل
Title. اسم، عنوان، لقب.	Title حق تملك أو سند تملك

4. Different legal systems

Knowing the differences and similarities of the existing legal system in the world is important legal system. In every society has its own character and scope. The legal system of countries in the world is generally grouped into 5 (five) systems. First, the Civil Law system, prevailing in the European, Second, the Common Law system; Third, Customary Law system, in some African, Chinese and Indian countries; Fourth, the Islamic law system, in Muslim countries, especially in the Middle East; And fifth, Mixed system. In our study we are going to deal with the most three used in the world.

4.1 Civil Law (نظام القانون اللاتيني)

The term **Civil law** or (**continental law**), also called **Romano-Germanic law**; derives from the Latin *ius civile*, the law applicable to all Roman *cives* or citizens. It finds its origins in **Roman law**, especially the Corpus **Juris Civilis** of Emperor Justinian in the sixth century CE. Unlike common law countries, **Civil Law** countries do not rely on **judicial precedent** but instead make legal decisions by applying **enacted statutory law**. Most of continental Europe and many countries in Asia, Africa and Latin America, which were strongly influenced by continental Europe, developed it. It is the oldest legal tradition in the Western world; it is primarily concerned with citizens and private affairs.

The most important characteristic of Civil law is its foundation in **Roman law**. Roman law did not completely dominate in Europe. In many countries, this law was a secondary source that was applied only as long as local customs and local laws lacked a pertinent **provision** on

a particular matter. However, local rules too were interpreted primarily according to Roman law (it being a common European legal tradition), resulting in its influencing the main source of law as well.

The second characteristic of continental law is the extended **codification** of law. The concept of codification developed especially during the 17th and 18th century, as an expression of both **Natural Law** and the ideas of the Enlightenment. The political ideal that era was expressed by the concepts of democracy, the rule of law and protection of property. That ideal required the creation of **certainty of law**, through the **recording of law** and through its **uniformity**. So, the aforementioned mix of Roman law and customary and local law ceased to exist, and the road opened for law codification, which could contribute to the aims of the above mentioned political ideal. Therefore, in continental law countries, **legislation** is the primary source of law. By default, courts thus base their judgments on the **provisions of codes and statutes**, from which solutions in particular cases are to be derived.

4.2 Common Law (نظام القانون الانجلوساكسوني)

Common law, also called **Anglo-American law**, is the system of **jurisprudence** in which legal decisions are based on **judicial precedents**. The principles of common law started to be developed in England after the Norman Conquest the **Anglo-Saxons**, especially after the accession of **Alfred the Great** in the 11th century, includes those countries : the United States, England, India, Canada...etc. The **circuit judges** appointed by the Norman kings travelled from place to place to **administer justice** and thus, gradually developed law which was uniform through the whole country. The developed law was based on **the doctrine of precedent, which** is still a central feature of modern common law systems.

The function and style of **legal doctrine** are different in the Common Law, the Common Law jurists focus on fact patterns. They analyse cases presenting similar but not identical facts, distinguishing cases and extracting specific rules. Then, through deduction, determine the narrow scope of each rule. Also, sometimes propose new rules to cover facts that have not yet presented themselves (*Tetley 2000: 701*).

In terms of **legal institutions**, typical legal institutions of the Common Law include trust, tort law, estoppel and agency, and these are unique to the Common Law. The Common Law also has categories of law such as contract and tort separate branches of law and two main

bodies of law: **Common law** and **Equity**. There is no substantive or structural Public or Private law distinction as that which exists in the Civil Law system (*de Cruz 1999*). In contrast to the Common Law.

4.3 Islamic Law (نظام القانون الإسلامي)

Known as the **Sharīah Law** is a religious law that lays down governing principles for spiritual, mental, and physical behavior that must be followed by Muslims. Regarded as God's command for Muslims, Sharia law is essentially Islam's legal system. Based on the God's law verses in **Surah Al-Nissa** "verse 59" can be known the source of Islamic legal system referred is as follows :

"O ye who believe, obey Allah and obey the Messenger (His), and those from among you who are Invested with authority; and then if you were to dispute among yourselves about anything refer it to Allah and the Messenger. If you indeed believe in Allah and the Last Day; that is better and more commendable in the end" Surah Al-Nissa "verse 59

قال تعالى: {يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ذَلِكَ خَيْرٌ وَأَحْسَنُ تَأْوِيلًا} [النساء: 59].

Bill Warner stated in his book *Sharia Law for Non-Muslim (2010)* that the traditional theory of Islamic jurisprudence recognizes four main primary sources of Sharia:

Qur'an

Is the main source of Islamic law. Under the verse, after the obedient command to Allah is commanded to obey the Messenger. This has historically been meaningful to all the Messengers of Allah and especially after the Qur'an came down was obedient to the Prophet Muhammad. Obedience to the apostle means being obedient to the Sunnah. This Sunna became the second source of Islamic Law.

Sunnah

According to Islamic jurists, the Sunnah is second to fard. Fard means something is obligatory and it must be done, the Sunnah are documented by **hadith** (the verbally transmitted record of the teachings, deeds and sayings, silent permissions or disapprovals of **Muhammad**).

Qiyas

Also *Abd el wahab Khellaf (2015)* defines Qiyas as the process of a deductive analogy in which the instructions of the Hadith are compared and contrasted with those of the Quran, in order to apply a known injunction to a new circumstance. Here, the rules of the Quran and the Sunnah may be used as a means to solve or provide a response to a new problem that may arise. However, this is only the case providing that the set precedent or paradigm and the new problem that has come about will share operative causes (the illah-العلة). That is a specific set of circumstances that trigger a certain law into action.

The Doctrine of Ijmaa (Consensus)

According to *Abdel wahab Khellaf (1955)* 'Consensus' was introduced in the 2nd century (8th century CE) in order to standardize legal theory and practice, and to overcome individual and regional differences of opinion. Though conceived as a consensus of scholars, **Ijmaa** was in actual practice, a more fundamental operative factor. **Ijmaa** has amounted to a principle of stability in thinking since the third century, when the points on which Consensus was reached in practice were considered closed and further substantial questioning of them was prohibited. Accepted interpretations of the **Quran** and the actual content of the **Sunnah**, all of them rest finally on the **Ijmaa** in the sense of the acceptance of the authority of their community.

Conclusion:

We conclude that the mentioned lexical characteristics of both English legal language and Arabic legal language are due to their influence by the complexity of the two legal systems. Also, the understanding of both legal systems of English and Arabic helps the translator to move smoothly and translate from one the legal languages into the other. As we mentioned above that legal language has many features which differentiate it from other types of languages.



Chapter two
The Difficulties of Legal Translation

Introduction

This chapter discusses the definition of legal translation and legal terminology. In addition to that, we have discussed the problems that may face the translators while translating both languages English and Arabic. Therefore, we tackle the eight procedures proposed by Bahaa-eddine Hassan in rendering system-based legal terms.

1. Legal translation

Legal translation facilitates the legal proceedings between individuals, agencies and organizations (factories, companies, firms...). Legal translation is not easy; Cao (2007) pinpointed “legal translation is difficult and complex”. In essence, the nature of law and legal language contribute to the complexity in legal translation. In other words, legal translation is a challenging task, because of the difficulty of legal language, which is legal jargon. It requires enough knowledge of both source language and target language, culture and legal systems. However, the legal translator needs to have robust language skills and also an excellent knowledge in legal affairs, several legislations, and law.

1.1. Definition of Legal translation

Many scholars and researchers have viewed legal translation as “a category in its own right”. It is a type of specialist or technical translation. As in Hanem’s book legal translation (2015) it is mentioned that “Since legal translation is bound by each language’s culture, it is not merely the transcoding between the SL and the TL or as Cao (2007:10) defines it ‘rendering of legal texts from the SL into the TL’. It is rather ‘a translation from one legal system into another, from the source legal system into the target legal system’ (Šarčević, 1997:13). It involves all the legal sub-text types which are used in various legal settings, whether a court, a national or international organization, a law book, a legal report, a birth certificate, a contract, among many others.

Another definition, (Šarčević1997: 9) defines legal translation as “special-purpose communication between specialists, excluding communication between lawyers and non-lawyers.”

From the above definitions, it can be concluded that legal translation is the transfer of all items that are related to legal language “texts, terms, contracts, wills and documents as well as laws and regulations from a source language (SL) into a target language (TL). Moreover, it means the transfer from one legal system into another, taking into account the importance of saving the same level of legal terminology.

2. Legal terminology

According to translation studies dictionary, terminology is a term used to refer to the vast bodies of specialist vocabulary, which is found in the discourse relating to any technical domain. A term is distinct from a general word in that it designates a single concept; terminology is thus less ambiguous than general vocabulary, and therefore more suited to machine translation (Arnold et al. 1994:107).

One essential subfield of terminology is legal terminology, which forms a crucial part of legal studies, the translation of which from one legal system into another is deemed a formidable and arduous task that needs to be properly performed by legal translators.

As it is mentioned in Alwazna article (2018), legal terminology is considered a key aspect of legal discourse and a crucial part of competence evaluation and quality control in the translation of legal texts [p.121]. Legal terms generically belong to what Alcaraz and Hughes [p.16] call ‘symbolic or representational group’, as opposed to ‘functional group’, which comprises grammatical words, and it helps the text hang together through providing links between elements related to the other group. Articles, deictics, modals, auxiliaries and other morphological as well as syntactic markers, in addition to certain complex units, such as ‘unless otherwise stated’ and the like are all related to the functional group.

2.1. Types of legal terms according to Alcaraz and Hughes

Alcaraz and Hughes in his book (1999, p.16) legal translation explained, he further divide ‘symbolic or representational group’ into three terms as the following:

- **Purely technical terms:** they are found exclusively in the legal sphere. eg: barrister, solicitor, court, and (case law: a letter from a solicitor to a client).

- **Semi-technical terms:** These terms are difficult and they are numerous because their number is constantly growing as the law changes. eg: assessment, enclose, (compensation: correspondences between a solicitor and client).
- **Unmarked terms:** it includes of terms in general use that are regularly found in legal text. eg: report, record, access, repair, examine, injury.

Within the field of translation, the legal translator is of course required to be fully aware of the terminology of the source text in question before embarking upon the translation process.

3. Difficulties of Legal Translation

Within the field of translation, translators encounter difficulties when translating specific terms from one language into another, thus, translating legal documents is such an objective can sometimes be impossible to accomplish, especially in a language pair like English and Arabic, due to linguistic differences, cultural differences and the different legal systems that pose considerable challenges to legal translators.

3.1 Linguistic Difficulties

It goes without saying that words are of the highest importance in the legal field. Tiersma (2000, p.1) pinpointed that "*words are also a lawyer's most essential tool.*", from the point of view of Catford (1965), on the linguistic level, untranslatability occurs when there is no lexical or syntactical substitute in the TL for an SL item. For example, the words “**Tu**” and “**Vous**” in French, for example, have only one Arabic and English equivalent to represent the same meaning, despite their ubiquitous use as singular or plural pronouns. **Tu** is used while speaking with family members, younger people, and so forth. “**Vous**” is a formal word that is used while speaking to strangers, older people, and so on. Another example is the phrase “**أنتم**” (أَنْتُمْ وَأَنْتُمْ وَأَنْتُمْ وَأَنْتُمْ وَأَنْتُمْ وَأَنْتُمْ) could only be translated into English by “**You.**”), which are linguistically untranslatable.

Moreover, we can say that Linguistic difficulties found in legal translation are usually attributed to the different concepts used specifically in one legal system, Arabic or English. As Cao (2007, p.25) affirms that “A basic linguistic difficulty in legal translation is the absence of equivalent terminology across different languages. This requires constant comparison between the legal systems of the source language (SL) and target language (TL).”

3.1.1 Archaic and Latin Terms

Legal English is loaded with Latin terms that date back to the Middle Ages, examples of which are given by Haigh (2004): (ad hoc, de facto, pro rata, inter alia, ab initio, mutatis mutandis. Examples of Old and Middle English words are (*aforesaid*, (مذكور أعلاه), (*hereby*, (بموجب هذا), (*hereinafter*, (المشار إليه), (*hereto*, (طى هذا), (*therein*, *thereof*, *herewith*. Haigh (2009, p.4) explains that "legal English owes a particular debt to French and Latin". French words used in English legal texts include, but are not limited to, *property*, *estate*, *lease*, *tenant*, and *executor*. Some words of Latin origin include *adjacent* and *subscribe*.

3.1.2 Word Pairs

According to Danet (1984, p.281), word pairs are fixed in the mind as frozen expressions, typically irreversible. Examples include: aid and abet, cease and desist, rules and regulations, and will and testament. Consider the following various Arabic translations and their connotative implications.

Example 1:

Those who **aid and abet** corruption offences shall be punished with the same penalty applicable to the perpetrator (UN).

يعاقب من يساعد ويحرض على الفساد بنفس عقوبة الجاني.

Example 2:

Anti-immigration policies aid and abet traffickers. (Motta and Saez, 2013, p. 229)

تؤدي سياسات مناهضة الهجرة إلى مساعدة المهربين وإغرائهم.

3.2 Cultural Difficulties

Newmark in his book "A Textbook of Translation" (1988, p. 94) defines culture as "the way of life and its manifestations that are peculiar to a community that uses a particular language as its means of expression". According to Catford (1965), cultural untranslatability, which occurs when two languages do not have the same cultural understanding and when there is an absence in the TL culture of a relevant situational feature for the SL text. The word "الضرة" relating to polygamous marriages in Arab culture could be translated into "**fellow wife**".

However, this translation does not provide the sufficient semantic impact of the SL word. Another example, the word *خال* in Arabic, which has no equivalent in English or French.

Otherwise, Translating culture-specific concepts seems to be one of the most challenging tasks, since they do not exist in the TL culture usually has no equivalents for those terms. Concepts only have meaning because they are embedded in socio-culturally determined frames that are more or less culture-specific. One of these concerns is the difficulty challenged by translators in handling the Islamic-oriented culture bound references, (Seclusion/الاعتكاف), (Mehram/محرم), and (Al-niqab/النقاب). The problem of comprehending the precise meanings of those religious terms is augmented by the fact that equivalents for such terms are simply absent in the target culture. Moreover, Arabic legal texts involve aspects of the Islamic Sharia Law, and Civil Law. It is also affected by the customs and traditions of the Arabic countries. Accordingly, lexical items of different cultures may have different functions and meanings. The Arabic official documents involve Islamic elements such as reference to God at the beginning of the certificate: (الحمد لله / praise be to God) Within the certificate, the Hijri calendar is used and some culture-bound concepts such as *متعة* (Mutaah) and (*عدة* /iddah), for the latter to mean, (a period during which a Muslim woman usually keeps at home 130 days for the woman whose husband passed away and about 90 days for the divorce). Here are numerous other examples of words which are specific to Islamic jurisprudence with no equivalence in English example: the word (*خلع* /divorce), because concepts have meanings only by virtue of being embedded in socio-culturally determined frames which are more or less culture-specific'. An example, the translation of 'pm' is rendered (*بعد الزوال* /afternoon) which can be vaguely interpreted by those who are not aware of the prayer times and the connection between them and sun statuses. Thus, one can either expand the meaning below, or give the corresponding time (*في منتصف النهار*).

3.3 Difficulties Related to Legal Systems

The difference in legal systems at regional and international levels emphasizes the importance of the translators' understanding, the legal system as a basic requirement for carrying out legal document translations. In addition, Legal terminology knowledge is essential in the process of

translating legal texts between English and Arabic which means that the legal translator is not only translating words that are culturally embedded, many terms of art in Legal English can only be understood against a Common Law background, and they have no direct equivalent in Islamic Civil Law. In Arab countries, the Legal language, on the other hand, incorporates elements of both Islamic and civil law. The former is practiced in countries such as Saudi Arabia, where the Qur'an and Prophetic tradition (Sunnah) serve as the foundation of the constitution and thus inform rulings in many aspects of life. For example, Algeria follows both Islamic and civil law.

3.3.1 Abstract legal Terms

Legal English includes “legal terms of art” which have fixed legal meanings and cannot be replaced by other words, such as "Common Law" is translated into “قانون الانجلوساكسوني” “it has various meanings, if contrasted with civil law, it covers the legal systems which are based on English law; if contrasted with equity, it means the set of rules developed by the court of Chancery; if contrasted with legislation, it means judge-made law (Triebel, 2009:176). In the other hand, "Equity" is translated into “العدالة المطلقة” or “العدالة الوجدانية”, which is a set of rules developed by separate courts in England. It is important to know whether rights and remedies derive from equity or law because the requirements for and the legal consequences of the two are different (ibid: 150).

3.3.2 Intra-System Differences

Translators must be familiar with the differences within one legal system in order to render a translation that suits a particular legal system. Although such familiarity may require a degree in law, extensive reading on the topic can facilitate the task. Husni & Newman (2015) point out that common law and civil law are the two main legal systems in use today. In some Arab countries, such as Algerian, Moroccan, Syrian, and Tunisian, their legal system is influenced by French law which is the civil law, whereas Oman's legal system is influenced by English Common Law (Husni&Newman,2015). Legal terminologies of different legal systems reflect the distinctiveness of those systems.

An example of intra-system terminological difference, the term وزارة الداخلية in many Arab countries they use the same term. Yet, it is called وزارة الداخلية والأمن الوطني in Gaza strip

and وزارة الداخلية والبلديات in Lebanon. Otherwise, in the Arab countries مجلس النواب which is translated into **Council of Representatives** in Bahrain and Iraq, **House of Representatives** in Jordan, Morocco and Yemen, **National Assembly** in Lebanon, **Chamber of Deputies** in Tunisia, **General People's Congress** in Libya, and **People's Assembly** in Egypt and Syria. In this case, the translator should be acquainted with both the system under consideration and the other systems.

From the above discussion, it can be deduced that the incongruency of languages, culture and the legal systems of each country cause difficulties in finding a functional equivalent that exactly corresponds to the term in question.

According to Cao's argument, the case of legal translation from English to Arabic or vice versa is even more difficult, because of the large distance between English and Arabic legal systems, on the one hand, and both language systems, on the other. Both Arabic and English belong to different language families, with Arabic being a Semitic language and English being an Indo-European language.

4. Translation procedures

It seems necessary for an acceptable translation to produce the same (or at least similar) effect on the TT readers. Therefore, translating system-based legal terms is the most challenging tasks to be performed by a translator. As a result, there are many translation procedures used to meet equivalence standards in legal translation. These procedures can be used in translating legal documents.

4.1 Difference between strategy and procedure

Different scholars within the field of translation studies suggested different terms, and they used them interchangeably such as 'procedures', 'approaches', 'methods', 'principles', 'options', despite the differences between those terms.

To distinguish between translation procedures, translation strategies and translation methods, Peter Newmark (1988, p.81) stated that "translation procedures are used for sentences and the smaller units of language", in contrast, Loescher (1991:8) defines translation strategy as "a potentially conscious procedure for solving a problem faced in translating a text, or any segment of it." In other words, strategies deal with the text at the macro level, whereas procedures deal with words at the micro level. For instance, Peter Newmark suggested two

strategies (semantic and communicative). Also, Lawrence Venuti came up with two strategies (domestication and foreignization), while Vinay and Darbelnet suggested a set of procedures.

4.3 Types of procedures according to Bahaa-Eddine Alhassan

The difference in legal systems is strongly linked to differences in legal terms between source and target languages, an aspect that certainly complicates the work of legal translators. In the current study we have adopted the model suggested by Bahaa-Eddine Hassan in his famous book “working with different text types in English and Arabic”. He proposed eight possible procedures to manipulate system-based legal terms.

4.2.1 Modulation

It refers to rendering the TT from a different point of view to that of the ST. Modulation consists of using a phrase that is different in the source and target languages to convey the same idea. For example the word ‘رجعي’ which is translated as ‘**revocable**’ to match the different legal system. Another example is ‘إبراء’ which is rendered as ‘nonliability’.

4.2.2 Shift

It is a change in the grammar from source text to target text verb into an adjective, a word into a phrase, changing the world class or part of speech. This is the process where parts of speech change their sequence when they are translated.

4.2.3 Over-translation (Addition)

The translator depends on pragmatic inference to supplement the text within formation that does not exist in the original text. This procedure is used because of the lack of functional equivalence in the target language (TL).

4.2.4 Under-translation (Omission)

Omission is the opposite procedure to addition. If the meaning conveyed by a particular item or expression is not necessary to mention in the understanding of the translation or has no functional equivalence in the target language, translators use this strategy to avoid lengthy explanations or unexplained meaning in the target language. Let us take the phrase ‘زواج أحله’ الله. The underlined modification of the noun ‘marriage’ is deleted.

4.2.5 Substitution

This procedure occurs when a word or sentence in the source text is substituted with the target text item in order to adapt or create similar message with the source text (ST) with rules of language which is acceptable in the target language (TL). An example of substitution is the translation of the word 'شرعي' as 'legal'. Because **legal** means قانوني. It is an acceptable rendition but it does not confer the same idea of شرعي. There is a nuance between قانوني and شرعي.

4.2.6 Expansion

It aims to make explicit information that is implicit in the original, either in the main body or in footnotes or a glossary. Let us take for example the translation of 'المعجل' المهر and 'المؤجل' المهر. These are explicitly rendered as 'down-payment dowry' and 'deferred payment dowry'. Another example is the word 'زكاة'. It is wrongly translated as 'alms' which is equivalent to 'صدقة'. Therefore, the word 'زكاة' should be explicated in the text or in the notes.

4.2.7 Exoticism

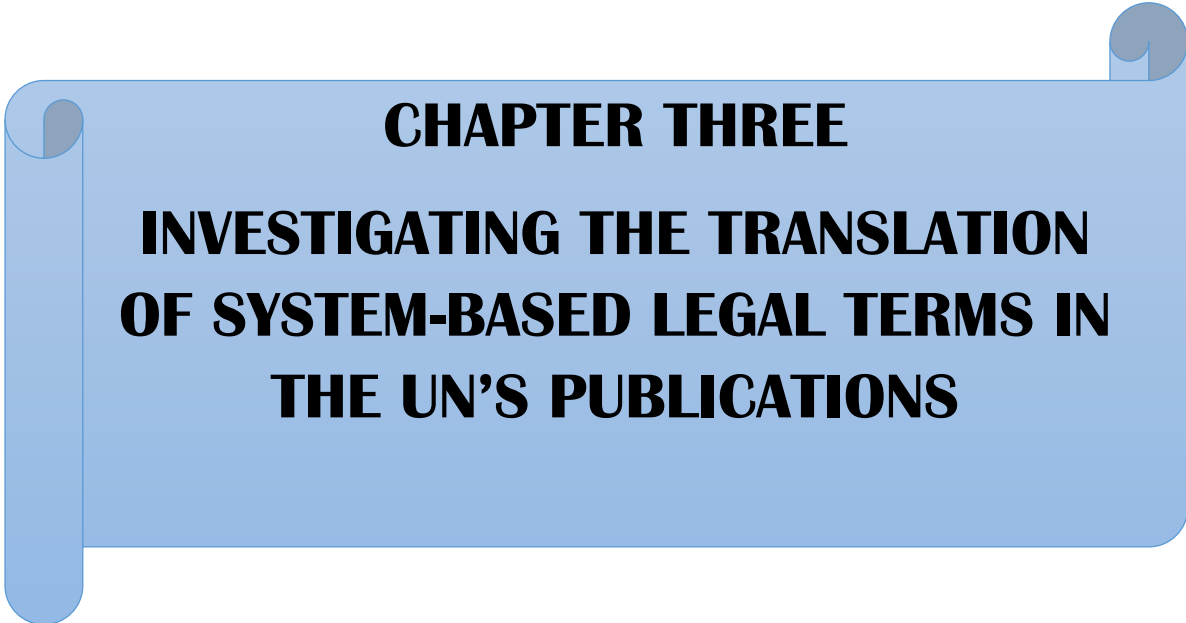
The substitution of dialect or nonsense words, in the original text by rough equivalents in the target language (sometimes marked by italics or underlining). An example is the word 'زكاة' as 'zakat'.

4.2.8 Creation

It is a replacement of the original text with a text that preserves only the essential message, ideas, and functions of the original. This procedure involves neologism, which means coining new words, and regionalism, which means using a peculiar feature in a particular region, or country that is not existed in the target language. For example, Convenient Arabic terms are often produced by means of '**derivation**' or '**compounding**'. Derivation or (**ishtiqaq**) has played the most prominent role in the process of the creation of new vocabulary in Modern Standard Arabic. Another example of creation: (اللامركزية-**alaamarkaziyya**, **decentralization**).

Conclusion

As we have mentioned above it is common that legal translation is one of the most difficult type due to the nature of its language which make the legal translator should be acquainted with both source and target culture as well as legal system. In addition, in this chapter we have seen some problems of legal translation that most legal translator faced during the translation process. Then, we have tackled of some translation procedures suggested by the scholar Bahaa-Eddin Hassan.



CHAPTER THREE

**INVESTIGATING THE TRANSLATION
OF SYSTEM-BASED LEGAL TERMS IN
THE UN'S PUBLICATIONS**

Introduction

It is common that the meaning of the terms may vary changing from one country to country, from region to region and from legal system to legal system. Thus, this chapter aims to demonstrate and explain the results of the questions that were raised in this study. It also aims to analyze the data and to explore the difficulties that legal translators encounter when translating system-based legal terms. Then, we study the renditions of those terms and identify the procedures used by different translators.

1. An overview of the Corpus

The United Nations is an international organization founded in 1945 after the Second World War by 51 countries. Now made up of 193 member states committed to maintain international peace and security and achieving worldwide cooperation to solve international economic, cultural and humanitarian problems as it includes six official languages. They felt in need to hire translators and interpreters at the level of the language section in order to provide timely renditions for the delegates of the Arab nations because Arabic was introduced in 1973, especially after the famous discourse of Houari Boumediene.

Since its establishment, the United Nations has been publishing various documents, proceedings and books even dictionaries. In the current time, most documents are only published in electronic version in order to alleviate the task of legislative bodies, because previously, the printing presses of the Organization ran 24 hours a day to keep up with the UN's publishing needs. This corpus was selected since it is a technical document that contains some legal terms were interspersed in the UN's publications, which are relevant to our research.

2. Methodology:

Our study is descriptive in nature, where we selected a set of samples. Then, we highlighted the system-based references and after highlighting those terms, we analysed and juxtaposed the samples, then we identified the procedures that were adopted by legal translators based on the model suggested by the scholar Bahaa-Eddine Alhassan in his titled book "*Working with Different Text Types in English and Arabic*".

3. Data collection:

The nature of legal systems and the diversity between them make the task of the translation between English and Arabic difficult, this analysis is directed at a specific selection of different system-based legal terms arranged as follows.

The following Arabic Islamic terms are:

طلاق بائن بينونة كبرى مهر مؤجل ومعجل الوقف، شرعي، الدية، طلاق بائن بينونة صغرى

The following English abstracts terms:

Law, Crown court, High court, Magistrates Courts, Equity

4. Data Analysis

This part is for analyzing the following significant System-based legal terms:

➤ الدية (Blood money)

In the first passage we are going to discuss the translation of the term "الدية" into 'Blood money'

ST

المساهمة في توفير الدعم المالي خاصة في حالات دفع الدية والتعويضات. (UN Corpus)

TT

Help in providing financial support, especially in cases of payment of **blood money** and compensation. (UN Corpus)

According to Al-Faruqi dictionary the term '**Blood money**' means:

« بدل دم دية : يدفعه القاتل على سبيل التعويض لأهل المغدور » (الفاروقي.86)

Moreover, the Black Law dictionary provides explanation for the term '**Blood money**':

« A wereglid, or pecuniary mulct paid by a slayer to the relatives of his victim. Also used, in a popular sense, as descriptive of money paid by way of reward for the apprehension and conviction of a person charged with capital crime. »(Black law: 218)

From the previous definitions, we can say that “الدية” is an Arabic term means “**blood money**” or financial compensation for homicide or injury, in early Islamic legal texts. The word الدية occurs in only one verse of Qur’an in the context of unintentional homicide. Most legal schools also also permit "الدية" as an alternative to the mandatory retaliation "Qisas" in cases of intentional homicide.

In the above passage, the term "الدية" is a translation void, translated into 'Blood money', where the back translation of it is "بدل دم" which gives the same meaning of الدية. In this case the translator tries to shift from the implicit to the explicit, for this reason he opted for *Expansion* procedure.

➤ Another example of the term الدية

The following passage we are going to analyse the translation of "الدية" into "Diyah"

ST

وتتوقف الإجراءات التي تتخذ بحياة حق الشخص أو سلامته البدنية على قرار الضحية الذي قد يطلب إخضاع الطرف الجاني لنفس المعاناة وقد يقبل بتعويض مالي "الدية" في حالة القتل أو الأذى البدني. (UN)

TT

Proceedings against the life or physical integrity of the person are subjected to the decision of the victim, who may ask for the guilty party to suffer the same treatment or may accept **financial compensation (diyah)** in the case of murder or physical injury. (UN Corpus)

According to Islamic law, **diyah** is the financial compensation due for the shedding of blood. In pre-Islamic times, the compensation required for taking a life was 10 she-camels. The figure was increased to 100 in the area where Islam originated, and this regulation was subsequently endorsed by the Prophet Muḥammad.

In the Second above mentioned passage, the translator opted for ‘*Exoticism*’ procedure. The term ‘الدية’ is translated into ‘diyah’ which gives the reader a sense of something exotic. But in

this case, the term ‘**Diyah**’ had been preceded by the phrase ‘financial compensation’ which makes the exotic term diyah clear and understandable from the context to the target reader .

➤ **طلاق بائن بينونة صغرى (Minor irrevocable divorce)**

ST

بائن بينونة صغرى وهو الذي يجوز فيه للزوج أن يتزوج بمن طلقها بموجب عقد جديد وذلك لانتهاء مدة عدتها. (UN Corpus)

TT

The minor irrevocable divorce, which allows the husband to marry the woman he divorced with a new contract, at the end of her waiting period. (UN Corpus)

According to Ibn Manzur Arabic Dictionary the term 'بائن بينونة صغرى'

البين قد يكون الفرقة، وقد يكون الوصل، بان يبين بينا بينونة، وهو من الأضداد، والمباينة هي المفارقة، والبين هو البعد والفراق. وبانت المرأة عن الرجل أي انفصلت عنه والتباين هو الهجر. (المنظور.196)

First of all, the Arabic equivalent for divorce is "طلاق" which means "freeing or undoing the knot" (Imam Raghīb). In the terminology of the jurists, "طلاق" signifies the dissolution of marriage, or the annulment of its legality by the pronouncement of certain words.

In Islamic jurisprudence, there are two types of divorces: revocable (رجعي) and irrevocable (بائن). Revocable divorce means that the husband has the right to take back the wife during the three-menstrual cycle waiting period ('idda) that follows all consummated marriages. In irrevocable divorces, by contrast, he does not have this right. Therefore, there are two types of divorce, **revocable** and **irrevocable**:

A revocable divorce will allow the husband to cancel it at any point up until the end of the three-month Iddat, or waiting period. After this period if the couple wish to reconcile, they must do so by getting married.

An irrevocable divorce ends the marriage as soon as it has happened. There are two types of irrevocable divorce: **The minor irrevocable** divorce and **the major irrevocable divorce**

Moreover Al-Faruqi gives an approximate equivalent to the term “**irrevocable**”

« لا ينقض، غير قابل للإلغاء، لا رجوع فيه، لا يرد أو لا مرد له» (الفاروقي.384)

And also according to Black Law dictionary the term irrevocable means:

« Which cannot be revoked or recalled.»

Minor irrevocable divorce, where the divorced woman can reconcile with her husband only with new marriage contract and dowry. but once the idda (waiting period) is over, it is impermissible to take the wife back without her consent and without a new marriage contract.

So, minor irrevocable divorce (طلاق بائن بينونة صغرى) referred to revocable divorce (طلاق رجعي)

From the above explanation, the translator uses 'Shift' procedure (structural and unit shift) to render the term 'بائن بينونة صغرى' into '**minor irrevocable divorce**', at the same time he opted for “Modulation” to translate the term irrevocable into 'بائن' which gives the same meaning

➤ طلاق بائن بينونة كبرى (Major irrevocable divorce)

ST

بائن بينونة كبرى وفيه يحرم على الزوج التزوج بمن طلقها ثلاث مرات وانتهت عدتها من الطلقة الثالثة (37.38)(UN Corpus)

TT

The major irrevocable divorce, which forbids the husband from marrying the woman he repudiated on three separate occasions and whose waiting period following the third repudiation has ended (arts. 37 and 38). (UN Corpus)

Al-Khudrawi pinpointed (1995:264):‘If the husband gives sentence of divorce to his wife a third time, it is not lawful for him to take her again, until she shall have married another husband’

According to **Al-Baqarah** verse:

فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدِ حَتَّىٰ تَنْكِحَ زَوْجًا غَيْرَهُ ۗ فَإِنْ طَلَّقَهَا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يَتَرَاجَعَا إِنْ طَنَّا أَنْ يُقِيمَا حُدُودَ اللَّهِ ۗ وَتِلْكَ حُدُودُ اللَّهِ يُبَيِّنُهَا لِقَوْمٍ يَعْلَمُونَ ۚ سورة البقرة الآية 230

From the above definition, the triple divorce refers to the husband when he pronounces three divorces (I divorce you, I divorce you, I divorce you or I divorce you three times) in a single spell to the wife, and simply allowing the waiting period to expire without taking her back. In this way, he immediately makes his divorce of her absolute.

In the above passage; the translator renders the term “بائن بينونة كبرى” into “major irrevocable divorce” by applying the same combination of procedures) Shift **and Modulation**) in the translation of “بائن بينونة صغرى”

➤ مهر مؤجل ومهر معجل (Deferred dower, Dowry paid in advance)

In this example we are going to analyse the term مهر مؤجل and مهر معجل

ST

يكون للمرأة المتوفى عنها زوجها مهر معجل ومؤجل المهر ويعتبر هذا من الديون الممتازة للتركة. (UN Corpus)

TT

A woman who is predeceased by her husband may receive the **prompt** or **deferred dower**, which shall be regarded as a privileged debt of the estate.(UN Corpus)

Faruqi’s Law Dictionary Arabic–English (1983:40) translates the word "مهر" as ‘**dower**’

And he also provides the explanation of the term “**dower**” in his legal dictionary:

(نصيب الارملة من تركة الزوج أو فرضها القانوني السهم الذي تصيبه الأرملة ، حسب القانون

العام الإنكليزي، من أموال الزوج العقارية القابلة للوراثة، وهو الثلث.) (الفاروقي.232)

According to Black Law dictionary he defines **Dower** as follows:

“ The provision which the makes for a widow out of the lands or tenements of her husband, for her support and the nurture of her children .A species of life- estate which a women is, by law, entitled to claim on the death of her husband, in the lands and tenements of which he was seized in fee during the marriage, and her issue, if any might by possibility have inherited.”
(Black Law.p.580)

From the above definitions, "**dower**" is the English translation that comes closest to Islamic meaning of المهر, as "dower" refers to the payment from the husband or his family to the wife, especially to support her in the event of his death, although subsequent to marriage the wife also acquires inheritance rights.

Historically, among pre-Islamic Arabs, a bride price called **mahr** was an essential condition for a legal marriage. **Mahr** was given to the guardian الولي(wali) of the bride, such as her father, brother or another relative. Moreover, the term **Mahr** is the obligation, in the form of money or possessions paid by the groom, to the bride at the time of Islamic marriage (payment also has circumstances on when and how to pay(مهر مؤجل أو معجل).

While the **mahr** is often money, it can also be anything agreed upon by the bride such as jewelry, home goods, furniture, a dwelling or some land. **Mahr** is typically specified in the marriage contract signed upon marriage

Otherwise, **mahr** is often paid to the bride in parts, the amount of mahr given to the bride at the signing of the marriage contract is called a (معجل) (which is paid at time of marriage (**nikah**), and the portion that is promised but deferred is called (مؤجل) (which is paid after completion of marriage). A deferred promise to pay does not make the full amount of the **mahr** any less legally required.

In the above shown passage, معجل ومؤجل المهر is translated into prompt and deferred dowry, which is a literal rendition, so the translator respected the structure of the source text.

Otherwise, the term **مهر مؤجل** is translated into " **deferred dowry**", in Arabic the word **مهر** is a noun comes first then comes the adjective **مؤجل** but in English is different (deferred then dowr) which is a *Shift*. Thus, the arrangement obeys the rules related to structure of each language.

However, other translators resort to different rendition for the term **مهر مؤجل**.

➤ **The second portion of dowry**

It is usual to divide the dowry into two portions: the first portion paid in advance and the portion paid later. The following sample shows another rendition of the word **مهر مؤجل**:

ST

لكن مجرد طلب الطلاق من قبل الزوج، ولو من غير سبب شرعي، يلزم القاضي بلفظه بعد الحكم
للزوجة

TT

The mere request for a divorce by the husband, even for an **unlawful** reason, requires the judge to pronounce it, after awarding damages to the wife, in addition to **the second portion of the dowry**. (UN Corpus)

In this example the term **مهر مؤجل** is translated differently, the translator applied the *Over translation (Addition)* procedure, where he renders ' **مهر مؤجل** ' to ' **the second portion of the dowry** ', the translator provide a description of **مؤجل** in form of explanation to create a similar meaning with the target culture.

➤ **غير شرعي**

In the previous sample we mentioned the term **غير شرعي** is translated to the term **unlawful**

ST

لكن مجرد طلب الطلاق من قبل الزوج، ولو من غير سبب شرعي، يلزم القاضي بلفظه بعد الحكم
للزوجة

TT

The mere request for a divorce by the husband, even for an **unlawful** reason, requires the judge to pronounce it, after awarding damages to the wife, in addition to **the second portion of the dowry**. (UN Corpus)

Moreover, Al-Faruqi provides an approximate equivalent for the term **Unlawful** as follows:

غير مشروع؛ مغاير للقانون، لا يبيحه القانون؛ لا يستند الى القانون.

يغلب استعمال هذه الكلمة في الوعود والتعهدات أو العقود و عوضها وما الى ذلك (الفاروقي. 720)

In this example, the translator opted for '*Substitution*' procedure, which the term unlawful is composed of the prefix **Un** which means غير and the root '**law**' which refers to 'قانون' and the suffix **ful**, in order to adopt and make the similar message with the source text .

➤ Magistrates' Court

In the first passage we are going to discuss the translation of the term 'Magistrates Court' into 'محاكم الصلح'

ST

Judges of the Court of Appeal and High Court, as well as **magistrates courts**, which are subordinate courts to the High Court established by Parliament in accordance with the Constitution. (UN Corpus)

TT

وتكون محكمة الاستئناف والمحكمة ذات المستوى الرفيع وكذلك محاكم الصلح أدنى مستوى من المحكمة العليا التي أنشأها البرلمان وفقا للدستور. (UN Corpus)

According to Black Law Dictionary the term '**Magistrates' Court**' means:

« *In American law courts in the state of south Carolina, having exclusive jurisdiction in matters of contract of and under twenty dollars.* »

«*A local court in the city of Philadelphia, possessing the criminal jurisdiction of a police court and civil jurisdiction in actions involving not more than one hundred dollars.* » (Black Law.p. 1103)

Furthermore, Suleiman Al-Faruqi provides in his legal dictionary the following Arabic definition for the English term **Magistrates' Court**":

محكمة صلحية; محكمة يعقدها الـ Magistrate أو الـ Justice of peace (الفاروقي.436)

It is worth mentioning that the **Magistrates' Court** is the lower court which hears matters relating to summary offences and some triable either-way matters. Some civil law issues are also decided here, **family proceedings court** was the name given to a magistrates' court when members of the court's family panel sat to hear a family case. It was a court of first instance in England and Wales that dealt with family matters. Cases were either heard in front of a bench of lay magistrates or a **district judge** (magistrates' courts). Whereas, all criminal proceedings start at a magistrates' court. On the other hand, the ability of magistrates' courts to imprison or fine defendants is limited. Appeals from a magistrates' court go to the **High Court** or **the Crown Court**. The magistrates' court also sits as a juvenile court hearing cases involving care of children under 14 and dealing with children aged 14–17 with the exception, in both age groups, of homicide cases.

From the above mentioned passage, the translator use **Substitution** procedure to render 'magistrates courts' to 'محاكم صلح' because the literal translation of **magistrates courts** is محاكم المستشارين . Here the translator tries to find close interpretation in the target culture and محاكم الصلح is the best rendition because it delivers the same meaning with **magistrates courts**.

➤ Another example of Magistrates' Court

In the following we going to discuss another translation of "**Magistrates Courts**" to "محاكم الجزئية"

ST

Dissatisfied litigants have a right of appeal from Local Court to the **Magistrates Courts** sitting as District Appeal Courts. (UN Corpus)

TT

ويحق للمتقاضين غير الراضيين استئناف قرارات المحكمة المحلية أمام المحاكم الجزئية التي تعمل بصفقتها
محاكم الاستئناف المحلية. (UN Corpus)

In the second passage, he renders **magistrates courts** into محاكم الجزئية opted for *Substitution* procedure to adopt the target culture. In this case, محاكم الجزئية is considered as Appeal Courts.

➤ **Equity** : (العدالة المطلقة)

In the following example, we are going to discuss the translation of the term "**Equity**":

ST

It is followed by Acts of the Parliament, English common law and **equity**, Pre-Independence British Imperial Act before 1961. (UN Corpus)

TT

وتليه القوانين التي يصدرها البرلمان، والقانون العام الإنكليزي وقواعد الأنصاف فضلاً عن قانون الإمبراطورية البريطانية السابق للاستقلال لعام 1961 (UN Corpus)

According to the definition of the Oxford World Encyclopedia, the term ‘Equity’ in law means:

« *A body of principles developed historically in England by the Court of Chancery to overcome the unfairness resulting from the inflexibility and limitations of the law applied in the common law courts.*»(The World Encyclopedia)

Moreover, Suleiman Al-Faruqi’s provides in his Legal dictionary the following Arabic terms as possible equivalents for the English term ‘**Equity**’:

عدالة مطلقة (غير مقيدة)، عدالة طبيعية أو وجدانية، إنصاف. (الفاروقي.252)

Also, he provides the following definition of the term:

”تنسب الى الوجدان لأنها تصدر عن الضمير ومخافة الله وتنطلق بالقاضي من قيود الشكليات والنصوص التشريعية المغلة لتبلغه حيث يعجز القانون عن بلوغه من العدل الكامل.

From the definitions given above we understand that the rules of ‘**Equity**’ came to existence in England and grew up from the inadequacy of common law to secure justice in all

cases and its inability to solve all problems and issues that may arise because of the narrow strictures of the old common law or any other technical requirements of the law.

In other words, 'Equity' is the law of conscience; Courts of Equity were also called Courts of Conscience (محاكم الضمير أو الوجدانية), these courts was established to apply principles of fairness and justice (مبادئ العدل والإنصاف), constitute acts against the conscience of people. This led to the emergence of a distinct court known as 'Chancery court'. Chancery courts requested remedies other than damages in their handling of petitions and lawsuits.

According to Al-Faruqi, the principle of 'Equity' goes back to the dawn of history. Greeks and Romans, for instance, recognized the existence of two types of laws in their Jurisprudence, 'positive law' which refers to the law imposed by the state, and 'the natural Law' also known as 'jus naturae', it is universal and common to all peoples and nations, because its ordinances are said to be dictated by natural equity as well as by natural reason.

« The philosophers of ancient Greece, where the idea of natural law originated, considered that there was a kind of perfect justice given to man by nature and that man's laws should conform to this as closely as possible. » (Martin: 326).

There is a difference between "equity" as a general term and **Equity** as an abstract system-based legal term related to common law. while the first can be translated as العدالة which is a general English term means fairness or natural justice but, equity in common law refers to العدالة المطلقة أو الوجدانية which encompasses a variety of ideas that we have explained before.

From the above mentioned passage, the translator resorts to **Expansion** procedure to render **equity** into قواعد الأنصاف, as he adds more information in a form of explicitation, because **equity** is a term refers to set of principles, that can not be explained in a short form, though, it needs more explanation.

- Another example of **equity**:

ST

Common law and **equity**. (UN Corpus)

TT

القانون العام وأحكام العدالة المطلقة. (UN Corpus)

In this example, the translator renders **equity** into أحكام العدالة المطلقة which is an *Expansion* due to the lack of functional equivalent in the target text, because when applying the back translation it will be “**the rules of absolute equity**”, and the latter is not the same as equity. So, one term is not sufficient to convey the whole ideas behind this concept.

- الوقف

In the two following examples we are going to discuss the translation of the term الوقف :

ST

واستخدم العثمانيون نظام الوقف للمواقع الدينية كوسيلة لربط السكان المحليين مع السلطة المركزية. (UN Corpus)

TT

The Ottomans used an endowment system (**waqf**) for religious sites as a means to link the local population with the central authority. (UN Corpus)

According to Law dictionary by Elizabeth (2002; p: 173), the term **Endowment** means:

“The provision of a fixed income for the support of a charity”. In addition, he adds “any property belonging permanently to a charity.”

Moreover, Suleiman Al-Faruqi provides in his Legal dictionary (2000, p:247) the following Arabic terms as possible equivalents for the English term “**Endowment**”:

هبة. تعيين نصيب الارملة في تركة الزواج.

رصد مال أو إيراد معين ثابت للإنفاق على مؤسسة عامة.

From the above definitions, we can understand that **endowment** is an equivalent term which does not convey the same idea of وقف, because **endowment** is a general term, where the back translation of **system endowment** is نظام الهبات which means in the Foreign countries the donation to charity for example building a kindergarten for children; whereas in our culture وقف (**waqf**) is a term used exclusively to point out for mosques and for what is related to religious and islamic side. In other words, we can say that in the absence of a functionally relevant term in the TL that conveys the same meaning. Thus, the translator opted for a combination of two procedures, where the term **system of endowment** is a self-explanatory, which is an *Expansion* in order to bring the term closer to the target reader. The second procedure is *Exoticism*, where the term وقف is transliterated into (**waqf**).

- Another example of the term الوقف

ST

وحق الإرث مضمون وأملاك الوقف وأملاك الجمعيات الخيرية معترف بها ويحمي القانون
تخصيصها (المادة 52). (UN Corpus)

TT

The right to inherit is guaranteed endowments (**waqf**) and foundations are recognized;
their intended purposes are protected by law (art 52).(UN Corpus)

There is another case, where we have noticed that the translator opted for the same procedures again that was applied in the previous example, which are *Expansion* and *Exoticism*. We noticed that there is a tendency toward Simplification in translating these terms in order to simplify and make the meaning closer to the target audience.

➤ **Crown Court**

In the following passages, we are going to discuss the term “**Crown courts**” and its translation.

ST

No distinction in the United Kingdom, criminal offences can be tried either in magistrates' court or **Crown courts**. (UN Corpus)

TT

في المملكة المتحدة يمكن النظر في الجرائم الجنائية إما في المحاكم الجزئية وإما في محاكم الجنايات.
(UN Corpus)

In the Oxford Dictionary of Law, the term ‘**Crown court**’ in law means: “A court created by the Courts Act 1971 to take over the jurisdiction formerly exercised by assizes and quarter sessions, which were abolished by the same Act. It is part of the Supreme Court of Judicature.” (Oxford Dictionary of Law, p: 130).

“**Crown Court**” is translated into Arabic by Faruqi’s Law Dictionary (English-Arabic) (2008:183) as:

"محكمة التاج" - "محكمة الجنايات". الفاروقي ص 183

According to the definitions given above, we can say that the **Crown Court** is a criminal court of both original and appellate jurisdiction, which in addition handles a limited amount of civil business both at first instance and on appeal. It was established by the Courts Act (1971).

Moreover, the **Crown Court** is the only court in England and Wales that has the jurisdiction to try cases on indictment.

Also, it deals with serious criminal cases which include: cases sent for trial by magistrates’ courts because the offences are ‘indictable only’ (i.e. those which can only be heard by the Crown Court), defendants convicted in magistrates’ courts, but sent to the Crown Court for sentencing due to the seriousness of the offence. (**Courts and Tribunals Judiciary Online Dictionary**)

In the example mentioned above, Crown court is substituted by the term محكمة الجنايات instead of محكمة التاج because in UK they call it محكمة التاج whereas, like in Algeria they have غرفة الجنايات and in Egypt they have محكمة الجنايات. Thus, the translator opted for محكمة الجنايات which is a general term, because he found a readymade equivalent in the target culture in order to adapt a similar message with the source text (ST) with rules of language which is acceptable in the target language despite the differences. So, in this case, the procedure used is *Substitution*.

➤ شرعي

In this passage, we are going to discuss the translation of the term شرعي and its rendition is.

ST

وقد أشار قانون العنف الأسري إلى تعريف أفراد الأسرة ممن يقيمون في البيت الأسري في المادة الثالثة منه وهم: الزوج والزوجة بعقد زواج شرعي وأبنائهم وأحفادهم. (UN Corpus)

TT

Article 3 of the Act defines family members as persons residing in the family home, namely: A husband and wife by **legal** marriage and their children and their grandchildren.(UN Corpus)

According to Al-Faruqi in his English Arabic Law Dictionary, he provides translation to the term “**legal**” as the following:

قانوني، مشروع، حسب القانون

Also, in the Maani’s online Dictionary (قاموس المعاني), the term شرعي is translated into English as:

- **de jure, authorized, lawful, legal, legitimate, fair, juristic, permissible, just, admissible, allowed, permitted, religious, right, rightful, statutory, obligations, rights.**

From the above definitions, we can understand that the term شرعي could be translated into legal. However, the translator opted for *Substitution* procedure, because legal means قانوني. It is an acceptable rendition but it does not confer the same idea or meaning of شرعي. Here is an example, in our tradition, reading the (Opening Verses of the Quran الفاتحة) with the presence of two witnesses is enough to declare the marriage to be شرعي (legal). From a religious, cultural and social point of view the marriage is acceptable and halal, but it is not legal قانوني vis-a-vis the civil law القانون المدني. There is a nuance between شرعي and قانوني.

➤ High Court

The following discussion is about the analyses of the translation of the term **High Court**:

ST

The Supreme Court hears appeals in civil and criminal cases from **the High Court**, Administrative Court, magistrates courts, local courts and other tribunals.(UN Corpus)

TT

وتنظر المحكمة العليا في الطعون باستئناف في القضايا المدنية والجنائية بعد أن تفصل فيها المحكمة العالية ومحكمة القضاء اداري والمحاكم الجزئية والمحاكم المحلية وغيرها من المحاكم.
(UN Corpus)

According to Oxford Law Dictionary (2002, p:230) the terms “**High court**” is defined as:

“**High Court** of Justice is a court created by the Judicature Acts 1873-75, forming part of the Supreme Court of Judicature. The High Court is restricted to (1) personal injury claims of £50,000 or more, (2) other claims exceeding £15,000, (3) specialist High Court claims that are required to be placed on a specialist list (e.g. the Commercial List), and (4) claims that are required by statute to be commenced in the High Court. The High Court has appellate

jurisdiction in civil and criminal matters. It is divided into the three Divisions: the Queen's Bench Division, Chancery Division, and Family Division.” (Oxford Dictionary of Law: 230)

Also, in Al-Faruqi's Dictionary of English-Arabic Law, he provides a translation of the term “**High Court of Justice**”:

محكمة العدل العليا: إحدى دائرتي محكمة القضاء العليا وهي تمارس ذات الاختصاص العائد سابقاً
لمحكمتي الإنصاف و مجلس الملك. (الفاروقي.335)

From the above definitions, the **High Court of Justice** deals and hears with sensitive cases and cases that have been sent for appeal, they can deal with both criminal and civil cases. This Court has the power to review the actions of individuals or organizations and deem whether they have acted legally and justly. In contrast, the **Supreme Court** which deals with the most serious and sensitive offences in the UK, including terrorism. This court also deals with appeals that have gone through the High Court and the Court of Appeal, but the most important cases they deal with are those in the public eye of general public importance.

Moreover, High court does not exist in other countries like in Algeria, however, translating High Court by المحكمة العليا leads to confusion because in the English common law system, they have the Supreme Court and High Court. They have differentiated between Supreme court and High court while in the Latin law countries, we have an institution called Supreme Court which in most cases is translated into المحكمة العليا. Therefore, if we opt for المحكمة العليا as an equivalent for **High court** this leads to confusion. We can see here that the Supreme Court in the common law system does not play the same role that it plays in the Latin law countries.

In this case, if we go to back translation we see that المحكمة العالية in English is the **Court High** instead of the **High court**, whereas in Arabic it is not المحكمة العالية. So, the High Court المحكمة العالية is a literal translation in a form of *Shift* procedure, where the reason behind the translator's choice is to make a distinction between the terms as well as to make the idea closer to the target reader.

- Another example of the term **High Court**:

ST

The High Court shall also have supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior.(UN Corpus)

TT

ويكون للمحكمة ذات المستوى الرفيع أيضا اختصاص إشرافي على المحاكم التابعة لها وأي شخص أو هيئة أو سلطة تمارس وظيفة قضائية أو شبه قضائية، ولكن ليس على المستوى الأعلى منها.(UN Corpus)

In this case, the term **High Court** is rendered into محكمة ذات المستوى الرفيع which is a form of explanation because, one term is not sufficient to convey the whole idea behind the context. Thus, in order to avoid confusion, translators at the level of the United Nations opted for different renditions, one of them is محكمة ذات المستوى الرفيع which is an *Expansion*, and the other one is المحكمة العليا in the previous mentioned example.

- **Law (قانون)**

In the following example, an accurate rendering of the term '**Law**' proves to be too arduous.

ST

“Saudi Arabia reported that article 61 of the Labour **Law** prohibited slavery and the withholding of salary, and also provided that workers be treated with dignity and respect, including with regard to their religion”.(UN Corpus)

TT

وأفادت المملكة العربية السعودية بأن المادة 61 من قانون العمل تحظر الرق والامتناع عن صرف الرواتب، كما تنص على وجوب معاملة العمال بكرامة واحترام بما في ذلك فيما يتعلق بديانتهم.
(UN Corpus)

According to the definition of the Oxford's Law dictionary, the term “**Law**” means:

“The enforceable body of rules that govern any society.”

Al-Faruqi, in his English/Arabic dictionary ‘المعجم القانوني’ he provides the following Arabic terms as possible equivalents for the English term ‘**Law**’:

قانون، شرعة، سنة. (الفاروقي 408)

As he defines **Law** as the following :

هو احكام مقننة تضعها وتصدرها السلطات التشريعية في البلاد لما ترى وجوب مراعاته.

"أيضا هو مجموعة المبادئ والاسس والأنظمة والقواعد التي تطبقها مراجع القضاء في الدولة على ما

يطرح امامها من شؤون ومنازعات" (الفاروقي 408)

From the above mentioned definitions, we understand that **law** is a set of legal rules that organize the conflicts between individuals and the state or between individuals among themselves.

The term **Law** which means قانون or تشريع in Arabic in almost all the Arab countries except in the Kingdom of Saudi Arabia where it is translated into نظام which means (**system**) in English.

For example, Saudi **Labour Law** is translated into **نظام العمل السعودي** instead of **قانون العمل السعودي**. Unlike, in Algeria and the other Arab countries, **Law** is translated naturally into **قانون** like in: **قانون الأسرة الجزائري، قانون العمل الجزائري**...etc.

In the Arab world, the civil law like in Algeria, Morocco, Syria, and Tunisia are influenced by the French law therefor, the translator used the term **Law** instead of the term **نظام**, while in Saudi Arabia, they are influenced by the Islamic legal system and according to the beliefs of the legislator in Saudi Arabia it is not acceptable to use the term **قانون** because, they think that the only legislator is God and His Messenger The Prophet Mohamed throughtout the Qu'an and the Sunnah (Islamic Jurisprudence). (Muhamed Alfawzan)

In addition to that, the term “**law**” (**قانون**) is rejected because this term is deemed unacceptable for culturally and religiously reasons.

In the UN text the translator resorts to the procedure of ‘*Substitution*’ and renders the term ‘**law**’ into ‘**قانون**’ instead of **نظام**. In this case, the translator opted for the well-known and the widely used term **قانون** which is a general term, when referring to the Saudi **labour law** because this legal documents especially UN’s puplications are targeted and read by diplomats, representatives and delegations coming from different countries and systems.

Conclusion

In this chapter, different translators used many procedures in order to overcome the difficulty of translating system-based legal terms. The translators in their renditions opt for several procedures, counting Substitution, Expansion, Shift, Exoticism and Modulation, to overcome the difficulties of translating System-based legal terms. In most of their translation, they opt for two procedures which are Expansion and Substitution we dealt with some of system-based legal terms extracted from the UN's publications. Therefore, we noticed that there is a general tendency towards simplification in order to bring the meaning closer to the target reader.



GENERAL CONCLUSION

General Conclusion

As a conclusion, the translators at the language section of the United Nations found themselves under the necessity of fashioning new terms or to substitute with similar terms in order to bridge the differences. This study aims to investigate the procedures that were used in translating system-based legal terms between Arabic and English. Legal translation in international setting is very challenging for translators because of the linguistic difficulties (word pairs, archaic terms), cultural differences and difficulties related to the difference between legal systems (abstract terms, intra-systems terms). These constraints should be taken into consideration to ensure achieving acceptable renditions. Providing an accurate legal translation is not an easy task. It has been described as the ultimate linguistic challenge. Moreover, in legal translation, due to the systemic differences between the different legal systems, many legal terms in one language do not have ready-made equivalents in the other language, causing both linguistic anomalies and legal complications. Also, it is commonly acknowledged that legal documents are difficult to read and hard to comprehend which make the task of the legal translator difficult to find the accurate rendition.

In addition to that, the difficulty of legal translation lies in the complexity of legal language and the nature of law. Also, it encompasses the main features of the pair languages Arabic and English. Throughout this study, we are well aware to distinguish between the various legal systems, which pose significant challenges, and issues in translation.

However, in our research we have selected the model suggested by the scholar Bahaa-Eddine Abulhassan, because he suggested a set of procedures that fits well our study. In the practical part, we analyzed and discussed the translation of thirteen samples extracted from UN's documents from English into Arabic and vice versa, we noticed that the translators who work at the language section of the different branches and agencies of the United Nations used different procedures to achieve an acceptable rendition that is easy to understand by the delegates and representatives who are from different countries. Thus, in the samples that we have analyzed we reached the following conclusion that translating system-based legal terms is a difficult task, also, we have noticed that there is a general tendency towards simplification. One of the most used procedures are "Expansion" where the translators throughout the translation built on the intended meaning of the word, and "Substitution" in order to adapt and create a similar and closer message to the reader.

Finally, the general tendency was towards simplification because in international settings the delegates come from different countries (more than 193) and different background, they need translation that they want to read texts that they can understand.

These translation procedures are successful and helpful in delivering the message and making it closer to the target audience, but Arab translators should make researches and try to create new, direct and close equivalents in the target language, which will make their translation complete and up-to-date with other languages, cultures and legal systems.



REFERENCES

REFERNCES

- Alcaraz V. E and Hughes, B. (2002) *Legal Translation Explained*, Manchester: St. Jerom.
- Altarabin, M. (2021). The Routledge Course on Media, Legal and Technical Translation Legal and Technical Translation English-Arabic-English. The Routledge studies in Arabic translation
- Alwazna,R. (2018). Translation and Legal Terminology: Techniques for Coping with the Untranslatability of Legal Terms between Arabic and English.
- Cao, D. (2007) *Translating Law*, Clevedon: Multilingual Matters.29-40
- Catford, J. C. (1965) *A Linguistic Theory in Translation: An Essay in Applied Linguistics*, Oxford University Press.
- Edzard, L. (1996) ‘Stylistic Elements in the Use of Arabic as Language of Diplomacy: Recent Developments in United Nations Context’. *Die Welt des Islams*: pp. 25–58.
- Faruqi, Harith S. (1983) *Faruqi’s Law Dictionary: Arabic–English*, Beirut: Librairie du Liban Publishers.
- Goodrich, P. (1987) *Legal Discourse: Studies in Linguistics, Rhetoric and Legal Analysis*, London: Palgrave Macmillan.
- Hassan, B.-E. A. (2019). Working with different text types in English and Arabic. Translation in practice - Cambridge Scholars.
- HUSNI,R. Newman, D. (2015). Arabic-English-Arabic-English Translation
- Jakobson, R. (1959) ‘On Linguistic Aspects of Translation’. In R. A. Brower (ed.), *On Translation*, Cambridge: Harvard University Press, pp.232–39.
- M.A, Henry. Cambell. *Black’s Law Dictionary* (2009) (11 edition),The PUBLISHERS EDITORIAL STAFF.
- Mellinkoff, D. (1963). *The Language of the Law*. Boston: Little Brown.
- Newmark, Peter (1981) *Approaches to Translation*, Oxford and New York: Pergamon. (1982) ‘The Translation of Authoritative Statements: A Discussion’. *Meta*,
- Nida, E. (1964) *Towards a Science of Translating*, pp. 375–391.
- Šarčević, S. (1997) *New Approach to Legal Translation*, London and Boston: Kluwer Law International.13-20
- Terminologie Juridique Anglais - Français - Arabe. Berti Edition

- Tiersma, P. (2000). *Legal Language*, University of Chicago Press, 1-16
- Trosborg, A. (1995a) 'Introduction: Special Issue on Laying down the Law-Discourse Analysis of Legal Institutions'.
- Venuti, L. (1995) *The Translator's Invisibility: A History of Translation*,
- Vinay, J.P., & Darbelnet J. (1958) : *Stylistique Comparée du Français et de l'Anglais*. Paris: Didier.
- Warner, B. (2010). *Sharia law for Non-Muslims*. Center For the Study of POLITICAL ISLAM.

Online Dictionaries and Websites

- <https://www.almaany.com/ar/dict/ar-en/%D8%B4%D8%B1%D8%B9%D9%8A/>
- [Courts & Tribunals website](#)
- <https://www.britannica.com/topic/High-Court-of-Justice-British-law>
- <https://www.judiciary.uk/you-and-the-judiciary/going-to-court/crown-court/>
- <https://conferences.unite.un.org/UNCORPUS>

Dictionaries:

- Law, J., & Martin, E. A. (2013). *A dictionary of law*. Oxford University Press.
- (حارث سليمان الفاروقي: المعجم القانوني إنكليزي عربي، الطبعة الخامسة) 2008
- *Faruqi's Law Dictionary English-Arabic*. (2008)., Beirut: Librairie du Liban Publishers.



الجمهورية الجزائرية الديمقراطية الشعبية
وزارة التعليم العالي والبحث العلمي
جامعة قاصدي مرباح - ورقلة كلية الآداب واللغات
قسم الآداب واللغة الانجليزية
مذكرة: ماستر أكاديمي



مذكرة لنيل شهادة الماستر

الميدان: آداب ولغات أجنبية

إختصاص: دراسات الترجمة

بعنوان:

ترجمة المصطلحات القانونية في ظل إختلافات الأنظمة القانونية

منشورات الأمم المتحدة أنموذجا

من إعداد الطالبتين:

فاطمة الزهرة البتول زعبار & نجات بالطيب

أمام اللجنة المكونة من:

المؤطر:	الأستاذ حمزة زغار	جامعة قاصدي مرباح - ورقلة
الرئيس:	الأستاذ الدكتور نور الدين بلعربي	جامعة قاصدي مرباح - ورقلة
المنافش:	الأستاذة ليلي يحياوي	جامعة قاصدي مرباح - ورقلة

السنة الجامعية

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ملخص الدراسة

المقدمة

تعتبر الترجمة القانونية من أصعب أنواع الترجمة بسبب التحديات التي تطرحها، إذ ترتبط بطبيعة اللغة القانونية المعقدة والاختلافات القائمة بين الأنظمة القانونية، حيث أن مهمة المترجم القانوني لا تقتصر على الترجمة من لغة إلى أخرى بل من نظام قانوني إلى آخر. الغرض من هذا البحث هو تسليط الضوء بدقة على اختلاف الأنظمة القانونية كمشكل في ترجمة بعض المصطلحات القانونية، وسنحاول تبيان الخصوصية التي تتميز بها الترجمة القانونية عن باقي أنواع الترجمة المتخصصة الأخرى، كما سنتطرق إلى أهم صعوبات الترجمة القانونية، ثم نعرض على أهم الإجراءات التي يمكن للمترجم استعمالها عند نقل المفاهيم القانونية.

أهداف الدراسة:

تهدف دراستنا إلى تحقيق جملة من الأهداف، نلخصها كما يلي:

- تسليط الضوء على الصعوبات التي يواجهها المترجمون في نقل المصطلحات القانونية.
- فهم كيفية نقل المصطلحات القانونية في سياقات دولية وشرح الأسباب وراء اختيار المترجمين لبعض الإجراءات لترجمة هذه لتلك المصطلحات.
- لإيجاد الحلول والإجراءات التي تساعد المترجم في نقل هذه المصطلحات.

أسئلة البحث

تهدف هذه الدراسة للإجابة عن الأسئلة التالية:

السؤال الرئيسي:

- ما هي إجراءات الترجمة التي اعتمدها مترجمو الأمم المتحدة في نقل المصطلحات القانونية بين اللغة العربية والانجليزية؟

الأسئلة الفرعية:

- ما هي الفروقات بين الأنظمة القانونية؟
- ما هي الصعوبات الشائعة في الترجمة القانونية بين اللغة الإنجليزية والعربية؟
- كيف يتعامل المترجمون لدى الأمم المتحدة في ترجمة المصطلحات القانونية في ظل تعدد الأنظمة القانونية؟

الفرضية:

وفقا للأهداف، وضعنا فرضية العمل كما يلي:

- تنطلق دراستنا هذه من مبدأ أن الترجمة جسر أساسي لنقل الافكار والثقافات وأن المترجم وسيط لا يمكن الاستغناء عنه بين الأمم والشعوب، ولأن المصطلحات القانونية التي قمنا بتحليلها قد وردت في سياقات دولية (نصوص أممية)، والتي يتم قراءتها والاطلاع عليها من قبل الدبلوماسيين والمفوضين وممثلين عن وفود من دول مختلفة (أكثر من ١٩٣ دولة)، ونظرا لكونها تستعصي على الترجمة لكونها لصيقة بالأنظمة القانونية التي أوجدتها فإن المترجمين الذي يعملون على مستوى هيئة الأمم المتحدة قد يلجؤون بشكل عام إلى التبسيط في عملهم الترجمي.

المنهجية:

انتهجنا في هذه الدراسة المنهج الوصفي التحليلي. يتجلى المنهج الوصفي في وصفنا للمدونة واستخلاص المصطلحات القانونية للصيقة بمختلف الأنظمة القانونية التي أوجدتها والتي وردت في النصوص والوثائق الأممية وشرح معانيها وإبراز الشحنات الثقافية والدينية التي تتضمنها. أما المنهج التحليلي فقد اعتمدناه لتحليل الترجمات التي قدمناها ووصف الصعوبات المرتبطة بعملية نقل هذه المصطلحات إلى اللغة الهدف والإجراءات التي اعتمدها المترجمون في نقلهم لها وذلك بالاعتماد على النموذج النظري الذي اقترحه الباحث بهاء الدين حسن.

خطة البحث:

تنقسم هذه الدراسة إلى ثلاثة فصول: فصلان نظريان وفصل تطبيقي.

الفصل الأول: التعريف بالقانون واللغة القانونية وخصائصها، وأخيرا الفروقات بين أنواع الأنظمة القانونية الأساسية الموجودة في العالم.

الفصل الثاني: يناقش هذا الفصل الترجمة القانونية وصعوباتها والإجراءات المقترحة من طرف الباحث بهاء الدين الحسن.

الفصل الثالث: هذا الفصل هو الجزء التطبيقي من هذه الدراسة ويتضمن الحالة التي قمنا بدراسة وتحليل البيانات التي تم جمعها وكذلك مناقشة النتائج المتحصل عليها.

الجزء النظري

الفصل الأول:

يبدأ هذا الفصل بالنظر في تعريف القانون وتاريخه وفروعه بشكل عام. بعد ذلك، نذهب إلى ما هو أبعد اللغة القانونية تعريفها وخصائصها في كلتا اللغتين الانجليزية والعربية. ويختتم الفصل بمناقشة الاختلافات بين النظم القانونية: القانون المدني والقانون العام والشريعة الإسلامية (قانون الشريعة).

الفصل الثاني:

سنتطرق في هذا الفصل إلى تعريف الترجمة القانونية والمصطلح القانوني. مع التركيز على أهم الصعوبات والمشاكل التي قد تواجه المترجمين أثناء عملية الترجمة من اللغة الإنجليزية إلى اللغة العربية أو العكس. وفي آخر الفصل سنعرض الإجراءات الثمانية التي اقترحها بهاء الدين الحسان في ترجمة المصطلحات القانونية في ظل تعدد الأنظمة القانونية.

الجزء التطبيقي:

تعريف المدونة:

الأمم المتحدة منظمة دولية حيث تأسست عام 1945 بعد الحرب العالمية الثانية من قبل 51 دولة. تتكون الآن من 193 دولة عضو، غرضها الحفاظ على السلم والأمن الدوليين وتحقيق التعاون العالمي لحل المشكلات الاقتصادية والثقافية والإنسانية الدولية. وتضم ست لغات رسمية وهم العربية والإنجليزية والفرنسية والصينية والروسية والإسبانية. ولهذا الغرض يشعرون بالحاجة إلى توظيف مترجمين تحريريين وفوريين على مستوى المكاتب الخاصة بهم من أجل تقديم ترجمة فورية لمدنوبي الدول العربية لأن اللغة العربية ظهرت في عام 1973.

جمع العينة:

وجدنا صعوبة في إيجاد نصوص قانونية ومحاكمات نظرا لطبيعتها السرية لان المترجمون محلفين و ليس لديهم الحق في نشرها. قمنا باختيار مجموعة من المصطلحات من أنظمة مختلفة وهي كالاتي:

المصطلحات العربية الإسلامية: طلاق بائن بينونة كبرى، طلاق بائن بينونة صغرى، وقف، شرعي، مهر مؤجل و معجل، دية.

المصطلحات الانجليزية المجردة: Magistrates court, High court, Crown court, Legal, Unlawful, equity, Law

المنهجية:

دراستنا وصفية بطبيعتها، حيث اخترنا مجموعة من العينات. بعد ذلك ، قمنا بتسليط الضوء على المراجع المستندة إلى النظام وبعد تسليط الضوء على تلك المصطلحات ، قمنا بتحليل العينات ووضعناها جنباً إلى جنب ، ثم حددنا الإجراءات التي تم اعتمادها من قبل المترجمين القانونيين بناءً على النموذج الذي اقترحه الباحث بهاء الدين حسان في كتابه بعنوان " العمل بأنواع نصوص مختلفة باللغتين الإنجليزية والعربية . "

نتائج البحث:

تظهر تحليل هذه الدراسة أن الشرح والاستبدال هما الإجرايين الأكثر استخداما من قبل المترجمين في ترجمة مصطلحات القانونية من العربية إلى الإنجليزية والعكس، حيث واجه المترجم معيقات وصعوبات في تحديد الإجراءات المناسبة عند ترجمة هذه المصطلحات لجانبين رئيسيين: من جانب اختلاف الأنظمة القانونية و من جانب تباعد الثقافات. لهذا لجأ المترجمون للنزوع نحو التبسيط والشرح بسبب الفجوات والثغرات التي تواجههم أثناء الترجمة بين العربية والانجليزية.

خاتمة

إن نقل المصطلحات القانونية مهمة صعبة للغاية وتزيد حدة هذه الصعوبة كلما تباعدت اللغات والأنظمة القانونية المنقول منها وإليها كما هو الحال بين اللغة الإنجليزية والعربية فهما تنتميان إلى عائلتين لغويتين قانونيتين مختلفتين، تماما هذا ما ينجم عنه في كثير من الأحيان انعدام وجود مكافئ وظيفي للمصدر في لغة القانون المنقول إليها، لقد حاولت دراستنا تبيان انعكاس اختلاف الأنظمة القانونية على تباين المصطلحات القانونية و عرض أهم الحلول والإجراءات التي يلجأ إليها مترجمو الأمم المتحدة عند ترجمة المصطلحات القانونية استدللنا في ذلك بترجمة اثنا عشر مصطلح قانوني مستخرجة من وثائق الأمم المتحدة، توصلنا من خلال تحليلها إلى أن هناك نزوح نحو الترجمة التبسيطية وذلك توضح من خلال استعمال إجرايين بكثرة أثناء ترجمة تلك المصطلحات وهما والاستبدال والشرح (التفسير) من أجل تقريب وتوضيح المعنى للقارئ الهدف.