On the Textual Communicative Function of Legal Language Translation

Li Ma

Abstract—Translation is a process of interlingual communication. Legal language translation is more than a process of interlingual conversion. It is closely associated with the law-related history, tradition, customs and systems. To achieve the faithfulness and accuracy in the translation of legal texts, translation needs to put across the meaning of the original version not only at the linguistic level but also at the legal conceptual, legal pragmatic and legal cultural levels. This paper is to explore the English-Chinese legal conceptual differences in these areas and how the textual communication strategy is employed in legal language translation in obtaining functional equivalence.

Keywords—legal language; translation; textual communication.

I. COMMUNICATIVE FUNCTION IN TRANSLATION AND LEGAL LANGUAGE

The concept of Communicative Competence was initiated by Dell Hymes.1 This view was put forward as opposed to Chomsky's theory about language ability and language behavior dichotomy. In contemporary translation studies, the ideology that translation is an act of communication is penetrated in varieties of theories. In Chapter 2 of his book The Science of Translation, Wilss expressed that “translation is a modern means of communication” (Wilss 2001,17) : The term (translation) is often thought not generally used in the German-speaking world as an umbrella term for translating and interpreting to denote interlingual communication...It should come as no surprise, that in a world developing from mass communication to universal or global communication and becoming ever more complex in terms of technology and organization, translation is becoming increasingly important as a means of international communication.

Communicative theory also serves as the foundation for the German functionalists in translation. Functionalist approach sees translation as “a communicative action carried out by an expert in intercultural communication (the translator), playing the role of a text producer and aiming at some communicative purpose” (Nord 2001, 151).

For functionalists in translation, “translation is not only a cross-cultural event” or “across-cultural behavior”, but also “an act of communication across cultural barriers” (ibid.). Contemporary translation studies are greatly influenced by many behavioral theories, but most of them take translation, at different extents, as a form of social communication and interaction.

Newmark brought forward “communicative translation” in correspondence to “semantic translation” (Newmark 1988,38). Based on the theory of Jakobson from the Prague School who presented views of the three communicative functions-- the expressive function, the informative function, the vocative function. Newmark categorized all kinds of texts into “the expressive text”, “the informative text” and “vocative text” (ibid.,42). To resolve this contradiction between “communicative translation” and “semantic translation”. Newmark proposed that one of the options is not to emphasize “equivalence” in translation, which is practically unachievable. “Semantic translation” or “communicative translation” should be taken as a more preferred rule in translation. Newmark also maintains that “global communication does not happen without translation” (ibid.,52).

The human history of law tells us that: “law is obviously not only just legal issues, but also a political issue, a social issue, a historical issue and a cultural issue” (Wu2002,12). As a cross-cultural communication, the translation of legal language is related to the different legal cultural differences. In the process of legal language translation, what needs to be taken into consideration is not only its special stylistic features, but also the legal system, origin, the contents of the legal provisions and the interpretation of the text, particularly the background in the legal system development and the legal culture of different countries. The process of legal language translation is the process of the reconstruction of the above information.

Sarcevic views legal translation as “an act of communication in the mechanism of law” ( Sarcevic 1997,4), the process of “the communication between specialists” (ibid.), namely, the communication between the law makers (as policy makers, legal draft makers, legislative people) and interpreters of the applicable laws ( as lawyers, managers, judges). The former are the authors of the legal texts and the latter are the direct recipients of them.

Taking legal translation as a process of communication is to emphasize the process of interaction among the original text, the original author, the translator, the translated text and its receiver. Legal language translation is receiver-oriented. Distinctions are to be made in translation for legal experts and
laymen. In the process of translation, the translator is the text producer who co-ordinates the various factors in translation and thus is the core of communication. Furthermore, legal translation is the dual operation of legal concept conversion and interlingual conversion (a double operation consisting of both).

II. THE TEXTUAL COMMUNICATIVE FUNCTION OF LEGAL TERM TRANSLATION

Legal translation and legal culture, namely the law-related history, traditions, customs and systems, are closely related. The cultural factors in legal language are dispersed in legal terms (in the areas like legislation, judiciary, judicial interpretation and application, law enforcement, etc.). Its impact on legal language employment is vast. Legal language translation requires not only the knowledge of target languages, but more critical the legal background knowledge of the original language and the target language. Particularly in the cases when the differences between the two legal systems are huge, more important than language skills, is the communicative function of translation in the process of conveying information.

A. Reflecting the different expressions in different legal systems

Legal system, also known as the department law system, refers to the unified whole organized with the full legal force in a country in accordance with certain structures and levels. Although the differences of humanistic environment now among different countries has become much less than before, it is still one of the important factors resulting in the different characteristics of the legal systems in different countries. So far, no countries are identical in terms of their legal systems. It is these differences in systems and department laws that increase the difficulties in the translation of legal terms and also highlight the importance of the textual communicative function of legal language translation.

According to semiotics, the same legal term (language symbol) in different department law may have different meanings and should be interpreted according to the legal contexts. For example, ‘dominion’ means ‘full ownership’ in civil law but ‘sovereignty’ in international public law. ‘Estoppel’ means ‘unrevokable’ in contract law but ‘prohibiting one’s withdrawal of confession’ in criminal law. Furthermore, clear distinctions should be made among some synonyms. The word ‘sue’ means ‘action’ in common law but ‘suit’ in equitable. The same is true for the words like ‘defendant’, ‘accused’, and ‘suspect’. Some scholars believe that the polysemy in legal terminology brings about difficulties of understanding and also undermines the dignity and the unity of the legal system. However it’s necessary for the translators to face the contradiction between the unlimited legal phenomena with relatively limited language symbols and have to determine the exact meaning of a term with each specific context.

The mistranslation in the connotation of legal terms is also a prominent issue in the translation of transplanted legal system. Without the accurate and complete translation of legal terminologies, different understandings would arise in the application of legal systems presented by legal terminologies. A case in example is to put ‘lien’, a word in the important property guarantee system of Common Law, into the Chinese legal concept ‘zhiliu quan’. ‘Lien’ has the connotation of ‘priority’ which covers a much wider sense than ‘zhiliu quan’. Maritime Code of the People's Republic of China is the first legislation from the common law system introduced to mainland China. In the process of its translation, the Chinese term of ‘chuanbo youxianquan’ was literally put into ‘maritime priority’ with reference to the equivalent term in French Law or ‘maritime lien’ with reference to Anglo-American Maritime Law. With its maritime code context, the more precise translation of it should be ‘non-possessory maritime lien’ (He and Pu 2010,117).

In the transplantation of the legal system, translation plays an important role in presenting the legislative intention by following the foreign legal norms and fully embodying the institutional functions. The accuracy in translation is the key determinant in the definition of a legal concept and the interpretation for the connotations in a legal system.

B. Reflecting meanings of the specific legal concepts

The specific concepts of legal terms make ‘accuracy’ the essential requirement for legal language translation. ‘Accuracy’ is one of the most important features in legal language and the most basic requirement in legal language translation, thus is the soul and life of it in a metaphoric sense. Laws and regulations are related to the constraints that the legislative and judicial bodies have on judicial subjects' behavior, rights and obligations. In legal language translation, the least bit of misinterpretation could result in huge mistakes. The translation of legal documents must strictly conform to the original legal meaning and definition domain without any misinterpretations. To achieve the goal of ‘accuracy’, some strategic translation skills might be applied such as concretization and addition. In translation, specifying the subtle differences would give the reader a more honest representation of the legal circumstances.

Mistranslation often occurs when the translator lacks the knowledge of the legal norms. For example: the phrase ‘final judgment’ is often mistaken for ‘zhongshen panjue’ and even many English-Chinese Legal Dictionaries can’t afford to be devoid of this mistake. According to the definition in Chinese literature, ‘zhongshen panjue’ means the last trial judgment to the lawsuits made by the court. This is a legally effective judgment that no longer opens to further appeals once it has been announced.

In this sense, ‘zhongshen panjue’ is by no means a ‘final judgment’, as the latter is not necessarily an effective verdict. Contrary to ‘zhongshen panjue’, ‘final judgment’ is the ‘appealable verdict’ made by the trial court after doing the trial on the merits of the case (so it is also known as the ‘final appealable judgment’ or ‘final appealable order’ which is
totally unrelated to the levels of the trial court. Therefore, the unappealable ‘zhongshen panjue’ should be ‘the judgment of the court of last resort’ or ‘the judgment of last resort’. The translation of legal terminology must be based on the particular context.

‘Minor’ is translated as "wei chengnian ren’ in Chinese, but the same word means differently with the varied legal provisions of the term in different countries. In France, Austria, Belgium, the Netherlands, Thailand, the term ‘minor’ refers to the people under the age of 21. In Switzerland and Japan it indicates the age under 20. In Britain, Turkey, Hungary, Yugoslavia, Romania, Bulgaria and China it means the age under 18. (Liu 2003,56) Additional information is needed when it is translated into Chinese. ‘Deposition’ is the system unique in Anglo-American procedural law, referring to the process that the parties ask each other or the witnesses for discovery in pre-trial.

Because it is in pre-trial and out of court, it is not accurate to translate it literally as ‘the admitted testimony’ or ‘discovery’. Chen recommended to put it on the basis of its meaning as ‘tingwai cai zheng de bilu (transcripts of the testimony or confessions taken out of court)’(Chen 1998,256).

In Chinese-English Manual of the Laws and Regulations of the People's Republic of China published in 1998, ‘wu zheng’ is translated into ‘material evidence’ which is a seemingly correct word for word translation, but actually is a far cry from its original sense. According to the interpretation of ‘material evidence’ in the seventh edition of Black's Law Dictionary (Bryan 2004,1357), the term actually refers to ‘evidence having some logical connection with the consequential facts or the issues’, which may the verbal evidence or physical evidence. Then what might be the substantial meaning of ‘material’ here as a legal term? According to Chen’s research (Chen 2000,256). The New English-Chinese Legal Dictionary compiled by Hong Shihao in Hong Kong explain it as the’ substantial evidence’, The English-Chinese International Economic Legal Glossary published by China Translation and Publishing Corporation also explained it as ‘substantial evidence’, ‘main evidence’.

In general, it’s easily seen that ‘material evidence’ does not stand for ‘wu zheng’ in English. However there are indeed some corresponding English legal terminology for this term, such as ‘physical evidence’, ‘real evidence’, ‘demonstrative evidence’ or ‘objective evidence’. Another example is the English term ‘extenuating circumstances’. It was translated as ‘jianzui qingkuang (crime reduction \ circumstances)’ by some English-Chinese legal dictionaries, which failed to reflect its English legal connotation. The reduction made here is not upon the crime but on a penalty. It would be more accurate to put it as ‘mitigating circumstances’ based on a term from China's Criminal Procedure Law.

Some other terms are bound to have the exclusive meaning, namely just keeping one sense once they are used as legal jargons, even though they are polysemous in their own languages. For example, the term ‘jurisdiction’ in Chinese literally means both ‘administer (guanli)’ and ‘overall control( tongxia)’. ‘Overall control( tongxia)’ can mean both the control of people, events, regions and cases. Accordingly, ‘jurisdiction’ means both ‘have jurisdiction over’ and ‘administer’. Obviously, ‘jurisdiction’, in its legal sense here, can only be restricted to ‘jurisdiction over (a) case (se)’ or ‘jurisdiction over a person’. ‘A reasonable person’ or ‘a reasonable man’ was translated as ‘tongxingdali de ren (an easy going or understanding person)’ in some English-Chinese legal dictionaries (Hu 2006:2). It is not a correct translation, as it only carries the ordinary meaning which is inapplicable in legal document. The meaning of this term in legal context should be ‘a normal person’. Another example is the term ‘wrongful act’, which was put into ‘buduan xingwei (misconduct)’ or ‘cuowu xingwei (wrong doing)’ in some legal dictionaries. It’s legal contextual translation should be ‘bufa xingwei’, which specifies the violation of law and legal obligations along with the liabilities for it, as it is a legal concept rather than a moral concept. ‘Remedy’ was translated as ‘zhiliao, liaofa, yiyao (treatment, therapy, medicine’) by some English-Chinese legal dictionaries, in which the legal meaning is totally missing. Its meaning in legal context refers to the ways of legal enforcement, protection and restoration of rights or the ways to...
compensate for the damaged rights.

A more accurate version should be ‘buiju fangfa’, meaning mainly the payment of damages including the injunction and specific performance.

In different legal systems, the same language symbol may represent different concepts. ‘Jail’ and ‘prison’ are normally translated, without any distinctions, as ‘janyu’ or ‘laoyu’ by most of the English-Chinese dictionaries. But in the judicial context of the United States, ‘jail’ is different from ‘prison’. ‘Prison’ is set up by the federal or state government as a transformation place to confine the sentenced felons.

The equivalent Chinese term should be ‘jangyu’. And ‘jail’ refers to the facilities confining the short-term defendant awaiting trial by the Federal or State judicial authorities or short-term prisoners for misdemeanors. The Chinese equivalence should be ‘kanshousuo (detention center)’. The differences between them should not be ignored in translation.

The solemnity and sacredness of law partly owes to the seriousness and legal-specific features of its language. Seriousness in legal language style needs to be presented by the rigorous and precise legal terminologies. Therefore, translating legal language literally would definitely fail to achieve it.

C. Highlighting the different cultural contexts

The universality of language and the generality of the legal systems have laid a theoretical foundation for the translatability of legal discourse. However, new issues are raised in translation with the particularity and localization of legal languages. Therefore the exploration of the cultural contexts in the translation of the legal terminology and the specific translation strategies are crucial to achieve the communicative function of translation. Legal culture, in the broad sense, refers to areas as the law-related history, traditions, customs, systems and doctrines. The exploration of the cultural elements in legal language translation needs the knowledge of the cultural background reflected from the specific legal concepts, legal systems and the functions of legal systems, so as to obtain the comprehensive conversion of legal texts at both language and cultural levels.

In view of the corresponding words in English and Chinese, the cultural implication in one language could be totally absent from another. The English word ‘bench’ and the Chinese equivalent ‘changdeng’ is a case. (Song and Cheng 2006,22) As a custom, British court used to set a row of benches as the seats for a judge or magistrate. Then the term ‘bench’ is closely related with the law with the cultural connotations with the meanings given later as ‘seat of a judge’, ‘court’, ‘tribunal’, ‘judge’, ‘seat of a member of a legislative body’. Terms relating with the this symbolic usage emerged as: ‘the Upper Bench (High Court of the 12th century British republican period)’, ‘the full bench (full -seats court, referring to the full attendance by all the judges of the court)’, ‘bench warrant (the arrest warrant issued by the judge, mostly for those showing contempt for court’s command)’, ‘Queen's Bench (the Queen’s Branch of the United Kingdom High Court)’, ‘King’s Bench ( the King’s Branch of the British High Court)’. ‘He is on the bench’ means ‘he is a magistrate’. These legal and cultural implications are not to be found in the Chinese equivalent ‘changdeng’. In Britain and the United States and some other English-speaking countries, ‘bar’ is used in court to separate litigation people, thus gradually gained the cultural connotations as the ‘court’, ‘dock’, ‘trial stage’, ‘lawyer’, ‘lawyer circle’ ‘legal profession’ and ‘judicial area’, etc. More legal terms are derived on this basis as ‘debar’, ‘disbar’, ‘disbarment’, etc. In addition, many terms or idioms composed of the ‘bar’ are all culturally connotated, such as ‘Bar Association (a professional body of lawyers)’, ‘Bar poll (Bar Association poll, referring to a test of electing judges among its association members)’, ‘bar examination (a test intended to determine whether a candidate is qualified to practice law in a given jurisdiction)’, ‘bar to divorce (divorce court, a specialized court for divorce cases)’, ‘be called to the bar (qualified as a solicitor)’, ‘pass the bar (pass the lawyer qualification exam); ‘plea in bar (anti-resolution in litigation)’, ‘prisoner at the bar (prisoner at the trial court)’, ‘the attorney’s misconduct disgraced the bar (the lawyer's unruly behavior tarnished the reputation of the legal profession)’, the defendant filed a bar (the defendant has submitted the application for suspension of proceedings)’, ‘trial at bar (triage, cases adjudicated by the collegial panel, rather than by one judge)’. In contrast, the Chinese equivalence for ‘bar (zhalan/ langan)” carries no such cultural implications. A literal translation of ‘Crown Court’ might be ‘huangjia fayuan (royal court)’, but in fact it should be translated as ‘gaodeng xingshi fati (High Criminal Court)’. Due to cultural differences, many concepts, principles or norms expressed by the terms in common law don’t have their equivalences in Chinese legal system. More importantly is the reproduction of the spirit of the original text. In Chinese, the person involved in extramarital affair is referred to as ‘the third person (disanzhe)’ which might be translated into English as ‘lover’ or ‘mistress’. There is less negative sense in English than in Chinese for these terms. On the contrary, the word ‘lover’ in English has more of the positive sense as ‘love’. But in Chinese custom, the terms are associated with the sense of ‘adultery’ or ‘whore’. The verb goes with the term ‘the third person in extramarital affair is ‘chazu( put one’s foot in)’. With the third person ‘putting his/her foot in’ a marriage, the intention of intervening another family and even taking over another’s spouse is evidently indicated. In this case, it is not accurate enough to put it into English like ‘put one s foot in’, ‘participate’ or ‘take part in’. The more pragmatic strategy is needed to reflect the connotation of the term.

As the consequences of the third person’s ‘putting his/her foot in’ a marriage is the disruption of a legally married family. Thus ‘step in’ should be a more appropriate English translation as it has the originally meaning of the action ‘participate’ and the metaphorical meaning of ‘intervene’. Here, action of the legs is also incorporated in translation.

Without the cultural schema for the original text, it is
common for the target language readers fail to have a coherent comprehension of text. Paraphrasing is one of the translation strategies to compensate for the cultural differences resulted in literal translation so that communicative value can be maximized.

‘Yellow dog contract’ has been literally translated as ‘huanggou hetong’ in some Chinese legal texts, which leads to some confusion for Chinese readers. ‘Yellow dog contract’ means “an employment contract forbidding membership in a labor union. * Such a contract is generally illegal under federal and state law”. ②Another example is ‘fishing expedition’, a legal term which means “an attempt, through broad discovery requests or random questions, to elicit information from another party in the hope that something relevant might be found; esp., such an attempt that exceeds the scope of discovery allowed by procedural rules. Also termed fishing trip”. (ibid.) For the better understanding of the concepts, the translation strategy of domestication needs to be employed. The translation for the two terms could be the paraphrased Chinese versions of their dictionary meanings or glossed. Such a flexible interpretation of the translation can obviously better highlight the specific meaning and the functionality of the original legal terms.

Other cases in need of domesticated translation strategy to facilitate intercultural legal communication are as follows: ‘Blue law’-- is a supposititious code of severe laws for the regulation of religious and personal conduct in the colonies of Connecticut and New Haven; hence any rigid Sunday laws or religious regulations. The assertion by some writers of the existence of the blue laws has no other basis than the adoption, by the first authorities of the New Haven colony, of the Scriptures as their code of law and government, and their strict application of Mosaic principles. (Bryan 2009,141) ‘Blue laws’ got their name because it was supposedly written on blue paper when first enacted by Puritan colonies in the 17th century, prohibits selling of certain types of merchandise, or retail or business activity of any kind, on certain days of the week. In Texas, for example, blue laws prohibited selling house wares such as pots, pans, and washing machines on Sunday, until 1985. Many southern states prohibit selling alcohol on Sundays. ‘Fruit of the poisonous tree’ -- a principle of the United States Code of Criminal Procedure, meaning the unusable evidence obtained through inappropriate procedures as torturing a suspect to confess. The theory of fruit of the poisonous tree includes two metaphors: one is the poisonous tree. The target domain is the evidence obtained in unlawful ways such as wrongful arresting, searching and interrogating. The other one is the fruit produced by the poisonous tree, which refers to circumstantial evidences that are derived from the unlawfully-attained ones. Since the tree is poisonous (i.e. unlawful), the fruit of it cannot avoid to be poisoned more or less. In accordance with this reasoning, the circumstantial evidences, even obtained under a lawful process, are considered as illegal as the wrongfully-got evidences, which will be questioned by the court. Both the “tree” and the “fruit” are likely to infringe citizens’ constitutional right and misguide judicial staff’s action, and thus debasing the value of the fact of a case.

(Luo and Zhang 2009) The rise of the principle of fruit of the poisonous tree embodies the development of respecting human and individual rights, and the maturation of litigation system of human society. It emphasizes that individual’s basic rights overweigh the value of objective facts.

‘Lemon law’-- Economist George Akerlof has been credited with coining the term in his 1970 paper "The Market for Lemons: Quality Uncertainty and the Market Mechanism.”③ The first lemon law was proposed in California in 1980. It is a statute designed to protect a consumer who buys a substandard automobile, usu. by requiring the manufacturer or dealer either to replace the vehicle or to refund the full purchase price. By extension, a statute designed to protect a consumer who buys any product of inferior quality. It is also termed lemon protection. ④For this reason, the defective car out of the factory is directly called ‘a lemon car’.

‘Kangaroo court’ -- meaning ‘unjust court’, ‘illegal court’, which is established with the violation of legal procedures and has no actual legal qualifications and effectiveness.( Collin 1998 ,302) Although kangaroo is unique for Australia, the kangaroo court did not originate in Australia. ‘Kangaroo court’ first appeared in the western part of the United States in the 1850s, when the conventional court had not been introduced to the undeveloped western border areas. People at that time had to set up temporary ‘kangaroo court’ to resolve disputes or some emergencies. Later ‘kangaroo court’ is used to describe the ‘the illegally established lynching’, such as the old prisoners privately mustered up kangaroo courts to extort money and goods from the new prisoners. Up till today, ‘kangaroo court’ is commonly used to express ‘the court making unfair and manipulated rulings’. ‘Kangaroo’ here is obviously to ridicule the ‘justice’. One assumption is that the kangaroo is an ironic metaphor, Its hop hop gait is an analogy to the ‘irrational’ and ‘unpredictable’ performance of the earliest kangaroo court in the western part of United States, as kangaroo court was generally practiced without logical thinking and legal procedures.

III. THE EMBODIMENT OF THE INTERTEMPORAL CHARACTERISTICS

Due to the solemnity and sacredness of law, fundamental changes are rarely made.

Hence, the sluggish developing process in law and in its language as its carrier. Even so, new terms in legal language emerge with the change of time and gradually evolve into specialized legal terminologies. For example: ‘legal person’ in Roman law system was originally translated into Chinese as ‘faren’, which had actually created an innovative meaning for Chinese as the legal system in China was not yet established.

http://dx.doi.org/10.15242/IJCCIE.E0913009
then.

Some Chinese legal terms such as the ‘disanzhe (the third party, extramarital lover)’, ‘tanshi quan (visitation rights)’, ‘lihun sunhai peichang (divorce damages)’ already came into being in many legal documents but they have not been taken in the dictionaries yet due to the ‘jet lag’. ‘Si huan (reprieved death penalty)’ system is also unique for China. It was founded in 1950s on the basis China's national conditions and Cautious Punishment. These are the cases reflecting the intertemporal feature in legal language. When these new terms are found neither in Chinese legal dictionaries nor in the foreign legal dictionaries and regulations, particularly when the legal and cultural background of the related systems can’t be examined from the history of the foreign legal systems, great challenges would arise in legal language translation.

The lack of equivalence in translation for legal terms sometimes is due to the particular reasons in history. For example, ‘zuigao fayuan’ cannot simply be translated as ‘the Highest Court’, as ‘the Highest Court’ in English should be ‘the Supreme Court’. But in New York State it is ‘the Court of Appeals’ which owes its origin to the legal history of the state.

In Canada, the term ‘civil’ initially meant ‘minshi de (civil) or’ ‘pingmin de (civilians)’ as opposed to the term ‘criminal’. With the evolution of the legal culture in Canada, the meaning gradually extended to ‘civilian crime’ and now it stands for ‘ordinary criminal’ in Canadian Defense Act. Likewise, ‘civil court’ means a court of ordinary criminal jurisdiction in Canada and includes a court of summary jurisdiction. Such term with intertemporal characteristics increases the complexities in translation. Thus the misled translation occurs when ‘civil prisoner’ is put into ‘minshi fan’ in Chinese. Similar terms are ‘civil court’ and ‘civil prisoner’. According to the uniqueness of Canadian Law and its cultural implication, ‘civil court’ is no longer the ‘minshi fayuan’ in the common sense as ‘a court with jurisdiction over non-criminal cases’. Instead, it refers to the ‘General Criminal Court’, namely, a court of ordinary criminal jurisdiction in Canada including a court of summary jurisdiction. ‘Civil prison’ means ‘putong jianyu (ordinary prison)’, referring to the prison incarcerating the prisoners under the 2-year prison sentences in civil court trial while ‘civil prisoner’ refers to the ‘putong zuifan (ordinary criminals)’ in civil prison.

IV. CONCLUSION

Translation is regarded as a form of communication and interaction, which is determined by the communicative nature of interlingual translation. For this reason, the communicative behavior theory became one of the foundations for contemporary translation studies. Due to the differences among Chinese and western laws, the active communicative role of a translator as a “cultural operator”(Sarcevic 1997,4), not only at the language level, but also at other levels such as history, tradition, institution, theory and culture, is particularly prominent. Under the guidance of the dynamic principles of the communicative function theory, more systematic and scientific researchers are to be conducted to all factors in translation process. The theoretical and case analysis in legal language translation has found that the textual communicative theory in translation is in line with the general rules of translation practice and can effectively serve as the practical guidance in legal language translation.

ACKNOWLEDGMENTS

The author would like to thank Shanghai Institute of Administrative Law for the proofreading resources of legal texts translation. This research is funded by 2010 Chinese Social Sciences Fund (12BYY019).

NOTES:

1. The term was coined by Dell Hymes in 1966, reacting against the perceived inadequacy of Noam Chomsky’s (1965) distinction between competence and performance. To address Chomsky’s abstract notion of competence, Hymes undertook ethnographic exploration of communicative competence that included “communicative form and function in integral relation to each other”. The approach pioneered by Hymes is now known as the ethnography of communication. http://en.wikipedia.org/wiki/Communicative_competence Last modified on 15 December 2012 at 06:33.


5. ‘Shen Xing’ -- the legal thought recorded in one of the earliest Chinese legal literatures Shang Shu. http://wenku.baidu.com/view/55085a3683c4bb4cf7ecd1a9.html


REFERENCES


[9] Luo, Lan and Zhang, Qiusha. On American ‘Fruit of the Poisonous Tree’
http://rcxfy.chinacourt.org/public/detail.php?id=174 posted on 1 July
2009 at 15:29:11
Prentice Hall.
Some Methodological Considerations. Revista Alicantina de Estudios
Ingleses 14: 151-166
Terms Translation. Journal of Southwest University of Political Science
and Law. (6):22
Field. 12. Shanghai: Shanghai Foreign Language Education Press. He,
Ruiqing and Pu, Yingshan. 2010. Correction to Several Mistranslations in
Maritime Law (6):117