

Interpreting Legal Language at the International Criminal Tribunal for the Former Yugoslavia: overcoming the lack of lexical equivalents

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ABSTRACT

This article explores difficulties experienced by court interpreters and the strategies they adopted in dealing with legal deliberations at the International Criminal Tribunal for the Former Yugoslavia (ICTY). After giving an outline of interpreting practices at ICTY, the author considers interpreting approaches used in this context. Problems created by the use and transfer of cognates, synonyms and neologisms in legal language are highlighted. The author shows why paraphrasing and other techniques of explicitation are often the most effective in an international legal context.

KEY WORDS

legal interpreting, legal language, courtroom communication, simultaneous interpreting, ICTY, intercultural communication.

Introduction

The relative accuracy of lexical equivalents has long been recognised as problematic in translating and interpreting (Newmark 1981, Baker 1992). Moreover, the translation of legal texts presents particular difficulties for the translator and researcher (Marks 1997, Orrantia 1997, Drummond 2000). This is understandable, considering the "cultural asymmetry" (Gémard 1995) between different legal systems. Whereas in English-speaking countries legal concepts, courtroom procedures and rhetoric have been moulded by a certain history and experience, this legal culture will not necessarily be shared by speakers of the target languages. Similarly, French legal terms reflect concepts and practices of the civil law system and thus cannot be considered as exact equivalents of the English terms. The interpreter and translator must therefore find the means of overcoming the lack of lexical equivalents for legal practices that are articulated differently in other systems. Proceedings at the International Criminal Tribunal for the Former Yugoslavia (The Hague) present an ideal opportunity to observe such challenges to translation: although the ICTY is an international tribunal, it has adopted an adversarial system essentially based on common law (Hunt 2000).

In court interpreting, however, legal terminology and more general lexical issues have not been listed as a major problem. According to Hale, interpreters in national courts perceive that their own difficulties derive from the "lack of awareness of the consequences of their interpreting choices, lack of time to think of the best alternatives, or lack of linguistic resources" (Hale 2004: 287). In a study of English-Spanish interpreters' perceptions of interpreting difficulties in court, Hale found that only 25% of her respondents' difficulties could be attributed to the interpreting of legal terms, and none to those of the 'formal language'. Only "one

[interpreter] ticked the 'other' option referring to interpreting discussions between lawyer and magistrate about points of law" (Hale 2004: 287).

Preliminary interviews with court interpreters at the ICTY revealed similar reactions, despite the additional pressures of simultaneous interpreting. One could speculate that certain conditions at the ICTY might lead to a better handling of obstacles to effective translation. Such conditions would include the interpreters' higher level of qualifications and expertise when compared with those in national courts, long-term employment at the ICTY which has led to experience in interpreting legal deliberations and opening and closing addresses, the availability of background and reference materials and interaction with the Tribunal translators. If these factors permit ICTY interpreters to acquire better coping strategies when compared with their colleagues in national courts, what, then, are these strategies? Could the ICTY approach to translating and interpreting be adopted by interpreters in national courts?

Methodology

These questions arose while the author observed the trilingual courtroom procedure at the ICTY from the public gallery, listening to proceedings through headphones with three or four language channels, and also during interviews with ICTY interpreters, translators, lawyers, legal officers and judiciary. However, the main analysis of the text and the bi-texts was undertaken by examining the sound recording and transcripts made available by the Tribunal. These included various modes of courtroom discourse, such as examination-in-chief, cross-examination of expert witnesses and legal deliberations. Before we proceed to an analysis of courtroom discourse, a brief outline of the interpreting practices and setting at the ICTY is required.

Background: Interpreting practices at ICTY

Interpreting practices at the ICTY contrast strikingly with those in national courts. Undoubtedly, the highly efficient operation of interpreting at this multilingual and multinational tribunal results from political good will and the availability of funds. The Tribunal employs essentially professionally trained and/or linguistically educated simultaneous interpreters (often graduates of leading translation and interpreting schools) who are provided with excellent working conditions (Stern 2001: 255-274). Unlike in national courts, where legal professionals and the judiciary can be unaware of the interpreting process and the preconditions for successful interpreting, the complexity and challenges of the interpreters' task are recognised by the judiciary and the lawyers of the Tribunal. Moreover, the quality of their work is appreciated by the legal professionals whose effective communication with their own witnesses, the other party and each other largely depends on the quality of the interpreting.

Issues

As has been stated, the investigation of the interpreting practices at the ICTY arose from an interest in using ICTY interpreting strategies as a model for interpreters in national courts (Stern 2002). The author of the current paper was also curious about the challenges that the simultaneous interpreting mode presents to ICTY interpreters. The simultaneous mode demands text condensing, but also carries a higher tolerance for omissions as well as the expectation that the speaker's style will be improved. Such challenges are absent in national courts because only the consecutive interpreting mode is used.

The ICTY is an international tribunal with English and French as its official languages and Bosnian/Croatian/Serbian (BCS) as its working languages, but English is its dominant language. Most of the prosecutors and judges are English speakers, native or not; most eyewitnesses and the accused speak the languages of the former Yugoslavia. Unlike in national courts, the majority of defence lawyers are speakers of languages other than English, namely BCS and French. That is why this analysis will focus on interpreting legal language from English into French and BCS.ⁱ

Awareness of translation and interpreting problems at ICTY

At least two groups of non-English-speaking ICTY professionals were aware of the translation and interpreting problems: French and BCS-speaking translators and French-speaking legal officers. Both indicated that the legal and linguistic imbalance, a consequence of the dominant role of Anglo-Saxon legal culture and language, was working to the detriment of the other languages, particularly the other official language – French.ⁱⁱ

The lack of exact legal equivalents between English and French (and BCS) was reported by translators as one of the most difficult aspects of translating from English into French and BCS. For example, French and BCS lack equivalents for everyday terms and concepts, such as *allegations, cross-examination, pre-trial, to plead guilty/not guilty, beyond any reasonable doubt or balance of probability*. Even cognates such as *appeal, charges, objection* have a different significance in the target languages. Such discrepancies were particularly challenging during the translation into French of official legal documents and judgments. Translators based their strategies for overcoming these linguistic lacunae on thorough research and reliance on reference materials. In the case of BCS, the problems were exacerbated by the lack of legal dictionaries and other reference materials in BCS. In order to render the French translation as close as possible to the English original, translators resorted to verbose

solutions, such as the use of the original term in italics, with an explanation in brackets, and the additional reliance on Latin and footnotes to convey the meaning with the utmost precision.

French-speaking legal officers commented on the variable success of translators' attempts to adjust French legal language to an alien legal system. It was felt that a number of French legal terms adopted by the Tribunal reflected an unfortunate compromise. Thus, the use of existing French equivalents in the target language – a technique known as cultural substitution – added meaning and connotation that were absent from the English original. For example, the translation of 'pre-trial' as *mise-en-état* was considered inaccurate because the French term can refer to a motion that occurs during the trial. Translating 'motion to disclose' by *requête aux fins de communication* was considered unsatisfactory as the investigating judge, in the Continental legal system, was in possession of all the information relevant to the file. The use of neologisms or literal translation of English legal terms into French was seen as being incomprehensible to native speakers of French.

This amounted, in the opinion of French-speaking professionals, to the creation of a *language-hybride*, a jargon. Some legal officers were of the opinion that because of this, and also because witnesses came from a different, civil-law, legal system, they had little chance of understanding the proceedings. If one accepts this assumption, one would become even more concerned about the effectiveness of communication with non-English-speaking professionals.

As mentioned above, with few exceptions ICTY court interpreters do not seem to share these concerns. What approach do they take in order to overcome the lack of lexical equivalents to English legal terms in French and BCS? What techniques do they commonly use and which are more effective? How strong are the semantic discrepancies between the original and the equivalent in the target language (TL)? What are the repercussions for courtroom communication?

Interpreting approaches

Translation studies describe two approaches to translation: one is more literal, semantic and writer-oriented, the other more communicative and reader-oriented (Newmark 1981ⁱⁱⁱ, Machali 1998). Based on my observations at the ICTY, the same methodologies may be applied to interpreting. ICTY interpreters use either a literal, semantic, speaker-oriented, approach, or a pragmatic, communicative, recipient-oriented one, ensuring the comprehensibility of the message transferred to the listener. The former resolves the problem of lexical lacunae at a word level, avoiding lexico-grammatical shifts and replacing the existing term or

expression in the source language (SL) with an equivalent of the same word class, without changing the grammatical construction in the TL. The latter consists of the interpreter's resorting to what may appear to be a freer interpretation. It relies on lexico-grammatical changes, conveying the intention of the speaker in order to ensure comprehensibility to the recipient in the TL. How exactly do interpreters achieve this?

Interpreter-centred approach

Using existing signs: literal translation of legal terms

ICTY interpreters often fall back on the literal translation of legal terms into French, particularly when there is a cognate. One can speculate that some interpreters will use a TL word that belongs to the same word class as in SL or maintains the same grammatical construction as in SL as a time-saving technique. Others may be under the misapprehension of semantic accuracy between cognates in both SL and TL. Whereas cognates may be helpful in other technical areas and often provide single equivalents to technical terms (in medical or scientific discourse, for example), in the legal context this literal approach to interpreting terms more often leads to a semantic discrepancy between the original term and the equivalent in the TL, subtle as it may seem to a lay-person or an interpreter untrained in legal interpreting.

Instead of ensuring accuracy, the use of cognates leads to an unintended semantic addition or to the stripping of the legal term of some aspects of its original meaning. Thus, translating *allegation* as *allégation*, and *to allege* as *alléguer*, adds negative marking to the original term, including pejorative connotations and implications of lying (cf. 'As alleged by you' – '*Comme vous alléguiez.*'). Similarly, interpreting *complicity* as *complicité* conveys stronger negative meaning, closer to 'aiding and abetting'. Translating *appeal* as *appel* distorts the meaning of the original, which denotes a review of a sentence based on a legal error rather than a re-trial on some factual basis. It is interesting to observe that even French-speaking lawyers use similar-sounding cognates, for example, the otherwise non-existent form of objection in French (*objection!*) rather than the more accurate *je proteste!*

More serious still is the use of deceptive cognates (*faux amis*), as in the case of 'to plead guilty'. Translated as *plaider coupable*, this expression makes no sense in legal French as it is the lawyer who does the act of *plaider* to represent a client. Similarly, interpreting 'I put it to you' as *je vous pose une question* ignores the cross-examination setting and the intention of the counsel who leads the cross-examination to a crucial point.

Literal translation of collocations and Latin expressions

A loss of intended meaning can also be observed in other cases of word for word translation of collocations, even when these exclude cognates. Thus, translating *legal advice* as *avis judiciaire* fails on two counts. In French, *avis judiciaire* is neither a legal term nor the term for a researched, often written, consideration by the party's lawyer. Similarly, a literal translation of Latin expressions, for example, *bona fide* as *dobra vera* (good faith) or *dobra volja* (good will), leads to the loss of legal meaning. Turning a Latin word commonly used in English into a loan word in French (eg, *verbatim*) would be legitimate, were there not an existing equivalent (*mot à mot*).

Adjusting French legal language to the ICTY legal system may result in a less idiomatic use of the language. Thus, translating *serious violations* as *violations graves* proved to be impossible, as the latter already refers to an existing term under the Geneva Convention. As a result, a literal translation, *violations sérieuses* was coined, despite the fact that the collocation is idiomatically incorrect.

Is near enough good enough? On the use of synonyms and cultural substitution

If literal translation proves inadequate and may lead to the distortion of meaning at various levels, how effective is another technique of drawing on the existing signs in the TL, namely synonyms or adaptation (or cultural substitution) using culture-specific legal terms in the TL? Unfortunately this technique can also have undesirable repercussions. Cultural substitution may work adequately (eg, *Trial Chamber* – *Chambre de première instance*) but can also mislead a witness or counsel about the denotation of the original term. Thus, *pre-trial conference* translated as *conférence de mise-en-état* misinforms the listener: the former refers to a period prior to the commencement of the trial, whereas the French *mise-en-état* may occur at any stage, both before and during the trial. Similarly, translating *to plead guilty* by means of cultural substitution as *avouer coupable* (to admit guilt) implies admission of guilt, which can be done at any stage of the hearing, rather than before it, and does not preclude the trial.

Using existing signs, such as more general synonyms, strips the original term or expression in the SL of its unique meaning and does not convey its real significance. Such is the case with translating *allegation* as *optužba* ('accusation' in BCS), and *charges* as a more general French *accusations*. A similar loss of legal meaning occurs in translating *inadmissible* into BCS as *nedopustivo/nije dozvoljeno*, that is, *not allowed/not permitted*.

Similarly, using cultural substitution by resorting to a near-enough term that exists in the legal culture of the target language may add unintended connotations. Thus, translating (*to testify in*) *closed session* into BCS as *svjedočiti iza zatvorenih vrata* lends this legal expression political connotations of the former communist system, alluding to secret party meetings held behind closed doors. Translating *cross-examination* as *unakrsno ispitivanje* (literally meaning 'criss-cross examination' of a detainee by a number of police officers) conveys the equally unintended notion of an interrogation in the police setting, thus placing the witness in the position of a detainee, if not an accused, rather than witness.

The use of cultural substitution in address titles and other formulaic court routines conveys a sense of unfamiliarity and even strangeness to a witness or a non-English-speaking counsel. Whereas translating *Your Honour* as *M le juge* sounds quite natural to the French ear (although it reduces the sense of formality and decorum characteristic of Anglo-Saxon proceedings), using the expression *časni sude* ('honest/honourable court/bench') in BCS lends an archaic and bookish sound to the equivalent; this form of address would not be used nowadays in the former Yugoslav countries. It is interesting to note, however, that this is how the BCS-speaking counsel in the Tribunal address the judge, rather than using a more contemporary form. Perhaps they choose this old-fashioned expression not only because they mirror the interpreter's choice, but also because the archaic *časni sude* evokes the alien nature of the court and reflects more appropriately the local colour of unfamiliar procedure and attire.^{iv} On a more trivial note, it may be for a similar reason that in the French-dubbed version of *Law and Order* characters use the otherwise non-existent *Votre Honneur*.

Neologisms

Might creating neologisms be a more satisfactory solution? But how adequate to the task are the new terms coined by the Tribunal? From the interpreter's perspective they are certainly useful, as they fill in the existing denotative gap for routine proceedings at the Tribunal. Thus, *evidence-in-chief* has been translated as *interrogatoire principal* ('main interrogation') and *cross-examination* as *contre-interrogatoire* (hence *to cross-examine* as *contre-interroger*). However, these choices can lead to connotative discrepancies. After all, they both use an existing sign as part of the new concept, namely a police-related word *interrogatoire*. Also, the use of the same word *interrogatoire* does not distinguish between the information-eliciting nature of the evidence-in-chief and the probing, confronting nature of cross-examination. Moreover, they create a vocabulary that has no meaning to the French speaker from outside the Tribunal, or even a witness or a new judge at the Tribunal.

Thus the above approach, although suitable for the purpose of brevity in simultaneous interpreting, works at a restricted word and collocation level. It is a literal approach that does not take the listeners' perceptions into consideration and creates misconceptions at a denotative and connotative level. It also demonstrates the nature and origin of "*language-hybride*" and accounts for some of the difficulties a listener in the TL may experience in trying to follow the course of the proceedings. As literal translation, elements such as cultural substitution and neologisms have shown themselves to be inadequate in some way, what other linguistic means of overcoming the problem of lexical equivalents are available to the translator?

Towards the listener-centred interpreting process

The listener-centred approach to the interpreting of legal language is a pragmatic one. It relies on paraphrasing, or on a brief explanation of a phenomenon using existing signs.

Translating *to tender (a document)* into BCS as *ponuditi document na usvajanje* ('to lodge/submit a document for acceptance') captures the notion that the document is more than simply being handed in to the court, that it will acquire the role of a piece of evidence, and that not just any document will be accepted by the court for this purpose. Although translating *to adjourn* as *procéder à une pause* loses its specific meaning of a courtroom break, it retains the formal register of the expression. Moreover, it indicates to the listener a particular context in which the session is being adjourned; in this case the announcement refers to a short break rather than to postponing the hearing for a lengthy period. Note also that paraphrasing relies on lexico-grammatical shifts and results in a TL text that is longer than the original. Taking the immediate context into account allows the explanations to convey the meaning of the procedure to a witness who is likely to have a very limited, if any, understanding of court proceedings, despite prior explanations and proofing. Thus, interpreting *examination-in-chief* as *glavno ispitivanje tužoca* ('main examination by the prosecutor') gives a witness some idea of what to expect of the process and the party that is to conduct the examination. Similarly, interpreting *you are going to be cross-examined* as *ispitivače vas odbrana* ('you will be examined by the defence') takes into account the fact that the witness will be questioned by the other party.

Thus, the value of paraphrasing lies in placing the terms or expressions of the SL in a context. It is the added explicitness by reference to the context that makes the equivalent in the TL more comprehensible to the listener. That is the essence of the listener-oriented approach to interpreting.

Explicitation as a listener-centred technique

Making explicit what is implicit in the proceedings has been observed at a sentence level for frozen language and formulaic routines. Translating *witness is excused* at the end of the examination as *svjedok je slobodan* ('the witness is free to go') conveys the pragmatic rather than the semantic approach to the translation of this statement, and will elicit the desired response from a Serbian-speaking counsel or a witness who might have been misled by a semantically accurate verbatim translation. Similarly, translating 'he [the witness] is all yours' as *možete poceti s ispitivanjem* ('you can start with the questioning'), free though it may seem because of a major lexico-grammatical shift and complete re-formulation of the original, transmits the meaning not only to a BCS-speaking witness but also to a BCS-speaking defence counsel. This explicitness becomes particularly important in an exchange of dialogue where an immediate response is expected.

Explicitation becomes crucial to the filling in of ellipses, which are part of the institutional jargon used by English-speaking counsel. How, otherwise, would an interpreter handle the shortcut, 'Can we 'bis' this witness?' It is only the added clarification of 'bis', constituting Paragraph 92 bis of the ICTY Statute, as well as an equally explicit statement about the witness being attributed to this category that reveals the intention of this question: '*Est-ce que c'est un témoin qui relève du paragraphe 92 bis?*' (Is it a witness who falls under Paragraph 92 bis?)

Limitations

Paraphrasing, however, is not a universal solution. Interpreters still struggle with such courtroom expressions as *I put it to you*, although it is not as frequently used at the ICTY as in national courts. In its French version, *je vous pose une question* (I am asking you a question), the speaker's intention is lost because the French version has omitted the crucial element of the counsel's challenge to a witness in a cross-examination, which first consists of a challenging statement and only then invites the witness to disagree. Translating it into BCS as *ja vam to tvrdim* (I declare/state/to you), on the other hand, does not invite the witness to voice his/her disagreement with the counsel's challenge. More sophisticated vocabulary as in *je vous soumets une hypothèse* (I submit a hypothesis to you) is known to have elicited the following response from a witness: 'What is 'hypothèse'?'

Attempts to explicate the meaning of 'pleading guilty' have not always been successful either. In an attempt to paraphrase a judge's explanation, 'And then you will plead guilty', the word *plead* is frequently translated into BCS as *declare*: '*A onda se izjasnite da li ste krivi ili niste krivi* (and

then you will declare whether you are guilty or not guilty)'. Attempts to lead the witnesses to the making of a statement about their admission or non-admission of guilt have likewise fallen short, whether it is the French version *se prononcer coupable/non coupable* or the BCS *izjasniti se o krivici* (to make a declaration about one's guilt). No technique seems capable of conveying the very important idea that this statement relates to specific charges and the sentence bargaining. The failure to translate the phrase adequately is demonstrated by the lack of adequate response from the witness, who omits the verb 'se prononcer/se déclarer'. It was noted that to the question 'Do you plead guilty?', translated as '*Est-ce que vous vous prononcez/déclarez coupable?*' (Do you pronounce yourself/declare yourself guilty?) a witness would either omit the relevant verb by saying 'I am guilty' or add another verb ('*Je me sens coupable*' - 'I feel guilty'), thus referring to his moral attitudes.

Conclusion

Although the ICTY is an international court, it shares similarities with the national courts in Anglo-Saxon countries. The main language spoken at the Tribunal is English, and non-native English speakers use English, rather than French, as a *lingua franca*. However, this cannot simply be attributed to the domination of English language and culture in contrast to the diminishing influence of French in the world. The real reason behind it is that in many ways the ICTY is an Anglo-Saxon tribunal, and this applies to its legal culture and courtroom practices.

While there is an acknowledgment and accommodation of other cultures at the ICTY, they do not enjoy equal status with the Anglo-Saxon legal and communicative culture that dominates the Tribunal. This legal and cultural asymmetry forces representatives of other cultures to adjust, both procedurally and linguistically. One of its results has been the creation of 'ICTY-speak' – otherwise described as jargon by the speakers of French. While being routinely used by the ICTY in-house interpreters, this *language-hybride* may not be understood by the outsiders or the newcomers to the Tribunal, such as witnesses and newly appointed judges and lawyers

Examining the varying degrees of success of interpreting strategies in court reinforces the notion that most of the techniques available to court interpreters suffer from limitations. These are imposed by the characteristics of the languages themselves and by the differences in legal systems. Using the same sign adds or removes aspects of meaning, denotative or connotative; paraphrases are lengthy and cannot always be used effectively either.

Despite these limitations, however, there is no evidence of immediate damage having been done to ICTY cases, or of a miscarriage of justice; furthermore, the high level of awareness by ICTY legal and judicial staff of issues in cross-cultural communication has helped to resolve interpreting and other communication problems as they arise. One is therefore tempted to conclude that the above problems are those of academic linguists, rather than of interpreters.

The analysis of interpreting techniques at the Tribunal demonstrates that problems of overcoming lexical lacunae in legal terminology and courtroom rhetoric are similar to those observed in national courts: incompatibility of legal concepts in the SL and the TL; dilemmas over choosing the correct technique; a consequent addition or loss of denotative meaning; unintended connotations and negative/positive marking; or a change of register and style.

From these examples it can be concluded that while interpreters often tend to choose the original-oriented solution involving cognates, literal translation, synonyms and neologisms. These however, possibly because of their brevity, have undesirable effects on both the accuracy and the effectiveness of communication, even if it is not immediately obvious (eg, in a courtroom monologue that does not require an immediate reaction from the listeners). This tendency reveals a lack of awareness on the part of interpreters of the semantic discrepancies between the legal terms in the SL and the TL, and possibly also a certain numbing of their linguistic sensitivity through their daily dealings with these matters.

Among the most effective techniques is paraphrase, which involves re-formulation at a sentence level in order to transfer the speaker's intention and highlight a specific context. A significant lexico-grammatical shift that helps to achieve this should not be seen as resulting in free or inaccurate interpreting. It may be the only way of achieving listener-centered interpretation and conveying the meaning in the TL. The effectiveness of this technique is best tested when an immediate response is elicited from a dialogue between interlocutors that speak different languages. This response will indicate success or failure in transferring the meaning. In a lengthy courtroom monologue or a dialogue between two legal professionals (eg legal deliberation between an English-speaking prosecutor and an English-speaking judge), it does not become apparent whether the witness has understood the meaning of the utterance or has followed the exchange, as an immediate response does not ensue.

It is important to remember that, unlike in other technical contexts, finding an adequate solution that combines the accuracy necessary for the faithful rendition of the legal text and the reasonable brevity required during interpreting is very challenging. However, interpreters in both national and international courts need to be aware of the features peculiar to legal language. This awareness can be achieved through training in

workshops in legal language, focussed presentations by legal staff or forensic linguists, and ongoing exchange with professional colleagues.

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ⁱ The Tribunal works in two official languages - English and French - with BCS (and some cases, Kosovar Albanian) a working one. Interpretation from and into these languages is done in simultaneous mode, with witnesses who speak other languages (eg, Dutch in Srebrenice case) communicating through consecutive interpreters.

ⁱⁱ For example, whereas judgments are supposed to be given in two languages, they are given in English and later translated into French.

ⁱⁱⁱ Although at the 'Aspects of specialised translation conference' run by the University of North London in 1999, Peter Newmark said that he has reconsidered this dichotomy.

^{iv} Postovani gospodine sudijo (male) or postovana gospodjo sutkinjo (female)" [respected mister judge], or, if there is a full bench / council, then "Postovana gospodo sudije" or " Postovani clanovi vijeca" [respected members of the council].