

Expectancy and Professional Norms in Legal Translation: A Study of Explicitation and Implication Preferences¹

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Abstract This article reports on the findings of a qualitative study seeking to generate hypotheses about norms as psycho-social entities amongst professional producers and commissioners of legal translations, and to shed light on the reasons underlying these norms. In particular, we wish to investigate how perceived norms influence the use of explicitation and implication. The findings are based on experiments involving Danish translators and legal experts who were asked to evaluate three different translations into English of the same Danish legal source text on a set of defined parameters. These parameters focus on the degree to which the use of explicitation and implication is considered to influence meaning transfer, authentic English legal language and style, and the informative function of the translation in a defined translational situation. Based on Chesterman's categorization of norms into expectancy and professional norms, the study leads us to set up two assumptions about the existence of norms at the macro-strategic level that may impact on attitudes across members of different discourse communities within the legal domain. These norms, we believe, may be useful in legal translation training to heighten student translators' awareness that norms are not a uniform entity, but subject to different perceptions depending on discourse community membership.

Keywords translation theory, legal translation, fidelity, norms, asymmetry hypothesis, explicitation and implication, legal translators and legal experts

1 Introduction

What are the norms governing the use of explicitation and implication in legal translation as perceived by legal translators and do they correlate with the expectations of the commissioners of the translation, i. e. legal experts?

In this article we want to explore the attitudes voiced by Danish members of different discourse communities to the use of such phenomena to try to generate hypotheses about norms influencing the use of explicitation and implication in legal translation. Our interest in this subject is connected with our role as teachers of legal translation. The norms that student translators work towards in their training process are, in a manner of speaking, what certified translators do and do not do in real-life legal translation situations. From a theoretical and didactic point of view these norms are interesting, but to our knowledge no comprehensive studies have been made of what the explicitation and implication norms of certified legal translators actually are.

Similarly, in their translation process, certified translators will naturally aim to produce legal target texts (TTs) that will satisfy any norms that the commissioner of the translation, in our case legal experts, may have. And to our knowledge no comprehensive studies have been made of the nature of such expert norms either.

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2 Investigating norms in legal translation

Access to translational norms may be gained via “textual and extratextual sources” (Schäffner 2010: 238). If investigated via textual sources, i. e. translated texts, norms may be seen as leading to “regularities of translation behaviour within a specific sociocultural context” (Schäffner 2010: 237). Such regularities are evidence of norms – not to be confused with the norms themselves (Chesterman 1999: 91).

Chesterman (2006) stresses that “norms do not affect behaviour directly, because their influence must be filtered through the translator’s mind as decisions are made during the translation act. Translators adopt attitudes to norms, if they are aware of them: to follow them or not, as the case may be.”

If norms are accessed via extratextual sources, the focus is on “norms as psycho-social entities” and they are therefore not “directly observable” (Schäffner 2010: 239), but will have to be studied through the attitudes or preferences expressed by the members of a discourse community. This is the focus adopted in this article, where we will consider the attitudes of different groups in the legal domain to the particular phenomena of ex- and implicitation in legal translation (rather than investigating what is actually done in translated texts).

Chesterman’s (1997) categorization of norms into expectancy and professional norms encompasses both the attitudes of translation commissioners and those of producers of translations, in our case legal experts and legal translators. Expectancy norms reflect “the expectations of readers of a translation (of a given type) concerning what a translation (of this type) should be like” (1997: 64). The readers may include the clients of the translators, who may have expectations about factors such as text type and discourse conventions, style and register, lexical choice, but also expectations about target language/target culture adaptations or source text orientation, respectively. Chesterman also notes that expectancy norms “can be influenced by economic or ideological factors, power relations within and between cultures and the like” (1997: 64).

Chesterman’s second category, professional norms, covers the norms of the process regulating the translation process itself (1997: 67). The professional norms reflect or take into account the expectancy norms, since “any process norm is determined by the nature of the end-product which it is designed to lead to” (1997: 67).

The basic process norms in Chesterman’s descriptive system are (1997: 68 f.)

- the accountability norm, which is an ethical norm focusing on the loyalty owed by the translator to relevant parties such as the writer of the source text (ST), the commissioner of the translation, the readers of the TT, etc.;
- the communication norm, which is a social norm focusing on the need to facilitate optimal communication;
- the relation norm, which is a linguistic norm focusing on achieving “relevant similarity” between the ST and the TT.

Chesterman’s concepts will be applied in the following to identify and describe attitudes voiced in connection with the manifestations of ex- and implicitation that we are examining here.

3 Changing socio-cultural constraints leading to changes in legal translation norms?

Translators produce translations under socio-cultural constraints which follow from the historical and social context in which they operate, the implication being that norms are unstable (cf. Toury 1995: 54, as quoted in Malmkjær 2007: 50, Schäffner 2010: 239). Therefore, it is relevant to consider any changes in attitudes to legal text production, and to translation in general, that may impact on legal translation norms.

In legal translation the factor of 'unstableness' is reflected in the attitude to the traditional principle of fidelity, e. g. in connection with the interpretation of the so-called 'translator's oath'² added to certain legal translations. To some, fidelity in the legal domain involves the traditional convention of adhering very closely to the ST (near-literality focusing on linguistic or legal equivalence with ST and source language orientation, e. g. Azar 2001). Focusing on more functionalist approaches, others have advocated a less ST-orientated approach and aimed at a TT that both denotatively and connotatively will enable the TT reader to derive the same meaning as the ST reader, e. g. Alcares/Hughes 2002, Šarčević 1997). One influencing factor could here be the awareness of the need for a change in communicative focus from the sender's perspective to that of the receiver, as advocated by the plain legal language movement, which has been prevalent in both the Anglo-Saxon and the Danish legal world for some time now.

The focus of the skopos theory on the function of the TT as the key factor in translation choices may thus be influential in bringing about a change in the conception of fidelity (see Garzone 2000). However, judging from a global survey of translator habitus, though not of the habitus of legal translators specifically, consensus seems to be non-existing. Katan (2009: 137) states:

Only just over half the professionals (56 %) believe that listener/reader reaction is ideally always their concern. [...] Surprisingly, perhaps, the group with a qualification in translation are no more concerned with the client than the group of professionals as a whole. This suggests that the skopos theory functionalist thinking has yet to permeate the profession, and that Genzler's prediction, "the future of the functionalist approach appears assured", is certainly not (yet) the case.

4 Norms and explicitation/implication in translation

For our purposes explicitation is of two types: addition and specification. 1: Addition is quantitative in nature, and involves the inclusion in the TT of extra lexical elements that either add or repeat meaningful elements. 2: Specification is qualitative, i. e. it adds meaning(s) by using lexical elements that are semantically more informative than the ST lexical elements.

Similarly, we consider implication to be of two kinds: 1: Reduction, which involves leaving out meaningful ST lexical elements in the TT. 2: Generalization, which involves using target-language lexical elements that are semantically less specific than the ST lexical elements (Hjort-Pedersen/Faber 2010).

² One version used in certified translations by Danish translators reads: I, ..., authorized translator and interpreter, competent to translate from ... into ..., hereby declare that the annexed translation in the ... language, and executed by me, is, to the best of my professional knowledge and belief, a true and faithful rendering of the ... original.

In the following we will focus on translational norms related to the use of explicitation and implicitation as micro-strategies in legal translation.

In a study from 2005, Klaudy and Károly formulate their ‘asymmetry hypothesis’ according to which “translators – if they have a choice – prefer to use operations involving explicitation, and often fail to perform optional implicitation” (2005: 14) when moving in the opposite translation direction.

One assumption of relevance to the issue of asymmetry is that the necessary cognitive inferencing processes undertaken by the translator to understand the ST may leave traces in the TT in the form of explicitation (cf. Steiner 2001, Pym 2005). The more complicated the ST, the more cognitive processing the translator will be engaged in. In the process of translating the translator may choose to render his or her fully enriched understanding in the TT and avoid the extra work of returning to the less-explicated level of the ST.

Accordingly, as legal texts are notoriously complex, it can be assumed that explicitation will occur in legal translation – even if the risk involved in specifying or adding information might be taken to be greater than in other types of translation because of the potential legal effects of any additions. Implicitation, on the other hand, should be rarer in legal translation following the ‘asymmetry hypothesis’ and the same considerations of risk-taking.

In an attempt to gain access to translational practices via translation-process and textual sources we have worked with translation experiments involving student translators, professional translators and legal experts who were asked to translate a legal text. Here we focused on elements in the ST that required reference assignment and enrichment in relevance theoretic terms to find out how such reference assignment and enrichment processes were tackled and subsequently rendered in the TT. These experiments have shown that both student translators and professionals quite often choose explicitation, whereas implicitation as a strategy is much less frequent (Faber/Hjort-Pedersen 2009a, Hjort-Pedersen/Faber 2010). Unlike the translators, the legal experts, when themselves doing the translation, were found to opt for implicitation in several cases (Faber/Hjort-Pedersen 2009b).

To further explore the attitudes of both legal experts and legal translators to the phenomena of explicitation and implicitation, we carried out a study in which we asked the participants to evaluate three different translations of the same text on a number of parameters. The ST was an extract of a Danish law report of a judicial decision. Seen in isolation from the ST, the three variants represent comparable renderings of the same content, though with different degrees of explicitness and implicitness in linguistic terms.

The following questions were explored:

- What are the attitudes of legal translators and legal experts, respectively, to the use of explicitation and implicitation in legal translation?
More specifically,
 - What are the reasons given by the two groups of informants in support of their attitudes towards the use of explicitation and implicitation in legal translation?
 - What types of explicitation and implicitation, if any, are preferred or disliked by legal translators and legal experts? And why?

5 The evaluators

The evaluators taking part in the study consisted of six legal translators and five legal experts. The relatively small number of evaluators is connected with the limited range of potential

participants. Two requirements had to be met: a) a sufficient knowledge of legal English and b) willingness to sacrifice time for our experiment.

Two of the legal experts worked in a Copenhagen-based law office handling a high number of international business clients; three were employed as researchers and teachers of law, one of whom had previously been employed in a law office. They all use English on a daily basis in their work life, communicating with clients or writing articles in English, and they also make use of the services of professional translators for translation of Danish texts into English or revision of TTs in English.

The legal translators all perform legal translation on a regular basis, either as freelance legal translators or as law office employees. In Denmark legal translators very often work into their L2 (in this case English).

6 Set-up and methodology

The experiment was designed as a qualitative investigation of the attitudes of the legal translators and legal experts based on both their ratings of the translations and their comments on the reasons for their ratings, which were recorded in individual protocols.

The ST and the translations are shown below. The three translations were produced by us and manipulated in such a way as to allow us to focus on selected instances of ex- and implicitation. We chose this procedure in order to avoid the complexity (or 'noise') that may result from real-world translations, which normally differ on several levels and in many different respects. We wished to restrict discussions of the choice of legal terminology as much as possible, as this was not our primary concern. Our evaluators were not informed of the origin of the translations nor of the area of our interest. The evaluators were given the ST, a background text (providing the context leading up to the decision) and a translation brief, which for the sake of the experiment was stated to have been given to the translators, and they were then asked to evaluate the translations in three different phases.

The brief specified that the translation was needed to inform an English lawyer of a Danish judicial decision and read (our translation): The text is to be translated for an English lawyer who wants to be informed of the decision of the Danish High Court. The reason is that he is working with a Danish law firm on a similar case involving an English party. The commissioner of the translation does not think that the English lawyer has any knowledge of the Danish legal system.

Translation A was the most literal and neutral translation. Translation B contained a large number of explicitations especially relating to agent, location and manner of information as well as to the chronology of the legal scenario described in the ST. In the frequently highly condensed style of Danish legal texts such information is often made implicit and will in relevance-theoretic terms (Blakemore 1992) require enrichment, reference assignment or disambiguation processes. Finally, Translation C was a translation that contained a high number of implicitations and therefore relied on the ability of the TT reader to infer information from the co-text as well as the general context.

The ST:

[...] retsplejelovens § 248 findes dog ikke at udelukke, at byretten som sket har tilladt fremsættelse af afvisningspåstand grundet på indsigelse mod værnetinget. Afgørelsen findes heller ikke uforenelig med EF-domskonventionens artikel 18, idet sagens forberedelse

for byretten på tidspunktet for kærendes processkrift af 15. april 1999 ikke var fremskreden. Det tiltrædes derfor, at byretten har tilladt kærende i henhold til processkrift af 15. april 1999 at fremsætte påstand om afvisning.

Translation A:

However, section 248 of the Administration of Justice Act is found not to prevent the City Court, as was the case, from allowing the submission of a motion for dismissal based on an objection to jurisdiction. Nor is the decision found to conflict with Article 18 of the EC Judgments Convention, as the case preparation before the City Court at the time of the Appellant's pleading dated 15 April 1999 was not advanced. The City Court's decision to allow the Appellant's submission of a claim for dismissal in accordance with the pleading of 15 April 1999 is therefore upheld.

Translation A is, as mentioned, the 'neutral' translation with neither ex- nor implicitations.

Translation B:

However, the Danish Eastern High Court finds that section 248 of the Danish Administration of Justice Act (*Retsplejeloven*) does not prevent the Copenhagen City Court from allowing the Defendant to submit a motion for dismissal, as the Court did in this case, based on the Defendant's objection to the City Court's jurisdiction. Nor does the High Court find the City Court decision incompatible with Article 18 of the EC Convention on Jurisdiction and Enforcement of Judgments (the EC Judgments Convention), as the parties' preparation of the case before the City Court had not reached an advanced stage at the time when the Appellant submitted its pleading of 15 April 1999. The High Court therefore upholds the City Court's decision to allow the Appellant to submit a motion for dismissal in accordance with the Appellant's pleading of 15 April 1999.

To give examples of the types of explicitation made we look at the first sentence in Translation B. Here we find the addition of the element *the Danish Eastern High Court*. This explicitation adds the agent of the verbal act, *find*, to the TT, and at the same time it provides cultural information about nationality and location, *Danish* and *Eastern*.

Translation C:

Section 248 of the Administration of Justice Act does not prevent the City Court from allowing the submission of a motion for dismissal based on an objection to jurisdiction. Nor is the decision contrary to Article 18 of the EC Judgments Convention, as the case preparation at the time of the Appellant's pleading dated 15 April 1999 was not advanced. The decision to allow the submission of a claim for dismissal is therefore upheld.

Considering the same sentence in Translation C the implicitations made are reductions through the omission of the conjunction *dog (however)* as well as of the speech act marker *finds (is found)* and, finally, the chronology expressed by *som sket (as was the case)*.

The experiment was divided into three phases, in which different approaches were adopted to obtain information about the informants' attitudes towards explicitation and implicitation.

In phase 1, we asked the evaluators to let us have their immediate reactions to the three translations, and to give them each a score from 1 to 10 with 10 representing the top score. We also asked the informants to verbalize their thoughts as to why they had arrived at these scores.

In phase 2, we asked the evaluators to score the three translations once again, this time zooming in on three parameters of evaluation. For each translation, and again based on scores ranging from 1 to 10, we now asked the evaluators to consider the degree to which

- (1) the TT renders the meaning of the ST
- (2) the TT appears to them to represent authentic language and style, and
- (3) the degree to which the TT fulfils the TT informative function specified in the translation brief.

In phase 3, we narrowed the focus even more, asking the evaluators to mark in Translations B and C any textual material they considered superfluous/not relevant (in Translation B) or any information that they thought was lacking (in Translation C).

One implication of giving the evaluators access to the three translations at the same time was that the mere knowledge of a different version might affect their awareness of one translation being more explicit than another. However, as our main objective was to elicit information about their attitudes to ex- and implicature, this risk was considered secondary to the need to encourage them to speak of precisely these phenomena.

Given the limited number of evaluators involved, the scores were not subjected to quantitative analysis. Rather we compare the relative scoring of the two groups as such, while correlating these scores with the evaluators' recorded comments. In line with Brownlie (2003), we do, however, make use of quasi-quantification in the form of e. g. 'the majority of', 'some', 'generally'. As Brownlie puts it: "Quasi-quantification is useful in a qualitative approach for obtaining an overall appreciation of groups of people's opinions (translators and readers), of the general nature of a single translation, of data across the whole corpus of translations." (151).

7 Analysis

For analytical purposes we divided the scores into three groups: low (covering scores from 1-4), intermediate (scores from 5-7) and high (scores from 8-10).

7.1 Phase 1

Tables 1A and 1B show the scorings of the two groups in phase 1 of the experiment.

Table 1A: Translator scores – phase 1

Translation A			Translation B			Translation C		
Low	Intermediate	High	Low	Intermediate	High	Low	Intermediate	High
1	1	4	1		5		2	4

Table 1B: Lawyer scores – phase 1

Translation A			Translation B			Translation C		
Low	Intermediate	High	Low	Intermediate	High	Low	Intermediate	High
	3	2	1		4	3	2	

Looking across the translations in the low-score section, Translations A and B were assigned low scores by relatively few informants. Translation C, on the other hand, received low scores from the majority of the lawyer group, whereas the translators appear to be more favourable towards this translation.

Translations A and C received scores in the intermediate category from both groups of informants. With Translation B, the striking feature is that either the informants did not like it, one from each group, or they liked it a lot, with nothing in between.

In the high-score category, the informants seem to be in agreement with regard to Translation B, for Translation A the picture is less clear, whereas with Translation C only the translators give it high scores.

The results of the phase 1 scoring are rather surprising on two counts. The translators' high scores for Translation C seem to conflict with the findings of our previous translation process studies, which showed that implicitations were used very rarely by translators but not infrequently by lawyer translators. With regard to Translations B and C, the most striking result is that the translator group seems to approve of texts with both high levels of explicitation and implicitation in the same translational context.

The comments provided by the evaluators in the protocols for this initial phase point to some of the attitudes and reasons which may be behind the scores. These can be summarized as being concerned with the following three main issues: the ST/TT relation, the question of legal language and legal style and the communicative value.

The ST/TT relation covers deliberations about legal translation in terms of near-literal or direct translation as a prerequisite of precision. Here the concern seems to be with Chesterman's accountability and relation norms and, in the case of the legal experts, the expectancy norm, i. e. does the TT live up to what a translation should be?

The question of legal language and legal style is reflected in deliberations about the flow of the sentences, whether it sounds 'nice' to the evaluator in terms of legal language and style. Here again the norm involved is Chesterman's relation norm.

The communicative value deals with questions that the TT reader might have about the content and his or her needs or preferences. The issues involved concern such factors as comprehensibility and background knowledge about the Danish legal system. This is related to Chesterman's communication norm.

Table 2, which contains our translations of selected comments, illustrates the points made above. For each excerpt from the protocols it is stated whether it is made by a legal expert (L) or a translator (T) and which translation it relates to, e. g. Trans C.

Table 2: Phase 1 comments – translators and legal experts

ST/TT relation	<p>[...] ... [you should not] <i>include too many inferences in a translation if you are not 100 % certain of what is meant.</i> [Trans A] (T1)</p> <p><i>...I would prefer A because it's a translation – it's not really the translator's job to change what is said, sort of to improve on the text.</i> [Trans A] (L1)</p>
Language and legal style	<p>[...] <i>Too many things are implied in C. But it sounds really nice.</i> [Trans C] (T2)</p> <p>[...] <i>It is ok – a bit complex ... That's the way I myself would have translated it, and then the translators would shake their heads at me in disbelief and rearrange everything.</i> [Trans A] (L2)</p>
Communicative value	<p>[...] ... [with B] <i>it's more detailed, it's easier to understand what the ST said. I quite like that more words are used to explain to the reader what the point is. [...] It's of course debatable how much to add, one shouldn't be patronizing.</i> [Trans B] (T1)</p> <p><i>[... B] has a lot of information which makes it a bit cumbersome, but on the other hand the English lawyer is well informed with this version.</i> [Trans B] (L4)</p>

7.2 Phase 2

In phase 2 we were interested in trying to elicit information that would give us a more detailed picture of what these attitudes expressed by the two groups of evaluators actually cover. We hoped that our specific questions as to meaning, authenticity and informative value of the TTs would prompt the evaluators to elaborate on their attitudes. For our purposes, the specific scores provided by the evaluators are again secondary to the protocols, but they may give an indication of the significance assigned to the different parameters and in this way be a key to some of the scoring of phase 1.

In the following we consider the distribution of scores in phase 2 given by each of the two groups in order to zoom in on the possible motives behind the overall scores of phase 1. Tables 3A and 3B present the scores given by the two groups.

Table 3A: *Translator scores – phase 2*

	Translation A			Translation B			Translation C		
	Low	Inter- mediate	High	Low	Inter- mediate	High	Low	Inter- mediate	High
Meaning	1	1	4		1	5		3	3
Authentic value		3	3		5	1		2	4
Informa- tive value		3	3	1		5	1	3	2

Paradoxically, the majority of the translators quite like all three translations. For Translation A importance is attached to the meaning parameter, Translation B scores high on both meaning and informative value, and for Translation C it is authentic value that draws the high score.

Table 3B: *Lawyer scores – phase 2*

	Translation A			Translation B			Translation C		
	Low	Interme- diate	High	Low	Interme- diate	High	Low	Interme- diate	High
Meaning		2	3		3	2	1	2	2
Authentic value	1	3	1			5	1		4
Informa- tive value	1	3	1		1	4	3	1	1

If we compare the scores given by the legal expert group in phase 2, it seems that the reason why most of the legal experts approve of Translation B is that it provides value in terms of authenticity and information. Conversely, they find that Translation C is lacking in informative value, which may explain the relatively low score in phase 1.

The legal experts rate Translation A higher than Translation C in phase 1, but when we look at the scores of phase 2, they do not provide any explanation in that they seem to be more or less evenly distributed on the three parameters, with a slight preference in terms of the meaning parameter.

We now turn to the protocols to explore the connection between the scores and the attitudes. The three issues that we identified in phase 1 are elaborated on in the phase 2 protocols, where the evaluators express their opinions about the translations on the basis of our three questions.

With regard to the ST/TT relation, both groups share the concern about the role of the translator as an interpreter of the ST and the authority that the translator has as a language

producer. As Harvey (2002: 181) puts it with respect to lawyers: "Since lawyers are well aware of the empowering nature of language, they are evidently reluctant to grant translators leave to use the words they choose." The following comments are examples, again translated by us from Danish.

I would rather not be faced with a lawyer saying to me: I wrote it like that, how come the translation reads like this? ... Then it would be best to be able to say: Well, you wrote it, I just translated it. [T6] (general comment)

A is very close to the wording of the ST, you might say, and this makes it a bit difficult to read when it's in English. One might have considered a more active style, but of course it's not the translator's job to change what is said, because [...] the ST is difficult to understand as it is. [Trans A] (L1)

But the protocols show that for the translators this concern seems to be rooted in uncertainty constraints on the one hand and the risk of a subsequent certification requirement.

You have to be 200 % certain to use an explicitation – experience has taught me that sometimes when you think you have understood a connection then afterwards you learn that it was the other way round, because sometimes it is fairly complicated. [Trans B] (T6)

[...] I don't think I would dare do that, though. [...] It takes a lot of confidence to leave out things. [Trans C] (T1)

[...] But I would want to make sure that I wasn't mistaken concerning 'the defendant'. The thing is that it is explicitated that it's his objection. It may be correct, but not being a lawyer, I would want to be absolutely certain. [Trans B] (T2)

I don't think I would necessarily insert an agent, if the translation is to be certified. But by far the majority of the translations we make are not certified, they are just for information, and then I would have no problem doing that. [Trans C] (T3)

This could never have been certified. [Trans B] (T6)

The legal expert group voice their concern in terms of what a translation is. They want to be certain who speaks through the translation, the ST or the translator.

Nothing has been added to explain things, and that is the characteristic feature of a good translation, i. e. that it says exactly what the ST said, so to speak. [Trans A] (L1)

The extra information added takes you away a bit from the ST and so you may be in doubt as to who actually said what, i. e. whether it is the translator giving you her interpretation or the court speaking. [Trans B] (L4)

The issue of precision is also touched upon, although from different points of view.

It confuses things a lot that extra words and things are added. The meaning is there, but it is sort of wrapped up. [Trans B] (L1)

Conversely,

(B) has a lot of details, which makes it a very precise reproduction. [Trans B] (L4)

If it's in the ST, it's probably because it's meant to be there. [...] I always aim at getting totally identical STs and TTs. [Trans C] (T6)

If the job is to make a precise translation, then that has not been done here [(C)], but that is not in fact the commission, is it? [Trans C] (T6)

With regard to language and style, both groups agree that readability is a requirement and to the legal experts especially it is very important that the TT can easily be understood by the TT reader.

(B) is better than (A) because an active style is much better and easier to understand. Especially if we are dealing with different nationalities, different linguistic traditions, then it is a great advantage to use an active style. [Trans B] (L4)

It is understandable, but you might have to read it several times to get it – it's not always the shortest version that will give you the most accessible text. [Trans C] (L3)

[...] and it makes the text less readable, if it contains all these explanations. [Trans B] (T3)

The translators' concern with readability is more focused on the issue of translation bias and whether to opt for a translation that to them resembles an English law report or not.

[...] to me it sounds more authentic when the translator uses verbs, which he or she does a lot more in B. [Trans B] (T2)

Being so concise without any explanations makes it seem more authentic to me, since they [English speakers] would not explain as much as a Dane might tend to do. [Trans C] (T2)

Highly authentic because of the direct manner in which things are phrased. In English judgments, those direct phrases are much more frequent. [Trans C] (T3)

With regard to the communicative value, both groups find the TT reader's background knowledge a factor that is important to consider. For the lawyer group, communicative value has to do with the translation allowing the TT reader to establish adequate contextual assumptions in terms of, for instance, specification of actors and chronology:

But again Translation (B) is much more readable with the details that are inserted. You don't have to wonder who is saying and doing what at the different points in time. I like that. [Trans B] (L3)

It is fairly obvious to a lawyer who is making the objection to jurisdiction from the context, but still I think it is a good thing that you don't have to make contextual inferences in a text written by others. It is better to have it clarified who is doing what. [Trans C] (L4)

Also the provision of legal cultural information in order to be able to save time and costs of a lengthy correspondence is important:

In my view, the most important thing is that the message comes across without the translator interpreting too many things. But on the other hand, if the TT reader does not understand the entire context, then it's OK that the translator clarifies certain things e. g. by writing the Danish Eastern High Court. [Trans B] (L3)

The message is delivered much faster in (B). It is highly likely that you would get questions from the English lawyer with both (A) and (C). [Trans B] (L3)

The advantage of (C) is that it is very brief, but it may result in a lot of extra phone calls or emails. And especially if there are many foreign-language parties involved, it becomes costly, so it's better to have a little too much information than a little too little. [Trans C] (L4)

The translator group is also concerned with TT reader needs, but, with the exception of one, is not very specific about what these needs would be.

I would find it too risky to include all this. Not necessarily risky in this situation, but I don't think there is any reason to do so. Because the TT readers will know very well what it is about. [Trans B] (T6)

Even if it isn't there in the ST, I like it that agents have been specified to be sure that the TT reader will not misunderstand who does what. [Trans B] (T2)

The translators also consider the issue of time, but not specifically from their own point of view, but rather from that of the receiver. Several of the translators mention that the shorter version appears to be more effective in terms of reading time for the expert reader, e. g.

There is no reason to make the text longer. First, it won't help the reader, and second, it takes longer to read. [...] The reader is a busy man, so the text needs to be short and precise. The content must be there, and then he needs no more. [Trans B] (T6)

Figure 1 illustrates and sums up the areas of concern, ST/TT RELATION, LEGAL LANGUAGE AND STYLE, COMMUNICATIVE VALUE, which appear to be behind the attitudes of the two groups, with the concerns that are shared by legal experts and translators appearing inside the circles and the concerns specific to the two groups of evaluators appearing in the columns.

7.3 Phase 3 – Types of explicitation and implicitation preferred or disliked by the evaluators

As mentioned earlier, in phase 3 of the experiment, we asked the evaluators to indicate in the TTs where they found that either too much information was being provided by the TT or too little. In practical terms, it meant marking the exact words or phrases that were found to be inappropriate or superfluous in Translation B, or the parts of the text where information was lacking in Translation C.

In tables 4A and 4B and 5A and 5B, respectively, we have typologized the specific instances in the TTs which each evaluator found to be either providing too much or too little information.

The types of explicitation that were marked as redundant by the evaluators were either additions or specifications such as

- addition of cultural information that relates directly to the Danish system or provides extra information which strictly speaking is semantically redundant, such as *Danish Eastern (High Court)*, *Copenhagen (City court)*, retention of the Danish title (*Retsplejeloven*) in the TT, short and full titles of convention,
- specification of agents and locations (the parties or the courts involved) because of the choice of active voice in English,

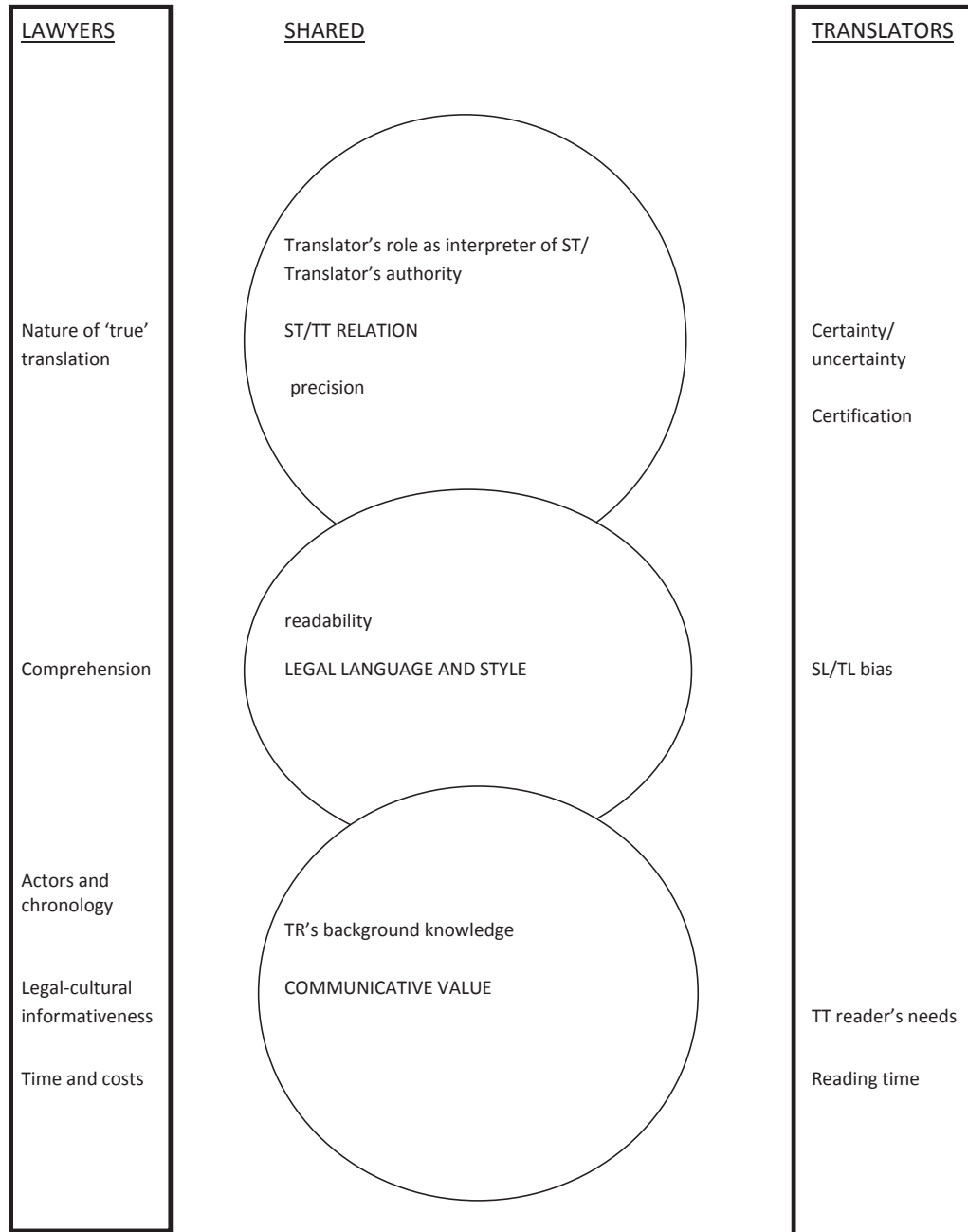


Figure 1: Areas of concern – lawyers and translators compared

- specification of reference (rather than retaining a pronoun) or specification of adjectival phrase meaning.

The implications that were marked as ‘information missing’ to a large extent overlapped with the points above. More specifically, they related to

- speech act marker (e. g. *findes* = [s 248] ‘is found’ – specifies that what follows is the court’s interpretation of the Act or Convention),
- cultural information,
- agents/locations,
- chronology markers/time specifications.

Table 4A: Redundant explicitations – translators

Translation B	Instances of explicitation considered inappropriate or superfluous by the translators. (Each ‘x’ represents one occurrence in the data.)			
	Cultural information	Agents/location Active voice	Reference (pronoun)	Adjectival phrase
T1	xx		x	
T2	x	x		
T3	xx	x		
T4	xxxx			
T5	xx	xx		
T6	xxx	xxxx		

Table 4B: Redundant explicitations – legal experts

Translation B	Instances of explicitation considered inappropriate or superfluous by the lawyers. (Each ‘x’ represents one occurrence in the data.)			
	Cultural information	Agents/location Active voice	Reference (pronoun)	Adjectival phrase
L1	xxx	xxxxx		x
L2	Does not find that any elements are redundant			
L3	x			
L4	xxx			
L5	x	x		

Surprisingly, the phrases: ‘... the case preparation *before the city court*’ (... sagens forberedelse *for byretten*), and ‘at the time of the appellant’s pleading’ (*på tidspunktet for kærendes process-*

krift) were found by two evaluators (one lawyer and one translator) to be superfluous information that should not be provided even though present in the ST.

Generally speaking, tables 4A and 4B show that apart from one lawyer, the evaluators find that Translation B has too many additions or explanations providing cultural information on the legal system(s) and rules. The translators' comments are concerned with considerations of the professional background knowledge of the TT readers and their reading-time constraints.

It may seem a little unprofessional to include all these explanations considering that the recipient knows what it is about, and it makes the text less readable with all those explanations and long names etc. (T3)

The text is too long-winded with all those inclusions of 'Danish', 'Eastern', the Danish title of the act, etc. It makes the text too long for the recipient who is a lawyer, and anyway, most of this is clear from the context. (T4)

The legal experts do not seem too keen either on the inclusion of such culturally anchoring terms as 'Danish/Eastern/Copenhagen' etc., and with the exception of one, they find the double rendering of the title of the Convention to be superfluous.

It is debatable whether it is necessary to put 'Danish' in front of 'High Court' because it can be inferred from the general context, and it is in fact not the name it has in Danish. (L4)

... And then in brackets 'the EC Judgments Convention', that would have been sufficient if that is the English title. It only confuses things to add more words. (L1)

However, the situation changes somewhat when the explicitation relates to agents and locations, i. e. the parties, the courts, etc. Again with one exception, the legal experts are largely in favour of the active voice style with specifications of agents and locations. Although the picture is less clear with the translators, the majority are not against this type of explicitation.

... There again – the readability – if you include the High Court, there is no doubt whose decision it is, whether it is the first instance or second instance. (L3)

I really like the second part in (B) because it is specified that it is the High Court that rules in respect of the City Court's decision, which is missing in Translation C and even in the Danish ST. (T2)

This picture is reinforced when we look at Tables 5A and 5B, where both groups find that Translation C lacks specifications of agents and locations and, to a lesser extent, the speech act markers and chronology/time specifications, and to an almost negligible extent, cultural information.

Table 5A: *Inappropriate implicitation – translators*

Translation C	Instances of implicitation, i. e. information considered to be missing by the translators.				
	Cultural information	Speech act marker	Agent/location	Chronology/time specifications	Specification of adjectival phrase
T1	x		xx	x	x
T2	xx		xxx	x	
T3	x ¹	xx	xxxxx		
T4	x	x	xxx		
T5		x	xx	x	
T6		x	xx	xx	

Table 5B: *Inappropriate implicitation – legal experts*

Translation C	Instances of implicitation, i. e. information considered to be missing by the legal experts				
	Cultural information	Speech act marker	Agent/location	Chronology/time specifications	Specification of adjectival phrase
L1		xx			
L2	x	x	xx	x	
L3	x	x	x ²		
L4	x		xxx	x	
L5				x	

When the evaluators are asked to consider the TTs at sentence level vis-à-vis the same ST sentences, as we did in phase 3, their focus shifts from the TTs as independent texts to particular features that are either added or missing, which they had not been aware of in the earlier phases. In the case of Translation C this focus made several of the translators reflect on the risks involved in leaving out textual elements:

... it is unfortunate in a translation if anything is missing. As a translator you should be careful not to leave out something that you don't think means anything, because it is not my decision, really, if it is in the ST, it is there for a purpose. (T6)

One lawyer stresses that Translation C does not provide sufficient information as to the chronology of the case proceedings because that is an informative feature which is important both in legal texts in general and in the translations:

... the date [of the pleading] is missing, and when was the 'claim for dismissal' actually made? I like to have clarity of the chronology as far as possible, the dates of when the things happened. (L2)

8 Norm hypotheses

The analysis leads us to set up two assumptions about the existence of norms at the macro-strategic level that may impact on attitudes to the use of ex- and implicitations at the micro-strategic level:

Norm 1: The TT should be a precise rendition of the ST.

Chesterman's ethical norm of accountability and linguistic norm of relation play a major role.

Several reasons for this can be extracted from the protocols. In the case of the translators it is a question of risk involved in the issue of certainty/uncertainty and certification. If translators are faced with a translation problem they cannot always be totally certain of the ST meaning, and they may not feel authorized to make any addition or reduction because of their status as interpretive language users in relevance theoretic terms. To them the use of ex- and implicitations may imply that they have taken on the role of a descriptive language user (in relevance theoretic terms) with the resulting responsibility for the truth value of the content.

Moreover, in the experience of translators, the skopos of a translation may change, for instance in the course of a court case so that certification subsequently becomes necessary. This might call for a new translation of the same ST, since it is debatable whether the traditional understanding of the Danish translator's oath with the emphasis on a 'true and faithful' translation will allow ex- and implicitations.

For some of the legal experts a translation is not a 'real' translation if it is not a near-literal translation, and therefore it may not be trustworthy. Or they want to be sure whose voice is speaking in the translation (the original ST drafter or the translator). Therefore, ex- and implicitations are not allowed.

Norm 2: The TT should be easily readable and take the TT reader's background knowledge into account.

Chesterman's linguistic norm of relation and the social norm of communication are at play.

The protocols seem to provide the following explanations. If the skopos of the translation is informative as in this case, then for the translators, a number of considerations seem to be related to this norm, i. e. a target language bias to achieve authentic legal English and higher readability as well as general considerations about TT reader needs.

The perceptions of what constitutes authentic legal English in connection with ex- and implicitation are of course idiosyncratic. Thus to some evaluators, explicitations may be a viable strategy since explicitation of, say, the agent involves the active voice resulting in a legal style which is considered to be authentic legal English, i. e. reflecting the conventions of English judgments. On the other hand, others seem to think that implicitations make the text more authentic in a style which mirrors what is referred to as 'direct statements' of English judgments. Paradoxically, both the active voice style with explicitations and the economical style with implicitations are taken by the translators to imply or result in higher readability.

The protocols showed the translators' difficulty in determining TT reader needs. On the one hand, the TT reader is seen to be part of a different national culture and therefore in need

of some cultural information about the ST background, but on the other hand the TT reader is perceived as a person with expert professional knowledge, which seems to be the primary concern of the translators. This means that the translators wish to avoid patronizing their reader by inserting information that is already available to him or her.

Finally, for reading-time reasons, the translators are concerned about the wordiness effect of the use of explicitations, and for the same reason, implicitations may be an effective strategy because of the readers' background knowledge and ability to draw on contextual assumptions.

Norm 2 also reflects the legal experts' expectancy norm in that they insist on a text presentation with clear chronology and clarity as to agent and location. One effect of this would be for them to welcome such explicitations. However, explicitation has to be targeted at achieving successful communication with their fellow English lawyer, which also means that the factors of time and costs are among the prime considerations. For that reason, 'unnecessary' explicitations are seen to be time-consuming and perhaps cause annoyance, e. g. the provision of both the short and long title of the convention. Their reluctance to accept implicitation is connected with the overall goal of communicating effectively.

We therefore suggest that these two norms co-exist in both professional discourse communities. The emergence of the TT reader focus following both the influence of the skopos theory and the plain legal language movement has thus resulted in a higher degree of focus on TT reader needs even in legal translation depending on the function of the TT.

9 Summing up

To return to the understanding of the principle of fidelity, the analysis shows agreement among both groups that the translator's role is to be that of interpretive rather than descriptive language user in relevance theoretic terms. Therefore, if the skopos of the TT is unknown or changeable, the default position with regard to fidelity is the 'neutral' translation, i. e. limited or no use of explicitation and implicitation.

This is also connected with the legal experts' preconceptions about the 'true nature' of a translation and the lawyer's need to be able to differentiate between the ST message as such and the translator's interpretation of the ST. The translators' attitudes are connected with the other side of the coin in that they see their authority and legal ability to interpret the ST as limited, and therefore they experience what could be called uncertainty constraints.

Both groups further agree that as long as the function of the TT is to inform the TT reader (documental translation), then explicitations are acceptable. However, they differ in attitudes to implicitations. For legal experts, implicitations result in too little information being given to the foreign TT reader. Some of the translators, on the other hand, think that because the (lawyer) TT reader is an expert reader who is able to make the necessary inferences, the use of implicitation allows the translator to balance the goal of authentic English³ with what to them is a text that is comprehensible to a legal expert.

Most of the legal experts think that explicitations save time (and money) through language and culture mediation, whereas some of the translators think that explicitations are unnecessary because of the contextual assumptions already available to the (lawyer) TT reader and

³ Authentic English is seen as an active style without the 'cumbersome' inclusion of all the details of the Danish ST.

because of their concern with not appearing to be patronizing in providing too much detail to an expert reader.

The legal experts seem to be more preoccupied with the end reader of the translation as a member of a different culture. The translators, on the other hand, although also having their focus on end-readers and their place in a different culture, are very much aware of the end-reader as a member of a different expert group to which they as translators do not belong.

In the narrow field of legal translation, our study seems to supplement the asymmetry hypothesis and the prediction that “translators – if they have a choice – prefer to use operations involving explicitation and often fail to perform optional implicitation” in the following ways. Our study identifies the situations that may allow the use of explicitation as situations requiring translation for information purposes only. It also shows that even in such situations, some legal translators would hesitate to use explicitation in order not to violate some sort of maxim of relevance; lawyers are the experts and they should not be told by means of explicitation what they already know. At the same time, our study shows that legal translators are more prone to accept implicitation for reasons both related to the maxim of relevance and a desire for producing texts that resemble authentic English texts.

An analysis like the present one can be faulted in several ways. It involves a relatively small number of evaluators. Moreover, the TTs are manipulated texts which because of the set-up of the experiment may have made the evaluators focus on phenomena that they would not have noticed or been concerned with in a real-life situation. So perhaps we should restrict ourselves to talking about a number of individual reactions to ex- and implicitations. Be that as it may, our analysis involving both translators and legal experts has illustrated that contradictory norms may co-exist. Norms do not appear to be a uniform entity, but subject to different perceptions depending to some degree on discourse community membership. Thus, the analysis has some explanatory value as to the correlation between expectancy and professional norms with regard to ex- and implicitation in legal translation that may be useful in legal translation training. ♦

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