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**THE APPLICATION OF THE THEORY OF NORMS TO THE  
TRANSLATIONS OF INTERNATIONAL TREATIES: A CASE STUDY OF  
THE JORDAN-ISRAEL PEACE TREATY**

**Orieh Khalaf Masa'deh**

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**A thesis submitted in fulfilment of the requirements for the degree of PhD  
Department of Linguistics and Institute of Middle Eastern & Islamic Studies  
University of Durham**

**2003**

**Orieb Khalaf Masa'deh**

**The Application of the Theory of Norms to the Translations of International  
Treaties: A Case Study of the Jordan-Israel Peace Treaty**

**PhD 2003**

**ABSTRACT**

This Thesis explains that the development of a method by which researchers can identify normative behaviour of translators will enable the standardisation of equivalences between English and Arabic. The thesis suggests that achieving such a method will minimise political disputes. In showing that norms have an effect on the behaviour of translators, the thesis examines and evaluates the resulting products of translators, i.e. translations, and presents explanations of why these effects occur. By eliminating the choices of equivalences, which were prejudiced by translators' normative behaviour, the standardisation could be achievable.

The thesis underscores the inadequacy of the suggestion that translators should learn a certain set of translational norms and should follow them. It argues, however, that being exposed to various norms whether, translational, cultural or otherwise plays an important role in the quality of translation. In illustrating the latter, the thesis provides an empirical study by which one hundred different translations are analysed by the use of a manual corpora method. The experiment records significant factors, which prove the effects of norms on translators, and offers different measures by which these factors are evaluated. Accordingly, the thesis examines the normative behaviour of translators in their decision-making process in relation to the translation of legal texts as part of international documents only. The thesis uses the Jordan-Israeli Peace Treaty signed in 1994 as a case study.

The key point is that, if legal and political translation between English and Arabic is prejudiced by negative normative behaviour, this will without doubt result in political disputes. The aim of this thesis is to suggest a method by which Arabic equivalences of English legal terms are relatively standardised and compiled in an index to be referred to by legal translators in future cases. The thesis suggests the establishment of a translation planning committee (TPC) to act as the authority responsible for conducting the suggested method.



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University of Durham**



2003

10 OCT 2003

## Dedication & Acknowledgment

*This Thesis is dedicated to the ones I love;  
my Family*

I wish to offer my thanks to H.M. King Abdullah II of Jordan.

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## Table of Contents

<b>Abstract.....</b>	<b>i</b>
<b>Dedication &amp; Acknowledgment.....</b>	<b>iii</b>
<b>Table of Contents.....</b>	<b>iv</b>
<b>List of Abbreviations.....</b>	<b>ix</b>
<b>Index of Figures &amp; Index of Charts.....</b>	<b>x</b>
<b>Index of Tables .....</b>	<b>xi</b>
<b>Declaration.....</b>	<b>xiii</b>
<b>Statement of Copyright.....</b>	<b>xiv</b>
<b>CHAPTER I: INTRODUCTION.....</b>	<b>1</b>
<b>CHAPTER II: CURRENT DOMINANT TRANSLATION THEORIES .....</b>	<b>14</b>
<b>Introduction .....</b>	<b>15</b>
<b>Part One: Linguistically-Oriented Approach.....</b>	<b>20</b>
<b>2.1.1. Text Linguistics.....</b>	<b>22</b>
<b>2.1.2. Corpus-Based Translation .....</b>	<b>26</b>
<b>Part Two: Translation as a Cross-Cultural Event.....</b>	<b>34</b>
<b>2.2.1. Language and Culture.....</b>	<b>35</b>
<b>2.2.2. Skopos Theory .....</b>	<b>38</b>
<b>Part Three: Descriptive Studies Approach.....</b>	<b>43</b>
<b>2.3.1. Translation as Manipulation.....</b>	<b>47</b>
<b>2.3.2. Translation in the Context of the Receiver’s Culture.....</b>	<b>51</b>
<b>Summary .....</b>	<b>60</b>

<b>CHAPTER III: RESEARCH METHODOLOGY AND THE THEORY OF NORMS.....</b>	<b>65</b>
<b>Introduction.....</b>	<b>66</b>
<b>Part One: Empirical Methodology .....</b>	<b>68</b>
3.1.1. Thesis Research Methodology.....	69
3.1.2. Identification of the Research Problems.....	71
3.1.3. Research Question(s) and Thesis Research Methods .....	73
3.1.4. Factors Affecting the Research Methodology.....	77
3.1.4.1. Contextualisation.....	77
3.1.4.2. Translation as a Decision-Making Process.....	79
<b>Part Two: The Theory of Norms .....</b>	<b>85</b>
3.2.1. Norms as Objects of Descriptive Studies.....	85
3.2.2. Norms as a Social Concept.....	86
3.2.2.1. Definition of Norms.....	89
3.2.2.2. Force of Norms.....	90
3.2.2.3. Existence of Norms.....	92
<b>Part Three: Translation as a Norm-Governed Activity.....</b>	<b>95</b>
3.3.1. Norms and Equivalence.....	99
3.3.2. Equivalence.....	99
3.3.2.1 Equivalence Within the Descriptive Approach.....	106
3.3.2.2 Toury's Understanding of Equivalence.....	109
3.3.3. The Effect of Norms on the Choice of the Translator .....	111
3.3.4. Toury's Norms.....	113
3.3.5. Legal Norms .....	120
<b>Summary.....</b>	<b>122</b>

<b>CHAPTER IV: LEGAL TRANSLATION: INTERNATIONAL TREATIES..</b>	<b>126</b>
<b>Introduction.....</b>	<b>127</b>
<b>Part One: Legal Language.....</b>	<b>130</b>
4.1.1. Features of Legal English .....	131
4.1.2. Legal Documents: International Treaties.....	135
<b>Part Two: Translation of Legal Documents .....</b>	<b>139</b>
4.2.1. Historical Background.....	139
4.2.2. Sensitivity of Legal Translation.....	141
4.2.3. The Process of Translating a Legal Text.. ..	143
<b>Part Three: Challenges Facing the Translation of Legal Texts .....</b>	<b>146</b>
4.3.1. The Translator's Legal Competence.....	146
4.3.2. The Differences in the Legal Systems.....	149
4.3.3. Equal Authenticity.....	153
4.3.3.1. The Lack of Coherence.....	154
4.3.3.2. The Effect of Culture .....	155
4.3.3.3. Loyalty (Source and Target Orientedness).....	159
<b>Part Four: Analysing Legal Text.....</b>	<b>161</b>
4.4.1. The Need for Standardisation of the Translations of Legal Concepts.....	163
4.4.2. Choice and Importance of the Case-Study (The Jordan Israeli Peace Treaty).....	166
4.4.3. Analysis of the ST and its Peculiarities.....	170
4.4.4. Legal Interpretation and Translation Difficulties arising in the ST.....	174
<b>Summary .....</b>	<b>191</b>

<b>CHAPTER V: EXPERIMENT DESIGN AND PROCESSING (PART ONE)</b> .....	<b>196</b>
<b>Introduction</b> .....	<b>196</b>
<b>Part One: Experiment Design</b> .....	<b>201</b>
<b>5.1.1. Processing of the Experiment</b> .....	<b>203</b>
5.1.1.1. Choice of Informants .....	203
5.1.1.2. The Layout of the Survey.....	205
5.1.1.2.1. The Questionnaire Design.....	205
5.1.1.2.2 Choice of the ST.....	208
<b>5.1.2. Controlling the Experiment</b> .....	<b>209</b>
5.1.2.1. The Distribution of the Survey.....	209
5.1.2.2. Problems Faced During Fieldwork .....	210
5.1.2.2.1. Situational Problems .....	211
5.1.2.2.2. Extra-Situational Problems .....	211
<b>Part Two: Results of Questionnaire</b> .....	<b>213</b>
<b>5.2.1. Cognitive Experience</b> .....	<b>216</b>
<b>5.2.2. Extra Cognitive Experience</b> .....	<b>221</b>
<b>5.2.3. Official Translation Experience</b> .....	<b>226</b>
<b>5.2.4. Students' Adequate Translation Training</b> .....	<b>229</b>
<b>CHAPTER V: EXPERIMENT DESIGN AND PROCESSING (PART TWO)</b> .....	<b>233</b>
<b>Part Three: Translation Analysis</b> .....	<b>233</b>
<b>5.3.1. Translation Stylistics (Occurrence of Translation Patterns)</b> .....	<b>234</b>
5.3.1.1. Data Representation and Transcription .....	237

5.3.2. Occurring Patterns in Translation and Explication of These Patterns and Their Relation to the Behaviour of Translators with Reference to the Information Given in the Questionnaire.....	243
5.3.2.1. Linguistic Translation Behaviour .....	245
5.3.2.1.1. Literal Translation.....	246
5.3.2.1.2. Explication and Disambiguation.....	250
5.3.2.1.3. Omission.....	253
5.3.2.2. Extra-linguistic Translation Behaviour.....	255
5.3.2.2.1. Conformity to Cultural Norms .....	256
5.3.2.2.2. Consistency in the use of Equivalence.....	261
5.3.2.2.3. Preserving the Legal Text Style .....	268
5.3.3. Conformity to Norms (Occurring Regularities) .....	270
5.3.3.1. Overall Evaluation .....	273
<b>Part Four: Results .....</b>	<b>277</b>
<b>CHAPTER VII: CONCLUSION.....</b>	<b>286</b>
<b>References.....</b>	<b>290</b>
<b>Appendices.....</b>	<b>308</b>
<b>Appendix I: Survey: Part One: Questionnaire.....</b>	<b>309</b>
<b>Appendix II: Survey: Part Two: Translation Task .....</b>	<b>317</b>
<b>Appendix III: Overall Evaluation Table .....</b>	<b>319</b>
<b>Appendix IV: The Complete Text of the Peace Treaty.....</b>	<b>321</b>
<b>Appendix V: The Official Translation of the Peace Treaty.....</b>	<b>334</b>

## List of Abbreviations

<b>DTS</b>	<i>Descriptive Translation Studies</i>
<b>ESP</b>	<i>English For Specific Purposes</i>
<b>MT</b>	<i>Machine Translation</i>
<b>LAT</b>	<i>Legal and Administrative Terminology</i>
<b>SL</b>	<i>Source Language</i>
<b>ST</b>	<i>Source Text</i>
<b>TE</b>	<i>Target Equivalence</i>
<b>TEC</b>	<i>Translational English Corpus</i>
<b>TL</b>	<i>Target language</i>
<b>TP</b>	<i>Translation Planner</i>
<b>TPC</b>	<i>Translation Planning Committee</i>



## Index of Figures & Index of Charts

### Index of Figures

Figure One :	<i>Nida's Language and Culture</i> .....	36
Figure Two:	<i>Holme's Basic Map of Translation Studies</i> .....	44
Figure Three:	<i>Empirical Methodology in Translation Studies</i> .....	69
Figure Four:	<i>Translation as a Decision-Making process</i> .....	81
Figure Five:	<i>Composing a Treaty</i> .....	136
Figure Six:	<i>Toury's Tripartite Model</i> .....	233
Figure Seven:	<i>Conformity to Norms</i> .....	244
Figure Eight:	<i>Overall Evaluation</i> .....	275
Figure Nine:	<i>Types of Translators</i> .....	284

### Index of Charts

Chart 1.a & Chart 1. b :	<i>Cognitive Experience</i> .....	220
Chart 2.a & Chart 2. b :	<i>Extra-Cognitive Experience</i> .....	225
Chart 3.a & Chart 3. b :	<i>Official Translation Experience</i> .....	228, 229
Chart 4.a & Chart 4. b :	<i>Students' Adequate Translation Training</i> .....	232

## Index of Tables

<b>Table 1:</b>	<b>Cognitive Experience.....</b>	<b>216</b>
<b>Table 2:</b>	<b>Extra-Cognitive Experience.....</b>	<b>221</b>
<b>Table 3:</b>	<b>Validity of Official Translation.....</b>	<b>226</b>
<b>Table 4:</b>	<b>Students' Adequate Translation Training.....</b>	<b>230</b>
<b>Table 5:</b>	<b>Data Representation and Transcription: Article 1.....</b>	<b>237</b>
<b>Table 6:</b>	<b>Data Representation and Transcription: Article 2.....</b>	<b>238</b>
<b>Table 7:</b>	<b>Data Representation and Transcription: Article 3.....</b>	<b>239</b>
<b>Table 8:</b>	<b>Data Representation and Transcription: Article 4.....</b>	<b>240</b>
<b>Table 9:</b>	<b>Data Representation and Transcription: Article 5.....</b>	<b>241</b>
<b>Table 10:</b>	<b>Data Representation and Transcription: Article 6.....</b>	<b>242</b>
<b>Table 11:</b>	<b>a. List of Terms Translated by the use of Literal Translation.....</b>	<b>247</b>
	<b>b. Regularities &amp; Classification.....</b>	<b>248</b>
<b>Table 12:</b>	<b>a. List of Terms Translated by the Use of Explication Strategy.....</b>	<b>251</b>
	<b>b. Regularities &amp; Classification.....</b>	<b>251</b>
<b>Table 13:</b>	<b>a. List of Terms Translated by the Use of Disambiguation.....</b>	<b>251</b>
	<b>b. Regularities &amp; Classification.....</b>	<b>252</b>
<b>Table 14:</b>	<b>a. List of Omitted Terms .....</b>	<b>254</b>
	<b>b. Regularities &amp; Classification.....</b>	<b>254</b>
<b>Table 15:</b>	<b>a. Conformity to Cultural Norms.....</b>	<b>257</b>
	<b>b. Regularities &amp; Classification.....</b>	<b>258</b>
<b>Table 16:</b>	<b>a. Consistency in the use of Equivalences.....</b>	<b>262</b>
	<b>1. Parties.....</b>	<b>262</b>
	<b>2. Recognise.....</b>	<b>263</b>
	<b>3. Boundary.....</b>	<b>264</b>

4. Territory.....	265
5. Their relations.....	266
6. Through it .....	267
7. Cooperation.....	268
b. Consistency in Using the Correct Equivalences.....	268
c. Average of Consistency Among the Four groups of Translators...	268
Table 17: a. Preserving Legal Text Style.....	268
b. Regularities & Classification.....	269
Table 18. Linguistic Translation.....	271
Table 19. Extra-Linguistic Translation.....	272
Table 20. Overall Evaluation.....	275

## **Declaration**

The material contained in this thesis has not been submitted for a degree in this or any other University.

### **Statement of Copyright**

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## CHAPTER ONE

### INTRODUCTION

#### **The Application of the Theory of Norms to the Translations of International Treaties: A Case Study of The Jordan-Israel Peace Treaty**

In the rapidly changing world of international politics, the rising demand for accurate, coherent and clear laws has substantially increased the need for professionalism in translation. Long known to be a tool of manipulation, translation served a considerable number of empires throughout history. Governments realized that translation plays a crucial role in conveying the true words of law; consequently, translation has become one of the most competitive professions of the modern era. The interaction between the European languages and Arabic was no exception to the political manipulation and shaping and reshaping of political history. Somekh (1981:193) claims that the 19<sup>th</sup> century marks the beginnings of translation from European languages to Arabic and hence exposing the Arab-speaking society to European cultural influences. He also claims that these translations, which were mainly from English and French, were directed towards legal, journalistic and technical texts. Translations also included military texts especially after the French invasion of Egypt in 1798. This period marked the start of modern day mass translation sponsored by governments. (Cleveland 1994: 67)

In the present day, translation is now a popular profession due to the increase in demand of undergraduate and postgraduate programs at universities all over the world opening new doors to both scholars and students in the field and resulting in new approaches, new theories and new debates. All this reflects the growing concern in relation to the increasing demand for better translations and translators with higher

degree of knowledge, skill and competence. The notions of the satisfactory (appropriate) translation, and the competent translator became the heart of discussion within academic circles. Conferences, workshops and seminars are held with the aim of finding the best methods by which translators' competence may be enhanced and thus improving translation quality.

The current thesis is no exception; the core of this research addresses the complexity of legal translation. The aim of conducting this research is an attempt to find a method through which the translators' choices of equivalences may be standardised. If this can be achieved, then this thesis will be able to suggest that the tested method can be adopted at a higher level of processing and can result in the compilation of a standardised list of equivalences appearing in an index to be used in future translations. The thesis also suggests that if this method proves achievable, a Translation Planning Committee (TPC) ought to be established to act as the authority responsible for conducting and supervising the method. In the case of the current research, this process is only performed within the limits of the legal text from English to Arabic. The case study that is used involves chosen parts taken from the Jordan-Israel Peace Treaty signed on 1994<sup>1</sup>.

The reason for choosing this particular treaty stems from two factors: its importance as a political document, and its importance as subject of translation. The treaty has played an important role in reshaping the future of Jordanian-Israeli relations. As the Middle East enters the twenty-first century, it is "torn by political uncertainty, economic inequity, social turbulence and psychological incoherence". (Bill & Springborg 2000: xi) Hence, various Middle Eastern political leaders have felt it prudent to develop policies with the aim of achieving stability and peace as a

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<sup>1</sup> See Appendix IV

prerequisite for modernisation and development. Jordan as a Middle Eastern country has always sought genuine peace with Israel. Therefore, caught amidst rapid political and economic transformation, the late King Hussein tried to lift Jordan from the firm grip of political turbulence and economic uncertainty. Hence, searching for the country's political stability, peace with Israel was an inevitable solution. The Peace Treaty between the two belligerent countries was signed on the 26<sup>th</sup> of October 1994. Although the Jordan-Israel treaty's articles were implemented, comprehensive peace in the region failed to materialise. The peace treaty as a document might have opened channels for negotiations and benefited both countries, but it has not solved the ongoing problems in the heart of the Middle East.

The Peace Treaty as a document stands today as a historical document in the political history of Jordan. The original transcript of the peace document was written in English but in order for the treaty to be ratified by the Parliaments of the involved countries; Jordan and Israel, and to be accessible to the public of both countries it was translated into Arabic and Hebrew, the native languages of the two negotiating parties. Hence, a team of professional translators was assembled for the purpose of translating the treaty. The team included highly qualified translators from: the Royal Court, the Prime Ministry and the Jordan News Agency who act as the official translators of the government. The team's work and efforts culminated in the official translation<sup>2</sup>.

The nature of the treaty is highly sensitive, dealing with crucial political and economic issues which play a major role in the stability of the region. These issues

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<sup>2</sup> Throughout the thesis, the description 'official translation' will refer to the aforementioned version of translation published by the Jordan Media Group, Publication No. 18, Third printing, August 1995.



include: borders, security, territorial waters, tourism, trading, etc. Therefore, those who translated this legal document must have undertaken the greatest efforts in order to ensure that their translation says exactly what is intended to be said while at the same time ensuring that there is no place or opportunity for misinterpretation. The second factor involves the importance of the document as a subject of analysis. As subject of translation the peace treaty makes an authentic piece of translatable and translated material, it comprises a rich source of translation analysis.

The hypothesis, which is tested through the current research, involves the application of the theory of norms to the Arabic translation of the text of the Jordan-Israel Peace Treaty. The research aims to explain whether or not translators are governed by norms during the act of translation, and how this affects the resulting product. If convincing results are achieved by the experiment used to prove the hypothesis, the research endeavours to suggest a method by which legal translational terms between English and Arabic may become standardised.

With the compilation of a legal translation index based on the method suggested in the current thesis, the researcher hopes that this method will bring the legal/political conflicts arising from misinterpretation of text to a minimum. However, it is clear that the current research will not be able to include all equivalents occurring in the legal and political languages given that the text used to conduct the experiment is not a comprehensive text. Nevertheless, the significance of this research and its contribution to the field of translation studies is that by making use of the results achieved from corpus-based studies of translation, the status of the applied branch of translation studies will considerably advance.

With regards to the layout of the current thesis, it constitutes a combination of a theoretical part and a practical part. The aim is to reveal the theoretical framework for

translation as a theory of action, and to show how translators put the theory into action in order to achieve the desired translation effect in practice. The current thesis consists of six chapters: Chapter One being the Introduction, while Chapter Two presents a highly theoretical review of the literature of the theories employed in the current research in general. Chapter Three presents a specific explanation of the empirical methodology employed in the thesis and provides a review of the theory of norms and its relation to translation. Chapter Four is devoted to legal translation and examining the difficulties arising in the chosen ST. Chapter Five consist of two halves; it presents the experiment design and the data analysis. The two halves of Chapter Five constitute the heart of the research and include the findings and results of the empirical experiment. Finally, Chapter Six provides a conclusion to the thesis. Following is a summary of the thesis' chapters in detail:

Chapter Two reviews the literature of current translation theories covering the last 40 years. It presents the fundamental changes which have affected translation theory and have thus resulted in the emergence of two major schools of thought in translation theory. Chapter Two presents the neat split between the Linguistically-Oriented School and the Descriptive Studies School and reveal the similarities and differences in their approaches to translation studies. Chapter Two is divided into three parts: Part one gives a detailed description of the methods adopted by the Linguistically-Oriented School represented by the subject of Translatology, which was developed in Germany by the Leipzig School. The most influential feature that drew the Leipzig School together was their ongoing research into the notion of 'equivalence'. The two dominant approaches which branched from the Linguistically-Oriented School are: the 'text-linguistics approach' and the 'corpus-based translation approach'. The former based its theories on the importance of the text as the basic unit of

communication, and through this, the concept of the pragmatics of translation was introduced. The later, corpus-based translation, is the most recent approach in translation studies which was affected by the Linguistically-Oriented School. The focus of this approach is the explanation of translation itself as a textual phenomenon, by way of computer-based programs, which work to analyse languages by mapping their forms and patterns. Part two explains translation as a cross-cultural approach. Followers of this approach saw that the notion of culture should be integrated in the study of translation and hence presented two new views of translation; the first view sees translation as closely connected to culture, whereas the second presented the theory of 'skopos' or 'aim' of translation. Part three includes an explanation of the Descriptive Translation Studies (DTS) approach, which emerged as an empirical approach to the study of translation, opposing the traditional approach in linguistics, which for a long time attempted to draw a dividing line between language and extra-linguistic reality. The two major schools which emerged from this approach were 'translation as manipulation' and 'translation in the context of the receiver's culture'. The former suggested that translations imply a degree of manipulation of the source text in order to fulfil a particular purpose in the target culture. The latter, which is the focus of the current research, regards translation as a network of different players working together to achieve one particular goal, the goal being translations to be regarded as facts of the culture which hosts them. (Toury 1995b: 136)

Whereas Chapter Two reviews a general description of the recent literatures applied to translation studies, Chapter Three is dedicated to explaining the research methodology of the thesis and its theoretical framework. It includes a general explanation of the empirical methodology employed in translation studies and explains its relation to the theory of norms, which was presented by the followers of

DTS. Chapter Three addresses two basic requirements of the current thesis, it describes its research methodology and presents a detailed explanation of its theoretical framework. It explains the empirical methodology used in the current thesis which describes the phenomenon involving the application of the theory of norms on translations of international treaties. The research then establishes general principles by means of which this phenomenon can be explained or predicted. With the use of a qualitative approach and adopting the method of corpora in analysing translations, the research expects to employ means for describing and attempting to understand observed regularities or patterns in the behaviour of translators. Chapter Three is divided into three parts; part one presents the methodology that is adopted in the research, which includes the identification of the research problem and research questions in addition to the methods of analysis used to tackle the problem and the factors affecting it. It demonstrates that the research employs a descriptive systemic approach on the whole of the thesis on one hand, and uses corpora in the analysis of the empirical study on the other. Hence, in the current research ‘corpora’ is considered the applied branch of translation studies, which is used in order to understand the constraints under which translators operate in their decision-making process, and which presumably affect their products. Chapter Three puts forward the thesis’ question which involves the concept of norms. It also proposes the hypothesis as to whether corpus translation analysis will enable finding an explanation as to whether translators are affected by certain sets of norms and why. And whether by achieving this, one can use the findings in order to standardise translation equivalents. Hence, part two presents the role of ‘norms’ as an object of DTS and its relation to translation studies. It explains the notion of ‘norms’ within the social context by pointing out both its features and role in society, as “the prescribed guide for conduct

or action, which is generally complied with by a member of society". (Ullman-Margalit 1977:12) Part two describes the features of norms including their cultural nature, degree of durability, and issues regarding their existence and validity. On the other hand part three discusses the relation between translation and norms; it presents an analytical view of translation as an activity constrained by norms. Part three begins with discussing the relation between 'norms' and 'equivalence'. It provides a description of the meaning of the notion of equivalence and gives an explication of the space this notion occupied in translation studies, and further explains why it was rejected by the descriptive studies' school as the centre of research in translation studies. Part three also presents an explanation of the role 'equivalence' plays in DTS, and its relation to the theory of 'norms'. Chapter Three highlights the work of the translation-scholar Gideon Toury commencing with his understanding of the notion of 'equivalence' to his application of 'norms' to translation. Toury believes that norms are the means which determine what type of translational relation there will be between a source and a target text, and hence a description of Toury's norms of translation is presented.

On a different level, Chapter three introduces the distinction between 'legal norms' and 'translation norms applied to legal texts', and their connection to each other. It points out that legal norms are used in order to help avoid the ambiguity or vagueness in the interpretation of legal texts, whereas translation norms applied to legal texts define the choices of the translator in choosing the most appropriate translation strategy which guarantees the same legal effect in the TL. The main objective of Chapter Three is to describe the methodology which underlies the research and its relation to the application of the theory of norms to the examined text. It also presents a literature review of the theory of norms and the effects they have on the act of

translation and translation analysis. It is the application of the theory of norms on translation which forms the base of the current research.

Chapter Four is designed to discuss the topic of legal translation. The purpose behind introducing Chapter Four is to draw attention to the fact that a legal text is a highly specialised form of text and hence translations of such a text should be treated differently to any other genre of translation. Chapter Four points out that legal translation, in the present time, is classified as an independent discipline supported by specialised training institutions and identified as separate branch of translation studies in many universities around the world. Nevertheless, Chapter Four addresses only one genre of legal documents, that of 'International Treaties', which have always had a special weight in the politics of the world, due to the role they play in International disputes. Therefore, in order to minimise the political disputes which arise from misinterpretation of legal text, it seems obvious that there should be some sort of methodology which translators of legal text should follow in general, and a standard form of legal concepts' equivalents which should be applied in the translations of this genre of legal text in particular.

Chapter Four is divided into four parts: Part one addresses legal language in general. It gives a description of the differences between standard and legal languages and their relation to each other. Part one also points out the features which characterise legal language and the significance of these features in the work of the translator. It further discusses the genres of legal texts and in particular international treaties, and hence a full description concerning the composition of a treaty is presented. Part two provides a historical background of the translation of legal documents and the sensitivity this form of translation carries within it; therefore, the research also presents an explanation of the process of translating a legal text. This leads to the

third part of the chapter which presents the challenges that face the translator of legal texts in general, including the translators competence, differences in the legal systems and the issue of document authenticity. Whereas part three describes the problems facing the translator of legal texts in general, part four is dedicated to the analysis of the chosen ST. Firstly, part four explains the significance of choosing the Jordan-Israel Peace Treaty as a case study in the current research. It also gives a description of the historical background of the ST. The aim of providing a background to the Peace Treaty is to emphasize the fact that this background will serve as the context which should be taken into consideration by the translators undertaking the empirical experiment. Chapter Four also points out the peculiarities of the examined ST, it highlights the problems which are expected to face translators undertaking the empirical experiment in the current research. Whilst taking the peculiarities of the ST into consideration, and in analysing the legal interpretation of the text, part four presents suggestions as to how translators might tackle the translation difficulties and ways to solving them. The choices made by translators are only tested on the equivalence level.

On the other hand, Chapter Five presents the practical part of the thesis. In addition to adopting an empirical approach to the present study, the use of the qualitative method is also employed in order to explain social interactions. (Glassner & Morena 1989:15) The aim is to acquire as much information as possible concerning a particular social reality, and then build a general theory based on those findings. This involves looking at the interactions between the various players in given situations. In Chapter Five the thesis investigates the research phenomena with the aim of achieving tangible outcomes resulting from its application. This study principally looks at the hypothesis that translators are governed by translational and cultural norms, then tries

to identify reasons as to why this occurs, and how translation experts can use this phenomenon to standardise Arabic equivalents of English legal terms in an attempt to minimize the damage done by misinterpretation of international documents. The empirical experiment looks at translational norms in primary material, i.e. the translations, and secondary material, i.e. theoretical or critical approaches of how the translators should proceed, what is expected of them, etc.

Chapter Five consists of two halves. The first half includes the experiment design and the way it is processed in addition to the first part of the data analysis, whereas the second half includes the second part of the data analysis and the results of the empirical experiment. Hence, Chapter Five is divided into four parts.

In part one, Chapter Five acknowledges that the research experiment is the core of the research and is therefore designed carefully. In part one the units of the experiment are defined clearly, and the relationship between them is also identified. Part one firstly presents the experiment design, which includes the study design *per se* and the logistical arrangements that the research proposes to undertake through the experiment. This contains the measurement procedures of the sampling strategy, the frame of analysis, in addition to the organisation of the empirical experiment by which the examined translations are analysed. It presents the processing of the experiment, including the choice of informant (sampling), choice of the ST and controlling the experiment. It also presents a detailed account of the problems faced whilst conducting the field-work. Most importantly, it gives a detailed explanation of the survey<sup>3</sup> which is used as the basis for the empirical experiment. The survey provides the data which is analysed and on which the current thesis bases its results. The survey is distributed to four groups of informants; it includes professional

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<sup>3</sup> See appendices I & II



translators, lecturers of translation, MA students of translation and undergraduate students of translation. The survey is divided into two parts: The first part is a questionnaire which includes information about the informants' general and translational backgrounds. The questionnaire itself is divided into sections; part of it is designed to address all informants in general, whereas there are two specific sections, one to address the translators who took part in the official translation, and the other addresses both MA and undergraduate students who take part in the experiment. The data resulting from the questionnaire is tested against the second part of the survey which is a translation task of the chosen ST which consists of excerpts taken from the text of the Jordan-Israel Peace Treaty.

Part two presents the processing of the questionnaire; it provides information presenting the informants' cognitive and extra-cognitive experience and the effects of their experiences on the decision-making process, and hence strategies used through the translation process. Through the processing of the questionnaire, the data is analysed in the form of tables and charts.

Part three includes the analysis of the resulting translation. It is divided into three stages: stage one portrays the translation stylistics by indicating the set of inventory the translators had at their disposal and the options that were chosen. This is presented in the form of tables which include data representation and transcription. Stage two presents the occurring patterns in the translators' behaviour; it also provides an explication of these patterns and their relation to the behaviour of the translator with reference to the information given in the questionnaire in order to test their conformity or non-conformity to norms. The difficulties arising in translation and their solutions are based on those suggested in Chapter Four as a result of the legal interpretation of the ST. In searching for behavioural choices made by translators

during the act of translation, the current thesis makes use of corpus analysis by applying the tactics of this method manually through the counting mode. As a final stage, stage three presents the result of the data analysis. It displays the translators' conformity or non-conformity to norms through the analysis of the resulting regularities. On the other hand, although this thesis does not aim to assess the quality of the translation, nevertheless, it provides a method by which the resulting translations are assessed. As the fourth and final part, Chapter Five presents the results of the empirical experiment.

The current research will put the theory of norms in translation to the test in the hope of proving that there are a number of significant factors which play a role in the choices made by the translators. By explaining why these factors affect the translators' choices, the research aspires to recommend a method by which Arabic equivalences of English legal terms may become standardised.

**Why translation theory is in a mess and what can we do about it?**

*(Bell, 1986)*

## CHAPTER TWO

### CURRENT DOMINANT TRANSLATION THEORIES

#### **Introduction**

Translation theory refers to the entire discipline of the whole system of translation. It includes systemic theories, methodological approaches, hermeneutics, etc. It also covers translation studies which deal with issues like the production and description of actual translation. (Shuttleworth & Cowie 1997: 183-185) The complexity of translation is an issue long discussed and thoroughly debated throughout history. Alongside the canonised literature, translation always assumed a significant role and flourished in what we nowadays call Translation Studies.

In reply to Bell's question, "Why translation theory is in a mess?" (Bell 1986: 280) Gutt claims that many different explanations have been offered for this disappointing state of affairs. One is that translation theorists were preoccupied for too long with debating unfruitful issues, such as the Roman scholars who flourished in the fourth century. (Gutt 1991: 2) Those scholars tackled issues relating to whether translation should be 'literal' by preserving the ST wording intact, or 'free' by paying more attention to producing a naturally reading TT. (Shuttleworth & Cowie 1997: 62) Others were those who tried to find an answer to the possibility of translation 'translatability' and dealt with areas ranging from individual words to entire texts. Another suggestion is that the understanding of translation has remained insufficient because it has never been studied in its own right, but merely as a sub-domain of some other subjects, such as: philosophy, literature, linguistics or foreign language teaching. Some scholars have provided a simple, if radical, explanation, which states

that translation, is simply not open to scientific investigation because it is an art or a skill. Steiner argues that the precisions to be achieved in translation are of an intense but unsystematic kind and he concludes from this that the study of translation as a whole is not in truth a science but an exact art. (Steiner 1975: 295) In attempting to trace the history of the theory of translation, it is not clear which particular line of reasoning it followed. Kelly points out that translation theory

has not moved through the centuries on a linear, logically consistent, progressive course from partial result, to partial result, but rather that it is characterised by the juxtaposition and opposition of various points of view in translation theory and different principles of translation method. (Kelly 1979 cited in Wilss 1982: 27)

It is also not easy to define or draw a line between different stages of progress in that field, especially given that all suppositions introduced into the field of translation have similar features and they overlap within themselves and each other. Koller summarises the situation by saying that:

The activity of translating and the products of this activity, translations, are studied from various perspective, in accordance with various theoretical interests and aims, and with recourse to various methods: literary, text-theoretical, philological, linguistic (including contrastive and psycholinguistics), comparative and cultural-historical etc. (Koller 1995: 192)

Toury suggests that, “theories are constituted in response to needs. Consequently, different theories inevitably fulfill different functions as well as apply to different objects”. In his understanding of this diversity in relation to translation, Toury believes that theories in translation studies apply to “different aspects of seemingly one object”. (Toury 1989a: 102) In researching translation theory, scholars followed various approaches in an attempt to map out its development, each having different areas of interest which included: the literature translated, loyalty towards ST or TT, the assessment of the quality of translation, the actual process of translation, the behaviour of translators, to mention but a few. With the vast amount of research

conducted in translation theory one can conclude that it is not possible to try to draw a defining line between the sequences of development the paradigm has followed. What becomes even clearer is that the more one tries to point out the differences between different periods and diverse approaches, the more one is faced with the clear fact that all approaches to translation meet at some point and there is often an overlap between them. It is well documented that the theory of translation goes back thousands of years, so attempting to trace all the efforts and enterprises of translation back to that time is a long process. It is sufficient for the purpose of this study to point out that the early translators were less concerned with demonstrating the interrelationship between translation theory and translation practice. They were more interested in the principles and postulates of translation mainly to explain and justify their own positions in relation to translation methods.

During the last thirty years of the past century, Translation Theory has undergone fundamental changes. The gap between the study of language and the study of literature has widened and the centre of interest has shifted from both the hermeneutic historical approach and the narrow linguistic approach to that of an extra-linguistic reality, from the prescriptive to descriptive theories and from the theoretical system to concrete realisation. These elements combined have resulted in the emergence of two major schools in translation theory: the first followed the line of reasoning of linguistics and adopted the methods and aims of applied linguistics, the second was the descriptive-studies school which adopted the study of extra-linguistic factors.

While research among the two rival schools, the *linguistically-oriented* and the *descriptive studies* schools, was split between the loyalty to either the Source Language or the Target Language, other recent empirical contributions to translation research resulted in the emergence of a number of controversial but prestigious

approaches. Some focused on tackling translation studies by looking at different social factors: sociolinguistics, psycholinguistics, feminism etc. which resulted in topics like translation and power, translation and globalisation, and translation and gender. This not only makes translation studies a paradigm of a multitude of approaches, but also inter-disciplinary, for “the tools of translation do not reside entirely within the discipline”. (Bruce 1994: 47)

It is important at this stage for translators and non-translators to know that the older trend of referring to translation with a capital T is no longer valid. With the emergence of the different approaches, perspectives and angles of research, the term Translation which was assumed to cover all types of translation lost its prestigious place in academic circles. All of this has affected the development of the science of translation in numerous ways and by a number of factors including: the emergence of text-linguistics, discourse analysis, cognitive linguistics, the concept of target equivalence, translation as a cross-cultural event and the emergence of empirical studies, to mention but a few.

Chapter Two addresses the different paradigms of translation which have characterised the dominant translation schools from 1960s up until the present day. This Chapter is divided into three parts representing different schools of thought in translation studies. Part one discusses the Linguistic-Oriented School with its two approaches; that of text linguistics and corpus-based translation. The second part represents the bridge which links the Linguistic-Oriented School to the Descriptive Studies School. Part two explains translation as a cross-cultural approach. This approach presents two new views to translation; the first saw translation as closely connected to culture, whereas the second presented the theory of ‘skopos’ or ‘aim’ of translation. Part three discusses the descriptive studies approach. It provides an

explanation of the two major schools which dominate this line of reasoning. The first introduces translation as an act of manipulation. The second which is the focus of the current research gives a full explanation of the views introducing translation within the receiver's culture.



## Part One: Linguistic-Oriented School

The Linguistic-Oriented School was represented by the subject of Translatology *Übersetzungswissenschaft* which was developed in Germany by the Leipzig School. New approaches in translation studies were developed through constant research which was conducted by disciples of this East German school such as Otto Kade, Gert Jäger and Albrecht Neubert, and by other scholars such as Wolfram Wilss, Katharina Reiss and Werner Koller in Western Germany. However, this approach was not limited to German scholars. In the United States Eugene A. Nida (1964) adopted a similar approach in translation theory which included transformational grammar. Also the English scholar J.C. Catford (1965) based his translation on the systemic grammar concept of the British linguist M.A.K. Halliday who suggests that four levels of language should be recognised. Hatim suggests that these four levels of language are:

Phonological, graphological, grammatical and lexical. In addition, four of the fundamental categories of linguistic theory are recognised: class (e.g. adjective, adverb,) structure (e.g. subject-verb-complement), system (e.g. singular, plural) and unit or rank (e.g. morpheme, sentence). (Hatim 2001: 15)

The most influential feature, which drew followers of the Leipzig school together, was their ongoing search of the notion of 'equivalence' or German *Äquivalenz*. At that stage the type of equivalence they were looking for was linguistic equivalence. Using linguistic equivalence, as a starting point Catford shifted his endeavours from the notion of 'meaning transfer' to 'meaning replacement' (Catford 1965: 21) by way of achieving textual equivalence through what he called translation *shifts*.<sup>4</sup>

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<sup>4</sup> Catford employed level *shift* vs. *category shift* see Hatim 2001:15

Although this process was of a purely linguistic preference by choosing between lexical and grammatical shifts, Catford did not know at that stage that he had laid the foundations for further research on translation as a decision-making process. (Hatim 2001: 16-17)

The work of American scholar Eugene A. Nida can be considered the first step towards broadening the sphere of translation studies beyond the linguistic borders whilst at the same time steering translation away from SL and towards the TL. Nida, in his approach introduced the role of the receptor in translation. (Nida and Taber 1969:1) Focusing his research on Bible translation and looking for an accurate translation which conveys the words of God, Nida's main interest was that of conveying the message and "his concern was that the finished translation communicates accurately what the original author wrote". (Martin 1997:6) This accuracy he suggested would be achieved by applying what he referred to as his 'dynamic equivalence', which he favoured over his 'formal equivalence'. (Nida 1964) In dynamic equivalence, the translator does not necessarily have to produce a rigid linguistically parallel version of the original text, but tries to employ the most natural form of the language of the reader, with special consideration given to the structure, grammar, and idiomatic expression of the source language. (Martin 1997:7) Through this approach Nida promoted the idea that there is no perfect or complete equivalence in translation, which was the focus of heated debates later on.

What is also common in the works of followers of this school of thought is that they all had a keen interest in the regularities of text, the genre, and the context resulting in the emergence of the so-called text linguistics approach.

### 2.1.1. Text-linguistics

Text began to assume an important status in the study of language in the early 1970s. With the introduction of the science of text, translation scholars began to realise that in the process of translation they can choose from a diversity of potential equivalents. This came to replace the optimal equivalent which was the focus in earlier translation theories in which text was seen as linear sequence of units, and translation was merely a transcoding process involving the substitution of a sequence of equivalent units. This former theory emerges clearly from Koller's (1972:69f) definition. He says, "linguistically, translation can be described as transcoding or substitution: Elements a1, a2, a3...of the language system L1 are replaced by the elements b1, b2, b3 of the language system L2". (Translated by Snell-Hornby 1995:16)

Text linguistics on the other hand defines the text as the basic unit of the communication process, and the primary object of research. The Austrian scholar Robert de Beaugrande (1978) introduced the assumption that the relevant unit in translation is the text, rejecting the "neat split of language into form and meaning" which remained paramount until then, and abandoning the notion of communicative text. (Hatim 2001:31)

Beaugrande & Dressler (1981)<sup>5</sup> employed the science of text initially to prove the unreliability of Machine Translation, which only worked with grammar and lexicon. Computer based translation was vehemently criticised by Beaugrande, because it could not evaluate context.

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<sup>5</sup> Beaugrande and Dressler's book *Introduction to Text Linguistics* was first published in German in the year 1972. This was a first introductory treatment of the science of text in language. The book was later translated into English and published in 1981.

Beaugrande says:

Millions of dollars and years of effort were devoted to the development of form-based models for machine translating. Such models function upon the highly problematic procedure of simulating mechanical comprehension for a left-to-right linear series. This procedure, which only superficially represents human comprehension processes (...), is extremely wasteful and inefficient, since the machine translation must pause to identify each item and its syntactic functions by trial and error. (Beaugrande 1978: 95)

It is clear that Beaugrande bases his theory on the importance of context. He suggests that there should be a distinction between “form-based” and “content-based” translation on the one hand, and “text-based and reader-based information representation” on the other. He emphasises, “I have tried to show that text-based information is by no means to be identified as a set of purely formal features, but rather as a result of an intense content-based evaluation of the communicative relevance of formal features”. (Beaugrande 1978: 95)

By introducing the science of text to human translation Beaugrande and Dressler (1981:216-217) were searching for *textual equivalence*, and they suggested that the equivalence a translation can achieve with its original occurs when translators try to incorporate their experience into the text itself while at the same time taking into consideration the reader’s experience of the language. In other words, translators should develop text grammars which can describe and explain the communicative competence of the sender and the receptor of a text, and interrelate the syntactic semantic and pragmatic text level in a way which would vary according to the type of text. A translator’s expansion, reduction, or modification of the text, should be kept to a minimum, and the resulting text should be kept as close as possible to that of the original.

Most scholars shunned the idea of a sentence-bound translation. James Holmes emphasised that scholars should turn their efforts away from “sentence-restricted

linguistics and produce a full theory of the nature of texts” (Holmes 1988: 100) by which scholars will be able to develop an adequate general theory of translation.

Holmes carries on to say:

Such a theory will devote extensive attention to the *form* of the text. How their parts work together to constitute an entity, to the way texts convey often very complex patterns of *meaning*, and the manner in which they *function* communicatively in a given socio cultural setting. (Holmes 1988: 100)

This superiority of the ‘text’ introduced in the Text-linguistic approach, attracted many opponents. Newmark (1984/5: 11) rejected the overriding authority of the text, which justifies any deviation from the original.

However, the primary importance of text attracted more supporters than critics. German scholar Neubert (1991: 20) suggested that although translations on the surface seem to be a duplication of the original, the process is more sophisticated, it not only involves the recasting of the sequence of source language sentences, but also locates equivalence in the whole text. Neubert’s approach supports the exchange of “communicative values” of both texts instead of addressing the issue of ST or TT. Referring to the text linguistic perspective in translation, he explains, “its frame of reference is, in fact, not the linguistic system (in its source and target language modes of expression) but the system of prototypical texts of at least two communicative communities”. (Neubert 1991: 21) This hypothesis indicates that the concept of meaning is not sentence – bound, but text-bound. Therefore, text linguistics constituted the first domain of the pragmatics of translation, as opposed to the linguistics of translation.

With further research, text linguistics proved to be more difficult than just a process of communication by text. In his research on text, (Neubert 1996 & Neubert & Shreve 1992) introduced two types of translation governed by the rules of text:

holistic translation and generic translation. In the former Neubert suggests that translation should meet six features cohesion, coherence, intentionality, acceptability, situationality and informativity. For a translation to achieve these features, translators must act as, “honest brokers”. He continues, “they are constantly aware of the opportunities and risks involved in selective activity. But what they eventually settle for will be part and parcel of a whole text”. (Neubert 1996: 92) Generic translation is more relevant to the current research as it involves not only paying attention to the linguistic and extra linguistic characteristics of the text ‘textuality’, but also addresses the issue of ‘intertextuality’. “A standard of textuality which taps our knowledge of previously encountered texts and regulates how text types, genre conventions and ultimately discursive formations evolve”. (Hatim 2001: 34)

Certainly, ‘text’ plays a crucial role in the current research. The text which is examined in this research is of a special genre, it is a legal text with special legal specification. The text as a whole entity carries within it a legal message which ought to be conveyed correctly. A text of a specialised kind such as a legal text is treated differently from other types. Nevertheless, it is important to point out that ‘text types’ are not determined entities, they overlap among themselves, and hence they cannot be isolated from each other. It is not easy to draw a defining line between types of texts since there is no absolute categorising authority which assigns a certain text to a particular genre. Trosborg points out that there is no clear-cut definition of what a text is, or to which genre it belongs. (Trosborg 1997a: 3) Trosborg explains that some scholars prefer to use the term ‘text’ only to refer to written and spoken language (Halliday and Hassan 1976), (Quirk et al. 1985) while others prefer to make a distinction between written language ‘text’ and spoken language ‘discourse’ (Grimes 1975) and (Sinclair and Coulthard 1975). (Trosborg 1997a: 4) In any case,

whether the text is written or spoken it is a medium which is used to express a communication situation. (Sager 1997: 30) For this communicative situation to be successful and to fulfil its purpose, different text types are used, which makes it even more difficult for these texts to be frameworks of analysis and consequently not applicable to translation. Neubert says:

Text Linguists as well as translatoologists have made many attempts to establish topologies [sic] into which texts can be integrated. This has proved to be extremely difficult. Deductive classifications such as *descriptive, argumentative, narrative texts* or *informative, expressive, directive* texts provide frameworks that are not clear-cut enough to serve as practicable guidelines for analysis. (Neubert 1996:95)

It is also difficult to try to draw a line between texts' genres, although it is possible to classify them under broad titles such as: medical, legal, literal, etc. However, it should be pointed out that the reason why these classifications occur is mainly the domain of the text and consequently the use of the special lexicon and in some cases the style. It is therefore suggested that translation should involve macro and micro elements of the texts and not just the texts as a whole entity of translation.

### **2.1.2. Corpus-Based Translation**

The 20<sup>th</sup> century brought a change in translation consciousness; structural linguistics and information theory were introduced into the discussion of interlingual exchange. One of the changes that emerged was the creation of Machine Translation. MT refers to translation that is performed wholly, or partly, by computer. This process can be carried out with or without the intervention of human input. It is suggested that it was the late 1940s, which marked the birth of MT. After World War II, and with the availability of digital computers, Warren Weaver introduced machine translation to the world in 1949 as a scientific venture, aimed at solving decoding problems by

adopting the idea of a universal language as a viable channel between languages. However, translations produced by MT were of poor quality and awareness of serious linguistic problems increased. (Locke & Booth 1955: 15-23)

Progress in developing MT programs continued throughout the last 50 years and while new theories of translation studies were put to the test; MT was undergoing huge progress. The growth in demand for translated material, in addition to the expansion of communication through internet use, resulted in the introduction of numerous computer-software translation programs on such as (*Trados, Multicorpora, TransSuite2000*)<sup>6</sup> to mention but a few. In addition, one of the main results of MT research was the emergence of Corpora or Corpus-Based translation, which constitutes a main part of the current thesis. Corpora in translation studies could be considered the most recent approach which branched from general linguistics. This approach was modelled on programs designed to study natural languages. Corpora began to assume a high status in translation studies in the early 1990s. At present the Institute of Science and Technology at the University of Manchester undertakes the largest amount of research in this domain. Linguistic corpora was initially introduced as a method of analysing languages by way of mapping forms and patterns, in order to achieve the right choice of words in language classes, dictionaries, etc. Corpus linguistics was realised through treatment of texts by automatic and semiautomatic machines, which were capable of reading these texts. Later this method was developed to include written and spoken texts. (Baker 1995: 225) Baker defines corpus linguistics as “a branch of general linguistics which draws on large,

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<sup>6</sup> For more information on translation software see Internet websites: <http://www.trados.com> and <http://www.proz.com>



computerised collections of natural language, processed in a variety of ways, to substantiate its findings". (Baker 1995: 239)

Scholars (Baker 1993, 1995, 1997 and Lindquist 1984) saw in corpus linguistics hope to revive MT, and with the rapid growth of computer-based programs, they thought they could use it in order to improve the performance of MT. This process like many earlier MT programs proved to be inadequate and unreliable. Most of these programs were mainly used to deal with technical and scientific texts. Deciding to swim with the current some scholars saw in this model a chance to help them explain translation theory and process. In 1984 Lindquist had promoted the use of corpora for training translators. (Cited in Baker 1995: 223) But it can be said that Baker brought this approach to life in 1993<sup>7</sup>. Baker in her quest to apply corpora on translation studies was looking to explain translation itself as a textual phenomenon and discarding all earlier efforts which focused on translation methods. Realising that the use of corpora in MT was beset by problems, Baker introduced the concept that corpora do not need to be limited to machines. She suggested that human help could aid the analytical process manually, thus the term 'corpus' has often been "used to refer to fairly small collections of text which are not held in electronic form and which are therefore searched manually". (Baker 1993:241)

Later in 1995, Baker introduced three types of corpora by which translations are analysed in order to facilitate translators' choices in the process of decision-making through understanding translation *per se*:

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<sup>7</sup> Mona Baker's paper titled "Corpus linguistics and Translation studies: implications and applications" (1993) could be considered the first serious treatment of translation studies in the light of corpus linguistics.

Parallel Corpora: this model is the one most commonly used and it usually consists of the original SLT in language A, and the translated versions in language B.

According to Baker:

This type allow us to establish, objectively how many translators overcome difficulties of translation in practice, and to use this evidence to provide realistic models for trainee translators. They also have an important role to play in exploring norms<sup>8</sup> of translations in specific socio-cultural and historical contexts. (Baker 1995:231)

- Multilingual Corpora: this type enables the analysis of more than two languages instead of conducting the analysis on just one pair of languages. This can be considered a form of comparison between a number of languages in order to elicit similar patterns or particular linguistic features. However, the role this type of corpora plays is only on the surface level and although it might prove beneficial in finding equivalence it does not address the theoretical research of translation studies (Baker 1995: 232). This type of corpora is found in pocket size electronic translators, which provide the meaning of a word in a number of languages but does not show concern to context.

- Comparable Corpora: In this approach the analytical process takes place within the borders of only one language. Baker had suggested that in this type of corpora the comparison is actually between a normal text of a specific type and a translation into the same language of the same text type. The analysis is carried out to study the shared features and differences between the normal text and the translation and it can include as many texts and as many translations as one likes regardless of what the language of the ST text is, as long as the comparison takes place between a normal text and translations of the same text type. According to Baker “the most important

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<sup>8</sup> The question of norms is important for the current research and it will be fully discussed in the next chapter.

contribution that comparable corpora can make to the discipline is to identify patterning which is specific to translated text, irrespective of the source or target languages involved". (Baker 1995: 234)

Corpora play an important role in the practical part of the current research. The method of analysis which is adopted in the thesis is based on corpora. The thesis however, does not apply any of the previously mentioned methods. The analysis involves a comparison between a number of different translations of one ST. In the current research the comparison will take place between translations of the ST performed by four different groups of translators, by way of corpus analysis. Leuven-Zwart emphasises that methods of comparison should be "carried out in a systemic and scientific manner". (Leuven-Zwart 1991b: 40) The Corpora method is based on a statistical approach in analysis. Baker says:

Large corpora will provide theorists of translation with a unique opportunity to observe the object of their study and to explore what it is that makes it different from other objects of study, such as language in general or indeed any kind of cultural interaction. It will also allow us to explore, on a larger scale than ever possible before, the principles that govern translational behaviour and the constraints under which it operates. (Baker 1993: 235)

Although at present corpus-based analysis is an identifiable form of translation analysis, when the application of corpus techniques in the field of translation studies began in the early nineties, it was faced with negative attitudes from corpus linguists. John Sinclair (1991) encouraged the use of comparable corpus of original texts and preferred it to the use of parallel corpora. However, he excluded translations on the basis that they are not representative of the language. However, it can be argued that the translations under examination in the current research could be considered as original texts because they are studied in isolation from the ST. They could also be considered original pieces for analysis due to the fact that the comparison takes place

between them, not between them and the ST. Baker supports this approach; she says, “it will be necessary to develop tools that will enable us to identify universal features of translation, that is *features which typically occur in translated text rather than original utterances* [my emphasis] and which are not the result of interference from a specific linguistic system”. (Baker 1993: 243) However, translation universals cannot be achieved because there are a number of different factors which affect the translation process and this differs according to context, text type, etc. Therefore, translation universals are more likely to occur in sub-categories of translation instead of translation in general such as in the case of legal translation.

The basic tool of corpus analysis is obviously computers, due to their accuracy and speed in counting and ordering stored information. A computerised corpus is able to provide basic statistics for analysis on different levels such as text length, words, sentences, paragraphs, etc. It is apparent that the easiest linguistic feature for a computer to count and order is ‘the word’ which is the concern of this study.

Munday says that the most significant feature of a computer’s work in analysing corpus work is providing ‘concordance’ and ‘collocation statistics’. (Munday 2000: 204) Munday uses the software ‘Word Smith’ as an example. He says that concordance can be produced in seconds by the use of this software. The software works when a key word in context (KWIC) is typed in it. The key word appears in the centre of the screen and the concordance appear either to the left or the right of the word and is sorted alphabetically- this method is useful in researching grammatical patterns. Munday suggests, “translation analysts may use word frequency lists or their own initial reading of the text to decide which search terms to examine. It is important to realise however, that the intellectual work and interpretation of the concordance is provided by the user, the computer simply being a very careful tool in

facilitating the analysis". (Munday 2000: 205) Collocation is another phenomenon for which analysis is facilitated by the use of computers; it is the study of words which frequently occur together. Both phenomena present the occurring patterns in translations which indicate the existence of norms. And therefore, software like Word Smith makes the task of translation analysis easier and the results quicker. Unfortunately, the use of such computerised programs is not possible in the current research for the following reasons: 1. The lack of the necessary tools for a computerised experiment. 2. The analysed data is in Arabic and there has not been yet any program for analysing Arabic. 3. The texts are all hand written, therefore, it would be a long task to try to feed them into a computer-based program. Translation analysis is in any case only facilitated by computer-based programs; it is people who perform the analysis on stretches of speech/texts identified by computers.

Due to these difficulties, the data in the current research is searched and registered manually. Seen that it is an exhaustive exercise to analyse every textual problem, it is probably more feasible to look at different fragments in the text, and analyse them within the framework of textual rules. (Lambert & van Gorp 1985: 49) Pym also supports this and warns of the "classical" mistake of reading and comparing "miles of texts, writing a mess of notes on apparently significant differences, and never finding a way to say something coherent about the result". (Pym 1998: 106) He suggests that "this trap can be overcome by analysing translations with respect to just one or two well defined levels or aspects, always in order to test clearly formulated hypotheses". (Pym 1998:106)

Baker stresses that:

One has to develop a method for approaching the data: knowing what to look for and how to look for it. And ultimately, it is not going to be particularly productive to provide a detailed description of the language of translation unless we can also offer some hypothesis about the motivation behind certain types of patterning. (Baker 2001a: 50)

Therefore, the current research analyses the texts with respect to equivalences occurring on the word level. Nevertheless, it should be noted that the equivalences analysed through corpus-analysis includes lexical items and verbs.

In the current research, corpus-based analysis is not an end; it is merely the means to an end. The research is not limited to linguistic analysis of the language, but this is used in order to understand the constraints under which translators operate in their decision-making process and which without doubt affect their products.

## **Part Two: Translation as a Cross-cultural Event: Bridging the Gap**

A new approach emerged in the study of translation opposing the traditional approach in linguistics, which for a long time attempted to draw a dividing-line between language and what was called 'extra linguistic reality'. It can be safely said that the emergence of translation as a cross-cultural process was the spark which instigated the emergence of the descriptive studies school. Translation scholars began to see that the notion of culture should be integrated into translation studies. Although they did not all "share one concept of translation, or one idea of the goals and methods of translation studies" (Toury 1987:1) they agreed that translation is an integral part of culture, and should no longer be seen as an isolated phenomenon suspended in a vacuum. Most translation theories presented by the Leipzig School have been generally discarded, except for the limited and special case of MT, and substituted by the culturally contrastive discipline called cross-cultural communication.

As a starting point, it is necessary to define the concept of culture which occupied for a long time the hermeneutic discipline. Because scholars studied culture from a philosophical point of view, they considered it an indefinable concept. Gadamer claims that no one could tell precisely what culture is, "culture is something that sustains us, but none of us would be knowledgeable enough to be able to say what culture is". (Gadamer 1990:11) He also suggests that, in order to understand culture we should relate it to science, "our sciences are the true planets of our human wisdom and just as the errant stars were the riddle for Greek astronomers, the task for our culture is to bind into a system these planets of our cosmos of knowledge that we call 'sciences'". (Gadamer 1990:21)

The concept of culture was also seen from a sociological viewpoint. The American ethnologist Ward H. Goodenough sees a society's culture as consisting of:

Whatever it is one has to know or believe in order to operate in a manner acceptable to its members, and do so in any role that they accept for any one of themselves. Culture, being what people have to learn as distinct from their biological heritage, must consist of the end product of learning: knowledge, in a most general, if relative, sense of terms. By this definition, we should note that culture is not a material phenomenon; it does not consist of things, people, behavior, or emotions. It is rather an organization of these things. (Goodenough 1964: 36)

So far, the concept of culture was understood in a broad anthropological sense. It referred to all socially conditioned aspects of human life. In that sense, the concept of culture portrays a "totality of knowledge, proficiency and perception". (Trosborg 1997b: 146)

### **2.2.1. Language and Culture**

Some translation scholars believed that culture creates an immediate connection with behaviour, and this usually depends on expectations or norms, either that of social behaviour or those accepted in language usage. The German scholar Hans Vermeer (1986)<sup>9</sup> observed that the connection between culture and language could be interpreted in translation. He adopted the hypothesis introduced by Wilhelm von Humboldt, who presented the idea that language is an expression both of the culture, and the individuality of the speaker who perceives the world through language. Vermeer suggested that if language is an integral part of culture, then "the translator needs not only proficiency in two languages; he must also be at home in two cultures. In other words, he must be bilingual and bicultural". (Snell-Hornby 1995: 42)

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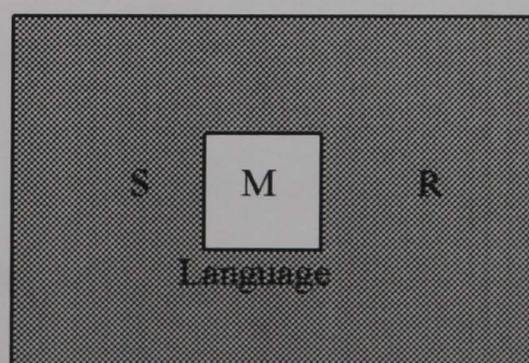
<sup>9</sup> German book cited in Snell-Hornby 1995 and Trosborg 1997b



This proposal influenced translation scholars all over the world. In China Hongwei says, “translation is a complex combination of art, science and skill. It refers to the communication between two languages and two cultures”. (Hongwei 1986: 189) Kaiser-Cooke says, “translating always involves identifying and articulating culturally relevant aspects of knowledge no matter which domain of knowledge or experience we are dealing with”. (Kaiser-Cooke 1997: 288) He adds “there has been a lot of talk in the last few years about the role of cultural knowledge in translating, about translating being a trans-cultural activity and involving some form of cultural transfer”. (Kaiser-Cooke 1997: 283) Also, Nida was decisive about his stance towards translation and culture. He says:

Translating can *never* [my emphasis] be discussed apart from the cultures of the respective languages since languages are themselves a crucial part of culture, defined as ‘the total beliefs and practices of a society’. Words only have meaning in terms of the culture in which they are used, and although languages do not determine cultures, they certainly tend to reflect a society’s beliefs and practices. (Nida 1996:17-18)

Figure 1 presented by Nida (1975:28) shows the link between language and culture in communication.



S = Source    R = Receptor  
M = Message    C = Culture

*Figure 1: Nida's Language and Culture*

“According to Nida, the inner square contains the message which is communicated by a source to a receptor, this happens with the use of a language, which is the outer square, and all of the elements are part of a culture and then conditioned by it”. (Roberts 2001:89)

This suggests that if the translator is aware of the language and the culture of both source and target texts, then all texts are translatable. However, the resulting translation cannot be considered the ultimate translation because it depends on the translator’s knowledge of the source language and target language cultures. In addition, different cultures will always create barriers in the process of translation since “different ways of thinking give rise to different ways of writing”. (Hongwei 1986: 189) The translations in this case depend on both the translators’ competence in the language and knowledge of culture rather than linguistic transfer.

On another occasion Rübberdt & Salevesky (1997: 302) suggest that Vermeer based his first ideas on Schleiermacher’s hermeneutics, in which he states that:

Any utterance can only be understood from the perspective of the entire life context to which it belongs, as an aspect of the speaker’s life that is dependant on all other aspects of life, and the latter can only be determined by taking into account the sum total of the settings which determine his development and future existence (Schleiermacher 1893 in Schreier 1988: 256).

According to Snell-Hornby, (1995:43) German scholars Hönig and Kussmaul, 1982, Reiss and Vermeer 1984, and Holtz Mänttari 1984 introduced three new approaches in which they viewed translation not as a process of transcoding, but as an act of communication. Their approaches are all oriented towards the function of the target text ‘prospective translation’ rather than the prescription of the source text ‘retrospective translation’ and they viewed the text as an integral part of the world and not as an isolated specimen of language. Both approaches introduced by Hönig and Kussmaul on one hand and Holtz Mänttari on the other rejected the idea of translating

words and focused their interest on the text. The former presented the concept of texts embedded in a given situation, which, itself, is conditioned by its cultural background. They believed that in order to achieve a good translation there should be a degree of connection between both the functions of the target text, and decisive socio-cultural factors. Holz-Mänttari viewed translation not as a mere transcoding or transferring process but as a form of action across culture, a cross-cultural event, and a whole complex of actions involving teamwork among experts. In her approach, she made it clear that the translator should be a highly trained expert and emphasised that high quality translation cannot be achieved by transcoding with the use of bilingual dictionaries only. (Snell-Hornby 1995: 43-48)

Also according to Toury (1998: 7) Mary Snell-Hornby herself was one of the scholars who thought of culture as an integral part of translation. Toury says she:

Adopts the ‘prospective’ concept of translation, which she terms *cross-cultural*, and supplements it with a set of assumptions as to the dual position of *texts*, most notably literary texts, as both systems in their own right (“internal” networks of relationships, as it were) and elements in other, hierarchy higher systems (‘external’ webs of relationships), namely the cultures which have given rise to them and in which they function. (Toury 1998: 7)

### **2.2.2. Skopos Theory**

The most important of the three German approaches was the one adopted by Vermeer and which later developed into what we now know as the functionalist approach. Vermeer refuses the idea that translation can be treated as a scientific process, and he insists that translation is “intuitional” (Vermeer 1987:25). In searching for a suitable procedure in translation, he points out that the obstacles facing translation are on 1. The formal level: (surface structure), and 2. The semantic value: not as an issue of word-for-word translation but rather how these words are understood in their contexts

and, finally 3. The cultural value: how the whole experience is understood in the target culture. He suggests that all these obstacles could be relativised by a functional approach in which the message is conveyed by way of text. (Vermeer 1987:26-28)

Vermeer regards translation primarily as a cross-cultural transfer. He understands 'culture' to be the "entire setting of norms and conventions an individual as a member of his society must know in order to be 'like everybody' \_ or to be able to be different from everybody". (Vermeer 1987: 28) And the reason why a translator translates is usually because he wants to convey a message to someone who lacks knowledge of the ST language and culture, which prevents him from communication. Therefore he believes that translation should involve the rendering of the culturally equivalent text. He says, "to translate-means to produce a text in a target setting for a target purpose and target addressees in target circumstances". (Vermeer 1987: 29)

Through this the leading German scholar introduced the theory of 'Skopostheorie: Skopostheory' (Gk. Skopos: aim, target), which is based on the function of the translated text. In his theory he views translation as action and stresses that the translator should be "bicultural if not pluricultural". (Snell-Hornby 1995: 46)

Vermeer's views apply to all pairs of languages regardless of their cultural differences since he believes that the difference is one of degree and not of kind. Vermeer formulates his definition of translation as follows:

A translation is not the transcoding of words or sentences from one language into another, but a complex action in which someone provides information about a text under new functional, cultural and linguistic conditions and in a new situation whereby formal characteristics are imitated as far as possible. (Vermeer 1986:36 cited in Snell-Hornby 1995: 46)

Other scholars suggested the same idea long before Vermeer introduced it. Forster says in describing a perfect translation that it is "one which fulfils the same *purpose*

[my emphasis] in the new language as the original did in the language in which it was written". (Forster 1958:1)

Nevertheless, although Vermeer's ideas seem plausible, they do not supply a sufficient basis for a complete translation theory. If the translator was able to convey the cultural equivalent, s/he might still be at risk of abandoning the linguistic equivalent, which brings us back to square one. Vermeer admits this point of weakness, he says:

Let us now assume we know the culturally equivalent behavioural values of a number of phenomena in two given cultures. So we would know how to translate them and we know what happens if we just apply dictionary 'translations' to them. (In the first case we get a different text (...) in the second case a different 'world'). (Vermeer 1987: 30)

In order to overcome this weakness, Vermeer established a scholarly-based method by way of supplying formal, semantic, cultural, and functional procedures in the aim of achieving "cultural equivalents in translation". (Toury 1998: 4)

Vermeer was not the only scholar who adopted Skopos theory. This approach was also supported by Katharina Reiss, who tries to "supply a set of 'scientifically justified' guidelines for 'communicative' translation". (Nord 1991a: 93) Reiss and Vermeer saw that skopos work on two levels: 1. If the purpose of the TT is that like of the ST, then the relationship, which exists, is that of 'intertextual coherence' or 'fidelity'. 2. If the TT purpose is different from that of the ST, and a change is required then the 'fidelity' element becomes subordinate to skopos and what rules is 'adequacy' and 'appropriateness'. (Reiss and Vermeer 1984:139 *cited* in Nord 1991a : 93)

With the introduction of this theory the shift towards the target reader became clearer, and gained a more dominant position. The key factors of action and intention in pragmatics constituted the base of Skopos theory. The idea behind this theory is that

the purpose of any translation is to fulfil an aim in the resulting text which will shape the actions taken during the process of the translation.

Gutt did not have a high opinion of skopos theory. He says, “instead of solving the problem of evaluation, Reiß and Vermeer only added another layer of theory to an already overwhelmingly complex framework”. (Gutt 1991:17)

According to the second generation skopos theorist Christiane Nord “*Intention* is thus closely bound up with *function*, the latter being the use (or interpretation) assigned by the receiver to the incoming message in the light of his or her expectation, needs, prior knowledge, and so on”. (Nord 1997 in Hatim 2001: 75) Also referring to that situation Hatim says, “This largely determines which translation strategy is most appropriate. Different purposes may be served by different translation strategies, and translation proper, paraphrase (thin glossing) or re-editing (**thick glossing**) [*author’s emphasis*] may attend to different communicative needs”. (Hatim 2001:74) The difference between the two is that thin glossing refers to the process of restating the meaning of something in other words. Thick glossing however, involves not only a change in the words used to describe the meaning but it might include a change in the meaning itself.

Within the framework of skopos theory, Nord introduced the concept of ‘loyalty’ in her functionalist approach. She claims that the decision taken by a translator to achieve the skopos of his/her translation works in accordance to what is expected in the receiving culture in order to be deemed a valid translation within the conventional concept of translation in this particular culture. If the translator decides during the process of translating to contradict these conventions s/he should be able to explain what has been done and why s/he did so, and this is what Nord refers to as ‘loyalty’ by which the reader is not deceived. (Nord 1991a: 91-95) She says, “Loyalty is a

*moral* principle indispensable in the relationship between human beings who are partners in a communication process". (Nord 1991a: 94) However, the fact that this conventional concept is particular to a certain culture means that it cannot be universal. Although Nord praises the idea of having a "Magna Charta of translation which every translator could turn to in case of doubt", (Nord 1991a: 92) she emphasises the fact that this is very unlikely to happen because there "will never be a common translation code for all cultures". (Nord 1991a: 92)

According to Toury (1998: 5) it is also worthy of mention that the success and failure of the translation within the skopos theory framework, depends on whether the target recipients have managed to interpret the resulting text within the framework of what was expected of it in the source language. In other words skopos theory is "heavily target-oriented". (Toury 1995b: 136)

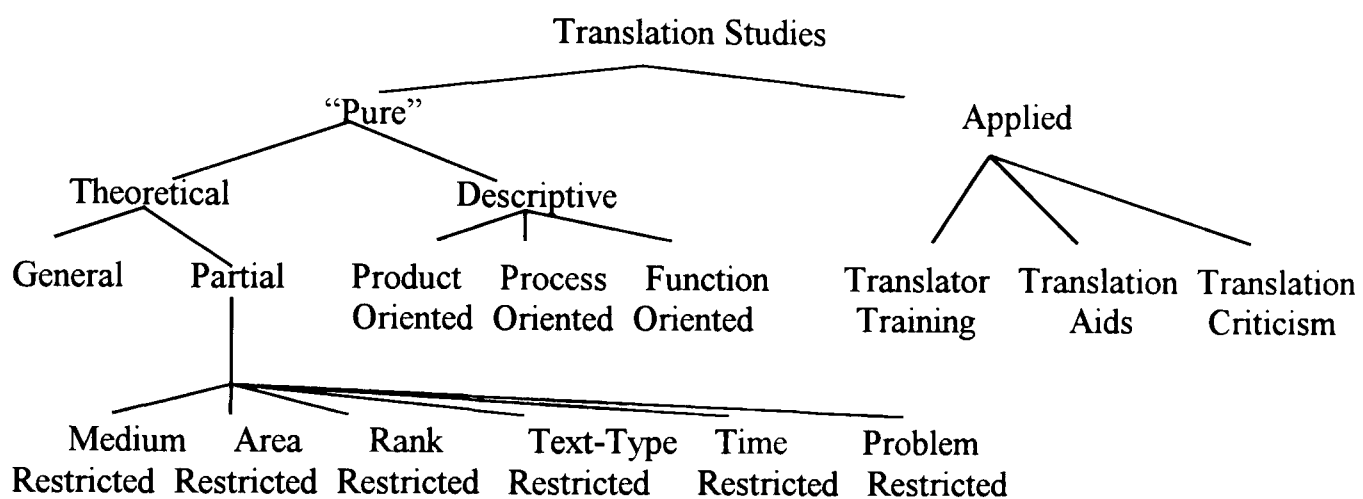


### **Part Three: Descriptive Translation Studies (DTS): An Empirical Approach to Translation Studies**

The Descriptive Translation School owes its success to the late Dutch scholar James Holmes, “who figured so prominently in the constitution and development of the field”. (Leuven-Zwart 1991b: 5) According to Holmes, the complexity of translating and translation can only be dealt with from an interdisciplinary point of view in order to produce a comprehensive theory of translation by bringing theory and practice together. (Leuven-Zwart 1991b: 9) Most scholars of DTS used James Holmes’ classic essay, “The Name and Nature of Translation Studies” which was published in 1972 as their starting point. According to Hermans, “the essay represents one of the first attempts to survey the entire field of translation studies, to distinguish its main branches and sub-branches and to define the proper objects of study and the methodological tools of each one”. (Hermans 1991: 155) In his approach, Holmes bases his studies on empirical science. Holmes believes that pure translation studies consists of ‘Theoretical’ and ‘Descriptive’ studies. The aim of the theoretical translation studies is “to establish general principles by means of which [the phenomena of translation(s)] can be explained and predicted”, and descriptive studies provides the data to “describe the phenomena of translating and translation(s) as they manifest themselves in the world of our experience”. (Holmes 1988: 71) Hermans explains that this approach works “between the study of actual phenomena, existing translation and their contexts, and the formulation of more general regularities and principles”. (Hermans 1991: 156) Holmes later adds another branch, which contrasts with pure translation studies but also complements it. With the introduction of the ‘Applied’ branch to translation studies practical applications in translation assumed



more importance. Holmes thus introduced to the study of translation three disciplines each drawing on each other, and suggested that their import from one another is unidirectional. He states, “in what has preceded, descriptive, theoretical and applied translation studies have been presented as three fairly distinct branches of the entire discipline, and the order of presentation might be taken to suggest that the relationship between them is unidirectional”. (Holmes 1988: 71). Figure 2 presents Holmes’ basic ‘map’ of Translation Studies (Toury 1995a: 10)



*Figure 2: Holmes’ basic map of Translation Studies*

As Figure 2 presents Holmes further broke down the branches into sub-branches. According to Toury (1991a: 180) the Theoretical branch was broken to (general and partial), the Descriptive into (product-process and function oriented) and the Applied to (translation training- translation aids-translation criticisms). With regards to the theoretical branch, ‘general theory’ is a comprehensive, inclusive and a highly complex theory of translation containing elements of the multifaceted nature of translation studies, which serve to explain all the phenomena falling within the boundaries of translation. (Holmes 1988: 73) On the other hand, partial theory deals

only with particular phenomena and thus it is restricted by the elements shown in Figure 2.

As for the divisions of the Descriptive branch; product-oriented translation “starts from the description of the existing translations, and typically progress to a comparative analysis of various translations of the same text into one or more TLs”. (Shuttleworth & Cowie 1997: 132) Process-oriented translation studies addresses the cognitive process taking place during the act of translating. And finally function-oriented translation studies is “concerned with analysing the function of translations in the context of the recipient culture and social setting”. (Shuttleworth & Cowie 1997: 63)

Applied theory of translation is clear and self explanatory in Figure 2. This branch of translation studies addresses practical domains of translation such as translator training which is now one of the common topics addressed in translation research circles. It also addresses translation aids including machine aided systems such as lexicographical electronic dictionaries and terminological references. Finally, translation criticism, addresses translation processes and products.

Starting from the exact opposite point of that represented by the linguistically-oriented and intended equivalence school scholars like André Lefevere, José Lambert and Theo Hermans, thought of translation as a branch of comparative literature. They were affected by the new ideas of involving the extra-linguistic factors in translation, especially that of culture on the one hand, and empirical research on the other. Therefore, they established the second major school of thought in translation studies in Europe and were based in the Dutch-speaking countries. Their endeavours were also supported by other scholars around the world like Susan Bassnett in England and the Israeli scholar Gideon Toury. Their focal point was that of admitted

manipulation. (Snell-Hornby 1995: 22) Although the work of both schools was directed towards different methods of analysing the process of translation and handling a text, according to Halverson (1997: 210) the concept of equivalence serves as one of the lines of demarcation, between the two main schools of thought in translation studies. Scholars of the linguistically oriented school worked on two different, but parallel lines. There were those who chose to focus on the unit of translation, and those who preferred to gear their endeavours to the qualities of translation. For both groups, the object of their study was that of the relationship between the target language text and the source language texts, which is labelled as equivalence, while on the other hand the historical descriptive approach sees the explication of equivalence as an unfruitful enterprise.<sup>10</sup> Also, the descriptive approach does not provide guidelines for translation or pass judgement on existing ones, instead it “takes the translated text as it is and tries to determine the various factors that may account for its particular nature”. (Hermans 1985:13) In this approach there is a continual interplay between theoretical models and practical case studies. According to Hermans:

The net result of the new approach to translation, is on the one hand, a considerable widening of the horizon, since any and all phenomena relating to translation, in the broadest sense, becomes objects of study, and on the other hand, it provides a more coherent and goal-directed type of investigation, because it operates within a definite conception of literature and remains aware of the interplay between theory and practice. (Hermans 1985: 14)

This approach is based on two basic assumptions: the target-orientation and translation norms. In both these assumptions, a reduction in the status of the source text is implied and a transition of target-orientation takes place.

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<sup>10</sup> See Snell-Hornby 1988, 1990

It will be noticed that the current research falls within the DTS, and in particular target orientation and translation norms. This research bases its analysis on the target translation and target culture. It provides a comprehensive view of the effect of target culture norms and target translation norms on the translation process. With the use of a comprehensive theory and providing practical research, the current thesis illustrates the heart of DTS as a new paradigm for the study of translation. The two main views discussed through DTS are the consideration of the translation process as an act of manipulation on the one hand and translation in the context of the receivers culture on the other. It is worth pointing out that the latter view will have the lion's share in the present research, since the core of this study will be based on translation within the context of the receiver's culture.

### **2.3.1. Translation as Manipulation**

As the title suggests, and according to pioneers in this approach, translation involves some form of manipulation. Their starting point is "not intended equivalence but admitted manipulation". (Snell-Hornby 1995:22) In the general editor's preface to Edwin Gentzler's book *Contemporary Translation Theories*, Susan Bassnett and André Lefevere say:

Translation is of course, a rewriting of an original text. All rewritings, whatever their intention, reflect a certain ideology and a poetics and as such manipulate literature to function in a given society in a given way. Rewriting is manipulation, undertaken in the service of power, and in its positive aspects can help in evolution of a literature and society. Rewriting can introduce new concepts, new genres, new devices and the history of translation is the history also of literary innovation, of the shaping power of one culture upon another. (Gentzler 1993: General Editor's Preface)

In the first half of the 1980s, Theo Hermans suggested that this manipulation takes place in the source text in order to achieve the target text required. Since he observed that the work of the translator can be instigated by different motivations, he suggested that the work of the translator can be either intentionally purposeful or due to various pressures exerted by different linguistic, literary and *cultural codes* impacting on one another. (Hermans 1985:11) This is clearly seen in the particular case of legal and political translation. As was mentioned in the Introduction, translation was long regarded as a tool of manipulation, especially in political disputes<sup>11</sup> and particularly by politicians and governments alike. This manipulation as Hermans points out could be either intentional or due to other non-purposeful reasons. In the case of legal and political translation political attitudes and aspirations could affect the translator's act during translation.

Whereas Hermans suggested that the act of manipulation takes place in the source text, the current research suggests that the manipulation appears during the whole process and it appears more clearly in the choice of the equivalences which conveys the intended meaning. The result of manipulated translation on the political level is not the immediate focus of the current research. It is the manipulation in the choice of equivalences, which consequently leads to different political interpretation the focus of the current research.

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<sup>11</sup> A controversy has surrounded the translation of UN resolution 242 adopted on November 22/1967. The resolution contained the following phrase: "Withdrawal of Israeli armed forces from territories occupied in the recent conflict". The key issue was the Israeli obligation to withdraw from the occupied territories or the territories occupied since 1967. The change in meaning appeared in the French version with the use of 'des territoire', which did not clarify whether it referred to 'all the territories' or 'the territories occupied since 1967'.

The approach of the manipulation school is based on the polysystem theory, which was developed in the late 1970s by the Israeli scholar Itmar Even-Zohar. Even-Zohar saw “translation as a text-type on its own right, as an integral part of the target culture and not merely as a reproduction of another text”. (Snell-Hornby 1995:24) He based his approach on translation of literature, and he used the case of Hebrew<sup>12</sup> as a model for his study. (Hatim 2001:98)

Even-Zohar (1990b: 47) believes that translation can achieve a primary position, when in a given society at a particular period of time, literature might be too young, or in the process of being established as in the case of Hebrew, or it can be peripheral or weak or both, or in other cases when literature is going through a crisis.<sup>13</sup> His argument is that translation “can possess a repertoire of its own, which to a certain extent could even be exclusive to it”. (Even-Zohar 1990b: 46) This can happen by adopting specific norms, behaviour, and policies which appear in linguistic and extra linguistic levels. Even-Zohar sees literature as a polysystem, a differentiated and dynamic “conglomerate” of systems. (Even-Zohar 1990c: 77) He also endorses the concept of transfer and suggests that products of inter-lingual transfer should be considered as proper translations even if they did not conform to postulated norms formulated by the cultures concerned. By this Even-Zohar reduces the problem of translatability and focuses on the question “*under what circumstances*, and in what

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<sup>12</sup> With the establishment of the state of Israel in 1948, the citizens of the state lacked an indigenous language, so they adopted the language of the Bible ‘Hebrew’. However modern Hebrew lacked a canonised indigenous literature, therefore it had to rely on foreign language translations in order to establish its own literary heritage. See Itamar Even-Zohar (1990 d) “The Emergence of a Native Hebrew Culture in Palestine 1882-1948” *Poetics Today* 11:1 pp.175-191

<sup>13</sup> Also in Holmes (1978) et al (eds.) pp. 117-127

particular way, a target utterance/text b relates (or is relatable) to a source utterance/text a". (Even-Zohar 1990c: 75)

Even-Zohar also addresses the question whether translated texts are recognised as translations only if they are produced according to a "certain pre-postulated ST-TL relation?" He, thereby introduces the concept of translational procedures through which all product will be dealt with as translations, "with no normative conclusions drawn". (Even-Zohar 1981: 4-5)

Using this idea as a point of departure, disciples of the Manipulation school including scholars, Even-Zohar (1990a), Herman (1985), Holmes (1988), van Leuven-Zwart & Naaijken (1991) and Toury (1980a, 1995a) suggest that, from the point of view of the target culture, translations imply a degree of manipulation of the source text to fulfil a particular purpose in the target culture. What the members of the manipulation school have in common is:

A view of literature as a complex and dynamic system; a conviction that there should be a continual interplay between theoretical models and practical case studies; an approach to literary translation which is descriptive, target-oriented, functional and systemic; and an interest in the norms and constraints that govern the production and the reception of translation, in the relation between translation and other types of text processing, and in the place and role of the translations both within given literature and in the interaction between literatures. (Hermans 1985: 10-11)

It is clear that the admitted manipulation of the ST to fulfil a certain purpose in the recipient culture entails a degree of rewriting. Lefevere (1985, 1992a) introduced the term 'rewriting' to describe translations and other types of texts which undergo a degree of change by way of manipulation. He suggested that rewritings are closely connected to the social, political and ideological power within a given culture and "ordinary" readers are subject to rewriting more than they are to original writings. (Lefevere 1992a: 8,110) In other words, readers are subject to manipulated texts not

the original ones. With that, Lefevere is endorsing the fact that most manipulations in translation occur in legal and political texts. It could be safely assumed that when the act of manipulation involves a change in the TT to the extent of rewriting, it ceases to be an act of translation. This is also supported by the fact that Lefevere is implying that the rewriting is actually instructed by the ideological power rather than performed by translators.

The significance of the manipulation, regardless of when it occurs in the translation process to DTS is that it opened the doors to the target-text oriented approach and the notion of norms. Whether the manipulation takes place in the ST or the TT or during the whole process, it certainly takes place to serve the TT and consequently the target cultural and therefore the attention is directed towards the TT. With regards to norms the idea of manipulation drove scholars to think that translators' behaviour is not a free act but is governed by certain entities and this introduced the idea of norms.

### **2.3.2. Translation in the Context of the Receiver's Culture**

In the 1970s the Israeli scholar Gideon Toury geared his endeavours towards descriptive translation studies, and embarked on a purely empirical approach to translation studies. Toury believed that it is wrong to claim that different approaches to translation studies are alternative ways to dealing with it, rather he suggested that different approaches are different aspects of the same thing. (Toury, 1989a: 102 & 1995b: 135) He refused the idea that one rejects another's concept because it does not fit with one's own frame of reference and like many other scholars of the descriptive translation studies school he believed that the gap between theory and practice in



translation studies should be bridged. Toury did not restrict his approach to DTS<sup>14</sup> and believing that translation should be studied within an overall view of the discipline he brought the results of DTS to bear on the theoretical branch of the discipline.

Based on Holmes' strategy of distinguishing between theoretical, descriptive and applied disciplines in translation studies (Holmes 1988: 71) Toury put forward the idea that translation should be studied within the frame of its three axes: product, process and function<sup>15</sup>. He suggested that translation should be accounted for as an overall process as all three axes determine each other regardless of the translation orientation. (Toury 1991a: 182)

In his approach Toury regards translation as a network of different players working together to achieve one particular goal, which is translations to be regarded as facts of the culture which hosts them. To achieve this goal one should unravel the "regularities which mark the relationships assumed to exist between function-product-and process". (Toury 1995b: 136) This interplay consists of: 1. The translations' function, 2. Translating into the prospective culture, 3. The form a translated text should have, 4. Strategies employed during translation.

Toury claims that "in view of all this, an orientation towards the target system where all these interdependencies have their place, is but a natural consequence". (Toury 1991a: 184) Toury's approach is based on the description and explanation of whatever is considered as translation in a particular target culture. He rejects the idea that translation could 'hover' between two cultures and dismisses the idea that

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<sup>14</sup> The acronym DTS was launched by Holmes himself (1988:71) Toury uses it when referring to the scientific branch. (Toury 1991a: 181)

<sup>15</sup> Refer to *Figure 2* on page 44 for explanation.

translation could belong to two cultures at the same time. Therefore, translations do not share the same space as that of their originals. As a result of his views that translations should be studied in the contexts of the receiver's culture, Toury became known as the father of the target-orientedness approach in translation studies.

Toury believes that the language of translation may be explored in terms of how responsive a translated text is to existing norms and models. To justify his new claims Toury explains that when a new text (translation) is introduced in the receiving culture, it is considered a novelty and therefore it does not always conform to the norms and models of the receiving culture. Because it is a novelty, it might import into the target culture its new models and norms, which will obviously cause change in the target culture. (Toury 1995a: 26-27 also Toury 1995b: 137-138) Therefore, in his theory, Toury studies translations within the position they are "designed to occupy" when they first came into being. After all, he says, "this is the only position which may be claimed to have actually governed its generation and the decisions made in its course". (Toury 1995b: 140-141) Through this, Toury's new approach earned its nickname "target-oriented". (Toury 1995a: 24) The idea of translation being within the receiver's culture is based on the assumption that during the process of translation, one introduces into a target culture something which was not previously there. Hermans explains that the new approach tries to account for two basic notions. The first is the strategies that determine the way a resulting translation looks. This, he explains, is usually governed by norms and constraints which influenced the methods used to produce the expected text (translation) process. The second is the way translation functions in the receptor (or target) literature by way of explaining the impact the resulting text has on its new environment (culture) in terms of the acceptability of translation in the target system. (Hermans 1985: 13)

When the new approach of ‘target-orientedness’ was put forward, it was considered revolutionary and according to Toury “its initiator a sworn *enfant terrible*” (Toury 1995a: 24) especially given that in the seventies most translation studies were marked by extreme source-orientedness. Taking on his claims that a text’s position and function regarded as translation are determined first and foremost by considerations originating in the culture which hosts them, Toury suggests that:

The resulting entity, the one that would actually be incorporated into the target culture, is decisive here; it is one which never existed before (...) it is likely in more complex cases to import new models into the recipient culture; this migration normally involves groups of texts, which embody a recurring pattern. (Toury 1995a: 27)

This called for a definition of the notion translation, and at this stage, Toury introduced the concept of ‘assumed translation’; he claimed that there is no totality in offering viable explanations of the transitional situation without full contextualization. He says, “a translation is a fact of whatever target sector it is found to be a fact of i.e. that (sub) system which is found to be best equipped to account for it: function, product and underlying process”. (Toury 1995b: 139)

Toury rejects the early rigid definition of translation; he says:

In most paradigms, a definition of translation would have been expected by now to have a list of (more or less) fixed features, which would entail a *deductive* mode of reasoning. However the obsession with restrictive definitions proves counter-productive precisely when the aspiration is to account for real-life phenomena in their immediate context, they tend to hinder rather than advance descriptive–explanatory work (Toury 1995a: 31 & 1995b: 141)

He therefore considers his ‘assumed translation’ to be any utterance which is presented or considered a translation within a target culture. He then proceeds to justify how this particular utterance within a particular target culture is regarded as translation. To start with Toury focuses his effort in explaining the ‘notion’ of translation, instead of the ‘label’ which is a mere ‘word’ to describe the act of

translating. This notion of assumed translation, he continues, is based on three interrelated postulates which might be found in many if not all translation paradigm, but in Toury's theory they are stemming from culture-internal notion, these are:

1. The Source-Text Postulate: Regardless of the fact that a translation has stemmed from an original text in a source language and culture, Toury's source-text postulate entails that the resulting text can be studied in isolation from its original. He says:

Concrete texts in languages other than the target's are not part of the necessary equipment for launching research either: even if none is used, the study will still pertain to Translation Studies as long as the assumptions of their temporal preexistence and logical priority are taken into account". (Toury 1995a: 34)

He also points out that in many cases an assumed translation might have no source text at all, or that it may have more than one source text as the case of "compilative translation", or one which served a different purpose from that, which the translation is meant to serve. (Toury 1995b: 144)

2. The Transfer Postulate: With the assumption that a source text exists for any assumed translation, this entails that a transfer process has taken place. And seeing that translation should be studied within the frame of its three axes, product, process and function, the transfer postulate bring together the ST and TT on one hand, and cross-linguistic and cross-cultural processes on the other.

3. The Relationship Postulate: Function, the third axis of Toury's descriptive approach is presented through the relationship postulate, as the two texts allegedly share an obvious function which is taken "to have been transferred across the cultural-semiotic (and linguistic) border". Toury adds that their relationship "can fall within the normative structure of the culture and language in question". (Toury 1995a: 35 & 1995b: 144)

If the three postulates are put together, then the conclusion is that an assumed translation will be:

Any target-culture text for which there are reasons to tentatively posit the existence of another text, in another culture and language, from which it was presumably derived by transfer operations and to which it is now tied by certain relationships, some of which may be regarded-within that culture- as necessary and/or sufficient. (Toury 1995a: 35)

Toury concludes that in order to study translation one should start with translations themselves as situated within their immediate contexts. He regards translation as “an **activity**, performed by individual players within a socio-cultural environment and to a large extent conditioned by that environment”. (Toury 1997: 289)

After defining what he considers as translation, Toury returns to the three axes of descriptive studies in an attempt to try to find laws which govern translators’ behaviour during the act of translation, and underline the overall process of translation. To explain how the three axes are interrelated, Toury says:

The [prospective] POSITION (or FUNCTION) of a translation within a recipient culture (or a certain section thereof) should be regarded as a strong governing factors of the make-up of the PRODUCT, in terms of underlying modals, linguistic representation, or both. (Toury 1991a: 183)

In other words, when analysing translations, the process starts from back to front. Toury suggests that the analysis should start with the recipient culture, which resulted in the relationship postulate, i.e. function, which in turn affected the transfer postulate, i.e. process and consequently resulted in the assumed translation i.e. product. Toury also points out that the two variables (position and product) play a role in governing the strategies employed during the actual act of production (Process). Toury continues, “in fact even with respect to the gradual making of a translator under ‘natural’ circumstances the hypothesis has been put forward (...) *that environmental feedback greatly influences the shaping of translation strategies* [my emphasis]”. (Toury 1991a: 183)

To explain further Lambert & Toury say:

The basic rule is simple: in as much as a translation is to be acceptable to and accepted in a target culture, whether as a wholly domestic(ated) utterance or as just “translational”, its make up will be determined largely by the constellation of that culture and the functions the target text is to fulfill in it. (Lambert & Toury 1989: 3)

In other words, the translation ‘product’ exists because it was accepted by the recipient culture as it was thought of to have fulfilled the function it was intended to fulfil.

Lambert and Toury argue that although this notion of acceptability seems only to address the ‘product’, it actually involves the ‘process’, as it governs the selection of strategies employed during the act of translating. They say, “there is evidence now, that to some extent, at least, target-oriented constraints of a cultural-semiotic nature indeed shape the *cognitive* processes involved in individual acts of translation”. (Lambert & Toury 1989: 3) It is clear that Toury considers translation as an empirical discipline, therefore he adopts Holmes’ (1988) three axes of translation research: process-oriented, product-oriented and function-oriented, but he also adds to them translation norms and strategies. (Leuven-Zwart 1991a: 39) In doing this Toury ignores the source-text postulate. He concentrates on the transfer postulate and the relationship postulate and he introduces the role of the strategies employed during translation and the constraints governing these strategies i.e. norms. Toury suggests that the establishment of the interdependencies between three factors achieves translation.

- (a) the *function* a translation fulfills (or is devised to fulfill) in the target culture,
- (b) the *make-up* of texts which are regarded as <<proper>> translations,
- (c) the strategies and procedures resorted to during the *process* whereby such a product is established and introduced into a target culture (hence, by extension, the cultural function of the act of translating [a’]. (Toury 1989a : 102)

The whole process of translation theory moves in three stages, it starts with a highly theoretical assumption which suggests that if translation fulfils the function it is intended for in the target culture, then it is considered as translation. The second stage entails a descriptive assumption and is based on the idea that translations exist in their current forms when they undergo certain cultural, communicational, linguistic and other circumstances. As a third stage the process reflects theory “in a higher, more elaborate form, namely a conditioned or *probabilistic* one” (Lambert & Toury 1989:6) by raising speculations about how a translation would be if it had undergone a ‘different’ set of cultural, linguistic and other circumstances. This approach joins the two levels of theory and descriptive studies and the ultimate goal is to achieve a conditioned or a probabilistic theory by establishing a coherent set of laws as “if X, then the greater/the smaller the likelihood that Y”. (Lambert & Toury 1989: 6)

Through his new approach Toury tries to establish translation didactics and this he tries to achieve through translation norms. He believes that translation norms should be regarded as “the focal point of a theory of translation purporting to supply a sound basis and an operative framework for descriptive studies into translation phenomena”. (Toury 1980b: 180)

Toury obviously disagrees with Osers who states that “the way a person translated (...) was very much his own business, and quite possibly not even a conscious one”. (Osers 1995: 56) Toury points out that it is naïve and misleading to think that translation depends on one hand on a translator who thinks that he has the freedom to define translational problems and suggest solutions for them, or on the other hand that translations are absolutely rule-governed, and the translator has no choice or freedom whatsoever during the act of translation. Therefore, he suggests that it is common sense that translation is subject to constraints of various types and degrees located

between the two ends of a scale, which include absolute rules on one hand, and idiosyncrasies on the other, and that the space between the two ends is usually occupied by intersubjective factors; usually 'norms' which act as constraints on translation. (Toury 1980b: 180-181) He says that:

These norms are the 'translation' of general values or ideas, shared by a certain social group - as to what is right and wrong, appropriate and inappropriate in every 'behavioural dimension' - into specific performance - instructions which are applicable to specific situations".  
(Toury 1980b: 181)

Norms play an important role in the current theory. The application of the theory of norms and its significance to the results of the thesis will be discussed in detail in the following chapter.



## Summary

After presenting this kaleidoscope of recent approaches to translation theory it is worthy of noting that in 1982 Wilss said, “It cannot be said- in spite of or perhaps even because of the extensive literature on the subject- that a coherent, theoretically and methodologically founded concept of the science of translation has already been fully developed (...) rather the contrary is true”. (Wilss 1982: 51) Arrojo (1997:6) quotes Savory who says that scholars of translation have “never agreed among themselves, but have so often and for so long contradicted each other that they have bequeathed to us a volume of confused thought which must be hard to parallel in other fields of literature”. (Savory 1968:49)

Many scholars of translation studies have largely imported its definition, models and methods, from neighbouring disciplines. According to Delabastita, what is peculiar about the emerging results of this situation is that “the entire field turns out to be characterised by a series of irreconcilable oppositions: literary vs. non-literary translation, linguistic vs. cultural aspects, theory vs. practice, normative vs. descriptive, source oriented vs. target oriented, theoretical vs. historical”. (Delabastita 1990: 138)

In the late 1980s Roda Roberts stressed the need for a systemisation of translation theory. She blamed the large number of diverse approaches on the fact that most scholars adopted the approach which most suited their academic background and orientation, and that “theorists work in a void with little or no recognition of the results of previous research”. (Roberts 1988a: 117) Roberts pointed out that this situation widens the gap between theoreticians themselves on one hand and between them and practising translators on the other. She maintained a strong stance against

the situation of translation theory at that time and referred to it as “chaotic”. (Roberts 1988a: 122) Roberts suggested that in order to reach a systemisation of the theory, scholars should first try to identify the terminology of each and every theorist and approach, in order to standardise them in one glossary. After this is established scholars should find what is common between these approaches rather than pointing out the differences. She says:

If translation theory is to move ahead, it must first move away from the [sic] juxtaposition/opposition course it has been following for centuries onto a linear, logically consistent, progressive course which leads from partial result to partial result. (Roberts 1988a: 122)

In 1995 Mary Snell-Hornby called for an *integrated approach* and urged for translation to be a discipline in its own right. She said, “translation studies needs to develop its own methods based, not on the outside models and conventions from other disciplines, but the complexities of translation.” (Snell-Hornby 1995: 35)

In the present day translation studies continues to attract new methods and approaches. The study of translation is as interesting as translations themselves.

The significance of reviewing the literature of translation theory and studies lies in the fact that in order to have a full understanding of the complex process of translation, it is suggested that translation scholars should have a broader view of all the approaches which existed in translation studies, and it is also recommended that they should incorporate different models and theories in an attempt to reach a more comprehensive method of dealing with the complexity of translation and therefore adopting a less restrictive theory. Delabastita urges “translation scholars to carefully consider alternative explanations and theories within the field and whenever it seems appropriate, to integrate elements of them into their own model”. (Delabastita 1990: 139)

On the other hand, if scholars are not able to incorporate the various approaches into the one they are following, they are still expected to be aware of the diversity of approaches, which are progressing alongside the line of reasoning they follow. Delabastita says, “given this rather problematic state of the art, translation scholars can ill afford to go on following their own line in complete ignorance of what others are doing in the field”. (Delabastita 1990: 138)

Toury says that, “it would be an illusion to assume that the so-called theories of translation indeed apply to one and the same object”. (Toury 1988: 82) He continues:

Hopefully enough, all objects tackled by theory of translation are at least interconnected. However, they can never coincide in full. They are, at best, different facets of one complex phenomenon. Consequently, all points of view from which translation can be tackled emerge as complementary rather mutually exclusive. (Toury 1988: 82)

It is also worth noting that other scholars draw a defining line between theory and practice, for example, Nida says, “most successful and creative translators have little or no use for theories of translation. In fact, some insist that only those who cannot translate become theorists of translating. In reality, outstanding translators are born, not made, since without an innate potential for the creative use of language, the study of procedures and principles of translating is unlikely to produce outstanding results.” (Nida 1996: 20)

After presenting all these diverse approaches and theories of translation and translation studies, it is obvious that we can rule out Nord’s wishful thinking with respect to having a “Magna Charta of translation which every translator could turn to in case of doubt”. (Nord 1991a: 92) Or Arrojo’s idea of a “master theory” (Arrojo 1998:34) for the mere reason that we will never be able to find a common, universal code of translation which applies to all cultures.

However according to Nord, what we can achieve is an:

Agreement on a general theory of translation which allows for specific variations when applied to particular cultures taking into account the culture-specific conventions of translation and the expectations the members of a particular culture have of a translated text. (Nord 1991a: 92)

What we can also follow is Newmark's understanding of translation theory in which he states that the main objective is:

To determine appropriate translation methods for the widest possible range of texts or text-categories. Further it [should provide] a framework of principles, restricted rules and hints for translating texts and criticizing translators, a background for problem-solving. (Newmark 1988: 19)

Therefore, this research will apply some of the aforementioned theories of translation and will attempt to draw theory and practice closer to each other. According to Hermans the interaction between theory and practice should be seen as "a view of literature as a complex and dynamic system: a conviction that there should be a continual interplay between theoretical models and practical case studies". (Hermans 1985:10) It is clear that there is no case if there is no theory, and that any study in translation should follow a particular line of reasoning.

Although the suggestions of a 'Magna Charta' or a 'master theory' are discarded, the current research nevertheless hopes to facilitate the task of translators at least on the level of choosing proper equivalences by the application of the theory of norms. The basic idea behind the theory is that translations depend for their existence on the acceptability of the recipient culture and this in turn depends on how well translations fulfil their function in the TC. This process, however, is neither absolutely free nor rigidly restricted, but it is subject to various constraints, which are usually norms. The current research applies the theory of norms to translation in an attempt to standardise Arabic translation of English legal terms. Therefore, it is necessary at this stage to explain how the current research uses the theory of norms as a tool to help

standardise the choices of equivalences. It is also essential to understand how norms act as constraints on translation. However, before explaining the theoretical framework of norms, the research presents a description of its methodology by pointing out the research problem and methods of addressing it. Hence, the following chapter is designed to address the research methodology and the theory of norms.

**Theory without translation is empty and translation without theory is blind**

*Albrech Neubert, 1996: 105*

## CHAPTER THREE

### RESEARCH METHODOLOGY AND THE THEORY OF NORMS

#### Introduction

The current thesis addresses four basic aspects. Firstly, the thesis adopts an empirical methodology in processing the study. Secondly, it applies the theory of norms in researching translation and thirdly it tackles one level of translation analysis, that of 'equivalences'. The fourth aspect, which is the comprehensive concept of the study, is the fact that this study is conducted within the borders of legal translation. This last aspect is addressed in a separate chapter which is devoted to the explanation of the features of legal language and legal texts, and in particular the ST used in the current thesis.

Chapter three, therefore, presents the research methodology which is followed in the current thesis and which is based on the empirical methodology adopted by scholars of DTS. Hence it provides an explanation of the employment of empirical methodology in translation studies. The empirical approach describes a phenomenon and then establishes general principles by means of which this phenomenon can be explained or predicted. The empirical approach is "initially devised to study, describe and explain". (Toury 1985: 16) In the current research, the phenomenon established is the assumption that norms govern the behaviour of translators in choosing their equivalences and hence affect the whole translation process. Therefore, the second aspect which is addressed in this chapter is the theory of norms and its application to translation studies and translation analysis. However, it is necessary that the theory of norm should be understood within its social sense and therefore, Chapter Three

provides a detailed description of norms in general and their features, then sets out to explain how norms act as constraints on the translators' behaviour and their translations. The focus of this is chapter the theoretical framework which is centred on the role played by the two basic assumptions of the descriptive school of target-orientation and translation norms. Both assumptions clearly imply that the importance is attached to the target orientation process which takes place in the TT, instead of that attached to the ST, which is pushed to the background. This approach, supported by the partisans of the descriptive studies school, suggested that "translation is the result of a socially contexted behavioural type of activity". (Toury 1980b: 180), or as "implying a degree of manipulation of the source text for a certain purpose". (Hermans 1985: 11) The followers of this approach believed that the relationship existing between the ST and the TT is only a step towards the understanding of the whole mechanism which underlies the act of translation. The disciples of the descriptive school suggested that the idea of an optimal Equivalence is unattainable and that the notion of Equivalence is only a label affixed to describe the relationship which assumedly exists between the ST and the TT. Therefore, in order to understand the role of norms in translation, on the one hand, this study presents an explanation of the notion of 'equivalence' in translation and in particular in DTS. On the other hand, however, the notion of equivalence is crucial to the current study due to the fact that this thesis is trying to find a method by which equivalences can be standardised.



## **Part One: Empirical Methodology**

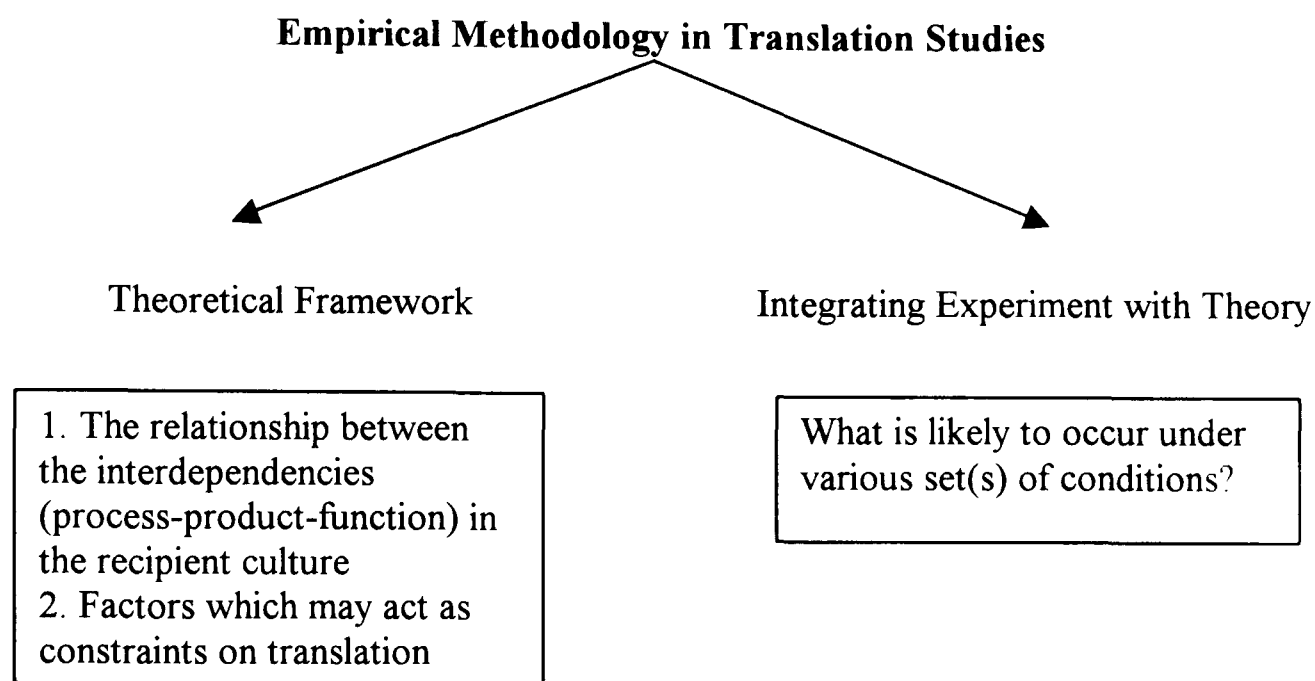
When scholars first initiated empirical science in the study of translation, their methodologies were intuitive; the greatest aim was to rid translation theory of its inherent weakness by adopting a systematic descriptive approach. (Toury 1980a) Now it can be safely said that the only real change in Translation Studies came with the introduction of empirical research, which started applying paradigms and models from all new disciplines and inter-disciplines to actual translation. Holmes attributes many of the weaknesses in contemporary translation theories to the fact that many studies are based on the deductive method of analysis instead on the empirical method. He says, “theories were, by and large, developed deductively, without recourse to actual translated text - in function, or at best to a very restricted corpus introduced for illustration rather than for verification or falsification”. (Holmes 1988: 34) In describing empirical research Toury claims that “the introduction of the empirical methods proved to be a true landmark in the evolution of the discipline, and it certainly looks like they are here to stay”. (Toury 1991b: 45) He adds:

The explanatory and predictive principles of a scientific discipline are stated in its hypothetical generalization and its theories, they characterize general patterns or regularities to which the individual phenomena conform and by virtue of which occurrence can be systemically anticipated (Toury 1991b: 46)

As previously mentioned, empirical methodology addresses two angles; firstly, it describes particular phenomena in the world of our experience and secondly, it establishes general principles by means of which these phenomena can be explained or predicted. Within the frame of a descriptive approach and applied to translation studies it functions towards the establishment of a “full-fledged, multi-faceted theory

of translation of a high explanatory and (some predictive) power”. (Toury 1991b: 63-64)

Figure 3 presents the way empirical methodology functions in translation studies:



*Figure 3: Empirical Methodology in Translation Studies*

### 3.1.1. Thesis Research Methodology

This research just like any other research employing an empirical approach faces multiple constructions of reality. It involves a systematic strategy for answering questions about people in an enclosed social context, which is in this case translators’ behaviour during the act of translation. With the use of a qualitative analysis method and the use of corpus-based analysis of translation the research will employ means for describing and attempting to understand observed regularities, patterns, commonalities appearing among translators.

This method follows Gutt’s “descriptive classificatory approach”, in which certain phenomena are seen to share certain aspects of similarity. These similarities will

allow the researcher to classify phenomena in sets and classes and enable her/him to provide explanations of the occurring similarities on a collective level. (Gutt 1991:

17) Gutt says that the basic aim of this approach is to:

Provide an orderly or systemic description of the phenomena in its domains. It starts from the observation that no phenomenon is totally different from every other phenomenon, but that sets of phenomena seem to be similar in some respects. These similarities can be exploited for purposes of description; they allow the theorist to describe the phenomena in sets and classes rather than individually which lends generalizing power to the theory. To the extent that phenomena with similar properties tend to behave in similar ways, this approach is also vested with a certain amount of predictive or explanatory power, though this is not usually seen as its first interest. (Gutt 1991:17)

The current study is initially based on Holmes basic map of translation studies<sup>16</sup>, in which he divides translation into two branches, the first is 'pure' and the second is 'applied' and then he divides the 'pure' branch into 'theoretical' and 'descriptive'. (Holmes 1988: 71) This study treats translation studies as divided between theoretical, descriptive and applied branches all of which are compatible whilst bearing on one another. In this research both descriptive and applied branches will draw on the theoretical branch but will make different use of it. (Hermans 1991:156) On the one hand the research addresses an empirical axis focusing on translation *per se* while on the other hand, the research discusses the practical issue of translational skills, which will be discussed in Chapter Four. In line with Leuven-Zwart's description of Toury's endeavours (Toury 1980a: 80), the research attempts to achieve "a proverbial catholic marriage" between theoretical and descriptive translation studies. (Leuven-Zwart 1991a: 39) Furthermore, in an attempt to create "unity out of disunity" (Neubert and Shreve 1992: 9) the research brings the forces of translation studies together by employing a descriptive systemic approach on the

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<sup>16</sup> See *Figure 2* p. 44

whole of the research on one hand, and by using a corpus-based<sup>17</sup> method in the analysis of the empirical study on the other. Hence, in the current research ‘corpora’ is considered the applied branch of translation studies. The use of corpora in the current research is significant due to the fact that it has proved to one of the most reliable method of comparison in translation analysis. According to Lindquist (1984), corpus work in languages has advantages that are valid for translation studies. He quotes Svartvik et.al (1982) who summarise the advantages of corpus analysis as follow:

A corpus makes it possible

- to state a wide repertoire of uses to which language is put,
- to make more objective statements than introspective analysis permits,
- to achieve total accountability of linguistic features
- to state frequencies of occurrence in different uses of the language. (Lindquist 1984: 261)

Therefore, the current research will make use of corpus-based analysis in the data analysis which is initially explained in discussing the research methods later in the chapter. However, the detailed use of corpus-base analysis is fully explained through the processing of the research in Chapter Five. Yet before designing the research methods, this research presents a specific idea as to the aim of the experiment. According to Agazzi, an experiment within the framework of empirical research is “an empirical procedure performed with a view of *testing* something, be it tentative conjecture, a rather elaborated hypothesis, or perhaps a whole theory”. (Agazzi 1988: 3) Therefore, this research starts with the identification of the problem and then suggests methods as to how this problem can be tackled.

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<sup>17</sup> Discussed in Chapter Two p. 26

### **3.1.2. Identification of the Research Problem**

There are different reasons why researchers choose to study a certain topic or a certain phenomenon. One of the most common reasons is the rise of social problems, which elicit the need for social research. In a constantly changing political and economic world, there is a symmetrical rise of problems associated with that change. Unfortunately, the growth of the number of states is usually connected with the growth of conflicts and disputes rather than harmony. In such situations, the parties concerned try to clarify their duties and guarantee their rights. This is usually achieved by regulating the interrelations between countries, governments, groups and individuals. Due to the rapid growth of technology and to comply with this fact, governments prefer to present the regulation of these interrelations by way of presenting them in a systemic codified method. This usually takes the shape of numbered articles included in lengthy documents such as statutes, agreements, contracts, etc. At any rate, in the particular case of international relations, translation plays an important role in the ratification of these regulations and making them accessible to both governments and public. It should be emphasised that in order to guarantee the rights of the concerned parties, there should be some kind of standardisation of translation terms. This study focuses on a contemporary topic, the need for standardisation of legal/political translation terms. The choice of this topic is due to its theoretical and practical relevance. In theory the research looks at translation within the frame of the theory of norms. In practice and through analysing the behaviour of translators with the use of corpora the study shall attempt to offer a method by which translation equivalences of political terms might become

standardised, which will consequently limit the possibility of political conflicts, at least those arising from the linguistics problems associated with documents.

The significance of this research and its contribution to the field of translation studies is that by making use of the results achieved from corpus-based studies of translation, the status of the applied branch in translation studies will be raised.

### **3.1.3. Research Question(s) and Methods**

This research has undergone several changes and passed through different stages. The preliminary idea behind the current research was to study lexical challenges facing the translator of the Jordan-Israel Peace Treaty (signed in Wadi Arab in 1994)<sup>18</sup> and the political conflicts or disputes that might arise due to misinterpretation of the text. That was the basic idea behind this research. After reviewing the literature on the theories of Translation Studies, it became apparent that this study fits within the stream of cross-cultural communication. The study adopted the hypotheses of German scholars Hönig and Kussmaul, 1982, Reiss and Vermeer 1984 and Höltz Mänttari 1984 (Snell-Hornby 1995:43), who viewed translation not as a process of transcoding, but as an act of communication. These scholars followed approaches which focused on the function of the target text ‘prospective translation’ rather than the prescription of the source text ‘retrospective translation’, and they viewed the text as an integral part of the world and not as an isolated specimen of language. The research was further supported by Gideon Toury’s target-orientedness (Toury 1980a, 1995a) approach, within which translation is achieved by a relationship between function, product and process, i.e. the form a translation would have and the strategies

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<sup>18</sup> Appendix IV

used during its generation are connected by a relationship which is governed by certain regularities, known as 'norms'.

It is noticeable that the concept of norms as applied to translation yields interesting results, the most relevant of which to this research is whether one can use the explanation of translators' conformity or non-conformity to norms in standardising translation equivalences. However, because norms themselves are not identifiable in translation, it is the regularities in the translators' behaviour that indicate their existence, and these are the elements which are examined. Toury says:

Normative formulations may, therefore, serve as a source of data on norm-governed behaviours, and hence on the underlying norms as such, but they may do so only indirectly: if one wishes to expose the bare norms, any given formulation will have to be stripped of the alien interest it has accumulated. (Toury 1999: 15)

Toury suggests that "the investigation of translational phenomena should start from empirical fact, i.e. from the translated text itself" (Toury 1985: 13) and this in turn should address the three axes of descriptive studies: product, process and function. (Holmes 1988: 71) Toury mentions that, "the application of experimental methods to translation has certainly shed new light on the need to account for the interdependencies of the three aspects; for no significant conclusions can be drawn from an experiment unless all the relevant parameters, along with their relationships, have been identified". (Toury 1991a: 182 & 1991b: 46) Toury states:

Whereas in actual practice, it is subjugation to norms that breeds norm-governed behaviour which then results in regularities of surface realisations, the search for norms within any scholarly programme must proceed the other way around. Thus, it is regularities in the observable results of a particular kind of behaviour, assumed to have been governed by norms, which are first noted. Only then does one go on to extract the norms themselves, on the (not all that straightforward) assumption that observed regularities testify to recurrent underlying motives, and in a direct manner, at that. For the researcher norms, thus emerge as *explanatory hypotheses* (of observed [result of] behaviour) rather than entities in their own right. (Toury 1999: 15-16)

Due to the fact that empirical methods can only be applied to observational data, the investigation of mental processes, which cannot be observed directly, has to rely on *the resulting products*.

In a descriptive methodology, scholars focus on describing phenomena both on individual and collective levels. This can be achieved by examining translated texts one by one by adopting a systemic approach of testing norms, models and behaviour. Toury suggests a number of programs for the objectives of descriptive studies, but he seems to favour the comparison method between translations and works of the target literature, or translations and source texts. He believes that this will establish similarities and differences which in turn will shed light on the norms and strategies employed in translations.

Such a comparative analysis will enable the researcher to note differences and similarities, where upon s/he can try to connect these findings with the constraints to which each translator seems to have subjected him/herself, especially the intersubjective, culture-dependent constraint which have come to be known as translational **norms**<sup>19</sup> (Toury 1997:283)

In addition to Toury's favoured methods, there are also a number of various empirical methods in translation studies such as: The comparison of different translations to the original translation of the ST, thinking aloud protocols (TAPs), comparing translations to texts of the same genre, and comparing different translations performed by the same translator in different periods of time of one ST.

Although all the above-mentioned empirical methods have proved their efficiency in the analysis of translation studies, they are not suitable for the purpose of this study. The current research has devised a different method which is followed in the analysis of the empirical experiment. The current research bases its experiment on the comparison which addresses the translated texts in isolation from the ST. The

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<sup>19</sup> See Toury 1995a pp.53-69



comparison is based on 100 different translations of the ST performed by four different groups of translators. The analysis of the translations which follows a manual corpus-based method is intended to identify commonalities or patterns in the choices made by the translators.

The research aims at finding explanations as to why these choices were made and whether, or not, they are governed by norms. It ought to be pointed out that “Translation within a descriptive approach should deal with *what* is actually done in translation and *why* instead of *how* it should be done [my emphasis]”. (Leuven-Zwart 1991b: 38)

The findings of the translation analysis are further supported by means of a questionnaire which all informants had to complete. The questionnaire is intended to measure the informants cognitive and extra-cognitive experiences<sup>20</sup> which affects their competence. The processing of the experiment and its design will be discussed in detail in Chapter Five along with the data analysis.

The current research has followed this method for a number of reasons, the most important being the fact that it aims at identifying the behaviour of translators during the act of translation through the choices appearing the TT. Therefore the research bases the empirical experiment on the translations of the ST. The research is not concerned with the processing of the ST. Therefore its role is reduced to pointing out the difficulties that are expected to face the translators in the processing of the TT.

On the other hand, it is important to point out that the research methods were affected by two crucial factors, which will consequently affect the research analysis at a later stage. The current research gives considerable consideration to two factors; the first

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<sup>20</sup> Cognitive and extra-cognitive experiences will be discussed under the section 3.1.4. Factors Affecting the Research Methods.

factor involves the context surrounding the empirical experiment and the second factor tackles the question of whether translation is a decision-making process.

### 3.1.4. Factors Affecting the Research Methods

#### 3.1.4.1. Contextualisation

In studying translated texts, it is of the utmost importance to study them within their context. It is contextualisation which should “ensure a satisfactory explanation of the linguistic make-up of the text and the (reconstructed) practice resorted to by its translators”. (Toury 1995b: 140)

In the present research, the study of contextualisation is achieved by means of the questionnaire. The context which is under study in the current research is not that of the ST, but of the TT for the following reasons:

1. The ST is actually the resulting work of three groups of authors<sup>21</sup> with different cultural backgrounds (Arabic-English-Israeli). They developed what was referred to by Toury in his *brakes*<sup>22</sup> example as an “artificial sub-culture” (Toury 1995b: 140) who shared English as the language of communication. Thus the study of this

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<sup>21</sup> Authors here refers to the three negotiating parties which took part in the drafting of the Peace Treaty

<sup>22</sup> Toury cites the example of a note which is posted on a German train to warn passengers against improper use of the emergency brake. The note, which is a literal translation of the German, reads: [Emergency brake -Pull brake only in case of emergency- Any misuse will be punished]. The text neither pertains to the German culture nor to any culture which has English as its national language. Therefore the system which hosts this translation and which governed its generation is the artificial sub-culture shared by the speakers of English whilst in Germany. For full explanation of the *brakes* example see Toury (1995 b) pp. 140-141

artificial sub-culture is unnecessary for this research, although it must be pointed out that this mere fact proves the idea that translations can be studied within the boundaries of their hosting cultures without referring to the source culture.

It also supports Toury's approach, which claims that the hosting context (target culture) of translation is the authority which governs the generation of the translation.

2. The fact that in the present research the ST belongs to an artificial sub-culture, and the TT belongs to a normal target culture, supports the theory that there is no way both texts share the same systemic space "not even when they are physically present side by side" (Toury 1995b: 137) as is the case in the present legal text. Nevertheless, Toury adds that "this is not to say that, having been severed from it, a translation would never be in a position to bear on the source culture again, on occasion even on the source text itself". (Toury 1995b: 137)

3. In the present case it is also worth pointing out that the translator is not trying to import the cultural context of the ST into the TT. Instead it is the legal context that is at stake.

Hermans gives a considerable amount of importance to context. He suggests that a text without a context does not mean anything. He refutes the idea that deciphering a linguistic code in a vacuum can make sense. Hermans cites the example of the 'British anthem' chanted by football fans, he suggests that in doing so they are not wishing for the queen to have a long life rather it is merely a type of normative behaviour they follow in such a situation. (Hermans 1997: 12) He says:

Texts therefore have no fixed meanings in themselves. They acquire meaning, they are invested with meaning as communications in a selective environment, a different context. (Hermans 1997: 12)

Hermans continues by suggesting that if this is true for a text, then it can be true for translation. Hermans (1997: 12) cites an interesting quote by Hans-Georg Gadamer in

his essay of *Man and Language* (1966), in which he says: “Nothing that is said has its truth simply in itself, but refers instead backward and forward to what is unsaid (...) And only when what is not said is understood along with what is said is an assertion understandable”. (Gadamer 1977: 67)

Wilss supports the idea that in order to investigate how translators or students of translation behave in the process of translation, he suggests that we should have a thorough investigation “not on how well people perform but also on how they perform in a specific translation situation. Examining discrepancies between actual and optimal behaviour then raises questions about how such discrepancies emerge”. (Wilss 1994:141)

Hence, the suggestion is that a sentence or a text is just a string of words, which makes no sense, unless it is associated with context. However, in the particular case of legal texts, the social context is less important than in other genre of texts. It is clear that legal words have the authority of law in themselves, and therefore these words can hold meaning without referring to social context, as long as they make sense in the legal context.

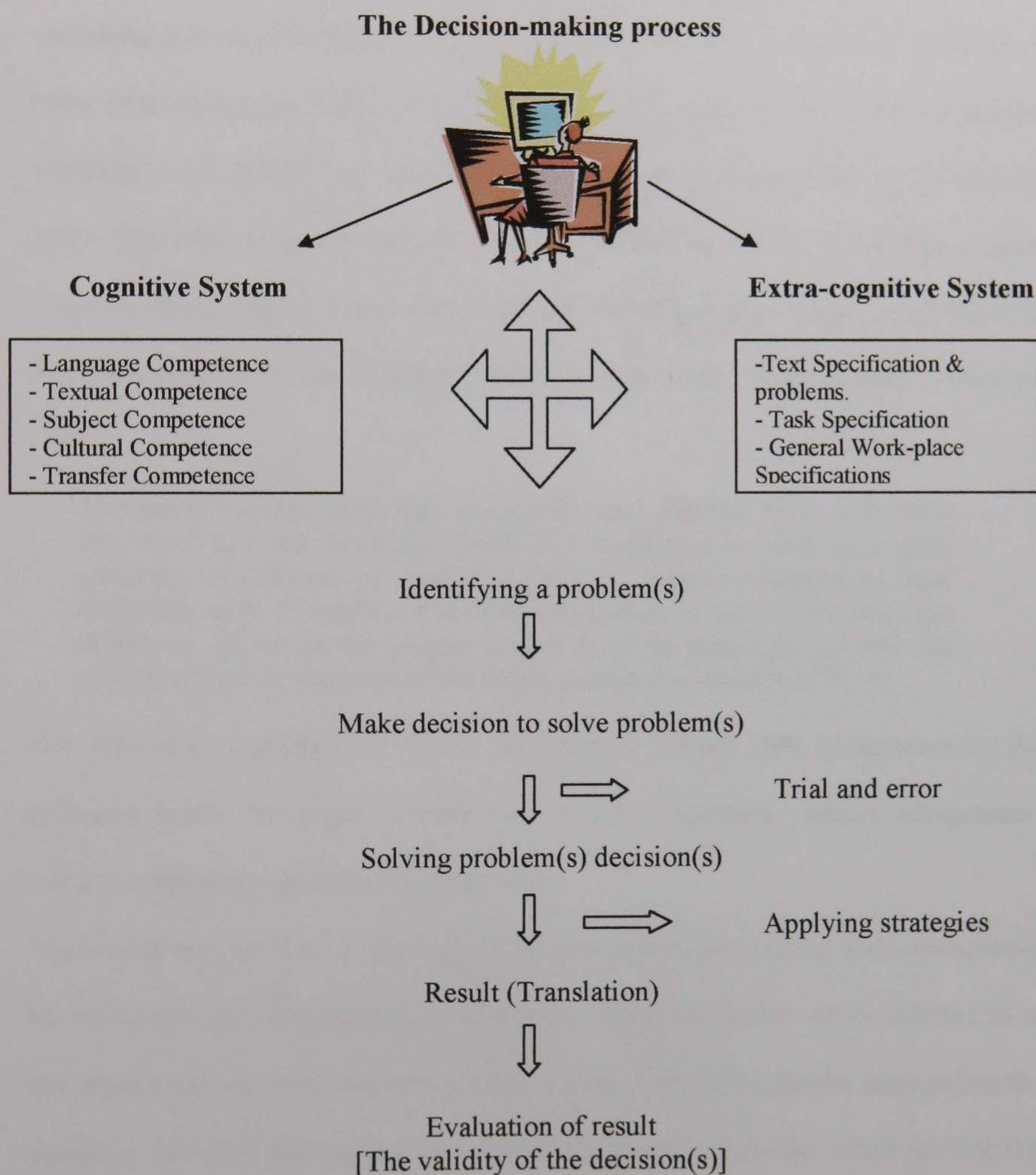
Pym believes that one of the most common shortcomings of contemporary translation theory is “the assumption that texts are wholly determined by their communicative context and immediate purpose, such that their textuality would be fundamentally transparent”. (Pym, 1998: 108) He even goes as far to say that if that is the case and one knows enough about sender and receiver worlds, then one might as well throw the text itself away.

### **3.1.4.2. Translation as a Decision-making process**

Translation as a form of human behaviour, in most expected cases, involves making rational decisions. This process which is a feature of human nature is not a random form of action but it is part of common behaviour in mental processes to behave rationally. But if one looks closer, it will be found that one commits irrational decisions in everyday life. How can there be, then, an agreement on the rationality of behaviour in general? Usually if what is done is acceptable and considered correct in a society, it is described as rational. According to Wilss human behaviour must satisfy the “four basic requirements: verifiability, plausibility, situational (contextual) adequacy, and value orientedness”. (Wilss 1994: 132) The same applies for translation and Toury states that in making their decision in the act of translation, translators tend to prefer avoiding “negative reactions to ‘improper’ behaviours as well as obtain the rewards that go with a ‘proper’ one”. (Toury 1986b: 21) But the problem which arises, is that with the diverse approaches to translation theories and studies, what may be considered rational in one approach might be considered irrational in another. Whatever choice the translator makes entails a risk. Therefore, choices must be seen within a comprehensive framework including both positive and negative results and this is what Wilss refers to as “conditional probabilities”. (Wilss 1994:132).

Due to the fact that translation is considered a form of human behaviour, a translator is highly likely to be caught in the trap of routine translation and thus lose her/his right to decision-making. Wilss says “routine translation, both linguistically and culturally, is, of course, a different matter; routine-practising and decision-making behaviour are in principle opposed to each other”. (Wilss 1994:132).

The decision-making process is obviously affected by a number of factors. Figure 4 represents an overall view of the factors affecting translators' decision-making.



*(Figure 4): Translation as a Decision-Making Process*

In looking at figure 4, it is immediately noticed that two types of factors affect the translator who has a task of translating a text: the first factor, which is specific to the

individual, is the *cognitive system* which affects the translators' competence. The term competence at this stage is used loosely as the *cognitive system* is not the only factor which affects the measurability of translators' competence. Therefore, it is suitable for the purpose of this chapter to define translation competence as, "the underlying system of knowledge and skills needed to be able to translate". (PACTE in press cited in Orozco 2000: 199) To look at the cognitive system from a general viewpoint, it is noticed that translators are expected to be specialists in all areas in which they have to operate as part of their professional work. If one has a better cognitive knowledge in a particular field this is what makes him/her a specialist in that field, and this is what Neubert (2000: 4) refers to as "heterogeneity". Neubert says:

Translation requires skills that are usually very different from each other and which are not normally found in a traditional or even a modern university or business (or artistic) career. e.g. literary, technical or legal translators have to combine a level of knowledge, at least of the language expert, i.e. of the mother tongue as well as of the language pair with the specific artistry or expertise of the writer or expert. (Neubert 2000: 4)

Any translator, regardless of his/her specialisation should have competence in the following levels: Language competence, textual competence, subject competence, cultural competence and transfer competence.

The second type of factors affecting the process of decision-making and consequently the whole process of translation are specific to situations, which will be referred to in this research as the *extra-cognitive factors*. These refer to the factors surrounding the translator and they are: 1. Text-type specifications and problems, which include the genre of the text (technical, commercial, legal, literal..) its functionality (informative, operative, vocative) sensitivity etc.. 2. Task specifications; this involves the task environment, time constraints, pressure, aiding material etc.. 3. Work-place specifications, the seriousness of the job (paid or unpaid) as in the case of professional

translators (graded or not) as in universities. Toury suggests that there is a relationship between the act of translation and the context of situation, where the act is performed. He suggests that the act of translation itself is embedded in the translation event. (Toury 1999: 18)

With all these factors affecting the translator, s/he proceeds to identifying the problem. According to Nord a translation problem is, “an objective problem which every translator (...) has to solve during a particular translation task”. (Nord 1991b: 151) Identifying translation problems is one of the main issues in the success of a translation process, and it is an indicator of the translators’ competence (Orozco 2000: 205). However it is not necessarily the easiest task, and very often it is not recognisable on the surface level, and may appear at any stage during the translation process. Solving observed problem(s) is the second stage in the translation process, just as observing them was the first. Wilss suggests that there are two levels of solving the problem: the first is a static process which involves a decision-making strategy and this involves having “declarative knowledge” (Wilss 1994:133): i.e. *knowing what*. The second is a dynamic process, the “processual knowledge” and it involves the problem-solving strategies: *knowing how*. (Wilss 1994: 133) The second level is arrived at by means of trial and error, as a normal course of action. This method is usually the one adopted by novice translators and students. In the case of professional translators, they are expected to have passed that stage especially in dealing with familiar text types, and familiar translation-problems which they deal with in a routine-manner. This is not to say that they are not bound to face new problems. “Experienced translators have internalised a typology of situations, but they have to rise to the occasion of ever-new situational challenges”. (Neubert 2000: 5)



In any case, it is safe to assume that on the level of trial and error, the translator's choice is individual and confined to his/her experience on the linguistic and extra-linguistic levels, and affected by his/her cognitive and extra-cognitive system. This method of trial and error might be justifiable in coming up with, situational-specific, decision-making strategies. But according to Wilss it is not a justifiable method for coming up with decision-making rules, because no two people share the same cognitive experience. (Wilss 1994:143) This indicates that there should be a more powerful factor which should govern the decision-making process. Translation problems solving strategies<sup>23</sup> are defined by Toury as, "any set of moves utilised in trying to solve a perceived problem; perceived by the one performing the act, that is". (Toury 1999: 28) With the application of these strategies through the act of decision-making, translators achieve their intended result, which is the actual translation of the text. Any produced translation goes through the process of evaluation. However, it is not the focus of this research to test the quality of translations but the behavioural actions of translators; nevertheless what should be known at this stage is that any process of evaluation carries within it the unavoidable risk that translators might not have chosen the right decision to start with.

The idea that translation is a decision-making process entails that it is a form of social behaviour. In society, if a certain state of affairs occurs people deal with it a certain manner which becomes the favoured course of action which become stabilised as norms. Similarly, in translation, translators adopt a norm or a set of norms which involve the making of a decision considered rational. However, when translators adopt this particular norm and make a decision to follow and imitate it, they abandon their right of free will to decide whether this particular course of action was originally

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<sup>23</sup> Strategies will be discussed in detail in Chapters 5 and 6 as part of the Analysis.

valid, and it was indeed the correct course of action. In this case discrepancies and inappropriateness in translation occur. Therefore, it becomes clear that the core concept of the research is the concept of 'norm', which is a basic notion in DTS and empirical methodology.

## **Part Two: The Theory of Norms**

Norms are considered the tools by which guidelines of behaviour are stabilised. It is the necessary outcome of a society striving for social order. Norms play an important role in the application and analysis of the current empirical experiment, therefore it is important that the notion of norms should be discussed in details.

### **3.2.1. Norms as an Object of Descriptive Studies**

A norm is the object of scrutiny in descriptive studies. The concept of norms has become a durable and useful instrument in Descriptive Translation Studies, which theorised and analysed their nature and operation and their effect on the practice of translation. However, in its theorisation, descriptive studies do not lay rules or guidelines for how a translation should proceed. As regards to the idea of translation as a decision-making process mentioned in 3.1.4.2 the question which arises is: what governs this decision? In the descriptive model, norms provide the first step towards an explanation of the choices and decisions which translators make. However, this act is not straightforward, especially given that translators as Hermans puts it, "do not just mechanically respond to nods and winks, they also act with intent". (Hermans 1999: 80) If norms offered ready-made solutions to particular types of translation

problems, then all translations would be identical resulting in no translation problems, which is definitely not the case. To fully understand the function of norms in descriptive studies one should have adequate understating of the notion and their features in general.

### **3.2.2. Norm as a Social Concept: Where Does it fit in Our Lives?**

In short, norms can be described as a middle stage between conventions and rules. In order to comprehend this position there should be a clear distinction between the three levels of agents regulating internal personal behaviour: norms, conventions and rules. Many people often confuse norms and conventions, since they both play a role in regulating lives to help form a sustainable form of coexistence. Both norms and conventions derive their legitimacy from shared knowledge, mutual expectations and acceptance. In order to understand the role conventions play in regulating interpersonal behaviour, one should first understand the meaning of convention. Hermans presents a definition based on his understanding of the explanation provided by the American philosopher David Lewis. Hermans states:

Conventions are regularities in behaviour which have emerged as arbitrary but effective solutions to recurrent problems of interpersonal coordination. Because they have proved effective, these solutions become the preferred course of action for individuals in a given type of situation. Conventions grow out of precedent and social habit. They do not have to be explicitly agreed, but they presuppose common knowledge and acceptance. They imply mutual expectations: the expectations that in a given situation, I will adopt a certain course of action, and my expectation that others expect me to do just that. (Hermans1999: 81)

What Hermans means is that conventions solve co-ordination problems by precedent, i.e. “by means of shared acquaintance with a *regularity* governing the achievement of

coordination in a class of past cases which bear some conspicuous analogy to one another and to our present coordination problem". (Lewis 1969: 41)

In other words, they do not need to be absolutely agreed upon, and they lack a binding force. However, they have a regulatory function which restrict the number of particular options, and which makes one's behaviour predictable. (Hermans 1997:7-8)

Christiane Nord is one of the first to introduce the notion of convention in translation. She agrees that conventions are not necessarily explicitly formulated. Nord says that conventions are:

Based on common knowledge and on the expectation of what others expect you to expect them (etc.) to do in a certain situation. Therefore, they are only valid for the group that shares this knowledge. They are acquired, and even internalized, by the member of the group during the socialization process. Newcomers have to learn the convention either by 'trial and error' or by imitation. (Nord 1991a: 96)

With regards to translation, Nord introduces two types of translation conventions. The first concerns features beyond the actual text such as proper names, culture-bound realities etc...and the accepted methods of dealing with them. These are referred to as regulative translational conventions. The second deals with what is actually considered as translation within a particular culture community and this she refers to as constitutive conventions. (Nord 1991a: 100)

Norms on the other hand can be considered long term durable conventions. They grow out of conventions that have existed long enough to have earned a stronger position and therefore imply a degree of social and psychological pressure. Norms also have a stronger directive character by which, in a given situation, one ought to rather than simply be expected to behave in a certain manner. Norms then are similar to conventions but they are stronger and more binding. Bartsch says:

As regards their origin and function, norms are conventions that solve coordination problems. But they come into their own as soon as preferences and expectations that go with conventions are conceptualized

as normative expectations. Like conventions, norms act as constraints on behaviour, foreclosing certain options while suggesting others. (Bartsch 1987: 141)

Although norms are not dictated to us, we practice them in everyday life while not being aware of them. Although they can be implicit they are still followed. They can also be verbalised in order to comment on them or “as part of the process of imparting them to others to ensure social continuity”. (Toury 1999: 15)

Norms are not universal. They are affected by culture, circumstances, and situations; therefore they differ from one place to another (e.g. table manners, answering the phone, queuing at the bus stop). Hence they carry in them an aspect of correctness and appropriateness and in this way they act as constraints on the behaviour of individual. Yet individuals do not necessarily have to follow norms whether intentionally or unintentionally. For example in Korean table manners it is rude to talk while having your meal whereas in somewhere like the Middle East, gathering around a table for a meal is more of a social act where everyone talks and exchanges ideas and information. If a Korean man shares a meal with a group of Middle Eastern people he might think that they are breaking the norms of his culture by talking and they might think that something is wrong with him (both will frown upon the others' behaviour but no rules are set against each group's behaviour).

On the other hand, some may break a norm intentionally. Thus a person who jumps a queue will get a few raised eyebrows but will not be punished. This proves that norms do not set regulations of conduct and behaviour, and who breaks which norm depends on the occasion, on the nature and strength of the norm and the individual's position and motivation.

At this stage comes in the role of 'rule' which regulates interpersonal relations in a manner which, if broken will result in the individual being punished. This rule is

usually set by an identifiable authority, even if it was not consented to by the majority of the people. Hermans states:

Compared with conventions, then decrees represent the opposite end of the normative scale: they spell out strict rules, which may be codified both as obligations and as prohibitions, and leave the individual who is subject to them no freedom of action either way. (Hermans 1991:163)

With regards to translation rules, not too many scholars supported the idea of setting translation rules, and for a long time there has been no one to claim that they really exist. Eugene A. Nida criticises the idea which suggests that languages are absolutely and universally rule governed. He believes that if this is the case then all translators have to do is “set up a series of detailed principles in the form of computer-program rules. By rigidly following such rules, satisfactory results can then be guaranteed”. (Nida 1996: 7) However, this cannot be achieved in reality, because no language is rule governed to that extent, and different languages do not share the same rules. He adds, “no text worth translating is so lacking in the creative and figurative use of the language as to be fully analyzable by autonomous rules”. (Nida 1996: 7) Also, if languages are rule governed then it is only natural that they can be rule defying. Or to be more accurate “they are rule stretching”. (Nida 1996: 10)

### **3.2.1.1. Definitions of Norms**

According to Edna Ullman-Marglit, norms are “the prescribed guide for conduct or action, which is generally complied with by a member of society”. (Ullman-Marglit 1977: 12) They are means to regulate the behaviour of individuals and support the interaction between them in order to create a sustainable form of coexistence.

In addition to its function of regulating the behaviour, Hermans suggests that a norm underlies the mechanism which accounts for this regularity. It is a social and

psychological entity, which serves as a middleman between the individual and the set of regularities perceived as accepted beliefs, values and preferences.

Hermans says, “norms are tied to shared values in a community and in turn values are stabilized by norms”. (Hermans 1999: 75) Therefore, they carry a notion of correctness and appropriateness in the socio-cultural system of the community in question.

Norms have a number of features: they are culture bound and differ in their degree of durability. Some norms last for a long time while some change according to circumstances and times. The existence of norms for a certain group of people implies that there is a degree of conformity to them. However, this does not entail that the degree of conformity is the same for all members of the group, or that all members in fact, conform to it. Because norms are less compulsive than rules, regular non-conformity (breaching or violating) of them could occur and this may cause change in the norm itself. Toury says, “as long as a norm is really active and effective, a high rate of regularity of behaviour in recurrent situations of the same type may be observed”. (Toury 1980b: 181)

### **3.2.1.3. The Force of Norms**

Through discussing the differences between conventions, norms and rules, it is concluded that norms lie in the middle stage between the permissiveness of conventions and the obligation of rules. However, although they don't dictate regularities in behaviour, they instruct what ought to happen, and how things should be done. This in itself involves a certain degree of constraint on behaviour. Regardless of their degree of force, constraints on behaviour help solve co-ordination

problems. Therefore they are usually related to the notion of correctness, due to the fact that it is more likely that norms guide behaviour towards something correct, not something wrong. And because norms are associated with a notion of correctness or with what is proper and appropriate, it is expected and agreed that this particular course of action should be adopted by all who find themselves in a particular situation. (Hermans 1997:8)

According to Bartsch, in order for norms to guide behaviour within the frame of the notion of correctness they have to be interpreted as models to be imitated. (Bartsch 1987: 70) And since the correctness-notion is a culture bound notion, then these models are determined by the socio-culture system, and compliance with them is also determined by the community. Therefore the degree of force influencing the act of following the model vary from one culture to another. Toury says:

Whatever its exact context, there is absolutely no need for a norm to apply-to the same extent, or at all- to different sectors within a society. It is even less necessary or indeed likely for the same norm to apply across cultures. In fact 'sameness' of norms is often a mere coincidence- or else the result of continuous contacts between sectors or entire cultures". (Toury 1992: 62)

Since norms imply a social and psychological pressure, their directive or normative force is a matter of social pressure, backed up with inducements or rewards, or the threat of sanctions. Norms are similar to conventions in that they imply a degree of social acceptance and internalisation. They are also able to cope with large amount of discrepant behaviour. However, they move away from conventions and they rely more on directive rules, which are issued by identifiable authority. It is clear then that " the existence of norms for a certain 'behavioural dimension' obviously presupposes a certain rate of conformity to them". (Toury 1980b: 181) However, non-conformity is also a possibility, as acts or performances do not always reveal the same degree of



conformity, since norms are considered changeable and unstable entities. Toury says, “nonconformity is not only perfectly possible, but also very common, since norms are much less compulsive than any rule and the sanctions involved in them –the positive and negative alike- are usually much milder” (Toury 1980b: 181) He also points out that idiosyncrasies can become institutionalised through their repeated use and as a result cause change in norms themselves. Regardless of this, as long as a norm is durable and effective, it is normal practice to associate a pattern of regularity in behaviour with it.

#### **3.2.1.4. The Existence and Validation of Norms**

The very act of observing norms confirms their existence. Whether they are followed or not, that is a different issue which is related to acquired habit, and since norms are not rules and they do not force the individual to follow them, then there are no sanctions implied for non-compliance to them. Therefore, a norm is validated by the mere act of being observed. Hermans even suggests that a norm could be validated even if it was not observed, as long as there are no persistent breaches of a particular norm without some kind of sanctions. In other words, norms are different from rules in that they are tolerant to discrepancies, and if a norm is not followed this does not make it invalid. (Hermans 1997:8)

As was mentioned earlier, norms can be implicit. However “verbalisation obviously reflects awareness of the existence of norms and their significance”. (Toury 1999:15)

The reason why norms came to exist in the first place could be explained by the fact that it is known that socio-cultural systems are historical entities which naturally means that they are open to change and adaptation, and they continuously import and

exchange information which can either be positive or negative. This apparatus of exchanging values, information, resources, etc. regulates the performance of the socio-cultural system itself, and these can be called feedback. Norms in that sense play the role of feedback which regulates systems and individuals within them and help them respond to impulses forced upon them by the surrounding environment by providing solutions for certain types of problems.

Judging by the aforementioned features of norms, it is obvious that they are relative entities depending on various factors and this means according to Itkonen, “*norms not known to exist do not exist* [my emphasis]”. (Itkonen 1983: 73) So if they lie unconsciously at the back of the mind then the individual knows them, even if s/he is not aware of them, and even if they are not directly observable.

With regards to the validity of norms, it is affected by a number of factors: firstly in terms of their power, norms occupy a space which lies between the absolute rule and pure idiosyncrasies; they can sometime tip the scale in favour of either sides; they could either become more binding or more relaxed, resulting in various types of norms.

Also, in relation to the force of norms, the borderlines between various types of constraints are widely spread; what is binding for a particular group of people could be either more or less binding for others. Therefore, the validation of norms is relative and the “ability to manoeuvre between alternative sets of norms is of course an important aspect of social life, and its acquisition is an important component of socialisation”. (Toury 1999: 16-17)

Chesterman (1993:5-7) found a way by which one can validate norms. He suggested that some norms are validated by a certain norm authority, and some are validated by their mere existence.

Chesterman explains that a valid norm exists to the effect that X ought to do H under condition C in society S, if and only if, the following conditions apply:

1. Most members of S regularly do H under C.
2. If somebody does not comply with the rule [i.e. norm], he or she will be criticized by other members of S and such criticism will be looked on as justified by other members of S, such that this criticism is not criticized by them.
3. Members of S refer to the rule [norm] by expression like 'An X ought to do H when C' or 'It is a rule [norm] that X ought to do H when C' in order to justify their actions, or demands made others, or criticism of behaviour.<sup>24</sup> (Chesterman 1993: 6)

It is clear that norms are found in many aspects of life, and since they regulate behaviour on different levels, this regulation does of course involve part of the language, which this research is focused on, and that is *Translation*.

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<sup>24</sup> Chesterman's theory of the validation of norms is based on the findings of Raz 1975:53, cited in Bartsch 1987:76

### **Part Three: Translations as a Norm-Governed Activity**

The emergence of translation as an independent discipline opened doors to new concepts in translation. In 1988 James Holmes<sup>25</sup> introduced what he called ‘disciplinary utopia’ which embodied a sense of shared interest in problems of translation, together with the establishment of the channels of communication to exchange views and information about the field. Holmes’ new discipline was based on pure research. (Holmes 1988:6768) At around the same time the concept of norms began to play a major part in Translation Studies of all kinds. Since translation was viewed, like many other forms of communication as presenting a degree of social interaction, some scholars including Gideon Toury adopted the view that the concept of norms earlier discussed in its social sense can play a major role in regulating the work of translators, especially given that it was established by then that translation is a decision-making process and that translators need some kind of guidelines to help them make the right decision. The work of a translator involves a transaction between parties who have an interest in the transaction which takes place. The translator is the agent who is responsible for realising this transaction, yet his/her actions are neither entirely free nor predetermined – nor are they necessarily conscious or rational, so s/he needs something to co-ordinate his/her actions. At this point norms are introduced to the translator in order to guide and facilitate the act of decision-making.

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<sup>25</sup> The emergence of translation as an independent discipline was presented in James Holmes’ essay ‘The Nature of Translation Studies’ that was first published in 1972. In his essay he tried to present a unique field of Translation Studies and he distinguished the main branches and sub-branches of the field. His main distinction was between Descriptive and Theoretical Translation Studies.

The basic premise is that translation, as a communicative act, constitutes a form of social behaviour. For communication to succeed those engaged in the process need to co-ordinate their actions. All decisions in the translation process are thus primarily governed by norms and by the two language systems involved. As mentioned in Chapter Two Gideon Toury argued that the relation between a translation and its source was determined by the choices which the translator had made during the overall process of translation, and these choices he suggested are governed by 'performance instructions' which he called 'norms'. He observed that norms are central to the act, and event, of translating. Within a target-oriented translation approach, the act of translation involves a compromise between the production of a text which is designed to occupy a certain position in the target culture and at the same time constituting a representation of a text which pre-existed in a different source language and a different source culture. This compromise between the two, often incompatible, requirements is affected by sociocultural factors which determine its appropriateness. Compromise, which can be seen to be a factor of effectiveness, is used to resolve the constraints between adequacy and acceptability. And this compromise is achieved through the regulative capacity of norms; however this regulative capacity differs from one culture to another. (Toury 1999:20)

When the notion of translation norms was introduced, it was not greeted with equal enthusiasm. Osers (1995: 53) had speculations about the actual existence of norms, especially those acquired throughout a long period of time. He mentions that for him, if a dozen translators perform the same translation task in different periods of time and adopt different patterns and strategies of translation, it will not indicate that they have adopted twelve different norms, but proves the non-existence of norms. To support his argument he cites an example traced back to the principles adopted in

early translation by the Roman scholar Cicero “non verbum de verbo”, which was considered a great discovery and a milestone in translation theory. Osers believes that Cicero’s new principle was not a discovery but a matter of presenting the best method of translation practiced at his time, and therefore, it cannot be considered as a breach of the existing norm. He says that the adoption of the principle “verbum de verbo” practiced before Cicero’s newly introduced method does not indicate the norm practised in that period but the practice of incompetent, or inexperienced translators. “Or perhaps of translators venturing into new linguistic and literary regions, where it could have been the result of a sense of insecurity in a new linguistic environment”. (Osers 1995: 54) Osers disagreed with the idea of having general translation norms. He said, “what we sometimes think of as translation norms governing a particular period or society (...) are really norms of societal attitudes and behaviour rather than translation norms in the strict sense”. (Osers 1995: 55)

However just like most scholars Osers contradicts himself and regardless of his views that translation norms do not exist in different periods of time, he still believes that there are individual translation norms or what could be also referred to as “translators’ philosophy of translation”. (Osers1995: 55) This Osers suggests, began to assume a more important status in the second half of the last century. He explains that, before translation theory became a widely known of study, translators used to proceed as they saw fit, and he insists that, “so long there was little or no reflection on the process of translation we cannot properly speak of translation norms”. (Osers 1995: 57) He also adds, “translation norms have been formulated over the past one hundred years or so. I can see no evidence that they are consistently or even extensively reflected in translation practice”. (Osers1995: 61) One could understand Osers’ objection to norms if they are viewed as prescriptive guidelines, rather than normative

tendencies. However, the fact that norms exist does not entail that the act of translation has to be a rigid process; the acceptance of norms entails that there is freedom of choice. The translator makes the decisions and suffers the consequences. Freedom of choice means that someone either adheres to the norms or refrains from them, and since there is an alternative form of behaviour there is an existence of norms. (Toury 1999: 15)

It is clear that that the translator's work involves choosing from a number of options. However, it is necessary to establish why translators opt for one choice instead of another. Is it because it was chosen by other translators in similar cases (although it is not always necessarily that the translator is aware of similar cases) or is it because they are routinely recommended? Whatever the reason, there is a guiding power which steers the translator towards his/her choice, and that is the power of norms. This act of choice in translation entails that the concept of 'norms' has replaced the notion of 'equivalence' which occupied for a long time translation studies' circles, especially that of the linguistically oriented school, which considered translation as referring to the relationship between the source language text and the target language text. This relationship was the centre of their research. Their theory was based on the determination of the actual existence of translation and its definitions. However, this approach is not the focus of this research. What matters here are the views presented by the descriptive studies school which:

Tried to escape the epistemological strait-jacket that the power of the original text retains over the translation by reviewing the problem of translation in terms of the actual product rather than the ideal of a 'faithful' version. (Gentzler 1993: 144)

It should also be pointed out that the study of the notion of equivalence is significant to the current research due to the fact that the research bases its analysis on the equivalence level only as part of the translation process.

### **3.3.1. Norms and Equivalence**

It is indisputable that the term equivalence has changed across time in translation studies. Hermans points out that in early stages of translation studies the term 'fidelity' was used to describe the equivalent relationship existing between the ST and TT. This was replaced by the term 'equivalence' itself which was reduced at a later stage to be replaced by 'norms'. (Hermans 1996: 25) As Svejcer puts it, "Equivalence is one of the central issues in the theory of translation and yet on which linguists seem to have agreed to disagree". (Svejcer 1981:321 cited in Gutt, 1991:10) However, it can be safely deduced that most schools of thought agreed that Equivalence is a relative notion in translation.

Due to the fact that the concept of equivalence served as "one of the lines of demarcation" (Halverson 1997:208) between the two main contemporary rival schools of thought in translation studies: the linguistically-oriented school and the descriptive studies school, the best way to understand the notion of 'norms' is through studying the notion of 'Equivalence'.

It should be pointed out that the notion of norms did not substitute the notion of equivalence. Whereas the linguistically-oriented approach focused on looking for the notion of equivalence and by this investigating (how?) translators proceed in the act of translation, the descriptive studies approach investigated (what?) is done and (why?) during translation and thus introducing the notion of norms.



### 3.3.1.1. Equivalence

The notion of equivalence is usually associated with definitions of translation. Translation Studies has been concerned with describing and explaining, within a theoretical framework, any behaviour which leads to something that can be appropriately called a translation. It sets out to describe the actual translation, its principles and its methodology, which includes the formulation of principles and practical application.

Koller states that:

Equivalence is a relative concept in several respects: it is determined on the one hand by the historical-cultural conditions under which texts (original as much as secondary ones) are produced and received in the target culture, and on the other by a range of sometimes contradictory and scarcely reconcilable linguistic-textual and extra linguistic conditions. (Koller 1995: 196)

Pym presents his understanding of the notion of equivalence. He says, “the notion of equivalence I am defending refers to a relation operative not between a source text and a target text but between the target text and the reader prepared to believe and trust its status as an ‘equivalent’ of an unseen source”. (Pym 1998:107)

Whenever the question, ‘what is translation?’ is put forward, the answer is routinely associated with reproducing the equivalent utterance in another language while preserving the form and content. This reproduction of the text can include paraphrasing, repetition, or restatements in another language. These may well preserve the full content of the source text message, but in that case the differences of language, circumstances, audience and translators are not essentially relevant to the process, which is not what translation scholars regard as translation. Gogol uses glass as a metaphor referring to translation, he defines the perfect translator as “one who

becomes a pane of glass, which is so transparent that the reader does not notice that there is any glass". (*cited in* Forster 1958: 16)

Hermans' understanding of translation supports Gogol's idea. He thinks that translators and their products should become transparent, and they should deny themselves in the interest of the original's integrity and authority. He says that "translators do not speak their own names; their words are someone else's words". (Hermans 1999: 98) However, Forster claims that this ideal of the translation to be like a pane of glass is never reached in practice. He suggests that "there are always little flaws or ridges in the glass, and even the clearest glass has always an index of refraction". (Forster 1958:16) Georges Mounin (1955) also believes that, "The translation is a pane of glass through which we look at the work of art. This glass may be clear, or distorted or coloured". (*Cited in* Forster 1958: 16)

Translation is a multi-faceted activity. It is changeable and variable, and achieving absolute equivalence is a difficult matter, especially since the process of translation is affected by an enormous number of factors, the most important of which being that translations are both language-bound and cultural-bound. Ross concludes that translation is the:

Primary form of utterance and articulation in which discrimination and selection are always constitutive factors. Indeed, intentional articulation and utterance are manifestly inventive and validational, plural in their achievement and ramification. The requirements that translations be similar to their originals is a condition of all articulations and utterances not to be fulfilled in any particular respect, but pregnant at all times with alternative realizations to be attained, as in representational art, by invention, creation and discrimination, a profound manifestation of human capacities. (Ross 1981:21)

The term equivalence, regardless of what it means exactly, served as *an easy way out*, whenever a definition of translation was in question. One way or another, whether formally, semantically, or pragmatically, translation involves replacement or



substitution in one language, by an equivalent in another. “Translation equivalence was mainly linguistic for Nida (1964) and Catford (1965); textual for Wilss (1982) and Neubert (1981), and later on it was declared to be an illusion and therefore a term to be discarded (Snell-Hornby 1988)”. (Rabadán, 1996: 127) In translation studies the notion of equivalence was found to be one of the most debatable issues over the past two decades. Perhaps the best way to describe equivalence is to use Hermans’ expression “the troubled notion”. (Hermans 1995: 217) The German scholar Wolfram Wilss says, “the science of translation has so far failed to develop clear cut criteria for the measurability of TE and has thus failed to explicate the concept of TE”. (Wilss 1982:136)

In order to understand the notion of equivalence it is useful to have a look at a general definition of equivalence. In the Collins Dictionary of English, *equivalence* is defined as the state of being “equal or interchangeable in value, quantity, significance, etc. (...) or having the same or a similar effect or meaning”. (Collins Dictionary 1991: 526) Thus, equivalence is defined as a relationship existing between two (or more) entities, and the relationship is described as one of likeness, sameness, similarity and equality in terms of any of a number of potential qualities. (Halverson, 1997: 201)

The notion equivalence did not acquire its nickname ‘the troubled notion’ without good reason, on the contrary it has been a source of headache for so many scholars in Translation Studies. Equivalence was not only defined as the value of being equal or interchangeable, but it was also considered the relationship existing in translation between the source and the target texts, which includes the rendering of one utterance in one language to another by replacement or substitution of all the features on the macro - and micro - levels. However, this definition implies strict interchangeability and complete reversibility and this in itself cannot be strictly true because it entails

that the two languages are synonymous in both the linguistic and cultural systems, which is not possible. However the notion of equivalence clearly has a number of features which influence its role in translation. The fact that equivalence describes a relationship existing between two entities entails that there is a degree of comparison relating to the macro - and micro - levels of the text, thus covering all the text's different units and levels. Equivalence also relates to the degree and nature of similar features and thus addresses the issue of the quality of translation, which was one of the main approaches discussed by the linguistically-oriented school.<sup>26</sup> Nevertheless, the aspect of degree does not appear to be crucial to the current research. According to Rabadán, the question of degree plays a role in “whether a TT is more or less ‘correct’, more adequate or more acceptable (...) but this does not change the fact that every TT has got a pragmatic *function*, and that this function will contribute meaning to its TT”. (Rabadán 1996: 129) Perhaps the most prominent feature of equivalence which acquired a great deal of research in translation studies, is that of *similarity*. Halverson suggests that the relationship of equivalence is described as “one of likeness/ sameness/ similarity/ equality”. (Halverson 1997: 201) The feature of similarity in relation to translations and their originals opens doors to a number of questions concerning both the necessity of exact similarity between translations and their original on one hand, and the issues of the degree of similarity on the other. This is explained by showing the differences between ‘similarity’ and ‘sameness’. Most definitions of translation entail the rendering of an utterance or text in language B, while retaining the same meaning of language A. However, paraphrasing, summary, etc. can achieve this end. The problem is that neither meaning nor similarity of meaning are clear notions; therefore it is helpful to point out the differences between

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<sup>26</sup> See Juliane House (1977) *A Model for Translation Quality Assessment*. Gunter Narr: Tübingen.

similarity and sameness. 'Similarity' covers a very wide range of factors, which is qualified by individual perception, whereas 'sameness' is usually between two entities sharing the specific features.

For example:

An apple = an apple, (they are similar because they share similar features but they are not the same because they cannot have the exact specific features). On the other hand an apple does not equal a banana but it can be similar to it because they share same features (fruits, sweet, nutritious etc).

This implies that no two entities are exactly the same, not even twins. Whereas 'sameness' refers to situations when one entity has a number of exact copies such as having two copies of a letter i.e. duplicates. At the same time similarity is relative and is perceived according to the individual's understanding.

Rabadán claims that in searching for sameness in equivalence, one neglects the important factor of content. She says:

Translation equivalence as a search for sameness is a very restrictive approach however; it ignores the extreme difficulty of translating meaning because of the vital importance of contextual-main situational – and intertextual relationship (Rabadán, 1996: 127)

Chesterman (1996: 159-164) argues that in that sense translation equivalence is better conceived as a kind of similarity instead of sameness. He supports the argument that there is no exact translation, and points out that this feature of similarity is a matter of cognition; it is not an objective concept and judgements of similarity must be made on some principled grounds, and not be arbitrary. A translation cannot be the same as its original, but this lack of sameness does not necessarily mean that perfect translation cannot be achieved.

The other feature of similarity is that of degree. How can we measure the degree of similarity between two entities? The degree of similarity deals with the number of

shared features the two entities in question are perceived to have. In addition to that, what is also important is that some features are more major and more important than others, which in turn is sometimes more relevant to the judgement of similarity. A number of factors influence the judgment of similarity. It has to be always remembered that the feature of similarity is both culture-bound and theory-bound. Therefore similarity is a relative notion which changes with the change of culture and shifts from one place to another and from one context to another. (Goodman, 1972: 437-447)

In detailing the main features of the notion of equivalence, it is safe to deduce that there is no optimal equivalence in translation. Equivalence is a relative notion which changes with the change of the circumstances surrounding the act of translation. It is indisputable that the term equivalence has changed across time in translation studies. Whether the notion of equivalence changed with the change of the term itself is a different issue, one which has been pointed out in the review of literature in chapter two. At this stage it is accepted that translation equivalence is defined as “a global relationship between two texts that defines one of them as the translation of the other”. (Rabadán 1991 cited in Rabadán, 1996:129)

The relation between equivalence and norms is that the process of translation cannot take place without its key player i.e. the translator, and it is the translator who not only chooses the equivalent but also has the liberty to make a preference for one equivalent instead of another. This act of choosing however is not a free act. It is at this point when ‘norms’ play a part in the translation process by acting as constraints governing the translator’s choice of equivalent.

### 3.3.1.2. Equivalence within the Descriptive Approach

To understand what the notion of equivalence means within DTS, it is important to explain what translation itself means within the framework of this approach. In the descriptive studies school, translation is believed to be a type of action or behaviour situated in time and space, and the behaviour registered is described in terms of the regularities demonstrated. Therefore, descriptive translation studies set out to describe and explain behaviours which lead to something that can be referred to as translation. For a translation to be called as such, the descriptive view considers that this acceptability depends on two factors: the proficiency of the translator and the quality of the translation in question. It argues that the translator is the first authority to designate a certain text 'a translation'. The justification given for this is that the translator is the only person who has full access to both source and target texts. The Descriptive Approach also argues that if the receiver of the produced text accepts it as translation, then it is called translation. Therefore, the existence of translation depends on the proficiency of translators, and the quality of translation as perceived by the reader. Toury says:

Translation is designed to fulfill the needs of a so-called 'target' culture. It does so by introducing into this system a version of something which is already in existence in another, 'source' culture, using a different language, and which-for one reason or another- is deemed worthy of introducing into it. The introduced entity itself is never completely 'new', that is, alien to the recipient culture in all possible respects. On the other hand, it is always something that has never been there before" (Toury 1993:10)

What seems obvious here is that there is an existing relation between the target and source texts and according to Toury (1995a) this relation only exists if the two major authorities agree that it exists and those are the translator and the receivers of the text.

Toury suggests that this relation is one of equivalence and it can only be met by supplementing means to regulate behaviour; which are 'norms'.

Scholars of DTS argue against theories which state that the standards of excellence in translation are usually, although not necessarily always, determined by experts of translation. They also reject the idea that these experts have to rely on their intuition and taste in preferring one translation to the other. DTS scholars believe that these so called experts should be ready to give reasons why they made one particular choice rather than the other. Toury disagrees with Vermeer (1987: 25) who claims that translation is intuitional. Toury believes that translation is a decision-making process, in which under certain conditions a translator chooses one approach from a variety of communicative approaches. Toury asserts that the translator should keep in mind the goal of producing an "all target language text", (Toury 1997: 287) which might create tension between the decision opted for and the ultimate goal. He mentions that, "Everything has its price"<sup>27</sup> (Toury 1992) and the translator's choice is no exception, whether a translator conforms to normative behaviour or not, there may well be a price to pay for the choice made.

Hermans supports the idea of translation as a decision making process which takes place within a communicative context and is governed by norms. (Hermans 1998: 156) In the process of translation it is obvious that the translator has the upper hand, s/he has both the power and the responsibility in the translation process. According to Levý (1967) the translator's responsibility begins with choosing a text to be translated

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<sup>27</sup> A title of an article written by Toury 1992, in which he stresses that in training translators, the principle that should be followed is "Everything has its price" instead of "We know better". By this "trainees would be made to weigh options of various types against each other, using as a yardstick not just the norm advocated by their teachers, but also the toll that might be exacted by resorting to this or that option, including the most non-normative ones". (Toury 1992:60)



and throughout the overall structure of the text, sentence construction, word choice, and even punctuation marks and spelling.<sup>28</sup> Hence translation is a decision making process and every decision made during this process affects the anticipated results, due to the fact that translation is an integral piece of work. However, this work is not arbitrary; it is governed by certain conditions, which affect the translator's choice. Some of the conditions are compulsory as in having to abide by the rules of the grammar of the target text language; for instance, the use of the passive or the dual in Arabic. Other rules involve factors relating to the individuality of the translator and the specificity of the text. Nevertheless where non-compulsory choices are concerned the translator has the free will to make her/his own choice from different alternatives, but this choice is not entirely free. This is clear because different translators make the same choice regularly in different translations, but what matters is what governs the translator's choice in opting for one alternative instead of another, which is explained by the notion of norms. Hermans explains how norms affect the choice of the translator. He says:

Translators will decide in favour of one option rather than another because they are aware of, and respond to, certain demands which they derive from their readings of the source text, and certain preferences and expectations which they know exist in the audience they are addressing. Because such decisions are made regularly across a range of texts, patterns will establish themselves which in turn will affect the expectations readers bring to the translated texts. In this way norms become fixed. Norms, that is, are part of the answer to the question why translators tend to make certain decisions rather than others. (Hermans 1999 :74)

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<sup>28</sup> What Levý fails to notice is that in so many cases the translator does not have the freedom of choice but s/he is required or expected to translate as part of a job or duty, especially with non-literary translation.

Hermans points out that the norms as a social regulation mechanism have two roles; they exert a type of pressure on a community to behave in a certain manner which is appropriate in a particular situation, and this entails that norms hold a notion of correctness within their content. (Hermans 1998: 156)

### 3.3.1.3. Toury's Understanding of Equivalence

Toury understands equivalence as only a label affixed to translational relations assumed to exist between two texts. (1980a: 39, 56) When Toury initiated his first views of translation he was less interested in the relationship between the ST and the TT, and was more concerned with various features of the target culture. Therefore, he adopted the Historical-Descriptive Approach, which introduced the displacement of equivalence as a concept. For scholars like Toury, who worked within a Historical-Descriptive Approach, the explication of equivalence was seen as a road leading to nowhere.<sup>29</sup> The feature of similarity, which characterised the concept of equivalence earlier, was of no concern to these scholars. On the contrary, they were interested in differences and in the motivation behind textual manipulation. In his approach Toury focused on empirical work and this was clear through his book *Descriptive Translation Studies and Beyond*, published in 1995, which was a more sophisticated version of his earlier work of 1980 *In Search of a Theory of Translation*. In his two books, Toury introduced two concepts: target orientation and translation norms, through which the concept of equivalence was overthrown and no longer occupied a central position in translation. With regard to the concept of target orientation, Toury says that translation is a way to originate something new in the target culture, "it is

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<sup>29</sup> For more information see Snell-Hornby 1995

performed INTO (from) rather than FROM (into)". (Toury 1988: 83) He suggests that translation is considered as such (i.e. translation), if a given cultural community accepts it as a translation. In other words if text A is a translation of text B because it is considered as one in a socio-cultural configuration, then the assumption is that the relation between these two texts is one of equivalence (Toury 1980a: 39, 65). Therefore, this relation is taken for granted and as mentioned before, equivalence is only a label affixed to this relation. In the assumption of target orientation, the importance of the source text is reduced and Toury justifies it as follows:

It will be recalled that the mainspring of the present endeavour was the conviction that the position and function of translations (as entities) and of translating (as a kind of activity) in a prospective target culture, the form a translation would have (and hence the relationship which would tie it to its original), and the strategies resorted to during its generation do not constitute a series of unconnected facts. Having accepted this as a point of departure, we found *interdependencies* emerging as an obvious focus of interest, the main intention being to uncover the *regularities* which mark the relationships assumed to obtain between functions, product and process. (Toury 1995a: 24)

What matters is the type of translation relation, which exists between a source and target text, and why one exists instead of the other. According to Toury 'norms' are the means, which determine what type of translational relation there will be between a source and a target text. He suggests that norms constitute an intermediary step in a larger program. Hermans explains the overall outline of the program; he says "you start by picking a text which you argue can be taken to constitute a translation, you study its composition and its relation to surrounding texts. Then you map it on a text in another language which you have reason to believe is its source". (Hermans 1999: 91) This is where the role of norms appears; because norms govern the choices which translators make, they determine the receptor text and hence the relation between the translation and its source. This relation Toury calls equivalence, he also adds "establishing the relation between translation and original serves as a stepping stone

to the next stage, which is that of figuring out the overall concept of translation underlying a given corpus of texts". (Hermans 1999: 91) And in this case the old fashioned concept of equivalence is replaced by the new concept of norms.

### **3.2. The Effects of Norms on the Choice of the Translator and their Acquisition**

Just as social norms act as feedback to our behaviour and regulate the performance of individuals in a socio-cultural system, norms of translation affect our decision-making process by regulating decisions of choosing one alternative from a set of potential options. The way it works according to Davis (1994: 97) is that:

We try to do all these things in a conventional way, and when we agree that we have options we try to create conventional ways of deciding among them. And you should note that creative activity is continuous: [conventionalised kinds of behaviour] would cease to happen if we did not, so to speak, renew the understanding which makes them, each time... (cited in Toury 1999: 17-18)

In the act of translation, it is clear that the environmental feedback which the translator receives contains within it a notion of correctness and appropriateness, and therefore it is normative in nature. According to Toury, this means that a translation relationship is achieved if the translator chooses from a set of possibilities which is seen as appropriate for the society in question as to what a translation utterance should be like. (Toury 1980a: 63-65, 1986a: 85, 1986:b: 20)

As regards acquisition of norms, there are a number of different ideas relating to how translators acquire norms. According to Hermans translators acquire norms by learning them, in the same way as learning any other social activity such as speaking properly in accordance with a particular community. Therefore, according to Hermans learning to translate properly is knowing how to operate norms of translation in a way that satisfies the expectation of a certain community of what is regarded to

be translation. (Hermans 1997: 9) Norms help the translator to select a particular course of action from a given set of alternatives within a specific situation.

Hermans puts it more clearly, he says:

In terms of translational behaviour: norms allow the translator who is faced with a contingent, unpredictable and potentially destabilizing input- the Source Text- to reduce the number of potential solutions for this array of translational problems by adopting only those solutions suggested by norm as being likely to result in a Target Text that accords with a given model, and thus with a certain notion of correctness, and hence with the values and attitudes that lie behind these models and correctness notions. (Hermans 1991: 164-165)

However, where, or who from, translators learn norms is not absolutely clear. Translation is a form of communication and therefore involves environmental feedback, which is usually normative in its essence; hence, it is only a natural reaction that translators adhere to this feedback because they wish to avoid improper behaviour. Therefore, Toury suggests that translators acquire norms by picking up “the conventions and norms pertinent to their jobs through a process of initiation within the culture itself, a specific mode of socialisation”. (Toury 1999: 25-26) This process of acquisition begins with novice translators who for lack of experience prefer to acquire the set of norms favoured by the granting group, which is usually either academic or professional training institutions such as teachers at universities or translation programs, which came into being to meet the need of institutionalising and regulating the recognition of translators. (Toury 1992: 61,65) A novice translator is initially exposed to external feedback; s/he “simply has no means of assessing the appropriateness of various possible translation products”. (Toury 1986a: 86) As a response to the external feedback, Toury carries on to explain that the translator begins to take into account “potential normative responses too” with time and experience and by following the principle of trial and error translators stop depending on external feedback and begin to develop an “internal kind of monitoring

mechanism”. (Toury 1986a: 86) At this stage it is safe to assume that the translator has gradually developed translation competence by acquiring a set of norms which are accepted as appropriate for the act of translation s/he is performing. (Toury 1999: 25-28) However, it cannot be absolutely assumed that any set of norms acquired by translators is a sustainable and comprehensive set of norms. Norms, as it has been established, are a changing entity. The change could take place across either a long or short period of time, and the change depends on many circumstances, whether cultural, linguistic or social. Because of this change, Toury suggests that one can deduce that there are three sets of competing norms: “trendy” describing the current mainstream norm, “old fashioned” referring to the previous set of norms, and “progressive” referring to new ones. (Toury 1992: 63) Therefore, the act of translation involves translators’ capability to manoeuvre between various norms by selecting the most appropriate for the situation “while keeping the door open to adjustment, even a complete switch to a different kind of behaviour, governed by an alternative set of norms, should the need arise”. (Toury 1992: 64)

### **3.2.1. Toury’s Norms**

Influenced by Jiří Levý’s classic article *Translation as a Decision Process* (1967), Toury saw that norms govern the decision-making process which is part of a socio-cultural behaviour. And therefore the regularity in a translator’s behaviour in the act of translation is constrained by socio-cultural constraints, which are seen as “performance instructions” (Toury 1980a: 51 & 1995a: 55), both in a general sociological sense, and with reference to communication and translation, in the sense of controlling linguistic usage. Toury says that, “every act of translating, every

instance of decision-making in the translation process is governed by certain norms”  
(Toury 1980a: 57)

Norms operate at the middle level between competence and performance, where competence stands for the set of options translators have at their disposal, and performance refers to the option actually selected.

According to Toury, norms play a major role in the entire process of translation, starting with choosing a source text to translate, which is not necessarily always true, as it is not always the task of the translator to choose a text, and ending with making decisions concerning the tiniest details in sentence construction. Toury distinguishes three kinds of translation norms:

1- Preliminary norms: These relate to the choice of the text to be translated. They can also relate to the choice made by the translator as to whether s/he should translate directly from the original language or from an existing translation in another language. Preliminary norms embody the overall translation strategy. However, because the current research is only focused on legal texts, it can be argued that in the case of legal translation, translators do not conform to preliminary norms because they do not always have the option of choosing a particular text. In most cases legal translation is performed as part of a job.

2- The initial norms: These govern the translator’s choice between two polar alternatives of the overall orientation of the translation. The first pole is that of ‘adequacy’, which entails adherence to norms expressed by, and contained in the source text. The second pole is that of ‘acceptability’, which entails adherence to norms governing the target system. Therefore, initial norms determine whether a translation is to be primarily source-oriented or target-oriented.

Initial norms are achieved when two major elements occur; “(a) being a worthwhile text in the target system, or a certain section of it; (b) constituting a representation, or a reconstruction, in the target system of another, preexisting text, occupying a certain position in some other system”. (Toury 1980b: 181)

Perhaps legal text translation is one of the most prominent types of translation to fall within the limits of the initial norm. The translation of legal texts holds within its nature an element of sensitivity which is related to interpretation. This entails, in frequent cases, a tension between the loyalty to either source text, or target text. The initial norm involves the whole process of translation act, not the translated text only. It is affected by extra-linguistic factors which involve the conformity on the extra linguistic level, i.e. the culture , the audience , the political aim ....

3- Operational norms: These control the decision-making process during the act of translation. Toury distinguishes between:

- a- Matricial norm, which help determine the macro-structure of the text and govern decisions concerning for example, translating all or part of the source text, dividing it into chapters, acts, stanzas, paragraphs and so forth.
- b- Textual-linguistic norms, which affect the text’s micro-level, the detail of sentence construction, word choice the use of italics, or capitals for emphasis, and so on.

The most problematic of these norms is the initial norm as the two poles adequacy and acceptability have proved to be confusing in translation studies. Toury adopts the notion of adequacy which was introduced by Even-Zohar, who considered translation to be adequate if it realises the textual relationships of the source text in the target language, without any breach of its linguistic system.



Hermans suggests that:

A better solution would be not to think of the 'initial norm' as forcing a choice between two poles only, but as involving multiple factors, depending on how the source text is viewed, whether it or similar texts have been translated before, whether the translation is made for import or export, by a speaker of which language, for what audience or purpose, and so on. If translation is a socio-cultural activity, as the norm concept suggests, there seems little point in trying to conceptualise it in terms of a choice along a single axis". (Hermans 1999: 77)

Norms basically "determine what hierarchy of relationships will function as translation equivalence in the relational sense of the terms". (Toury 1980a: 71-78 & Toury 1980b: 182)

Hermans gives a considerable amount of credit to norms in the process of translation. He suggests, "without norms, the translator would probably throw up his hands in despair". (Hermans 1991: 165)

On the other hand, Leuven-Zwart rejects the idea that there is an ultimate NORM, which will solve all translation problems once and for all. Instead, she thinks that it is appropriate to have an individual normative behaviour among translators by which the reader will be free to either agree or disagree with the author's norm. (Leuven-Zwart 1991b: 37)

However the translator is the agent whose decision is neither entirely free nor predetermined; her/his actions are also neither conscious nor rational. So whether s/he is aware of it or not, s/he is submitting to a set of norms, even in the basic act of choosing to perform a translation. Hermans claims that in submitting to the standard norm of a given system, whether translators go with the flow or row upstream, both actions are considered to be governed by norms.

Within this framework, Leuven-Zwart observes that:

The concept of norm, then, has a double meaning in Translation Studies. In Applied Translation Studies norms are synonymous with rules: they are what translators, translation critics and teachers of translation regard as the requirements for good or near perfect translations. In Theoretical and Descriptive Translation Studies, however norms are not the requirements which ought to be set for translation, but the requirements as they are set in practice. Non applied Translation Studies does not prescribe, but describes and explains the requirements which-according to translators, critics and readers- good translation must meet. (Leuven-Zwart 1991b: 37)

Also in line with Toury's concept of norms and translation as a form of human behaviour, Chesterman believes that translation studies should seek to find guides for this behaviour, which can be achieved through norms. His discussion, though, covers social, ethical and technical norms of translation. Social norms play a role in regulating interpersonal co-ordination, whereas ethical norms uphold the values of clarity, truth, trust and understanding (Chesterman 1997a: 175-86), and these also relate to the central category of technical norms. Chesterman divides his types of norms into (1) Product norms, also termed *expectancy norms*, which show the expectations of the reader of what a translation should look like. Product norms serve as boundaries of translation, the translator should work within the space of that boundary, if s/he fails to do so, her/his translation is likely to be called something other than translation – adaptation, paraphrase, travesty, parody, etc... (2) Process or *production norms*, which regulate the translation process itself. These are divided into three professional norms: the first two are not specific to translation but to the ethical and social part of it. The first is the *accountability norm* which is ethical in nature and recommends that translators should act in such a way that the demands of loyalty are appropriately met with regard to all concerned. The second is the *social norm*, which is related to communication and which stipulates that translators should act in such a way as to achieve the perfect communication relation, as required by the

situation, between all parties involved. Its practical demands correspond broadly to the maxims (be truthful, be clear, be relevant, etc.). The third norm which relates to translation is the *relation norm*. This urges the translator to ensure that “an appropriate relation of relevant similarity is established and maintained between the source text and the target text”. (Chesterman 1997a: 69 & 1997b: 149) In other words, the relation required is that of relevant similarity. However, relevant similarity is not consistent; it depends on the type of the text in question. Therefore, relevant similarity might be primarily formal, as with legal contracts, or stylistic, as with literary texts, or semantic, as with scientific articles, or as a matter of overall effects, as with tourist brochures or advertisements, and so on.

Others referred to norms in a broad linguistic sense which covers the whole process of translation. Osers points out that there are four different types of linguistic norms all varying in degree, and translators do not conform to all four of them in the same manner and the same force. Osers emphasises that linguistic norms without doubt affect translation strategy. He claims that the four types of norms affecting translation practice are:

- (1) the linguistic norm of source language(SL),
- (2) the norm of the translation process, which some translators would call their translation philosophy,
- (3) the linguistic norm of the target language (TL), and
- (4) the norms governing the expectation of the target culture of the TL receptor. (Osers 1995: 53)

On a cultural level, Pym (1998: 111) presents an idea which assumes that translational norms are culture-specific, he suggests that norm-breaking, or what he refers to as ‘change’, “raises questions about power and social tension, whereas (...) non-change (norm observance, if you like) invites assumptions of social unity and homogeneity”. Pym’s views imply that in the analysis of norms, the frame of their analysis should be performed within the boundaries of the single culture. Hermans disagrees with Pym

and regards the fact that translation blends into culture asserts that it cannot be a monolithic system. On the contrary, it is a diversified and adaptive entity, which is multiple and has a potential to change in order to meet certain conditions. This gives rise to competing norms, and to norm conflicts which steer translators in the direction of adopting one set of norms rather than the other. He says:

Since cultural systems and subsystems are highly complex entities, they may be expected to contain a range of competing, conflicting and overlapping norms and models embedded in different spheres and of activity, which themselves form part of changing historical configurations. (Hermans 1998:157)

Hermans also points out that conflicting and overlapping norms not only occur on the social and institutional aspects of translation, but there is an individual aspect to the process of translation, which also plays a role in the translators' choices. He suggests that the individual aspect, which affects the norm, could be anything from making money to political ideology and systems, or even acquiring literary fame. Therefore, he emphasises that the process of translation involves all agents from production to consumption. (Hermans, 1997: 10-11) He says:

The operation of translational norms is then not a matter of texts, or of textual relations but of acting, thinking, feeling, calculating, sometimes desperate people with certain personal or group interests at heart, with states to defend, with power structures to negotiate. (Hermans 1997:11)

Different scholars of translation have different concepts of the meaning of 'norm', however, many "equate the concept of translation norms with what Gideon Toury calls the 'horizon of expectation' of the receptor audience, to which the translator will, either deliberately or instinctively, conform". (Osers 1995:53)

### 3.3.2.3. Legal Norms

There should be a clear distinction between legal norms and translation norms applied to legal texts, and their connection to each other. It is one of the most important features of legal language that there should be no room for ambiguity or vagueness. In a legal language one should have a set of facts treated as proven without reasonable doubt, these facts result in legal consequences. However, in order to find the fact-situations one has to find the norms which regulate these fact-situations and draw from them the legal consequences. In this process one has to always keep in mind that the whole act is performed within the framework of law. The application of law, or in other words, the legal consequences, depends on the various possibilities of the interpretation of the legal norm. With regard to finding the appropriate norm that fits the fact situation Wroblewski suggests that in law this usually is an immediate occurrence he says, “legal norms are formulated to fit immediately average fact-situations occurring in a given society”. (Wroblewski 1963: 406)

It is necessary that the meaning of norm be understood to such a degree as to enable a decision to be made in a particular fact-situation. There are two semantic rules which play a part in understanding legal norms. (Wroblewski: 1963: 409-416) The first is that of the immediate normal understanding and this is sufficient in many cases. However, if doubt arises in the meaning of the norm applied to a given case, there is a necessity to seek the help of other rules such as resorting to directives of legal interpretation. The meaning of a legal norm has to be sought through its analysis in the context of its occurrence. There are three types of context: a. Linguistic, which includes semantics, vocabulary and syntactic rules. b. Systemic which consists as part of the legal system and which includes two vital parts, the consistency of meaning and

the wholeness (all the gaps should be filled), and c. Functional, which includes the total social situation. These three types constitute the basis of the grouping of the directives of the legal interpretation. The grounds for choice of the directive of legal interpretation are based on normative theories, which consist of two sets; (1) Static theory, where the meaning of an interpreted norm is constant as long as it is not changed explicitly in appropriate action by the norm-giving authority. The stability of the meaning is conceived as an essential element in asserting legal security, stability and certainty in the application of law. The meaning of norm in this case is considered static and it attaches great importance to linguistic and systemic directives. (2) Dynamic theory, where the meaning of the legal norm changes without any interference from the lawmaker. It changes within its functional context. The conditions of choosing either one of the static or dynamic theories embodies “the tension between the ‘letter of law’ and requirements of ‘life’”. (Wroblewski 1963: 416)

On the other hand, norms of translation applied to legal text play a similar role to that of legal norms. Whereas legal norms define (restrict) the choice of a legal authority in choosing the legal consequences, translation norms defines the choice of the translator in choosing the most appropriate translation strategy which guarantees the same legal effect in the TL. Just as legal language should have no room for ambiguity or vagueness, legal translation should be treated in the same manner, and it should not allow any room for misinterpretation. Translation norms were fully discussed earlier in the chapter. Therefore, there is no need now to expand in this area.

## Summary

The main aim of Chapter Three was to point out the methodology adopted in the empirical experiment which is designed to test the hypothesis in the thesis. Baker emphasises the importance of methodology in translation research. She attributes the growing concern with methodology to the increased recognition of the influence of the researcher's subjectivity. Baker says, "recognising and accepting the subjectivity of the researcher, as well as accepting the need to focus on the effects of discourse on social reality rather than the internal mechanism of language, are both extremely challenging in this respect". (Baker 2001b: 13)

The current research makes use of the theoretical, descriptive and applied branches of translation studies. With the use of the descriptive studies featured by the theory of norms and the use of the applied studies featured by corpora in the analysis of the empirical experiment, this thesis hopes to achieve results that will help raise the status of the applied branch of translation studies. This is only applied to legal text and it supports the need for standardising the Arabic equivalences of English legal and political terms, which will consequently limit the conflicts arising from text misinterpretation.

By monitoring the translators' patterns of behaviour appearing through the choices they make in the translation experiment, the research will be able to establish similarities and differences which in turn will shed light on the norms and strategies employed by them. Strategies and norms should meet in order to supply a more comprehensive and flexible explanation of translational behaviour. Consequently this will help the thesis achieve its anticipated results.

Translation, like any other form of communication, is a norm-governed process. This process depends on the translator himself who is considered as a professional translator, and on the text, which is similarly accepted to represent correct translation. These two agents, professional translator and model translation are the sources of translation norms, one is behavioural whilst the other is text linguistic. (Chesterman 1993: 2) A professional translator becomes recognised by acquiring the set of norms which are considered as valid in her/his translation circles. The acquisition of a particular set of norms is based on two stages: firstly, stage one involves external feedback from the superior granting group as in translation training centres or universities which vouch for professional qualifications for translators. The second stage depends on internal feedback developed by the translator her/himself in building translator's experience. At this stage, norms arise from collective experience of translators working in particular fields with particular text types. The internal feedback translators develop is influenced by translators' knowledge of how other translators dealt with a specific translation situation. It also depends on their linguistic competence. An experienced translator will have gained that experience because s/he has been asked, or paid repeatedly to translate. This in turn implies that clients are satisfied with the quality of the translations, and thus makes the translated text an accepted translation.

The suggestion that the translator and the translation both comprise a source of norms opens doors to a number of questions: Where do translators actually get the norms? Do they lie at the back of their minds and are used whenever the need arises? Or do they already exist in the translations themselves? Or are there external factors which influence both sources? Also, it is interesting to know, who rules the other, is it the norms within the consciousness of translators or the norms within the texts?



Norms themselves do not appear in translations, it is the regularities in translators' behaviour which indicate that they exist, and whether translators are conforming to them or not. Due to the fact that norms are not directly observable, and given their diversity and changeability, it is not always easy to identify which are the most relevant and dominant norms in a particular act of translation. However, with analysis of translations, one might be able to identify whether translators adhered to a particular set of norms, and why. The main issue is that, through the establishment of the conformity or non-conformity of translators to a particular set of norms, researchers might be able to use this in order to rid the choices made by translators, on the equivalence level, of prejudiced normative behaviour. The relevance of this question to the current research is that if translators were able to identify and eliminate prejudiced choices then they might reach a method by which translation equivalences could be standardised. And since this research only addresses legal translation as part of international documents, if this method of standardising equivalents is achieved, then in this case the tensions occurring on the legal-political level in translation could be brought to a minimum.

First, in order to identify the dominant norms in a particular translation situation, and explain their retrieval and employment, this research will conduct a comparative study on one hundred translations of chosen parts of the ST, which will serve as an experiment to identify the norms conformed to in the translation experience. The examined text is the Jordan-Israel Peace Treaty which was signed between the two parties in 1994. The research will employ an empirical method in the analysis of the translated text. The translation task will be performed by four different categories of translators ranging from amateurs to professionals. The processing of the experiment and data analysis will be fully discussed in Chapter Five. It is worth pointing out that

the text under examination is of a special sensitive nature. Therefore, before embarking on the application of the theory of norms to the translated material the following chapter will present a detailed description of the translation of legal documents. It will address the specificity of legal text and the legal translation, and their analysis with references to the text under study.

**Translation will have to bridge the gap, small or large, between two different languages and cultures, and will hopefully result in contact, and not in conflict**

*Trosborg, 1997b: 146*

## CHAPTER FOUR

### LEGAL TRANSLATION

### INTERNATIONAL TREATIES

#### **Introduction**

Legal translation is a complex field which requires familiarity with a number of subjects, including law, translation, linguistics and intercultural communication. Legal translation has for a long time been regarded as only a subject area of translation studies and been denied its rightful place in translation studies as a fully-fledged discipline. However, with recent awareness of the importance of the translations of legal documents and the responsibility attached to it, and the dedicated efforts of scholar in this domain, legal translation is nowadays an independent discipline supported by specialised training institutions and identified as separate branch of translation studies in many universities around the world.

Chapter four addresses the issue of legal translation. It is devoted, however, to only one genre of legal documents, that of ‘International Treaties’, which are gaining a special weight in the politics of the world. The concern about the sensitivity accompanying translations of international treaties has increased in recent years. Translation scholars and lawyers have become more concerned about the grave consequences which occurred through past translation errors in treaties. Kunar comments that, “the growing trend toward providing authentic texts of treaties in four or more languages poses dangers to the peace and stability of the international order”. (Kunar 1991: 953)

In order to reduce the number of international disputes especially in the field of legal documents, it seems obvious that there should be some sort of methodology which

translators of legal text should follow in general, and a standard form of legal concepts' equivalents which should be applied in the translations of this genre of legal text in particular. Hence the basic aim of the current thesis is to find a method by which these terms are 'relatively' standardised. However, there should be a specific consideration of legal translation which ought to be addressed before embarking on testing the suggested method. Therefore, chapter four is committed to describing issues addressed in the translation of legal text.

Chapter four is divided into four parts: part one addresses legal language in general. It gives a description of the differences between standard and legal languages and their relation to each other. Part one also points out the features, which characterise legal language and the significance of these feature in the work of the translator. In the first part, the current research discusses the genres of legal texts and in particular international treaties. A full description concerning the composition of a treaty is presented in part one. Part two provides a historical background of the translation of legal documents and the sensitivity this form of translation carries within it. Therefore, the research also presents an explanation of the process of translating a legal text. And this leads to the third part of the chapter which presents a general view of the problems that face the translator of legal text, including the translators competence, differences between the legal systems and the issue of document authenticity. Finally, part four is dedicated to the an examination of the ST which is used in the empirical experiment. Firstly it states the reasons behind choosing the Jordan-Israel peace treaty as a case-study and its importance. It also gives a description of the historical background of the ST, which serves as the context which the translators have to take into consideration in the translation process.

This research also points out the examined text's peculiarities that will present challenges in the act of translation. Taking these peculiarities into consideration and analysing the legal interpretation of the text, part four presents suggestions as to how translators might solve translation problems during the translation process.

## **Part One: Legal Language**

Legal language is one of the oldest technical languages in history. Just like any other language of a technical nature, legal language is coined from certain terminologies mainly existing in the standard language. According to Lane, a standard language is the language taught at school and includes a totality of vocabulary, which is used by everyone in a particular language. It constitutes, “the base on which the various technical languages are built up”. (Lane 1982:221) Standard language is an entity by itself, whereas specialised technical languages are derived from and dependent on standard languages. However, specialised languages include in their body a wide spectrum of terms which are specific to the user of this language and that are not necessarily comprehensible by the average person. According to Wroblewski, legal language is “the language in which legal rules are formulated, and in which one can speak about legal rules”. (Wroblewski, 1963:403) The mere knowledge of standard language is not sufficient for the production of a legal document. The producer of a legal document is expected to possess a full knowledge of legal and administrative terminology (LAT) (Lane 1982: 221), i.e. the technical terms used by the members of legal professions including legislators, lawyers, the court, etc.

Legal documents are the instruments by which legal language is expressed. They are non-literary texts, characterised by distinctive features. As opposed to a literary text which derives its authority from the author her/himself who expresses her/his own thoughts, a legal text does not express the author’s own thoughts as an individual on

the personal level, but rather it is the status and position<sup>30</sup> of the author which lends authority to text. Legal documents carry the force of law; they are the instruments by which law is applied. The emphasis of the current research is on English as a legal language due to the fact that the ST under examination is an English legal text. Therefore, in chapter four, when discussing legal language, the research is referring to English only, and when discussing legal texts the research is only referring to the genre of international treaties.

#### **4.1.1. Features of Legal English**

Although legal English follows the rules of the Standard English, it also diverges in many respects. Legal English is characterised by a number of features affected by the circumstances in which it is written. The writer of a legal text is not writing to fulfil an individual desire or to entertain the reader, s/he is writing for a specific purpose, either on a local level (company charters, civil affair documents, law cases, local trade agreements...) or the international level (war crimes tribunals, peace treaties, international trade charters ....)<sup>31</sup> Legal texts have a style of their own, depending on which genre of legal texts a particular text fits, and some styles communicate more clearly than others.

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<sup>30</sup> For example: In Court, it is the judge as a supreme position who passes judgment, it is not the individual who occupies the post.

<sup>31</sup> Political speeches, whether for a local campaign or those by leaders in international conferences, do not fall within this category of legal text, since they have a style of their own which is usually rhetorical and is similar to literary text.



Legal documents are usually drafted by two or more parties. In international treaties, it is the negotiating teams which are responsible for creating a treaty. For them, the main purpose of the negotiations is to form a political pact and they are usually more interested in the content of the document than its form and style; therefore little time is spent on refining the linguistic form of the document. Even in cases when they disagree on the form of a document, very rarely do they let it stand in the way of signing the agreement, and they often find a compromise on that level as part of the negotiation process.

Another feature mentioned by Newmark (1982: 287) is that most legal texts involve synthetic and semi-synthetic languages. He suggests that these are not as difficult to translate as literary texts, since they are formal in style and are thus likely to have fewer problems in syntax. And through contrastive linguistics he adds, “one can work out a large number of typical transpositions”. (Newmark 1982: 287) Nevertheless, Newmark admits that there is a greater chance of lexical problems in legal texts. However, Newmark’s suggestion is not absolutely correct.

Legal English is known to be made up of complex and lengthy sentences resulting in conjoined and embedded sentences, in addition to unusual sentence structures.

Tiersma says:

A motivation for lengthy sentences is the desire to place all information on a particular topic into one self-contained unit. Presumably, this tendency reduces the ambiguity that might result if conditions on a rule or provision was placed in separate sentences. (Tiersma 2000: 56)

Although Tiersma suggests that this feature reduces semantic and syntactic ambiguity, it nevertheless, creates difficulty in translation.

As previously mentioned, lengthy complex sentences result in unusual sentence structures. It is often noticed that legal English shows a tendency towards using non-definite clauses that follow the noun they modify. For example the following

sentence appeared in the examined ST: *The parties recognise the international boundary...as inviolable and will respect and comply with them.* Another feature is the extensive use of prepositional phrases and noun phrases and the use of nominalization, that is the use of nouns that are derived from verbs. This occurs because legal English favour obscuring the actor. This might create difficulty on the translation level and hence could lead to producing an ambiguous TT. Tiersma relates the occurrence of the unusual structure in legal English to its influence by Latin, in which there is a free word order and sentence elements could be moved around with ease. (Tiersma 2000: 65)

Although legal English is also characterised by having a particular set of terminology there are certain terms in legal language which share the same form with Standard English but carry a different meaning, they also have different purposes and different directives. One important word in the legal lexicon are the auxiliary verbs ‘shall’ or ‘will’ which in standard English express the future, as in *I shall do it* or *you will do it tomorrow*, whereas in legal English they express command and obligation, and therefore could be paraphrased by ‘must’ (Tiersma 2000:105)

In addition to its use as a declarative tool, ‘shall’ also suggests that an act is binding. In legislations and international treaties and conventions, ‘shall’ is perhaps the most forceful regulatory tools used to express regulation of behaviour with a legal force (command). Within the borders of legal universe wording the actions by the use of the tool ‘shall’ functions on two levels, that of obligation to express the illocutionary<sup>32</sup> force of an order and that of prohibition ‘Shall not’.

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<sup>32</sup> Relating to or being the communicative effect (as commanding or requesting) of an utterance.

Due to the forcefulness of 'shall', Child warns against its misuse, He says:

*Shall* is the most powerful word in the legislative arsenal. It must not be squandered by misuse. *Shall* must not be wasted by being used to put verbs in future tense. The future tense is seldom needed in statutes, for the legislative act applies to the ever-present present. (Child 1992:205 in Torsborg 1994:316)

In international treaties, however the act takes place in the immediate future from the moment the treaty is signed, unless the date when the treaty takes effect is clearly stated. Therefore, 'shall' or 'will' are more acceptable in this case. There is usually a confusion between stating what the actual law is, and directing people to do or not to do things. When laws and legal statements are not directions but descriptions of the world, as is the case in constitutions or statutes, the statements of laws are to be rendered in both the indicative mood and present tense because of their juridical impact. However, when there is a regulating force, it is more acceptable to use the future tense. Different genres of legal texts have a large number of specific features which are not all significant to the current research. However, there are features which will be noticed through the examination of the ST such as negation, multiple negation, and the use of passives which occur when the focus is on the object of the action. (Tiersma 2000: 206-209)

Regardless of legal documents' specificity and the need for special qualifications to create these types of texts, Newmark (1982:287) stresses the fact that authoritative statements are addressed primarily to their readers, and hence must be fully comprehensible to them. Therefore, in order for legal language to ensure the success of the act of communication, it should be comprehended and its features clearly understood.

#### 4.1.2. Legal Documents: International Treaties

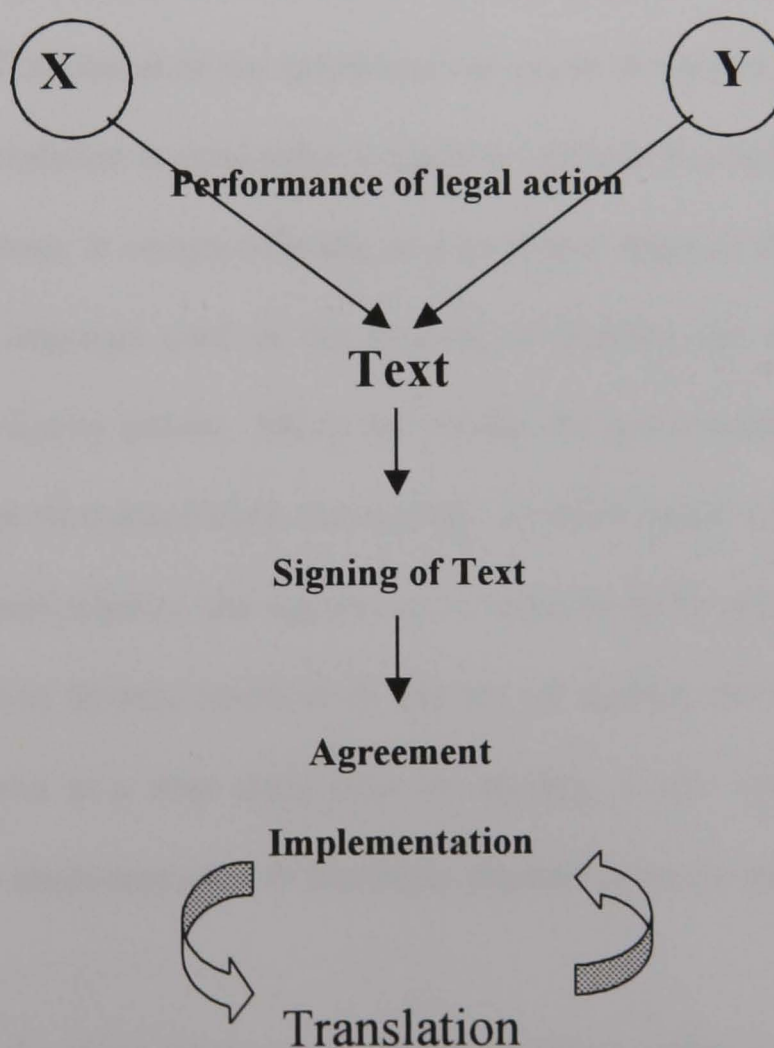
Documents become characterised by a certain genre because they acquire this particular position from the culture they appear in. Legal documents become considered legal because it is determined by the way the requirements of the target culture bear on it.

Legal documents include a wide spectrum of legal texts, divided into legal sources, and legal material. The former include: constitutions, statutes, treaties in addition to contracts and certificates, the latter include: law reports, textbooks, essays in periodicals, etc. (Weisflog 1987:186)

One particular legal document which is relevant to the current research, are those documents produced in a supranational multicultural discourse community, where there is no linguistically neutral ground. These are referred to as “hybrid texts”. (Trosborg 1997b: 146) “Hybrid texts are a feature of contemporary intercultural communication. They result from cultures and languages being in contact”. (Schäffner & Adab 1997: 325) Such contacts occur due to different communicative purposes, e.g. informative, propagandist, educational, entertaining, thought-provoking, commercial (Trosborg 1997b: 164) or as in this case for political reasons. Trosborg suggest two types of hybrids, the first being the product of or a compromise between two or more cultures and the second being the international texts, which are products of a dominant culture. These are the result of a text type resistant to change. (Trosborg 1997b: 147) In both cases Schäffner & Adab say that, “hybrid texts are produced through intercultural negotiation, as well as through translation”. (Schäffner & Adab 1997: 329) The International treaty examined in this research falls within the latter type of hybrid text.

Before examining the text of the peace treaty, it is necessary to understand how a treaty is composed, The Merriam-Webster Dictionary definition of a Treaty is “an agreement or arrangement made by negotiation: (1) PRIVATE TREATY (2) a: a contract in writing between two or more political authorities (as states or sovereigns) formally signed by representatives duly authorized and usually ratified by the lawmaking authority of the state. b : a document in which such a contract is set down”.<sup>33</sup> Madsen defines an agreement as, “a description of possible or prescribed actions and/or omissions that have been, or are to be performed by the parties to the contract as a result of their contractual relationship”. (Madsen 1995: 296)

The process of creating a legal document involves several stages. Figure 5 illustrates the process.



*Figure 5: Composing a Legal Document*

<sup>33</sup> Merriam-Webster Dictionary online- <http://www.m-w.com/dictionary.html>

First the parties X and Y negotiate in order to reach an agreement. Once the legal actions are performed and agreed upon they need to be described, and this takes place through documentation (describing the actions by a written text). Hence, it follows that the legal text is the means by which the major part of the legal actions are performed. The next stage involves the signing of the text; with the act of signing, the text assumes a new authoritative position and becomes an agreement. Therefore, the notion of text reflects the relationship between the situations where the actions are being created, and the legal function of the text. Finally, comes the implementation of the agreement. This procedure is the normal course of action in the composition of a treaty. However the use of a foreign language in the process requires translation. Consequently, a new stage is introduced within the process, that of translating the legal document. Translation of the agreement can occur at various levels. In addition to the fact that translation is used either literally or verbally throughout the process of drafting the document, it occurs officially at a particular stage of this process. In the first case, if the language used in the process of drafting the document was not accessible to the signing parties, which are usually the governments, then there is a need for translation to occur before the signing. In other cases, and especially in the cases of international treaties, the agreement is required to be accessible to different readers who are not directly involved in the act of signing the treaty. Therefore, translation can occur at a later stage after the signing, it also can either take place before or after the implementation of the treaty depending on the purpose and force of the translation.

Madsen refers to the three stages as: 1. Legal universe, where the legal actions are performed and state of affairs created. 2. Textual universe, where the legal universe is described, by means of creating a text, and 3. Translator's universe, in which the

text describing the legal actions, is translated. (Madsen 1995: 296) One can safely conclude that the translation is inseparable from the legal universe in which the actions take place, and which necessitates that the translator in his task should not only depend on the text to be translated but also on the whole process of drafting this text. This reveals that the cornerstone of a model for translation of legal text must be rooted in the legal system; this will be discussed in full later in this chapter.

It is important to note that in composing an international treaty there is a pressing need for translation throughout the whole process although not necessarily on an official level. Translation could also be verbally used in the process of drawing up an agreement between the different contracting parties. In the case of the current study, it is assumed that the Jordanian and Israeli teams in their separate local meetings used their native languages (Arabic and Hebrew). However, in the meetings held by the two parties, English became the *lingua franca*, for communication. Weisflog says:

A pressing need for translation exists, of course, also in the sphere of translational legal relations, particularly in *international treaty law*, that is the negotiation, drawing up and subsequent implementation of treaties, agreements, conventions, protocols, declarations, exchange of notes, etc. (Weisflog 1987:191)

This entails that the act of translation between three languages existed throughout the whole process of drawing up the treaty. Nevertheless, this ongoing act of translation is not the immediate concern of the research. Neither is the official translation, which occurred after the signing. The focus of this study is the 100 new translations performed by the four groups of informants referred to in Chapter Three and which will be discussed in detail in Chapter Five.

## **Part Two: Translation of Legal Documents**

Toury suggests that one could draw an analogical distinction between the translation of legal documents and legal translations. He says that translation of legal documents results in texts which will be included in a history book in the target culture. Legal translations on the other hand, are the products which are designed to serve legal purposes, either that similar to or different from the purposes served by the source text. (Toury 1993: 13) International treaties could fall within both types of legal translations because they could either be translated for informational purposes or they could be translated to be used as the ST having a binding force.

### **4.2.1. Historical Background**

The oldest recorded evidence of legal translation dates back to 1271 B.C. This is a translation of the Egyptian-Hittite Peace Treaty between the two dominant powers of the Early Eurasian World. According to Hilf (1973:5 cited in Šarčević 1997:23) the original was never found.<sup>34</sup> It is not quite sure whether the document found was actually a translation or a bilingual document<sup>35</sup>. Also, Weisflog states, “a solid piece of evidence for the translation of coexisting languages in the past is the Rosetta (190 BC), on which Greek has been translated into Egyptian (hieroglyphic and demotic writing)”. (Weisflog 1987:186)

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<sup>34</sup> The first translation was in hieroglyphic inscriptions in several Egyptian temples and the other in cuneiform characters inscribed on tablets found in the Hittite capital of Bogazköy.

<sup>35</sup> Bilingual document refers to the creation of two (identical) documents in different languages simultaneously serving the same function, e.g. the constitution in Canada, although it is debatable whether these documents could actually exist without any translation act involved.



Legal documentation and sacred scriptures are known to be the first type of literature that was regarded as material for translation. Although translation was a major means of communication in the Middle Ages, little attention was paid to the methods of the process of translation. Given the fact that legal documentation and sacred scriptures are of a higher status they were to be accepted by faith, and not necessarily intended to be comprehensible by the human mind, translating without regard to context and text coherency was a common feature through this period. The earliest form of translation, of both legal documents, and sacred scriptures, for a long period took the shape of word-for word translation; in this the ST transferred exactly as it is to the TT in terms of words, grammar and syntactic form.

There is no doubt that the political history of nations tremendously affected the shaping of legal translation and its development. In analysing early medieval German-Latin translation Heck<sup>36</sup> attributed their poor quality mainly to the fact that translators were clerics with no previous training in law. Lacking adequate knowledge of the technical vocabulary of the law, they used terms of ordinary (standard) language and translated word for word, simply replacing the source terms with Latin equivalents without regard to context and text coherency. Although Heck criticised the quality of such translations, he defended the “equivalent method” as a necessary means of preserving the letter of the law. (Šarčević 1997: 23-36) And thus “fearing that any deviations from the original could pose a threat to uniform interpretation and application, lawyers traditionally obliged translators to preserve the letter of the law by reproducing the wording and syntax of the ST as closely as

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<sup>36</sup> Philipp Heck systemised the techniques used to translate legal instruments and documents in Germany in the early Middle Ages. This was published in his book *Übersetzungsprobleme im frühen Mittelalter* in 1931.

possible”. (Šarčević 2000: 282) Therefore, the Church and the Monarchy endorsed the word-for-word method of translation, the only accepted method of translation in the period of the Middle Ages. It was not until the twentieth century that the literal translation was introduced. In literal translation, the basic unit of translation is still the word; however, basic transformations are allowed to respect the rules of grammar in the target language and thus increase comprehensibility whilst following the source text as closely as possible. Also at the beginning of the twentieth century, Virgile Rossel, a law professor, challenged literal translation. He “dared to translate the German text of the Swiss Civil Code into ‘natural’ French. Accused of heresy for having altered the letter of the law, Rossel defended his ‘revolutionary’ translation by invoking the principle of the language equality”. (Šarčević:2000:282) By language equality, Rossel means that everyone has the right to know the words of the law in their own language. (Šarčević: 1997:36-40 & 2000: 282)

Legal translation like any other type of translation is a source of controversy in translation studies. In addition to all the aspects present in general translation, legal translation holds within itself the peril of serious damaging effects through legal interpretation.

#### **4.2.2. Sensitivity of Legal Translation**

Due to the sensitive nature of legal texts, the translation of a legal text carries within it similar, if not more, sensitivity than that which is held in the text itself. Obviously, someone’s life or a nation’s future should not depend on a mistranslated term or a grammatical mistake. Although there is agreement that the main duty of a legal translator is to reproduce the content, the translator cannot totally ignore the reader

since the success of a translation is determined by the reader's ability to understand the text. It is worth pointing out that this raises the crucial question of who the reader is? Whether the reader is a lawyer, an academic, a taxi driver etc? However, for the purpose of the current thesis, the addressed reader is considered the average person.

The sensitivity of the legal text becomes particularly clear when translating an international treaty between two countries with two different languages. Translators of legal texts tend to favour loyalty to the source-language believing that adhering to the source text as close as possible is in the interest of the source language country. This principle can be applied if the legal document is meant to address readers of the source language. However, it should be pointed out here that the treaty under study for the purpose of this research is drafted in English (SL) although it is intended to address the target reader whose first language is either Arabic or Hebrew. Therefore, the translator of such treaty is expected to keep the target language reader in mind throughout the process of translation.

Another significant feature that adds to the sensitivity of the translation task of legal texts is that in normal circumstances in such documents, the ST is binding rather than informative, and the TT is designed to inform the target reader about events, which took place in the source culture. However, the text in question in this study the Jordan-Israel Peace Treaty informs the target reader about events that occurred in the target culture but was described using a different language, which is in this case the source language (English).

The sensitivity of a text also results from its function. Legal texts have different functions depending on their status and purpose. Usually, the TT serves a different purpose than that of the ST because the ST is used for external communication whereas the TT is used for internal communication. However, in the present research

both ST and TT are used for external communication. Sensitivity is not only restricted to the function of the texts, but it sometimes reflects the “sensitivity of the conditions and rules of the uses to which political text are put, be it practices of referring to pieces of information during negotiations, or an awareness of the necessity of identical wording”. (Schäffner 1997b: 137)

#### **4.2.3. The Process of Translating Legal Texts**

The translation of legal texts is no different from that of any other types of texts. According to Rayar, the process of legal translation is one of ‘elimination’. This entails that the translator has a number of possibilities, then s/he chooses one of these possibilities and by thereby eliminates other alternatives. This preference for one possibility rather than the other, Rayar proceeds to say, is usually governed by either reasons of language or reasons of law, this preference no doubt results in gain or loss. “For instance, where form is to be maintained for considerations of law; readability may be lost”. (Rayar 1988:452)

The translation process for a legal document usually takes three stages: documentation, translation, and approval of the translated version. Translating a treaty is expected to follow this order. In international treaties the language is usually used with a regulative function in order to present order in human relations. In the process it must be ensured, among other things, that there are no inconsistencies in terminology, and that the views of the drafters are clearly expressed in a style and terminology which reflects the comprehensive aim of the treaty in the target language. Once a translation is authenticated by the act of signing or ratification, it will carry the force of law. By this the two objectives of legal translation will be achieved: the first

is that it must produce a translation that is equally authoritative, which implies that it must be legally equal to the original document and have the same legal effect. The second is to make a translation that can stand on its own as a legal document, and be independent from the original. However, although the translation should be treated as an original document in itself, sometimes the original is accorded a special legal status over the translation.

According to Šarčević, some scholars refer to the kind of translated text mentioned in the first objective as ‘parallel text’. She says:

In legal discourse the term ‘parallel text’ is used to denote equally authoritative texts of the same instrument existing in two or more languages. In the event of textual discrepancies, the courts are required to compare all the parallel texts of a single instrument to determine the intended meaning. For practical reasons such texts are often published in separate volumes. (Šarčević: 1994 301)

Parallel text includes instruments that are legally authoritative in more than one language, such as bilingual and multilingual legislative texts, international treaties, conventions, judgments and contracts. In the past, lawyers refrained from using the word ‘translation’ and often blamed non-lawyers for the poor quality of the produced legal texts. Šarčević suggests that the use of the term ‘parallel text’ is used to overcome the inferiority complex some hold in using the term translation which implies that translated texts are of a lesser level than original texts. (Šarčević 1994 : 301)

Parallel texts normally include two types. The first are those of a jurisprudence nature, which involve the legislation of one country with two or more official languages, e.g. the Constitution, civil law etc. in Canada or Switzerland and for which Canada is considered a “Mecca” for legal translators. (Šarčević 2000:283) The second type is related to international law; this involves two or more countries, e.g. bi-lateral treaties, international treaties, etc. Despite the fact that all types of legal texts

function to maintain law and order, those addressing international issues are strongly related to the politics of governments and their foreign policies. Therefore, legal texts of this kind are also labelled political texts. It should be noted though, that not only texts which regulate international relations are considered political. This label also covers a wide range of texts addressing inner-state issues.

Schäffner describes the term political text as:

An umbrella term covering a variety of text type, or genres. Political discourse includes both inner-state and inter-state discourse, and it may take various forms. Examples are *bilateral or multilateral treaties* [my emphasis], speeches made during an electioneering campaign or at a congress of a political party, a contribution of a member of parliament to a parliamentary debate, editorial or commentaries in newspaper, a press conference with a politician, or a politician's memoirs. (Schäffner 1997a: 119)

It is common knowledge that in the contemporary world the need for political translation is becoming more important due to the fact that politics is becoming increasingly internationalised. This consequently implies that translations are intended to address a wider audience. However, Schäffner points out that political texts are a part, or result of, politics, which means that they like most genres of texts are historically and culturally determined. (Schäffner, 1997a : 119-120)

## **Part Three: Challenges Facing the Translation of Legal Text**

### **4.3.1. The Translator's Legal Competence**

Assuming that the translator is competent on the language level, a new issue arises, namely the translator's competence on the legal level. Weisflog suggests that the process of translation involves first the translator's comprehension of the author's message. Then the second stage involves transferring this message by way of restructuring. (Weisflog 1987: 190-191) He suggests that the comprehension stage entails analysis and interpretation of the text. He states, "each analysis involves to a certain degree an *interpretation* of the original, i.e. the authors' message- his train of thoughts crystallized into words- since the latter (and sometimes also the former!) are rarely absolutely clear-cut, unambiguous". (Weisflog 1987: 190)

However, the translator is not allowed complete liberty in producing her/his own legal interpretation unless s/he has adequate legal training of the two legal realities which enables her/him to judge the required meaning of the legal text. Therefore, Weisflog suggests that translators have similar role to that of the jurist who has to interpret the words or intentions of the legislator in one way or another. (Weisflog 1987: 190)

It is still controversial whether a legal translator should be legally trained. It is quite an accepted fact that the legal translator should have minimum specific legal translation training. However, often this is not sufficient to completely understand the mechanism of the legal system within a legal order, and be able to produce it in the target language. How can a translator understand a text, if it was drafted in a way that can only be understood by a lawyer? Translators should be familiar with legal language to help them understand the minimum of the legal context. Therefore, it is

important that they are familiar with the documents and know the ins and outs of legal writing; this in itself helps the translator to avoid the risk of misinterpretation.

Many translation institutions give this issue great importance; they introduce special programs to ensure the translator's competence in understanding and interpreting the legal sphere. The New Jersey Department of Higher Education has funded a major project intended to raise the standards of legal interpreters in the USA, in order to meet the growing demand for professional interpreters, especially with the increase of immigrants and international legal cases. (Roberts, 1988b: 443)

Another topic open for discussion, but not necessarily relevant to the immediate research is: Which is more efficient, to teach translation to a jurist or law to a translator? According to Lajoie (1987:77) the Canadian Translation Bureau of the federal Government of Canada has a policy of hiring persons with a law degree to undertake legal translation on the assumption that it is easier to teach translation to a jurist than teaching law to a translator.

Morris argues against this assumption. Referring to translators, he says:

The hard-won knowledge that they possess is virtually invisible to monolinguals and superficial bilinguals, those who work even work very well within the confines of a single language and cultural experience. Such persons may otherwise be splendidly and expensively educated, as are lawyers and judges, who can cut things fine in their own language. The dilemma is that it is slow and painstaking work to make understandable to anyone else such things as translators and interpreters know, just as it has been slow and painstaking work to acquire these insights in the first place. If it could be done quickly and efficiently, it would be the gift of a kind of sight, making the invisible visible. (Morris 1995: 6)

Teaching someone to be a translator is not as easy as some think. It is possible for a person to learn law, Baker claims that translation is a gift, either you have it or you don't. Theoretical and practical training are 'skill aids', which help perfect this gift. (Baker 1992: 2) It is this fine line that makes two translations of the same text different, one outstanding and one standard.



Learning an adequate level of law is considered a skill which makes the translator a specialised translator, i.e. a legal translator. It would be sensible to say that the ideal legal translator does not need to have a degree in law, S/he is a person who has the gift and skills of a translator among which are knowledge of law and legal language. After all, it is expected that there should be a legal authority which approves the final version of the translation and ensures the truthfulness in the legal content of the text.

This leads to the other issue that is also important in training the translator and that is the professional issue of 'ethics'. A person who has good command of two or more languages and an adequate background in law should also be aware of her/his ethical responsibilities and duties. In translating sensitive texts such as legal documents, the translator must be aware of her/his role as the carrier of truth. A translator should be impartial; s/he should be able to convey the true meaning without any personal interference or bias, whether linguistically or otherwise. Lack of training in this field results in serious mistakes, in addition to the fact that "unconscionable breaches of ethics may occur without ever being noticed". (Schweda-Nicholson 1994: 80)

Breaches of the code of ethics result from many reasons. Some of the reasons are usually associated with insufficient knowledge of the linguistic systems of the SL and the TL, unawareness of the legal systems, and most importantly ignorance of the background of the text. However, it must be pointed out that these breaches often occur on a primitive level of translation attempts as in the case of students and these errors are significant in studying translation problems.

On the other hand, more experienced translators are expected to be able to avoid such errors or breaches. Those who reach the stage of being labelled legal translators would have gained or acquired the skills and experience required for performing such sensitive tasks.

Referring to the relation between the translator and the customer, Boker describes it as being like any other business relation where the translator is selling his goods to the vendor. He explains that, “the goods we sell are not the ‘sheets of paper (or computer diskettes) we actually deliver to our customer’, but skill acquired through years of language and subject matter studies and practice, as well as the time and effort expended to produce an expert translation”. (Boker 1994: 99)

Many translation institutions have set their own ‘Code of Conduct’ to guarantee fairness in the profession between the translator and the customer. In his introduction to the French Civil Code, Crabb borrows an expression from Italian which says ‘*tradurre è tradire*’ which means “to translate is to betray”, and by this it is suggested, that “translation has analogies to that of the traitor, though hopefully its worst potential consequences are less serious”. (Crabb:1995:xxx)

#### **4.3.2. Differences in the Legal Systems**

A significant problem lies in the differences between the two legal systems which host the two languages involved in the act of translation. This entails two different legal languages representing the social reality of their individual legal order. The differences in the two systems are reflected in their legal categories, methods, concepts, and manner of conceiving things and apprehending legal reality.

Some lawyers like to think that it is acceptable to refer to legal translation as a task of comparative law.<sup>37</sup> In fact de Groot thinks that comparative law “forms the basis for translating legal texts”. (Groot 1988: 409)

Problems facing the translator of legal texts are not only of a terminological nature, which is common in all kinds of specialised translation, but includes the process which takes place not only between two languages but also between two legal systems. Therefore, the use of bilingual and multilingual law dictionaries is not sufficient for the process to succeed. The translator must have a good knowledge of both systems and consequently s/he should be skilled in the analytical and empirical methods of comparative law.

This idea is also supported by Carballal, who refers to comparative law as the ‘more powerful ally’, which we resort to in cases when dictionaries fail to satisfy us. (Carballal 1988: 448) He explains that comparative law provides a good source of the guidelines for a scientific treatment of the text to be translated and this is achieved through it being a method of comparison between legal systems. (Carballal 1988: 448)

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<sup>37</sup> "Comparative law' is the comparison of different legal systems of the world." (Zweigert and Kotz 1987: 2) "Comparative law is an ' école de verité ' which extends and enriches the supply of solutions and offers the scholar of critical capacity the opportunity of finding the 'better solution' for his time and place. . . It dissolves unconsidered national prejudices, and helps us to fathom the different societies and cultures of the world and to further international understanding; it is extremely useful for law reform in developing countries; and for the development of one's own system the critical attitude it engenders does more than local legal doctrines. . . four particular benefits of comparative law. . (I): Comparative law as an aid to the legislator. (II); comparative law as a tool of construction (III); comparative law as a component of the curriculum of the universities and law schools and (IV): comparative law as a contribution to the systematic unification of law. (Zweigert and Kotz 1987:15)

On the other hand, Rayar disagrees with Carballal's views. He says, "where it has been said that legal translation is merely a matter of practicing comparative law, it could be argued that the actual translation effort, in its restricted sense, begins where comparative law leaves off". (Rayar 1988: 452) What Rayar is trying to say is that the actual translation of a legal document does not take place between the two legal systems. Rather but these legal systems should only help the translator in making her/his choice in finding the right equivalence, based on the definition of the legal concepts. Defining the legal concepts is achieved through comparing the legal systems and this should take place prior to the act of translation. However, understanding the legal concepts does not always prove easy. In many cases it is hard to achieve due to many reasons, among which is the permanent shift of concepts.

Lehto explains this process of permanent shift of concepts. She says:

As we well know, legal concepts are based on a long historical development, and where that development differs, so do often the concepts. Furthermore, legal concepts are abstract: we cannot take the 'object' in our hands in order to examine it or draw a picture of it; we can only understand it as part of the system of concepts that it belongs to. Even if the extralinguistic reality is much the same in two different legal systems, it can, like the spectrum, be sliced into sections differently or looked at from totally different angles. (Lehto 1988: 432)

Because legal translation could be undertaken for two reasons, either that which has a historical value, as in translating material dating to past years, or translating contemporary legal material which has an immediate legal impact, shifts occur on two levels; one which is characterised by a temporal gap, which could be highly cultural, and the other which is characterised by a system gap. (Weisflog 1987: 187) In the first instance, where translation takes place across a long span there is no harm in using the greatest possible degree of correspondence between ST and TT, as in the case of translating dead languages like Greek and Latin into living ones. This method is also recommended in translating legislation. (Weisflog 1987: 196) However, this is

not always easy to achieve due to the fact that legal languages are system-bound, especially between radically different systems as the law of “western and Islamic countries, the law of industrial and developing countries, or the law of capitalist and socialist countries”. (Weisflog 1987: 188-189)

In other words, there is no universal language when it comes to law, unlike other technical languages such as physics or mathematics. Weisflog suggests that although formal correspondence is achieved to a certain extent, it does not necessarily mean that the concept equivalent is achieved. Weisflog cites an example:

In ‘English’ law, <<theft>> is defined in accordance with section 1 of the Theft Act 1968, as <<the dishonest appropriation of the property belonging to someone else with the intention of keeping it permanently>>. In German law, on the other hand, <<Diebstahl>> is defined, in accordance with paragraph 242 of the (West) German Criminal Code (STGB) as follows(...) A person is guilty of theft if he takes away movable property belonging to another with the intention of appropriating it unlawfully. (Weisflog 1987: 210-211)

However, cases of differences in concepts appear less in translating universal legal material such as treaties. There is usually less difficulty on the conceptual and terminological levels because these are usually governed by international institutions (e.g. the UN), and therefore there is less difference on the systemic level, and more chance of standardising them. As suggested earlier, international treaties are hybrids and therefore they are not restricted by a particular legal system. The text under examination is neither one which falls between two different legal systems, nor it is a legal system written in two languages. It is safe to assume that the peace treaty is restricted by an international code rather than a legal system. Thus, in the act of translation the translator is not restricted by a particular legal system, but rather by the norms established by the international code.

### 4. 3.3. Equal Authenticity

Translations of legal text can be either informative or binding or both. They can be informative in cases when translating a document which is rooted in the same legal system but uses different languages, as is the case in Canada. In this case the translation will only exist in order to inform speakers of the second language of events which took place within their legal system. On the other hand, legal translation can be binding when speakers of one particular language follow the text written in the language they use. In the two cases it is expected that translations are as authoritative as the original, and therefore they have to be authentic.

Authentic translations of international agreements which are concluded in different languages, are common in international practice, especially in the case of peace treaties concluded by the UN. A translation is usually included with the official text of the agreement. However, most of these translations are not regulatory and do not have a binding force, since it is only the original text that becomes domestic law through the act of ratification.

The acceptance of the principle that translated legal documents are of equal authenticity to the original text, places the translator under great pressure to produce first-class material not open for dispute. Translators are expected to produce an equal text in form (structure) and legal content; to quote Šarčević, “the challenge of legal translation is to strike a proper balance between linguistic purity and legal equivalence”. (Šarčević 1994: 306)

Translators should be able to produce different degrees of authoritative legal orders: obligation, permission, prohibition etc. Although under no circumstances is the translator allowed to produce her/his own understanding or interpretation, s/he is still

required to foresee how the text should be interpreted within the legal hermeneutics. Translators must have language competence in order to have the confidence to avoid mechanical translation. In the text under study, a statement is included at the end of the document which states, “In case of divergence of interpretation, the English text shall prevail” which implies that the translation is not treated with equal authenticity and consequently it is not binding. This does not mean that it should be treated with less care. Translators are expected to produce a translation as good as the original. However, committing errors in translation that result in the occurrence of discrepancies in legal interpretation often occur on the following levels:

#### **4.3.3.1. Lack of Coherence**

It is important to always keep in mind that legal language is a coded language, which means that the message intended to be relayed is laid down in codes. The translator in this case has two tasks, one of decoding the linguistic aspect, and the other of decoding the legal message. Due to the special nature of legal documents, which appears in their features, it is very likely that the translator who is not professionally trained in the legal language will not be in a position to interpret the legal content. This gives rise to the question as to whether translators who are not familiar with legal terminology should actually be allowed to translate legal texts. This also occurs at the level of students who are not yet fully trained to deal with legal texts. However, the lack of coherence in translation of legal texts usually occurs due to the fact that the clear understanding of a legal text is sometimes hampered by the typical use of legal terms, expressions, abbreviations, legal formulations, etc. Although these are meant to enhance the precision of the text, if the translator is not familiar with them s/he will

end up producing an incomprehensible text. Mistakes on the structural level also have important implications. Sometimes the text is not clear, not only through using specific terms but also through a number of trivial errors with far reaching impacts. These include typing mistakes, omission of words, misplacing of names or numbers, not to mention grammatical mistakes, and these in particular should be checked by the drafters, since they are important not only to the translators but also to the users of the document. All this leads to the question as to whether translators have the power to correct these mistakes. The lack of coherence not only occurs on the structural and linguistic levels, it is also most common on the non-linguistic level. Translators are often not given the history of a document; consequently they are unaware of the non-linguistic intention and therefore they have no choice but to attempt to reconstruct the intention of the writer, thus putting their own interpretation on the TT. On the other hand, the translator can sometimes be faced with another dilemma, that of whether the intention of the TT should be like that of the ST, or a new intention should be indicated. In that sense, the reader is at the mercy of the translator who functions here as a language expert. (Sager 1997: 29)

#### **4.3.3.2. The Effect of Culture**

Through the previous chapters, the research has supported translation as an intercultural communication process. The concept of culture in this sense refers to the broader socially conditioned aspects of human life, which include: “ (a) the concept of culture as a totality of knowledge, proficiency and perception; (b) its immediate connection with behaviour (or action) and events; (c) its dependence in language usage”. (Vermeer 1986: 33 cited in Trosborg 1997b: 146)



Political documents are of two types. The first is of an internal nature (national,) such as speeches and statements made by politicians which are designed to address a limited audience, usually a domestic audience and are therefore highly culture-bound. Joseph argues that this type of legal text is so highly cultural it cannot be reproduced in translation. He emphasises the fact that words come in cultural baggage and that legal language is no exception, he describes this type of legal text by referring to Alexander Fraser Tytler's 'laws of translation'<sup>38</sup>. He says:

No one can ever give a *complete transcript* of the ideas of a text in another language, for the simple reasons, that words and structures always come with cultural baggage, resonances from centuries of legal, political and literary use, that it is impossible to transfer fully (...) legal translation will always be a failure, because those connotations and resonances are not secondary niceties one can take or leave they are, or at least are capable of becoming, part and parcel of the *meaning* of a text as it is subjected to judicial interpretation. (Joseph 1995: 17)

Also Kaiser-Cook says that translation, being a cultural activity, involves some form of "cultural transfer". (Kaiser-Cook 1997: 243) However, it is important to always keep in mind that with the text in hand there is no cultural transfer. Culture only plays a role in the whole process when affecting the translators' choice. Therefore, the second type of political text are of an external nature, and these are the result of negotiations on a wider supranational level, such as treaties.

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<sup>38</sup> In his classic *Essay on the Principles of Translation*, Alexander Fraser Tytler, Lord Woodhouselee (1747-1814) laid down the following three 'laws' of translation.

- i. That the Translation should give a complete transcript of the ideas of the original work.
- ii. That the style and the manner of writing should be of the same character with that of the original
- iii. That the translation should have all the ease of the original composition (Tytler 1813:9)

The translation of these documents is linked to cultural, social, and political realities, but they are not system-bound or culture-bound. Nevertheless, even if culture-bound terms did exist in the text, as with all fields of translation, a certain degree of loss is inevitable in the translation especially if these are designated to institutions which only exist in the source language.

Another issue which is culturally specific in legal translation is the use of 'hedges', which are "words whose meaning implicitly involves fuzziness" as 'words whose job to make things fuzzier or less fuzzy'. Fuzziness can be related to vagueness, indeterminateness, variation of sense, which are constitutive characteristics of natural language". (Lakoff 1973: 471) Schäffner suggests that in political context there is no clear dividing line between semantic and pragmatic aspects of hedges. They are usually connected to presupposition and implicatures and in order to fully understand the message conveyed by a hedge, the hearer is required to "activate background knowledge, which will often be culture-specific". (Schäffner 1998a: 199)

Strategies used in overcoming cultural issues in legal translation are not different from other types of translation. Translators are obliged to compensate for any under-translation that occurs in translating culture-bound terms. Translators frequently find themselves having to use the method of 'over-translation' by lexical 'expansion'; in this they provide supplementary information either in the text itself or in marginal help such as glossaries or marginal notes. Success in translating these terms depends primarily on the translator's ability to understand comprehensively his readership's cultural background. When faced by SL culture-bound terms, translators tend to use definitions and explanations, which should be written in additional footnotes, glossaries or commentaries, whilst taking special care in expressing the relationship

between the term and the general background knowledge shared by participants of the SL. Šarčević says that:

Translators, translating for readers of a particular social reality, which is often their own, do not hesitate to 'bend' the supplementary information towards the readership. As a result their definitions and explanations are understood by the average TL reader whose knowledge of SL institutions and concepts is limited, but who has the substantial knowledge of the same subject matter in the target language country. (Šarčević 1985:131)

Many translators tend to use adaptation as a speculative procedure. The SL term is adapted to replace a thing in the social reality of the TL with a similar function. Šarčević suggests that this procedure is misleading since it results in the divergence of meaning through adapting the original text and thus changing the information content which is not acceptable in translation.

In cases when the translator has no choice but to use the loan words, the use of couplets and triplets is also considered a procedure of translation. These are usually culture-bound terms, followed by a cultural equivalence between brackets. There are two kinds of cultural equivalents: insertible equivalent and explanatory equivalent. In order to keep the structure as short and clear as possible, it is preferable to use the insertible equivalent rather than the explanatory, since it is one of the most important features of translation to use as clear and idiomatic a structure as possible, without breaking the grammatical system. In other cases where it is impossible to find an identical equivalent, a descriptive or explanatory substitute could be used cautiously in case it runs the risk of becoming paraphrasing.

Another way of avoiding these problems is the use of footnotes outside the text on the one condition that these footnotes do not carry the translator's own interpretation in a way that might affect the essence of the text.

#### **4.3.3.3. Loyalty (Source and Target Orientedness)**

The ongoing struggle between source text orientedness and target text orientedness appears most in legal translation. Translators are often not sure where to direct their loyalty. In their minds they know that the source text is the original and that the translation should be parallel to the original in form and content. In translating an international treaty, the translator has to keep in mind who this treaty is addressed to. Is it the SL readers or the TL readers? On the one hand, s/he must respect and adhere to the SL country legally and linguistically and on the other s/he has to produce a text in the TL comprehensible to the readers of the target country also legally and linguistically. In trying to strike balances between the two the translator may find her/himself restricted within the text and therefore not free to insert any form of lexical expansion within the text. However, the translator is free outside the text to make concessions to the reader as long as this does not include her/his legal interpretation, and does not interfere with the content of the text. As a result, it is suggested that source language orientation and target language orientation are not applicable to legal translation. If the SL text and the TL text are addressing the same readers then the method of translation normally used is by rendering the precise contextual meaning of the original text, without breaching the syntactic and associative constraints of the target language, and in that case there is no harm that the text remains within the constraints of the SL. However, if the text is addressing TL readers especially if it is an international text, considerations of the target readers and their culture should be taken into account.

Šarčević in most of her articles (Šarčević 1985, 1988, 1991, 1994, 1997) states that it is preferable in legal translation to use functional equivalences.<sup>39</sup> However, this may prove hard to find or confusing in many cases, as the equivalent chosen might not carry the same meaning or the same function in the target language; therefore functional equivalence is not always the solution. (Weisflog 1987: 187) Nevertheless, Šarčević stresses the fact that under no circumstances in this case a translator is to resort to using a SL equivalent as a loan word. In this case s/he has to resort to the strategy of descriptive translation, which as the term entails involves a descriptive act of the SL term in the TL.

This method which is also described as “explanatory equivalent” (Šarčević 1988: 456) is a common method in translating legal documents. However, Šarčević does not rule out the use of literal translation and in fact she suggests that sometimes the translator has no choice but to resort to this strategy; this, however, may cause another risk on the translation level, and that is the incomprehensibility of the text. (Gémar 1979: 7 cited in Šarčević 1988: 459) Therefore, it should be emphasised that the literal equivalent should also be grammatically acceptable. (Newmark 1981: 81) In this case the strategy of lexical expansion and use of couplets mentioned earlier to solve culture-bound problems is another way to solve the problem of SL terms which have to resort to functional equivalents in the TL. Lexical expansion should take place either within the text or outside the text by means of footnotes or glossaries.

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<sup>39</sup> “A term used to refer to the type of EQUIVALENCE reflected in TT which seeks to adapt the function of the original to suit specific context in and for which it was produced”. (Shuttleworth & Cowie 1997: 64)

## **Part Four: Analysing Legal Text**

The current study suggests that the legal document which carries the legal content is actually the instrument by which law is applied. It is the tool which carries the force of law. This instrument needs to be transferred, and the vehicle to transfer this legal content is language. Rayar says, “since language is the vehicle for the legal content, the translation is determined largely by how that language is used and how its rules are applied”. (Rayar1988: 451) The translator’s language is consequently affected by the language used in the making of a legal text. Through this, the translator applies his translational strategies to achieve an authentic translation of the text. Translation strategy is defined as “a potentially conscious procedure for the solution of the problem which an individual is faced with when translating a text segment from one language into the other”. (Lörscher 1991 cited in Chesterman 1993: 13)

Madsen developed a theoretical framework for analysing legal text based on the action theory of Jochen Rehbein which entails that actions are performed within a pattern.<sup>40</sup> (Rehbein 1977 cited in Madsen 1995: 292) Rehbein presents a relationship between dynamic actions performed between a specific agent in a particular situation and the social circumstances (embeddings) of the action in question. Rehbein divides the composing of an agreement into three stages: “1. Pre-history, which consists of the conditions for the conclusion of a certain agreement, 2. History, which is the performance of the agreement and 3. Post-history, the legal effect of the agreement. This means that the agreement (actions described in a legal text) is fixed in time and

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<sup>40</sup> Rehbein’s theory was developed with general human action in mind not within a specific view of translation.

space by the means of the text, as the text is the means by which the agreement is concluded". (Madsen 1995: 297)

Needless to say, regardless of the type of translation, there are basic features that make a good translation, among which are; the importance of the concept, achieving relative equivalence, full comprehension of the hermeneutics of law, command of both source and target languages, clarity and coherence. In the actual act of translation the translator is the authority; s/he can go through the options s/he has, and opt for one of the strategies. A skilled translator should be able to decide how far s/he can depart from the source text and still produce a target text that leads to the same legal effects. A translator is free to use different strategies of translation but at the end s/he is expected to produce a text with the meaning intended in the ST. However s/he is not at full liberty to produce her/his own personal legal interpretation and has to adhere to the conventions of the legal language in the TL. S/he must know when to use loan or borrowed words, when to interfere and when to explain. A professional translator should also be able to decide the consequences of her/his choice. Translators learn to respect the languages they are dealing with. Not only that but they also try not to offend the cultural embeddings of these languages. Translation is a human interaction process; it is not a mathematical equation that can be solved in mechanical methods. Morris goes on to explain:

Translation poses many of the great human questions of meaning, of spirits and of mind, yet at any given moment the translator is attempting to solve some immediate problem of practical human import. We understand that the most ordinary job of translating has in common with the greatest that it entails synthesizing and bringing to bear on an immediate human problem whatever is knowable and pertinent. (Morris 1995: 6-7)

According to Joseph (1995:14), all kinds of legal texts stand at a crossroads of three areas of theoretical inquiry: legal theory, language theory (including linguistic, rhetorical and textual), and translation theory.

#### **4.4.1. The Need for Standardisation of Legal Terms (Concept Equivalents)**

In order to reduce the number of international disputes especially in the field of legal documents, it seems to be obvious that there should be some sort of standard form of legal concepts equivalents, which is not based on the mechanical choice of the meaning but involves a comprehensive and contextual choice. Many translators' insufficient knowledge of laws and consequently the rules, in addition to individual solutions to translation dilemmas, results in controversies and conflicts between the concerned parties, on the international and local levels. It also causes conflicts between the translator and authorities and in many cases gets the translator into serious trouble. On top of this, the individual solution to translation problems enhances the chances questioning the credibility of the document. The question which arises here, is what should be standardised?

The core of any translation is finding the most suitable kind of equivalence, regardless of the exact definition it fits, its kind or its degree. To find the most suitable kind of equivalence is being able to find a compromise between the semantic and pragmatic equivalence. Some scholars inaccurately assumed that to find the right equivalence the translator should follow the old dichotomy which concentrates on the semantic equivalence rather than the pragmatic.



Therefore, Kierzkowska suggests that there ought to be a preference for:

- Nida's formal equivalence over his dynamic equivalence;
  - Neubert's and Pierce's semantic equivalence over their syntactic, or even pragmatic equivalence;
  - Catford's literal equivalence over his free translation;
- (Kierzkowska 1988: 440)

Nevertheless, following the aforementioned suggestion does not guarantee the choice of the correct equivalence. Achieving semantic equivalence does not necessarily guarantee conveying the correct meaning. The first step towards standardisation is achieving an established equivalent. The way to this is through consistency in using the same equivalence to describe a certain concept. What gives the chosen equivalence a stronger position is the fact that it was preferred to the existing alternatives. However, a translator is not always certain that the choice of that particular equivalence is the correct one; hence the correctness notion plays another crucial role. The translator must not only convey the correct linguistic equivalence, but also convey the correct legal message, in such a way that the translation has the same legal effect as that of the original document. Although the translator's role is to convey as closely as possible the linguistic and legal messages, s/he also has to be true to the linguistic and legal systems and try to be true to the original as far as possible. Standardisation should also involve technical matters, such as the structure of the documents, numbers, and dates. It also should include some sort of mutual agreement on the transliteration of proper nouns and names. These may differ even between languages both of which use the Latin alphabets, e.g. French 'Irak' vs. English 'Iraq'. Needless to say, the standardisation of legal terms (equivalents) will be a very long and hard process, in the absence of international co-operation between both legal and translation organisations. Any attempt to standardise these terms should not be accepted unless it is ratified and accredited by international organisations. Newmark

supports this especially with regards to international treaties. He suggests, “an international treaty or law must be translated in accordance with recognised conventions agreed by both parties”. (Newmark, 1982:297) Through this Newmark is asserting the need for standardisation of the legal terms.

The process of standardisation does not always mean the need for finding similarities. It is also another form of standardisation if one is able to point out the differences between the source and target texts. Kierzkowska suggests a methodology towards achieving this end, in the domain of court interpreters, she says, “the first step should be taken towards collecting basic information on the materials which have been already developed in this field in different countries. Then, by way of comparative studies, a special working group would suggest solutions to be agreed upon”. (Kierzkowska 1988: 441) However, Kierzkowska admits that this process will require several years to be achieved. Nevertheless, if this procedure was performed on a more controlled and limited manner, translators might be able to reach tangible results.

The current research aims to suggest a method by which legal equivalences are standardised through identifying regularities and patterns in the choices made by translators and which indicate that they are governed by norms in the translation process. Therefore, it is safe to assume that ‘norms’ play a major role in stabilising and standardising legal language. In the current thesis, the experiment is controlled in terms of time and space, and in terms of informants and text choice. The experiment design and its processing including the choice of informants will be discussed in the following chapter. Due to the fact that the current chapter addresses legal translation, the following part constitutes a thorough examination of the ST chosen as the base of the case study.

#### **4.4.2 Choice and Importance of the Case Study (The Jordan-Israel Peace Treaty)**

The reason for choosing this particular topic for research has a personal and a general aspect. As a political correspondent for the Jordan News Agency, I have worked in a political oriented environment. One of my duties was to cover some rounds of the peace talks held between Jordan and Israel in the year 1993-1994. The neutral language which was used in the negotiations was English and the drafts that resulted from these talks needed in many situations to be translated. This focused my attention on the need and importance of achieving consistent and reliable translation in the field of politics, and the need to avoid any misunderstanding that could possibly result in political conflict. The importance of the treaty for the present study is that it rests on two fundamental factors: its importance as a political document, and its importance as subject of translation.

As a political document the treaty has played an important role in reshaping the future of Jordanian-Israeli relations. The nature of the treaty is highly sensitive, as it deals with crucial political and economic issues which play a major role in the stability of the region. These issues include borders, security, territorial waters, tourism, trading, etc. Therefore, translators who are assigned the duty of translating this document are expected to be fully aware of the contextual background of the document. The Jordan-Israel peace treaty is the outcome of a long process of war and peace. During the First World War, British policy became gradually committed to the idea of establishing a Jewish home in Palestine. In 1917 after discussions in the British Cabinet and consultation with Zionist leaders, the decision was made known, in the form of a letter by Arthur James Lord Balfour, British Secretary of State for Foreign Affairs, to Lord Rothschild, member of the English Zionist Federation. The letter

represented the first political recognition of Zionist aims by a great power. It was reaffirmed in the Mandate of the League of Nations which in particular, gave international sanction to the historic connection between the Jewish people and Eretz-Israel and to the right of the Jewish people to rebuild their National Home. All of that culminated with the establishment of the state of Israel on the 14<sup>th</sup> of May 1948 on the same day in which the British mandate over Palestine expired.

The establishment of the state of Israel in the heart of the Fertile Crescent was the beginning of a long and bloody conflict between the state of Israel on one side and the Palestinians and Arab countries on the other. However, throughout these years of conflict and war, there was a constant search for peace among the neighbouring countries. Some of these countries made great efforts in order to reach a peace agreement and called for the opening of direct channels of communication and dialogue, whilst others did not meet these efforts with similar enthusiasm.

Egypt was the first Arab country to negotiate with Israel face to face. The late Egyptian President Anwar Sadat met with Prime Minister Menachem Begin, and the two countries embarked on historic bilateral negotiations which led to the 1978 Camp David Accord and subsequently the 1979 Israel-Egypt Peace Treaty. Throughout the 1970's and 1980's a huge range of peace plans were considered. The Gulf War of 1990 produced new limitations and a change in the basic political order of the Middle East. A new understanding emerged within a vision of building a new future for the Middle East.

In October 1991, a conference was convened in Madrid to inaugurate direct peace talks. Subsequently, bilateral negotiations were conducted between Israel and Syria, Lebanon, Jordan and the PLO, as well as multilateral talks on key regional issues.

These negotiations resulted in a peace treaty between Israel and Jordan and a series of interim agreements with the Palestinians.

The bilateral talks between Israel and Jordan, initiated at the Madrid Conference, continued for almost two years in Washington until the signing of the Israeli-Jordanian Common Agenda on the 14<sup>th</sup> of September 1993. The Common Agenda constituted the blueprint for the peace treaty, comprising the following components: security, water, refugees and displaced persons, borders and territorial matters.

The first public meeting between King Hussein and Prime Minister Rabin took place in Washington, on July 25, 1994. Out of this meeting emerged The Washington Declaration, signed by Prime Minister Rabin and King Hussein, with President Clinton, President of the USA at that time, serving as a witness. The major achievements of the Washington Declaration were a series of agreements and concrete steps symbolising a new era. The state of belligerency between Jordan and Israel was terminated. Both states agreed to seek a just, lasting, and comprehensive peace based on UN Resolutions 242 and 338, and Israel agreed to respect the special role of the Hashemite Kingdom over Muslim holy shrines in Jerusalem.

Concrete steps included the establishment of direct telephone links, joint electricity grids, new border crossings, free access to third-country tourists, and co-operation between the police forces in combating crime, with special emphasis on drug smuggling. It was also decided to continue negotiations on bilateral economic co-operation and abolishing economic boycotts, as well the opening of an international air corridor between the two countries.

The first meeting of the Israeli and Jordanian bilateral delegations took place on July 18-19, 1994 at Ein Avrona, located in the boundary area north of Aqaba and Eilat. The parties agreed to hold talks on a continuous basis, alternately on the Israeli and

Jordanian sides of the border. The peace treaty between Jordan and Israel signed at Wadi Araba on the 26<sup>th</sup> of October 1994 was the culmination of years of talks between both countries, which had previously been political enemies. With the ratification of the peace treaty, full diplomatic relations were established between Israel and Jordan on November 27, 1994. Since that time, relations between Israel and Jordan have been steadily progressing. The open border crossings between the two countries have facilitated the normalisation of relations. Joint business ventures are being consistently initiated and the free movement of businessmen, by both land and air, has created an atmosphere of co-operation and open communication. Tourism between the two countries has increased significantly. The basis for the implementation of the peace treaty with Jordan was set with the 15 bilateral agreements which have since been signed and ratified. These agreements cover the following areas: Environmental Protection, Commerce and Trade, Transportation, Air Transport, Water, Agriculture, Combating Crime and Illicit Drugs, Communications and Mail, Science and Culture, Education, Health, Borders, The Eilat-Aqaba Region, Tourism and Energy. These treaties are to serve as the foundation for the peaceful, normal relationship between the state of Israel and the Hashemite Kingdom of Jordan. The significance of pointing out the historical background of the treaty is the fact that this will form the context of the examined text.

With regards to the importance of the peace treaty as a subject of translation, one cannot ignore the fact that this treaty is of a special nature, since it is designed to keep the peace between two countries who have been in a state of belligerency for more than fifty years. Therefore, the political aspect and its impacts on the legal text are of high importance. It is not only a fact that any breach of the article will cause political tension, but also any vagueness or inaccuracy in the translation may have serious

implications. In addition to that, the text in hand is a perfect example of a hybrid legal text created in supranational circumstances, and therefore makes a perfect example of a legal document extremely worthy of analysis on the translational level. Hence, with the use of corpora, the research will attempt to determine the translators' behaviour during the translation process. By identifying the patterns occurring in the closed examination of the sample which indicates a particular form of behaviour and consequently is a sign of the existence of norms, the research suggests that this could be used to standardise the translators choice of equivalents. If this is achieved then there will be a chance to compile all the most appropriate equivalents in an index to be used by translators in similar cases. With the compilation of a legal translation index based on the findings, the research hopes that the legal/political conflicts arising from misinterpretation of text will be brought to a minimum. If positive results are achieved by the current experiment, this research would suggest that the experiment ought to be carried out on a more comprehensive level, under the supervision of a translation planning committee, and with the possible use of computer software in order to reach the required results needed to standardise legal translational terms between English and Arabic on a more comprehensive level.

#### **4.4.3. Analysis of the ST and Its Peculiarities**

It is worth pointing out that the following part of Chapter Four is the only part which deals directly with the ST. It should always be kept in mind that the empirical experiment of the current thesis analyses the translations produced by the informants who undertook the experiment, in isolation from the ST. Nevertheless, the

importance of the ST and its features should not be underrated. After all if it was not for the ST, then the TTs would have not existed.

The ST is an international treaty of peace. It falls within a special type of legal English which is of a highly complex nature. It “differs significantly from normal formal usage. This variety of English can be acquired only through a very specialised form of schooling. It is more than a professional jargon, as it contains a specialised lexicon and its own peculiar syntactic constructions”. (Mok 1995: 196)

Upon examining the text of the Peace Treaty (Appendix IV) the study highlighted a number of peculiarities throughout the text:

As is mentioned in the description of legal language unusual grammatical and syntactic features are peculiar to legal English, and these are apparent in the examined text, among which is the use of intrusive sentences. Intrusive sentences are the insertion of conjoined and embedded elements into other sentences to make them more complex sentences. These elements could be either a noun phrase or a prepositional phrase separating the subject and verb from the object creating a difficulty in the way one understands the sentence. In the first article, the intrusive elements is used to place the information in one self contained unit: *The parties recognize the international boundary, as well as each other's territory, territorial waters and airspace as inviolable.* This feature appears in most articles resulting in long and complex sentences: *Towards that goal, the parties recognize the achievements of the European community and European Union in the development of the Conference on Security and Co-operation in Europe (CSCE) and commit themselves to the creation, in the Middle East, of a conference on Security and Co-operation in the Middle East (CSCME).*



Another prominent feature in the examined text is the use of repetition and “parallel structure”. (Dante 1980: 477-482 In Mok 1995:197) Parallel sentences appear as part of legal English style. They are used in order to emphasize the legal act: *to take necessary and effective measures to prevent acts of terrorism, subversion or violence from being carried out from their territory or through it and to take necessary and effective measures to combat such activities and all their perpetrators.*

It is also noticed that there is extensive use of prepositional phrases. This is a common feature of legal English and appears throughout the examined text. This frequent use of prepositions is due to the use of the lengthy and complex sentences as prepositions are very effective tools for linking sentences: *The demarcation of the boundary. 9 months after the signing of the treaty. Cooperation in security related matters. Security of the region. Relations on mutual trust. Advancement of joint interests. Achievements of the European community. In the development of the Conference on Security and Co-operation in Europe Commit themselves to the creation, in the Middle East, of a conference on Security and Co-operation in the Middle East. Operating on their territory. Material of a third party. Of the other party.*

The frequent use of prepositional phrases also indicates the high rate of nominalization in legal English especially with the use of the determiner ‘the’, which appeared in almost every sentence: *The international boundary. The signing of the treaty. The security of the region. The achievements of the European community. The conference on security.*

In addition, it is also clear that there is a significant lack in the use of direct negatives. It is noticed that all acts were issued by the use of the positive regulatory tool ‘will’, and not by prohibition ‘will not’, although the use of the negative and even double

negatives is the normal practice in legal documents. This, Tiersma suggests, is due to the “age-old notion that whatever is not explicitly forbidden is permissible”. (Tiersma 2000:66) And because law is usually about what people must refrain from doing as opposed to indulging in, it is presented in the negative. Yet this did not appear in the examined text: *The parties recognize the international boundary (...) and will respect and comply with them. The of the boundary will take place as ...*

The reason for the lack of use of direct negatives could be due to the fact that the examined text is a treaty of peace and both parties are hoping for a positive outcome of the treaty. Therefore, the legal directives are presented in way by which the emphasis is focused on what the parties should do instead of what they should not do. On the other hand, it is noticed that the regulative tool by which directives are stated is the auxiliary verb ‘will’ although in English legal text, the tradition is to use the auxiliary verb ‘shall’. According to Tiersma, “in American English, *shall* has become virtually obsolete, so that the sole future modal verb is *will*.. ”. (Tiersma 2000: 105) Because the American government was the patron of the peace process the text of the peace treaty is affected by American English; it is noticed that only ‘will’ is used in the text.

Another feature which is tackled through the analysis of the text is the use of the specialised terms (legal lexicon). Terms are generally taken to be the unique subject-related use of nouns and sometimes verbs. They could also be a word or a phrase. Kaiser-Cook says that “the characteristics of a term which distinguish it from the non-term; are precisions and the fact that it belongs to a system of terms, which are the linguistic manifestations of a system of concepts”. (Kaiser-Cook 1997: 284) Terms in the text belong to a political and legal universe, they include a set of verbs peculiar to treaties: *recognise, comply, acknowledge, take upon, commit, stationing, operating.*

*undertake, prevent and combat*. The terms also include a set of special nouns: *boundary, territory, demarcation, appendix, annex, parties, security, region, military forces, personnel, material, terrorism, violence and perpetrators*. Specialised terms are also typically culture-bound, although this is not particularly clear in the examined text. Neubert (1985:235) refers to culture bound terms as “realia” which “encompass a wide range of cultural patterns of the society in question, including its characteristic food, clothing and sport as well as aspects of religion, folklore, education and even its economic, *political and legal life* [my emphasis]”. (Bugarski 1985: 159 in Šarčević 1989: 211). Kaiser-Cook says that translation being a cultural activity involves some form of “cultural transfer” (Kaiser-Cook 1997: 243); however, it is important to always keep in mind that with the text in hand there is no cultural transfer. Culture only plays a role in the whole process when affecting the translators choice in her/his decision making.

#### **4.4.4. Legal Interpretation and Translation Difficulties Arising in the ST**

Legal translation, just like any form of translation involves a decision-making process. The decisions made by translators are crucial not only on the linguistic-translational level, but also on the legal-political level. The misinterpretation of the legal context could lead to serious political implications. The decisions made by translators depend first and foremost on the legal interpretation of the text. In order to point out the translation difficulties arising in the ST, there should be a clear examination of the legal interpretation, through which the current part of the research is able to suggest translations difficulties that are expected to face the translators undertaking the empirical experiment and ways of tackling them, by use of the correct

equivalence. The outcome of this examination provides a framework for registering and monitoring occurring patterns through the empirical experiment. The current research does not use the full text of the Peace Treaty (Appendix IV) in the empirical experiment. This research has chosen certain excerpts from the full text to serve as the ST used in the empirical experiment. This choice was based on the peculiarities characterising the text of the Peace Treaty which were mentioned earlier. However, the importance of choosing these particular articles is pointed out through discussing each article individually. The examined text is divided into six individual articles. For each article, the research points out the areas for possible legal misinterpretation which might create difficulties of translation for the translator of English legal text to Arabic. The research offers solutions to these problems and these solutions are based on the legal interpretation of the articles. The articles and their translations in Arabic are presented in boxes.

#### Article One

International Boundary: The parties recognize the international boundary, as well as each other's territory, territorial waters and airspace, as inviolable, and will respect and comply with them.
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Although the first article reads clearly in English, the translator is faced immediately with a sense of un-clarity with respect to translating into Arabic. There are a few areas in the article which could yield ambiguity when translated to Arabic. The difficulties appear in three areas, [International Boundary] [Parties] [Them] in [Comply with them]. The inaccurate translation of those areas might result in an ambiguous article in Arabic which could lead to political tension. In the three cases, translators are expected to base their choices on the use of the explication and

disambiguation strategies. To those translators acquainted with the history of the peace between Jordan and Israel geographically and politically, it is obvious that the International Boundary used in English is meant to be used in the plural in Arabic as, [الحدود الدولية], especially given that the boundaries separating Jordan and Israel link at different points throughout the line. As for the use of [parties], here the translator must decide whether to translate it in the plural [الأطراف], or change it to the dual in Arabic [الطرفان] as it is only Jordan and Israel who are signing the treaty. In translating [them] the translator is facing a crucial decision, [them] refers to the recognition of the inviolability of the boundaries, territory, etc. Translators in this case must use their own judgment either changing it by addition or translating by formal correspondence. The translator could either use the strategy of disambiguation by using the term [boundary] [الحدود] instead of [them] [لها]. By using this strategy the translator ensures that the Arabic translation will not be open to misinterpretation. Therefore the translation resulting from the use of this strategy will be [هذه الحدود]. On the other hand if the translator fears the risk of implying something which should not be implied through her/his own interpretation s/he can use formal correspondence by translating the term [them] literally as [لها].

In general, the legal message which is conveyed in this article is not the actual recognition of an international boundary, which already has been agreed upon. Rather, what is crucial in this article is the recognition that the boundary is *inviolable*. Finally, it should be pointed out that if the ST sentence is translated literally, it will result in an awkward translation and will thus generate ambiguity in the target text. It is suggested that the TT should begin with the use of the verb, and that translators provided they understand the legal message, could add clarity to the translation without jeopardising the legal context.

It is also important to point out at this stage the use of [will], which is another feature of legal text. In legal English, as was mentioned before, [will] is an important tool by which the word of the law is implemented; it ceases to be an auxiliary merely indicating the future tense. In legal text [will] carries the immediacy and urgency of implementing the act. This legal tool [will] occurs in most articles and sometimes more than once in one article. It is important to grasp this authoritative tool in the TT. [will] is expected to be translated as [سوف] or [س]

Following is the suggested Arabic translation :

الحدود الدولية: يعترف الطرفان بحرمة الحدود الدولية لكل منهما بالإضافة إلى أراضيها ومياهها الإقليمية ومجالها الجوي. وستحترم هذه الحدود وسيتمثل لها.

## Article Two

The demarcation of the boundary will take place as set forth in Appendix (I) to Annex I and will be concluded not later than 9 months after the signing of the Treaty.

In this article several issues arise. Firstly, the translator is faced with the use of a new specialised lexicon which does not exist in the dictionary. The term [demarcation] was first translated by Prince Hassan bin Talal<sup>41</sup> as [ترسيم]. The use of the literal translation [تعيين] or [رسم] does not imply the same meaning. The meaning implies a process which has already taken place and has now been recognised. Translators who have followed the peace process are able to use the appropriate equivalent, whereas translators who are not aware of the context, use the literal equivalence

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<sup>41</sup> Prince Hassan bin Talal, is the brother of the late King Hussein of Jordan who signed the Peace Treaty. Prince Hassan was a key player in the drafting and editing of the Peace Treaty. He was then the Crown Prince of Jordan.

which is found in the dictionary. Another issue in this article which indicates the conformity to matricial norms and the importance of keeping the style of the ST, is the translation of [Appendix (I)], [Annex I], and the number [9]. The correct translation of the mentioned terms indicates the faithfulness of the translators to the legal style. This also reflects whether or not translators have omitted certain parts of the sentence, although, in legal translation under no circumstances is a translator allowed to delete any part of the sentence because this will cause a fault in the message to be conveyed and therefore jeopardise the legal and political impact. On a different level, it is also important to point out in this article the use of the preposition [after]. In law, an agreement takes effect from the moment it is signed unless the date on when the agreement takes effect is clearly stated within the text. In the English text there is no problem with the legal interpretation of the article and it is clearly understood that the demarcation will have to take place in a period no longer than nine months after the signing of the treaty. However, in Arabic the inaccurate translation of [after] creates ambiguity. Firstly, [after] can be either translated as [من] or it can be translated as [بعد]. In Arabic there is a difference in meaning between the two. Whereas [من] implies immediacy, [بعد] does not indicate the specific time; it could refer to any time after the signing of the treaty, which might indicate that the period of nine months could start any time after the signing of the treaty. This may create political tension resulting from misinterpretation of the article. There could be a delay in the demarcation of the boundaries due to the fact that the period is not accurately determined for the above-mentioned reasons. Obviously, this would occur if the Arabic version were the one to be legally followed. In order to overcome this problem translators are advised to use [من] instead of [بعد].

The suggested translation is as follows:

سيجري ترسيم الحدود حسبما ورد في الذيل (١) من الملحق ١ و سيتم الانتهاء منه في مدة أقصاها ٩ أشهر من توقيع الاتفاقية.

### Article Three

Security: both parties, acknowledging that mutual understanding and cooperation in security-related matters will form a significant part of their relations and will further enhance the security of the region, take upon themselves to base their security relations on mutual trust, advancement of joint interests and co-operation, and to aim towards a regional framework of partnership in peace.

In article 3 the difficulty facing the translators with regards to the use of [parties] in article 1, is solved with the use of [both parties] which indicates the duality of the parties. However, one of the characteristics of legal translation is consistency in the use of equivalents. In that case the translator cannot alternate between using parties at one time in the plural, and at the other in the dual form, but has to be consistent. To solve this problem the translator should consider the context element, and because the signing parties are Jordan and Israel, it is recommended that [parties] be translated in the dual form throughout the entire text. Hence it is translated as [الطرفان]. This instance highlights the need to revise earlier parts of the translation in light of information and decisions taken in later parts.

In article three a difficulty appears in the association between a legal term and its equivalent. In legal language there are a number of terms which share the same form as a term in the standard language but carry a different meaning. In this article, there are two verbs which create difficulty on this level. Article three is a long complex



sentence which involves the use of an intrusive clause. It is noticed that the first verb used in this article is the verb [acknowledge] at the beginning of the intrusive clause. However the emphasis in this article is on the second use of the verb phrase [take upon themselves]. It should be pointed out that in translating [acknowledge] and [take upon themselves] the translator should use the appropriate legal equivalent which carries an authoritative force. Legal language always carries within it the force of the law and this has to be implied through the translation. The verb [acknowledge] in standard English carries the meaning of [be aware of] and hence is translated with the term [ يدرك ], which has the same meaning as in Standard English. However, in other cases in legal translation the verb [acknowledge] is translated as [يعترف] which also back translates as [recognise]. In legal language the verb [recognise] not only implies the act of knowing but also implies the act of admitting. Therefore in cases when the legal act has to be implied, it is preferable to use the equivalents [ يعترف ] or [ يقر ].

In this particular article there is a certain emphasis on the verb phrase [take upon themselves]. This is a commonly used phrase in international treaties in particular. Nevertheless in the translation into Arabic this phrase is often confused with [ يتعهد ] which carries within itself a sense of promise and back translates as [pledge]. It is important here that the translator realises that the signing of a treaty has more power than just a promise. There should be a degree of sharing of responsibility. Therefore the nearest natural equivalence to convey this phrase is [ يأخذان على عاتقهما ].

In article three the translator is faced with another structural feature of legal text. The long and complex sentence which is one of the most prominent characteristics of legal text, that create a difficulty in translation. Firstly, the use of the long intrusive clause [acknowledging that mutual understanding and cooperation in security- related

matters will form a significant part in their relations and will further enhance the security of the region] is difficult to render in Arabic without resulting in an awkward translation. Although it reads perfectly well in English, it creates a problem in Arabic on the collocational, and hence grammatical levels. In English [understanding] and [cooperation] are by definition mutual, and therefore [mutual] collocates perfectly with both of them. However, in Arabic [mutual] means [متبادل] and this collocates with [تفاهم] whereas the adjective which best collocates with [تعاون] is [مشترك]. The translator has various options and in this case the choice of equivalence is not rigid as it does not affect the legal interpretation of the article. The choice of equivalence in this case is only a stylistic one. To achieve the most natural collocation in Arabic and a grammatical choice by the use of singular or dual. If the translator decides to use mutual as an adjective going with both [understanding] and [cooperation] s/he will have to use the dual form in Arabic [التفاهم والتعاون المتبادلين] which makes sense on the semantic level. The translator can use her/his judgment in this matter and use the normal Arabic collocation by splitting the sentences into two, thus resulting in [التفاهم المتبادل] and [التعاون المشترك]. What matters is consistency in the use of the chosen equivalence through the text. Therefore, whichever choice the translator decides to make s/he should be consistent. This is also related to the use of the dual form, in translating [their relations] [take upon themselves] [their security relations] which are expected to be translated as [علاقتهم] [ياخذان على عاتقهما] [علاقتهم الامنية].

On a different level it is noticed that [will] in this article is used several times. However, it serves a different purpose from that of the authoritative tool. In this article [will] serves the purpose of a temporal marker referring to an act, which will take place in the future [will form] [will further enhance].

On a lexical level the term [region] is one of the most problematic terms not only in the treaty under examination but also it has been a problematic source of political manipulation throughout the history of the war and peace in the Middle East. The term [region] could be translated as [منطقة], which means [area] when back translated into English, or [إقليم], which is the literal equivalent of the word. The term [region] in addition to the term [territory] constitutes one of the most prominent terms throughout the examined text. However, what affects the choice of the proper equivalent, in this case, is usually its position in the sentence and its collocation with surrounding nouns and verbs.

In Arabic [أمن المنطقة] is a common collocation and hence it is expected to be translated as such. In the case of [regional framework], [regional] should be translated as [إقليمي] given that it sounds awkward to say [إطار منطقي] in addition to the fact that it changes the whole meaning which if back translated will mean [logical framework]. Also, on the lexical level, in translating [base] the translators could use commonly used terms in Arabic like [بناء] [تأسيس] [إقامة], whereas the most appropriate is the term [إسناد].

As for [advancement] the most appropriate equivalence is the word [تعزير] and not literal equivalents like [تحسين] or [تطوير]. One more term in article three is [framework]. This could be translated as either [هيكل] or [إطار]. The difference between the two is that the former refers to material things and, whereas the latter refers to intangible issues like ideas. Since the article refers to peace which is an incorporeal issue, then [إطار] is the appropriate equivalent.

As noted, this article is interrupted by the intrusive clause [acknowledging that mutual understanding and cooperation in security-related matters will form a significant part of their relations and will further enhance the security of the region] The insertion of

this clause between the subject [both parties] and the verb which should follow it [take upon] could distract the reader from identifying the main message in the article and hence affect the political meaning. What is obvious here is that the important message in the article is not the first part dealing with acknowledging the impact of mutual understanding and cooperation in security. Rather it is the legal act of [taking upon themselves to base their relation on mutual trust]. Therefore, translators have two choices in solving this problem; they can play safe and translate it as close as possible to the ST, or they can break the article into two sentences emphasising the legal action. In the first case the translation will be along the following lines:

إذ يدرك الطرفان أن التفاهم المتبادل و التعاون المشترك بينهما في الأمور الأمنية سيكون جزءاً مهماً من علاقتهما و سيؤدي أيضاً إلى تعزيز أمن المنطقة، فإنهما يأخذان على عاتقهما إسناد علاقتهما الأمنية على الثقة المتبادلة و تطوير المصالح المشتركة و التعاون. و أن يسعياً نحو إيجاد إطار إقليمي لسلام مشترك.

In the second case the translation will start with a verb which changes the passive form of the sentence and gives the legal act a stronger position. It will also imply a more binding authoritative force and carry within it the immediacy of the action required of both parties and thus leave no place for misinterpretation. The translator in this case is expected to use his/her own judgment to come up with a codified text which fits the proper structure of legal text in the most understandable manner. This of course is not always an accepted practice. Some legal translators might even argue that it is preferable to keep the text in its normal form and structure even if this creates ambiguity in the legal interpretation.

The suggested translation is as follows:

يأخذ الطرفان على عاتقهما إسناد علاقتهما الأمنية على الثقة المتبادلة و تطوير المصالح المشتركة و التعاون.  
و أن يسعيا نحو إيجاد إطار إقليمي لسلام مشترك. و ذلك إدراكا منهما أن التقاهم المتبادل و التعاون المشترك  
بينهما في الأمور الأمنية سيكون جزءا مهما من علاقتهما و سيؤدي أيضاً إلى تعزيز أمن المنطقة.

#### Article Four

Towards that goal, Parties recognize the achievements of the European Community and European Union in the development of the conference on Security and Co-operation in Europe (CSCE) and commit themselves to the creation, in the Middle East, of a conference on Security and Co-operation in the Middle East (CSCME).

The significance of including article four in the examined ST is to provide a good example to show the translators' commitment and conformity to maintaining the legal form and structure of the legal text. Article four is a highly formulaic sentence and it contains a complex phrase structure. It also contains a number of difficulties on the equivalence level which will hinder the task of the translator and without doubt will jeopardise the legal context. Translation difficulty first appears in this article by the use of the word [that] in [towards that goal]. Obviously, article four is connected to the previous article and [that goal] clearly refers to [a regional framework of partnership in peace], therefore it is best for the translator to play it safe and translate it literally as [ذلك] because any misjudgement on behalf of the translator which might change the meaning is not acceptable. On the stylistic level, the use of the acronym and their significance for the translation is important. In Arabic the usual standard way when referring to UN organisations and conferences is through Arabic

transcription of the English acronyms, provided that it is accompanied with a full explanation of what the acronyms stand for.

On the equivalence level, the more prominent difficulty here is the use of the noun [creation], which has a cultural and religious connotation in the TT language; the literal equivalent of the word [create] is [خلق]. This word has special significance in the Arab culture as it mainly relates to God. Therefore, it is expected that translators will refrain from using the equivalent [خلق]. Within this context, translators are advised to use the nearest equivalent [عقد] which collocates well with the equivalent to the word [conference] in Arabic [عقد].

Also in article four, the verb [recognise] occurs again with a new function. In this case [recognise] is not only meant to show acknowledgment of the [achievement of European Community etc.], but it also carries with it a sense of appreciation of these achievements. Therefore, the verb [recognise] in this sense should be translated as [يقدر] or [يُثمن].

In general, the highly formulaic nature of this sentence and the interruption of the intrusive phrase with the use of the acronyms create intense difficulty in translation, which results in awkward translation.

The suggested Arabic translation is as follows:

نحو ذلك الهدف يقدر الطرفان منجزات المجموعة الأوروبية و الاتحاد الأوروبي في تنمية مؤتمر الأمان والتعاون في أوروبا (سي. إس. سي. إي) ويلزما نفسيهما بعقد مؤتمر للأمن والتعاون في الشرق الأوسط (سي. إس. سي. إم. إي).

## Article Five

The Parties further agree to refrain from the following: Allowing the entry, stationing and operating on their territory, or through it, of military forces, personnel or material of a third party, in circumstances which may adversely prejudice the security of the other Party.

The most significant problem in this article, in addition to a number of difficulties on the equivalent level, is the use of the expression [adversely prejudice] in the ST. In legal English [adversely prejudice] means ‘to pose a potential risk or danger to’ and it does not mean directly jeopardise, but rather to allow a circumstances to arise which could lead to danger. The difficulty is faced because this phrase does not have an equivalent in the TL. The term [prejudice] literally means [تحيز] and adversely means [عكسي], therefore the literal translation of the phrase [تحيز عكسي] does not make sense in Arabic. In order for the translator to convey the correct message, s/he should understand what it means in the SL in this context, and this in particular requires special legal competence. Hence, the translator could use different equivalents to convey the message. The terms that could be used in place of [prejudice] are [يخل] [يهدد] [يضر]. As for [adversely] when used with [تضر] as [بشكل عكسي] this will result in the wrong meaning of the sentence. One way to get round this difficulty is to change it as [تتعرض بضرر] which reads well in Arabic.

In article five, another important issue is the correct interpretation of the sentences. It is most important to clarify that the two signing parties should [refrain from allowing the entry, stationing and operating on their territory, or through it, of military forces, personnel or material of a third party] the emphasis should be that it is the third party which is not allowed to operate from either side. Failure to indicate this results in

failure of the whole legal message, which is very sensitive. The sensitivity here is linked to the word [circumstance]; this is a crucial word because the whole political interpretation is based on it. The use of [circumstance] indicates that the two parties could allow a third party to operate from their territories or through it in certain circumstances. However, the nature of the circumstances is not mentioned here, which leaves this article open for interpretation.

Another example on the lexical level which creates inaccuracy in Arabic is the use of the words [material]. Whereas [material] is perfectly normal to use in this sentence, the use of the common Arabic equivalent [مواد] in the translation does not convey the military meaning. Therefore translators are advised to use the word [معدات] instead, which is the literal equivalent of [equipment]. The use of military terms is apparent in article five [stationing] and [operating]. Obviously translating these terms literally will probably convey the meaning but it will sound weak and unprofessional. If the term [stationing] is translated as [تواجد] [إقامة] [تمرکز] it will indicate the right meaning, but the accurate military term is [مرابطة]. As for [operating] the normal equivalence is [التشغيل] or [العمل]. However, here the translator must use the strategy of addition to translation and thus translate it as [القيام بعمليات عسكرية]. [Personnel] is yet another term which has a military significance in this text. However, if the literal equivalent is used to translate [personnel] it will not convey the correct meaning. The word موظفين which is the literal equivalent means [staff] if back translated, therefore, it should be translated by using a military term, which refers to soldiers and hence the appropriate equivalent is [عناصر] or [فراد].

The translation of the phrase [through it] is another difficulty that might cause political misinterpretation. A common mistake in TT translation is using the equivalence [من خلالها] which wrongly could mean that the military operations is



conducted through the parties themselves, not particularly referring to the land where the operations are carried out. Therefore, the safest translation in this case will be [عبرها]. In this article, the problem of using plural or dual for [parties] appears again, the ambiguity which was cleared in the past articles with the use of [both] appears again in article five and article six. Because the translation should be consistent the use of the dual is clearly expected in the translation of these articles.

The suggested Arabic translation is:

يتفق الطرفان أيضا على الامتناع عما يلي: السماح لقوات أو أفراد أو معدات لطرف ثالث من الدخول أو المرابطة أو القيام بعمليات عسكرية على أراضيها أو عبرها، في ظروف قد تتعكس بضرر على أمن أحد الطرفين.

#### Article Six

The parties undertake: a. To take necessary and effective measures to prevent acts of terrorism, subversion or violence from being carried out from their territory or through it and to take necessary and effective measures to combat such activities and all their perpetrators.

Article six is highly formulaic, the difficulties occur with the use of the intrusive elements and repetition, without any break in the whole sentence. Although rhetorical repetition is a feature of political discourse as in speeches, it is not a feature of mechanical legal text as in the case of codified articles. Therefore, as a first step it is suggested that the translator deletes the repetition in the sentences. With the deletion the article will be condensed and could be more easily contained. On the other hand, to deal with the intrusive elements there should be a change in the structure of the

sentence. In the Arabic translation, the sentence must be changed from passive to an active-like verbal noun usage. The verbal noun in this sentence [carry out] should precede the object [acts of terrorism ...], [منع تنفيذ أعمال الإرهاب ...]. If this sentence is back translated it will sound as [prevent the carrying out of acts of terrorism etc..].

In articles [5] and [6], the translator is introduced to the use of the term [territory] again; however, this time it carries within it a serious significant political peril. In article [1], there was a distinction between [territory, territorial waters, and airspace]. These three elements make a [region][ إقليم ] which was mentioned in article [3]. In article [4. 3. c.] of the original text of the Peace Treaty (Appendix IV) there has been a clear mention of what [territory] refers to. The article stated: [to take necessary and effective measures to ensure that acts of belligerency, hostility, subversion or violence against the other Party do not originate from, and are not committed within, through or over their territory (hereinafter the term ‘territory ‘ includes the airspace and territorial waters)] The introduction of this sentence in the article in order to clarify the meaning of [territory] obviously makes the translators’ choice easier, and they are expected to use the correct term consistently throughout the translation. In the current thesis, however, the informants who undertook the translation experiment were not introduced to Article [4.3.c] of the Peace Treaty which preceded article [5] of the examined ST. Therefore, they are expected to use their own judgment in choosing the appropriate equivalence. In article [5] the use of the proposition [on] instead of [in] implies the reference to land [ أراض ] only, rather than the whole territory referring to [ إقليم ]. In article [6], there is no clear indication as to whether the reference applies to land only or to the whole territory including water and airspace. The choice of the right equivalence in this case is very sensitive due to the fact that an unclear indication could be used cunningly by either party in order to

further their interests with regards to particular claims. The translator will have no choice but to translate [territory] as [ أراض ] which only indicates [land] and leave the political peril for politicians to decide. Another issue in article 6 is the significance of using the letter [a]. Hence, the original text of the treaty is followed by [b] and [c], however the use of only one part of the article is deliberate to test the translators' conformity to matricial norms, and their loyalty to the style of legal language, which will be discussed in the data analysis in Chapter Five.

The suggested Arabic translation of article [6] is:

يتعهد الطرفان ب : أ. اتخاذ إجراءات ضرورية و فعالة لمنع تنفيذ أعمال الإرهاب، التخريب أو العنف من أراضيها أو عبرها ومحاكمة هذه النشاطات ومرتكبيها جميعهم.

## Summary

It is now clear that the translation of legal documents falls within two disciplines, that of language and linguistics on one hand, and that of a juridical nature on the other. This allows us to speak of this process as a 'multidisciplinary operation'. (Carballal 1988: 447)

What becomes clear through the previous discussions is the general acceptance that the translator of a legal text should have the ability to comprehend the intention and message of the ST as fully as possible. Whereas Lane says, "under no circumstances is the translator permitted to place his own interpretation on the text, and it is absolutely forbidden for him to attempt to interpret the legal content" (Lane 1982: 223), Newmark suggests that the translator cannot be neutral, "he has to draw attention, *separately* [my emphasis] to all prejudiced senses in both articulation of meaning (word and sentence), where they are not clear or concealed". (Newmark 1982: 297) On the other hand, the translator himself must be professional and accurate in his work he must objective and act in a responsible manner with regards to conveying the moral and social truth.

There is no doubt that there should be a certain degree of co-operation between makers of the law and makers of the language. This co-operation enhances better understanding of the duties of a translator of a legal document; it will also help bridge the gap between the two disciplines and consequently decrease the number of disputes among international bodies.

Although many academic institutions do not see the need for a special legal training for legal translators, this unfortunately will undermine the goal of achieving a translation as good as the original text, which can only be achieved if the translator

has both translation and legal skills. This study suggests that legal translators should only be translators who have undergone legal training. In this context, it pays to refer to the program introduced by the Ottawa Faculty of Law and the School of Translation and Interpreting. The graduate program is designed for candidates already holding degrees in either law or translation. The twelve-month program is divided in two parts: theoretical and practical. In the first part, students holding law degrees study translation, and students of translation degrees study law. In the second phase of the program both types of candidates undergo practical legal translation training in legal training institutions. If this program proves to be hard to achieve in all universities, it is suggested that a course or a module of law should be introduced in undergraduate programs of translation.

The translator's task in legal translation is limited by certain factors; these factors could determine her/his framework for making decisions. Among these is the purpose of the ST and its intention as a legal draft, the purpose of the translation and its force, in addition to the document type. Translators should bear in mind that they are not the only ones involved in the translation of the treaty. Their job should not exceed the limit of transforming the content and form of the text in a target language; they have no authority to reshape the content of the legislation. They are allowed to make improvements only if this does not interfere with the legal content and this should be noted in footnotes. In other words, factual information must be rendered faithfully, any departure from the legal message could be considered malpractice and "potentially criminally fraudulent if done with intent". (Joseph 1995: 17)

In legal language there is no margin for freedom; the translator must render the form and meaning as faithfully as possible within the conventions allowed by the target language. Trosborg gives a number of recommendations for legal drafters that could

also be useful to translators. She says “1. write in the present tense, 2. break up long periods, 3. use intelligible syntax and vocabulary, etc”. (Trosborg 1994: 317)

With regards to political texts and in particular treaties, they are often conventionalised both at the macro- and micro- levels; these conventions appear at the lexical, syntactic and even structural levels. Schäffner emphasises the structural level in order to ensure mutual understanding. She suggests that one sentence in the ST must correspond to one sentence in the TT, and in the case of treaties, the negotiators “must be able to refer to ‘article 1, paragraph 2, sentence 3 without causing misunderstandings for their counterparts”. (Schäffner 1997a :121)

As for the loyalty of the translator to either source or target orientedness it should be noted that the agreement has two aspects to it; speech act function and factual information. These should be produced in the target language in a manner which serves a purpose similar to that of the original, while taking into consideration that it will be produced within a different linguistic and cultural setting. Trosborg suggests that three procedures could be employed to that end:

1. the communicative function (i.e. the speech act function) is preserved, though with the realization pattern adjusted to TL conventions
2. that the content side (i.e. factual information) is rendered as faithfully as the target language and culture allows
3. that the form side is adjusted to TL norms and conventions, or even better, that the translation is in agreement with recommendation for international contract drafting.

(Trosborg 1994:315)

As for the suggestions that translators of International treaties should work within certain regulations set by recognised international institutions, it is worth mentioning that this endeavour may not be easily achieved in practice. Joseph (1995:14) argues that law is always open to interpretation and that the idea that it is ‘carved in stone’ is only an illusion. He also adds that this not only applies to law but also to language as the meaning of words are not fixed. Therefore, setting international guidelines (which

will mostly serve the SL), will only restrict the translator and confuse her/him about whether to adhere to these rules or bend towards the conventions of the TL.

In translating authoritative statements, translators should keep in mind that these derive their authority from the relation between the writer and the reader (the official and the public). However, the fact that these statements are issued by high authorities does not mean that they are sacred and irrefutable. They may contain a number of mistakes on different levels, and it is the task of a translator to investigate the background of these statements and circumstances in which they were issued. In that sense as opposed to imaginative literature, which is self-contained, authoritative statements cannot be cut out from all their surrounding elements.

The translator must consider three aspects of the text in her/his hands. It should be viewed in a comprehensive way that covers the following: the semantic meaning in the text as language, the pragmatic meaning in the intention behind the text and the whole background of the creating of the text (context). This includes the author, the situation in which it was created, the language and technical methods used for that purpose, the reader it addresses, and most important the force and truth of the statement. It must also include the culture in which the ST and the TT are created. Whatever strategy translators apply in legal translation, they are looking for “some sort of equivalence” (Wilss 1995 cited in Sager 1997:26) not to fulfil the static view of translation which is to change the linguistic form while retaining the meaning, but as a communication process between two cultures. (Sager 1997: 26)

This chapter marks the end of the theoretical part of the thesis. So far the thesis has discussed the theories used in the analysis of translation studies, including the theory of norms, which is the core of the thesis and its application to translation. The thesis has also provided a full description of legal translation and its features in addition to

presenting a thorough examination of the ST and the difficulties which informants are expected to face in undertaking the experiment on one hand and what is expected of them on the other. The following chapters represent the empirical part of the thesis. Chapter Five offers the experiment design, experiment processing and analysis and experiment results.



**No partial theory will ever be in a position to fully account for translation as  
the complex phenomenon it really is**

Toury 1988: 83

**CHAPTER FIVE**  
**EXPERIMENT DESIGN AND PROCESSING**  
**(PART ONE)**

**Introduction**

“Although a theory is first and foremost a conceptual pattern, it also functions as an instrument of exploration, and thus has both heuristic and cognitive values”. (Hermans 1985:12) A theory increases its credibility and acceptability by generating new ways of investigating phenomena to achieve tangible outcomes resulting from its application. Empirical investigation is one way of testing theories, and this can be achieved through case studies. In the current research, the only way to prove the suggested hypothesis is by means of an experiment. The experiment is considered the core of the thesis and the tool by which the research achieves its anticipated results. For this end to be achieved, the research designs a framework of the empirical experiment. In choosing the design of the experiment, researchers “must decide what to observe or ignore, how to go about making their observations and how to interpret them. Such decisions inevitably are based on the researcher’s expectations about how variables are related to one another”. (Singleton & Strait 1999: 73) The current thesis is no exception, in order to test the theory of norms as applied to translation, which was discussed throughout the research, this chapter provides a full description of the experiment design including the data collected through the field work and the way it is processed.

This study principally looks at the hypothesis that translators are governed by translational and cultural norms, then tries to find reasons as to why this occurs and

how translation experts can use this phenomenon in order to standardise Arabic equivalents of English legal terms, in an attempt to *minimize* the damage done by misinterpretation of the legal message in international documents. It should always be kept in mind that political misinterpretation could still be made intentionally regardless of how skilled, careful or professional a translator is, or how rigidly equivalents are standardised between two languages.

The experiment focuses on the search for normative behaviour in primary material, i.e. the translations, and secondary material, i.e. theoretical or critical approaches to how the translators should proceed, what is expected of them. The search for norms within primary and secondary material is expected to create contradictions caused by the conflict between the two. Nevertheless, it has been proved that the best data result from mixing the two types of sources. (Pym 1998:112) If the study is able to strike a balance between the norms found in primary sources and those found in secondary ones, it might be able to find a method by which the standardisation of equivalences between different languages is achieved. However, norms themselves are not obvious and cannot be seen in the work of a translator. It is the regularities which appear throughout translations that are indications or signals used as evidence of norms and translation as a norm-governed activity. Therefore in order to extract the norms from the source material this research maps the regularities observed in the behaviour of the translators who undertook the experiment. The observed regularities indicate their choices of equivalences through the act of translation.

Chapter Five with its two halves is the practical part of the thesis. It includes the experiment design and processing. Chapter Five as a whole is divided into four parts. In part one of the first half, Chapter Five acknowledges that the research experiment is the core of the research and is therefore designed carefully. In part one the units of

the experiment are defined clearly, and the relationship between them is also identified. Part one firstly presents the experiment design, which includes the study design *per se* and the logistical arrangements that the research proposes to undertake through the experiment. This contains the measurement procedures of the sampling strategy, the frame of analysis, in addition to the organisation of the empirical experiment by which the examined translations are analysed. It presents the processing of the experiment, including the choice of informant (sampling), choice of the ST and controlling the experiment. It also presents a detailed account of the problems faced whilst conducting the field-work. Most importantly, it gives a detailed explanation of the survey which is used as the basis for the empirical experiment. The survey provides the data which is analysed and on which the current thesis bases its results. The survey is divided into two parts: The first part is a questionnaire which includes information about the informants' general and translational backgrounds. The data resulting from the questionnaire is tested against the second part of the survey which is a translation task of the chosen ST consisting of excerpts taken from the text of the Jordan-Israel Peace Treaty.

Part two presents the processing of the questionnaire. It provides information presenting the informants' cognitive and extra-cognitive experience and the effects of their experiences on the decision-making process, and hence strategies used through the translation process. Through the processing of the questionnaire, the data is analysed in form of tables and charts.

In the second half of Chapter Five, part three presents the analysis of the resulting translation. It is divided into three stages: stage one portrays the translation stylistics by indicating the set of inventory the translators had at their disposal and the options that were chosen. This is presented in the form of tables which include data

representation and transcription. Stage two presents the occurring patterns in the translators' behaviour. It also provides an explication of these patterns and their relation to the behaviour of the translator with reference to the information given in the questionnaire in order to test their conformity or non-conformity to norms. The difficulties arising in translation and their solutions are based on those suggested in Chapter Four as a result of the legal interpretation of the ST. In searching for behavioural choices made by translators during the act of translation, the current thesis makes use of translation corpora by applying its tactics manually through the counting mode. As a final stage, stage three presents the result of the data analysis. It displays the translators' conformity or non-conformity to norms through the analysis of the resulting regularities. Although this thesis does not aim to assess the quality of the translation, it does provide a method by which the resulting translations are assessed. The current research will put the theory of norms in translation to the test in the hope of proving that there are a number of significant factors which play a role in the choices made by the translators. By explaining why these factors affect the translators' choices, the research aspires to recommend a method by which Arabic equivalences of English legal terms may become standardised. In the fourth and final part of Chapter Five, the thesis presents the results of the empirical experiment.

## **Part One: Experiment Design**

For the research problem in the current thesis to be addressed in a scholarly manner there should be proven evidence of the existence of that problem. Therefore, the experiment design sets out the logic of the present inquiry. It includes the study design *per se* and the logistical arrangements that the research proposes to undertake through the experiment including the measurement procedures, that of the sampling strategy and the frame of analysis. In addition to adopting an empirical approach for the present study, the qualitative method is also employed in order to explain the social interactions. (Glassner & Morena 1989:15) The aim is to acquire as much information as possible concerning a particular social reality, and then build a general theory based on those findings. This involves looking at the interactions between the various players in given situations. In a qualitative approach the question which is addressed is not whether a given pair of variables are associated but how strongly they are related. In many cases the research problem itself determines whether the study is treated as a qualitative or a quantitative piece of research. In the case of this research the topic in question is 'translation' which involves a type of human interaction. Therefore, the methodology used for this research will be based on the qualitative approach. One important element is that "no applied discipline can do without a purely scientific component. Every applied discipline will use the data supplied by description and theory". (Leuven-Zwart 1991a: 36)

The research experiment is the core of the research and therefore it is designed carefully, units of the experiment are defined clearly, and the relationship between them is also identified. The experiment design clearly presents the stages of the

study. The first step in designing the experiment is identifying the elements of the research. The elements of research in the present study consist of three aspects:

1. The entities: this includes the objects under study which consist of two types: The first is the social grouping (the translators=informants) who perform the experiment. The second category is the artefacts (the different versions of the translated ST text produced by informants).

2. Variables: This is the relationship between the characteristics of the entities of analysis, and what aspects of these characteristics are of interest to the research. These variables are not stable or consistent. In the current study the variables constitute the translators' behaviour and their decisions in translation within the boundaries of translational-cultural norms.

3. Relationships: These decide what kind of relationship is anticipated among these characteristics of the units. At this stage it is safe to assume that one of the aspects affecting the results is the presences of a causal relationship between variables (translators' behaviour  $\longleftrightarrow$  norms) This relation occurs within the limits of the theory applied, "theory plays a much larger role in causal analysis than specifying intervening variables. They render a more complete understanding of the causal process that connects events and also provide the general framework for investigating the nature of all relationships". (Singleton & Strait 1999: 85)

The basic aim of the experiment is to find an answer to the research question(s). These results are obtained by applying several strategies, such as: survey, field search, or the use of available data. In the current research a combination of all methods is used. This includes the use of the experiment to test the overall design of the research. Also by use of the survey, the informants are tested on two levels: firstly the use of questionnaire in order to test the contextual backgrounds of informants, and

secondly through the translation task by which translators' behavioural patterns are monitored.

### **5. 1.1. Processing the Experiment**

The experiment includes two major element of analysis in the study samples: first the human subjects (informants), and second: the survey. The experiment also presents the manner and means in which the study sample is analysed. The experiment involves collecting data in terms of demographic and categorical variables. The study is able to define and compare the data within the terms of a statistical treatment. The empirical experiment is conducted in Jordan where the Treaty was originally translated.

#### **5.1.1.1. Choice of Informants (sampling)**

The sampling aims at choosing units from different groups of translators in order to determine how they performed the task of translation, and the effects of their contextualisation on the process. Therefore, the informants are chosen from different levels and backgrounds which include: Professional translators<sup>42</sup>, lecturers in translation, MA and undergraduate students of translation from both state and private universities. The reason why the research chose these categories is due to the fact that there should be comparable data to conduct the experiment. The experiment is intended to test translators' conformity or non-conformity to norms. The acquisition

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<sup>42</sup> Using the description 'professional translator' does not indicate the competence of the translators. It is used in this research to refer to translators who use translation as a way to earn their living.



of norms occurs in two stages, firstly translators-to-be acquire norms by being exposed to external feedback (Toury 1992: 61) favoured by the granting group, which is usually either academic or professional training institutions such as teachers at universities or translation programs. Therefore, the inclusion of MA students and undergraduates as informants is designed to test this stage of acquiring norms. The second stage to acquire norms is that with time and experience and by following the principle of trial and error translators stop depending on external feedback and begin to develop an “internal kind of monitoring mechanism”. (Toury 1986a: 86) At this stage it is safe to assume that the translator has gradually developed translation competence by acquiring a set of norms which are accepted as appropriate for the act of translation s/he is performing (Toury 1999: 25-28) and hence the choice of professional translators and lectures. The reason why the experiment is conducted on the four groups rather than just dividing the categories into two groups of professionals and students is to keep the margin of objectivity wide and to get as much feedback on the data as possible.

#### **5.1.1.2. The Layout of the Survey<sup>43</sup>**

The survey consists of two parts; the first is a questionnaire which deals with information about the informants, their education and political backgrounds and their opinions regarding these issues. In the second part the informants are asked to translate the chosen part of the Peace Treaty, which will be used at a later stage as the material for analysis.

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<sup>43</sup> See Appendices I & II

### 5.1.1.2.1. The Questionnaire Design

The questionnaire is designed within the framework of contextualisation and the main factors affecting the decision-making process<sup>44</sup>. According to Toury (1991b: 52), “By and large, the most common way of studying aspects of translated texts (or rather, addressees’ responses to them) with methods consists in devising questionnaires and having groups of subjects hopefully big enough as well as controlled for their background-react to the texts by answering the questions”. (Toury 1991: 52) However, Toury warns that in experiments carried out in the field of translation studies up until almost ten years ago, samples of insufficient size seemed to be a common weakness. Therefore, in the current research the experiment is given extra care. Although it has been an exhausting process at the stage of the analysis, the number of samples collected for the purpose of this research has proved sufficient.

What should be noted is that the analysis of the questionnaire will not follow its layout. Questionnaire sections covered a wide spectrum of issues in a general way in order to collect as much data as possible. And because at the stage of designing the questionnaire, it was still too early to speculate what would be the relevant information for the purpose of the research, some of the information provided in the questionnaire is not used in the analysis.

The questionnaire is divided into several sections, some of which are of a general nature and apply to all informants while some are of a specific nature and deal with the informants separately.

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<sup>44</sup> Refer to Chapter Three, 3.1.4. p. 77

Sections A, B and C apply to all informants. They address the informants' general background, including: education, work experience, theoretical translation knowledge and political awareness. They include questions on academic degree, occupation, years of experience, knowledge of translation theory and studies including recent literature written on the topic. This part also includes information addressing the theory of norms and the effect of culture on the translators' job, in addition to views concerning legal translation. Section C addresses the informants' background knowledge of the political situation in the Middle East. This part of the questionnaire is mainly concerned with collecting data on the informants' contextual background and translation task specifications.

Section D in particular addresses professional translators, who were directly involved with the Treaty. This section addresses three levels. It aims to acquire information concerning the official process of translation, the text itself, and the competence of the translators. Through the questions asked in the questionnaire the study tries to confirm whether the official translation has undergone the normal process of translation, which includes documentation, translation, and approval of the translated version. It also attempts to identify whether the treaty was translated just for information or as a binding legal document. The third level, which is the translators' competence, includes questions concerning the identity of the translators who were assigned the task of the official translation of the Peace Treaty, including their qualifications and awareness of the Peace Process. It also includes questions on whether the drafters of the treaty interfered with the translation or whether it was under the full responsibility of the translators. What sort of environment did the translators work in ...did they have deadlines, formats, terminology etc.. Were they given any guidelines? Did the translators consult with the negotiating team? And

above all, did the translators undergo any type of specialised legal or political training. The significance of including this part of the questionnaire is to give us a clear idea of what actually happened during the official translation of the Peace Treaty<sup>45</sup>.

Section E is addressed to students only. The aim of including this part in the questionnaire is to test their knowledge of translation theory, and whether or not they had undergone proper translation training at the university. This section includes questions addressing students' awareness of peace between Jordan and Israel. It also indicates their ability to perform legal translation tasks.

On the whole, the questionnaire tries to test the competence of informants, by relating to their conformity or non-conformity to norms. It ought to be always kept in mind that the data and its results will vary according to the different groups of informants. The data resulting from the questionnaire does not indicate the final result of the analysis, but it is validated against the results of the translation task analysis.

#### **5.1.1.2.2. Choice of the ST**

The choice of the text employed as the basis of the experiment is not the full text of the Peace Treaty (Appendix IV), but certain parts, which have been chosen selectively due to the fact that an exhaustive discussion of the entire text would have been too comprehensive. The part chosen from the Peace Treaty includes a straightforward part as well as other complicated and problematic part with the aim of being able to achieve controversial opinions concerning ways and methods of translation, which consequently affect the translators' choice of equivalences. The points specified to

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<sup>45</sup> See Appendix V

insure the validity of the chosen text are on both linguistic and extralinguistic levels. They include the identification of the importance of the chosen text on cultural, political and legal levels, and identifying translational problems on syntactic, semantic and pragmatic levels. The importance of choosing the ST was fully discussed in Chapter Four (4.4.4. p. 174) and each of the six articles was individually analysed. Therefore there is no need to expand in that domain. However, it is worth pointing out a few reminders of the peculiarities of the ST. On the extra-linguistic level it is clear that legal translation, just like any form of translation, involves a decision-making process. The decisions made by translators are crucial not only on the linguistic-translational level, but also on the legal-political level; the misinterpretation of the legal context could lead to serious political implications. The decisions made by translators depend first and foremost on the legal interpretation of the text. The difficulties which are expected to face the translators undertaking the experiment are based on legal interpretation. On the linguistic level the difficulties that are apparent in the ST, which are the reason why the ST was chosen, are its peculiarities such as the unusual grammatical and syntactic features, the use of intrusive elements, the use of repetition and parallel structures. It is also noticed that there is extensive use of prepositional phrases and nominalization in addition to the use of the specialised lexicon which includes both nouns and verbs.

### **5.1.2. Controlling the Experiment**

The core of the experiment which defines and influences the final results is gathering data. In order to control the experiment the fieldwork was conducted in the time range of 2-3 weeks, between 29<sup>th</sup> November 2001 - 21<sup>st</sup> December 2001 in Jordan.

### 5.1.2.1. The Distribution of the Survey

The survey was distributed on the 30<sup>th</sup> of Nov. to the following:

Press Departments and Newspapers	Universities
<ul style="list-style-type: none"> <li>- Jordan News Agency</li> <li>- Jordan Television and Radio</li> <li>- Department of Press and Publications</li> <li>- Reuters</li> <li>- The Associated Press</li> <li>- The Jordan Times</li> <li>- Al Ra'i Daily</li> <li>- Ad- Dustour Daily</li> <li>- Al Aswaq Daily</li> <li>- Al Arab Al Youm Daily</li> </ul>	<ul style="list-style-type: none"> <li>- University of Jordan/ Amman</li> <li>- Yarmouk University / Irbid- North of the Kingdom</li> <li>- Muuta University/ Karak- South of the Kingdom</li> <li>- The Hashimite University /Al Mafraq- East of the Kingdom)</li> <li>- University of Applied Sciences / Amman</li> </ul>

The survey was distributed to four groups of informants, professional translators, lecturers, MA students and undergraduates. The professional translators work in press departments and newspaper. The survey was distributed to translators and to correspondents whose work involved covering the peace talks and translating the peace treaty, including chief editors of news agencies.

As for universities, the survey was distributed to university professors of translation, and language and literature. It was also distributed to MA and undergraduate students of translation. Altogether, the researcher distributed 230 surveys. Informants were given a period of one week to complete the survey. The majority of informants did not meet the deadline. After eliminating surveys that were not adequately completed, only 135 surveys were left as valid material for analysis, which totalled 59% of the total number of the distributed surveys. However, because any corpora “must be comparable, that is be of roughly the same size and to be compiled according to the same principles” (Laurdisen 1996: 64) the 135 surveys had to be reduced to a 100

divided equally between the four categories of informants: professional translators, lecturers, MA students and undergraduates. The surveys that were discarded are those which were not fully translated. The 100 surveys remaining to be used as material for analysis totalled 43% of the actual number of the distributed surveys.

#### **5.1.2.2. Problems Faced During the Fieldwork**

Although self-completion surveys are popular in empirical research, they are nevertheless not totally risk free. The popularity of self-completion surveys among researchers stems from the fact that they are easy to administer and they are flexible in that they “can be used to collect a wide range of data in a variety of different circumstance”. (Moor 2000: 108) They are also popular among informants because informants can look through them and decide whether or not to complete them, and they can also complete them at their convenience. However, this is not always the case as problems are often faced during the process of administering these surveys. Because people tend to complete such surveys in haste, they often give immediate, unconsidered responses. (Moor 2000: 109) It ought to be kept in mind that these surveys are employed to build a broad picture of informants rather than explore them in depth. In order for the problem of hasty answers to be avoided in the current thesis, the researcher had emphasised in the covering letter of the survey that the completed surveys are crucial to the results of the research. Because the survey included a part which involved a translation task, informants were not expected to complete them immediately. Rather they were given the period of two weeks to do so. Nevertheless, during the fieldwork a few problems appeared on two levels.

### **5.1.3.2.1. Situational Problems**

One of the most problematic obstacles which was encountered through the field work is that the period for conducting the experiment coincided with Ramadan, which meant that all institutions worked only half day. This put the survey distribution under considerable time constraints.

Considering that three of the universities which were visited are located in different parts of the country, travelling was an obstacle combined with time constraints.

### **5.1.1.3.2.2 Extra Situational Problems**

These are mostly related to informants' personal reactions to the completion of the survey. According to Simon "*opinions, attitudes, beliefs and interests* are often the subject of surveys". (Simon 1969: 248) The survey distributed as part of this thesis addressed the sensitive issue of the political situation in the Middle East, and because people react differently to giving information this was apparent in some of the informants' reactions to completing the survey. Among these reactions were:

- Some informants refused to complete the survey because of their negative attitude towards the Peace Treaty between Jordan and Israel. Others refused to complete the survey giving the excuse that they refuse to be examined. Both excuses show the lack of research culture in Jordan.
- Some of the informants were not committed to the time limit that was given to them in order to complete the survey. This was found more common among students, whereas professional translators, who are accustomed to meeting deadlines, managed to meet the deadline given for the task.



- Much of the time designed for the experiment was inefficiently consumed in the collection due to the fact that informants did not have the surveys ready on time, which resulted in returning to collect them three or four times.
- Only *one* informant refused to translate unless he was paid. Otherwise the issue of money was not mentioned.
- Some of the surveys were returned with only the first part completed but not the translation, which meant that they could not be added to the data.
- One of the most annoying obstacles is that some of the informants, although a small percentage, did not take the survey seriously.
- It was also puzzling to find that some 3<sup>rd</sup> year translation students found the survey difficult and did not know how to tackle it.

## **Part Two: Results of Questionnaire**

It should be noted that the questionnaire included an abundance of information which was not all used in the analysis. The reason for including such a detailed layout is to ensure the objectivity of the questionnaire and to keep the margins of data processing wide. The analysis of the questionnaire followed a pattern by which informants' replies were presented in tables, followed by explanation and graph charts.

The data collected through the questionnaire is not treated individually. It addresses general categories. The results of the questionnaire are collective on two levels; the first level includes treating the informants as groups. The second level is the data, which was also treated as a collective entity relating to each group of informants.

As mentioned earlier, the results of the questionnaires are meant to provide information presenting informants' cognitive and extra-cognitive experience and the effects of those experiences on the decision-making process, which consequently affects the strategies used through the translation process and choice of equivalences. The findings of the questionnaire did not constitute the final results of the survey. These were validated against the results of the translation task, which presented informants' conformity or non-conformity to norms by introducing the patterns occurring within them.

The results of questionnaires only presented answers concerning factors affecting informants' behavioural choices. The factors are divided into two sets. This research refers to the two sets of factors as 'experiences'. The first relates to translators' cognitive experience and includes their general and educational background, work experience and theoretical knowledge. The second is the extra-cognitive experience which provides information on informants' awareness of the importance of text-type

specification and peculiarities of legal texts, in addition to their awareness of the social impact on legal translation<sup>46</sup>. It also includes information to test informants' affectedness by contextualisation including translators' political awareness, and their consciousness of external factors which affected the translation process.

The data is presented in four tables indicating four central factors affecting the overall results of the experiment.

- Cognitive Experience
- Extra-Cognitive Experience
- Official Translation Experience
- Students' Adequate Translation training

Due to the fact that each group of informants is tested collectively and not individually, the results are based on the average of the findings of each group. Because testable categories presented in the tables might vary among informants of one group, the average of the whole variable is the one taken into consideration as the final findings. This method is based on Gutt's "descriptive classificatory" approach (Gutt 1991: 71) in which the theorist describes a phenomenon in sets and classes rather than individually. This description takes place by mapping similarities between phenomena which lends power to theory.

In order to measure translators' cognitive and extra cognitive experiences the researcher devised a method through which information given in the questionnaire is assigned to a number of criteria. Adherence to each criterion indicates that the translator is affected by the suggested factors. Each criterion is represented by a symbol in the tables and graphic charts. The conformity of informants to these criteria measures their experiences. It should always be remembered that by

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<sup>46</sup> See Figure 4 p. 81

experience the research refers to the internal and external factors which affect the translator in the decision-making act and consequently affects translation strategies used and resulting translations.

Each experience is divided into ten positive-oriented<sup>47</sup> criteria; hence, if all informants in every group conformed to each criterion, each group would collect a total of 25 points (the number of informants in each group). If all groups have 25 points multiplied by the number of criteria (ten), each group should collect a total of 250 points. If informants collected this number of points this indicates that their translations are affected by the factors suggested by each criterion. In order to acquire the percentage which measures the experiences of each group, the total of points for each group is added up; then the result is multiplied by 100 and divided by 250.

For example: Group 1 (professional translators) have 95 points as total of their conformity to all criteria.  $95 \times 100 / 250 = 38\%$  is the percentage that measures the cognitive experience rate of group 1.

To measure each group's experience in comparison to the others, in other words to see which of the groups is most affected by internal and external factors in the translation process, the total of points collected by each group is multiplied by the total of points collected by the four groups of informants, which adds up to 1000. The points collected by every group are multiplied by 100 and divided by 1000, resulting in the percentage measuring the experience of each group in relation to the others.

For example: to test the experience of group 1 in relation to the other groups:

$$95 \times 100 / 1000 = 9.5\%$$

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<sup>47</sup> This indicates that the conformity to the designed criteria affects the translation process positively.

### 5.2.1. Cognitive Experience

The data included in table 1 presents factors of a general nature which affect translators. The information includes their educational background and tests their theoretical knowledge of translation studies. It also presents their qualifications and experience in translation.

Symbol	Criteria	Professional Translators (25)	Translation Lecturers(25)	MA Students (25)	Undergraduates (25)
a.	Translation degree holders	6	8	1	0
b.	Over 5 years of work experience	13	9	2	0
c.	Translating 1-5 pages a day	18	7	0	0
d.	Arabic native speakers	25	25	25	25
e.	Accreditation	2	0	1	0
f.	Naming four books on translation	3	10	10	2
g.	Naming four articles on translation	3	6	7	2
h.	Awareness of the theory of norms	4	2	5	0
i.	Those affected by norms	4	5	2	0
j.	Bilingual working environment	17	4	10	7
	Cognitive experience of each group of informants	38%	30.4%	25.2%	14.4%
	Percentage of Cognitive experience in all groups in relation to each other	9.5	7.6	6.3	3.6

Table 1: (all informants =100)

The first criterion in table 1 shows the number of informants that hold translation degrees and this covers a range from BA to PhD levels. With regards to professional translators [6] informants fit the criterion, the remaining [19] hold different social

science degrees including: Arabic, English literature, political science, and journalism. Lecturers and MA students hold degrees in one of the following: translation, English literature, English language, ESP (English for specific purposes); with the majority being degree holders in linguistics. Only [8] lecturers and [1] MA student hold an undergraduate degree in translation. With regards to the criterion of work experience duration, this research suggests the duration of five years to test translators' experience because five years is considered a sufficient period in which translators should have attained a certain degree of experience through being exposed to norms and should have acquired and stabilised them. In addition, it is noted that a period of five years is the average translation experience duration given by informants in the questionnaire. Only [13] professional translators have over 5 years experience, and it is important to note here that [12] of them are among those who were directly involved in the official translation of the peace treaty. [9] Lecturers and [2] MA students have also worked in translation for a period of five years or more. No undergraduate students had previous work experience. Another indicator of experience is the amount of material translated in a day. Taking into consideration that some informants are part-time translators, and half the informants are students who are not necessarily expected to perform a translation task every day, the research suggests that a sufficient amount of translated material to be 1-5 pages a day. The information produced by informants indicates that only [18] professional translators and [7] lecturers fit this criterion, while [0] MA students and [0] undergraduates translate 1-5 pages a day. In the questionnaire students indicated that they do translation tasks on a weekly basis, and this indicates that most lecturers concentrate on theoretical rather than practical issues. This was discussed further in examining table [4]. The data indicates that all [100] informants are native speakers of Arabic.

The significance of this appears in the analysis of the translations especially in the explication of the mistakes committed at the linguistic level. Criterion [e] is the only criterion which directly tests the translators' accreditation as professional translators. Among all informants only [2] professional translators are accredited translators, and [1] MA student is a member of the Iraqi translators' association.

Criteria [f] to [i] test the informants' theoretical knowledge of the research conducted in translation studies, and their awareness of the literature written on the subject. The data indicates that only [3] professional translators named four books and four articles which they had read recently. Informants who did so are the translators with work experience of less than 1-5 years, which indicates that they are recent graduates and therefore they were able to remember some of the material used in their course work. The majority of experienced professional translators failed to do so, which leads to the conclusion that they are not aware of the literature written on translation studies and do not keep up to date with new theories in translation. This was further proved by the next criterion addressing the informants' awareness of the theory of norms in translation, in which only [4] professional translators answered by referring to the general areas of cultural and political norms. As for lecturers, only [2] out of the total of [25] said that they are familiar with the theory of norms in translation. When asked to specify norms affecting their behaviour [5] lecturers mentioned linguistic, sociolinguistic, cultural and political norms, which illustrated that they are aware that translation is not totally free and is indeed governed by certain factors. As regards to lecturers' knowledge of recent literature written on translation studies, the data presented in criteria [f] and [g] reveal that only [10] lecturers named four books and only [6] named four articles they read recently. Nevertheless, the material presented was not the most recent in translation studies.



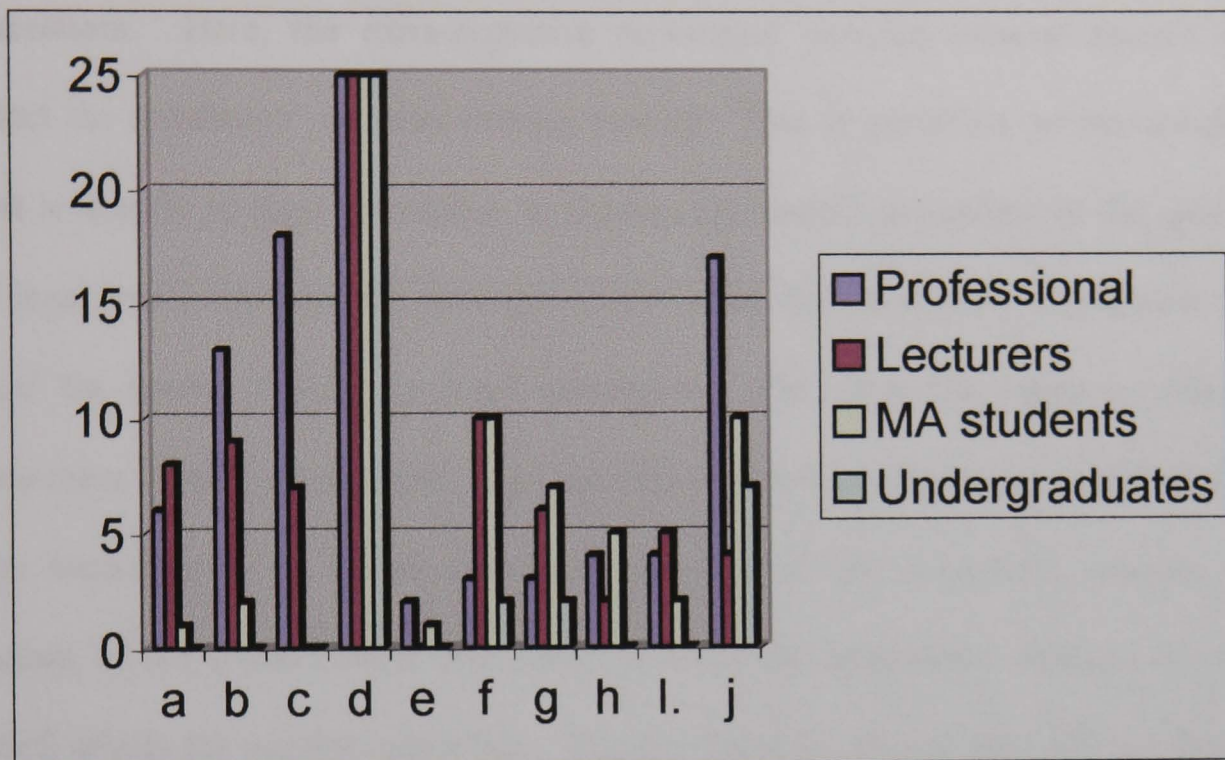
The data also indicate that students are not making sufficient use of reading material. [10] MA students managed to supply the names of four books and [7] articles. However, their answers were not academic, as they failed to give full details of the books and references mentioned. Among all [25] informants in the undergraduate group only [4] were able to name books and articles on translation studies recently read. None of them were familiar with the theory of norms or whether the work of a translator is governed by such a theory. A further indication which plays a factor in the cognitive experience is the bilingualism of the working environment. It was revealed that the highest rate of bilingualism in the working environment appeared among professional translators [17], and the lowest appeared among lecturers [4]. Students considered their class-room environment as bilingual, due to the fact that they are taught in English. Lecturers, however, did not agree with this and did not consider the class-room environment as bilingual, due to the fact that the use of two languages is not reciprocal.

To present an overall picture of informants' cognitive experience, it is clear that professional translators have the highest percentage compared to other informants, which is not surprising given that professional translators and lecturers of translation should have better cognitive capabilities than students, and should be aware of the effect of this cognitive experience on their translations. In terms of percentages, the data reveal that professional translators scored 38%, closely followed by lecturers at 30.4%, then MA students at 25.2%, with the lowest percentage that of undergraduates at 14.4%.

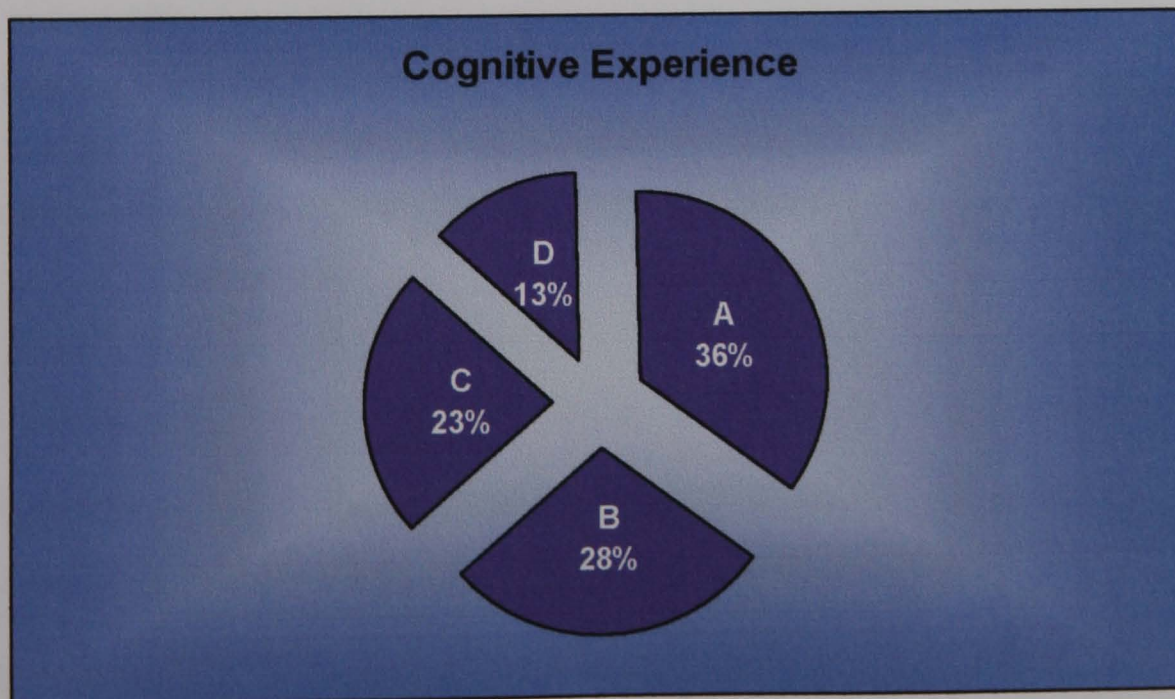


In the following graphs, Chart 1:a presents data included in table 1 while chart 1:b presents the percentage of cognitive competence of all groups of informants.

**Chart 1.a: Cognitive Experience**



**Chart 1.b**



<b>A.</b>	<b>Professional Translators</b>
<b>B.</b>	<b>Lecturers</b>
<b>C.</b>	<b>MA Students</b>
<b>D.</b>	<b>Undergraduates</b>



### 5.2.2. Extra-Cognitive Experience

Table 2 presents the data collected to describe the extra-cognitive experience of translators. Here, the extra-cognitive experience includes external factors which affect the translators' decision-making process. This is presented on two levels; the first is specific to legal translation; it displays informants' awareness of the specificity of legal translation such as text-type specification and sensitivity, in addition to the need for special training in legal translation. The data also presents informants awareness of task specification, such as time constraints (deadlines), team work, etc. The second level is related to contextualisation of the translation process. This section of the questionnaire processing portrays the informants' political awareness which affects the current case study. This is related to cultural and work environment factors affecting the translation task. The data displayed in table two showed the difference between what the informants think of the specificity of legal translation, and whether they achieved it in reality.

Symbol	Criteria	Professional Translators (25)	Translation Lecturers (25)	MA students (25)	Undergraduates (25)
a.	Need for Specialisation in legal translation	22	15	19	18
b.	Need for legal training	20	23	19	20
c.	Undergone legal training	2	1	0	0
d.	Sensitivity of Legal text	25	22	23	25
e.	Specialists in legal translation	3	2	0	2
f.	Awareness of the political situation in the Middle East	23	25	19	7
g.	Political oriented job	16	0	0	0
h.	Awareness of the effect of culture on translation process	21	23	25	24



i.	Time constraint affect translation process	20	23	20	24
j.	Necessity of team work in translation	16	16	17	20
	Extra-cognitive Experience for each group	67.2%	60%	56.8%	56%
	Percentage of Extra-cognitive Experience in all groups in relation to each other	16.8%	15%	14.2%	14%

Table (2) (All informants =100)

It is significant to note that a high percentage of professional translators [22] are aware of the need for specialisation in legal translation, and this shows that they are aware of the perils of incompetent translations in the legal and political domain. A similar number of informants in the professional translators' group [20] also supported the need for legal training. Other groups of informants shared this concern with professional translators. Only [15] lecturers agreed that there is a need for specialisation in legal translation, but the majority [23] endorsed the necessity of translators undergoing legal training. The data also indicate that most MA students and undergraduates also agreed with the need for both specialisation in legal translation and need for legal training. However, if we relate this information to the information presented in [Table 1], the data show that only [6] professional translators, [8] lecturers and [1] MA student are actually holders of translation degrees, let alone legal translation degrees. With regards to legal training as a prerequisite for specialising in legal translators, all informants seemed to agree on the importance of this criterion, but only [2] professional translators and [1] lecturer have actually undergone legal training. Although this group of informants saw special legal translation training as highly desirable, they have all attempted to translate the

legal documents. This could be attributed to two reasons; they either thought that it is not absolutely essential to be a specialist in the field, or because there are not too many specialists in the field, then there is no alternative but to perform the translation tasks of a legal translator.

As regards the sensitivity of translating legal texts, 95% of the informants agreed that the task of translating a legal text is highly sensitive. This indicates that they are aware that extra care should be taken when choosing equivalents. Whether informants applied this extra care in practical translation was tested through analysing their translations.

As to awareness of the political situation in the Middle East, it was noticeable that professional translators and lecturers have a better awareness of the political situation than that possessed by MA students and undergraduates. Whereas [23] professional translators and [25] lecturers claimed full awareness of the political situation in the Middle East, only [19] MA students and [7] undergraduates claimed they did. This criterion is essential in relation to the contextualisation of the translation process. It shows the understanding of the examined text's context and the impact it has on the translation process. One more essential issue related to contextualisation is that of work environment. Only [16] professional translators claimed that they work in a politically oriented environment, while none of the other informants' groups did so. The third aspect related to contextualisation is the effect of culture on the behaviour of translators during the decision-making process. The data presented in Table 2 suggest that most informants were aware of the effect of the culture on their translational behaviour. Whether it actually affected them or not, that was put to the test whilst analysing the translation. Another factor which affects the translators' decision-making and hence their resulting translation, is the time constraint. Time constraint

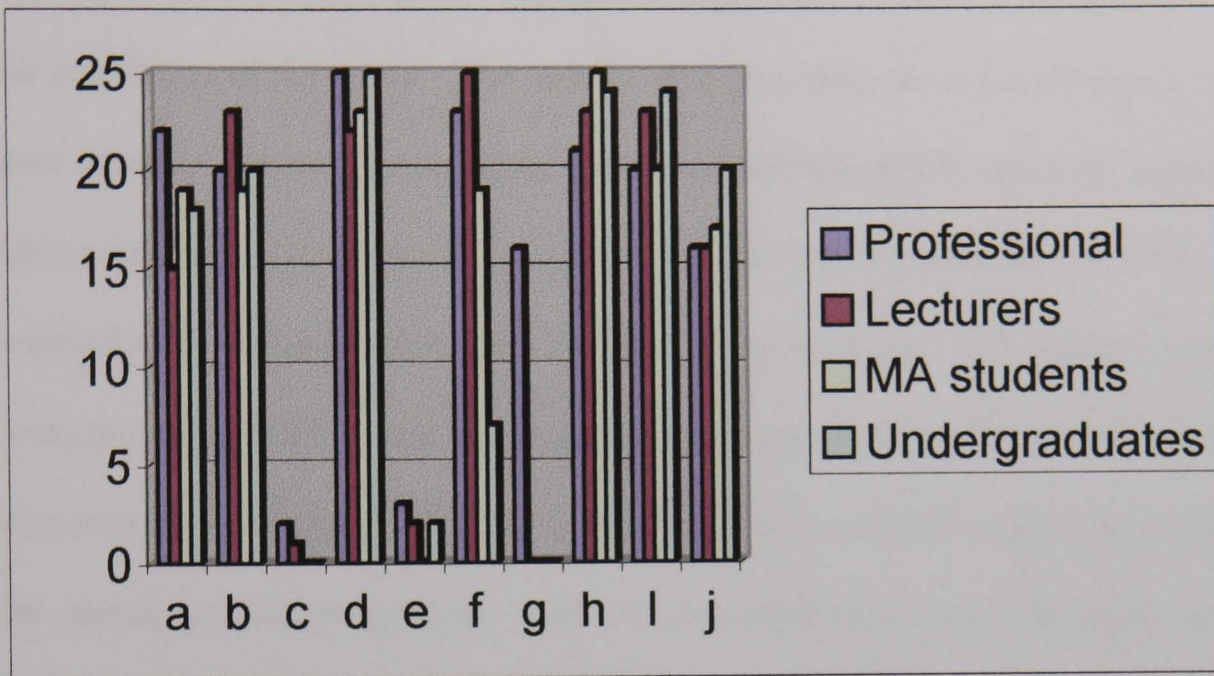
differs from one area to another. For professional translators, it involves meeting deadlines on a professional level. In the current research, the group of professional translators who performed the experiment are all part of a media institution. Their job is often restricted due to the need to meet news broadcast deadlines, or to meet a particular printing time as in the case of newspapers. On the other hand, although [23] lecturers agreed that time constraints affect the resulting translation, they seem to be least affected by this factor, as their job rarely involves meeting deadlines on the level of translation tasks. Students at both MA and undergraduate levels also suggested that time constraints affect their translations. Because students would have not acquired adequate competence in translation at this stage, the time constraint factor affects them differently. Usually, this factor is accompanied by the psychological element in relation to their fear of exams. The last criterion is the necessity of team work in translation. Although only [16] professional translators are in favour of this, the translation of the peace treaty was actually conducted by a team of translators, who did not work in the same environment. Only [16] lecturers and [17] MA students supported this criterion, while [20] undergraduate agreed that team-work is necessary in the work of a translator. This could be attributed to the nature of class work.

Generally, unlike the cognitive experience presented in Table 1, all informants shared more or less the same extra-cognitive experience. This is expected because extra cognitive experience is not acquired through education or training, although it can be influenced and developed by these factors. Extra-cognitive experience is based on general knowledge of social values, which all informants are expected to conform to. The highest percentage of the extra-cognitive experience was found among lecturers at 60%, followed by professionals at 57.2%, then MA students at 56.8%.

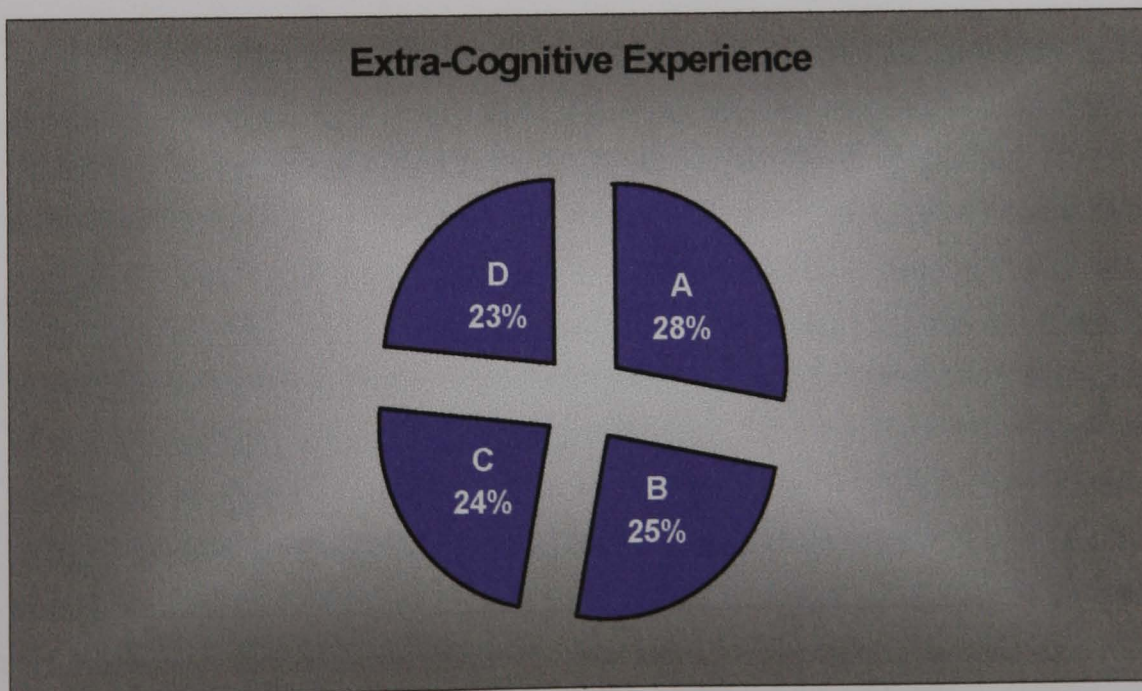


Undergraduates have the lowest percentage, although the difference between them and MA students is marginal at (56%).

**Chart 2.a: Extra-Cognitive Experience**



**Chart 2.b**



<b>A.</b>	<b>Professional Translators</b>
<b>B.</b>	<b>Lecturers</b>
<b>C.</b>	<b>MA Students</b>
<b>D.</b>	<b>Undergraduates</b>



### 5.2.3. Official Translation Experience<sup>48</sup>

The data provided in Table 3 test the practical experience of the translators who were directly involved in translating the original ST (the Peace Treaty) and resulted in the official translation of the treaty. Through the data provided, the research attempted to evaluate whether the translators were affected by factors which normally affect the translation of a legal document. As mentioned earlier, there is an overlap between the areas tested in the questionnaire. Hence, the contextualisation issue appears again in this section, represented by the translators' awareness of the peace process and the circumstances surrounding it. The data also test factors which are particularly related to the actual translation process, such as documentation, and approval of the translation, etc. Table 3 is treated differently from Tables 1& 2. Only [12] informants among the professional translators' group took part in this section. The testing process took the shape of two ends of a scale, one showing how strongly the data conform to the criteria suggested, and the other end showing the opposite; in other words, the number of translators who were affected by the criteria suggested for this purpose.

Symbol	Criteria	High end	Low end
a.	Full awareness of peace process developments	10	2
b.	Expectation to translate treaty	5	7
c.	Time constraints (2-5) hours	5	7
d.	Consulting drafters of treaty	7	5
e.	Translated text was final copy	0	12
f.	Length of translation	0	12
g.	Not first time experience of legal/political text	4	8
h.	Translating similar texts afterwards	3	9
	Official Translation Experience	35%	65%

Table 3: (12 translators<sup>49</sup>)

<sup>48</sup> See Appendix V

The significance of this section is that it gives the research an overview of what had actually happened through the process of official translation. This helps in the explication of the translators' behaviour in the analysis of the translated material. The first criterion in this section questions the translators' involvement in the peace process since the Madrid conference in 1991. The majority of translators [10] were involved in the whole process including being on the news coverage team of the negotiations which took place on either sides of the Jordan-Israel border alternatively. Although these translators were part of the news coverage team, and their job included several translating tasks through the negotiation process, only [5] of them expected to be entrusted with the task of translating the ST. On a practical level with regards to accomplishing the translation task, only [5] among the [12] informants submitted to the time constraint factor, as they had to finish their task in a time range of 1-5 hours. The data indicated that none of the informants had to translate the whole treaty, which suggested that the translated part of treaty given to each translator was not big in size, and with their expected competence, translators would not have been tremendously affected by the time factor. It could also be suggested that translators were more affected by the psychological factors of having to produce a high quality translation because of its political importance.

It is also interesting to note that although all translators are professional, reliable translators, none of their translations were considered the final copy. [7] of them had to refer to either drafters of the actual treaty or seniors at work, which suggested that the decision-making process did not solely rely on the translator her/himself but was affected by decisions made by a higher authority. This interference of the higher authority does not necessarily relate to the direct choice of translation strategies or

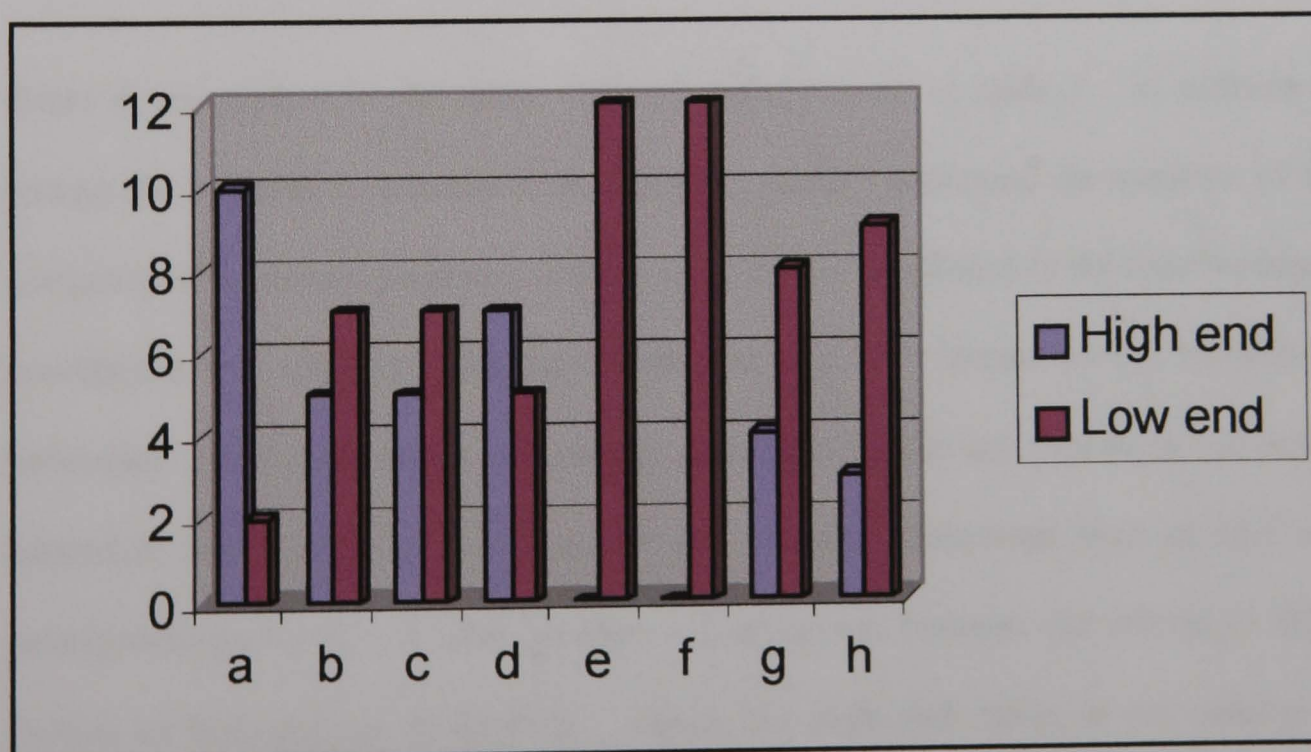
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<sup>49</sup> The informants in this category are translators who took part in producing the official translation.

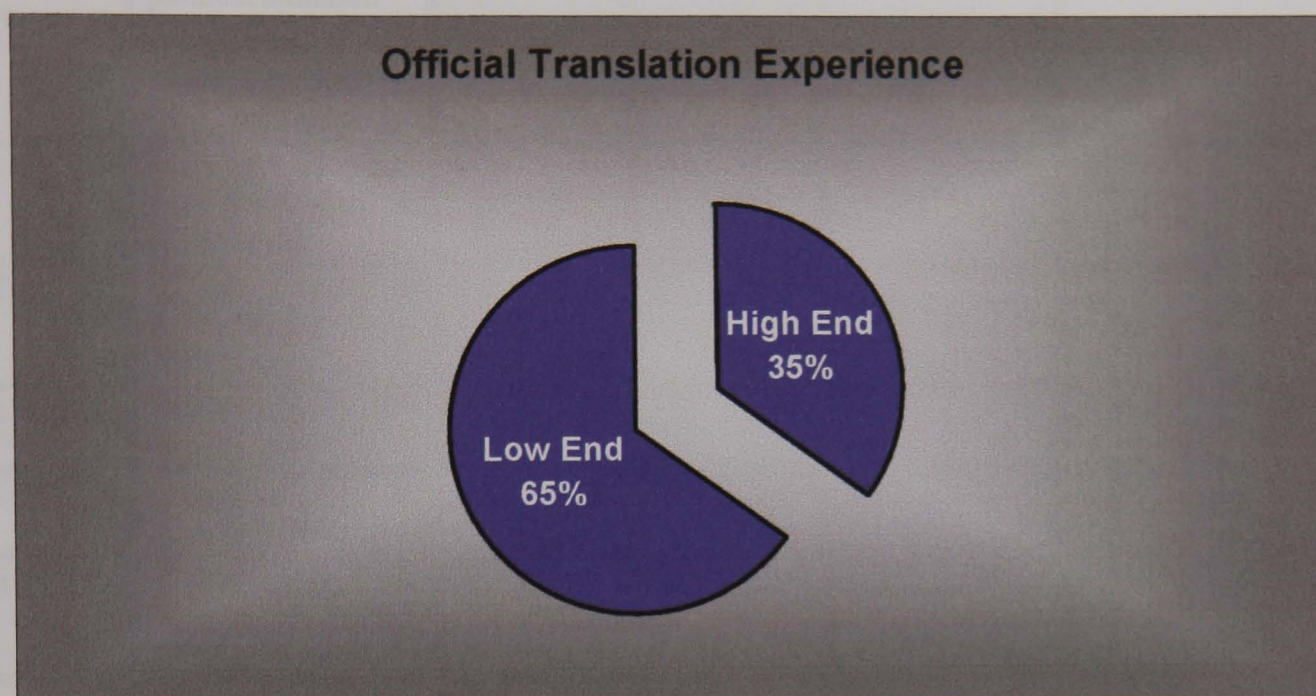


equivalents but it affects the extra-cognitive experience which is related to the interpretation of the text. Another factor which is of special importance is that only [4] translators had translated texts of a similar nature, including the Washington Declaration, Jordan-Israel Declaration of principles, and UN Charters. This proved essential in detecting whether translators who are experienced in translating a particular text type conform to different norms to those who are inexperienced in this particular genre of translation. It is also interesting to observe that during almost six years following the signing of the treaty [9] out of the [12] informants had not translated any other text of a similar nature. The data showed that only 35% of the translators have been affected by the factors which usually affect the normal process of translating a legal document. The other 65% who made up the low end were not affected by the same factors.

**Chart 3.a: Official Translation Experience**



**Chart 3:b**



#### **5.2.4. Students' Legal Translation Training**

Table 4 was treated in the same two-end scale manner as table 3. In addition to testing the political awareness of the students, table 4 addresses the question of the adequacy of university programs in legal and political translation in the four Jordanian universities that were used for the experiment, and their impact on the translators' behaviour. The data shows the impact of factors which are related to university education and translation programs on the students' behaviour both at MA and undergraduates levels. It also presents a comparison between the effects of these factors on both groups of students. Again, the high end refers to the number of informants who were affected by these factors. Therefore, those who appear at the high end are those who took full advantage of the legal translation program at university.



Symbol	Criteria	High end (MA)	Low end (MA)	High end (Undergrads.)	Low end (Undergrads.)
a.	Awareness of the political situation	12	13	14	11
b.	Awareness of the issues addressed in the peace treaty	5	20	4	21
c.	Inclusion of legal text translation in course work	4	19	11	14
d.	Special module of legal/political translation	0	25	9	16
e.	Translating 1-5 pages a day	0	25	0	25
f.	Capability of translating legal text	10	15	13	12
g.	Confidence in making the correct translation choice	13	12	12	13
	Effects of Legal translation training	22%	64.5%	31.5%	56.5%

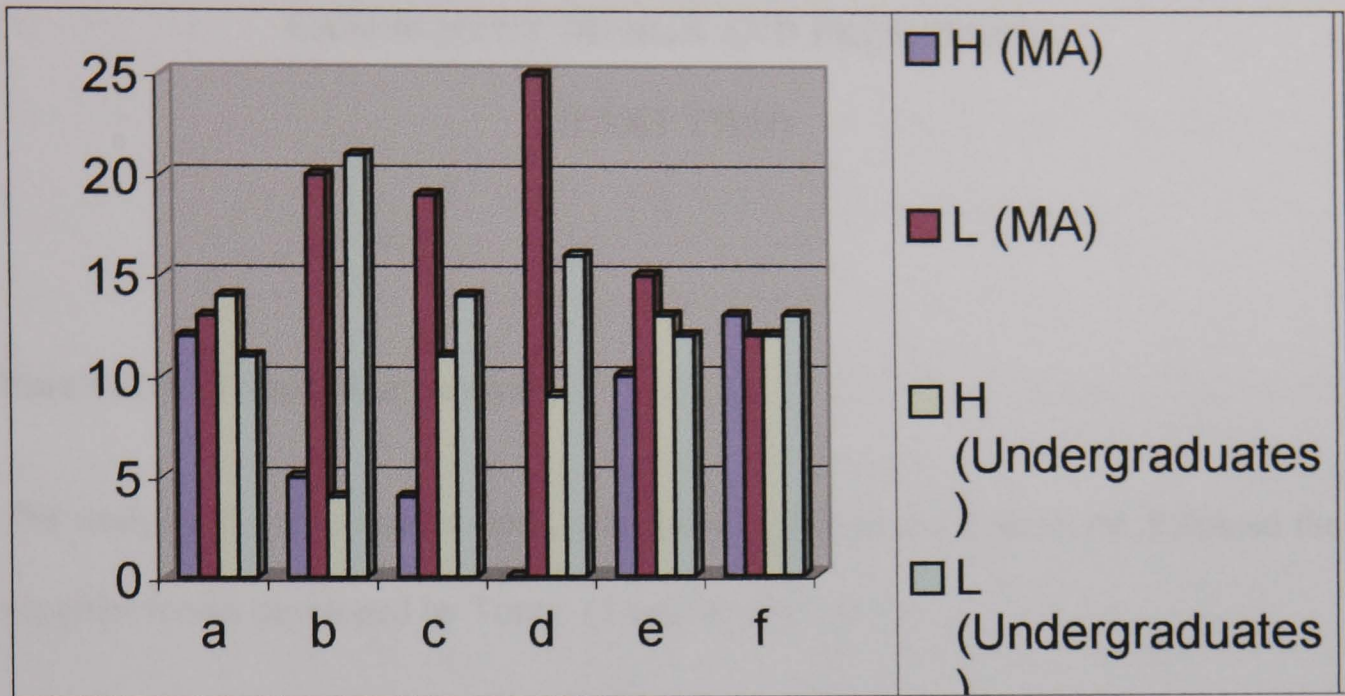
Table 4: (50 informants)

It is interesting to see at first that [14] undergraduate students claimed to possess awareness of the political situation in the Middle East compared to [12] MA students. This criterion only refers to having a general awareness of the political situation in the Middle East. It does not entail that the informants have specifically followed all the developments of the peace process and are fully aware of its progress. This is indicated in the differences in responses between criteria [a] & [b]. The table indicates that the numbers of informants at the high end is noticeably different as between the two criteria. Only [5] MA students and [4] undergraduates said that they have followed the development of the peace process since the beginning. This criterion reflects the informants' awareness of the contextualisation of the peace treaty. Whether the number of informants at the high end reflects truth in practice was tested through the analysis of the translations. With regards to legal texts used in class work the data suggests that undergraduates use more texts of that nature in their course work than MA students. While [11] undergraduates replied positively to this

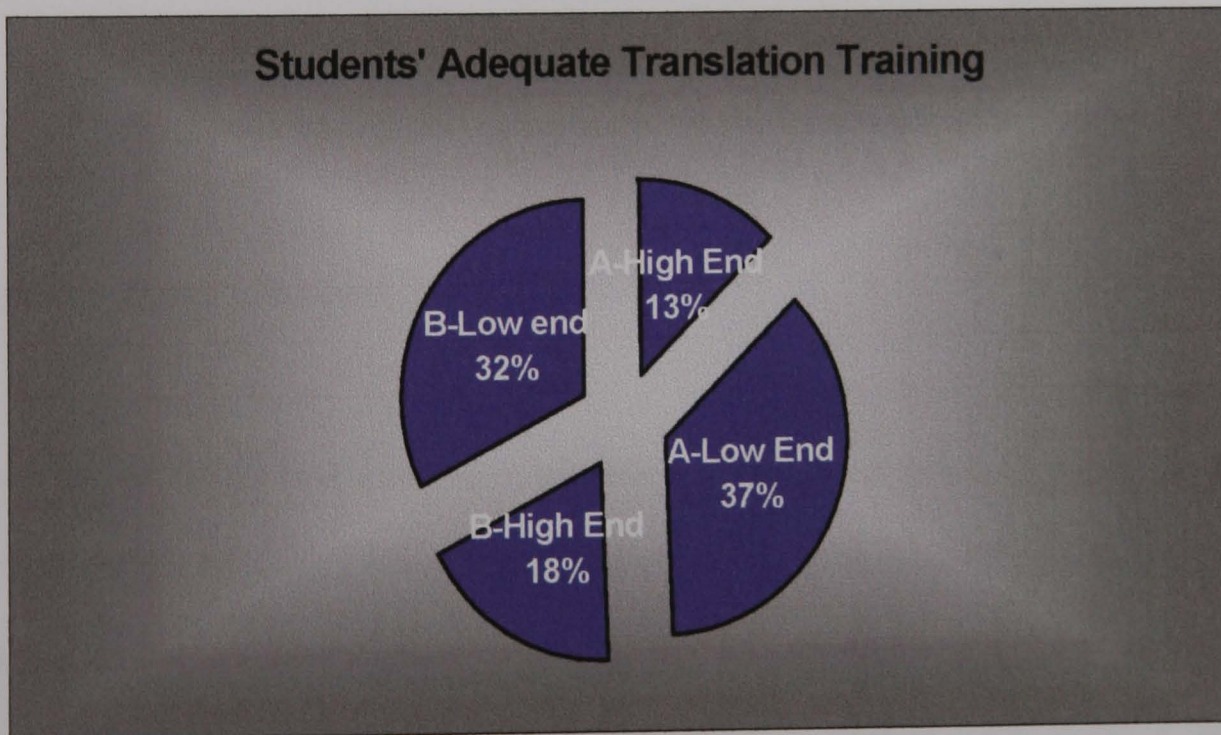
criterion, only [4] MA students did so. The data also suggests that undergraduates sit a specialised module on legal/political translation, whereas MA students do not. It is worth mentioning here that although the data suggests that the MA program does not include a legal /political translation module, MA students informed the researcher that they have to sit one module on legal/political translation in order to fulfil the requirements of their degree, but it was not running at the time of data collection. As for daily course work in the classroom, [0] MA students and [0] undergraduates translate 1-5 pages a day. In the questionnaire students indicated that they do most of the practical translation tasks on a weekly basis. This indicates that most lecturers mainly concentrate on theoretical rather than practical translation issues. On the other hand, almost 50% of both groups claimed they are capable of translating legal texts and take full responsibility for the risks accompanying translating such texts. Overall, concerning the factors stemming from sufficient political awareness and legal translation training at universities, which affect the translation process, it is disappointing to notice that the high end at the MA level represents a percentage of only 22% compared to 64.5% on the low end. This implies that legal translation training is inadequate at the postgraduate level. The results in relation to the undergraduate level, although better than the MA level, show a certain lack of legal translation training at universities. The final percentage shows that undergraduate students undergo more legal translation training 31.5% than MA students 22%, and hence should be more affected by it. However, this does not necessarily indicate that undergraduates are better trained than MA students.



**Chart 4.a: Students' Adequate Translation Training**



**Chart 4.b**

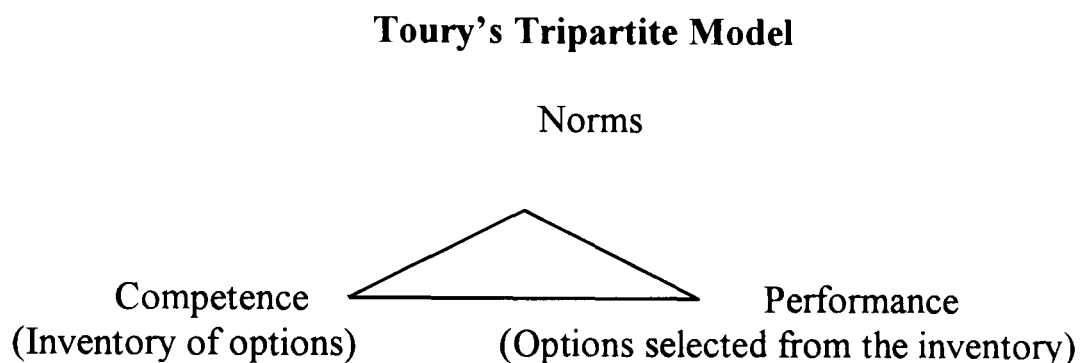


**A** Ma Students  
**B** Undergraduates

**CHAPTER FIVE**  
**EXPERIMENT DESIGN AND PROCESSING**  
**(PART TWO)**

**Part Three: Translation Analysis**

The analysis of the translated texts, which resulted from the experiment, followed the tripartite model developed by Toury. (Toury 1980a: 19-34)



*Figure 6: Toury's Tripartite Model*

In his model Toury sees translation process as taking place between competence and performance. By competence, Toury refers to the inventory of options translators have in hand. In this research, competence of translators who took part in the experiment is tested through the questionnaire, whereas the analysis of the translations tests the performance of translators, which is indicated through the selected options. The ongoing interaction between competence and performance results in the recurrence of translational patterns, which indicate the existence of

norms. Both three key players in the tripartite model meet in order to supply a more comprehensive and flexible explanation of translational behaviour.

The current research aims to achieve a method by which Arabic equivalents of English legal terms are standardised. The analysed material consists of 100 different translations submitted by 25 professional translators, 25 lecturers of translation, 25 MA students of translation and 25 undergraduate students of translation. The analysis follows a systematic and organised method. The four groups of translators are referred to in the data analysis as **A**= Professional translators, **B**= Lecturers of translation, **C**= MA students of translation and **D**= Undergraduate students. Firstly, the analysis is based on the legal interpretation of the ST (Chapter 4) and the difficulties arising in it.

The analysis was conducted in three stages: stage one represents translation stylistics by indicating the set of inventory translators had at their disposal and options that were chosen. This is presented in the form of tables that include data representation and transcription. Stage two presents the occurring patterns of translation and provides an explication of these patterns and their relation to the behaviour of translators with reference to the information given in the questionnaire. As a final stage, stage three presents the result of data analysis.

### **5.3.1. Translation Stylistics (Occurrence of Translation Patterns)**

Translation Stylistics refers to the stylistic analysis of translation, which is used to find differences between languages translated, areas of ambiguities, similarities, technical terms and general difficulties. (Malmkjaer 1993:215) By analysing translation stylistics the research aimed to find the relationship between textual

evidence and translators' cognitive and extra cognitive choice of equivalents. Also by analysing translation stylistics, the research established the translational behavioural patterns which occurred during the act of translation. The patterns embodied the observed regularities, which are not norms themselves but evidence of norm-based activities. These regularities showed both similarities and differences, and they not only showed what is expected to be correct or appropriate behaviour but also showed incorrect behaviour. Aarts says, "the fact that a translation corpus contains perfect matches does not unfortunately, imply that it is also a perfect research tool for linguists who want to compare two or more languages. An intrusive factor in such corpora is the translation activity itself, which may affect the texts of the target languages". (Aarts 1998: ix-x cited in Baker 1999: 283)

The method of testing the patterns followed the techniques of computerised corpora. A corpus study of translation between two languages would have to be organised according to some ruling principle. This will have to depend on the anticipated results of the study.

For the purpose of this research it is always important to keep in mind that the analysis is searching for behavioural choices made by translators during the act of translation. As it was mentioned earlier in the research the strategy of corpus analysis was applied manually by the mode of counting. Holmes claims that in analysing lexical items, "counting is the least contestable mode of analysis". (Holmes 1994: 87)

It could be argued that manual counting has an advantage on computerised counting, Munday warns that, "the computer's supreme ability to calculate individual word-forms runs the risk of focusing on a one-to-one equivalence at word level whereas professional translators normally work with larger chunks of language". (Munday 2000: 209)



The current research did not follow the dichotomy of TEC<sup>50</sup> (Translational English Corpus). (Baker 1999: 292) In TEC the analysis involves a ST which is written by one author and its translation which is translated by one translator. This research analysed a text which is produced by a number of anonymous authors and translated by four different groups of translators.

The study is based on the choice of vocabulary (equivalence) and not on syntactic features. This can be ascribed to

the fact that lexical problems can most easily be pinned down whereas word order, for instance, can be subsumed under focus or under syntactic features, respectively, or alliteration, yielding cognitive effects, or as a stylistic feature, i.e. as communicative clue; very often neat categorizations are very difficult, if not impossible. (Muscard 1996:189)

The following tables include data representation and transcription. The tables deal with each article separately. Each table include two lexical columns and four numerical ones. The first column of the tables provides a listing of the terms that are likely to cause a translational problem on the equivalent level. Column two lists all the possible equivalences that could be used in translating the term, which embody the set of inventory of options at the disposal of the translators (competence). The following four columns show the choices made by the four groups of translators: A, B, C, and D respectively (performance). The tables register the number of occurrences of choices made during the act of translation and their consistency throughout the text.

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<sup>50</sup> A computerised collection of authentic published translations into English from a variety of source languages and by a wide range of professional translators.

### 5.3.1.1. Data Representation and Transcription

1. International Boundary: The Parties recognize the international boundary, as well as each other's territory, territorial waters and airspace, as inviolable, and will respect and comply with them.

Table (5) article (1)

Term	Equivalent(s)	A	B	C	D
International	الدولي	-	1	1	8
	الدولية	25	24	23	16
	العالمي	-	-	1	1
Boundary	الحد	-	1	2	9
	الحدود	25	24	22	16
Parties	الاطراف	9	4	11	5
	الطرفان	16	21	14	19
	الاحزاب	-	-	-	2
Recognise	يعترف	21	22	15	9
	يقر	3	1	3	6
	يعتبر	1	2	-	-
	يدرك	-	-	7	10
As well as	بالاضافة	7	17	20	17
	و	18	8	5	8
Each others	كل منهما	19	19	7	11
	الطرف الاخر	3	6	7	4
	كل طرف	2	-	-	-
	Omitted	1	-	11	10
Territory	اراض	13	17	9	6
	اقليم	2	3	8	7
	منطقة	5	3	8	12
	حدود	5	3	-	1
Territorial waters	المياه الاقليمية	16	24	18	20
	المياه في اراضيها	9	1	7	5
Airspace	المجال الجوي	15	17	12	17
	الاجواء الاقليمية	2	3	1	1
	الاجواء الفضائية	-	2	1	-
	الاجواء	8	3	11	7
As inviolable	انتهاك	14	9	16	13
	اختراق	2	3	1	-
	خرق	-	2	-	-
	Omitted	9	11	8	12
Will	س(سوف)	6	7	6	12
	عليهم	6	5	3	3
	Omitted	13	13	16	10
Respect	يحترماتها	25	25	21	21
	Omitted	-	-	4	4

Comply with	العمل بمقتضاها	1	-	-	-
	يتقيدان	3	11	1	6
	يلتزمان	21	11	14	10
	Omitted	-	3	10	9
Them	بها	19	21	15	16
	البنود	1	1	-	-
	الحدود	5	3	-	-
	Omitted	-	-	10	9

2. The demarcation of the boundary will take place as set forth in Appendix (I) to Annex I and will be concluded not later than 9 months after the signing of the Treaty.

Table (6) Article (2)

Term	Equivalent (s)	A	B	C	D
The Demarcation	ترسيم	19	7	4	2
	إعادة ترسيم	1	-	-	-
	رسم	3	3	2	-
	تعيين	2	13	19	23
Boundary	الحد	-	1	4	5
	الحدود	25	24	21	20
Will	س(سوف)	18	12	15	20
	Omitted	7	13	10	5
Take place	يتم	20	22	24	10
	يجري	5	3	-	-
	يأخذ مكانه	0	-	1	15
As set forth	كما هو منصوص عليه	11	-	-	-
	حسبما ورد	6	3	2	1
	كما هو مبين	8	22	23	20
	سوف تحل بالمقدمة	-	-	-	4
Appendix (I)	ملحق ١	24	25	17	15
	ملحق أ	1	-	-	-
	حذفت	-	-	8	10
Annex I	ملحق ١	-	2	5	14
	ذيل ١	13	4	2	1
	Omitted	12	19	18	10
Will be	س(سوف)+ الفعل	9	12	13	14
	Omitted	16	13	12	11
Concluded	الإنهاء	23	11	15	16
	إستكمال	1	1	-	-
	Omitted	1	13	10	9
9 months	٩ أشهر	9	8	13	11
	تسعة أشهر	16	17	12	14
After	من	8	14	16	11
	بعد	17	11	9	14

The signing	التوقيع	24	25	25	25
	Omitted	1			

**3. Security:** Both parties, acknowledging that mutual understanding and cooperation in security-related matters will form a significant part of their relations and will further enhance the security of the region, take upon themselves to base their security relations on mutual trust, advancement of joint interest and co-operation, and to aim towards a regional framework of partnership in peace.

Table (7) Article (3)

Term	Equivalent (s)	A	B	C	D
Both parties	الطرفان	25	25	25	23
	الاطراف	-	-	-	-
	الحزبين	-	-	-	2
	الاحزاب	-	-	-	-
Acknowledging	ياخذ بعين الاعتبار	1	-	1	-
	يعترف	14	21	14	21
	يدرك	8	3	4	4
	يقبل	-	1	4	-
	Omitted	2	-	2	-
Mutual understanding	التفاهم المتبادل و التعاون	16	7	17	15
	التفاهم و التعاون المتبادلين	3	4	1	-
	التفاهم المشترك و التعاون	9	12	5	10
	التفاهم و التعاون المشتركين	1	2	2	-
Will	س(سوف)	16	14	23	25
	Omitted	9	11	2	-
Form	يشكلان (يكونان)	6	3	1	-
	يشكل (يكون)	19	22	24	25
Their relations	علاقتهما	25	25	11	15
	علاقتهن	-	-	14	10
Will+ further enhance	س(سوف)+تعزيز	16	13	23	24
	و يعزز	8	12	2	1
The region	منطقة	25	25	25	20
	أقليم	-	-	-	5
	أرض	-	-	-	-
Take upon + themselves	ياخذان على عاتقهما	6	10	9	21
	يتعهدان	19	15	16	4
Base	تأسيس	3	10	8	19
	أقامة	5	6	1	1
	بناء	12	7	16	5
	إسناد	2	2	-	-
Relations	علاقتهن	7	10	19	18
	علاقتهما	18	15	6	7

Mutual trust	الثقة المتبادلة الثقة المشتركة	16 9	25 -	25 -	25 -
Advancement	تعزيز تطوير تقدم	13 7 5	10 12 3	1 17 6	2 11 12
Joint interest	مصالح مشتركة إهتمامات مشتركة	23 2	23 2	11 14	15 10
To aim towards	بهدف السعي نحو Omitted	9 13 3	11 14 -	16 3 6	14 4 7
Regional framework	إطار إقليمي بنيان إقليمي هيكل إقليمي إطار للمنطقة Omitted	25 - - - -	14 3 - 5 3	11 1 2 - 12	9 5 2 2 7

4. Towards that goal the parties recognize the achievements of the European Community and European Union in the development of the Conference on Security and Co-operation in Europe (CSCE) and commit themselves to the creation, in the Middle East, of a conference on Security and Co-operation in the Middle East.

Table (8) Article (4)

Term	Equivalent(s)	A	B	C	D
Towards	لتحقيق نحو من أجل	15 6 3	20 2 3	10 15 -	3 22 -
That goal	ذلك الهدف هذا الهدف	9 16	12 13	12 13	8 17
European Community	المجموعة الأوروبية السوق الأوروبية المشتركة المجتمع الأوروبي Omitted	6 3 16 -	8 1 11 5	4 - 17 4	2 - 17 6
Recognize	يعترف/ يقر يدرك يقدر	19 5 1	18 5 2	20 5 -	15 10 -
Parties	الطرفان الاطراف الحزبين	25 - -	25 - -	18 7 -	14 9 2
In the development	تطوير عقد إقامة	20 2 3	21 1 3	23 2 -	24 1 -

CSCE	CSCE+ translation	3	2	4	5
	سي.إس.إس.إي.إي + Translation	1	1	-	-
	Translation only	21	22	21	20
CSCME	CSCME +translation	3	2	4	5
	سي.إس.إس.إي.إم.إي +translation	1	1	-	-
	Translation only	21	22	21	20
Commit themselves	يلتزمان	20	17	16	8
	يتعهدان	4	7	9	2
	يعترفان	1	1	-	-
	يسلموا (يكرسوا) أنفسهم	-	-	-	15
Creation	خلق	3	1	2	2
	إقامة	8	15	11	7
	إيجاد	11	6	8	3
	عقد	3	3	4	-
	إبداع	-	-	-	13

5. The parties further agree to refrain from the following: Allowing the entry, stationing and operating on their territory, or through it, of military forces, personnel or material of a third party, in circumstances which may adversely prejudice the security of the other Party.

Table (9) Article (5)

Term	Equivalent(s)	A	B	C	D
The parties	الطرفان	20	23	15	18
	الاطراف	5	2	10	8
	الاحزاب	-	-	-	2
Further agree	كما و/ايضا	12	9	6	8
	Omitted	13	16	19	17
Refrain	الامتناع (الاحجام)	21	24	15	19
	تجنب	4	1	-	-
	الالتزام	-	-	10	-
	الكف عن	-	-	-	6
Stationing	نشر	1	-	-	1
	مرابطة	1	2	-	-
	تمركز	17	8	5	4
	إقامة	5	1	5	6
	توقف	1	2	2	4
	Omitted	-	12	13	10
Operating	القيام بعمليات عسكرية	6	4	4	4
	العمل	19	7	9	9
	تشغيل	-	3	-	6
	Omitted	-	11	12	6

Their territory	أراضيها	23	13	8	13
	المنطقة	1	6	4	6
	الأقليم	1	6	2	6
	Omitted	-	-	11	-
Or through it	من خلالها	20	7	14	17
	عبرها	5	9	-	2
	Omitted	-	9	11	4
Personnel	موظفين	14	6	5	2
	أفراد	10	5	2	1
	عناصر	1	-	-	-
	عسكريين	-	-	-	2
	أشخاص	-	6	4	6
	Omitted	-	8	13	7
Material	معدات	8	10	4	2
	مواد	17	13	5	11
	ذخائر	-	-	1	-
	Omitted	-	2	15	12
Of a third party	طرف ثالث	21	17	12	13
	Omitted	4	8	13	12
May	قد/ يمكن	19	16	8	12
	Omitted	6	9	17	13
Adversely	بشكل عكسي	4	1	3	4
	سلبي	4	3	-	-
	Omitted	17	21	22	21
Prejudice	تضرر/تهديد	21	20	11	8
	تخل	-	1	1	1
	تؤثر عكسياً	-	1	5	8
	تؤثر سلبياً	4	3	3	-
	تتحيز	-	-	-	-
	Omitted	-	-	5	8
Of the other party	الطرف الآخر	21	23	20	17
	أي منهما	4	2	-	-
	Omitted	-	-	5	8
Circumstances	ظروف/أحوال	19	18	13	14
	Omitted	6	7	12	11

6. The parties undertake: a. To take necessary and effective measures to prevent acts of terrorism, subversion or violence from being carried out from their territory or through it and to take necessary and effective measures to combat such activities and all their perpetrators.

Table (10) Article (6)

Term	Equivalent(s)	A	B	C	D
The parties	الطرفان	17	24	18	16
	الاطراف	8	1	7	7
	الاحزاب				2
Undertake	يتعهد	13	16	13	18
	يتفق	4	-	-	1
	ياخذ على عاتقه/يلتزم	2	4	5	-
	يقوم/يشرع	7	5	7	6
a.	ا	9	10	8	13
	Omitted	16	15	16	12
To take	اتخاذ	21	25	21	25
	القيام	3	-	4	-
	تبنى	1	-	-	-
Necessary	ضرورية	23	22	19	25
	لازمة	2	3	6	-
Measures	اجراءات	24	22	16	21
	مقاييس	1	-	5	2
	تدابير	-	2	2	2
	احتياطات	-	1	2	-
To prevent	للحيلولة	2	-	1	1
	لمنع	23	23	20	20
	تجنب	-	2	-	1
	مكافحة	-	1	4	1
	الوقاية/الحماية	-	-	-	2
Subversion	التدمير	20	3	6	16
	اعمال تخريبية	5	13	6	4
	Omitted	-	6	13	5
Carried out	تشن/تطلق	6	6	2	1
	تنفذ	12	12	9	9
	Omitted	7	7	13	14
Their	Dual	18	12	9	5
	Plural	7	13	16	20
Territory	ارض	23	20	14	6
	منطقة	2	5	8	9
	إقليم	-	-	3	10
Through it	عبرها	7	15	5	4
	خلالها	18	10	20	21
To take ... measures	نفس الترجمة	23	14	18	24
	Omitted	2	11	7	1
To combat	محاربة/مكافحة	21	13	15	14
	كبح/احباط	3	5	8	11
	Omitted	-	6	2	-



Such	مثل هذه	19	16	13	12
	هذه	6	7	6	3
	Omitted	-	2	6	10
Activities	الانشطة	25	18	17	13
	أعمال	-	5	2	2
	Omitted	-	2	6	10
All their	كل / جميع	9	9	8	7
	Omitted	16	16	17	18
Perpetrators	مرتكبيها	16	13	7	9
	منفذيها	5	9	12	4
	Omitted	4	3	6	12

### 5.3.2. Occurring Patterns in Translation and Explication of These Patterns and Their Relation to the Behaviour of Translators With Reference to the Information Given in the Questionnaire

Stage two presents a listing of the choices made by translators and monitors the occurring patterns of these choices. The data which is registered, does not monitor translator's behaviour in the act of translation as in the case of the software Translog<sup>51</sup>, instead the results and the explanation of the problem-solving strategies used depend on the resulting translations with the help of the information provided in the questionnaire.

Through finding consistent patterns adopted by translators, or even identifying those who did not follow the pattern, the research was able to explain why these patterns occurred, and to which set of norms they conformed.

<sup>51</sup> Translog is a software program by which the author monitors all the translators' movements while in the act of translation, and finds out what problem-solving activity is used especially under time pressure. This is compared to the translators' TAP, which works simultaneously with the translation process. (Jensen & Jakobson 2000:110)

The research was able to achieve this by justifying why in a given situation one equivalent is more suitable than other and thus discard unsuitable equivalents. This could be a vital aid in finding a method to standardise the Arabic translations of English legal terms.

Figure 7 shows the set of norms that were expected to affect the translators' behaviour and through which the occurring patterns were tested.

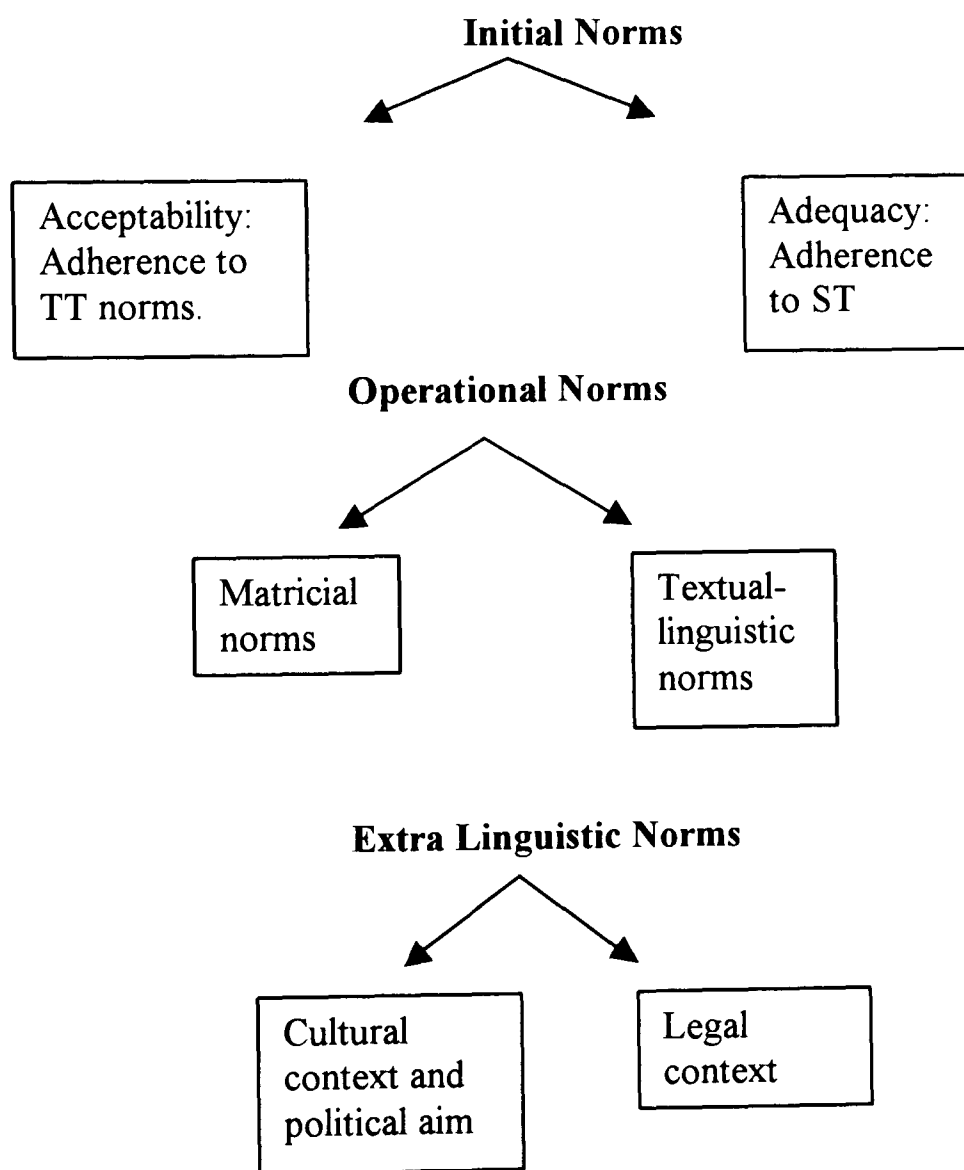


Figure 7: Conformity to Norms

As mentioned in Chapter Three, translators in the research experiment did not conform to *preliminary norms* which relate to the choice of the text to be translated. In the official translation of the peace treaty, translators were required to translate the

treaty as part of their job. In the case of the current research, translators were requested to translate the text as part of the empirical experiment. Their conformity to norms was tested by finding the regularities (patterns) in the translational behaviour. These were referred to as the ‘number of occurrences’ during the analysis of the translations.

The analysis was divided to test two areas; ‘linguistic translation behaviour’, and ‘extra-linguistic translation behaviour’. Testing linguistic and extra-linguistic translational behaviours was designed to examine translators’ conformity to the set of norms which appeared in *figure 7*. It is important to note that there was an overlap between the examined set of norms and therefore some terms appear under both linguistic and extra-linguistic translational behaviour.

### **5.3.21. Linguistic Translational Behaviour**

This tested the choices made during the act of translation on the text level and this in turn made it possible to test conformity to initial norms, and operational norms. This method tested translation strategies and choice-making activity during the process of translation. Lørscher (1991:76) says, “a translation strategy is a potentially conscious procedure for the solution of a problem which an individual is faced with when translating a text segment from one language to an other”. Lørscher believes that “translation strategies are complex behavioural sequences”. (Chesterman 1998:138)

Among the many translation strategies, the four groups of translators used the following strategies: literal translation, explication or expansion, simplification or disambiguation and omission. (Baker 1993: 244) It was also noticed that translators avoided using strategies usually associated with favouring the ST, such as the use of

ST loan terms in the manner of transcription and phonological transliteration. (Šarčević 1985: 127)

In testing the appropriateness of translation strategies used during the act of translation, the research concentrated on the use of correct lexicon and grammar. Due to the fact that the research aimed to test the behavioural process of choices made during the translation act and not grammatical or linguistic competence in particular, the importance of identifying recurring patterns in grammatical errors is not that it indicates the translators' grammatical competence. However, it does help to give reasons to explain why translators committed these errors. Each strategy is discussed in detail. The data of each strategy is illustrated by the use of two tables. The first table shows the SL terms and their equivalents in the TL. This is based on the data which was presented earlier in Tables (5-10) in Stage One. The second table indicates the number of occurrences of the TL terms which appear in the translations submitted by the four groups of translators, and which were counted manually. It also presents the classification among the four groups and their conformity to the tested norms. The explication of why translational patterns occurred and their relation to norms follows the tables.

The strategies that were used by the translators are:

#### **5.3.2.1.1. Literal Translation:**

This strategy was applied only to lexical items.<sup>52</sup> It involves the rendering of the basic meaning of the word without relating it to the context resulting in wrong translation. In most cases this strategy reflects the use of the dictionary. This strategy relates to the initial norm which governed the translators choice between

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<sup>52</sup> Lexical items refer to words and verbs

adherence to the norms contained by the ST (adequacy), and those governing the TL system (acceptability). This determines whether the translation is source-oriented or target-oriented. Table (11a) lists the ST terms which could be translated with the use of different equivalences, as indicated in tables (5-10) in the data transcription. It also lists the literal equivalents which were incorrectly used in translating SL terms, and which resulted in wrong translation. Table (11b) indicates the number of occurrences of these wrongly used equivalents by the four groups of translators in the resulting translation. It also classifies the degree of use of literal translation strategy among the four groups of informants. The table shows that undergraduates have the highest rate of use of the strategy of literal translation, followed by MA students, then professional translators and lecturers.

**Table (11 a) List of Terms Translated by the use of Literal Translation**

Boundary	الحد
International	عالمي
Parties	الاطراف، الاحزاب
Recognise	يدرك
Airspace	اجواء فضائية
Inviolable	إختراق
Take place	ياخذ مكانه
As set forth	سوف تحل بالمقدمة
After	بعد
Regional framework	هيكل إقليمي
Development	تطوير
Commit themselves	يسلمو انفسهم
Creation	إبداع
Refrain	الالتزام
Stationing	توقف
Operating	تشغيل
Through it	من خلالها
Personnel	اشخاص، موظفين
Material	مواد

Undertake	يُشرع، يقوم
Prevent	الوقاية، الحماية

**Table (11 b)**

Group	A	B	C	D
Number of occurring regularities	125	94	152	178
Classification	3 <sup>rd</sup>	4 <sup>th</sup>	2 <sup>nd</sup>	1 <sup>st</sup>

The use of literal translation implies the adherence to initial norms. The extensive use of literal translation implies conformity to ST norms (adequacy) instead of TT norms (acceptability). This makes these parts of the translation source-oriented.

The use of literal translation can be attributed to a number of factors. The high rate of occurrence of literal translation among undergraduates shows that their translations rely heavily on extensive parallelism between form and meaning across English and Arabic, and on one-to-one relationship at word level. This could be explained by the fact that undergraduates are translators-to-be who have not yet acquired the competence that is required for such a task hence their 'data bank' does not have a large number of equivalents to choose from. Because novice translators are more likely to prefer avoiding committing mistakes by adopting improper behaviour, (Toury 1986b: 21) they tend to consult the dictionary. Because their cognitive and extra-cognitive experiences are not fully developed (according to the results of the questionnaire), they choose an equivalent without relating it to its context and hence this approach results in the use of wrong equivalents. Also undergraduates could have wrongly assumed that a good piece of legal translation is one which provides a one-to-one correspondence between equivalents of the specialised lexicon in both languages. However, this is not the only linguistic feature required for a good

translation. It is often that limited understanding of the background of the text affects the correct outcome.

Another reason why translators fail to find the right word is related to “methods of vocabulary learning and foreign teaching”. (Anderman 1998:39) Whereas Kelly (2000:158) believes that a functionalist approach to translation is the best suited for developing students’ competence and skills in translation, Osers believes that the use of functional equivalence, which results in the production of literal meaning, is a mistake which stems from a “failure to appreciate linguistic register”. (Osers 1995: 54)

Beaugrande suggests an explication of this situation in referring to the particular case of Arab students of translation. Beaugrande (1992:19) suggests that it is wrongly assumed among Arab students that their success in their education and careers depends crucially on fluency in English (or another western language). He asserts that they should not be allowed to think this, lest they underrate or even reject their Arabic culture in the process of translation, and hence allow the SL culture to empower their TT culture. Beaugrande says, “success must be measured by their power to actualise and develop their cultural identity with broader means and to gain access to the knowledge which will support their ability”. (Beaugrande 1992:19)

What Beaugrande fails to notice is that fluency in the SL neither implies nor leads to non-fluency in the TT. Certainly in the context of translation and translators’ training it only makes sense for learners to become as fluent as they possibly can be in the language from which they normally translate. On the other hand, more experienced translators are exposed to a wider variety of options and hence they break free from the one-to-one rule of literal translation and use their more developed cognitive and extra-cognitive experiences to find the correct term.

Toury says:

The greater the variety of situations that a translator is put into, hence the greater the variety of the subsets of translational norms that he finds himself exposed to, the greater the range and flexibility of his ability to perform in a socially adequate manner will eventually be. (Toury 1986b: 23)

#### **5.3.2.1.2. Explication (expansion) & Disambiguation (simplification)**

Both strategies of explication and disambiguation are used to make unclear terms clearer. The two strategies overlap as they both include: the use of a sentence to translate a word on one hand, and changing the term on both lexical and grammatical levels on the other. The significance of testing these two strategies relates to testing translators' conformity to initial norms. The extensive use of these strategies implies translators' conformity to the norms contained in the TL and thus falls within the pole of acceptability. This section included two sets of tables (12 & 13) to describe both strategies. Table (12a) lists the terms whose translation could have created ambiguity in the TT. It also includes translations that are suggested with the use of the strategy of explication. Table (12b) presents the number of occurrences of this strategy among the four groups of translators and their classification. The table shows that professional translators occupied the highest position in using this strategy. They are followed by lecturers, and then both MA students and undergraduates who hold the same rate. Table (13a) on the other hand presents English legal terms that were translated by changing them either lexically or grammatically. The second column of Table (13a) presents the translation and indicates the change that was made in order to apply the strategy of disambiguation. Table (13b) includes the number of occurrences of the use of disambiguation. It shows that lecturers hold the highest rate



in using this strategy followed by professional translators, and then MA students and finally undergraduates.

**Table (12 a): List of Terms Translated by the use of Explication Strategy**

Parties	الطرفان (dual)
Each other	الطرف الاخر / كل طرف
Territorial waters	المياه في اراضيها
Them	الحدود
Acknowledging	ياخذان بعين الاعتبار
Their relation	علاقتهما (dual)
CSCE	CSCE + transcription + translation
CSCME	CSCME + transcription + translation
Operating	القيام بعمليات عسكرية
Undertake	ياخذ على عاتقه

**Table (12 b)**

Group	A	B	C	D
Number of explication strategy	139	133	96	96
Classification	1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>	3 <sup>rd</sup>

**Table (13 a): List of Terms Translated by Use of Disambiguation Strategy**

International	الدولية (Plural)
Boundary	الحدود (Plural)
Parties	الطرفان (Dual)
Each other	(Change to noun) الطرف (the الاخر other party)
Them	(Change to noun) الحدود (borders)
Other party	اي منهما (Specified)(both parties)
Their	الطرفان (Dual)

**Table (13 b)**

Group	A	B	C	D
Number of disambiguation strategy	185	189	146	125
Classification	2 <sup>nd</sup>	1 <sup>st</sup>	3 <sup>rd</sup>	4 <sup>th</sup>

Explication and disambiguation overlap and can be considered one strategy. Both Professional translators and lecturers were aware of the fact that the possibility of establishing adequate equivalents of meaning through formal equivalence or at word level is rare. It is revealed through the table that both professional translators and lecturers used these strategies more often than other strategies.

In referring to strategies used by professional translators Jensen & Jakobson say:

They are far more aware of the need to create a comprehensible, idiomatic and readable target text. Expert translators rely most exclusively on paraphrase. Indeed they seem to rely on indirect translation strategies possibly in order to escape the tyranny of the source-text form. (Jensen & Jakobson 2000: 114)

When compared to the use of literal translation strategy, it was clear that more experienced translators tend to use the more flexible strategies of explication and disambiguation implying that they adhered to the norms contained by the TL (acceptability). Students, on the other hand, adhered to norms of adequacy. As was clear in their extensive use of literal translation. Where professional translators tend to use the strategy of explication more, lecturers favour the use of disambiguation. In both cases, the text has been amended by inserting a number of specifications, such as the change of the plural English terms to dual in Arabic. It should be noted that the use of these strategies results in two different looking texts, and this is usually related to the length of sentences. Šarčević says that this action is “usually tolerated as long as the text is clear and the substances unaltered”. (Šarčević 2000: 287) The behavioural reason behind this act could be related to the fact that it is a lecturer’s

duty as a teacher to make things clearer; in translating lectures fulfil this role in a routine manner without being aware of it. The main reason for this behaviour is that professional translators and lecturers have acquired a degree of competence which allows them to challenge a certain set of norms. When they have acquired such a position through practice and through the exercise of trial and error, they start resisting the pressure of translational norms and are therefore in a position to act contrary to the operating norms in a particular situation. Also, in particular cases where there are no norms at all, these translation experts could work as the authority that sets the followed norms.

#### **5.3.2.1.3. Omission:**

This is the strategy which involves ignoring certain words or sentences in the ST, resulting in their deletion from the TT. In legal translation, translators are given concessions in altering the text, provided that the alteration does not change or affect the legal meaning. However, translators are not allowed under any circumstances to delete any part of the ST especially if this would involve legal or political consequences. The number of occurrences of the strategy of omission indicates its extensive use in the translations. The test indicates that this strategy involves translators' conformity to initial norms and in this case also their conformity to operational norms. Table (14a) presents a list of the terms that were totally ignored in the ST and thus were omitted from the translations. These terms are crucial for the legal interpretation of the legal context.

**Table (14 a) List of Omitted Terms**

Each other	Acknowledge	May
As inviolable	To aim towards	Adversely
Will	Regional framework	Prejudice
Respect	European Community	Of the other party
Comply with	Further agree	Circumstances
Them	Stationing	a.
Will	Operating	Subversion
Appendix I	Their territory	Carried out
Annex I	Or through it	To take ... measures
Will be	Personnel	To combat
Concluded	Material	Such
The signing	Of a third party	Activities
All their	Perpetrators	

**Table (14 b)**

Group	A	B	C	D
Number of Omissions	165	265	397	329
Classification	4 <sup>th</sup>	3 <sup>rd</sup>	1 <sup>st</sup>	2 <sup>nd</sup>

Toury says, “in translation, textual relations obtaining in the original are often modified, sometimes to the point of being totally ignored in favour of (more) habitual options offered by the target repertoire”. (Toury 1995a: 268). He also says the “tolerance of the interference - and hence the endurance of its manifestation - tend to increase when translation is carried out from a ‘major’ or highly prestigious language/culture, especially if the target language/culture is ‘minor’ or ‘weak’ in any other sense. (Toury 1995a: 278)

This justification presented by Toury is not applicable to the current situation. The deletion of words and phrases in the translations does not result from habitual use, nor is it related to the status of the languages. While professional translators and lecturers refrained from using the strategy of omission, students deviated from translating special lexicon to the extent of omitting the entire phrase. Contrary to what Toury

suggests, students' behaviour could be attributed to the fact that translators are translating from a foreign language into their mother tongue. This process puts them under restrictions due to their inadequate knowledge of English. Therefore they resort to 'omission' if confronted by lexical obscurity whilst ignoring the serious impact this procedure results in. This behavioural act on the part of both MA students and undergraduates indicates that they did not conform to any of the norms that are tested on the linguistic level. It also indicates a non-conformity to the legal norms of the text. The more - experienced translators conformed to initial norms of translation, this time striking a balance between adequacy and acceptability, by presenting their loyalty to the ST through translating the whole text in an attempt to keep the legal message intact, while at the same time keeping the target readers in mind by clearly conveying the legal message.

#### **5.3.2.2. Extra-Linguistic Translation Behaviour**

In this section, the research monitored the patterns which occurred in translators' behaviour during the choice-making process on the extra-linguistic level, which included cultural and legal norms. By registering these patterns the research is able to detect the impact of the cultural and legal universe on translators' choice, and their conformity to their norms. This area relates to the part of the questionnaire which included translators extra-cognitive experience. To test the cultural and legal universe this part of the analysis tested three areas. The first was the conformity to cultural norms, which has a negative effect on conformity to legal norms. The second considered inconsistency in using equivalents throughout the translations. The third

area tested conformity to matricial norms which plays a role in presenting the legal message.

#### **5.3.2.2.1. Conformity to Cultural Norms**

Through this the registered patterns indicated the impact of context and background as well as political views on translators' choice. It also indicates the translators' interpretation of the legal message, i.e. the use of extra-cognitive experience tested through the questionnaire. The analysis is primarily concerned with the negative impact of translators' conformity to cultural norms; which indicated their non-conformity to legal norms. The data tested how translators' culture affects the choices they made during the translation process, and the implication this had on their ability to convey the legal message of the text truthfully. It has been established that translators of legal documents are not allowed to omit, change, or alter the ST unless absolutely necessary and with the insurance that the content of the legal message is preserved. The analysis of the translation reveals a large number of omission instances. In this section, the occurrences of 'omissions' are not highlighted as a translation strategy to test initial norms as in the case of 'linguistic translation behaviour'. Rather, they are used in order to test the level of conformity to cultural norms. The strategy of omission appeared on two levels. The first level related to the cultural background of translators and in this research this refers to translators' political attitudes and aims. It is related to their conception and understanding of the political situation in the Middle East and the peace between Jordan and Israel. The second level is the legal message which should be conveyed through translation. The non-conformity to legal norms results in inaccurate translation due to wrong interpretation of the legal message. The omitted terms are crucial for the creation of

legal documents, which have specific features, including the production of an authoritative legal order: obligation, permission and prohibition. Through this there is an indication of the translator's' cultural effect on his/her choice, especially given that the legal-political aspirations of translators are part of their culture. Table (15a) presents a list of the terms which translators ignored in the ST and hence did not translate. The negative impact of omitting these terms was explained in Chapter Four. Table (15b) presents the number of occurrences of omissions and shows the classification of the rates of 'negative' conformity to cultural norms among the four groups of informants. The rates show that MA students occupied the highest percentage in using the strategy of omission, followed by undergraduates, whereas lecturers and professional translators refrained from using the strategy of omission.

**Table (15 a)**

Each other	Omitted
Inviolable	اختراق / Omitted
Parties	الاطراف / الاحزاب
Will	Omitted
Respect	Omitted
Comply with	Omitted
Them	البنود / Omitted
Demarcation	تعيين / ترسيم
Take place	ياخذ مكانه
As set forth	سوف تحل بالمقدمة
Appendix 1	ملحق ا / Omitted
Annex 1	ملحق ا / Omitted
Concluded	Omitted
After	بعد
The signing	Omitted
Acknowledge	Omitted
To aim towards	Omitted
Regional framework	Omitted
EC	Omitted
Commit themselves	يملئو انفسهم
Creation	ايداع / خلق

Further agree	Omitted
Refrain	تجنب / الالتزام
Stationing	توقف / Omitted
Operating	عمل / تشغيل / Omitted
The territory	Omitted
Or through it	من خلالها
Personnel	موظفين / أشخاص / Omitted
Material	مواد / Omitted
Of a third party	Omitted
May	Omitted
Adversely prejudice	تحتيز / Omitted
Of the other party	Omitted
Circumstances	Omitted
Undertake	يقوم / يشرع / يتفق
Prevent	تجنب
Subversion	Omitted
Carried out	Omitted
To take . measures	ترجمة مختلفة
Combat	Omitted
Such activities	Omitted
All their	Omitted
Perpetrators	Omitted

**Table (15 b)**

Group	A	B	C	D
Occurring regularities in the Conformity to cultural norms	306	352	539	500
Classification	4 <sup>th</sup>	3 <sup>rd</sup>	1 <sup>st</sup>	2 <sup>nd</sup>

The deviation from legal choices which resulted from the effect of culture appeared firstly on a general level among all groups of informants. Most informants in this research have been brought up knowing and believing that Israel is the enemy, and now they are faced with the prospect of peace with the enemy. Although a translator is expected to act as a neutral mediator, in this case particular choices made by the translators indicate their political attitudes. The fact that many authoritative verbs



were omitted indicated the translators' attitude towards the seriousness of this treaty and negligence in realising the vital importance these verbs carry in the production of a legally binding document. The reason why translators use one term instead of another or omit a term altogether in the legal and cultural domain maybe that they regard certain terms as emotive rather than sensitive considering that they are translating a peace treaty with a country that has been in a state of belligerency with Jordan for fifty years. Through the answers that were given in completing the questionnaire, some informants revealed their discontent with the peace treaty. Therefore, they may well had perceived that some terms can have a negative connotation. All these attitudes are also related to the more specific area of the legal context. The translators' cultural attitude towards the peace treaty affects the legal message of the document. Students deviated extensively from legal norms; they took the liberty to omit a significant number of words, phrases and even sentences which affected the legal interpretation of the text. One good reason for the deviation from the original format of the legal document, in addition to the general reason of their political aims, is inadequate schooling in the style and content of legal writing. In Table 2 section (5.2.1.2) it is indicated that none of the students have undergone training in legal translation. Also in Table 4 which tested students' adequate training in legal translation, it was indicated that both MA and undergraduate students do not meet the criteria set to test their legal translation competence. Students seemed to have a problem with translating specialised terms such as 'recognise', 'territory', 'annex', although "most of the professional jargon or institutional terms found in legal writing in one language claim a direct one-to-one correspondence in another language". (Mok 1995:205)

Another reason why some translators did not conform to legal norms can be attributed to informants' unawareness of the purpose of the translation. Obviously the four groups of translators reacted differently towards the experiment. It was clear through the resulting translations that they did not all regard the task with equal seriousness. Professional translators and lecturers reacted to the experiment quite differently from students. Because professional translators are aware of the importance of legal translation and the political impact such documents have, their concern was reflected in their resulting translations. It was also noticeable that lecturers, because they are aware of the significance of academic research, were mostly concerned with introducing adequate and complete translations. Students on the other hand did not pay such attention to the task because of their ignorance of the importance of legal translation and academic research and particularly due to the fact that the task was not a graded test. Although the four groups of translators were constantly reminded of the purpose of the task, i.e. that it was an empirical experiment used to test the hypothesis in the current thesis, some of them did not take this fact into consideration. Nord stresses the importance of indicating to the translator the purpose of the translation. She says, "the scopos of a particular translation process is fixed by the translator according to 'translation instructions' given by the customer or client, who is the instigator or as I call him the 'initiator' of the translation process; (...) when commissioning a translation". (Nord 1999a: 93)

Nord adds:

Even though these instructions may not be very detailed, they should provide the translator with some (explicit or implicit) information on the 'situation' the TT is going to be used in (i.e. the recipient, medium, time and the place of and motive for, communication and the intended function or functions of the target text). (Nord 1991a: 93 & 107)

In cases when translators are not given the history of the document and are consequently unaware of the non-linguistic intention, they have no choice but to attempt to reconstruct the intention of the writer, thus putting their own interpretation on the TT. Any intentional alteration or omission is a breach of the code of ethics in legal translation. Lack of training, insufficient knowledge of the linguistics and legal system, or ignorance of the background of the text cannot be considered an excuse for this breach. To be on the safe side, any translator knowing that s/he is not fully qualified to translate a legal document should not attempt to do so.

#### **5.3.2.2.2. Consistency in Using Equivalent**

Within the frame of extra-linguistic translation behaviour the research tested the consistency in using the same correct equivalent throughout the text. In international treaties language is usually used with a regulative function in order to produce order in human relations. In a legal document it must be ensured that there are no inconsistencies in terminology, and hence the translation of legal documents should exhibit the same aspect of consistency in terminology. Inconsistency of equivalents is important in respect of conveying the legal message through the translated document. This in turn indicates the conformity or non-conformity to legal norms which was presented through the reoccurring patterns in translation. The use of consistent equivalents was only applied to terms which appeared in the text more than once. It should be noted here that due to the fact that the translated text is relatively small, the number of reoccurring terms is not large. However, it is still a sufficient indication of the consistency or inconsistency of translators in using the same translations. The following tables show the number of times the correct equivalent of the term was used. The tables only register the number of occurrences. For example,

in table (16a .1) the term [parties] occurred five times. The correct equivalent which translates this term is [الطرفان]. If the term is translated correctly every time it occurred by each group of informants then the number corresponding to the occurrences is 25.

- Term1: [Parties] [الطرفان] (occurred 5 times):

**Table (16 a. 1)**

الطرفان	A	B	C	D
1 <sup>st</sup> occurrence	16	21	14	19
2 <sup>nd</sup> occurrence	25	25	25	23
3 <sup>rd</sup> occurrence	25	25	18	14
4 <sup>th</sup> occurrence	20	23	15	18
5 <sup>th</sup> occurrence	17	24	18	16

The term [parties] is important here because it shows the consistency of translators' use of the dual form in Arabic. The term appeared five times in the text. However, the findings show that there were discrepancies in using the correct grammatical form of the term. In referring to legal interpretation in Chapter four, it was noticed that the use of the correct equivalent depends on the ST. In the second occurrence of the term [parties], the word was accompanied by the use of [both], and hence all translators, except two undergraduates used the dual form in Arabic [الطرفان]. It was noticed that whereas professional translators and lecturers tried to be consistent with using the dual form of the word especially after the ambiguity of the term was resolved with the use of the term 'both', students on the other hand carried on translating it in the plural form. The findings in this table show that professional translators and lecturers adhered to the norms of the TT, while students adhered to norms of the ST. This

conformity to initial norms affects their conformity to legal norms, although translators are expected not to change the ST, in this case the inconsistency in alternating between [الأطراف] or [الطرفان] manipulates the text and hence can affect the interpretation of the legal message.

- Term2: [Recognise] (occurred 2 times): The translation of [recognise] in the two cases is different. In the first instance the correct translation is [يعترف]. In the second the correct translation is [يُقدّر].

**Table (16 a. 2)**

1 <sup>st</sup> occurrence	A	B	C	D
يعترف	21	22	15	9
يُقدّر	-	-	-	-
2 <sup>nd</sup> occurrence	A	B	C	D
يعترف	19	18	20	15
يُقدّر	1	2	-	-

With regard to the verb [recognise], translators are not expected to be consistent in the use of the equivalent because although the same verb occurred more than once in the ST, it did not convey the same meaning in the TT. Although legal English is characterised by having its own set of terminology, there are certain terms in legal language which share the same form with standard English, but carry a different meaning and different purposes and directives, especially when they occur in a different context. Nevertheless, the data show that translators were mostly consistent in the use of equivalents regardless of the fact that they carry different meanings in the two instances. This behaviour on the part of the translators indicates that they did not take the context of the text into consideration.

- Term 3: [Boundary] الحدود (occurred 2 times):

**Table (16a. 3)**

الحدود	A	B	C	D
1 <sup>st</sup> occurrence	25	24	22	16
2 <sup>nd</sup> occurrence	25	24	21	20

To those translators acquainted with the history of the peace process between Jordan and Israel geographically and politically, it is obvious that the term ‘boundary’ occurring in the ST is meant to be used in the plural in the Arabic TT [الحدود], especially given the fact that the boundaries separating Jordan and Israel link at different points throughout the border line. This was clear for professional translators, who were 100% consistent in the use of the correct equivalent. Lecturers also had a high rate of consistency in the use of the correct term followed by MA students. Undergraduate students translated the term literally as [الحد] but used the term [الحدود] in other places, this creates confusion in the meaning, which consequently creates political tension.

- Term 4: [Territory] [الأراضي] (3 times)

**Table (16a. 4)**

الأراضي	A	B	C	D
1 <sup>st</sup> occurrence	13	17	9	6
2 <sup>nd</sup> occurrence	23	13	8	13
3 <sup>rd</sup> occurrence	23	20	14	6

The term [territory] is probably one of those most abstract lexical items that are tainted with cultural untranslatability. Catford describes this situation in referring to

the term 'home'. He says, "the functionally relevant situational features related to <home> include that nebulous sentimentality which is supposed not to be related to lexical items in other languages". Catford (1965: 100) However [territory] does not have a sentimental term in this sense. It is a political term with sensitive significance and implications. On a lexical level the terms [territory] and [region] are often used interchangeably, but in a legal context this change is not correct. These terms constitute one of the most prominent inconsistent equivalents throughout the translation of the examined text. However, the factor which affects the choice of the proper equivalent is usually the term's position in the sentence and its collocation with surrounding nouns and verbs. In its first occurrence the term [territory] appeared in a context which refers to [land] because it was accompanied with the specification of territorial waters, and airspace. In the second and third occurrences this specification was not made clear, and therefore some translators chose the term [إقليم] as an equivalent, to cover the whole region. Professional translators used the correct translation consistently while the rest of the groups of informants, especially students, neither used the correct equivalent nor used it consistently.

- Term 5: [Their relations]علاقتهما] (2 times)

**Table (16a. 5)**

علاقتهما	A	B	C	D
1 <sup>st</sup> occurrence	25	25	11	15
2 <sup>nd</sup> occurrence	18	15	6	7

The significance of including this term is to indicate the translators' use of the dual form in Arabic. In some cases the translator finds him/herself facing "not a genuine decision-making situation". (Wilss 1994:138) An example is where a translator has

no choice but to adhere to the rules of grammar or syntactic limitations of languages. In the current research it is clear that the more experienced translators are consistent in their use of the correct equivalent. Students on the other hand, were not consistent in the use of the dual in Arabic and this shows that they did not adhere to the rules of Arabic grammar. This can be attributed to students' ignorance of the rules of Arabic grammar or even the importance of adhering to them. Interestingly this appeared only in students' translations. Students did realise that the dual can be used in this ambiguous situation but they did not realise the impact of the use of dual from the legal-political perceptive.

- Term 6: [Through it] [عبرها] (2 times)

**Table (16a. 6)**

عبرها	A	B	C	D
1 <sup>st</sup> occurrence	5	6	-	2
2 <sup>nd</sup> occurrence	7	15	5	4

A common mistake is using the equivalent [من خلالها] to translate [through it]. This could wrongly imply that the military operations are conducted through the parties themselves, not particularly referring to the land where the operations are carried out. Therefore, the safest translation in this case will be [عبرها]. Also in this article, the problem of using plural or dual for [parties] appears again, and the clarification which appeared in previous articles through the use of [both] referring to the signing parties, Jordan and Israel, appears again in article five and article six. Because the translation should be consistent, the use of the dual is clearly expected in the translation of these articles.



- Term 7: [Cooperation] [التعاون] (2 times)

**Table (16a. 7)**

التعاون	A	B	C	D
1 <sup>st</sup> occurrence	25	25	25	25
2 <sup>nd</sup> occurrence	25	25	25	25

This is the only case where all four groups of translators used the equivalent consistently. This is due to the fact that there is no other equivalent. The translators adhered again to ‘not a genuine decision-making situation’. In order to assess who among the four groups of translators are most consistent in using the same correct equivalent, the average of consistency for each group is calculated. This process is based firstly on working out the percentages of translators’ groups’ consistency in each individual term. Table (16b) indicates the percentages of consistency in use of each equivalent by each group of translators. This is achieved by adding up the number of occurrences of each equivalent for each group and multiplying it by 100, then dividing it by the total of complete occurrences, which differed from one equivalent to another. These percentages in turn were calculated to work out the average consistency of each group in using the correct equivalence. Table (16c) presents the average consistency of each group in relation to other groups. This is achieved; by adding up the percentages of all the equivalences for each group and dividing them by 8. Table (16c) reveals that lecturers held the highest percentage of consistency in using the correct equivalence. Professional translators came second followed by MA students and lastly undergraduates.

**Table (16b)** Consistency in Using the Correct Equivalences

Term	Equivalence	A	B	C	D
Parties	الطرفان	82.4%	94.4%	72%	72%
Recognise	يعترف	42%	44%	30%	18%
	يقدر	2%	4%	0%	0%
Boundary	الحدود	100%	96%	86%	72%
Territory	الأراضي	78.6%	66.6%	41.3%	33%
Their relations	علاقتهم	86%	80%	34%	44%
Through it	عبرها	24%	42%	10%	12%
Cooperation	تعاون	100%	100%	100%	100%

**Table (16c)** Average of Consistency Among the Four Groups of Translators.

A	B	C	D
64.3 %	65.6%	46.6%	43.8%
2 <sup>nd</sup>	1 <sup>st</sup>	3 <sup>rd</sup>	4 <sup>th</sup>

**5.3.2.2.3. Preserving the Legal Text Style (Conformity to Matricial Norms)**

Table (17a) shows the terms that were expected in a certain manner which preserves the legal text style. For example, it is crucial that ‘will’ is translated as [(س)سوف] in order to convey the immediacy of the legal act. Other terms especially the use of acronyms, letters, or numbers are also an important indication to test translators’ conformity to matricial norms. Although translating such items might not be problematic on the lexical level, it is vital for maintaining the essence of the legal style.

**Table (17a)** Preserving the legal text style (Conformity to matricial norms)

Will	س (سوف)
Will further enhance	س (سوف) + تعزز
May	قد
Each other	كل منهما
Them	بها
Appendix I	ملحق ١
Annex I	ذيل ١

9 months	٩ أشهر
CSCE	CSCE + translation
CSCME	CSCME + translation
a:	أ

**Table (17b) This table indicates informants' conformity to matricial norms by preserving legal text style.**

Group	A	B	C	D
Number of occurring regularities	183	165	158	184
Preserving legal-text style	2 <sup>nd</sup>	3 <sup>rd</sup>	4 <sup>th</sup>	1 <sup>st</sup>

The translator must cater for difficulties on the macro context and micro context levels. “For **macro contextual problem-solving**, the translator needs a strategy that is oriented to the totality of the text-to-be translated and avoid strategic inconsistency”. (Vermeer 1990 cited in Wilss 1994:134) In other words:

This means that s/he must have a clear idea of what the context of the text-to-be translated implies, what its communicative purpose is (representational, appellative, expressive-to take up Bühler's (1934) subdivision of textual functions) and what reader(ship) the target text is intended for. (Wilss 1994:134-135)

Wilss suggests that texts of a specific nature, e.g. technical commercial etc, to which can add texts of legal nature, usually raise minor problems on the macro contextual level because it is highly unlikely that the text is assigned a divergent meaning or perspective by participants in the translation process.

Translators also face limitations occurring in the text type, especially texts with a highly standardised configuration which leaves no room for flexibility in the process. The translators have no choice in this situation but to follow the standard configuration of the text. This standardisation involves technical matters, such as the structure of documents, number, dates, etc. Consistency in preserving the legal text style was almost equal among all four groups of translation. Some translators

deviated from preserving the legal text style. One of the reasons why translators deviated from the conformity to the legal text style is that they are not aware of the typological conventions of the text. Schäffner confirms that awareness of the text-typological conventions is a major requirement in the process of translation. (Schäffner 1998b: 126) By non-conformity to legal text style, translators therefore jeopardise the legal message and legal interpretation.

### **5.3.3. Conformity to Norms (Resulting Regularities ‘Patterns’)**

Translation is clearly a cognitive process. All cognitive processes occur within a context, which includes linguistic and extra linguistic factors. These factors affect the work of a translator to various degrees resulting in different behavioural choices and thus different translations. Toury says:

The beauty of human behaviour, whether under cognitive or sociocultural observation, is that there is no 100 percent regularity, not even in the behaviour of one person while translating one text, which concurs with the graded and relative nature of the notion of norms. (Toury 1999: 21)

However, regularities are key notions in descriptive studies. Toury adds, “In fact, the establishment of recurrent patterns is the most basic activity in pre-explanatory phases of the study, the phases where data are collected and analysed and discoveries are being made”. (Toury 1999: 21)

The regularities observed through data analysis are not norms themselves. Rather they are evidence of a norm-governed activity from which the norms themselves are extracted. The norms are the instructions that produce those regularities.

The following table presents the classification of the translators in the four groups who conformed to norms tested in Linguistic and Extra-linguistic translation behaviour.

**Table (18) Linguistic Translation behaviour:**

Strategies	A	B	C	D
Literal translation	2 <sup>nd</sup>	3 <sup>rd</sup>	2 <sup>nd</sup>	1 <sup>st</sup>
Explication	1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>	3 <sup>rd</sup>
Disambiguation	2 <sup>nd</sup>	1 <sup>st</sup>	3 <sup>rd</sup>	4 <sup>th</sup>
Omission	4 <sup>th</sup>	3 <sup>rd</sup>	1 <sup>st</sup>	2 <sup>nd</sup>

The occurring regularities in using the strategies of literal translation, explication and disambiguation indicate that the four groups of translators conformed to ‘initial norms’. However, whereas students conformed to norms of adequacy, professional translators and lecturers conformed to norms of acceptability. Students adhered to the norms exhibited by the ST and this was clear through their extensive use of literal translation, which resulted in awkward translations, for the reasons mentioned earlier in (Table 11a). Professional translators and lecturers, on the other hand, tend to use explication and disambiguation more often. The use of those strategies implies translators’ conformity to the norms contained in the TL.

Professional translators and lecturers alike seem to rely on indirect translation strategies possibly in order to escape the tyranny of the ST.

With regards to the use of omission, the test of this strategy indicated the translators’ conformity to initial norms and in this case, it also indicated conformity to operational norms, and their effect on legal interpretation of the legal context. Through the extensive use of omission students did not conform to any set of translation norms tested on the linguistic level; in fact they acted in a way which breached the rules of legal translation. This behavioural act on the part of both MA students and

undergraduates indicated non-conformity to legal norms of the legal text. The more experienced translators conformed to initial norms of translation, by striking a balance between adequacy and acceptability, thus presenting their loyalty to the ST through translating the whole text in an attempt to keep the legal message intact, while at the same time keeping the target readers in mind through conveying the legal message clearly.

**Table (19) Extra-linguistic Translation:**

	A	B	C	D
Conformity to Cultural Norms	4 <sup>th</sup>	3 <sup>rd</sup>	2 <sup>nd</sup>	1 <sup>st</sup>
Consistency in using the same equivalence	2 <sup>nd</sup>	1 <sup>st</sup>	3 <sup>rd</sup>	4 <sup>th</sup>
Preserving Legal text style	2 <sup>nd</sup>	3 <sup>rd</sup>	4 <sup>th</sup>	1 <sup>st</sup>

This part of the data analysis tested the translators' conformity to extra-linguistic norms, which included cultural and legal norms. The first level tested translators' conformity to cultural norms, as presented in the regularities apparent through omissions. The data show that MA students were the most negatively affected among the four groups of translators by their cultural context and hence they conformed less to legal norms. Undergraduates also resembled MA students in their non-conformity to legal norms. On the other hand, professional translators and lecturers who have far more competence on both the linguistic and extra-linguistic levels did not let their cultural context affect their conformity to legal norms to the extent that students did. This could be attributed to the fact that with experience, translators learn professionalism, which implies that they be impartial in their translations and be as faithful as possible to the purpose of their tasks. On a different level, conformity to legal norms was also tested through consistency in the use of the correct equivalents.

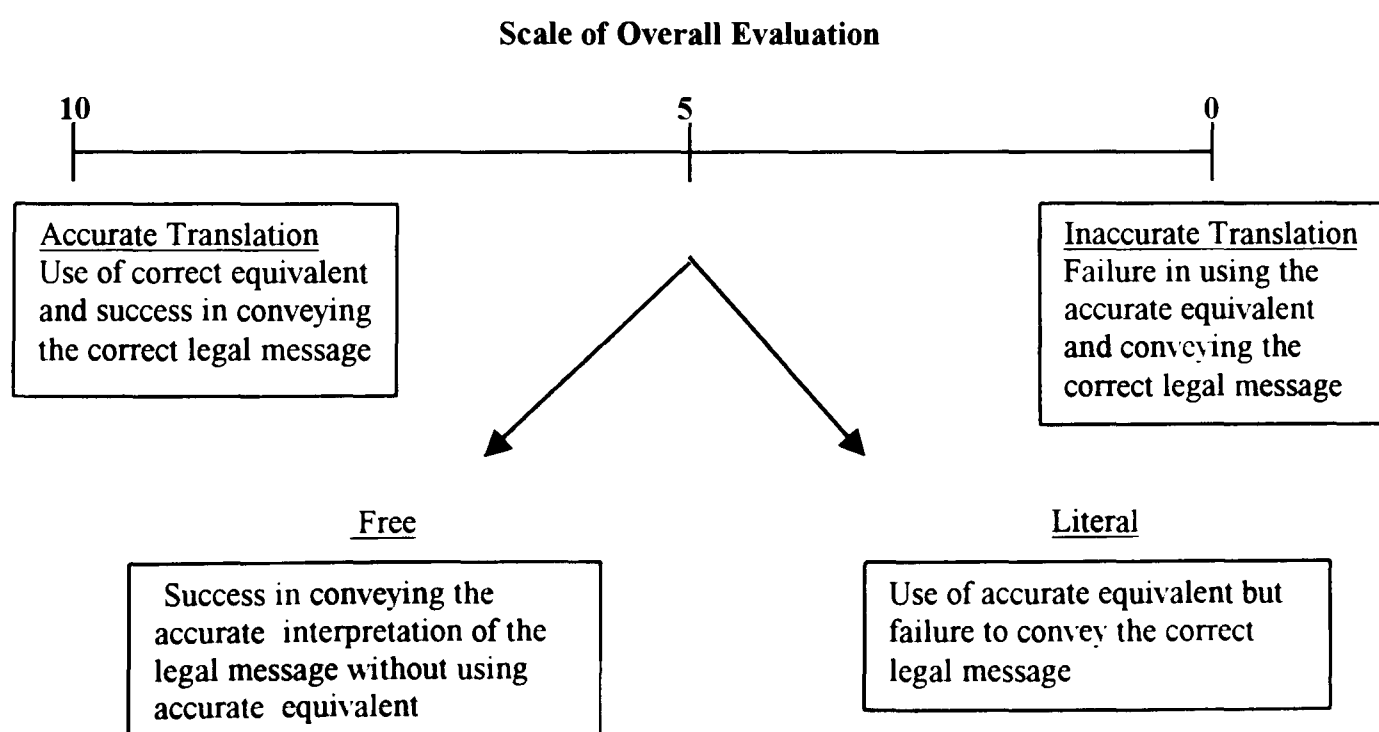
This consistency is important in conveying the legal message through the translated document. Analysis of consistency in using the correct equivalents among the four groups of translators showed that lecturers occupied the highest position, closely followed by professional translators, then MA students, whereas undergraduates were the least consistent in their translations.

With regards to conformity to matricial norms, and hence preserving the legal text style, it is noticed that all four groups seem to have conformed to the matricial norms and respected the style of the legal text.

#### **5.3.3.1. Overall Evaluation**

This research does not aim to assess the quality of the translation. However, it is important to point out how different choices which were adopted by translators and were clear through the monitoring of occurring regularities, affected the resulting translations. In order to evaluate the resulting translations the research developed a system by which to assess the strategies used during the translation. The assessment system involved the development of a scale, which presented opposite poles of a spectrum. The high end of the spectrum represented accurate (proper) translation, which related to the use of accurate (communicative and idiomatic) equivalences on one hand and success in conveying the legal message on the other. Correspondence to the pole representing the high end of the spectrum is assessed by being given the grade 10. The low end of the spectrum which represents inaccurate (wrong) translation through failure to use the correct equivalences and failure in conveying the correct message, is graded 0. The middle course between the two ends of the spectrum is assigned to either free or literal translations, the former representing

success in conveying the accurate interpretation of the legal message without using the accurate equivalences, the latter representing the use of accurate equivalences but failure to convey the correct legal message. Correspondence to the middle course is graded 5. The overall evaluation illustrated the traditional separation suggested by André Lefevere between “semantic (locutionary) and pragmatic (illocutionary) levels entertained by linguistics”. (Lefevere 1992b: 17) The difference between the two Arrojo says, is that “the first is taken to be the primarily linguistic, denotative, or merely informative level, while the second is related to ‘the level of language usage on which language is used primarily for effect’ and which ‘tends to be more concentrated in texts usually thought of as literary’”. (Arrojo 1998:27) The whole evaluation system depended on the results of regularities which appeared in the analysis of the linguistic and extra-linguistic translation behaviour. The translations of each informant who took part in the translation experiment were graded individually by the researcher. Figure (8) represents the overall evaluation scale<sup>53</sup>. This is followed by table (20) presenting the success rate of the translation task among the groups of translators.



<sup>53</sup> For the specific grading diagram of the overall evaluation see Appendix III.



*Figure 8: Overall Evaluation*

Table (20) shows the percentages achieved by each group of translators representing their degree of success in the translation task. Regardless of the fact that the percentages varied among translators' groups, the table indicates that the four groups of translators all failed in the translation task.

**Table (20)**

Professional Translators	Lectures of Translation	MA Students of Translation	Undergraduates Students
21.6%	11.6%	5%	5 %

After examining translations which were produced by the four groups of translators, A B C D, the resulting translations ranged from crude to awkward and amateurish. Only few informants produced translations that can be considered relatively good compared to others, although the overall evaluation system proved that their translations are not necessarily correct ones. What is significant here, on the one hand, is the proof that in the case of both professional translators and lecturers, 'learning by doing' or in other words 'experience' is not a guarantee of the success of the task. With regard to students, on the other hand, the evaluation and the result of this experiment proved that MA students' translation skills are not any better than undergraduates'. Although the results of the questionnaire indicates that MA students' cognitive abilities are better than those of the undergraduates their practical translation abilities, nevertheless, proved to be not any better.

## **Part Four: Results**

The previous experiment has shown that there are a number of significant factors which play a role in the choices made by translators. It has also shown that translators do not conform to a single specific set of norms. Rather every individual has a different experience, which affects the choices they make.

Baker says:

A translator's decision, contrary to Touryean type schemes, is not the result of a simple, consistent coherent overall strategy (translators don't just opt for acceptability or adequacy, or, for that matter, for an overall strategy of domestication or foreignisation, and then follow that global decision through. A translator's behaviour is often the result of conflicting loyalties, sympathies and priorities-precisely because a translator, like any human being, does not have just one identity but many. He or she plays a multiplicity of roles and speaks simultaneously in a variety of voices, and he or she adopts a whole variety of strategies, often conflicting ones, in the space of even a single translation or a single stretch within translation. (Baker 2001b: 16)

There is no doubt that the process of translation is one of elimination. It involves a preference for one possibility over another, and this entails either gain or loss.

In the particular case of the translation of legal texts Rayar says, "where form is to be maintained for consideration of law, readability may be lost". (Rayar 1988: 452) This emphasises why the choice of the translator is very important in rendering the correct translation, not just on the linguistic and grammatical levels. In addition, other contextual considerations should be taken into account.

Ten years ago, Wilss presented a theory which involved eliminating the less efficient strategy. He believed that this process consists of: decision object, decision maker, and a number of decision rules. (Wilss 1994:139) It is true that the translation process consists of a decision object and a decision maker, but this thesis has shown that there is no efficient or less efficient strategy; and there are certainly no decision

rules. There are a considerable number of translation methods and translation strategies. There are also a number of different key players who work in different ways and achieve different results. Therefore, it cannot be claimed that one strategy is more or less efficient in translation. This was made clear through the fact that in this thesis translators employed the theory of elimination but they did not all employ similar strategies. This proved that the decisions made are affected by different factors. Moreover, Wilss' theory is not comprehensive enough to include all translation theories. Therefore, what works for X might not work for Y, and so on. Wilss knew that translators make particular choices in the act of translating but he did not explain why translators opt for one strategy instead of another.

This thesis has shown that the elimination process is undertaken according to a particular set of norms governing translators' own judgments. It has also shown that one translator is not necessarily governed by the same set of norms that influence other translators. In translation studies, it is not possible to have or specify a number of sets of norms and assume that if a translator follows them, her/his end product will be successful. Nevertheless, a study of norms can at least enable translators to solve some of the problems arising in translation.

In this research, the theory of norms was employed to explain translators' behaviour in solving translation problems on the lexical level between English and Arabic. By monitoring translational patterns and regularities in translators' choices, the research was able to identify the norm-governed choices of the translators who took part in the translation experiment. The thesis also explained the normative reasons behind these choices, and hence, facilitated detecting the most appropriate choices which were not prejudiced by negative normative influences. In the current research the study was only limited to Arabic translations of English legal terms.

Making the appropriate choice in translation without being affected negatively by norms boils down to competence. Translation competence “involves an awareness of and conscious reflection on all the relevant factors for the production of a TT that appropriately fulfils its intended function. Such a competence requires more than a sound knowledge of the linguistic system of the L1 and L2”. (Schäffner 1998b: 125)

Translators' competence has been one of the main focuses of this research.

Competence affects the process of elimination; it affects translators' choice of equivalents, which consequently affects their resulting translation. Because translation involves an act of elimination, translators should have a set of alternatives to choose from. For a translator to have these alternatives to choose from is an indication of their competence level. These alternatives are found at various levels of the translation process and differ from one translator to another.

According to Toury (1980b: 191), a translator-to-be (novice) acquires translation competence in two stages; first, the basic level in which s/he is able to realise the compromise between translation adequacy and acceptability which conforms to prevailing norms. It could be safely assumed here that any translator who is not able to realise this compromise does not have translation competence and hence is not able to achieve an adequate translation. The second stage is the more developed stage in which s/he becomes able either to choose freely between conforming or non-conforming to norms. “This version will be defined as the ability to translate texts of various types according to various notions of translation equivalence”. Toury (1980b: 192)

A translator's high level of competence is highlighted by the fact that she/he is able to draw from a wide variety of options. Being exposed to these alternatives and making the right choices results in better performance. The reason why students lack a range

of choices is that because they were not exposed to them in the first place, and as a result, their decisions resulted in inappropriate translations.

The current research suggests that Toury's two-stage plan for translators to acquire competence cannot be generalised to all translators and all translations. It also suggests that Toury's two-stage plan does not guarantee the success of the translation process. This can be attributed to a number of reasons, but mainly because the behaviour of translators differs according to the circumstances surrounding the translation process.

In order for translators to acquire and build competence, they need to be fully aware of the reasons behind their choices. The importance of the current thesis is clear in this sense. This idea works on two levels; in general, and on an elementary level, if translators were able to identify the reasons behind their choices, they would be able to eliminate choices affected and prejudiced by negative normative behaviour, and hence make the appropriate choices. On a more advanced level directly relating to the current thesis with regards to translation equivalences, if translation experts adopt this method, they will be able to achieve a relatively standardised Arabic compilation of English legal terms.

In the first case, the thesis endorses the view that Descriptive Translation Studies play an important role in building translators competence. Leuven-Zwart emphasises the role of DTS in teaching translation and hence building competence. She suggests that by exposing students (translators-to-be) to translation from different periods and authors, they will realise different results for different patterns of behaviour and make them aware that they can make deliberate choices in translation norms and the strategies they use. (Leuven-Zwart 1991a: 42) Toury supports this idea and suggests that in order to teach students translation norms, they should be exposed to original

texts and original translations chosen diversely to cover all text types. In this way the students will be able to discover the differences between various translations, which are usually explained through changing norms. (Toury 1980b: 192)

This thesis suggests that translators at all levels, and regardless of their translation experiences, should not only be exposed to translations of other authors and from different periods, but should be able to analyse their own translations in order to understand the set of norms which govern their behaviour. By acquiring a wider view of the choices they made during the translation process, and by being able to weigh the consequences of their choices translators will improve their competence. Nevertheless, this is not easily achieved as translators react differently to experiences.

Hermans suggests that a person can attain different attitudes concerning new experiences. The first attitude is having 'cognitive expectations'; through this approach one can adopt a learning attitude by which s/he can incorporate a new experience into her/his world. This approach is open to change and to building new hypotheses. The second attitude is that which is unwilling to open to change and is happy with the experiences it had and will always explain new changes according to 'normative expectations'. (Hermans 1997: 4-5)

The later attitude is unfortunately often adopted by translators, and in particular students. It often happens that students do not make their own decisions in translation but rather follow the instructions of their course tutors. Through this practice, students suffer from a lack of creativity in translation. The 'normative expectation' attitude also appears among translators who fall into the trap of routine translation, and are not open to change, and this without doubt affects the process of building translators' competence, therefore resulting in more inaccurate translations.

In the particular case of legal texts, translators need to have adequate competence before attempting to translate this genre. This competence not only includes linguistic aspects, but also extra-linguistic aspects. Extra-linguistic competence is often affected by 'intuition'. Intuition can hinder the process of developing translation competence. The relationship between intuition and data is one issue which is not sufficiently dealt with in corpus linguistics. This relationship usually involves the basic meaning of a commonly used word and the actual occurrence of that word with the same meaning and use. This relation is difficult to explain through computerised processing of data. However, because the current thesis is not processed with the use of computer programs, it has attempted to explain why translators made particular choices of equivalences. The current thesis has demonstrated that translators' intuitions are affected by certain norms related to their cognitive and extra-cognitive experiences.

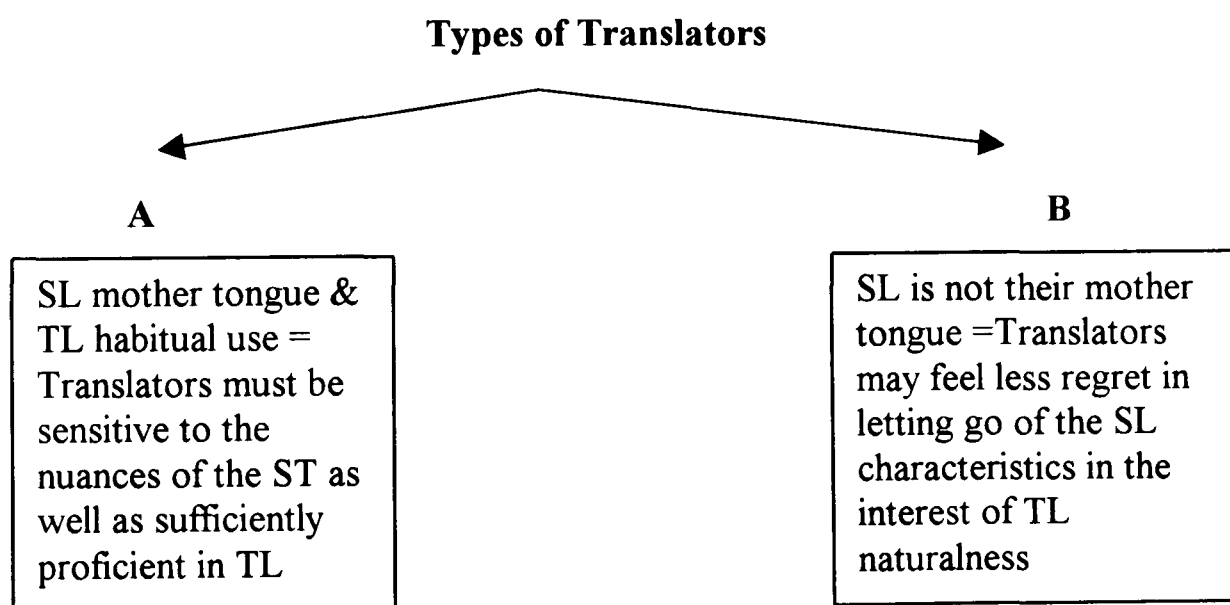
On a linguistic level, the thesis suggests that SL and TL proficiency play an important role in the rendering of equivalences not affected by negative normative influences. In referring to language usage, Sinclair says that, "actual usage plays a very minor role in one's consciousness of language". (Sinclair 1991:39 quoted in Malmkjaer 1993:214) However, Malmkjaer insists that, "the exposure to language in use must play a part in the development of intuitions". (Malmkjaer 1993: 214)

Native language proficiency obviously comes with increasing exposure to the language being acquired. However, proficiency in acquiring languages does not necessarily reflect improvement in translation ability.

According to (Toury 1986 cited in Malmkjaer 1993: 226) "translation ability appears not to develop automatically along with language proficiency". Sometimes intuition

overrides the understanding of meaning of a lexical item. Malmkjaer states, “there is obviously neither one fixed use nor one fixed meaning for each term in each language, and there is no one-to-one correspondence between the terms across the languages”. (Malmkjaer 1993: 220)

Translators’ performance is also affected by another factor. This is whether translators perform better when they translate from their mother language or into it. There is no doubt that translating from one’s own language gives the translator the privilege of being able to better understand the legal message due to having a better command of the language. Nevertheless, because translation is a bi-polar exercise, this might be a disadvantage to the translator who is not equally competent in the use of the source language, and hence, result in her/him not being able to convey the correct legal message. Figure 9 explains how this idea work:



*Figure 9: Types of Translators*

In figure 9 type **A** translators are more likely to share the authors’ interpretation of the ST linguistic choices thus making them more sensitive to their significance and therefore more likely to reproduce them in the TT. The differences between the two



types of translators shows ST and TT orientedness. This leads to the strategies used by the two groups and choices they make during the act of translation being different. Šarčević (1985:127) distinguishes between procedures used in source-language translation and target-language translation. In the former she suggests that procedures should include transcription, which covers phonological transliteration, graphological transliteration and loan translation. The latter involves adaptation, description by definition and descriptive substitution. The latter strategies are similar to those used by the translators in the current research. Because informants who took part in the field work all share Arabic as their mother tongue, they used TT strategies.

Lindquist on the other hand attributed the individual differences between translators to their own style (1984:268). This however does not necessarily apply to the translators who undertook the experiment in the current research, especially students who are unlikely to have adopted a personal style at this early stage. Students are still amateurs and therefore it is acceptable to assume that at this stage they are only imitating already existing translations.

It has been concluded through this research that translation is a circumstantial act that depends on a variety of different factors. Through the empirical experiment presented in the current research, the study was able to limit the equivalents that could be used in the translation, and through the occurring regularities which are indications of a norm-governed activity in the choices of these equivalents, the study was able to explain why translators behave in a certain manner in certain circumstances.

With the ability to determine why translators' choices were made and being able to identify the correct equivalences which have not been prejudiced by normative behaviour, the research suggests that this process could enable translation researchers to standardise Arabic equivalents of English legal and political terms.

## CHAPTER SIX

### CONCLUSION

Compiling a list of standard Arabic equivalences of English legal terms is an achievable goal. This thesis suggests the establishment of a 'Translation Planning Committee' (TPC). The committee is expected to undertake the duty of compiling a standard list of equivalences. The committee's job is a compromise between the work of a lexicographer and that of a language planner. According to Šarčević (1988, 1989: 216) it is agreed that the lexicographers' task is to 'record' terminology. It is the language planner's duty to fill the semantic gaps in the TL by creating new terms. The translation planner (TP) is expected to record terminology but not create them. Her /his job does not solve semantic problems, but rather helps standardise the options that already exist. The TP weighs the suggested options, and by explaining and proving that they are used without any normative prejudice, draws a list of standard equivalences used in a given contextual situation, and thus coordinates them with the terms that occur in the SL. Through the analysis of a considerable amount of running text, the TP may well discover new uses and meanings of certain terms which did not exist before.

The application of corpora study to translation provides the TP with the meaning in context which enables her/him to draw up a list of standard equivalences and compile them in an index. The compiled list determines the different meanings of lexical units within their cultural context, thus providing informative standard equivalents. This thesis suggests that the duty of the TP is to compile a comprehensive list of Arabic equivalents of English legal /political terms. The compilation of the standard list can be achieved by means of the methodology suggested in the current thesis, which

identifies translators' conformity or non-conformity to various sets of norms and excludes equivalences that were prejudiced by negative normative behaviour.

Roberts notes that a lexicographer's job is not an easy task, stating that "it involves a thorough knowledge of linguistic and cultural issues but requires the lexicographer to present this linguistic and cultural knowledge in a simple, synthesized yet clear manner in order to produce a user-friendly reference work". (Roberts 2001:95) This could also be said of translation planners, but whereas lexicographers make their choices randomly, translation planners make their choices according to a comprehensive study of the use of terms. Hence lies the importance of a study like the current thesis in terms of which a standard type of index could be compiled based on the findings of the right choice of equivalents.

With the help of advanced software the TP will be able to compile the comprehensive standard list of Arabic translational terms of English legal terms which is aspired to in this thesis. The list is not like those drawn by lexicographers in bi-lingual dictionaries.

Šarčević suggests that in order to overcome the problem of compiling useless list of equivalents, lexicographers should resort to long stretches of the language. She says:

When it comes to clarifying equivalents, lexicographers should be encouraged to "stretch" language by supplying supplementary information in the form of glosses, explanation and definitions, pictures, illustrations and charts. The amount of additional information will depend on the linguistic and cultural diversity of the language in question. (Šarčević 1989: 216)

The lexicographer may compile a long list of equivalences but s/he does not tell the translator which one to use and where. The TP, by contrast, through standardising equivalences directs the translator towards the correct choice of equivalents.

Compiling a list of standard terms will without doubt facilitate translators' choices. According to Roberts, one way of helping translators to choose the right word is by expanding and developing dictionaries and incorporating in them a more contextual-

cultural element, in other words to attempt to find a middle stage between language dictionaries and encyclopaedic dictionaries. (Roberts 2001: 79-98)

The task of the TP, i.e. standardising equivalences, does not mean that in translation studies one should discard creativity in translation. Baker suggests that, “it is possible to develop a methodology for investigating creativity in translation, by identifying non-typical patterns in translation which could be a sign of creative translations”. (Baker 1999: 292) This creativity is not part of the TP’s task but that of the translator her/himself. When the language planner is convinced by the translators’ choice, this choice can be included in the standard list. In referring to creativity in legal translation Šarčević says, “creativity is at its best when legal translators use innovative means to compensate for differences between legal systems and languages, with a view to promoting uniform interpretation and application”. (Šarčević 2000: 285) She adds, “creative translation requires considerable language and legal competence on the part of the translator/co-drafter”. Nevertheless, creativity should by no means alter the legal meaning in a way which interferes with the interpretation of the legal message, creating text ambiguity and raising doubts that the legal effects will not be the same as those of the ST. (Šarčević 2000: 289)

It is worth emphasising at this stage that the TP’s task could be made easier by the use of corpus analysis. This is due to computers’ accuracy and speed in counting and ordering stored information. Computerised corpora are able to provide basic statistics for analysis on different levels, such as text length, words, sentences, paragraphs, etc. It is apparent that the easiest linguistic feature for a computer to count and order is the word, which is the primary concern of this study.

Munday states that corpora analysis is “presented to suggest, in practice, an electronic corpus and the related computerised tools may help in the selection and the evaluation of translation equivalents”. (Munday 2000: 206) Whereas computers are simply a very systematic tool in facilitating the analysis, the concordance of equivalences must be provided by the TP.

Although compiling a list of standard equivalences will minimise the manipulation of words in translating legal texts and therefore lessen the conflicts which might arise, achieving full standardisation is not possible. The task of standardisation is a continuous one which evolves with the development of language. However, this thesis recommends that the methodology suggested throughout the research should be pursued in a higher level and can achieve tangible results in both translational and legal terms.

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## **APPENDICES**

**Appendix I:** Survey: Part One: Questionnaire

**Appendix II:** Survey: Part Two: Translation Task

**Appendix III:** Overall Evaluation Table

**Appendix IV:** The Complete Text of the Peace Treaty

**Appendix V:** The Official Translation of the Peace Treaty

**APPENDIX I**

**Survey (Part One)**

**Questionnaire**



### Survey Prepared for the Purpose of Academic Research

This survey is conducted to help test the hypothesis introduced in the thesis prepared for a PhD degree at the University of Durham in the field of Legal Translation.

The researcher will use the Jordan-Israel Peace Treaty as a case study.

Please be objective as possible when completing the survey

The survey is divided into two parts

**Part One:** consists of a questionnaire of six pages.

Sections A-C: to be answered by **all** respondents

Section D: to be answered by translators involved directly with the official translation of the Peace Treaty.

Section E: to be answered by students only.

**Part Two:** consists of a number of paragraphs in English chosen from the Peace Treaty.

All respondents are kindly requested to translate the paragraphs into Arabic.

#### Key:

.....= Please specify

N/A = Non applicable

The researcher appreciates the help of all respondents and their cooperation in contributing to the success of the research.

Orieh Masa'deh  
PhD Researcher  
Department of Linguistics  
University of Durham  
2001

8. Cultural background: Urban  Rural

9. Your first language is Arabic: Yes  No

10. Your first language is English: Yes  No

11. Any other languages:.....

12. You work in a bilingual environment Yes  No

13. The dominant language at your working environment is:  
Arabic  English  other  .....

14. Currently you translate: 1-5 pages a day  1-5 pages a week   
1-5 pages a month  other  .....

15. You are an accredited translator in a translation association  
Yes  specify.....  
No  N/A

**Section B**

1. Translation is a natural gift:  
6 5 4 3 2 1  
strongly agree  strongly disagree

2. Translation is an acquired skill, which improves with practice  
6 5 4 3 2 1  
strongly agree  strongly disagree

3. Translation is both a gift complemented by acquired skills  
6 5 4 3 2 1  
strongly agree  strongly disagree

4. Name four books you have read in the field of Translation Studies.

- .....
- .....
- .....
- .....

5. Name four articles you have read in the field of Translation Studies.

- .....
- .....
- .....
- .....

6. You are fully aware of the theory of norms in translation introduced by Gideon Toury

6 5 4 3 2 1  
strongly agree  strongly disagree

7. Is your work as a translator governed by norms?

Yes  specify .....

No

8. Culture affects the translators' choice of Target Language equivalents

6 5 4 3 2 1  
strongly agree  strongly disagree

9. *Your* cultural background affects *your* choice of Target language equivalents

6 5 4 3 2 1  
strongly agree  strongly disagree

10. Legal Translation should stand as a branch on its own

6 5 4 3 2 1  
strongly agree  strongly disagree

11. You translate legal documents as part of your job

always  often  rarely  never  N/A

12. You are a specialist in Legal Translation

6 5 4 3 2 1  
strongly agree  strongly disagree

13. Your written and spoken English is excellent

6 5 4 3 2 1  
strongly agree  strongly disagree



14. You believe that team work is essential in a translators' work

6 5 4 3 2 1  
strongly agree  strongly disagree

15. It is necessary for a translator to always consult the dictionary

6 5 4 3 2 1  
strongly agree  strongly disagree

### Section C

1. You are fully aware of the political situation in the area (Middle East)

6 5 4 3 2 1  
strongly agree  strongly disagree

2. You work in a political environment

6 5 4 3 2 1  
strongly agree  strongly disagree

3. You listen to the news

all day  1-5 times a day  1-5 times a week  1-5 times a day  occasionally   
not interested

4. You work in a politically sensitive position

Yes  No  N/A

5. Time constraints affect the quality of the translation

6 5 4 3 2 1  
strongly agree  strongly disagree

6. Do you often work against the clock ?

Yes  No  N/A

7. If yes, does it affect the quality of your translation?

Yes  No

8. Do you have to make crucial decisions concerning the material to be translated?

Yes  No  N/A

9. Translators of legal documents must undergo legal training

6 5 4 3 2 1  
strongly agree  strongly disagree

10. You have undergone legal training

Yes  No  N/A



11. In translating sensitive text the translator should pay extra attention to his/her choice of target language equivalent

strongly agree        strongly disagree

12. Translation can play a serious role in political interpretation

strongly agree        strongly disagree

13. Name the head of the Jordaninan delegate team in the peace negotiations which resulted in the Jordan-Israeli Peace Treaty without consulting any references.

.....

14. Name the head of the Israeli delegate team in the peace negotiations which resulted in the Jordan-Israeli Peace Treaty without consulting any references.

.....

15. Where and when was the Peace Treaty between Jordan and Israel signed?

Where..... When.....

**Section D (To be answered by translators who were directly involved with the translation of the treaty) Students continue to section E**

1. You followed the peace process since the Madrid Conference in 1991

always        never

2. You were expecting to translate the treaty as part of your job

Yes  No  was not sure

3. The time range that was given to you for the translationof the Treaty was:

less that 2 hours  2-5 hours  less than 24 hours   
a couple of days  a week  no time restriction   
other  specify.....

4. Your translation was:

the final copy   
proofread by your superior at work   
proofread by the parties responsible for drafting the treaty

5. You attended the negotiation sessions held before the signing of the treaty

always        never



6. In the process of translation, you consulted the parties responsible for drafting the treaty  
6 5 4 3 2 1  
always  never

7. You were responsible for the translation of  
the whole treaty  part(s) of the treaty  specify.....

8. If you were responsible for translating the whole treaty, which part did you find most difficult?  
.....

9. Have you ever translated a text of the same nature before attempting to translate the treaty?  
Yes  specify.....  
No

10. Since the translation of the Peace Treaty, have you translated any similar documents?  
Yes  specify .....  
No

**Section E (To be answered by students only)**

1. You are fully aware of the Peace Treaty between Jordan and Israel  
6 5 4 3 2 1  
strongly agree  strongly disagree

2. You have read the whole Treaty  
6 5 4 3 2 1  
strongly agree  strongly disagree

3. In your course work you have translated legal texts  
Yes  specify.....  
No

4. In your program did you attend a specialised module for legal/political translation?  
Yes  specify.....  
No

5. At the moment you are capable of translating a legal document  
6 5 4 3 2 1  
strongly agree  strongly disagree

6. You are ready to take full responsibility for the choices made during translation  
6 5 4 3 2 1  
strongly agree  strongly disagree

Please turn over



**APPENDIX II**

**Survey (Part Two)**

**Translation Task**

**Thank you for completing the questionnaire. Please proceed to the second part of the survey**

Please translate the following paragraphs, taken from the Jordan-Israeli Peace Treaty signed in 1994.

#### International Boundary

- The parties recognise the international boundary, as well as each other's territory, territorial waters and airspace, as inviolable, and will respect and comply with them.
- The demarcation of the boundary will take place as set forth in Appendix (I) to Annex I and will be concluded not later than 9 months after the signing of the Treaty.

#### Security

- Both Parties, acknowledging that mutual understanding and co-operation in security-related matters will form a significant part of their relations and will further enhance the security of the region, take upon themselves to base their security relations on mutual trust, advancement of joint interests and co-operation, and to aim towards a regional framework of partnership in peace.
- Towards that goal the Parties recognise the achievements of the European Community and European Union in the development of the Conference on Security and Co-operation in Europe (CSCE) and commit themselves to the creation, in the Middle East, of a CSCME (Conference on Security and Co-operation in the Middle East).
- The parties further agree to refrain from the following: Allowing the entry, stationing and operating on their territory, or through it, of military forces, personnel or materiel of a third party, in circumstances which may adversely prejudice the security of the other Party.
- The Parties undertake: a. To take necessary and effective measures to prevent acts of terrorism, subversion or violence from being carried out from their territory or through it and to take necessary and effective measures to combat such activities and all their perpetrators.



## **APPENDIX III**

### **Overall Evaluation Table**

### Overall Evaluation

	Sentence 1		Sentence 2		Sentence 3		Sentence 4		Sentence 5		Sentence 6	
<b>Professional Translators</b>	10	6	10	3	10	0	10	1	10	2	10	1
	5	11	5	11	5	17	5	17	5	15	5	18
	0	8	0	11	0	8	0	7	0	8	0	6
<b>Lecturers of Translation</b>	10	1	10	0	10	0	10	1	10	2	10	3
	5	16	5	17	5	18	5	19	5	13	5	15
	0	8	0	8	0	7	0	5	0	10	0	7
<b>Ma Students of Translation</b>	10	2	10	1	10	0	10	0	10	0	10	0
	5	6	5	3	5	9	5	11	5	3	5	14
	0	17	0	21	0	16	0	14	0	22	0	11
<b>Undergraduates of Translation</b>	10	1	10	0	10	0	10	0	10	0	10	2
	5	6	5	4	5	6	5	7	5	7	5	8
	0	18	0	21	0	19	0	18	0	18	0	15

**APPENDIX IV**

**The Complete Text of the Treaty of Peace  
Between the Hashemite Kingdom of Jordan  
and  
the State of Israel**

## **Treaty of Peace Between the Hashemite Kingdom of Jordan and the State of Israel**

October 26, 1994

### **Preamble**

The Government of the State of Israel and the Government of the Hashemite Kingdom of Jordan:

Bearing in mind the Washington Declaration, signed by them on 25th July 1994, and which they are both committed to honour;

Aiming at the achievement of a just, lasting and comprehensive peace in the Middle East based on Security Council resolutions 242 and 338 in all their aspects;

Bearing in mind the importance of maintaining and strengthening peace based on freedom, equality, justice and respect for fundamental human rights, thereby overcoming psychological barriers and promoting human dignity;

Reaffirming their faith in the purposes and principles of the Charter of the United Nations and recognising their right and obligation to live in peace with each other as well as with all states, within secure and recognised boundaries;

Desiring to develop friendly relations and co-operation between them in accordance with the principles of international law governing international relations in time of peace;

Desiring as well to ensure lasting security for both their States and in particular to avoid threats and the use of force between them;

Bearing in mind that in their Washington Declaration of 25th July, 1994, they declared the termination of the state of belligerency between them;

Deciding to establish peace between them in accordance with this Treaty of Peace; have agreed as follows:

### **ARTICLE 1: ESTABLISHMENT OF PEACE**

Peace is hereby established between the State of Israel and the Hashemite Kingdom of Jordan (the "Parties") effective from the exchange of the instruments of ratification of this Treaty.

## **ARTICLE 2 : GENERAL PRINCIPLES**

The Parties will apply between them the provisions of the Charter of the United Nations and the principles of international law governing relations among states in times of peace. In particular:

1. They recognise and will respect each other's sovereignty, territorial integrity and political independence;
2. They recognise and will respect each other's right to live in peace within secure and recognised boundaries;
3. They will develop good neighbourly relations of co-operation between them to ensure lasting security, will refrain from the threat or use of force against each other and will settle all disputes between them by peaceful means;
4. They respect and recognise the sovereignty, territorial integrity and political independence of every state in the region;
5. They respect and recognise the pivotal role of human development and dignity in regional and bilateral relationships;
6. They further believe that within their control, involuntary movements of persons in such a way as to adversely prejudice the security of either Party should not be permitted.

## **ARTICLE 3 INTERNATIONAL BOUNDARY**

1. The international boundary between Israel and Jordan is delimited with reference to the boundary definition under the Mandate as is shown in Annex I (a), on the mapping materials attached thereto and co-ordinates specified therein.
2. The boundary, as set out in Annex I (a), is the permanent, secure and recognised international boundary between Israel and Jordan, without prejudice to the status of any territories that came under Israeli military government control in 1967.
3. The parties recognise the international boundary, as well as each other's territory, territorial waters and airspace, as inviolable, and will respect and comply with them.
4. The demarcation of the boundary will take place as set forth in Appendix (I) to Annex I and will be concluded not later than nine months after the signing of the Treaty.
5. It is agreed that where the boundary follows a river, in the event of natural changes in the course of the flow of the river as described in Annex I (a), the boundary shall follow the new course of the flow.

6. In the event of any other changes the boundary shall not be affected unless otherwise agreed. Immediately upon the exchange of the instruments of ratification of this Treaty, each Party will deploy on its side of the international boundary as defined in Annex I (a).

7. The Parties shall, upon the signature of the Treaty, enter into negotiations to conclude, within 9 months, an agreement on the delimitation of their maritime boundary in the Gulf of Aqaba.

8. Taking into account the special circumstances of the Naharayim/Baqura area, which is under Jordanian sovereignty, with Israeli private ownership rights, the Parties agreed to apply the provisions set out in Annex I (b).

9. With respect to the Zofar/Al-Ghamr area, the provisions set out in Annex I (c) will apply.

#### **ARTICLE 4 SECURITY**

1.a) Both Parties, acknowledging that mutual understanding and co-operation in security-related matters will form a significant part of their relations and will further enhance the security of the region, take upon themselves to base their security relations on mutual trust, advancement of joint interests and co-operation, and to aim towards a regional framework of partnership in peace.

b) Towards that goal the Parties recognise the achievements of the European Community and European Union in the development of the Conference on Security and Co-operation in Europe (CSCE) and commit themselves to the creation, in the Middle East, of a CSCME (Conference on Security and Co-operation in the Middle East).

2. This commitment entails the adoption of regional models of security successfully implemented in the post World War era (along the lines of the Helsinki process) culminating in a regional zone of security and stability. The obligations referred to in this Article are without prejudice to the inherent right of self-defence in accordance with the United Nations Charter.

3. The Parties undertake, in accordance with the provisions of this Article, the following:

a) to refrain from the threat or use of force or weapons, conventional, non-conventional or of any other kind, against each other, or of other actions or activities that adversely affect the security of the other Party;

b) to refrain from organising, instigating, inciting, assisting or participating in acts or threats of belligerency, hostility, subversion or violence against the other Party;



c) to take necessary and effective measures to ensure that acts or threats of belligerency, hostility, subversion or violence against the other Party do not originate from, and are not committed within, through or over their territory **(hereinafter the term "territory" includes the airspace and territorial waters)** [my emphasis]

4. Consistent with the era of peace and with the efforts to build regional security and to avoid and prevent aggression and violence, the Parties further agree to refrain from the following:

a) joining or in any way assisting, promoting or co-operating with any coalition, organisation or alliance with a military or security character with a third party, the objectives or activities of which include launching aggression or other acts of military hostility against the other Party, in contravention of the provisions of the present Treaty.

b) allowing the entry, stationing and operating on their territory, or through it, of military forces, personnel or materiel of a third party, in circumstances which may adversely prejudice the security of the other Party.

5. Both Parties will take necessary and effective measures, and will co-operate in combating terrorism of all kinds. The Parties undertake:

a) to take necessary and effective measures to prevent acts of terrorism, subversion or violence from being carried out from their territory or through it and to take necessary and effective measures to combat such activities and all their perpetrators.

b) without prejudice to the basic rights of freedom of expression and association, to take necessary and effective measures to prevent the entry, presence and co-operation in their territory of any group or organisation, and their infrastructure, which threatens the security of the other Party by the use of or incitement to the use of, violent means.

c) to co-operate in preventing and combating cross-boundary infiltrations.

6. Any question as to the implementation of this Article will be dealt with through a mechanism of consultations which will include a liaison system, verification, supervision, and where necessary, other mechanisms, and higher level consultation. The details of the mechanism of consultations will be contained in an agreement to be concluded by the Parties within 3 months of the exchange of the instruments of ratification of this Treaty.

7. The Parties undertake to work as a matter of priority, and as soon as possible in the context of the Multilateral Working Group on Arms Control and Regional Security, and jointly, towards the following:

- a) the creation in the Middle East of a region free from hostile alliances and coalitions;
- b) the creation of a Middle East free from weapons of mass destruction, both conventional and non- conventional, in the context of a comprehensive, lasting and stable peace, characterised by the renunciation of the use of force, reconciliation and goodwill.

## **ARTICLE 5 DIPLOMATIC AND OTHER BILATERAL RELATIONS**

1. The Parties agree to establish full diplomatic and consular relations and to exchange resident ambassadors within one month of the exchange of the instruments of ratification of this Treaty.
2. The Parties agree that the normal relationship between them will further include economic and cultural relations.

## **ARTICLE 6 WATER**

With the view to achieving a comprehensive and lasting settlement of all the water problems between them:

1. The Parties agree mutually to recognise the rightful allocations of both of them in Jordan River and Yarmouk River waters and Araba/Arava ground water in accordance with the agreed acceptable principles, quantities and quality as set out in Annex II , which shall be fully respected and complied with.
2. The Parties, recognising the necessity to find a practical, just and agreed solution to their water problems and with the view that the subject of water can form the basis for the advancement of co- operation between them, jointly undertake to ensure that the management and development of their water resources do not, in any way, harm the water resources of the other Party.
3. The Parties recognise that their water resources are not sufficient to meet their needs. More water should be supplied for their use through various methods, including projects of regional and international co-operation.
4. In light of paragraph 3 of this Article, with the understanding that co- operation in water-related subjects would be to the benefit of both Parties, and will help alleviate their water shortages, and that water issues along their entire boundary must be dealt with in their totality, including the possibility of trans-boundary water transfers, the Parties agree to search for ways to alleviate water shortage and to co- operate in the following fields:
  - a) development of existing and new water resources, increasing the water availability including co- operation on a regional basis as appropriate, and minimising wastage of water resources through the chain of their uses;
  - b) prevention of contamination of water resources;

c) mutual assistance in the alleviation of water shortages;

d) transfer of information and joint research and development in water-related subjects, and review of the potentials for enhancement of water resources development and use.

5. The implementation of both Parties' undertakings under this Article is detailed in Annex II.

## **ARTICLE 7 ECONOMIC RELATIONS**

1. Viewing economic development and prosperity as pillars of peace, security and harmonious relations between states, peoples and individual human beings, the Parties, taking note of understandings reached between them, affirm their mutual desire to promote economic co-operation between them, as well as within the framework of wider regional economic co-operation.

2. In order to accomplish this goal, the Parties agree to the following:

a) to remove all discriminatory barriers to normal economic relations, to terminate economic boycotts directed at each other, and to co-operate in terminating boycotts against either Party by third parties;

b) recognising that the principle of free and unimpeded flow of goods and services should guide their relations, the Parties will enter into negotiations with a view to concluding agreements on economic co-operation, including trade and the establishment of a free trade area, investment, banking, industrial co-operation and labour, for the purpose of promoting beneficial economic relations, based on principles to be agreed upon, as well as on human development considerations on a regional basis. These negotiations will be concluded no later than 6 months from the exchange the instruments of ratification of this Treaty.

c) to co-operate bilaterally, as well as in multilateral forums, towards the promotion of their respective economies and of their neighbourly economic relations with other regional parties.

## **ARTICLE 8 REFUGEES AND DISPLACED PERSONS**

1. Recognising the massive human problems caused to both Parties by the conflict in the Middle East, as well as the contribution made by them towards the alleviation of human suffering, the Parties will seek to further alleviate those problems arising on a bilateral level.

2. Recognising that the above human problems caused by the conflict in the Middle East cannot be fully resolved on the bilateral level, the Parties will seek to resolve them in appropriate forums, in accordance with international law, including the following:

a) in the case of displaced persons, in a quadripartite committee together with Egypt and the Palestinians:

b) in the case of refugees,

- i.) in the framework of the Multilateral Working Group on Refugees; in negotiations, ii) in a framework to be agreed, bilateral or otherwise, in conjunction with and at the same time as the permanent status negotiations pertaining to the territories referred to in Article 3 of this Treaty;

c) through the implementation of agreed United Nations programmes and other agreed international economic programmes concerning refugees and displaced persons, including assistance to their settlement.

## **ARTICLE 9 PLACES OF HISTORICAL AND RELIGIOUS SIGNIFICANCE**

1. Each party will provide freedom of access to places of religious and historical significance.

2. In this regard, in accordance with the Washington Declaration, Israel respects the present special role of the Hashemite Kingdom of Jordan in Muslim Holy shrines in Jerusalem. When negotiations on the permanent status will take place, Israel will give high priority to the Jordanian historic role in these shrines.

3. The Parties will act together to promote interfaith relations among the three monotheistic religions, with the aim of working towards religious understanding, moral commitment, freedom of religious worship, and tolerance and peace.

## **ARTICLE 10 CULTURAL AND SCIENTIFIC EXCHANGES**

The Parties, wishing to remove biases developed through periods of conflict, recognise the desirability of cultural and scientific exchanges in all fields, and agree to establish normal cultural relations between them. Thus, they shall, as soon as possible and not later than 9 months from the exchange of the instruments of ratification of this Treaty, conclude the negotiations on cultural and scientific agreements.

## **ARTICLE 11 MUTUAL UNDERSTANDING AND GOOD NEIGHBOURLY RELATIONS**

1. The Parties will seek to foster mutual understanding and tolerance based on shared historic values, and accordingly undertake:

a) to abstain from hostile or discriminatory propaganda against each other, and to take all possible legal and administrative measures to prevent the dissemination of such propaganda by any organisation or individual present in the territory of either Party;

- b) as soon as possible, and not later than 3 months from the exchange of the instruments of ratification of this Treaty, to repeal all adverse or discriminatory references and expressions of hostility in their respective legislation;
- c) to refrain in all government publications from any such references or expressions;
- d) to ensure mutual enjoyment by each other's citizens of due process of law within their respective legal systems and before their courts.

2. Paragraph 1 (a) of this Article is without prejudice to the right to freedom of expression as contained in the International Covenant on Civil and Political Rights.

3. A joint committee shall be formed to examine incidents where one Party claims there has been a violation of this Article.

## **ARTICLE 12 COMBATING CRIME AND DRUGS**

The Parties will co-operate in combating crime, with an emphasis on smuggling, and will take all necessary measures to combat and prevent such activities as the production of, as well as the trafficking in illicit drugs, and will bring to trial perpetrators of such acts. In this regard, they take note of the understandings reached between them in the above spheres, in accordance with Annex III and undertake to conclude all relevant agreements not later than 9 months from the date of the exchange of the instruments of ratification of this Treaty.

## **ARTICLE 13 TRANSPORTATION AND ROADS**

Taking note of the progress already made in the area of transportation, the Parties recognise the mutuality of interest in good neighbourly relations in the area of transportation and agree to the following means to promote relations between them in this sphere:

1. Each party will permit the free movement of nationals and vehicles of the other into and within its territory according to the general rules applicable to nationals and vehicles of other states. Neither party will impose discriminatory taxes or restrictions on the free movement of persons and vehicles from its territory to the territory of the other.
2. The Parties will open and maintain roads and border-crossings between their countries and will consider further road and rail links between them.
3. The Parties will continue their negotiations concerning mutual transportation agreements in the above and other areas, such as joint projects, traffic safety, transport standards and norms, licensing of vehicles, land passages, shipment of goods and cargo, and meteorology, to be concluded not later than 6 months from the exchange of the instruments of ratification of this Treaty.

4. The Parties agree to continue their negotiations for a highway to be constructed and maintained between Egypt, Israel and Jordan near Eilat.

#### **ARTICLE 14 FREEDOM OF NAVIGATION AND ACCESS TO PORTS**

1. Without prejudice to the provisions of paragraph 3, each Party recognises the right of the vessels of the other Party to innocent passage through its territorial waters in accordance with the rules of international law.

2. Each Party will grant normal access to its ports for vessels and cargoes of the other, as well as vessels and cargoes destined for or coming from the other Party. Such access will be granted on the same conditions as generally applicable to vessels and cargoes of other nations.

3. The Parties consider the Strait of Tiran and the Gulf of Aqaba to be international waterways open to all nations for unimpeded and non-suspendable freedom of navigation and overflight. The Parties will respect each other's right to navigation and overflight for access to either Party through the Strait of Tiran and the Gulf of Aqaba.

#### **ARTICLE 15 CIVIL AVIATION**

1. The Parties recognise as applicable to each other the rights, privileges and obligations provided for by the multilateral aviation agreements to which they are both party, particularly by the 1944 Convention on International Civil Aviation (The Chicago Convention) and the 1944 International Air Services Transit Agreement.

2. Any declaration of national emergency by a Party under Article 89 of the Chicago Convention will not be applied to the other Party on a discriminatory basis.

3. The Parties take note of the negotiations on the international air corridor to be opened between them in accordance with the Washington Declaration. In addition, the Parties shall, upon ratification of this Treaty, enter into negotiations for the purpose of concluding a Civil Aviation Agreement. All the above negotiations are to be concluded not later than 6 months from the exchange of the instruments of ratification of this Treaty.

#### **ARTICLE 16 POSTS AND TELECOMMUNICATIONS**

The Parties take note of the opening between them, in accordance with the Washington Declaration, of direct telephone and facsimile lines. Postal links, the negotiations on which having been concluded, will be activated upon the signature of this Treaty. The Parties further agree that normal wireless and cable communications and television relay services by cable, radio and satellite, will be established between them, in accordance with all relevant international conventions and regulations. The negotiations on these subjects will be concluded not later than 9 months from the exchange of the instruments of ratification of this Treaty.

## **ARTICLE 17 TOURISM**

The Parties affirm their mutual desire to promote co-operation between them in the field of tourism. In order to accomplish this goal, the Parties -- taking note of the understandings reached between them concerning tourism -- agree to negotiate, as soon as possible, and to conclude not later than three months from the exchange of the instruments of ratification of this Treaty, an agreement to facilitate and encourage mutual tourism and tourism from third countries.

## **ARTICLE 18 ENVIRONMENT**

The Parties will co-operate in matters relating to the environment, a sphere to which they attach great importance, including conservation of nature and prevention of pollution, as set forth in Annex IV . They will negotiate an agreement on the above, to be concluded not later than 6 months from the exchange of the instruments of ratification of this Treaty.

## **ARTICLE 19 ENERGY**

1. The Parties will co-operate in the development of energy resources, including the development of energy-related projects such as the utilisation of solar energy.
2. The Parties, having concluded their negotiations on the interconnecting of their electric grids in the Eilat-Aqaba area, will implement the interconnecting upon the signature of this Treaty. The Parties view this step as a part of a wider binational and regional concept. They agree to continue their negotiations as soon as possible to widen the scope of their interconnected grids.
3. The Parties will conclude the relevant agreements in the field of energy within 6 months from the date of exchange of the instruments of ratification of this Treaty.

## **ARTICLE 20 RIFT VALLEY DEVELOPMENT**

The Parties attach great importance to the integrated development of the Jordan Rift Valley area, including joint projects in the economic, environmental, energy-related and tourism fields. Taking note of the Terms of Reference developed in the framework of the Trilateral Israel-Jordan-US Economic Committee towards the Jordan Rift Valley Development Master Plan, they will vigorously continue their efforts towards the completion of planning and towards implementation.

## **ARTICLE 21 HEALTH**

The Parties will co-operate in the area of health and shall negotiate with a view to the conclusion of an agreement within 9 months of the exchange of instruments of ratification of this Treaty.

## **ARTICLE 22 AGRICULTURE**

The Parties will co-operate in the areas of agriculture, including veterinary services, plant protection, biotechnology and marketing, and shall negotiate with a view to the conclusion of an agreement within 6 months from the date of the exchange of instruments of ratification of this Treaty.

## **ARTICLE 23 AQABA AND EILAT**

The Parties agree to enter into negotiations, as soon as possible, and not later than one month from the exchange of the instruments of ratification of this Treaty, on arrangements that would enable the joint development of the towns of Aqaba and Iilat with regard to such matters, inter alia, as joint tourism development, joint customs, free trade zone, co-operation in aviation, prevention of pollution, maritime matters, police, customs and health co-operation. The Parties will conclude all relevant agreements within 9 months from the exchange of instruments of ratification of the Treaty.

## **ARTICLE 24 CLAIMS**

The Parties agree to establish a claims commission for the mutual settlement of all financial claims.

## **ARTICLE 25 RIGHTS AND OBLIGATIONS**

1. This Treaty does not affect and shall not be interpreted as affecting, in any way, the rights and obligations of the Parties under the Charter of the United Nations.
2. The Parties undertake to fulfil in good faith their obligations under this Treaty, without regard to action or inaction of any other party and independently of any instrument inconsistent with this Treaty. For the purposes of this paragraph each Party represents to the other that in its opinion and interpretation there is no inconsistency between their existing treaty obligations and this Treaty.
3. They further undertake to take all the necessary measures for the application in their relations of the provisions of the multilateral conventions to which they are parties, including the submission of appropriate notification to the Secretary General of the United Nations and other depositories of such conventions.
4. Both Parties will also take all the necessary steps to abolish all pejorative references to the other Party, in multilateral conventions to which they are parties, to the extent that such references exist.
5. The Parties undertake not to enter into any obligation in conflict with this Treaty.
6. Subject to Article 103 of the United Nations Charter, in the event of a conflict between the obligations of the Parties under the present Treaty and any of their



other obligations, the obligations under this Treaty will be binding and implemented.

#### **ARTICLE 26 LEGISLATION**

Within 3 months of the exchange of ratifications of this Treaty the Parties undertake to enact any legislation necessary in order to implement the Treaty, and to terminate any international commitments and to repeal any legislation that is inconsistent with the Treaty.

#### **ARTICLE 27 RATIFICATION**

1. This Treaty shall be ratified by both Parties in conformity with their respective national procedures. It shall enter into force on the exchange of instruments of ratification.

2. The Annexes, Appendices, and other attachments to this Treaty shall be considered integral parts thereof.

#### **ARTICLE 28 INTERIM MEASURES**

The Parties will apply, in certain spheres, to be agreed upon, interim measures pending the conclusion of the relevant agreements in accordance with this Treaty, as stipulated in Annex V.

#### **ARTICLE 29 SETTLEMENT OF DISPUTES**

1. Disputes arising out of the application or interpretation of this Treaty shall be resolved by negotiations.

2. Any such disputes which cannot be settled by negotiations shall be resolved by conciliation or submitted to arbitration.

#### **ARTICLE 30 REGISTRATION**

This Treaty shall be transmitted to the Secretary General of the United Nations for registration in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at the Arava/Araba Crossing Point this day Heshvan 21st, 5775, Jumada Al-Ula 21st, 1415 which corresponds to 26th October, 1994 in the Hebrew, English and Arabic languages, all texts being equally authentic.

**In case of divergence of interpretation, the English text shall prevail.**

For the State of Israel Yitzhak Rabin, Prime Minister

For the Hashemite Kingdom of Jordan Abdul Salam Majali, Prime Minister

Witnessed by: William J. Clinton President of the United States of America

APPENDIX X

The Official Translation of the Peace Treaty

معاهدة السلام

بين

المملكة الاردنية الهاشمية

و

دولة اسرائيل

# معاهدة السلام

بين

المملكة الاردنية الهاشمية

و

دولة اسرائيل

ان حكومة المملكة الاردنية الهاشمية وحكومة دولة اسرائيل.

اذ تأخذان بعين الاعتبار اعلان واشنطن، الموقع من قبلهما في ٢٥ تموز ١٩٩٤ والذي تتعهدان بالوفاء به.

واذ تهدفان الى تحقيق سلام عادل ودائم وشامل في الشرق الاوسط مبني على قرار مجلس الامن ٢٤٢ و ٣٣٨ بكل جوانبهما.

واذ تأخذان بعين الاعتبار اهمية المحافظة على السلام وتقويته على اساس من الحرية والمساواة والعدل واحترام حقوق الانسان الاساسية متخطيتين بذلك الحواجز النفسية ومعززين للكرامة الانسانية.

واذ تؤكدان ايمانهما باهداف ومبادئ ميثاق الامم المتحدة وتعترفان بحقوقهما وواجبهما في العيش بسلام بينهما ومع كافة الدول ضمن حدود آمنة ومعترف بها.

واذ ترغبان في تنمية علاقات صداقة وتعاون بينهما حسب مبادئ القانون الدولي التي تحكم العلاقات الدولية في وقت السلم.

واذ ترغبان ايضا بضمان امن دائم لدولتيهما وبشكل خاص بتجنب التهديد بالقوة واستعمالها فيما بينهما.

وإذ تأخذان بعين الاعتبار انهما اعلنتا انتهاء حالة العداء بينهما بموجب اعلان  
واشنطن الموقع في ٢٥ تموز ١٩٩٤.

وإذ تقرران إقامة سلام بينهما بموجب معاهدة السلام هذه.

فقد اتفقتا على ما يلي:

#### المادة ١: إقامة السلام

يعتبر السلام قائما بين المملكة الاردنية الهاشمية ودولة اسرائيل (الطرفين) اعتبارا  
من تاريخ تبادل وثائق التصديق على هذه المعاهدة.

#### المادة ٢: المبادئ العامة

سيطبق الطرفان فيما بينهما احكام ميثاق الامم المتحدة ومبادئ القانون الدولي  
التي تحكم العلاقات بين الدول وقت السلم. وبشكل خاص:

- ١- يعترفان ويحترمان سيادة كل منهما وسلامته الإقليمية واستقلاله السياسي.
- ٢- يعترفان بحق كل منهما بالعيش بسلام ضمن حدود آمنة ومعترف بها  
وسوف يحترمان ذلك الحق.
- ٣- سينميان علاقات حسن الجوار والتعاون بينهما لضمان امن دائم  
وسيمتنعان عن التهديد بالقوة وعن استعمالها ضد بعضهما وسيحلان كل  
النزاعات بينهما بالوسائل السلمية.
- ٤- يحترمان ويعترفان بسيادة كل دولة في المنطقة وبسلامتها الإقليمية  
واستقلالها السياسي.
- ٥- يحترمان ويعترفان بالدور الاساسي للتنمية والكرامة الانسانية في  
العلاقات الإقليمية والثنائية.

٦- ويعتقدان ايضا ان تحركات السكان القسرية ضمن نفوذهما بشكل قد يؤثر سلبا على الطرف الاخر ينبغي الا يسمح بها.

### المادة ٣ : الحدود الدولية

- ١- تحدد الحدود الدولية بين الاردن واسرائيل على اساس تعريف الحدود زمن الانتداب كما هو مبين في الملحق ١ (أ) والمواد الخرائطية المضافة اليه والاحداثيات المشار اليها فيه.
- ٢- تعتبر الحدود، كما هي محددة في الملحق ١ (أ)، الحدود الدولية الدائمة والامنة والمُعترف بها بين الاردن واسرائيل دون المساس بوضع اي اراضي وقعت تحت سيطرة الحكم العسكري الاسرائيلي عام ١٩٦٧.
- ٣- يعتبر الطرفان الحدود الدولية واقليم كل طرف بما فيها المياه الاقليمية والمجال الجوي حدودا لا يجوز اختراقها وسوف يحترمانها.
- ٤- سيتم ترسيم الحدود حسبما هو منصوص عليه في الذيل ١ من الملحق ١ وسيتم الانتهاء منه في فترة لا تزيد عن تسعة اشهر.
- ٥- من المتفق عليه انه حيثما تبعت الحدود مجرى نهر فانه اذا تغير مسيل مجرى النهر تغييرا طبيعيا كما هو موضح في الملحق ١ (أ) فان الحدود تتبع المجرى الجديد للمسيل. وانه في حالة حدوث اي تغييرات اخرى فان الحدود لن تتأثر الا اذا اتفق على خلاف ذلك.
- ٦- مباشرة عند تبادل وثائق التصديق على هذه المعاهدة سيعيد كل طرف الانتشار الى جهته من الحدود الدولية حسبما هو معرف في الملحق ١ (أ).
- ٧- عند التوقيع على هذه المعاهدة سيدخل الطرفان في مفاوضات للوصول الى اتفاقية خلال ٩ اشهر حول تحديد حدودهما البحرية في خليج العقبة.
- ٨- اخذين بعين الاعتبار الاوضاع الخاصة بمنطقة الباقورة/نهاريم والتي هي تحت السيادة الاردنية، وفيها حقوق امتلاك خاصة اسرائيلية. يقرر الطرفان تطبيق المواد المنصوص عليها في الملحق ١ (ب).

٩- فيما يتعلق بمنطقة الغمر/تسوفار تطبق المواد المنصوص عليها في الملحق ١ (ج).

#### المادة ٤: الامن

١- أ- اذ يتقبل الطرفان ان التفاهم المشترك والتعاون بينهما في المسائل المتعلقة بالامن سيكون جزءا مهما من علاقاتهما وسيؤدي ايضا الى تعزيز امن المنطقة، فانهما يأخذان على عاتقهما ان يؤسسا علاقتهما في مجال الامن على الثقة المتبادلة وتطوير المصالح المشتركة والتعاون وان يهدفا الى اقامة بنيان اقليمي من الشراكة في السلام.

ب- نحو ذلك الهدف يعترف الطرفان بمنجزات المجموعة الاوروبية والاتحاد الاوروبي في تطوير مؤتمر الامن والتعاون في اوروبا ويلتزمان باقامة مؤتمر الامن والتعاون في الشرق الاوسط. ويعني هذا الالتزام تبني اطر اقليمية بالشكل الذي تم تنفيذه بنجاح في فترة ما بعد الحرب العالمية (على نفس الخطوط التي سار عليها مؤتمر هلسنكي) بما يتوج بمنطقة امن واستقرار.

٢- لا تمس الالتزامات المنصوص عليها في هذه المادة بالحق الطبيعي في الدفاع عن النفس بموجب ميثاق الامم المتحدة.

٣- يتعهد الطرفان، بمقتضى هذه المادة بما يلي:

أ- الامتناع عن التهديد بالقوة، واستعمالها او استعمال الاسلحة التقليدية او غير التقليدية، او من اي نوع اخر، ضد بعضهما وعن الاعمال والانشطة الاخرى التي تضر بأمن الطرف الاخر.

ب- الامتناع عن تنظيم الاعمال والتهديدات العدائية او المعادية او ذات الطبيعة التخريبية او العنيفة وعن التحريض عليها والمساهمة او المشاركة فيها ضد الطرف الاخر.

ج- اتخاذ اجراءات ضرورية وفعالة للتأكد من ان الاعمال او التهديدات بالعداء او المعاداة او التخريب او العنف لا ترتكب من ارضيها او من خلال او فوق ارضيها (وحيثما وردت كلمة اراض بعد هذه الفقرة فانها تشمل المجال الجوي والمياه الإقليمية).

٤- بما يتماشى مع حقبة السلام ومع الجهود لبناء امن اقليمي وما يمنع ويحول دون العدوان والعنف، يتفق الطرفان ايضا على الامتناع عما يلي:

أ- الدخول في اي ائتلاف او تنظيم او حلف ذي صفة عسكرية او امنية مع طرف ثالث او مساعده باي طريقة من الطرق او الترويج له او التعاون معه اذا كانت اهدافه او نشاطاته تتضمن شن العدوان او اية اعمال اخرى من العدااء العسكري ضد الطرف الاخر بما يتناقض مع مواد هذه المعاهدة.

ب- السماح بدخول او اقامة او عمل قوى عسكرية او عسكريين او معدات تعود لطرف ثالث على ارضيها او من خلالها في احوال يمكن ان تخل بسلامة الطرف الاخر.

٥- يتخذ الطرفان اجراءات ضرورية وفعالة وسيتعاونان في مكافحة الازهاب بكل اشكاله. ويتعهد الطرفان:

أ- باتخاذ اجراءات ضرورية وفعالة لمنع اعمال الازهاب والتخريب والعنف من ان تشن من ارضيها او من خلال ارضيها واتخاذ اجراءات ضرورية وفعالة لمكافحة هذه النشاطات ومركبيها.

ب- دون المساس بالحريات الأساسية بالتعبير عن الرأي وبالتنظيم، اتخاذ اجراءات ضرورية وفعالة لمنع دخول ووجود وعمل اي منظمة او مجموعة او بنيتها الأساسية في ارضيها اذا كانت تهدد امن الطرف الاخر باستعمال وسائل العنف او التحريض على استعمال وسائله.

ج- التعاون بمنع ومكافحة النقل عبر الحدود.

٦- اي مسألة تتعلق بتنفيذ هذه المادة تتم معالجتها ضمن آلية للتشاور والتي ستضم آلية ارتباط، والتحقق، والإشراف، وحيثما كان ذلك ضرورياً، آليات أخرى ومشاورات على مستوى اعلى. وستضم اتفاقية، سيجري الانتهاء منها ضمن مدة ثلاثة اشهر من تبادل وثائق التصديق على هذه المعاهدة، التفاصيل المتعلقة بآلية المشاورات.

٧- العمل على اساس الاولوية وبالسرعة الممكنة، ضمن المجموعة المتعددة الاطراف لضبط التسليح والامن الاقليمي، وبشكل مشترك، على ما يلي:

أ- ايجاد منطقة خالية من التحالفات والائتلافات العدائية في الشرق الاوسط.

ب- ايجاد منطقة خالية من اسلحة الدمار الشامل سواء منها التقليدية او غير التقليدية، في الشرق الاوسط ضمن سلام شامل ودائم ومستقر يتصف بالامتناع عن استعمال القوة، والتوفيق والنوايا الحسنة.

#### المادة ٥: الدبلوماسية والعلاقات الثنائية الاخرى

١- يتفق الطرفان على اقامة علاقات دبلوماسية وقنصلية كاملة وتبادل السفراء المقيمين وذلك في خلال مدة شهر من تاريخ تبادل وثائق التصديق على هذه المعاهدة.

٢- يتفق الطرفان على ان العلاقة الطبيعية بينهما تشمل ايضا العلاقات الاقتصادية والثقافية.

#### المادة ٦: المياه

بهدف تحقيق تسوية شاملة ودائمة لكافة مشاكل المياه القائمة بين الطرفين:

١- يتفق الطرفان بشكل متبادل بالاعتراف بتخصيصات عادلة لكل منهما وذلك من مياه نهري الاردن واليرموك، ومن المياه الجوفية لوادي عربة،



وذلك بموجب المبادئ المقبولة والمتفق عليها، وحسب الكميات والنوعية المبيّنة في الملحق رقم (٢)، والتي سيصل الى احترامها والعمل بموجبها على الوجه الاتم.

٢- انطلاقا من اعتراف الطرفين بضرورة ايجاد حل عملي وعادل ومتفق عليه لمشاكلهما المائية وبالنظر الى كون موضوع الماء يمكن ان يشكل اساسا لتطویر التعاون بينهما، فان الطرفين يتعهدان، بالتعاون، بالعمل على ضمان عدم تسبب ادارة وتنمية الموارد المائية لاحدهما، باي شكل من الاشكال، بالاضرار بالموارد المائية للطرف الاخر.

٣- يعترف الطرفان بان مواردهما المائية غير كافية للايفاء باحتياجاتهما الامر الذي يتوجب من خلاله تجهيز كميات اضافية بغية استخدامها وذلك عبر وسائل وطرق مختلفة بما فيها مشاريع التعاون على الصعيدين الاقليمي والدولي.

٤- في ضوء احكام الفقرة (٣) اعلاه، وعلى اساس ان التعاون في المواضيع المتعلقة بالمياه سيكون لمنفعة الطرفين، الامر الذي من شأنه التخفيف من حدة ما يعانيانه من شح في المياه، وان قضايا المياه على امتداد الحدود بينهما لا بد ان تتم معالجتها بوصفها وحدة كاملة، بما في ذلك امكانية نقل كميات المياه عبر الحدود الاولية، فان الطرفين يتفقان على القيام بالبحث عن وسائل من شأنها التخفيف من حدة شح المياه، وعلى العمل في ضمن اطر المجالات التالية:

أ- تنمية الموارد المائية الموجودة منها والجديدة، والعمل على زيادة وفرة كميات المياه، بما في ذلك تحقيق التعاون على المستوى الاقليمي، كما هو ملائم، وجعل ما يهتر من الموارد المائية بالحد الاذني وذلك من خلال مراحل استخدامها.

ب- منع تلوث الموارد المائية.

ج- التعاون المتبادل في مجال التخفيف من حدة النقص في كميات المياه.

د- نقل المعلومات والقيام بنشاطات البحوث والتطوير المشتركة في المواضيع المتعلقة بالمياه، فضلا عن استعراض امكانيات تعزيز عملية تنمية الموارد المائية واستخدامها.

٥- يضم الملحق رقم (٢) كافة التفاصيل المتعلقة بتنفيذ التزامات كلا الدولتين بموجب احكام هذه المادة.

#### المادة ٧ : العلاقات الاقتصادية

١- انطلاقا من النظر الى التنمية الاقتصادية والرفاهية باعتبارهما دعائمتين للسلام والامن والعلاقات المنسجمة فيما بين الدول والشعوب والافراد من بني البشر، فان الطرفين، في ضوء اوجه التفاهم التي تم التوصل اليها، يؤكدان على رغبتيهما المتبادلتين في تعزيز التعاون الاقتصادي لا بينهما وحسب بل وفي ضمن الاطار الاوسع للتعاون الاقتصادي الاقليمي.

٢- لتحقيق هذا الهدف يتفق الطرفان على ما يلي:

١- ازالة كافة اوجه التمييز التي تعتبر حواجزا ضد تحقيق علاقات اقتصادية طبيعية طبيعية، وانهاء المقاطعات الاقتصادية الموجهة ضد الطرف الاخر والتعاون في مجال انهاء المقاطعات الاقتصادية المقامة ضد احدهما الاخر من قبل اطراف ثالثة.

ب- اعترافا من الطرفين بان العلاقات بينهما ينبغي لها ان تسير بهدي مبادئ الانسياب الحر الذي لا يعترض شئ سبيله، يدخل الطرفان في مفاوضات بهدف التوصل الى عقد اتفاقيات تتعلق بالتعاون الاقتصادي، بما في ذلك التجارة واقامة منطقة او مناطق تجارة حرة، والاستثمار، والعمل المصرفي، والتعاون الصناعي والعمالة وذلك لاغراض ترويج علاقات اقتصادية مفيدة تقوم على مبادئ يتم الاتفاق حولها، كما تقوم على اعتبارات اقليمية خاصة بالتنمية البشرية. وسيتم اختتام هذه المفاوضات في موعد لا يتجاوز فترة ستة اشهر من تاريخ تبادل وثائق التصديق على هذه المعاهدة.

ج- التعاون ثنائيًا، وفي المحافل المتعددة الاطراف كذلك، باتجاه تعزيز اقتصادياتهما وكذلك تعزيز علاقات الجوار الاقتصادية مع اطراف اقليمية اخرى.

#### المادة ٨: اللاجئون والنازحون

١- اعترافا بالمشاكل الانسانية الكبيرة التي تسببها النزاع في الشرق الاوسط بالنسبة للطرفين، وبما لهما من اسهام في التخفيف من شدة المعاناة الانسانية، فانهما سيسعيان الى تحقيق مزيد من التخفيف من حدة المشاكل الناجمة على صعيد ثنائي.

٢- اعترافا من الطرفين بأن المشاكل البشرية المشار اليها اعلاه، التي تسببها النزاع في الشرق الاوسط، لا يمكن تسويتها بشكل كامل على الصعيد الثنائي، يسعى الطرفان الى تسويتها في المحافل والمنابر المناسبة، وبمقتضى احكام القانون الدولي بما في ذلك ما يلي:

أ- فيما يتعلق بالنازحين، ضمن لجنة رباعية بالاشتراك مع مصر والفلسطينيين.

ب- فيما يتعلق باللاجئين:

(١) ضمن اطار المجموعة المتعددة الاطراف حول اللاجئين.

(٢) في مفاوضات تتم في اطار ثنائي او غير ذلك ضمن اطار يتفق عليه وتكون مقترنة ومتزامنة مع المفاوضات الخاصة بالوضع الدائم للمناطق المشار اليها في المادة ٣ من هذه المعاهدة.

ج- من خلال تطبيق برامج الامم المتحدة المتفق عليها وغيرها من البرامج الاقتصادية الدولية المتعلقة باللاجئين والنازحين، بما في ذلك المساعدة على توطينهم.

## المادة ٩: الاماكن ذات الالهية التاريخية والدينية وحوار الاديان

- ١- سيمنح كل طرف للطرف الاخر حرية الوصول للاماكن ذات الالهية الدينية والتاريخية.
- ٢- وبهذا الخصوص، وبما يتماشى مع اعلان واشنطن، تحترم اسرائيل الدور الحالي الخاص للمملكة الاردنية الهاشمية في الاماكن الاسلامية المقدسة في القدس، وعند انعقاد مفاوضات الوضع النهائي ستعطي اسرائيل اولوية كبرى للدور الاردني التاريخي في هذه الاماكن.
- ٣- سيقوم الطرفان بالعمل سويا لتعزيز حوار الاديان بين الاديان التوحيدية الثلاث، بهدف العمل باتجاه تفاهم ديني، والتزام اخلاقي، وحرية العبادة والتسامح والسلام.

## المادة ١٠: اوجه التبادل الثقافي والعلمي

انطلاقا من رغبة الطرفين في ازالة كافة حالات التمييز التي تراكمت عبر فترات الصراع، فانهما يعترفان بمرغوبية التبادل الثقافي والعلمي في كافة الحقول، ويتفقان على اقامة علاقات ثقافية طبيعية بينهما. وعليه فانهما سيقومان، باسرع وقت ممكن، على ان لا يتجاوز ذلك فترة تسعة اشهر من تاريخ تبادل وثائق التصديق على هذه المعاهدة، باختتام المفاوضات حول الاتفاقيات الثقافية والعلمية.

## المادة ١١: التفاهم المتبادل وعلاقات حسن الجوار

- ١- يسعى الطرفان الى تعزيز التفاهم المتبادل، والتسامح القائم على ما لديهما من القيم التاريخية المشتركة، وبموجب ذلك فانهما يتعهدان بما يلي:
  - أ- الامتناع عن القيام ببيث الدعايات المعادية، القائمة على التعصب والتمييز، واتخاذ كافة الاجراءات القانونية والادارية الممكنة التي من شأنها منع انتشار مثل هذه الدعايات وذلك من قبل اي تنظيم او فرد موجود في المناطق التابعة لاي منهما.

- ب- القيام بأسرع وقت ممكن، وبفترة لا تتجاوز ثلاثة أشهر من تاريخ تبادل وثائق التصديق على هذه المعاهدة، بالغاء كافة الاشارات المضادة والتمييزية والتعبيرات العدائية في شروعاتها.
- ج- ان يتمتع من مثل هذه الاشارات او التعبيرات في كافة المطبوعات الحكومية.
- د- التأكيد على تمتع مواطني كل طرف بالمعاملة القانونية الاصولية في الانظمة القانونية للطرف الاخر وامام محاكم ذلك الطرف.
- ٢- تطبيق الفقرة ١ (أ) من هذه المادة بما لا يتعارض مع الحق في حرية التعبير والمنصوص عليها في العهد الدولي للحقوق المدنية والسياسية.
- ٣- تشكل لجنة مشتركة للنظر في الحالات التي يدعي فيها طرف انه قد حدث خرق لهذه المادة.

#### المادة ١٢: محاربة الجريمة والمخدرات

سيتعاون الطرفان في محاربة الجريمة وبخاصة التهريب، وستتخذان كافة الاجراءات الضرورية لمحاربة ومنع نشاطات المخدرات المحظورة والاتجار بها، وسيقومان بتقديم مرتكبي مثل هذه النشاطات الى المحاكمة، وفي هذا الخصوص سيأخذان بعين الاعتبار مجالات التفاهم التي توصل اليها، حسب الملحق (٣) من هذه الاتفاقية. كما يلتزم الطرفان باتمام الاتفاقات المرتبطة بهذا المجال في فترة لا تزيد عن ٩ اشهر من تاريخ تبادل وثائق تصديق هذه المعاهدة.

#### المادة ١٣: النقل والطرق

ياخذ الطرفان بعين الاعتبار التقدم المحرز في مجال النقل، ولهذا يعترف الطرفان بالاهتمام المتبادل باقامة علاقات جوار حسنة في مجال النقل. ولتعزيز العلاقات في هذا المجال يتفق الطرفان على ما يلي:

١- سيسمح كل طرف لمواطني الطرف الاخر ووسائل نقلهم حرية الحركة في ارضيه، وفقا للقواعد المطبقة العامة المطبقة على مواطني الدول الاخرى ووسائل نقلهم. ولن يفرض اي طرف ضرائب او قيود تمييزية على حرية الحركة على الاشخاص ووسائل النقل من ارضيه الى ارضي الطرف الاخر.

٢- سيقوم الطرفان بفتح واقامة طرق ونقاط عبور بين بلديهما، وسيأخذان بالاعتبار اقامة اتصالات برية واتصالات بالسكك الحديدية بينهما.

٣- سيستمر الطرفان بالتفاوض بشأن اتفاقيات النقل المتبادل في المجالات السابقة وغيرها، مثل المشاريع المشتركة، والامان على الطرق (المروري)، ومعايير النقل، وترخيص المركبات، وممرات برية، وشحن البضائع، الحمولات، والقضايا المتعلقة بالارصاد الجوية، على ان تتم هذه الاتفاقيات خلال ٦ اشهر من تاريخ تبادل الطرفين وثائق التصديق على هذه المعاهدة.

٤- يتفق الطرفان على الاستمرار في التفاوض لاقامة طريق سريع يربط الاردن ومصر واسرائيل بالقرب من ايلات وصيانتته.

#### المادة ١٤ : حرية الملاحة والوصول الى الموانئ

١- بما لا يتعارض مع الفقرة ٣، يعترف كل طرف بحق سفن الطرف الاخر بالمرور البري في مياهه الاقليمية وفقا لقواعد القانون الدولي.

٢- سيمنح كل طرف لسفن الطرف الاخر وحمولاتها منفذا عاديا الى موانئه، وكذلك للسفن والبضائع المتجهة الى الطرف الاخر او التي تأتي منه. وسيمنح هذا المنفذ وفقا لنفس الشروط المطبقة عادة على سفن وبضائع الدول الاخرى.

٣- يعتبر الطرفان مضيق تيران وخليج العقبة ممرات مائية دولية مفتوحة لكل الامم للملاحة فيها والطيران فوقها بدون اعاقه او توقف. وسيحترم كل طرف حق الطرف الاخر بالملاحة والمرور الجوي للوصول الى اقليم اي من الطرفين من خلال مضيق تيران وخليج العقبة.

### المادة ١٥: الطيران المدني

- ١- يعترف الطرفان بتطبيق الحقوق والامتيازات والالتزامات المنصوص عليها في الاتفاقيات المتعددة الاطراف والتي يكونا طرفين فيها، فيما بينهما، وخاصة اتفاقية الطيران المدني الدولي لعام ١٩٤٤ (اتفاقية شيكاغو) واتفاقية خدمات المرور الجوي الدولي (الترانزيت) لعام ١٩٤٤.
- ٢- في حال اعلان حالة الطوارئ الوطنية في اي طرف وفقا للمادة ٨٩ من اتفاقية شيكاغو فلن يطبق هذا الاعلان على الطرف الاخر على اساس تمييزي.
- ٣- يأخذ الطرفان بعين الاعتبار المفاوضات فيما بينهما حول افتتاح ممر جوي بينهما وفقا لاعلان واشنطن. بالاضافة لذلك، وبعد تصديق هذه المعاهدة، سيدخل الطرفان في مفاوضات تهدف الى الوصول الى اتفاقية طيران مدني بينهما وسيجري اتمام هذه المفاوضات خلال فترة لا تزيد عن ٦ اشهر من تاريخ تبادل وثائق تصديق هذه المعاهدة.

### المادة ١٦: البريد والاتصالات

يأخذ الطرفان بعين الاعتبار افتتاح خطوط الهاتف والفاكسيميلي المباشرة فيما بينهما بموجب اعلان واشنطن. اما فيما يتعلق بالربط البريدي، والذي اختتمت جولة المفاوضات حوله فسيجري تشغيله عند توقيع هذه المعاهدة. كما يتفق الطرفان على انشاء اتصالات لاسلكية وسلكية عادية وعلى انشاء خدمات الربط التلفزيوني بالاسلاك والراديو والاطباق اللاقطة (ساتلايت) وفقا للمعاهدات والانظمة الدولية في هذا المجال، وسيجري اتمام المفاوضات حول هذه المواضيع في فترة لا تزيد عن ٩ اشهر من تاريخ تبادل وثائق التصديق على هذه المعاهدة.

### المادة ١٧: السياحة

يؤكد الطرفان رغبتهما المتبادلة لتعزيز التعاون فيما بينهما في حقل السياحة. ولتحقيق مثل هذا الهدف واذ يأخذ الطرفان بعين الاعتبار التفاهم المشترك الذي

توصلا اليه فيما يتعلق بالسياحة - يتفق الطرفان على التفاوض، باسرع وقت ممكن، والرصول الى اتفاق في فترة لا تزيد عن ٣ اشهر من تاريخ تبادل وثائق تصديق هذه المعاهدة، وذلك بهدف تسهيل وتشجيع السياحة المتبادلة والسياحة من الدول الاخرى.

#### المادة ١٨ : البيئة

يتعاون الطرفان في المواضيع المرتبطة بالبيئة، لما يوليه الطرفان لهذا الموضوع من اهمية كبرى، وفي مواضيع منها المحافظة على الطبيعة، ومحاربة التلوث، وذلك حسب ما هو موجود في الملحق رقم ٤. وسيدخل الطرفان في مفاوضات ليتوصلا الى اتفاق بهذا الشأن في فترة لا تزيد عن ٦ اشهر من تاريخ تبادل وثائق التصديق على هذه المعاهدة.

#### المادة ١٩ : الطاقة

١- سيتعاون الطرفان في تنمية موارد الطاقة بما في ذلك تنمية المشاريع ذات العلاقة بالطاقة كاستغلال الطاقة الشمسية.

٢- نظرا لكون الطرفين قد اتفقا التفاوض حول الربط المشترك للشبكات الكهربائية في منطقة العقبة - ايلات، لذا فسيقومان بتنفيذ هذا الربط عند توقيع هذه المعاهدة. ويعتبر الطرفان هذه الخطوة جزءا من مفهوم ثنائي واقليمي. اوسع. ويتفق الطرفان على الاستمرار في التفاوض بينهما باسرع وقت ممكن لتوسيع مجال الربط المشترك للشبكات الكهربائية.

٣- سيتوصل الطرفان الى اتفاقيات ذات علاقة في مجال الطاقة خلال ٦ اشهر من تاريخ تبادل وثائق تصديق هذه المعاهدة.

#### المادة ٢٠ : تنمية اخدود وادي الاردن

يولي الطرفان اهمية كبرى للتنمية المتكاملة لمنطقة اخدود وادي الاردن، ويشمل ذلك مشاريع مشتركة في المجالات الاقتصادية والبيئية، والمشاريع المرتبطة



بالمطابقة والسياحة اخذين بعين الاعتبار الاطار المرجعي الذي تم التوصل اليه في اطار اللجنة الاقتصادية الثلاثية الاردنية - الاسرائيلية - الامريكية بهدف الوصول الى خطة رئيسة لتنمية ا الحدود وادي الاردن. لذلك سسينل الطرفان قصارى جهدهما لاتمام التخطيط والسير في التطبيق.

#### المادة ٢١ : الصحة

سيتعاون الطرفان في مجالات الصحة، وسيقومان بالتفاوض بهدف التوصل الى اتفاق خلال فترة لا تزيد عن ٩ اشهر من تاريخ تبادل وثائق التصديق على هذه المعاهدة.

#### المادة ٢٢ : الزراعة

سيتعاون الطرفان في مجال الزراعة، بما في ذلك الخدمات البيطرية، وحماية النباتات، والتقنية الحيوية، والتسويق، وسيقومان بالتفاوض بهدف التوصل الى اتفاق في غضون ٦ اشهر من تاريخ تبادل وثائق التصديق على هذه المعاهدة.

#### المادة ٢٣ : العقبة و ايلات

يتفق الطرفان على الدخول في مفاوضات في اقرب وقت ممكن، وفي مدة لا تتجاوز شهرا واحدا من تاريخ تبادل وثائق التصديق على هذه المعاهدة، على الترتيبات التي ستمكنهما من التنمية المشتركة لمدينتي العقبة و ايلات في مجالات من ضمنها تنمية السياحة المشتركة، والرسوم الجمركية المشتركة، ومنطقة تجارة حرة، والتعاون في الطيران، ومحاربة التلوث، والامور البحرية، والشرطة، والرسوم الجمركية، والتعاون الصحي، وسيتوصل الطرفان الى اتفاق في فترة لا تزيد عن ٩ اشهر من تاريخ تبادل وثائق التصديق على هذه المعاهدة.

## المادة ٢٤: المطالبات

يتفق الطرفان على اقامة لجنة المطالبات لحل كافة المطالبات المالية على اساس متبادل.

## المادة ٢٥: الحقوق والواجبات

- ١- لا تؤثر هذه المعاهدة ويجب ان لا تفسر على انها تؤثر باي شكل من الاشكال على حقوق وواجبات الطرفين بموجب ميثاق الامم المتحدة.
- ٢- يتعهد الطرفان بتنفيذ التزاماتهما بموجب هذه الاتفاقية بحسن نية ودون الالتفات الى الافعال او الامتناع عن الافعال من قبل اي طرف اخر وبشكل مستقل عن اي وثيقة لا تتماشى مع هذه المعاهدة. ولاغراض هذه الفقرة يبين كل طرف للاخر انه حسب رأيه وتفسيره لا يوجد اي تعارض بين التزاماتهما التعاقدية القائمة وبين هذه المعاهدة.
- ٣- يتعهد الطرفان ايضا باتخاذ كافة الاجراءات اللازمة لتطبيق مواد المعاهدات المتعددة الاطراف التي هما طرفان فيها على علاقاتهما بما في ذلك تقديم اشعارات مناسبة للامين العام للامم المتحدة وغيره ممن يمارسون مهام الودعاء على المعاهدات الدولية.
- ٤- سيتخذ الطرفان كل الاجراءات اللازمة لازالة الاشارات التحقيرية التي تتعلق بالطرف الاخر في المعاهدات المتعددة الاطراف التي هما طرفان فيها الى الحد الذي توجد فيه اشارات كهذه.
- ٥- يتعهد الطرفان بعدم الدخول في اية التزامات تتعارض مع هذه المعاهدة.
- ٦- مع مراعاة المادة ١٠٣ من ميثاق الامم المتحدة، في حالة تعارض بين التزامات الطرفين بموجب هذه المعاهدة وأي من التزاماتهما الاخرى، فان الالتزامات بموجب هذه المعاهدة ستكون ملزمة وستنفذ.

#### المادة ٢٦: التشريعات

يتعهد الطرفان خلال ثلاثة اشهر من تبادل وثائق التصديق على هذه المعاهدة بتبني التشريعات الضرورية لتنفيذ هذه المعاهدة ولانتهاء اي التزامات دولية والغاء اي تشريعات تتناقض مع هذه المعاهدة.

#### المادة ٢٧: التصديق

- ١- يتم التصديق على هذه المعاهدة من قبل الطرفين كل حسب اجراءاته الوطنية، وتدخل حيز التنفيذ بتبادل وثائق التصديق.
- ٢- تعتبر الملاحق، والذبول، والمرفقات الاخرى بهذه المعاهدة جزءا لا يتجزأ منها.

#### المادة ٢٨: الاجراءات المؤقتة

سيطبق الطرفان اجراءات مؤقتة في بعض المجالات والتي سيتفق عليها لحين عقد الاتفاقيات ذات العلاقة المنصوص عليها في هذه المعاهدة وذلك حسب الملحق ٥.

#### المادة ٢٩: حل النزاعات

- ١- تحل المنازعات الناتجة عن تطبيق هذه المعاهدة او تفسيرها بالتفاوض.
- ٢- اية منازعات لا يمكن حلها بواسطة التفاوض ستحل بالتوفيق او تحال الى التحكيم.

المادة ٣٠ : التسجيل

ترسل هذه المعاهدة الى الامين العام للأمم المتحدة لتسجيلها بمقتضى المادة ١٠٢ من ميثاق الأمم المتحدة.

وقعت في معبر وادي عربة/هاعرفا هذا اليوم الواحد والعشرين من شهر جمادى الاولى من عام الف واربعمائة وخمسة عشر هجرية، الواحد والعشرين من شهر حشوان من عام خمسة الاف وسبعمائة وخمس وخمسين عبرية، الذي يوافق يوم السادس والعشرين من شهر تشرين الاول من عام الف وتسعمائة واربع وتسعين ميلادية.

النصوص العربية والانجليزية والعبرية متساوية الحجية و اذا ظهر هناك اختلاف بين النصوص في التفسير يؤخذ بالنص الانجليزي.

عن حكومة دولة اسرائيل

عن المملكة الاردنية الهاشمية



الدكتور عبد السلام المجالي

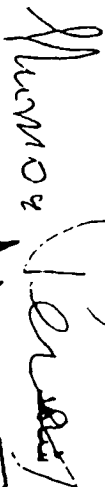
رئيس الوزراء



اسحاق رابين

رئيس الوزراء

Y. Rabin



William J. Clinton

وليام ج. كلينتون

رئيس الولايات المتحدة الامريكية

