

Reviews

Vijay K. Bhatia, Christopher N. CANDLIN and Paola Evangelisti ALLORI (eds),
**LANGUAGE, CULTURE AND THE LAW. THE FORMULATION OF
LEGAL CONCEPTS ACROSS SYSTEMS AND CULTURES.**

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The book consists of three parts in which the authors focus on (i) International Arbitration and Trade Law, (ii) European Legal and Institutional Language and (iii) Translating Legal Discourse. Many papers of the volume are inspired by the project *generic Integrity in Legislative Discourse in Multilingual and Multicultural Context* (No. 9040474) and by the project *Interculturality in Domain-specific English* (No. 2002/104353), which involved mostly Italian research units. The main issue of the above projects was the adjustment of English language and legal culture to legal concepts, which differ from Common Law concept. The general aim of the volume is to present “a wide range of issues within different international legal and juridical contexts”, which are caused by various approaches applied in legal discourse researches.

The first part of the volume is devoted to the influence of culture on the legal discourse existing in international arbitration and trade. The fourth paper of this section is Maurizio Gotti’s text *The Formulation of Legal Concepts in Arbitration Normative Texts in a Multilingual, Multicultural Context*. According to the author the main trend, which affects international trade law is globalisation, which should be conducive to greater harmonisation in legislation and procedures. Gotti also emphasises that despite many efforts, even the EU legislative framework, does not serve the purpose of ensuring uniform legislation drafting at a supranational level. International law needs a common linguistics instrument to express universal trade legal rules. This instrument is primarily the English language but as the author emphasises many technical terms are culture-specific and English legal terms are not appropriate in the drafting of normative acts in many legal systems. Discrepancies seen in various normative texts originating from different countries and their legal systems are very often caused by non -native users of English even though this language is considered the modern *lingua franca* and many international legal documents are drafted in English, i.e. contracts. These statements are illustrated by some investigations conducted by Fletcher, Slamasi and Seymour (cf. 2002).

General introductory remarks precede Gotti's analysis, the intention of which is to investigate the ways in which statutes and regulations are formulated in various environments: cultural, linguistic and legal to express parallel legal concepts. The author gives examples, which are drawn from international arbitration legislation and are particularly articles 806-840 of the Code of Civil Procedure in comparison to the Model Law on International Commercial Arbitration (ML) and the UNCITRAL Arbitration Rules (UAR), which were issued by the United Nations. The analysis is performed on the basis of three criteria: (i) drafting conventions, including textual schematisation and clarity of expression, (ii) linguistic constraints and (iii) socio-cultural constraints. From every point of view the key differences between English language texts based on the Common Law system and Italian language text based on the Civil Law system are clearly underlined. The author examined various linguistic levels of analysed texts i.e. intratextual and intertextual relations, text mapping or even word level; moreover he exposed the research material in the scope of socio-cultural and socio-economic environments. This multiform method of investigation enabled indication of patterns of local legal discourse on arbitration, which as is evident from the analysis may differ mutually in the extreme. Thus the model of analysis proposed by Gotti should be relevant to further investigation of arbitration legislation at international level i.e. to analyse various linguistic and legal methods applied with the intention to adapt and to adjust international arbitration regulations. Consequently this type of investigation may provide sets of certain confrontational linguistic and legal data, which should be considered when harmonising international the legal field both for linguist and for lawyers. Furthermore the model of analysis proposed by Gotti may be considered an algorithm useful for wider analysis of texts concerning arbitration legislation in the comparative aspect. The material proposed by Gotti's research seems to be very productive, as adoptions of UNCITRAL model English language texts often must be translated into local languages. The translation process is not only adaptation of the original text into the local language but it is also adjustment to the cultural needs and legal constraints. Gotti shows that international commercial arbitration is an excellent material for his analysis as the need for harmonisation is especially apparent in the mediating procedure. This opinion is extremely noteworthy as one of the main issues concerning legal translation is to "produce a text that shall lead to the same legal effects in practice" (Šarčević 1997, 71). Gotti adopted this opinion through an inversion, starting from the same "legal effect". Thus the results of his confrontational analysis on the language are verifiable and may be adopted by legal translators.

Guliana Garzone's paper *International Commercial Arbitration Rules as Translated/Re-written texts: An Intercultural Perspective* continues discussion of the issue of arbitration legislation. As Gotti similarly Garzone presumes that arbitration rules are equally authentic regardless of different language version. This presumption makes the analysis of different versions of various arbitration rules very interesting especially when they are seen as translated texts. That is why the author of the paper analyses English versions of arbitration rules, which are issued in non-English speaking countries and these texts are analysed as translated/rewritten texts. In particular the analysed texts are English translations of Italian and French source texts. Garzone's study concentrates on a representative sample of arbitration rules, which were translated from French or Italian into English. They are accompanied by a corpus of source texts

and by a corpus of comparable English texts concluding arbitration rules issued by arbitral institutions in English-speaking countries. The study is additionally intended to verify if it is possible to identify linguistic and discursive features that are hypothesised by scholars to be common for the analysed texts. Then Garzone describes particularly the analysed corpus giving details about Italian, French and English texts.

The second part of this paper includes a contrastive analysis of so-called universal of translations adapted to arbitration rules translation. Garzone executed her contrastive analysis made on the basis of seven points of view. The analysis is confirmed by the data drawn from statistical analysis of the corpora. The most analyses are performed at the level of words, syntagmas and clauses. The results of the analysis of micro-structural analysis of the texts highlight that every change, even the smallest one, which is performed by the translator, as is needed by the character of the target language, has a crucial significance and needs critical consideration. If it is neglected, a change of meaning may arise in a translation when compared with the source text. The analytical research of Garzone presents some inconsistencies of translated/re-written texts and thus confirms the need of further investigations of this type and also supports the universal applicability of general criteria and approaches in legal translation.

In the line of linguistic investigations of arbitration rules Paola Evangelisti Allori presents the paper *The Linguistic Formulation of Power: Modality and Power Relations in two sets of Sports-related Arbitration Rules*. In particular the paper concentrates on the methods by which the attribution of power is distributed among the participants of the arbitration procedures related to sport. The author presumes that provisions of arbitration codes differ from other provisions i.e. making provisions in statutes. Allori underlines the difference existing between arbitration legal discourse and other legal discourses thus she gives some definitions of arbitration, which indicate “amicable” settings of arbitration procedure when compared to traditional court proceedings. This statement is important as different discourse environments affect different generic patterns of the text existing in arbitration procedures.

As the main scope of the paper is to examine modality and power in arbitration legal discourse, the author investigates the circumstances where modal verbs are used. On the base of Trosborg’s investigations (1997) Allori gives statistic data concerning some modals used to express Prohibition and Permission, which she found in analysed texts. Then the author began analysing directives in arbitration regulations on the material drawn from UNCITRAL and ALPRC. Statistical data given as above presented more linguistically preferable means to express Permission, Obligation and Prohibition. The final discussion about results of the performed analysis concerns modal forms in ICAS and CCAS and the author of the paper presents various quantitative results, which confirm a general tendency to use a certain modal form in English and Italian sport-related arbitration codes. The thorough analysis of various modal forms confirms Trosborg’s (2008) findings concerning the exclusive character of arbitration discourse among other legal discourses, as there is a lesser proportion of prohibition counteracted by more obligations and permission/attribution of rights in arbitration regulations. Furthermore Allori’s investigation leads to revision of Trosborg’s categorisation of acts. This conclusion confirms the continuous need of revision of theoretical backgrounds for legal linguistics because the constantly changing legal discourse includes evermore new genres.

Sport-related arbitration is the main issue of another paper written by Michela Menghini titled *Italian-English Correspondences in the Juridical Discourse of Sports Arbitration: An electronic glossary*. In the context of arbitration rules investigation Menghini provide another model of arbitration legal discourse analysis. The aim of the study is to investigate correspondences between Italian and English arbitration statutory text, as the author of the paper adopted Bhatia's model to perform the study (1993). In particular Menghini examines nominal text units such as complex prepositional phrases, bi-nominal and multi-nominal expressions and nominalisations. The author of the paper using Word-Smith Tools intends to create a comparative glossary in electronic version, which may present correspondence or lack of correspondence between two codes at the level of chosen nominal text units.

The analysis is conducted on the basis of pivotal constructions and placing the constructions in their co-text and context that seems similar to the text mapping process (Engebretsen 2001). Then Menghini thoroughly describes the method with which the electronic tool was used. As a final product of the analysis one may obtain not only an electronic glossary of arbitration expressions but they also are accompanied with their placement in co-text and in the context. The information obtained in the method used by Menghini is more useful for translators and lawyers when compared to traditional glossaries or dictionaries because it provides a wider field where a certain expression is used in the text. Thus the specific textual situation helps to better understand the meaning and the function of the specific expression and moreover it increases the possibility of giving a proper and equivalent expression in the target text – translation.

The last two papers of the first part of the book concern trade law. In particular Tarja Salmi-Tolonen's paper *Negotiated Meaning and International Commercial Law*. The author examines issues of language in the scope of contracting and in particular business-to-business contracting as well as in contract law. Salmi-Tolonen believes that crucial difficulties in international contracting are caused by non-conformity, avoidance and impossibility of performance. The basic presumption for the study are meanings that are thus negotiated, the author shares the general research object, which is the common concept expressed in various languages and cultural-bound terms.

Salmi-Tolonen believes that legal terms constitute the pattern, which differentiates legal language from general language. Thus she investigates legal terms connected with commercial law and provides some statistical data. Then she explains the complex character of contracting as may be seen as result of common work of the many participants who take part in contracting. The most significant part of the paper is paragraph 5 where the author clearly specifies what are legal knowledge, linguistic knowledge and the relations between them. The relations indicated, which are drawn from the study should be considered in the education of legal linguists, translators and of lawyers.

Martin Solly's paper *Uberrimae fidei: Language Choice and Cultural Undertones in the Insurance of International Trade* is devoted to the law and language of insurance. The author focuses on the role of language in the culture-bond concept and the main research material is the United Kingdom Marine Insurance Act of 1906. The principle term for the investigation is *uberrimae fidei* (utmost good faith) and the legal concept of "non-disclosure" with the "implied warranty of seaworthiness". Solly

examines the method in which these legal concepts were treated in the statutory legislation of many English-speaking countries where common law jurisdiction exists.

Solly's analysis examines language choices found in various marine insurance acts. The specific terms are additionally defined and explained and they are accompanied by examples drawn from various historical versions of the analysed texts. The investigations led the author to the statement that MIA 1906 still plays a dominant role in English-speaking countries and in international trade. In this context MIA 1906 may be seen as testament for drafting laws. Useful concepts of marine insurance law not only have survived for more than one hundred years but they were successfully adapted to the changing language of statutory texts that is seen in MIA 1993.

The second part of the book is devoted to the function of language and its role in the construction of Europe, which is a new political and legal entity. The first chapter of Gigliola Sacerdotti Mariani with the title *Linguistic "Checks and balances: in the Draft UE Constitution"* includes the analysis of three versions of UE Constitutions: English, French and Italian, where the English one seems to be more controlled and thoughtful in contrast to the French and Italian, which seem to be more passionate. 24 language versions of the UE Constitution are a source of vocabulary for "Eurospeak". Thus the author examines some keywords and finds that translation of even common words can be poor, inaccurate, imprecise or even deceptive. Mariani then highlights the role of the constitution from the historical and political points of view. One of the main principles of EU drafting is transparency but as the author of the paper shows the need of understanding the UE constitution is not always fulfilled.

The main analysis of checks and balances is performed on the term "competence" and on selected adjectives and adverbs, which are called eulogistic terms. Final remarks are accompanied by the analysis of the concordance of following terms: "necessary" and "appropriate", which leads to surprising results. The paper, even if it includes a very small sample of comparative analysis of terms of the EU Constitution, clearly points out translational imprecision and questionable language choices. It is an evident fact should motivate the EU institutions to emphasise more attention to proper translation of EU legal texts.

Maria Dossena's paper "*The times they're a-changing*": *The abolition of Feudal Tenure (Scotland) Act 2000 and Linguistic Strategies of Popularization* is devoted to various linguistic strategies used to make the source text more accessible to ordinary citizens. In particular she presents methods of rendering the text generally understandable and argumentation used for encoding the statutory text.

The main issues on which Dossena has concentrated are the features of text organisation and presentation and encoding distance and proximity. All issues are illustrated by well-explained linguistic strategies, which provide parallel linguistic choices, more intelligible for lay recipients. The study presents a valuable method of explanation and evaluation of legal text for the benefit of its readers, which seems to be consistent with the general idea of "easification" of legal language seen in the plain legal language movement.

Negotiations are an appropriate field to demonstrate how parallel concepts may be expressed in various languages, cultures and legal systems. This statement seems to be the starting point not only for Salmi-Tolonen but also for Giudita Caliendo and Marco Venuti who devoted their paper *EU Discourse on Enlargement: The negotiation of meaning* to the active role played by language in negotiation of meaning. The authors

examined the diplomatic process in European enlargement and in particular they concentrated on the position of Turkey and its relations with the EU. Caliendo and Vanuti provide historical information on the EU enlargement and the EU strategy for Turkey in contrast to other strategies for new EU members.

The material for analysis is two types of EU documents. As both documents differ crucially between themselves two varying methodologies were adopted to analyse them. Thus textual analysis of the Annual Report is based on diluting modifiers, contrast/concessive adverbials and modals and meanwhile textual analysis of European Council Conclusions concludes with the following components: “not saying” and conditionality. Two documents are evidence of two distinctly different roles of the Commission and European Council as they used different language choices to express parallel concepts. It is worth emphasising after Caliendo and Venuti that diplomacy is never overlooked in the wording of both documents.

The paper *How EU Secondary legislation Encodes Humanitarian Aid Policies* by Christina Pennarola is intended to explore linguistic features of EU legislation on humanitarian aid and to investigate the nation-bound character of the Community. The tool, which is used in the study, is Critical Discourse Analysis and the object of the analysis is EU secondary legislation.

In the analysis Pennarola concentrates on keywords, which are included in three main semantic fields: assistance, violence and policy, which are related to humanitarian aid. During her investigation Pennarola notices the coexistence of conflicted keywords, which she calls negative. The next step of analysis is investigation of modal values illustrated with statistic data. The analysis leads to an interesting conclusion as Pennarola writes that impersonal deontic forms together with keywords characterise the legal documents related to humanitarian aid as “personal” or subject-oriented. Analysis of word connections in EU legislation and a sample analysis of the two humanitarian sub-corpora leads to the conclusion that the language of EU legislation dealing with humanitarian aid is an instrument to express “controversial concepts of European apartheid and neo-colonialism within EU”. Thus the EU legislative language confirms political and economic asymmetry as well as geographical and cultural distance.

Marchilla Violini’s paper *Phrasemes in EU Framework Decisions* investigates phrasemes of EU Framework Decisions in the period from the 1st July 1999 to the 31st December 2002 in the scope of contrastive semantic and lexicographic analysis. The objects of the investigations are English and Italian language corpora.

First Violini defines and classifies the phrasemes. Then the phrasemes existing in EU Framework decision are identified and analysed. In the subsequent phase the author analyses use and abuse of English phrasemes in Italian texts. The contrastive analysis is illustrated with clear, tabular comparison of selected phrase existing in source and target text. Violini points out that generally the formation of new phrasemes is quite welcome but in some cases the abuse of the same expression may result in loss in the translation leading to a flattened style of the text. Violini’s paper underlines how important is the identification and interpretation of phrasemes in a legal context. On the other hand it is stated that phrasemes may be both valuable footholds for lexicographers and might also cause loss in translation when they are abused.

The paper *Implementing Council Directive 1993/13/EEU on Unfair Terms in Consumer Contracts in Great Britain: A case for intra-linguistic Translation?* by Paola Contenaccio concentrates on the debate surrounding the implementation of the title directive. Contenaccio reflects on language and harmonisation of law in the European Union and she emphasises the gap between language variety used at European level and the language used locally. The coexistence of these two “sub-codes” may be a problem when a legal instrument conceived at supra-international level and re-drafted in a national language version is being implemented in national legislation.

From this point of view implementation of the Council Directive as mentioned in the title of the paper is seen as a state between compliance and resistance. Contenaccio analyses some issues connected with this process and in particular: unfair terms in contracts in English law and “domesticating” European Contract law. The analysis is performed on selected words and phrases seen in the context. Adoption of some European terms in the UK met strong resistance. Thus the English language version of Directive 1993/13/EU is an example of where English European legal language is noticed and it is emphasised that this sub-code is not equal to English legal language.

The east part of the book deals with the issue of translating legal discourse and it opens with Girolamo Tessuto’s paper *Legal Concepts and Terminography: Analysis and Application*. The paper presents terminological implications in two different legal systems and languages, i.e. English and Italian. As introductory remarks the author provides information about mapping linguistic forms and concepts and also about legal concepts. The method of analysis is described.

The analysis is based on the term “mens rea” and it is presented both as seen in English and Italian legal concepts. Then the three-stage procedure of elaboration of the term is presented. Finally a comparative concept-oriented terminography model is characterised. In final conclusion a very valuable algorithm of terminography is given, as it describes step-by-step tasks, which may be used by lexicographers and legal translators. Tessuto suggests the method may be adopted also for Computer-Aided Language Learning, Distance Learning and Technical Writing.

Marta Chromá’s paper *Semantic and Legal Interpretation: Two Approaches to Legal Translation*. According to the author there are three groups of specialist professionals dealing with the language of law and among them the translators should combine legal and linguistic approaches when comparing source and target legal texts. Chromá briefly explains how she understands translation of legal texts and she underlines main factors influencing the process of legal translation.

The author states that legal translation is in part both semantic and legal interpretation and it is regarded as intralingual translation. This statement is confirmed by sample analysis of selected conjunctions and one noun. Even so brief an analysis provides important implications for the training of translators, which has been applied at Charles University Law School. The described project provided satisfactory results as many participants of the project passed the final exams.

The last paper of that part of the book is Stefano Marrone’s paper *System-texts and cross-system’s translation*. The aim of the paper is to analyse methodological and linguistic issues related to the translation of *Regolamento* of Italy’s *Camera dei Deputati* into English. The translation was executed in a certain political context, which

is given in the paper. Furthermore it was expected that the translation is to be published widely i.e. on the Internet.

When dealing with linguistic features of the translation process, text typology was one of the issues, which the translator considered as it determines methods of translation. Moreover system features of the texts for instance: system-boundness, culture-boundness, historical context were analysed when preparing for translation. The first stage of translation was full of trials and errors and consequently a cross-system approach was adopted. Marrone gives some examples presenting factors, which lead to the specific linguistic choice used in translation. In conclusion Marrone states that even such accessible and well-developed sources of legal terms, which we currently use in Europe do not cover all the needs, which arose during translation of Italian text into English as Anglo-Saxon equivalents are too heavily connotative. On the other hand Marrone notices that from the perspective the few years, which have passed since translation, some different scenarios seem to be relevant to the project and this statement may be a motto for the next generations of scholars.

The entire book provides a very wide range of various aspects gathered under the general title *Language, Culture and the Law*. The first part of the book, which is the most exhaustive, provides a set of papers dealing with arbitration rules. These chapters are very valuable for legal linguists and lawyers, as the phenomenon of arbitration in international trade has not been explored thoroughly. It is a complex issue and it should be investigated from many points of view, as Gotti proposes. Even when taking account of just the language level of arbitration legal discourse, there are many fields to be analysed and explored. This statement comes from the papers of Garzone, Alliori and Menghini. Their sample studies, comparing the global use of arbitration rules, in many various legal systems and languages, open the gate to wider and deeper analysis on the global scale if it is desired to accomplish a globalising trend in legislation. All the papers mentioned provide set of issues to be developed if harmonisation in the legal field is to be achieved. Alternatively, amicable circumstances are observed also in negotiations and commercial law and it is a pattern common with arbitration procedures. Both Tolmi-Solonen and Solly confirmed that some methods used to investigate legal discourse might be applied to investigate negotiation language.

The second part of the book provides a mosaic picture of European Legal and Institutional Language. The papers of Sacerdoti Mariani, Caliendo & Venuti, Pennarola, Volini and Catenaccio include investigations performed on EU legislative texts, primary and secondary. Many papers confirm the opinion existing among scholars and translators that the European legal framework is still a great challenge and it provides many problems when drafting or re-drafting EU legal texts in many language versions. Regardless of the supranational level of legislations there are still intranational issues concerning national legal languages within Europe. The UK is the most eminent example of that situation, which is presented in Dossena's paper. On the one hand language may be the instrument, which helps in the process of legal communication but on the other it may be used to express negative phenomena such as economic asymmetry or even apartheid. These statements, which are drawn from the second part of the book, should be considered by the institutions and entities responsible for harmonisation of law within and beyond Europe.

The last part of the book consists of three papers. Chromá's and Marrone's papers have a very empirical character and indicate how researches in legal translation may be applied to pragmatic needs of the real world. Meanwhile the paper of Tessuto provides a very interesting concept of terminography. It combines the need of text mapping and word placing with other linguistic aspects and legal concepts. Furthermore Tessuto provides very clear directives of application of the model, which may be immediately adopted.

The book presents current results of legal linguistic researches. The wide range of methods applied, including statistical analysis of corpora, presents a variety of aspects in the work of linguists and lawyers. Thus it confirms the constant need of cooperation between linguists and lawyers when accommodating the role of language in law. Moreover the book is both a starting point and one of the concluding stages for various investigators, especially for those who manage the problem of the formulation of parallel legal concepts in various cultures, legal systems and languages.

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