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The Decalogue of Legal Translation – Contracts in Intercultural Legal Communication

El decálogo de la traducción jurídica – Los contratos en la comunicación jurídica intercultural]

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Abstract: The paper proposes a model for translating contracts which unites different translation stances (Snell Hornby's integrated approach, the functionalist views with the *skopos* theory and the concept of *cultureme*, as well as Chesterman's theory of *memes*) with the findings of comparative law regarding differences between legal systems and their impact on legal languages. The model is structured in ten stages, each addressing one of the specific linguistic and extra-linguistic aspects of the contract as a text type. When translating contracts, a very specific situation may arise with respect to the cultural embeddedness of the target text, since *memes* of different legal cultures may co-exist at various levels. This is especially the case when the contracting parties decide to use a third language as a *lingua franca*, which may lack any direct correlation with the legal culture(s) underlying the contract.

Key words: legal translation; skopos; cultureme; meme; comparative law.

Resumen: En esta ponencia se propone un modelo para traducir contratos que une distintos planteamientos translatológicos (el planteamiento integrado de Snell Hornby, los enfoques funcionales con la teoría del *skopos* y el concepto de *culturema*, y la teoría de los *memes* de Chesterman) a las conclusiones del derecho comparado relativas a las diferencias entre sistemas legales y su impacto en los lenguajes legales. El modelo se compone de diez fases, cada una de las cuales aborda un aspecto específico lingüístico o extra-lingüístico del contrato como un tipo de texto. En la traducción de contratos se crea una situación muy específica referente al enraizamento cultural del texto meta, como los *memes* de culturas legales distintas pueden coexisistir en sus varios niveles. Este caso se da especialmente en situaciones en las cuales las partes contratantes utilizan una *lingua franca*, que puede no tener ninguna correlación con los sistemas legales considerados por el contrato.

Palabras clave: traducción legal; skopos; culturema; meme; derecho comparado.

1. INTRODUCTION

Legal transactions which involve participants from different cultural settings often require these relationships to be regulated in the form of a contract. Contracts and agreements made to this purpose thus have to bridge the differences between the legal cultures and more specifically between the legal systems. When negotiating a contract, the contracting parties have to agree upon the legal system to be considered as the governing law, as well as on the language(s) in which the contract will be drafted. In any case, drafting one or more of the language versions of an international contract will involve translation to some extent. This translation procedure, however, will have to take into account the specifics of contracts as legal text types embedded in the corresponding legal cultures. A targeted approach to the translation of contracts thus has to combine several stances which take into account their linguistic and extra-linguistic dimensions, i.e. contrastive legal linguistics, comparative law and those translation theories which particularly suit the nature of legal translation.

2. TRANSLATION MODEL

The translation model proposed in this paper combines different translation approaches with the findings of comparative law regarding the differences between legal systems and their impacts on legal languages and underpins them with the results of a corpus study of commercial contracts in English, Slovene and German. It broadly follows Snell Hornby's integrated approach to translation, as it foresees a sequence of stages each addressing one specific aspect of contracts with an interdisciplinary focus. It also adopts the functionalist view stressing the importance of the prospective

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function, i.e. *skopos* according to Reiß and Vermeer (1984) as the decisive factor determining the type of translation to be produced. Moreover, taking into account the cultural embeddedness of contracts, it views them as *culturemes,* i.e. formalized, socially, legally and judicially embedded phenomena, existing in a particular form and function in a given culture (cf. Oksaar 1988, 26-27; Vermeer 1983, 8; Nord 1997, 34). It furthermore proposes to view the *cultureme* as consisting of several levels, where culture-specific features can be identified, which according to Chesterman (1997, 7) have the status of *memes*, units of cultural transfer encapsulating ideas, concepts, beliefs and so forth, which can only be transmitted verbally across cultures through translation. The text as *cultureme* is thus split into its extra-linguistic (the extent and contents of the contract as required by or customary in the relevant legislation) and linguistic (i.e. lexical, syntactic, pragmatic, stylistic) memetic levels.

The model reflects the procedure developed by the author in years of translation practice, i.e. a schematized think-aloud-protocol proposing a sequence of ten steps for undertaking the translation of contracts as legal texts types.

2.1. *Establishing the skopos of the translation*

In the initial phase the translator uses the data contained in the translation brief, gathers the necessary additional information from the commissioner and/or evaluates the circumstances of the communicative situation for which the translation is needed to define the *skopos*, i.e. the prospective use of the target text. Translations of contracts can serve a number of different *skopoi,* ranging from mere information on the source text for a receiver in the target legal culture who does not speak the source language to a translation which will have the status of authentic text in the target legal culture. Some of the possible functions of the target text are:

- drafting one of the bi/multilingual versions, each of which will have equal legal force within an international legal transaction, where one legal system will be binding, i.e. defined as the governing law;
- the target text will be produced for one of the parties to the contract, but will not have the status of an authentic text;
- the source text will be used as a basis for a new contract in the target legal culture and will thus have to be adapted by transferring and mutating *memes* on different text levels;
- the target text will be produced for receivers in the target legal system who do not speak the source-text legal language so as to enable them to study the characteristics of the source legal system and language, etc.;

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- the target text will be produced for a party external to the contract, e.g. a financial institution/bank as proof of a future source of income (e.g. for the granting of a loan);
- parts of the target text will be used in the target environment for publication, e.g. a newspaper article.

2.2. *Defining the type of translation to be produced in accordance with the skopos*

At this stage, the translator will determine the type of translation which will best suit the prospective use of the target text. According to Cao, there are three categories of legal translation: translation for normative purposes, translation for informative purposes and translation for general legal or judicial purposes (2007, 10-12).

Legal translation for normative purposes implies producing translations of legal instruments in bilingual and multilingual jurisdictions, where the source and the target text have equal legal force. In the case of contracts, this kind of translation is necessary within bilingual/multilingual legislations (such as Switzerland, bilingual areas of Slovenia, Italy, Belgium, and others), as well as within supranational legislations such as the UN and the EU, but also when contracts such as private documents are made in two or more equally authentic language versions.

Legal translation for informative purposes has constative or descriptive functions and includes translations of different categories of legal texts, produced in order to provide information (in the form of a document) to target culture receivers, whereby the translations only have informative value and no legal force. In the case of contracts this category of translation is common when contracts are made by parties originating from different legal settings and in different language versions, where, however, one version is defined as the authentic text and the translations into other languages merely have informative value, but no binding effect.

Generally, a contract will contain a provision determining which language version is to prevail in case of discrepancies, i.e. the so-called authentic text. Irrespective of its status, the translated contract still has to convey to the receiver all relevant information, especially regarding the rights and obligations ensuing from the contract. On the extra-linguistic level, a translated contract has to take into account that both the source and the target text are embedded in the same legal system chosen by the parties as the governing law.

The receiver of this kind of translation is very often one of the parties to the contract, but a contract in other languages may also be produced for receivers who are external to the contract or even to the legal environment. As an example of this, consider how a translation may be used within the context of an educational institution for studying

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the sources of law which apply to these documents in the source-text legal system and language. Thus, Common Law contracts can be translated for Continental legal experts or students for the purpose of studying Anglo-American legal systems. Furthermore, a sales agreement or a contract for long-term supply procurement can be translated for a financial institution to be submitted as evidence of a company's expected future income and thus justify the granting of a loan. Similarly, (parts of) an international agreement can be translated for the media to provide information to the general public regarding the development of relations between companies from different countries.

The third possible translation category according to Cao is translation for general or judicial purposes, where original source language texts are translated to be used in court proceedings as parts of documentary evidence. These translations have an informative, as well as descriptive function. Contracts are often translated for judicial purposes to provide evidence of the obligations assumed by the parties and the rights conferred to them. Generally, such translations are commissioned to sworn judicial translators, who produce a certified translation, where in a special clause they confirm that the translation fully conforms to the original. Such certified translations only allow for a minimum of adaptation to the target legal culture, i.e. on the lexical level they may require comments on or explanations of specific concepts which have the status of lexical *memes* in the source legal culture, while on the stylistic and pragmatic level the *memes* of the target legal culture may be copied to the extent necessary to render the rights and obligations as unambiguously as in the source text.

In court proceedings, documents may need to be translated, which (unlike contracts) do not have the status of a legal instrument, but are nonetheless connected with the contract or the legal transaction regulated with the contract, e.g. the business correspondence exchanged prior to or after the making of the contract, as well as invoices for goods and/or services which are the subject matter of the contract, and so on. These are often not written in legal language by legal professionals, but enter the sphere of legal translation due to specific circumstances. These translations are meant to be used in proceedings by parties who do not speak the language used in court or by lawyers and/or court officials who need to access the original documents written in a language different from the one used in court.

Experienced translators will usually be able to establish the *skopos* and the kind of translation best conforming to it within the given legal setting, while the relevant information may also be supplied in the *translation brief,* which, as pointed out by *skopos* theory, can contribute considerably to the quality and functionality of the translation by providing the translator with explicit or implicit information about the intended target text functions, addressees, the prospective time, place and motive of production and reception of the text (Nord 1997, 137). In the case of contracts, this information should also indicate the legal system to be observed as the governing law (if not already contained in the source text).

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2.3. *Establishing the legal systems involved in the translation and their hierarchy*

When translating contracts, it needs to be considered that although the translation involves two different legal languages and usually two legal cultures, not all legal systems involved will be considered governing or binding. When translating within an international or supranational legal system such as the law of the UN or the EU or within a multilingual jurisdiction (such as the legal systems in bilingual/multilingual areas of Italy, Slovenia and Switzerland), only one legal system will be involved and thus binding. In contracts regulating the relationships between parties from different countries, where the contracting parties usually agree upon one legal system as the governing law, there will be two or more legal systems involved, but only one binding and thus hierarchically superior. Hence, this binding legal system will be the one underlying both the source and the target text.

There is the possibility that in accordance with the *skopos* the source text will have to be translated from the source legal language and thus from the legal system underlying it into the target legal language and system. In this case it will have to be culturally transferred into the target legal system, which shall apply as binding and hierarchically superior. To embed the target text into the target legal culture, adaptations will have to be carried out on all memetic levels where modifications will prove necessary. In such situations two legal systems will be involved and the level of translatability of the text will depend on the extent of their relatedness.

2.4. *Establishing the level of relatedness of the legal systems involved*

At this stage the translator should identify the legal families to which the legal systems involved in translation belong and establish their degree of relatedness. Sandrini points out that the translatability of legal texts fundamentally and directly depends on the relatedness of the legal systems involved in a particular translation (Sandrini 1999, 17). Hence, a translator should be well acquainted with the major legal families, their differences and common traits and thus be able to anticipate the potential pitfalls resulting from the (un)relatedness of legal systems.

Zweigert and Kötz (1992) group legal systems on the basis of their historical development, the specific mode of legal thinking, the distinctive legal institutions, the sources of law and their treatment, as well as the ideology. They thus distinguish eight major legal families: the Romanistic, Germanic, Nordic, Common Law, Socialist, Far Eastern Law, Islamic and Hindu Laws (1992, 68-72). The two most influential legal families nowadays are the Common Law (i.e. Anglo-American) and the Civil Law (i.e.

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Romano-Germanic) families, to which 80% of the countries in the world belong. The Common Law family includes England and Wales, the USA, Australia, New Zealand, Canada, some of the former British colonies in Africa and Asia such as Nigeria, Kenya, Singapore, Malaysia and Hong Kong. The Civil Law countries include France, Germany, Italy, Switzerland, Austria, Turkey, Japan, South Korea, some Arabic states, the Latin American countries and the North African countries. Some legal systems are hybrids created through the mixed influence of Common Law and Civil Law. This is the case of, for instance, Israel, South Africa, the Province of Quebec in Canada, Louisiana in the US, Scotland, the Philippines and Greece. According to Cao, the law of the EU is also to be classified as a mixed jurisdiction (2007, 25).

The Common Law, or Anglo-American Law, family is based on the principles of *common law, equity* and *statute law*. *Common law* is often described as judge-made law, which is not based on written codes but on precedents, i.e. the decisions which judges have taken in previous legal cases. *Equity,* on the other hand, is a term referring to a system of rules which are applied in addition to common-law and have no equivalent in the continental legal system. Finally, the term *statute law* applies to written law (e.g. the Acts of Parliament), i.e. those legal sources which exist in written form in the Anglo-American legal system.

The legal systems pertaining to the Civil Law, or Continental Law, family include the Romanic, the German and the Nordic legal systems, which all inter-related. They have common foundations in the Roman legal tradition and are characterized by codification – the most important rules and regulations are set out in written sources of law. In the case of the continental legal systems, a considerably close relationship of the legal concepts applied can be expected. On the other hand, the legal systems of the remaining 20% of countries are derived from different traditions and are difficult to compare. This is the case of the Far-Eastern, the Islamic and the Hindu legal systems.

Taking into account these differences the translator will be able to anticipate that more translation problems are to be expected when translating Anglo-American contract texts into the language of one of the legal systems pertaining to the continental legal family, and vice versa, than when translating between two legal systems pertaining to the same legal family. A basic knowledge of comparative law will enable translators to map the areas of law where the extent and markedness of the differences between the legal systems may hinder the translation process (e.g. the Law of Obligations in continental legal orders or *equity* in the Anglo-American legal family).

A translator should thus be able to classify the legal systems involved in translation into corresponding legal families and be able at the same time to identify the extent and major sources of translational problems to be expected in a given situation.

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2.5. *Establishing the relationship of languages used and the legal systems involved*

Having established the extent of relatedness of the legal systems underlying the translation, the translator should also evaluate the level of relatedness of the languages involved. In this respect, De Groot points out that the crucial issue to be taken into consideration when translating legal concepts is the fact that «The language of the law is very much a system-bound language, i.e. a language related to a specific legal system. Translators of legal terminology are obliged therefore to practice comparative law.» (1998, 21). It is thus the legal system in which the language is embedded and not the general culture underlying it which plays an essential role in translation. In this respect, Weisflog (1987) speaks of the «system gap» existing between legal systems, which in turn results in a gap dividing legal languages. The wider the system gap, the greater the number of translation problems and, consequently, the lower the level of equivalence to be expected. According to Sandrini, it is the degree of relatedness of the legal systems, rather than of the languages involved in translation that defines the level of translatability of legal concepts (cf. Sandrini 1999, 17).

If the contract text is viewed as *cultureme*, the impact of the legal system is directly felt on the extra-linguistic level – through superordinated legal acts (the Law of Obligations in continental legal systems, commercial usage, informal legal sources such as the General Terms and Conditions), which apply to the contractual relations and are sometimes directly mentioned in the contract wording. In one of the contracts analysed (between a Slovene and a Romanian party, drafted in English as *lingua franca*) the following formulation is found: «For mutual rights and obligations between the parties that are not explicitly regulated in this agreement the Law of Obligations shall be applied in the part that regulates the contract of work and services».

Such referencing to superordinated legislation is typical of contracts made under continental law where the influence of hierarchically superior regulations affects the macrostructure, i.e. the entire extent of the text. Contract elements regulated by such hierarchically superior acts namely do not need to be explicitly and extensively set forth in the text, as they apply automatically. As a consequence, contracts drafted under continental civil legislation are as a rule shorter than comparable Anglo-American contracts, for which such (tacit) application of hierarchically superior legislation is not common. In their study, in which they compare German and American business contracts, Hill and King (2004) argue that German agreements are usually only one-half or two-thirds the size of comparable US agreements made for the same or similar purposes.

The relatedness of legal languages in translating contracts will be reflected in the greater or lesser relatedness or similarity of the different memetic levels of the text, such as the use of the passive voice in German. In Anglo-American contracts, the syntactic differences between the way of expressing the assuming of obligations between

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languages, e.g. the *shall* future in English and lexical verbs such as *sich verpflichten* in German or *zavezati se* in Slovene (to undertake, to bind oneself) on the pragmatic level. The relationship between legal languages and legal systems is a very complex one. Legal systems exist independently from the legal languages they use and are created through social and political circumstances. One legal system may use different legal languages (Canada, Switzerland, bilingual areas in Slovenia, Austria, Italy, Belgium, and a number of others), while one language area may be divided into different legal systems, as is the case in the United Kingdom or in the USA. Moreover, each society has its own legal concepts, legal norms and ways of applying its laws. According to Šarčević (1997, 13), each national law represents an independent system with its own terminological apparatus, underlying conceptual basis, rules of classification, sources of law, methodological approaches and socioeconomic principles.

When translating between different legal systems or families, translators should thus evaluate the relatedness of the legal systems, but also take into account the affinity of the languages involved in translation. They will thus be able to recognize one of the following scenarios described by de Groot (1992, 293-297):

- the legal systems and the languages concerned are closely related, as in the case of Spain and France, or Slovenia and Croatia¸ which means that translating will involve fewer problems;
- the legal systems are closely related but the languages are not, e.g. when translating between Dutch and French laws in the Netherlands, hence this task will not involve insurmountable problems;
- the legal systems are different but the languages are related; here the problems encountered will be considerable, especially as this relatedness of languages implies the risk of *faux amis*, as in the case of translating German legal texts into Dutch or vice versa;
- the task which will involve the greatest problems will be translating between unrelated legal systems and unrelated languages, e.g. translating Common Law texts from English into Slovene.

Kocbek (2009, 53-54) argues that de Groot's categorization of translational situations fails to identify two further possible scenarios. The first involves translating within an international or a supranational legal system, e.g. within the UN or the EU, where legal concepts pertaining to the EU law are translated by using terms bound to national legal systems (drawing from national legal terminologies), which may be tainted by the meanings attributed to them in the source legal system. In order to be used within the EU legal system, the existing terms should therefore be «neutralised», i.e. uprooted from their source legal system and re-interpreted (e.g. by adding a footnote specifying their meaning within the EU context).

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The second scenario leading to potential pitfalls implies translating between legal systems which are relatively related (e.g. German and Slovene, both belonging to the Civil Law), but using a *lingua franca* bound to a legal system which may be fundamentally unrelated to the legal systems involved, as is often the case with English used as *lingua franca*. Such situations involve specific problems and require a selective application of the principle of cultural embeddedness. In such cases, the specific memetic structure of Anglo-American contract *culturemes* on the syntactic, pragmatic and stylistic level may be envisaged, whereas on the lexical level there is a risk of introducing *memes* from the legal system underlying the *lingua franca* (in the case of English, from Common Law), which are alien to the legal systems of the communicating parties and may as such prejudice communication. The problems deriving from the discrepancy between the Common and Continental Law are also felt within the EU where English, as the most widely adopted *lingua franca* (cf. Kjaer 1999, 72), is used to describe specific concepts of the European Law or of national legal systems pertaining to the continental legal family within the EU by using terms tainted by the meaning attributed to them within the Anglo-American legal system.

When recognizing one of the scenarios described above, the translator will be able to evaluate where problems are to be expected due to the lack of equivalence as a result of the unrelatedness of the legal systems. On the one hand, this is the case of typical Anglo-American lexical *memes* such as *consideration* (a key concept implying a right, interest, profit or benefit accruing to the one party of a contract, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other party). On the other hand, this is also the case of concepts referring to the Law of Obligations in Continental contracts.

When translating between related languages, the translator will have to be aware of the risk of using false friends, such as the inadequate translation of the function of *Prokurist* (i.e. a representative of a company holding special powers) in German and Slovene companies with the term «procurator».

Moreover, translators will also have to be aware of the potential problems deriving from the use of a *lingua franca* in contracts. When *memes* are uncritically transferred from the legal culture underlying a *lingua franca*, which may be completely alien to the legal system agreed upon as the governing law, a very complex situation may arise which can compromise the legal security of the contract.

2.6. *Analysing the source text cultureme – identifying memes on its different levels*

At this stage, translators will have to identify the *memes* which form the *cultureme* of the source contract text on the extra-linguistic and linguistic level. To this purpose,

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they will need a good knowledge of the text conventions applied in contracts in different legal cultures and thus of the universal features of contract texts as well as of the prototypical traits which mark contract texts in different legal cultures.

On the macro-structural level of the text, extra-linguistic factors (the legal system) determine to what extent certain textual contents and text elements which are considered obligatory or recommendable in a given source-text legal culture need to be present in target texts. In Anglo-American contracts, this is the case of such items as *Recitals*, which begin with *Whereas clauses*, of *Representations and Warranties*, which begin with bare statements of fact, and of other «boilerplate clauses». In analysing this dimension of the text, the knowledge of contract-relevant areas of law in a given legal system proves useful (Contract Law in the Anglo-American legal culture, the Law of Obligations in the continental legal culture). Moreover, the translator should also be acquainted with the specific style of drafting contract texts, e.g. drafting customized contracts which is typical of the Anglo-American culture or using more standardized texts created by adapting sample contract texts or templates typical of the German and also of the Slovene legal culture.

In studying the linguistic dimensions of the contract *cultureme,* the *memes* marking this *cultureme* in the source legal culture will have to be identified:
On the lexical level, the specific terms expressing concepts which are prototypical of the source legal culture, as well as phenomena, such as word pairs (e.g. «bind and obligate«, «deemed and considered«) and word strings (e.g. «all taxes, levies, duties, imposts, charges and withholdings of any nature whatsoever«), typical of Anglo-American contracts, and idiomatic expressions such as «with the diligence of a prudent businessman» or archaisms (so-called legal adverbs, e.g. *herein, hereunder*) will have to be identified.

a) On the syntactic level, the prevailing sentence structures (typical conditional, e.g. introduced by «provided that»), the use of the passive voice and impersonal verb forms will be established.
b) With respect to style, the level of formality and the language means used to create the effect of objectivity, to stress the official nature of the text (passive voice) will be examined.
c) On the pragmatic level, the language means prototypical of the source legal culture for expressing the essential contractual relationships (assuming and imposing obligations, granting and obtaining rights) which typically have a strong performative power will be identified.

Having clearly defined the contract *cultureme* in the source legal language and culture, the translator will be able to compare it with the *cultureme* of contract texts existing in the target legal culture.

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2.7. *Determining the hypothetical target text cultureme*

By drawing on their knowledge of the target legal culture and contract text *culturemes* developed by it, translators will be able to mentally conceive a hypothetical target text, i.e. a skeleton text fully conforming to the conventions of the target legal culture by following the same procedure addressing the various levels of the text as the one used for identifying the source text *cultureme*, i.e. its extra-linguistic, as well as its linguistic dimension with the specific levels of macrostructure, lexis, syntax, style, pragmatics. By uniting their knowledge of the source and target legal languages and the corresponding legal systems they will be able to anticipate the potential translation pitfalls resulting from the gap dividing the legal systems and the differences between the legal languages.

2.8. *Comparing the source and target text culturemes – establishing overlappings and divergences*

By comparing the *cultureme* of the source text with the hypothetic target text *cultureme,* it will be possible to identify some common features (universal *memes* of contract texts), i.e. overlappings between the source and target *culturemes,* as well as the divergences between them on the different levels of the text.

When proceeding to the next stages of the translation process and creating the target text, the *skopos*, i.e. the intended function or prospective use of the target text, proves to be the key factor guiding the final drafting of the target text. On this account, the translator needs to determine:

a) Which *memes* are to be directly transferred from the source into the target *cultureme*. These can be the *memes* identified as common or universal when comparing the contract texts (i.e. the use of legal terminology, a formal style). These can also be other *memes* which are prototypical of the source legal culture and do not exist in the target legal culture but have to be preserved due to the *skopos*. For example, this occurs when the source legal system applies as the governing law also to the target text, or when the target text will be used by receivers in the target legal culture to study the legal regulation and the specific linguistic features of the contracts in the source legal system;
b) Which *memes* are to be modified (mutated) and adapted to the target *cultureme* (especially when the source text is used as a draft for a target contract text adapted to the target legal culture);
c) To what extent and depth this modification (mutation) of the source text *culturemes* is to be undertaken. Such modifications may stem from changes

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in the surface structure, including stylistic adaptations. There are a number of instances in which this may occur. The passive voice in Anglo-American contracts may be replaced with other impersonal forms in the Slovene texts and word strings in Anglo-American contracts used to convey the meaning of all-inclusiveness may be replaced with shorter structures due to the lack of synonyms in the target language. These modifications may also take place on the conceptual level. Again, there are numerous examples of such instances. The Anglo-American concept of *consideration* may be replaced with the related, but by no means equivalent, concept of *price* in continental contracts. Some *memes* from the source legal culture may be completely omitted, as often occurs with the *whereas clauses* in recitals of Anglo-American contracts when they are translated into a Continental legal system/language. Modification of source text *memes* can even lead to the creation of new *memes* in the target text. In such cases, where the source text contained no *meme* at a specific point, the target text language or legal culture may require the insertion of a customary *meme* in order to make the text functional. This is exactly what occurs when translating a contract from the German or Slovene legal culture into the Anglo-American target-text language and culture: the translator must add prototypical *memes* such as the *Recital, Definitions,* and *Warranties and Representations*.

2.9. *Final design of the target text*

In this phase translators design the final version of the target text. To this purpose, they take into account the findings of the previous steps and imitate, i.e. apply those *memes* of both the source and target *cultureme* which were in the previous stage identified as functional with respect to the *skopos*. An important guideline at this stage of the translation process is the awareness that *memes* of different legal cultures can coexist in the target text depending on the *skopos* (e.g. if the source legal system is chosen as the governing law, the prototypical content clauses/articles and lexical *memes*/concepts will be maintained in the target text, while on the syntactic, stylistic and pragmatic level *memes* of the target *cultureme* will be introduced).

An analysis of several contract texts has shown that some memetic features of contracts have the status of universal *memes* – such a universal *meme* is the structuring of the text in articles which are very often numbered and titled with the key terms dealt with in them (e.g. *Duration of the Contract, Force Majeure*, etc.). A further universal feature is a formal and rather impersonal style and the use of long, complex sentences (with extensive use of conditions, qualifications and exceptions), which iconically reflect the complexity and intricacy of contractual elements and relationships.

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Contract texts in general are marked also by their performative nature which, however, requires the use of language-specific structures enabling the realization of speech acts of establishing and assuming obligations, granting of rights, permitting, prohibiting.

On the lexical level, a universal feature of contracts is the use of technical language, i.e. legal terminology and terminology of other areas of expertise contemplated by the contract. Where, due to differences between legal systems, cases of non-equivalence between terms and concepts have to be dealt with, one of the following solutions can be applied: using the source-language term in its original or transcribed version, using a paraphrase, creating a neologism (cf. de Groot 1998, 25) or the building of calques and/or borrowed meanings (Mattila 2006, 119-121).

In order to avoid the risk of divergent interpretations of the terms used in the contract, compiling lists of terms and corresponding definitions of the words and phrases to be used might be useful (*terminologizing*). Definitions and interpretations are typical of the *cultureme* of Anglo-American contracts, but if added to the translated text, they can undoubtedly contribute to avoiding problems in the communication of the contracting parties by using formulations such as «For the purpose of this agreement, the following words, phrases and terms are defined as follows».

The analysis of contract texts has shown that definitions as a *meme* of Anglo-American contracts are gradually gaining grounds also in contracts made under continental law thus enhancing uniform interpreting and understanding of the terminology used.

In realizing the remaining textual levels of the final text design, the *memes* identified as prototypical of the individual legal cultures are to be applied. Particular attention is to be paid to the fact that in expressing the crucial contractual relationships, i.e. imposing and assuming obligations and/or granting and exercising rights, language structures are used which have been identified as prototypical of a legal language due to the frequency of their use. Accordingly, it has to be considered that for example the English *shall* future, which is absolutely the most widely used means of expressing obligations in Anglo-American contracts, has a considerably higher pragmatic power than the German or Slovene future tense and should therefore be substituted by other language structures with a comparable pragmatic impact, e.g. lexical verbs of the type *sich verpflichten* or *zavezati se* (to undertake, to bind oneself).

2.10. *Ensuring the legal security of the target text and the transparency of the translational decisions*

Considering the performative nature of legal language, i.e. the fact that utterances in contracts have a decisive impact on the establishing of contractual relationships, the

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creating of obligations and rights that are thus binding upon the parties, the translator has to be aware of the risks implied in legal translation and assume the burden of responsibility for potential consequences of (in)adequate translation. In order to reduce this risk, Sandrini (1999, 39) proposes to follow two guidelines. The first requires the translator to safeguard the legal security of the target text by double-checking the legal foundations of contracts. When translating between the Anglo-American and the continental legal systems, the translator will have to be acquainted with and take into account the differences in contract drafting under Contract Law or in respect of the Law of Obligations and consult experts whenever this is necessary.

The second guideline imposes the transparency of the translational decisions, requiring translators to account for their translational solutions. To this purpose, when translating contracts, the translator will need interdisciplinary knowledge of the legal systems involved in the translation as well as of the legal languages and *culturemes* of contract texts pertaining to the corresponding legal cultures.

3. CONCLUSION

The purpose of the translation model presented here is to provide a dynamic framework aimed at guiding translators through a logical sequence of steps and making them aware of potential pitfalls which could compromise the quality and functionality of the target text. Each step takes into account a specific aspect of contract *culturemes* by providing a targeted guideline. The guidelines are not necessarily meant to occur in the order indicated above, as they may blend into one another and some stages may, indeed, be omitted in accordance with the *skopos* and the context of the translation. The result of this translation procedure is a cultural hybrid in which *memes* of different legal cultures coexist. A fundamental role is played by the governing law, i.e. the applicable legal system which determines the extra-linguistic and conceptual basis of the text, on which *memes* of source and target legal *culturemes* are combined in conformity with the *skopos*. Texts written in a *lingua franca* may pose special problems as they imply the risk of introducing *memes* from the legal system underlying such a language, which may be completely unrelated to the legal transaction regulated by the contract. Thus, the translator should be able to selectively and critically apply *memes* from different legal cultures. By studying *culturemes* of contract texts in different legal cultures and applying the findings of such research in professional work, translators will nevertheless contribute to divulging and spreading knowledge of the different legal languages and cultures. And finally, producing optimal customized translations for every *skopos* can undoubtedly significantly enhance intercultural legal communication.

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