

Original Research Article

Pragmatic Functions of Vague Expressions in Legal Texts and Its Translation Techniques

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Abstract: As the international communications are more frequent in the current situation, it is necessary for China to both better understand the law in other countries and let the world have a clearer idea of the law in China so as to avoid some unnecessary disputes. As vague expression is a common language phenomenon in legal texts, this article focuses on its pragmatic functions to explain the necessity of vague expression in legal texts and intends to explore translation technique to deal with the vague expression in legal texts. It is found that vague expression has the following functions: 1) generalization and maintaining conciseness of the texts 2) maintaining stability of law 3) maintaining the ultimate accuracy of law enforcement and justice. And there are three translation techniques to deal with the vague expression: 1) literal translation 2) addition and omission 3) conversion between precision and vagueness.

Keywords: legal text; pragmatic function; translation skills

1. Introduction

Since 2003 when China got access to WTO, our country has gradually deepening the opening up to the world. As the links between China and the world has deepened in various fields, there are more and more economic, political and cultural exchanges, which require deeper understandings on law in different countries. And it is also necessary to let the world have basic knowledge about the law in China. The research on legal texts have been focused and paid attention by both the linguistics and the law researchers.

In 1979, Tieping Wu, a domestic scholar published the paper *A Preliminary Study of Vague Language*, introduced vague language into China for the first time. Since then, the research on vague language has developed vigorously in China and a preliminary complete system has been gradually established. The development of the research on vague language has laid a theoretical foundation for Chinese scholars to study legal vague expression.

This article focuses on exploring the the pragmatic function of vague expressions in legal text, and discussing the translation strategies of vague expressions in legal text, hoping to deepen the understandings of vague expressions in legal texts and facilitate the exchanges between China and the world.

2. The pragmatic functions of vague expressions in legal text

2.1 Generalization and maintaining conciseness

The legal language should have a strong ability in generalizing especially the legal language about legislation. First of all, when the subjects, objects and applicable scopes are expressed in the legal texts, it should both make an accurate expression and keep comprehensive and complete. At this time, vague expression such as the words “any” “other” can be used to have an accurate and complete function. The use of this kind of vague expression can help the scope of legislation extend to the level which is required to protect the proper interests of groups. Only in this way can the justice of the law be demonstrated and can no one escape from the long arm of law.

What’s more, the language of legal texts should have a high degree of generality as it cannot be very specific and detailed. As there can be varieties of situations happening in the reality, there is little possibility to cover all and if it is supposed that everything is included in the legal provisions, such a law will certainly appear to be too complicated and wordy. For example, in the “Contract Law of the People’s Republic of China”, parties can reach contracts in written, oral and other forms. This provision uses other forms to generalize various forms of contract.

2.2 Maintaining stability of law

Secondly, law is supposed to be relatively stable and can't be amended and modified day by day, while the society is constantly evolving and changing. However, it is difficult to foresee all new social phenomena as there are various complicated and constantly changing social phenomena. Therefore, the use of the vague words and terms are making effects on keeping the stability of law which is beneficial for the social operation.

For example, in the *Contract Law of the People's Republic of China*, there is a clause that if the contract cannot be performed due to force majeure, part or full of the liability will be exempted based on the influence of force majeure, unless it is otherwise prescribed by law. If a force majeure occurs after the party's delay in performance, the liability cannot be exempted. "Force majeure" in the law refers to an objective situation that cannot be foreseen, unavoidable and difficult to overcome. The vague words such as "partial or full liability", "force majeure", "objective conditions that cannot be foreseen, unavoidable and difficult to overcome" in this regulation are making interpretations to the extent of exemption from liability and to what force majeure is. This kind of interpretation makes use of vague words to maintain the stability of the law and makes it applicable to various corresponding different situations.

2.3 Maintaining the Ultimate Accuracy of Law Enforcement and Justice

If a certain degree of discretion can be entitled to law enforcement officers or judicial personal in the process of judgment or enforcement on the actual circumstances of the case, it will help maintain the ultimate accuracy of law enforcement and justice, and then let law make a proper, appropriate regulatory effect on society, thereby defending the fairness and justice of the law.

For example, in the *Contract Law of the People's Republic of China*, there is a stipulation that one of the parties has the right to request the people's court or arbitration institution to change or revoked for the following contracts: (1) It was concluded due to a major misunderstanding; (2) It was obviously unfair when the contract was concluded. In *The United Nations Convention on Contracts for the International Sale of Goods*, it is also stipulated that if the goods do not conform to the contract, the buyer may require delivery of substitute goods only if the lack of conformity constitutes a fundamental breach of contract and a request for substitute goods is made either in conjunction with notice given under article 39 or within a reasonable time thereafter.

The use of vague terms such as "major", "unfair", "fundamental" and "reasonable" in these two regulations entitles the law enforcement personnel certain degree of discretion, which allows them to adopt corresponding legal measures appropriately under the specific circumstances of the situation, so as to better maintain the fairness and justice of the law.

According to the above functions, the language in the legal text should have a certain degree of vagueness, which can be conducive to justice and law enforcement personal to judge and enforce the cases more accurately, effectively, and fairly. And the use of vague words in legal texts is determined by the legal spirit of fairness and justice pursued by the law. Therefore, it can help to maintain the justice and fairness of law, and also help to demonstrate the spirit of humanistic care in the law.

3. Translation techniques of vague expressions in legal English text

3.1 Literal translation

As there are many vague expressions in Chinese legal texts and English legal texts, when it is possible, literal translation can be used in which the vague expression in one language. For example,

(1) The registered capital shall generally be represented in RMB or maybe in a foreign currency agreed upon by the parties to the joint ventures.

合资企业的注册资本以一般以人民币表示，也可以用合营各方约定的外币表示。

In the above translation, the words "general" "may" are the vague expression, it can be literally translated into "一般" "也可以" under Chinese contexts as it is also common words expressing vague meanings.

3.2 Addition and omission

According to the context of legal texts, addition and omission can be used to deal with different contextual information and different language customs. Addition can be used when the literal translation is unable to provide enough information under the original language context and addition can help the reader understand the information more easily. And omission is used to avoid being wordy and complicated as there is different way of expressing under different language background. Here are the examples:

(2) 当事人应当遵循诚实信用原则,根据合同的性质、目的和交易习惯履行“通知、协助、保密”等义务。

The parties shall observe the principle of good faith and fulfill the obligations of notification, assistance and confidentiality in accordance with the nature and aims of the contract and the appropriate trade practices.

In the above example, the translation adds the word "appropriate" which delicately expresses the vague implications in the sentences while the literal translation may not reach. It is appropriate and ingenious to stipulate that the trading habits must be appropriate, which reflects the rigor of the law.

(3) A contract shall be an agreement whereby the parties establish, change or determinate their civil relationship.

合同是当事人之间设立、变更和终止民事关系的协议。

In the above translation, "shall" in the English text is a vague expression and the omission of the word will not have effects on the meanings and the legal effects and it will further reinforce the expression.

3.3 Conversion between precision and vagueness

In the process of translating the vague expression, the different expressing habits should be considered carefully. If necessary, some vague words should become precise in another legal background and some precise words should be translated into the vague one. For example,

(4) A mortgagor and a mortgagee shall conclude a mortgage contract in writing.
抵押人和抵押权人应当以书面形式订立抵押合同。

According to the Guarantee Law in the mainland of China, the word“抵押”is only limited to the situation that the real property is taken as a guarantee of creditor’s rights. However, in the law in USA and UK, guarantee is a vague expression relative to all kinds of property. Under such situation, mortgage can be dealt with vaguely as it will not affect the accuracy of the translation.

4. Conclusion

To sum up, law is a system of rules which is used to constrain people’s behavior, to protect people’s proper rights and to maintain the order of a society. Therefore, the language of law should keep mandatory and normative. In order to improve generalization and maintaining conciseness of law, maintain stability of law and maintain the ultimate accuracy of law enforcement and justice, the vague expression is one common language phenomenon in legal texts.

To deal with the translation of such vague expressions, literal translation, addition and omission, and conversion between precision and vagueness can be used in translation according to the contexts. The contexts must be correctly understood and re-evaluated so as to ultimately make the translation accurate and appropriate.

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