

Arabic and English Formulation of Legal Texts: A contrastive Study

الصياغة العربية و الإنجليزية للنصوص القانونية: دراسة تقابلية

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ملخص

يوضح الكاتب في هذه الدراسة الوصفية الاختلاف بين النصوص القانونية بالإنجليزية والعربية من حيث الصياغة.

يشكل هذا الاختلاف إحدى المشكلات التي تواجه المترجمين والقراء العاديين في تناولهم لهذه النصوص.

تنقسم هذه الدراسة إلى جزأين. الجزء الأول منها يتناول البنية الكلية لكل من النصوص العربية والفرنجية، لتوضيح أوجه الشبه والاختلاف. أما الجزء الثاني فإنه يحدد ويبين بعض المواضيع اللغوية المهمة.

المنهجية التي اتبعها الكاتب في المقارنة بين أي نص فرنجي وترجمته هي أنه يأتي بالنص، تليه ترجمته العربية المتوفرة ثم ترجمة إنجليزية للعربية نفسها. ذلك ليرى القارئ الفوارق بين الصيغتين الإنجليزيتين؛ الصيغة الأصلية والترجمة الإنجليزية لترجمتها العربية.

1. Introduction

In this descriptive study, the main objective is to illustrate the difference in formulation between Arabic and English legal texts. That is because such difference constitutes one of the problem areas that translators, and indeed ordinary readers, normally encounter in legal texts.

This work falls into two main parts. The first part deals with the macro—structure of such texts to show similarities and dissimilarities amongst them. The target of the second part is to specify more essential language matters. The method adopted is to cite an English text and its Arabic translation consecutively, followed by an English back translation of the Arabic itself to

demonstrate the differences between the Arabic translation and the original English text.

As in any non-fiction piece of writing, legal texts follow a standard skeletal plan. Due to the large number of texts that can be referred to as legal, it would be time consuming and perhaps repetitious to deal with all their types so as to investigate their structure. I shall focus on the problem areas that translators, and indeed all readers, may encounter with legal texts. The features of layout in English legal texts constitute one of the problem areas as expounded by Crystal and Davy (1991:213). The problem lies in the fact that the reader may not readily understand the significance of some layout features. It is perhaps appropriate at this stage to explain exactly what is meant by 'layout'. As explained by Farghal and Shunnaq (1992: 205-206),

“Layout refers to the sketch or plan of the text’s physical appearance. This relates to paragraphing, indentation, and graphitic choices, viz., capitalizing, italicizing, underlining and bold-typing. On the other hand, these features are sometimes governed by language specific constraints such as the standard of paragraphing and capitalizing in English.”

Whether any document involves a whole statute, a decree, a court order, an international treaty or a sales contract, it always has a preamble to justify it. Such justification is often listed in points form introduced with ‘whereas’, ‘further to’, ‘subject to’ or ‘pursuant to’ or similar terms. Sometimes these reasons may be in the forms of a list of non-finite clauses, starting with ‘noting that...’, ‘acknowledging that...’ and so forth. Translating, all these points have to be treated as one whole paragraph connected with the initial noun phrase in the preamble. The meaning becomes complete only when one comes to the verb found at the tale-end of these points, often preceded by a portmanteau type word such as ‘therefore’, ‘hereby’ and so on. What follows is usually a list of obligations or things to be done by every one or by each one of the parties involved when the document is a contract or an agreement or a court order. The layout of some legal documents could also take a simpler form, with the names of the parties stated, together with the details of the property or service subject of the document, followed by the list of obligations and things as stated.

2. Physical Organization of Acts

According to Mario (1966), one can sum up the physical organization of acts as follows:

1. The actual configuration of elements, both obligatory and optional, may vary and certain types of statutes may have a specific generic structure.

2. Some generalizations across the different types and jurisdictions can be made.
3. There is first pre-material, giving a long title, year and number, short title, preamble and an enacting formula.
4. The body of the statute follows, divided into numbered sections, subsections and paragraphs.
5. Larger units may be used; for example, a definition part or division, followed by a substantive part and a procedural part.
6. Schedules are appended as end material.

Indentation in legal texts has its own significance .It could easily lead to improper use of it. This is because a paragraph might accept more than one interpretation. Capitalization in European language texts is another area, which could cause problems to the translator specifically; for example ‘according to *law* and ‘according to the *Law*. The first refers to the nature of law in general, while the second refers to the ‘Law’ under consideration.

Comparison between several written English statutes on the one hand and written (Arabic) statutes on the other hand shows that the description given above by Mario applies across all these statutes. While this practice is particularly apparent in the enabling decrees in the case of Arabic statutes, Maley (1992:24) states that the numbered and lettered paragraphs constitute a typical drafting practice also in all common law countries. This feature is more prominent in other legal documents, namely treaties and the like, in both English and Arabic, although the latter may have been influenced by translations of the former. Accordingly, a professional translator, exposed to statutes of the English and Arabic systems, should normally have no difficulty in providing a meaningful and well-structured translation in either direction. Undergraduate Translation students in Sudanese universities, when given relevant sections of various legal texts for translation into Arabic, in fact, provided adequate translations thereof despite their limited knowledge of legal language.

Results from a similar exercise reported by Farghal and Shunnaq (1992), however, were not as encouraging. In their study, 13 postgraduate Translation students at a Jordanian university were asked to translate a United Nations legal text, committed mistakes that seemed to have stemmed from their failure to understand the significance of the skeletal structure of the document translated, despite their free access to reference books during the test. Farghal and Shunnaq explain, obviously correctly, that layout features can be of significance in a text; their employment does affect the meaning of the text and, consequently, they are relevant to the process of translating. Therefore, the translator should be aware of the significance of layout features in technical texts, and legal texts in particular.

The UN text of Farghal and Shunnaq's study, in fact, consists of one sentence, 300 words long. Perhaps it is appropriate to reproduce here parts of a short passage, which seems to have presented difficulty to students in their study.

Text 1

"The General Assembly,
 Recalling its resolution 35/206N of 16 December 1980
 Gravely concerned about the inhuman oppression of
 millions of women and children under apartheid,
 Noting the ...,
 1. Invites all Governments and ...;
 2. Encourages ... ; ...

In the study, 10 out of the 13 examinees failed to appreciate the significance of the layout, and used many full-stops in their translations, thus interrupting the structural and semantic flow of the text. Thus, rather than making the first unnumbered points premises for the resolution itself, some of the examinees transformed them into independent statements. In so doing, the intent of the text collapsed, because the premises became resolutions, and accordingly the resolutions themselves, following the premises in the original English text, lacked supporting material. Here, below, are two samples of examinees' translation of the first part of the document (Translation 1) followed by an accurate translation as provided by Farghal and Shunnaq (Back Translation).

Translation 1

"الجمعية العامة تشير إلى قرارها رقم 206/35 ن الصادر في كانون أول
 1980. كما تعبر عن قلقها الشديد تجاه الاضطهاد اللاإنساني لملايين النساء
 والأطفال تحت نظام الفصل العنصري"

Back Translation

The General Assembly refers to its resolution No
 35/206N of December 1980. It also expresses its grave
 concern about the inhuman oppression of women and
 children beneath apartheid ...]

Translation.2

"إن الجمعية العامة، إذ تشير إلى قرارها 206/35 ن المؤرخ في 16 كانون
 الأول 1980، وإذ يساورها القلق الشديد إزاء الاضطهاد اللاإنساني
 لملايين النساء والأطفال في ظل الفصل العنصري ..."

Back Translation

The General Assembly, Recalling its resolution 35/206N dated 16 December 1980, Gravely concerned about the inhuman oppression of millions of women and children under apartheid ...]

It appears that examinees, who were the subject of this study, lacked more than mere appreciation of the significance of the layout in this text. The word ‘under’ which has been literally translated into Arabic by what means ‘beneath’ signifies a more acute problem that has to do with their translating competence in general. The Arabic equivalents of ‘under’ do not have the metaphoric sense conveyed by the English word; hence the meaningless ‘beneath apartheid’ in the above quotation. It is maintained that the layout of English legal texts is a very significant feature, and in many cases constitutes an essential framework for comprehensibility. Layout features, however, should not pose a difficulty of any level that cannot be solved by properly trained translators.

3. Sentence Length

Another feature of legal English is the extraordinary length of sentences, be it in statutes or other legal documents, including international treaties (and such UN resolutions as the one quoted in Translation 2). In the past, English statutes were even more awkward – each section was presented as a continuous and usually unpunctuated single sentence, unlike the present statute with the elaborate use of punctuation forms within the one sentence. According to Renton (1975), retention of the one sentence section is directly traceable to institutional methods of interpretation, since lawyers believe that it is easier to construe a single sentence than a series of sentences (elaborated by Mario 1965:25). There is, therefore, less potential for uncertainty.

The length of the sentence quoted by Farghal and Shunnaq in the preceding section is not unusual in English legal documents. Bhatia (1994:141) gives another example, which is section 14A(1) of the Income Tax Act, 1984, Singapore, that is 271 words in length, compared with the average 27.6 word-long sentence in written scientific English as calculated by Barber (1962).

Currently produced English legal texts still seem to alternate between the long sentence without punctuation and the normally punctuated sentence. This has been found to be the case even in powers of attorney. There is, however, an historical background for the non-use of punctuation marks in English statutes, a practice that was quickly followed by drafters of other legal instruments. Sir Maxwell, a British ex-Chief Justice of the Straits Settlements, explains that bills, at one stage of their production, were engrossed without punctuation on parchment. He stated:

“but as neither the marginal notes or the punctuation appeared on the roll, they formed no part of the Act. This practice was discontinued in 1849, since which time the record of the statute is a copy printed on vellum by the Queen’s printer; and both marginal notes and punctuation now appear on the rolls of Parliament” (Maxwell 1883: 51-52).

The above examples should not be treated as extremes. A quick glance at the Acts quoted earlier reveals many sections that are between 100 and 200 words long. To investigate this feature in Arabic statutes, the writer conducted a study on the Lebanese Act of Civil Proceedings. This noted a more liberal use of full-stops across sections and paragraphs. It also found out that where the lettered or numbered sub-paragraphs in the English texts usually end in commas or semi-colons, depending on the content and structure of each sub-paragraph, their Arabic counterparts invariably ended with full-stops. Thus, Paragraph 93 of the Lebanese Act of Civil Proceedings reads as follows in Arabic:

Text 2.

"مادة 93 - تنظر محكمة الاستئناف في الطعن بالأحكام والقرارات القابلة للاستئناف والصادرة ضمن منطقتها:
 1. عن محاكم الدرجة الأولى في القضايا المدنية والتجارية.
 2. عن دوائر التنفيذ واللجان والمجالس الخاصة في الأحوال التي ينص عليها القانون."

A possible translation of the quoted section is:

Translation.3.

“Article 93. the Court of Appeal shall hear appeals against appealable orders and judgments originating within its jurisdiction:
 1. From Courts of First Instance in civil and commercial matters.
 2. From executive departments and special committees and boards in matters stipulated by the Act.”

Apart from the full-stops at the end of the two numbered clauses, of note is that the preposition ‘from’ in the quoted paragraph is made to introduce each

numbered clause, rather than to conclude the opening sentence; that is to follow the word ‘jurisdiction’.

The positioning of the first full-stop in Text 2, that is in Point 1, creates a flaw in the linguistic and legal sense. This leads to a legal problem, because it would then mean that the Court of Appeal should hear appeals from the Courts of First Instance in civil and commercial matters, only. The full-stop is thus positioned prematurely, and indeed uselessly, but most probably inadvertently. Some may seek to find an excuse in thinking that punctuation is probably not as relevant in Arabic as it is in English.

4. Punctuation

4.1 Punctuation as a matter of interpretation

In both English and Arabic legal environments, the judiciary is considered to be as the highest authority. Nevertheless, there seem to be significant differences. In common law countries judges resort to linguistic argumentation in what appears to be an effort to find a seemingly scientific and neutral justification for difficult decisions (Solan 1993: 11). Solan explains that in many instances the linguistic argumentation either falls hopelessly flat or is seen as a window-dressing. Nevertheless, courts and statutes in common law countries cannot function effectively without judges capable of successfully and convincingly interpreting these statutes. When a judge, for instance, declares to the members of a jury that they are the judges of the facts while he or she being the judge of the law, the judge simply means that he is in charge of interpreting the law, directly linguistically and indirectly on precedents. A comma or a full-stop may elaborate. As said by Mario (1996:43)

“In given judgment, a judge could, of course, simply declare the principle of law which is applicable to the instant case. The principle of law is called the ‘ration decidendi’ or reason for deciding. But common law judges do not discharge their obligations so simply, not only do they declare the law, they make explicit the reasoning processes which have led them to that decision, the cases they have considered, the analogies they have considered and rejected – in short, their individual ‘fullest examination’”

Judges in common law countries, such as England, have to study law statutes carefully, taking into account of whatever flexibility and specificity therein. Continental judges, as well as those in Arab countries, of which laws are based on continental models, tend to be less flexible. Since they, as noted by Friedman (1975:223), are likely to be officials and bureaucrats, their judgments would be restrained and frequently rigid in style and format. It

suffices to quote the number of the section under which a particular offence falls without much ado about the analysis of the text of the law itself. Friedman's statement appears to be too harshly set against judges outside the common law countries, for them to enjoy certain latitude of freedom in interpreting statutes. The Lebanese Act of Civil Proceedings, for instance, stipulates in Article 4 that:

“A judge may not refrain from making judgment on the pretext of the vagueness or lack of provision ... When a certain provision is ambiguous a judge shall interpret it in line with its intended purpose and such that harmony between that provision and the other provision is assured”.

The above and similar provisions, nevertheless, fail to give judges in the Arab and similar legal environments the same interpreting power afforded to justices in common law countries. Accordingly, in the former situation the question of full-stops instead of semi-colons, for instance, should not mean a lot. It is not because of the judges' incompetence or failure in any way. Rather, this is because their limited role does not allow, or require, them to conduct comprehensive analyses as undertaken by their counterparts in the common law countries, who can also assume the roles of linguists in interpreting law.

4.2 Nature of punctuation in Arabic

The situation of the linkage system in Arabic can still be said to be chaotic, notwithstanding those numerous studies dealing with this topic. Kharma (1985:9) states that all classical Arabic writings are devoid of punctuation, while Shouby (1951:292) unjustly states that the Arabs are characterized by “general vagueness of thought” due to the fact that modern literary Arabic is constituted of “diffuse, undifferentiated and rigid units and structures” (author cited in Sa'adeddin 1987:143). These remarks were on the assumption that Arabic writing, both classical and modern, does not follow a systematic punctuation system. Sa'adeddin, on the other hand, claims that these are simply partial truths. He makes the point that Arabic relies more heavily on a linguistically-overt linkage system as opposed to Western notational-codified systems. He further suggests that criticism by researchers of the Arabic linkage system settled into a deprecatory stance towards the Arabic language and culture.

Despite criticisms of Arabic punctuation practice and the defense by Sa'adeddin and others, partly motivated by nationalistic feelings, the fact remains that the way punctuation is used in Arabic texts is markedly haphazard, to say the least. It is evident that most writers use systems that suit their own needs, or those influenced by their own training. This ought

to be rectified and made to comply with rules stated in a number of Arabic works now available, dealing with punctuation, conjunction and various elements of Arabic composition and style. Sa'adeddin is obviously correct in stating that the Arabic conjunction meaning *wāw* (و), meaning "and", is often equivalent of the comma in English and that it was an obvious mistake for some Arabic writers to adopt the comma instead. I should add that, based on an observation of Arabic writers in the past, it would be even worse to insert "و" after the comma as some translators and Western-influenced writers nowadays do. In fact, this practice seems to be a reflection of a high level of uncertainty, as the writer wants to retain the Arabic "و" but at the same time also desires to emulate the English way of writing and thus uses the comma. Sa'adeddin's defense of the Arabic linkage system, however, is too narrow and cannot be extended to apply to other linkage forms. Besides, it should not exonerate one from responsibility of producing balanced, coherent and cohesive texts that are capable of being interpreted on a sound systematic basis, especially when it comes to translating legal texts. It may be that judges in Arab countries do not concern themselves with interpreting the law to the extent that their counterparts do in common law countries. However, statutes are not the only legal documents that affect the lives of people these days. In a world of international treaties, which literally regulate even the air one breathes, there is no excuse for leaving Arabic, which is a United Nations language, to lag behind other languages simply because some scholars maintain that the current application of the linkage system is inappropriate. It is regrettable that even in treaties among Arab countries drafters elected to dispose of punctuation. The following, is an excerpt from the Arab Solidarity Accord-II, as cited in Mansour (1965:49)

1. عقدت هذه الاتفاقية لمدة عشر سنوات من تاريخ نفاذها وإذا لم تعدل قبل انتهاء هذه المدة باتفاق الحكومات المتعاقدة تظل نافذة المفعول إلى حين انتهاء أجلها، وبعد ذلك بانقضاء سنة من تاريخ تقديم إحدى الحكومات المتعاقدة للحكومات الأخرى بالطرق الدبلوماسية إخطاراً بالانتهاء.
2. يصدق على هذه الاتفاقية وفقاً للأوضاع الدستورية المرعية في كل من الدول المتعاقدة وتصبح نافذة من تاريخ تبادل وثائق التصديق

Although this accord is relatively recent (1957), there is no full-stop, while there is only one comma, and in the first paragraph, in which it is inserted haphazardly. The same thing applies to three other paragraphs, also cited by Mansour and one not reproduced here. In fact, the single comma is the only punctuation tool in the whole, four-paragraph text.

There is no justification for the almost complete absence of non-lexical linkage tools, even in modern Arabic works, in view of the fact that even classical Arabic works do have punctuation, extremely well applied by the editors. That is because of meticulousness of the editors. *Nahjul-Balāghah* (i.e. Peak of Eloquence) for instance, which is the collection of sermons, letters and sayings of Imam Alī b. Abī Tālib, is a case in point. The prose is peppered with editorial commas and full-stops, some of which, admittedly, are for rhetorical purposes. However, in the main, they are there to serve more or less the same purpose as that in English works.

A large number of modern Arabic works are often flawed because of either the excessive use, or the almost complete lack, of punctuation. This renders such Arabic texts either too fragmented and abrupt because of excessive punctuation, or disorganized and vague, because of the reverse. In some instances, it appears that Arabic writers utilize the comma or the full-stop, not to convey sense accurately, but rather to reduce the lengths of sentences to suit what can be read 'in one breath'. Obviously a more accurate and systematic application of punctuation rules, as specified in specialized books, should be followed.

5. Other layout features

Other layout features that may contribute to the comprehension and proper interpretation of statutes and other legal texts include the typographic styles and fonts now available in word processors in both English and Arabic. Bold, italic and underling are increasingly becoming accessible to all practicing translators, and consistency in punctuation should not pose any difficulty. The only point, which needs to be mentioned here, is the capitalization of specific nouns or acronyms in English texts. Its absent in Arabic epigraphy creates insoluble problems to Arab translators. In this respect, one should bear in mind that in English, capitalization of initial letters in words is meant to achieve specificity, a direct reference to an entity.

6. Micro-structure

In order to develop a good understanding of a legal text, it is important to understand the aim of such a text first. Many legal experts and translators, puzzled with the seemingly complex patterns and structures of legal texts, wonder whether these could ever be simplified so that their purposes could be clear. In fact, the "plain English" movement constitutes

one possible response to what appears to many as an unnecessary complication of laws. It aims, however, at making legal formulation intelligible to the layman. In explaining the plight of drafters, Solan (1993:12) refers to Benjamin Cardozo, a justice of the Supreme Court of the United States from 1932 to 1938:

“The overriding theme of Cardozo’s extrajudicial writings is the tension between the need for the law to be both sufficiently flexible to accommodate new cases as they arise and sufficiently rigid to maintain its predictive power. If the law is not flexible enough, then it is doomed to irrelevance and to becoming the source of injustice. If the law is too flexible, then it becomes so unstable that it fails to define with any reliability people’s rights and obligations, even in seemingly simple situations. This results in decay of the rule of the law,”

This is a very important notion, especially as far as translation is concerned. Some translators believe that a complex structure could be simplified in translation to facilitate its comprehension. The direct result of Solan’s view, however, is that it should be left only to a presiding judge to determine cases in accordance with statutes as drafted and not on the basis of someone else’s interpretations. What is felt to be a difficult structure of a statute should also be understood to be a necessary feature of it to give it sufficient flexibility as well as sufficient rigidity at the same time.

7. Conclusion

In this paper, the writer attempted to show the various features that are common to English and Arabic legal text with a view to demonstrating that there are more similarities than differences between the two types of texts. He pointed out similarities at both the text–mapping, that is macro-structure level, as well as at the purely lexical, stylistic and syntactic levels. Examples are provided to support the claim of similarity.

The underlying theme in this paper is precision and the ways of achieving it in legal texts. Nevertheless, it is important to point out that there are new trends in legal writing, which might be opposed to the arguments advanced in this paper in favour of precision and clarity. It should be noted that there are still supporters of maintaining the status quo. Many members of the legal profession and judiciary still insist on using technical terms, in rigid style and complex structures.

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