

Applying Speech Acts Theory in Translating English Legal Texts into Arabic

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1. Summary:

Legal language is one of the most conservative forms of discourse, used only in specific contexts (e.g., in courts or legal documents), and there have been many calls for making it more comprehensible for laymen. The present study aims to address the role of Austin's (1962) and Searle's (1969) Speech Acts Theory in legal texts, as well as the role of translators in conveying the meaning and legal effect of such texts into Arabic. The study hypothesizes that adopting functional equivalence plays an integral part in conveying the same legal effect and illocutionary force of the verbs of speech acts theory from the SL to the TL. Functional equivalence can convey the SL 'legal effect' to the TL while maintaining faithfulness to the SL text. This method, which is called functional equivalence, is referred to by some scholars as a measure that occupies the universal area between the source language and the target language. Those scholars prefer the use of functional equivalence for the purpose of the official translation due to the fact that functional equivalence makes the target text both understandable to the target reader and faithful to the original source text. The translators of legal texts may encounter several barriers that might affect their capability to render legal terminology. The role of translators of legal texts is, therefore, even more significant, as they not only translate the texts, but also interpret them. The findings have shown that legal translators are very interested in speech acts theory because speech acts theory helps them explain how the law uses language and how people can convey more encoded information with this theory.

The paper ends with the conclusion that legal texts that contain verbs which express speech acts theory can be best translated into Arabic by adopting functional equivalence. Moreover, the TT containing verbs of speech acts theory can also produce the same illocutionary force and the same legal effect as were produced in the ST.

2. Nature of Legal Texts

English legal language is different from ordinary language, and there is a rich use of unusual sentences in the English language. Legal texts vary widely depending on their function and nature. Legal English can be seen as consisting of several kinds of writing, relying on their communicative functions. Hiltunen (1990:81) proposes three types of legal writing:

“1. Academic texts, which consist of academic research journals and legal textbooks.”

“2. Juridical texts covering court judgments or law reports.”

“3. Legislative or statutory writings consisting of Acts of Parliament, contracts, treaties, etc.”

Legal texts are written in a legal genre that has several specific features. First of all, it is a language that cannot be qualified as languages like English, Polish, Spanish, or German are. Legal language depends on ordinary language, however, it has its own use domain and specific linguistic norms. Furthermore, the language of law is used for specific goals. Therefore, it has a vocabulary of special purposes depending on the type of law it describes. A very narrow group of professionals use this language in formal settings. Thus, it may not be understandable to most people. This genre has strict regulations when it comes to role-taking and participation in its realization. It is by some means connected with the (Austin's Speech Act Theory (1962) (Henceforth SAT), and this will be illustrated below. According to this theory, speaking is not just semantics. The words uttered are affected by the situation we are in while speaking and by our listener. For instance, sentencing someone to death, for

instance, will not have such an interpretation unless it is announced by a judge in a court by a judge or other authorized official.

It is important to look at the form in which legal texts are written. This form or style can be defined as direct and having only one interpretation. Intelligibility and clarity of legal texts like treaties, statues, agreements, etc., is highly desirable because their role is to protect the rights of people as well as impose obligations on them. Hence, authors of legal texts should very precisely word them so that they are of a high degree of clarity and adequacy.

Another essential aspect of legal texts, according to Kahaner (2005:4), is that they regulate the behavior of individuals in mutual relations and in relation with the whole society and with the legislator itself. The rule of law is always a logical proposition despite the fact that it might not be stated in a legislative document. For that reason, it must leave the receiver with no doubts and be built on reliable and up-to-date information. Thus, law, according to Sarcevic (2000:167), is used in a more direct expression, repetition, and more details, in order to limit judicial discretion. Before dealing with speech acts theory in some detail, it is convenient to address the salient features of legal texts in English.

3. Salient Features of Legal Language

Legal language has its own specific grammar and archaic words, in addition to its technical terms. The analysis of the salient characteristics of the legal language of English was carried out by Butt and Richard (2006), Crystal and Davy (1986), Tiersma (1999), and others.

This means that legal language permeates and encompasses numerous aspects of our life either directly or indirectly. Individuals have a strong connection to the language of law when it comes to legal documents like enrolling children in schools, travel paperwork, property contracts, loan procedures, medical certifications, court judgements and so on (Bouharaoui, 2018:10)

3. 1. Technical Terms

All professional domains, as Maley (1987:34) holds, contains many technical terms. They have the features of technical senses that are "senses that have uniqueness of a specialized or profession-bound case and that have extralinguistic fact toward the world of such professions." Thus, a technical term has a certain sense in a specific activity. It is regarded as a "specific legal term, yet the content of its meaning might differ in context or by time" (ibid.). On the other hand, Crystal and Davy (1986:210) point out that the technical terminology or specific vocabulary of the law is remarkable not because it operates a group of words, some with exact and some with less exact meanings, but due to the fact that the extent of exactness in several cases is "the subject of a kind of tacit argument between lawyers." In English legal texts, one can find such technical terms as Lessor, Lessee, Defendant, Bail, Plaintiff, etc. For example:

Should the Lessee wish to leave the leased premises prior to the end of the contract period provided he gives notice of that effect to the Lessor three months in advance by registered letter.

Another source of technical terminology lies in foreign elements established as technical terms. Maley (1987:34) maintains that the specific terms of legal language come from French and Latin. Many French items can be found in the English law. This is due to certain reasons, one of which, according to Alcaraz and Brian (2002:5), is that it was inevitable for English law to avoid the impact of Latin that was enhanced by the authority of the Roman Church across Europe at that time, in addition to its wide use throughout this place of earth as a language of learning and literature. The following are a number of Latin words that might be found in legal language:

Res judicata (an issue adjudicated), Bes nova (a new thing; an undecided question of law), and others. Like Latinism, the appearance of legal terms with a French origin in

the legal language of English is very clear. This is due to the Norman Conquest in 1066 and domination of the language of the invaders in England (Crystal and Davy, 1986:208). The following examples will suffice in this respect, proposal, policy, quash, terms, contract and so on.

3. 2. Archaic Diction of Legal English

The legal English mainly consists of old legal terminology. Therefore, this flavor of archaism did not come for no reason; it is made on an aim. Many reasons are behind the use of archaic terms in legal language. Tiersma (1999:95) holds that the language of law usually tends toward formality. Thus, the use of archaic terms is aimed at expressing formality in this kind of language. Some solicitors tend to use archaic terms instead of the current terms. They use, for instance, 'imbibe' instead of 'drink', 'inquire' instead of 'ask', 'peruse' rather than 'read', 'forthwith' as an alternative for 'right away' or 'at once', and so on. Another convenient example is the use of the verb 'witnesseth' with the preservation of an 'eth' ending for the third person singular of the present tense as an alternative to the current morpheme 'es' 'witnesses'.

The same applies to a number of archaic adverbs which are in fact a mixture of deictic elements: 'here,' 'there,' and 'where,' with certain prepositions: of, after, by, under, etc. (Alcaraz and Brian, 2002). For example:

- The parties hereto agree as follows.
- Hereinafter referred to as the Seller.

3. 3. Legal-Bound Terms

Many terms are formed by abstractions from the expressions of ordinary language. Certain possibilities within the range of meaning of these items are suppressed and the expression is limited to only one meaning. The meaning is clearly defined; one property is selected from the bundle of associations that surround the word in general. Hence, it is a fairly common phenomenon that when

terms in use in one discipline are borrowed by another discipline, they undergo a shift of meaning.

Therefore, it does not come as a surprise that lexical items when used in a legal register should not be understood in their original meaning without checking.

Legal language has a tendency toward the use of familiar terms with uncommon meanings, which can usually be designated as register specific. Crystal and Davy (1986:210) hold that a province takes over these common words and converts them into technical terms by using them in a special way, often by allowing them to retain only one of a range of meanings they may have elsewhere. Consider the following example:

Subject to the regulation of the Central Bank of Iraq, the Contractor shall transfer his salaries to his country or **suffer** the same as aforesaid.

In this example, ('suffer' does not mean to bear or undergo pain; but in this context, it implies to overlook or disregard, i.e., to take no notice of) (Al-Faruqi, 1970:671).

3. 4. Collocations

Words that go together in definable combinations can be said to collocate. Lexical collocation is the likelihood that any particular lexical item will occur in the immediate environment of any other. Certain combinations of words are not fixed by means of grammatical rules but as a result of their meaning and long association. Some of these words have a tendency to combine with certain other words. Combinations such as these are stylized, fixed, and stereo-typed (Pinchuk, 1977:145). Furthermore, collocations that are synonyms or semi-synonyms are used in pairs, which are called 'doublets' (Alcaraz and Brian, 2002:9). those terms could be nouns, verbs, adjectives, and even prepositions. Here are some English legal collocations:

made and enter, by and between, terms and conditions, covenants and obligations, null and void, and so on.

3. 5. Lexical Repetition

Draftsmen, in the language of law, do not use anaphoric devices or pronouns or reference, which are: the pronouns of persons (he, she, it, etc.) and demonstratives (this, that, etc.), as well as the verb 'to do' which may be substitution for the whole sentence, for example:

He rented an apartment, and so did his father. (Sabra: 1995).

In fact, the language of law mainly deals with the accuracy of reference; which tends towards the repetition of lexical items and functional redundancy, as in the example below:

The First Party shall pay to the Second Party at the office of the First Party.

In this example, if the possessive pronoun 'his' was used instead of the word 'the First Party' in the phrase 'at the office of the First Party', confusion and ambiguity would be created,

The Second Party shall pay to the First Party at his office.

In this case, it would be confusing whether the intended office is the one of the Lessee or that of the Lessor. Consequently, such substitutes may, in many cases, refer to a lexical item other than that intended by the writer (Bouharaoui, 2008:3).

3. 6. Passive Voice

Legal language makes use of passive voice to make correct sentences in English. Butt (2006:153-154) states that "Passive voice is widely used in the legal language of English because of its useful indirectness and formality". "This is due to the fact that when the writer wishes to hide the doer in the sentence and in case the sentence may use another agent" (Tiersma, 1999:74-77). Also, the active voice is easier to follow than the passive voice because passive voice reverses the normal sentence construction. Therefore, the author should avoid passive voice unless necessary.

Garner (2002:40-42) holds: "replacing an active voice with a passive voice may save words and make the process of reading the text easier.", as in the following example:
The lease estate has been taken over by the Lessee.

3. 7. Modality

Modality performs a vital role in legal language. Maley (1987:29) states that "Legal sentences principally tackle duties, obligation and rights. Legal texts can be formed in two ways: to empower or to command. Two significant legal illocutionary acts can be distinguished (Maley,1987:29)

"1. Mandatory illocutionary acts have the force of command, imposing an obligation to act or not to act. The modals (must and shall) are used in the performance of mandatory illocutionary acts."

The following examples will illustrate this point:

The receiving State must, even in case of armed conflict, grant facilities in order to enable persons enjoying privileges and immunities other than nationals of the receiving State, and members of the families of such persons irrespective of their nationality, to leave at the earliest possible moment.

Each specialized agency concerned shall communicate the text of this Convention, together with the relevant annexes, to those of its members who are not Members of the United Nations and shall invite them to accede thereto in respect of that agency by depositing an instrument of accession to this Convention in respect thereof either with the Secretary-General of the United Nations or with the executive head of the specialized agency

"2. Discretionary illocutionary acts, which confer a power that may or may not be exercised. Discretionary types have two subcategories: manual or permissive, and a distinction between substantive and procedural."

The modal 'may' is used to express discretionary acts, as in the following example:

The Lessor may impose other terms and conditions on the contract.

4. Speech Acts Theory (SAT)

Speech Acts Theory will always be linked with Austin, the British scholar who, in 1950s, had a great impact on analytic and Anglophone philosophy. One of Austin's significant comments is reflected in the title of his William James lectures, which was addressed at Harvard in 1955, *How to Do Things with Words*. When language is used by people, they do not just exchange information or utter words on how the universe is; when they use language, they do things. They command, apologize, request, contract, convey, and admonish. SAT concentrates on the way in which written and oral language is used to carry out actions. Scholars of law are concerned with Speech Acts Theory for many reasons, including that this theory assists to interpret the method in which language is used. Statutes, holdings, and constitutional provisions are different "the cat is on the mat." That is, a statute does not inform us how the universe is in the same way that a declaratory sentence does. The language of law is replete with the acts of speech.

4. 1. Austin (1962)

"The original idea in Austin's '*How to Do with Words*' (1962)" was that two kinds of utterance can be established: those that make statements such as: "All men are mortal"; the speaker states a certain fact that can be truth-tested; it could be evaluated in traditional terms of truth and falsehood. Such statements are called Constative Utterances. The second categories are those that do not yield any new information about a state of affairs, but rather by their very utterance bring into being a new state of affairs, as in the following examples:

"I bet you six pence it will rain tomorrow."

"I declare war on Zanzibar."

"I apologize."

"I sentence you to ten years of hard labor."

"I give my word"

"I warn you that trespassers will be prosecuted."

The strange thing about those sentences, as Austin holds, is that those sentences are used not just to say things, i.e., describe states of affairs, but rather actively to do things. They are neither true nor false; instead, they are deemed as felicitous or non-felicitous. They are called performative utterances because the speaker actually performs or accomplishes something in utterances as such. Performative utterances are expected to be subject to certain conditions that underlie their 'appropriateness'. They are named felicity conditions since their absence would result in the utterance being "unhappy," "infelicitous," "inappropriate" (Doctor, 1988:141-2).

As a fitting way to highlight the well-known distinction, Austin (1962) postulates three kinds of speech act that underlie an utterance. "Doctor (1988:13) reviews them as follows,"

Locutionary Acts, i.e., the action of uttering or physically producing a given statement.

Illocutionary Acts, i.e., the intentionality of the speaker underlying the locutionary act.

Perlocutionary Acts, i.e., the effect the first two acts have on the hearer/addressee.

However, illocutionary acts receive greater attention than the other two types of speech acts, which are touched upon only for the sake of presenting an overall picture of the speech act matrix.

4. 2. Searle (1969)

Searle (1969) attempts to refine Austin's classification by replacing the Felicity Condition by Regulative and Constitutive Rules. Similarly, "the first regulates a pre-existing activity, an activity whose presence is logically independent of rules. Social rites and rituals that regulate a given culture belong to this type. Constitutive rules constitute an activity, the existence of which is logically dependent on rules. Laws and legal codes are good examples" (Doctor, 1988:14).

In his latter development, Searle (1975, 1979) initiates a more rigid classification of speech acts, wherein five kinds of illocutionary acts are triggered. They are surveyed by Leech (1983:105-6) as follows:

"1) Assertives commit the speaker to the truth of the expressed proposition: e.g., stating, suggesting, boasting, complaining, claiming, and reporting."

"2) Directives are designated to produce some effect through action by the hearer, such as ordering, commanding, requesting, advising, and recommending."

"3) Commissives commit the speaker (to a certain extent) to some future action, such as promising, vowing, offering, etc."

"4) Expressives have the function of expressing, or making known, the speaker's psychological attitude towards a state of affairs which the illocution presupposes, e.g., thanking, congratulating, pardoning, blaming, praising, condoling, etc."

"5) Declarations are illocutions whose 'successful performance brings about the correspondence between the propositional content and reality'; such as resigning, dismissing, christening, naming, appointing, sentencing, etc."

4.3. Relationship between Legal Language and Speech Acts Theory

As far as legal texts are concerned, two kinds of speech acts that are mentioned above, namely, commissives and declarations, are found in laws and legal texts. In other words, verbs such as agree, undertake, acknowledge, warrant, accept, offer, etc., which belong to commissives, are used to express one party's promise or commitment to carry out the act. On the other hand, verbs such as appoint, sentence, resign, authorize, dismiss, declare, etc. are used to express one party's declarations to carry out the act.

However, it should be noted that SAT plays an important role in the law. Laws themselves might be seen as speech acts—as types of commands or authorizations. In contract law, for example, issues of contract formation frequently turn on questions of whether particular utterances were speech acts of particular types. Was

this utterance an offer? Was that statement an acceptance? In a very general way, SAT is helpful simply because it allows one to understand legal phenomena from a new angle. Consider the following examples:

-The Lessee hereby declares he has taken over the leased flat free of any damage or defect. The Lessee undertakes to keep the leased flat safe and deliver the same intact at the end of the lease period.

يُقرّ المستأجر بموجب هذا بأنه استلم الشقة المؤجرة سليمة من أي ضرر أو عيب. ويلتزم بالحفاظ على الشقة المؤجرة سليمة وتسليمها سليمة في نهاية مدة الإجارة.

-The First Party ensures to present to the Second Party the approval of the Ministry of Foreign Affairs.

-يلتزم الطرف الأول بتقديم موافقة وزارة الخارجية للطرف الثاني.

-The Supplier guarantees that the items covered by this contract meet the characteristics and are new, unused, and in accordance with the codes and specifications set forth therein

يضمن المورد أن المواد التي يغطيها هذا العقد تلبى الخصائص وأنها جديدة وغير مستخدمة ومتوافقة مع القوانين والمواصفات المنصوص عليها فيه.

The Seller agrees and confirms that the Buyer is the sole Agent and Distributor for the Seller's products (vehicles, spare parts, and after-sales service in Iraqi territories).

يوافق البائع ويؤكد أن المشتري هو الوكيل والموزع الوحيد لمنتجات البائع (المركبات وقطع الغيار وخدمة ما بعد البيع في الأراضي العراقية)

5. Translation of Legal Texts

The features of legal language mentioned previously, including those of SAT, give evidence of the high level of difficulty and specificity of translating legal texts from English into Arabic, and vice versa. According to Harvey (2002: 177), legal translation is "the ultimate linguistic challenge combining the inventiveness of literary translation with the terminological precision of technical translation." It derives from differences between the common law and civil law systems as well as

the system-bound nature of legal terminology. As a matter of fact, one cannot rely on words as guides to the perfect state because one is not sure if the lawgiver did a good job in creating those words. Legal translators are somewhat the lawgivers. It depends on them and their skills how the law will be interpreted. Seemingly, legal translators should be conversant with the law, but some linguists (Alcaraz and Brian, 2002) claim it is not necessary among them. What is essential in order to make a good legal translator is highly competent in the legal conventions of both source and target language texts (see Sarcevic, 2000). Therefore, "even if solicitors do not expect translators to produce parallel texts that are identical in meaning, they do expect them to produce parallel texts that are identical in their legal effect" (Altay, 2002: 1). Additionally, the receivers of a translated text should comprehend it in the same way as the source-language audience does. This notion was defined as dynamic equivalence by Nida and Taber (1974). This is why translators should bear in mind the purpose of the text they translate as well as its receivers. The translated text can be used as evidence in court, and if not adequately translated, it can bring disastrous consequences. To avoid such situations, one can follow Nida (1964: 164) in his four principles of a good translation. These are:

- making sense,
- conveying the spirit and manner of the original,
- having a natural and easy way of expression,
- producing a similar response

These requirements are not always easily met. As mentioned earlier, the legal systems of the source and target languages are different because they reflect the culture and institutional customs and traditions of those systems, which makes translation between the SL and TL more difficult. For this reason, translation studies place emphasis on cultural awareness as well as differences in legal systems. This is

very accurate for translation between English and Arabic, as both legal systems and cultures vary in countries where those languages are spoken.

Linguistic barriers pose another problem that translators have to tackle. It often happens that commonly used grammatical or lexical structures in the source language will not correspond to those of the target language. The translator's task is to find an equivalent structure in the target language. It is crucial to make sure that the structure has the same function as it does in the source language. According to Nida, translators should not worry too much about the style of the target text when finding an equivalent because "correspondence in meaning must have priority over correspondence in style" (Nida, 1964: 173).

Terminological incongruity can take several forms: "ranging from identical concepts (very rare) or near equivalence to conceptual voids without any equivalents in the TL" (Altay, 2002). American theorist Lawrence Venuti (1995) come up with two techniques for approaching incongruous concepts of translation (including legal translation): domesticating and foreignizing. Venuti defines foreignizing method as "an ethnodeviant pressure on those values to register the linguistic and cultural difference of the foreign text, sending the reader abroad" (Venuti, 1995: 20). Domesticating method, on the other hand, is described as the opposite: "an ethnocentric reduction of the foreign text to target-language culture values, bringing the author back home" (ibid.). This basically means that foreignization, unlike domestication, promotes cultural and linguistic transfer deliberately leaving a gap between original and target conventions. Domestication aims at minimizing strangeness of the target text.

5. 1. Functional Equivalence

A number of scholars, in the translation of legal texts, link legal equivalence with the extent to which the SL 'legal effect' can be produced in the TL while maintaining faithfulness to the SL text. This method, which is called functional equivalence, is

referred to by Newmark (1988) as a measure that occupies the universal area between the source language and the target language. He prefers the use of functional equivalence for the purpose of the official translation due to the fact that functional equivalence makes the target text both understandable to the target reader and faithful to the original source text.

Newmark (1981) also adds that when the translator deals with legal texts such as contracts which are concurrently valid in the TL, the translator must concentrate on a communicative approach that is TT-oriented. As Nida (1993, 5) says, "In general, it is best to speak of 'functional equivalence' in terms of a range of adequacy, since no translation can ever be completely equivalent. A number of different translations can, in fact, represent varying degrees of equivalence." According to Jean-Claude G mar, functional equivalence should be used for translation of contracts (G mar 1995-II: 163-166), suggesting that the target term can be grasped by the TL reader, as well as familiar to the SL term.

Vermeer (2000) also says:

"In respect of contracts, the decision whether and to what extent TL forms must be used is principally determined by the regulation of the contract. This fact is important since it determines whether the contract will be explained in accordance with the SL or the TL system of law."

Nida (1993) suggests that functional equivalence is appropriate mostly when application of formal translation would not be adequate, as depicted in these three principles of functional equivalence:

1. Functional equivalence is important if a close and formal rendition is likely to cause misunderstanding of the designative meaning; some changes must be introduced into the text of the rendition.
2. Functional equivalence is important if a close and formal rendition does not make sense; some changes may be made in the text.

3. Functional equivalence is important if a close and formal rendition is likely to cause serious misunderstanding of the associative meanings of the SL or in an important loss in a proper appreciation for the stylistic values of the SL; it is important to make such modifications as are necessary to reflect the associative values of the SL text. (Nida, 1993:125)

Since SAT is found in legal texts, especially in contracts, functional equivalence can be applied to the translation of legal texts that contain speech acts. This type of equivalence aims to produce the same legal effect in the TT and maintain fidelity to the ST. In other words, the illocutionary acts performed by certain verbs are best translated into the TL by achieving functional equivalence. In what follows, some examples of illocutionary act-verbs in English legal texts will be located, and the researcher will do his best to translate them into Arabic by adopting functional equivalence, which represents the optimal equivalence when translating legal texts from one language into another.

1. "JTA" Limited Liability Company authorizes herewith: Mr. John Smith, ENG., director of "JTA" Branch Office - Iraq to manage the Branch Office in Iraq.

In this example, the verb 'authorize' functions as a declaration, which is an illocution whose successful performance brings about the correspondence between the propositional content and reality. The above-mentioned examples can be translated as follows:

ان شركة جي تي اي ذات المسؤولية المحدودة تخول المهندس السيد جون سميث مديراً لفرع الشركة في العراق في ادارة فرع الشركة في العراق.

Here, the verb *authorize* belongs to declarations-illocutions whose successful performance brings about the correspondence between the propositional content and reality. It is translated into *تخول* in Arabic, which can perform the same function of the ST and can produce the same legal effect in the TT. Furthermore, the

illocutionary force of the verb *authorize* has also been conveyed successfully into Arabic by the present form of the verb *تخول*.

2. "The parties acknowledge that this lease comprises the entire agreement between the parties, and the parties hereto agree that they rely on no representations, oral or written, in executing this lease other than the provisions forth in this lease".

In this example, two verbs that belong to commissives are mentioned: acknowledge and agree. Commissives commit the speaker (to a certain extent) to some future action. Commissive verbs can be translated into Arabic as follows:

أقر الطرفان ان عقد الايجار هذا يشكل كامل الاتفاق بين الطرفين. وقد اتفق طرفا هذا العقد انهما لم يعتمدا اي تأكيدات شفوية كانت ام كتابية في توقيع عقد الايجار هذا خلاف الاحكام المبينة في عقد الايجار هذا.

Here, the two verbs acknowledge and agree are translated into *أقر* and *اتفق*, both of which can achieve the functional equivalence in the translation of legal texts of which the verbs of speech acts are part. Both verbs in English and Arabic can produce the same illocutionary force and the same legal effect

3. "The States Parties to the present Protocol undertake to cooperate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall, in particular, facilitate its duty of supervising the application of the provisions of the present Protocol".

تتعهد الدول الاطراف في هذا البروتوكول بالتعاون مع مفوضية الأمم المتحدة لشؤون اللاجئين او مع اية مؤسسة اخرى قد تخلفها في ممارسة وظائفها و تتعهد على وجه الخصوص بتسهيل مهمتها بالإشراف على تطبيق احكام هذا البروتوكول

Here, the English legal verb *undertake*, which represents the category of commissives in the SAT, has been translated into *تعهد* in Arabic, which can

function as the best functional equivalence that can produce the same legal effect in the TT as was produced in the ST.

4. "The two Sellers warrant to the First Party, the Buyer, that they are committed to obtaining a letter of undertaking from the Principal Companies to the company in connection with the said commercial agencies on a date not exceeding the sale completion date".

"يضمن البائعان بالطرف الأول (المشتري) التزامهما بأستصدار خطاب تعهد من الشركات الموكله للشركة بخصوص الوكالات التجارية المشار اليها في تاريخ لا يتعدى تاريخ إتمام البيع".

In this example, the verb *warrant* also belongs to the category of commissives, which has been translated into "يضمن" in Arabic, both of which express the action of warranting by the two sellers. Furthermore, the same legal effect has been achieved in Arabic by the verb *يضمن*, which is the optimal functional equivalent of the English verb *warrant*.

5. "The Lessor and the Lessee hereby agree to the following: The Lessor hereby leases to the Lessee, and the Lessee hereby accepts the lease of the building, land, and appurtenances commonly known as ----- located at" ----- hereinafter referred to as the Building"

In this example, there are three verbs that have illocutionary acts: *agree*, *accept*, and *lease*. The first two verbs belong to commissives and the third one to declarations. These can be translated into the following:

"اتفق المؤجر والمستأجر بموجب هذا العقد على ما يلي:"
"يؤجر المؤجر بموجب هذا العقد للمستأجر وقبل المستأجر بموجب هذا العقد ان يستأجر المبنى والأرض والملحقات المتعرف عليها باسم ----- والتي تقع في ----- (ويشار اليها فيما يلي ب البناء)"

Here, the verbs *agree*, *lease*, and *accept* are translated into *اتفق*, *يؤجر*, and *قبل*, respectively, which can stand as the optimal functional equivalences in Arabic since

they have the same illocutionary force and the same legal effect in the TT and maintain fidelity to the ST.

6. The Lessee hereby declares that he has taken over the leased flat free of any damage or defect.

"يقر المستأجر أنه استلم الشقة المؤجرة خالية من كل تلف أو خلل."

In the example above and its translation, the verb 'declare' in English and the verb *يقر* in Arabic express declarations in speech acts theory. This type of speech acts theory has been successfully translated into Arabic by adopting the functional equivalence, which can play an important role in conveying the illocutionary force of speech acts theory into the TL, in addition to producing the same legal effect.

Thus, legal texts that contain verbs expressing commissives and declarations can be successfully translated into the present or past forms in Arabic to express the illocutionary force of commissives and declarations of SAT. Commissives, which are used to express one party's promise or commitment to carry out the act in SAT, can be conveyed into Arabic by adopting functional equivalence, achieving the same legal effect and illocutionary force, i.e., to express one party's promise and commitment to carry out the act in the TL. On the other hand, verbs expressing declarations, which are used to express one party's declarations to carry out the act, can also be conveyed into Arabic, producing the same legal effect and illocutionary force as they were produced in the SL, i.e., to express one party's declarations to carry out the act in the TL. In addition, the issue of producing the same illocutionary force and legal effect in the TL regarding SAT legal texts means that SAT is universal in all languages, including English and Arabic.

6. Conclusions

The translation of legal texts from one language into another is sometimes difficult. The translation of legal texts may require of legal translators that they should have linguistic and semantic proficiency in the SL and TL, in addition to being

familiar with the culture and legal systems of the SL and TL. Legal scholars and translators are concerned with speech act theory for many reasons, but one of the most important is that speech act theory helps explain the way the law uses language. The theory of speech acts aims to do justice to the fact that even though words (phrases, sentences) encode information, people do more things with words than they convey information, and that when people do convey information, they often convey more than their words encode. Although the focus of speech acts theory has been on utterances, especially those made in conversational and other face-to-face situations, the phrase 'speech act' should be taken as a generic term for any sort of language use, oral or otherwise. Speech acts, whatever the medium of their performance, fall under the broad category of intentional action, with which they share certain general features.

As for the translation of legal texts, it seems that the difficulties of the translation of legal texts consist in the fact that legal terms are culture and country specific. Several times the terminology of legal texts in the SL cannot always be rendered literally. Here comes the role of the functional equivalence. The process of finding functional equivalence is where the translator grasps the concept in the SL and finds a solution to express the same concept in the TL in the way where the equivalence conveys the same meaning and form of the original. Thus, legal texts that contain verbs that express speech acts theory can be best translated into Arabic by adopting functional equivalence. Moreover, the TT containing verbs of speech acts theory can also produce the same illocutionary force and the same legal effect as were produced in the ST.

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تطبيق نظرية أفعال الكلام على ترجمة النصوص القانونية الإنكليزية إلى اللغة العربية

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الكلمات المفتاحية: المكافئ الوظيفي، الأثر القانوني، نظرية أفعال الكلام
الملخص:

اللغة القانونية من أكثر الخطابات محافظة، إذ لا تُستخدم إلا في ظروف محددة (مثلاً، في المحاكم أو النصوص القانونية)، وقد وُجّهت دعوات عديدة لجعلها أكثر يسراً على الفهم للعامة. تهدف هذه الدراسة إلى تناول دور نظرية أفعال الكلام لأوستن (1962) وسيرل (1969) في النصوص القانونية، إضافة إلى دور المترجمين في نقل معنى هذه النصوص وأثرها القانوني إلى اللغة العربية. تفترض الدراسة أن اعتماد المترجم على التكافؤ الوظيفي يؤدي دوراً أساسياً في نقل الأثر القانوني والقوة الإلقائية لنظرية أفعال الكلام من لغة المصدر إلى لغة الهدف. يمكن للتكافؤ الوظيفي أن ينقل الأثر القانوني للغة المصدر إلى اللغة الهدف مع الحفاظ على الأمانة لنص اللغة المصدر. هذه الطريقة، التي تُسمى التكافؤ الوظيفي، يُشير إليها بعض الباحثين على أنها مقياس يشغل الحيز العالمي بين لغة المصدر ولغة الهدف. يُفضل هؤلاء الباحثون استخدام التكافؤ الوظيفي لأغراض الترجمة الرسمية، لأنه يجعل النص الهدف مفهومًا للقارئ ومطابقاً للنص الأصلي. وقد يواجه مترجمو النصوص القانونية عدداً من العوائق قد تؤثر في قدرتهم على ترجمة المصطلحات القانونية. لهذا، يكتسب دور مترجمي النصوص القانونية أهمية أكبر، فدورهم لا يقتصر على ترجمة النصوص فحسب، بل يشمل أيضاً تفسيرها. وقد أظهرت النتائج اهتماماً كبيراً بنظرية أفعال الكلام لديهم، إذ تساعدهم في شرح كيفية استخدام القانون للغة، وكيف يمكن للأشخاص نقل معلومات أكثر دقة عبر تطبيق هذه النظرية. يختتم البحث باستنتاج مفاده أن أفضل ترجمة للنصوص القانونية التي تتضمن أفعالاً تعبر عن نظرية أفعال الكلام إلى العربية تتمثل في اعتماد التكافؤ الوظيفي. علاوة على ذلك، يمكن للنص الهدف الذي يتضمن أفعالاً تعبر عن نظرية أفعال الكلام أن يحدث الأثر الإلقائي والأثر القانوني نفسه كما في النص المصدر.