

## **Proximity Principle in Legal Translation**

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### **Abstract**

This research paper introduces to proximity principle as an approach to translation in general, and legal translation in particular, when the full meaning is not attainable in the Target Language(TL). The main problem of this study is how to translate legal texts more approximately than accurately due to several reasons highlighted below. The principal aim of the study it to probe the principle of proximity as a translation strategy compared to perfect equivalence. accordingly, the importance of the study lies in understanding the process of the translator's strife for approximate meaning in the TL. So, the main question of the paper is how translators manage and struggle to translate unfindable legal terms closely into the TL. On the other hand, the methodology of the study is based mainly on theoretical definitions, logical arguments, analytical and practical discussion, translation procedures and strategies, and culminated by conclusions and findings. One main finding is to establish the principle of proximity in translating legal texts in specific as a major strategy in translation theory to sort out solutions to the problems of translating non-equivalent legal terms. Finally, the paper covers points like the scope of proximity principle, its applicability, the justifications for using it, volume of potential loss of meaning involved, its credibility, proximity vis-à-vis faithfulness and accuracy, etc. All these and other points are considered in relation to a huge number of applications in practice in legal context.

**Keywords:** proximity principle, translation, legal terms, strategy, procedure, approximate translation

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## 1. Introduction:

Legal translation is currently among the most prosperous types of specialized translation worldwide. At the same time, it is perhaps the most demanding translation in the field. It has many difficult problems of translation that need be attended to, to sort out appropriate solutions to them urgently and in practical terms. Chief among the strategies and procedures of translation to address many of these problems is “proximity principle”. Although this principle is commonly and largely used in relation to sociology and psychology in particular in the sense of closeness in space, time, or relationship, it is borrowed into translation theory and studies in its general sense of approximate translation used when full translation of an Source Language (SL) word’s meaning is for some reason unfindable in the TL.

Proximity principle of translation is based on the inescapable notion of equivalence in translation. It is taken in juxtaposition to absolute equivalence. There are two major types of equivalence (in the sense of synonymy here: (1) absolute equivalence and (2) near equivalence. Although the former is rare, or maybe absent from the same language, near equivalents (or synonyms) are commonplace in any language, spoken or written. They are indispensable in order to cover all shades of difference of the intended sense. Near equivalents are in other words approximate synonyms. The main problem for many students, translators and teachers of translation is that in most cases they understand all synonymous words as absolute synonyms only and, hence, are translatable into one and the same word in the other language. In other words, to them, any word of a group of synonyms would give the same meaning of other words. This means that the differences between synonyms are unimportant, which is not acceptable in principle, of course. These differences of meaning can be sometimes crucial, especially in legal texts, for everything counts in them. (See Lyons, 1977; Wales, 1989, Crystal, 1980; Cruse, 1986; Carter, 1987; Leech, 1974; Saeed, 2003 and others for further details about synonymy).

On the other hand, absolute synonymy is possible between two different languages like English and Arabic. Thus, identical equivalence does exist between them. This stands in contrast to what some translation theorists claim that absolute synonymy does not exist even between two languages (e.g. Baker, 1992) (e.g. water=ماء; law=قانون; lawyer=محام; case=قضية; money=نقود; medicine=دواء; funny=مضحك, and thousands and thousands of other examples). This unfortunate line of argument has been echoed by translation scholars like Snell-Hornby (1988), Bassnett-McGuire (1980), Robinson (1997/2007) and others. Snell-Hornby, to cite one example, calls 'linguistic equivalence' an illusion, a chimera (42). This is similar to the notorious statement that 'translators are traitors' (*Traduttori traditori*) which is described as a very old joke by Raffel (1988).

So contrary to Snell-Hornby's claims against equivalence as a mirage in translation (1988), it is a matter of fact that it is unavoidable, indispensable and widespread in use by translation theorists and practitioners. Indeed, and as Rojo states about translation, "the word 'equivalence' is sooner or later on everyone's lips" (2009, p.31). We do have identical equivalence (or absolute synonymy) between any two languages (2009, p.31). In any translation practice, first and foremost, we look for an absolute equivalence, yet the harsh reality of translation disappoints us that not everything can be translated exactly and perfectly into another language as one-to-one equivalent. In the event, and when absolute equivalence is not possible or available, we go for the next best, the closest possible, or approximate equivalence. This type of equivalence is what we really work on most of the time, and we have to strive for it to achieve close resemblance of the SL meaning.

### Proximity principle and loss of meaning

Approximate translation is sometimes recommended strongly to overcome the problem of translating terms that have no perfect equivalence in the TL. One might enquire about the proportion of the loss of meaning at translating the SL term into an approximate TL meaning.

The fact of the matter is that a plenty of our translations of different types of texts including legal texts are approximate translations, leaning heavily on proximity principle (مبدأ تقريب المعنى). Proximity of meaning is a big issue in translation and solves many problems of translation in general. Hence, many legal words including those forthcoming are translated on the basis of this principle of approximate translation. Other examples include "the Saudi Parliament" as an approximate translation for "the Shura Council (مجلس الشورى)" for it looks like a parliament to the British that is similar in form to their Parliament, "The House of Commons", despite several differences between the two Houses (e.g. the British Parliament is selected by public election, whereas the Shura Council is by appointment by the King, etc.). This procedure can also be called "cultural equivalent", which is the closest in English Language to the Arabic term.

On the other hand, gambling (ميسر) is legal in English law, whereas it is illegal in our law and forbidden in Islam. That is, the cultural connotation of the term is entirely different in the two languages in question. The examples can be greater in number than expected. The approval of this procedure of proximity is due to the fact that coming close to the meaning of the SL term in the TL is next to identical equivalence and much better than paraphrase, transference, or a long comment or a footnote. The missing truth about these approximations is that they are treated as identical equivalents, but they are not; they are just approximate translations. Therefore, صلاة/دعاء is not a perfect equivalent of "prayer" – as many would think - but an approximate equivalent for our prayer – in either sense. It states the obvious that the Muslims' prayer is essentially different from the Christians'. Hence, there could be a considerable loss of meaning, yet, "half a loaf is better than nothing" (الرمد خير من العمى), as it were. Although these SL terms are approximate translations, they are indisputable. Therefore, their meanings should not be distorted by providing further synonyms. Indeed, this strategy is extensively used in the translation of so many terms from one language into another.

### Proximity as acceptable equivalence

Equivalence is understood by Hatim and Mason (1990) as closest approximation possible to the meaning of the original text. Similar to this is the notion of equivalence in terms of 'acceptability', suggested by Rojo (2009: 32). Also, Newmark's 'accepted translation' procedure (1988: ch. 8) is close to Rojo's concept (see also Ghazala, 2014 & 2020, Cao, 2007 & 2010, and El-Farhaty, 2015&2016 for further details about proximity in translation). These concepts of equivalence are conciliatory, practical and applied widely and satisfactorily, more unconsciously than consciously in translation practice. Hence, an approximate equivalent is a word or term that either gives sense (or intended meaning) in general, or a part of it in an acceptable way. This means that approximate equivalence misses a part of the meaning of the original word in various ways, yet it is recognized and comprehended comfortably, as illustrated in the following general examples:

- a) Muslim obligations like Hajj/pilgrimage (حج): is an approximate translation that renders the full meaning of the Arabic/Islamic term only in part. That is, Christians, Jews and even the followers of pagan religions, the Buddhists and the Hindus make pilgrimage, but are

the rituals and other specific details of their pilgrimage similar to Muslim Hajj. The same applies to other obligations like prayer (صلاة), fast/fasting (صيام) and many Islamic conceptions.

- b) Terrorism (إرهاب): this term does not mean the same for us and for them. There are sharp differences among people about who are terrorists and who are not.
- c) Social clubs (أندية اجتماعية): there are social clubs in the west and social clubs in Arab and Muslim States, but they do not have the same activities, for sure.
- d) Foreign words and phrases have invaded Arabic language for they found the door wide open for them! That said, some loan words (or calques) are false friends because they have a partly different meaning in the SL, or in the TL. For example, "romanticism" is usually naturalized into Arabic as رومانسية, or translated into one of the following words: شاعرية / وجدانية / عاطفية / رقة مشاعر. However, this is just a fraction of the meaning of the term in English (see above), which includes other hidden meanings of obscenity and atheism. So the Arabic translation is partial and does not render the total meanings of the original, but translated it approximately into one part of its original meaning. By analogy, the notorious word "democracy" (see earlier) is also taken into Arabic by naturalization as ديمقراطية in its political sense. Yet its original meaning is so much wider than this narrow political sense. It means among other things absolute freedom of individuals to say or do anything absolutely freely irrespective of social and cultural values, religious beliefs, family relations, etc. The only limitation is to abide by the law; do everything you wish but within the law.
- e) "Liberalism" (ليبرالية) is also taken into Arabic in its narrow sense of political freedom. However, it is loose freedom from everything, especially religion and moral values. Consequently, the full translation of the term should be (تفقت). This means that these words are translated falsely only partly into Arabic. Unfortunately, we continue using them in their partial meanings as such, and it is not possible to alter them in any way, or, otherwise, they will be thought of as different words. (See Ghazala, 2011, 2014 and 2015 for further examples and argument)

Hence, it is an ipso facto now that nothing in language is untranslatable, and that "everything without exception is translatable", as Newmark rightly states (1988: 6, 72-73). This basic principle in translation draws heavily on the understanding of translation as not merely as one-to-one equivalent practice, but as a translation of the SL meaning into the TL either identically, closely, approximately or by transference, paraphrase, etc., whichever is applicable. That is, المشاعر is translated into a paraphrase as 'the Holy Sites in Makkah'; الحرمان الشريفان is translated approximately into the 'Two Holy Mosques', but القرآن is transferred into English as 'The Koran', without changing the Arabic pronunciation, and without giving its meaning. The same is said of حجاب and حجابة which are transliterated ad lib as 'Jubbah' and 'hijab/hejab' in a row.

On the other hand, the Islamic legal term تعدد الزوجات is translated wrongly into the English equivalent 'polygamy / bigamy'. In fact, it has no equivalent of any kind. More seriously, it is highly sensitive in English, as getting married to more than one wife at one and the same time is not allowed either religiously, legally, socially or culturally. Legally speaking, it is a crime in the English Law. Hence, English dictionaries define 'bigamy' - which is wrongly mistaken for the Arabic term - as "The crime of marrying while one has a wife or a husband still living, from whom no valid divorce has been effected" (Webster's, 1996). However, the meaning of the Arabic term

has to be rendered into English properly. So neither 'bigamy' nor 'polygamy' works as both are crimes that a punishment is sued for those who commit either. Secondly, they are applicable to both sexes, a husband having more than one wife, and a wife having more than one husband. In Islam, however, getting married to more than one wife at the same time is permissible for Muslim men only and, hence, cannot be described in any way as a crime. Translators are, therefore, required to suggest an approximate alternative term that may retain the positive sense of the Arabic term in English and, at the same time, can be acceptable in the TL. Suggestions like: "Islamic legal poly-marriage"; "Islamic multi-marriage" are not too bad. ( See also Ghazala 2014&2015).

We conclude from that that the number of words used to express the meaning of an SL term that has no equivalent is not restricted, but words are preferably to be as few as possible, and as many as necessary. This makes it clear that the notion of equivalence is not a matter of words, but a matter of meanings that can be expressed in the TL in different ways. This is possible in any live languages, and it is the translator's onus to find these ways in the TL.

### **Proximity in legal translation**

Back to legal translation. This paper is mainly intended to elaborate about the applicability and usefulness of proximity principle in legal translation. Another goal is to make sure of the extent of its reliability and credibility in translating law. A third aim is find out about the volume of loss of meaning of SL legal texts in the TL. Yet, the ultimate aim of this paper is to illustrate the minutiae of investing proximity principle on a large scale to solve several problems of legal translation.

### **2. Problem of the study**

The central problem of the study is that our translations from one language into another are proportionately approximate translation of meaning due to the fact that many words and expressions do not have full one-to-one equivalence in the two languages. So they are translated only partly, or approximately into satisfactory versions of translation, being the next best choice to translators. This problem occurs in almost all types of translation including legal translation which is conceived of as an extremely accurate type of translation. This research deals with the problem of translating legal language sometimes approximately rather than accurately for several reasons using a number of translation procedures to overcome the problems of rendering legal meaning as closely as possible to guarantee a good proportion of it, which is not perfect but accepted.

### **3. Study hypotheses**

The research hypothesizes that sometimes meaning cannot be translated fully due to lexical, cultural, sociological and legal differences between the two languages involved, English and Arabic. This implies that translators have to do something about the meanings of some legal terms that cannot be translated perfectly and directly into ready-made equivalents in the other language, and they do not enjoy the luxury of leaving anything in the legal text untranslated.

### **4. Aims of the study**

The study's aim is multiple: to probe the principle of proximity as a translation strategy compared to perfect equivalence; to point out in practical terms the justifications for using it; and to suggest

translation procedures to help translators apply the strategy of proximity to solve the problems of translating some legal terms, expressions and documents in general.

### **5. Importance of the study**

In the light of increasing interest in, and demand for professional legal translation around the globe, it is extremely important to revisit the process of producing meaning in another language especially when straightforward identical equivalence is not available in it. At the same time, it is useful to restate the significance of understanding the process of striving for an approximate meaning in the TL as closely as possible in terms of translation strategies and procedures that would aid the translator to achieve proximity of meaning in the TL. Indeed, on many occasions, the struggle to achieve that is tenuously the most significant process in the production of closeness of meaning in the other language as appropriately and satisfyingly as possible.

### **6. Previous literature**

Only cursory references have been made to proximity principle in translation in general, but almost none in relation to legal translation. A casual mention has been made to this principle by Hatim and Mason (1990&1997); Newmark (1988) (who called it accepted translation); Rojo (2009) who (who named it approximate translation), Ghazala (2014), Cao (2007&2010) and perhaps El-Farhaty (2015&2016). Hence, this research paper is claimed to be the first detailed study of this principle of translation of approximation.

### **7. Study questions**

The questions of the study are mainly about one major problem in translation in general, and in legal translation in specific. That is, there are terms and phrases in the SL that do not have one-to-one direct and accurate equivalent in the TL, in which case the translator resorts obligingly to proximity principle to render meaning as closely as possible, or at least partially. Hence, the questions of the study are specifically and briefly: what are these terms that are insurmountable to translate?; how can they be rendered into the other language as closely as possible to the meaning of the original? And what are the strategies and procedures that can be employed by the translator to achieve that and why?

### **8. The study results**

Amongst the most important results of this study is establishing proximity principle in translation in general and in legal translation in particular as one of the bases on which translation theory and translation studies lean heavily to find out about the solutions to the translation problems of unfindable and non-equivalent words and terms, based on the proverbial rule: “half a loaf is better than none”. Besides that, among the results expected for the research is to make easier the possibility of finding logical and convincing solutions to such a big problem of translation by means of translation procedures. The beneficiaries of the study are the people interested in translation, particularly legal translation, namely, university students of translation, trainee translators, professional translators and teachers of translation.

### 9. Limitations of the study

This study is limited to professional translation studies and applications with respect to legal translation in specific, though. Hence, its findings and conclusions are limited to the translation of legal documents mainly from English into Arabic and occasionally from Arabic into English. Yet, applications to other types of texts in the discipline of translation are not entirely excluded.

### 10. Methodology, definitions, tools and theoretical framework of the study

This study follows up the following methodology: theoretical definitions, arguments, analytical discussions, translation strategies and procedures that are confirmed and applied in practice by a host of illustrative examples from the two languages involved.

### 11. Proximity principle as a translation method, strategy or procedure?

A method of translation is usually applicable to whole texts, whereas strategies and procedures are limited to words, terms and phrases. Thus, proximity principle cannot be a translation method. However, it is either a translation procedure or translation strategy. Usually, it is referred to as a translation procedure when used in its general sense of approximation of meaning. Yet it can be described as a translation strategy when reference is being to the various ways (i.e. procedures) to realize it when applied to legal translation. In this sense, strategy is a superordinate word (or a hypernym) subsuming a variety of hyponyms representing translation procedures like the following:

- Through translation  
(e.g. VAT ضريبة القيمة المضافة; Caesar law قانون قيصر)
- Adaptation  
(e.g. Caesar Law قانون معاقبة بشار الأسد في سوريا)
- General sense  
(e.g. Copyright: الملكية الفكرية (instead of حقوق التأليف والنشر)
- Intended sense  
(e.g. dead loss خسارة لا تعوض)
- Cultural equivalent  
(e.g. letter of law نص القانون; marriage of convenience زواج المصلحة)
- Approximate translation (of meaning)  
(e.g. canonical law قانون فقهي)
- Partial translation  
(e.g. liquidation قفل حساب; solicitor محام (not متدرب) تحضيري/محام وكيل قضايا/محام)
- Recognized translation  
(e.g. bail كفالة; defendant مدعى عليه; plaintiff المدعي; prayer استرحام)

- Paraphrase  
e.g. parole evidence rule (قاعدة البينة الشفهية (لا تقر الأخذ بالدليل الكلامي مهما بلغ من القوة))
- Footnote  
(e.g. 'Noxa' can be translated into ضرر من الغير, then more details can be footnoted as ضرر (الغيبية؛ حصر النفس؛ إثبات alibi; يحل بشخص أو بشيء نتيجة فعل غير مشروع من شخص أو شيء أو حيوان) المرء عدم وجوده في مكان وقوع الجريمة))
- Eclectic translation  
(e.g. contraband مهربات (rather than equally good translation into ممنوعات probably to state clearly the type of the goods intended specifically)
- Neutralization/deculturalization  
(e.g. Caesar Law قانون قيصر (rather than قانون معاقبة سوريا to use specific reference)
- Literal translation  
(e.g. hot water ordeal محنة الماء الساخن للاستبراء)
- Acceptable/accepted translation  
(e.g. Therapeutic Jurisprudence (فقه المعالجة) للمتهمين في قفص الاتهام)
- Metonymy  
(e.g. brain drain هجرة الأدمغة)
- Semi-collocation  
(e.g. brain drain هجرة العلماء (instead of هجرة الأدمغة); shock enormity صدمة قوية (rather than هول الصدمة); gentlemanly agreement اتفاق ودي (c.f. اتفاق شرف))
- Euphemization  
(e.g. Money laundering غسل أموال (بدل: تهريب أموال غير مشروعة); criminal conversation محادثة جنائية (في إشارة إلى الفجور والكلام الفاحش))

## 12. Scope of proximity principle

Many of our translations of different types of text and language are unknowingly approximate translations. That is, they are full equivalents to the SL words and phrases. In addition to the examples stated above (i.e. prayer, romanticism, democracy, etc.), hosts of examples can be cited here, but there is no space for them in this paper. However, different miscellaneous examples can be put forward in the next point to illustrate the point of argument about proximity principle in translation in general, and at translating legal/cultural terms of different types (political, religious, political and social) in particular, especially those not found in the TL.

(1) **Unfindable cultural/legal words** (with a loss of part of meaning): e.g.

1. (العرض) (jealousy for women): an approximate translation of the general sense of the Arabic term which is completely absent from English culture and lexicon. More

- to that, in the British social culture, the English family feels proud if their grown daughter has a boyfriend who can visit them any time and their daughter is free to go with him anywhere anytime.
2. 'Boyfriend' / 'girlfriend': translated approximately and euphemistically into Arabic as ... صديق/صديقة؛ عشيق/عشيقة؛ خطيب/خطيبة؛ حبيب/حبيبة... and has a zero equivalent in the Arabic culture. Such relationship between men and women is categorically forbidden in Arabic culture, and these translations just render the SL meaning partly and politely to Arab readers.
  3. مروءة: one of the unfindable words in English, translated approximately into magnanimity, chivalry, sense of honour, etc. all of which do not translate but a part of the meaning of the original Arabic term.
  4. اجتهاد (personal interpretation interpretive judgment, opinionated interpretation): all these are again semi-translations that make the meaning of the original approximately comprehensible to English readers.
  5. المشاعر (الأماكن) المقدسة/مناسك الحج (The Holy Sites (Places) in Makkah/ Hajj Rituals): an approximate through translation rendering broadly the term's sense.
  6. فتوى (Fatwa (religious/legal counsel).
  7. (تعدد الزوجات) Ta'adud al-zawjat (Islamic legal multi-marriage).
  8. (الميراث/التركة) Al-Mirath / Al-Tarikah (Islamic inheritance laws)
  9. (زواج المسيار) (Misyar Marriage / non-committed legal marriage)
  10. (الشغار) (exchange marriage (forbidden in Islam): sister and brother getting married to sister and brother of another family in exchanges, with no dowry.
  11. (الحدود في الإسلام): major punishments in Islam.
  12. President (رئيس): originally, it is a western political / administrative term that may apply to the following: head of the State, head of university, head of the Security Council of the UN, head of a session in a meeting, a bureau, a conference, a congress, a parliament, a company, head of ministerial council (i.e. the cabinet), head of a team, group, researchers, sport, etc., head of a social or sports club, delegation, etc.
  13. Chancellor (مستشار): can be approximately a king's / president's adviser, a prime minister (in Germany), a consultant in a company, a head of university in the UK (interchangeable with president, rector and principal), etc.
  14. Mayor (محافظ): the governor of a big city (i.e. shire / province) in some Arab States, the chief director of a city/town administratively next to Emir/Emirate (as in Saudi Arabia), etc.
  15. Political concept terms like liberalism, democracy, radicalism, etc. (see above for translation and discussion) which are generally translatable approximately.

### Marriage terms:

- (1) Same-Sex Marriage (زواج الجنس الواحد؛ زواج الشذوذ؛ زواج الشاذين/الشاذات): The landscape of marriage changed in June 2015. In a supreme court ruling, the court held that prohibiting marriages between couples on the basis of their genders was unconstitutional. This decision effectively overturned all prohibitions against same-sex marriage, granting many people the right to marry for the first time.

- (2) Parenting marriage (زواج الإنجاب): this model of marriage is all about the children. A romantic connection need not be part of the package. Two people commit to raising kids together and providing a great home for them. They promise to stay together only until all of their children become independent. Of course, they can always decide to stay together even after that, but the forever assumption is not part of their marital contract from the start.
- (3) Safety marriage (زواج مصلحي / مصلحة): Some people marry for money. Others marry for health insurance or for financial security while they pursue their passions or an education or they marry for some other instrumental reason. Don't get all judgy! It is not gold-digging or exploitation if each spouse gets something out of the arrangement and each explicitly agrees to it from the outset.
- (4) Living alone together marriage (زواج الاستقلال الفردي): This marriage is for people who say they need their space, and mean it, literally. Each spouse has a place of his or her own. They are committed to the relationship but want a measure of autonomy, too.
- (5) Open marriage (زواج مفتوح بالسر/مع وقف التنفيذ بالتراضي): Spouses have other partners but they are not sneaking around. They are practicing "consensual non-monogamy." They want a stable marriage but not a monogamous one.

Hence, both as a strategy and a procedure, approximate translation is used frequently and flexibly in almost all types of text and not restricted to legal or any other texts to sort out some problems of translating them when full meaning is unattainable for several reasons discussed in the next point.

### 13. Applicability of proximity principle: when and why

- (a) No one-to-one equivalent is available in the TL: (e.g. Hajj rituals, boyfriend, jealousy toward women, ideology, pragmatism, pragmatics, etc.)
- (b) Premeditated partial meaning for cultural or other reasons: (e.g. romanticism (رومانسية): meanings of pornography and atheism are excluded in Arabic which adopts the implication of emotions and feelings only. See above for more examples and details) etc.
- (c) Paraphrastic translation of zero-equivalence words for illustration: (e.g. Ka'ba (the Holy House of God) (see also earlier).
- (d) Euphemistic translation for in respect for readers (e.g. money laundering (غسيل أموال) instead of the negative term of (تهريب أموال غير مشروعة بطرق غير مشروعة); crime against nature (translated as الشذوذ الجنسي; crime against nature (translated as جريمة ضد الطبيعة to evade the bad criminal conversation (translated into the less exposed محادثة جنائية to hide the impolite فاحش كلام), etc.
- (e) Ignorance of the exact term on the translator's part who translates the term into general sense (e.g. 'landlord' translated into المالك rather than the exact equivalent العفار; 'action' into the general دعوى قضائية not into the specific legal term إجراء قانوني), etc.
- (f) Illegal meaning for legal meaning (e.g. agreement (موافقة) instead of the specific عقد/اتفاقية), etc.
- (g) Transference/naturalization instead of the specific Arabized term (e.g. 'policy' into the colloquial naturalized term بوليصة, to mean وثيقة, police (بوليس) (instead of the Arabic term (الشرطة), etc.).

#### 14. Volume of loss of meaning of the original.

The volume of loss of the SL meaning at applying approximate translation could be one of five possibilities:

- (1) Great loss (e.g. 'boyfriend/girlfriend' translated into صديقته / صديقها which expresses a fraction of meaning in Arabic and has more serious implications of a sensual, love and illicit relationship); 'prayer' which is translated loosely but recognizably into صلاة/دعاء despite the fact that our prayers are substantially different from theirs in Christianity (see above).
- (2) Misleading loss of SL meaning (e.g. 'polygamy /bigamy' is translated misleadingly into تعدد الزوجات, but the fact is that it is جريمة تعدد الزوجات in the English original for marrying two or more wives at the same time and living together is a crime in the Western Christian law and culture).
- (3) Proportional loss of legal implications (e.g. translating زواج المسيار into part-time / temporary / occasional / on-passing marriage ignores the woman's concessions of some of her rights like dowry, permanent residence with her husband, etc.).
- (4) Minor loss of meaning of the original (e.g. 'lawyer, barrister, solicitor' are all translated approximately into Arabic as محامي with no serious loss of meaning of the SL); 'court' is translated accurately into محكمة, but approximately and symbolically into قضاء; etc.).
- (5) Marginal loss of SL meaning (e.g. translating doublets like 'able and willing' into one word (قادر), rather than two words as قادر ومصمم; or translating triplets suchlike 'cancel, annul, and set aside' into one word (ألغى), or two words (ألغى وأبطل) rather than three words as (ألغى وأبطل ونسخ), etc.

#### 15. Inapplicability cases of proximity principle in legal translation

There are legal contexts where approximate translation is inapplicable owing to the big difference of meaning of the seemingly two close words. Precise comprehension of the words concerned is required in their religious legal sense. To attain that, translators need to check their meanings in specialist religious or legal bilingual and monolingual dictionaries, or in jurisprudence books. Utmost care should be taken at translating these words for some of them may have a double-decker meaning: one religious, another legal. For example, "retribution" in Islamic context is قصاص, whereas in legal context it can be –according to Al-Farouqi, 2000: 609 – تكفير (عن ذنب); عوض/تعويض؛ جزاء؛ أجره على خدمات...

Following are more guidelines to help translators overcome the problems of translating these technical religious-legal terms (see also Ghazala, 2021):

- (1) Avoidance of confusing the common meaning and legal/religious meaning of the polysemous terms like العارية, whose common meaning is "naked", but its religious/legal meaning it is "loaned object" (from borrowing and lending). Another example is القذف, which is commonly "throwing / hurling", whereas religiously and legally, it is "slander", etc.
- (2) Precaution against confusing seemingly synonymous words such as دية and فدية, for they may have different meanings, as is the case here. That is, while the latter means "blood money", the former means "redemption/ransom). Another example is the differentiation between the seemingly near synonyms الطلاق and الخلع. That is, while the former means the

well-known term, "divorce", the latter is "divorce for consideration" (paid by wife) which most likely does not take place as the wife may change her mind any time. Similarly, marriage terms need be treated with utmost care as some of them are synonyms but do not translate one another on the basis of proximity principle thanks to small differences that make them different in a way or another from one another (see some marriage terms above).

- (3) Careful legal distinction between different types of the same general term should be taken. For example, divorce is of different types with different legal interpretations and liabilities (e.g. طلاق رجعي (revocable divorce); طلاق بائن (irrevocable divorce); طلاق سني (proper divorce); and طلاق (divorce). These and similar terms cannot be translated approximately due to the difference in their meanings both legally and religiously.

## 16. Conclusions and results

We may draw a number of conclusions and results from this paper on applying the principle of proximity to legal translation. *First*, there are many words and phrases in Arabic that are not readily available in English and vice and are described in translation terminology as untranslatable, or unfindable. Well, this does not mean that their meanings cannot be translated into English. As stressed earlier, it is an ipso facto now that nothing in language is untranslatable, and that "everything without exception is translatable", as Newmark says (1988: 6, 72-73). This basic principle in translation draws heavily on the understanding of translation as not merely a one-to-one equivalent practice, but as a translation of the SL meaning into the TL either identically, closely, approximately or by transference, paraphrase, etc., whichever is applicable. That is, المشاعر is translated into a paraphrase as 'the Holy Sites in Makkah'; الحرمان الشريفان is translated approximately into the 'Two Holy Mosques', but القرآن is transferred into English as 'The Koran', without changing the Arabic pronunciation, and without giving its meaning. The same is said of حجاب and حجة which are transliterated ad lib as 'Jubbah' and 'hijab/hejab' in a row.

More to that, the Islamic term تعدد الزوجات is translated wrongly into the English equivalent 'polygamy / bigamy'. In fact, it has no equivalent of any kind. More seriously, it is highly sensitive in English, as getting married to more than one wife at one and the same time is not allowed either religiously, legally, socially and culturally. Legally speaking, it is a crime in the English Law. Hence, English dictionaries define 'bigamy' - which is wrongly mistaken for the Arabic term - as "The crime of marrying while one has a wife or a husband still living, from whom no valid divorce has been effected" (Webster's, 1996). However, the meaning of the Arabic term has to be rendered into English properly. So neither 'bigamy' nor 'polygamy' works since both are crimes that a punishment is sued for those who commit either. Further, they are applicable to both sexes, a husband having more than one wife, and a wife having more than one husband. In Islam, However, getting married to more than one wife at the same time is permissible for Muslim men only and, hence, cannot be described in any way as a crime. Translators are required to suggest an alternative term that may retain the positive sense of the Arabic term in English and, at the same time, be acceptable in the TL. Suggestions like: "Islamic legal poly-marriage"; "Islamic multi-marriage" are not too bad.

We also conclude that the number of words used to express the meaning of an SL term that has no equivalent in the TL is not restricted, but usually, 'the shorter the better'. This makes it clear that the notion of equivalence to us is not a matter of words, but a matter of meanings that can be

expressed in the TL in different ways. This is possible in any live languages, and it is the translator's onus to find these ways in the TL.

*Further*, approximate translation is sometimes recommended strongly to overcome the problem of translating terms that have no perfect equivalence in the TL. The fact of the matter is that a plenty of our translations of different types of texts including legal texts are approximate translations leaning heavily on proximity principle.

*Third*, proximity of meaning is a big issue in translation in general, and in legal translation in special for it sorts out many translation problems including even examples like "The Saudi Parliament" as an approximate translation for "the Shura Council (مجلس الشورى)" as it looks like a parliament to the British similar in shape and representation to their Parliament, "The House of Commons", despite several differences between the two Houses (e.g. the British Parliament is selected by public election, whereas the Shura Council's members are appointed by the King, etc.). Besides, gambling (ميسر) is legal in English law, whereas it is illegal in our law and forbidden in Islam. In other words, the cultural connotation of the term is entirely different in the two languages, English and Arabic. And so on and so forth.

*Fourth*, the approval of this procedure of proximity is due the fact that coming close to the meaning of the SL term in the TL is next to identical equivalent and much better than paraphrase, transference or a long comment or footnote. The missing truth about these approximations is that they are treated as identical equivalents, but they are not; they are approximate translations. Therefore, صلاة/دعاء is not a perfect equivalent of "prayer" – as many would think – but an approximate equivalent for our prayer – in either sense – is not like the Christians' prayer both in shape and content (see above. See also Ghazala, 2015 and Hatim and Mason, 1990, for further details about "approximate translation"). In other words, "half a loaf is better than nothing", as it were.

*Fifth*, honesty and accuracy require from legal translators to translate truthfully whatever the sensitivity of the word may be. These procedures give them a multiple choice to pick up the most appropriate one to translate the term concerned. They are also required to be brave enough to translate the proper meaning of the SL term into the TL without fearing to be wrong or criticized for doing so, especially when the SL term exceeds all limits of repugnancy and decency, by being preposterous or blasphemous. Translators can be keen on translating the original meaning accurately, but they should follow it with a correcting comment in square brackets, thus, righting the wrong and at the same time showing jealousy toward their religion of Islam and respect to the TL readership.

*Sixth*, the translator is responsible for translating the legal term in question appropriately into Arabic (or English), and that's it! His/her task does not include changing the meaning or arguing about the implications of the term in question. The same argument applies to "adultery" (الزنا), "wine drinking" (معاقرة الخمر), "gambling and other similar terms that are treated differently in the religious culture and law in the two languages concerned. Rather, we, the translators, are concerned with the appropriate translations of these terms into Arabic, and no comment is required unless the term is sensitive and insulting to readers (e.g. same sex marriage/gay marriage: (زواج الشاذين المثليين), or anti-religious.

The *seventh* conclusion drawn is that Islamic legal terms can pose a big problem of translation. A good number of these terms occur in different legal contexts of family, criminal, common, civil and other types of law. They have to be attended to by translators at translating

them. So, utmost care should be taken at translating them for some of them may have a double meaning: one religious, another legal. For example "retribution" in Islamic context is قصاص, whereas in legal context it can be –according to Al-Farouqi (2000: 609): (تكفير (عن ذنب)؛ (عوض/تعويض؛ جزاء،؛ أجرة على خدمات...)). Besides that, the common meaning and legal/religious meaning of polysemous terms like العارية, whose common meaning is "naked", but its religious/legal meaning is "loaned object" (from borrowing and lending). Another example is القذف, which is commonly "throwing/hurling", whereas religiously/legally, it is "slander", etc. By analogy, precaution should be exercised against confusing seemingly synonymous words (i.e. false friends) such as دية and فدية, for they may have different meanings, as is the case here. That is, while the latter means "blood money", the former means "redemption / ransom). The same precaution applies to الطلاق/الخلع (divorce / divorce for consideration claimed by wives only).

*Eighth*, careful legal distinction between different types of the same term is commended to be exercised by legal translators. For example, divorce and marriage are different types with different legal interpretations and liabilities each. Therefore, some of them might look similar, but they are not, so that they cannot be translated approximately, but accurately (as many examples have demonstrated above).

*Finally*, both as a translation strategy and a procedure, the principle of proximity is well-established in translation practice in general and in legal translation in particular. As confirmed by this paper, it helps sort out a number of translation problems of legal words, terms and phrases that can be or should be translated approximately when accuracy of meaning is either unattainable or not required. In the end, the translator's discretion of taking the right decision of opting for investing proximity principle or not in legal translation is the deciding factor. A good translator cannot turn a blind eye on it at translating law.

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## Appendix GLOSSARY

(Legal terms translated approximately)

Legal terms	Arabic translation	Proximity procedure
act of aggression	اعتداء	(reduction)
act of law	قوة القانون	(sense)
action	إجراء؛ قضية	(contextualization)

arbitration document	وثيقة فض النزاعات	(expansion)
bigamy	جريمة تعدد الزوجات/الأزواج	(foreignization)
bureaucracy	بيروقراطية	(naturalization)
civil marriage	زواج قانوني شرعي	(localization)
common heritage of mankind	مبدأ الحفاظ على التراث العام للإنسانية (للأجيال القادمة)	(paraphrase)
communal marriage	زواج خارج المحكمة	(localization)
companionship marriage	زواج العشرة	(foreignization)
consensual marriage	زواج بالتراضي	(sense)
copyrights	حقوق الملكية الفكرية	(overtranslation)
corporatism	حكومة نقابية	(foreignization)
counsel	مستشار/مساعد قضائي	(cultural equivalent)
cross-examination	استجواب الشهود (من محامي الدفاع)	(paraphrase+cult. equiv.)
crown court	محكمة الجنايات (في إنجلترا)	(sense+classifier)
crown court	محكمة التاج	(foreignization)
democracy	حكومة ديمقراطية	(foreignization / naturalization + expansion)
dictatorship	دكتاتورية	(foreign. / naturalization)
dictatorship	حكومة طغاة/طغيان	(sense)
economic marriage	زواج مصالح اقتصادية	(paraphrase)
fascism	فاشية	(foreignization / naturalization)
green-card marriage	زواج البطاقة الخضراء الأمريكية للجنسية	(paraphrase)
letter of credit	خطاب اعتماد	(foreignization)
letter of demand	خطاب تكليف	(localization)
living alone together marriage	زواج استقلال الفردي	(literal sense)
maintenance	إعالة؛ إنفاق	(contextualization)
manus marriage	زواج تسلط (الزوج على الزوجة أيام الرومان)	(overtranslation)
marriage of convenience	زواج مصلحة	(sense)
marriage went downhill	ذهب زواج في مهب الريح/في خيبر كان	(cultural equivalent)
marriage without disparagement	زواج متكافئ	(sense)
parenting marriage	زواج الإنجاب	(literal translation)
police interviews	إفادات أمنية	(sense)
police power	سلطة الأمن العام	(expansion)
political marriage	زواج مصالح سياسية	(literal translation)
polyandry	جريمة تعدد الأزواج	(foreignization)
polygamy	جريمة تعدد الأزواج/الزوجات	(foreignization)
polygyny	جريمة تعدد الزوجات	(foreignization)
power of attorney	توكيل رسمي؛ وكالة رسمية	(cultural equivalent)
social marriage	زواج مصالح اجتماعية	(expansion)
testament	وصية أخيرة؛ أمنية أخيرة	(sense)

testimonial	شهادة تحريرية (على سلوك أو تصرف)	(paraphrase)
testimony	شهادة شفوية مع اليمين	(expansion)
theocracy	حكومة المؤسسة الدينية	(overtranslation)
trial marriage	زواج تجريبي؛ زواج مؤقت	(literal translation)