

The DNA of Officialese: Feasibility of Legal Genre Analysis in Official English to Persian Translation

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Abstract

Although official translation suffers from fuzzy demarcations with other fields of translation, the recent spate in international trade and frequent exchanges in the post globalization period has boosted the demand for official translation services. This poses a new challenge to translators and a new topic for research on such issues as the features of this form of translation, standard requirements for translators and other related aspects in this domain. This paper attempts to bring together aspects of genres and legal translation to investigate how these decisive factors can contribute to translation of official documents from Persian to English. This article sets out by providing some in-depth background knowledge about the concept of genre in translation studies and by discussing the impact having on translation demands concerning types of official documents that need to be translated. Then, the macrostructures of three official documents, birth certificate, university degree, and a contract in Persian and English, which entail the identification and application of genres pertinent to official translation, are rendered as concrete specimens. Finally, it concludes by some pedagogical implications.

Key Words: Officialese, Genre, Legal Translation, Official Translation, Document, Contract

Introduction

Official documents, such as certificates of birth or marriage, are usually among the most often translated specialized texts because of their extensive public usefulness. They are classified as legal texts (Zralka, 2007)

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for at least two reasons. First, they are used for matters connected with law, like proving a subject's identity or marital status, and are prepared most often in the form of sworn translations. Secondly, they share many typical formal characteristics of other legal documents and, at the same time, specialized texts.

A cursory glance at the bulk of official documents that required to be translated reveals a striking trend in this kind of translation, which is definitely discernable. The causes for this trend are enormous and encompass requirement of accompanying documentation for education and profession oversea, and the mass mobility of people around the world, which has led to immigration. So as the bulk of official translations increase, the pressure on translators' shoulders to work more quickly efficiently is more tangible. Some translators focus their attentions on computerized tools in the hope that technology may aid them promote their rendering. Although this trend may be reckoned as a sound way out in certain cases, it is not necessarily an empowering strategy in all circumstances.

The purpose of this article is to suggest that the identification of legal genres common between parallel official documents offers a feasible alternative for translators who are willing to have a scrutiny into the nature of the particular texts they are dealing with as well as to concentrate on increased insight and functionality of translation in the original document.

1. Concept of Genre in Translation Studies

Generally defined as the study of situated linguistic behavior in institutionalized academic or professional settings, genre analysis has its crucial characteristics for our translation purpose (Bhatia, 1997: 205):

- Genre analysis shows a genuine interest in the use of language to achieve communicative goals rather than a detailed extension, validation or otherwise of one linguistic framework to the other. Therefore, it is not just an extension of linguistic formalism.
- Genre theory exploits all aspects of socio-cognitive knowledge situated in disciplinary cultures in order to analyze construction, interpretation and use of linguistic communication to achieve non-linguistic goals.

Fortunately, the relevance of genre and genre analysis has begun to be recognized if not widely studied in translation theory and practice in recent years, especially in a text-linguistic approach to translation. Such an approach has helped to increase our sensitivity to the linguistic patterning at various levels and thus makes us aware of the complexity of translation competence (Schäffner, 2000).

It was Katharina Reiß (1971) who first investigated the intricate relationship between genres and translation, though she was mainly concerned with text types and not with genres. Based on Bühler's three functions of language, Reiß derived three corresponding dimensions of language and formulated three corresponding text types, i.e. informative, expressive, and appellative. These three text types are then linked to three specific translation methods: a straightforward one, that of identifying, and that of adaptation (Schäffner 2000: 212).

But what seems to be wrong with Reiß's typology, according to Snell-Hornby (1988: 32), is "the use of box-like categories as a kind of prescriptive grid, creating the illusion of clear-cut objectivity. When applied to real-life translation in all its complexity, Reiß's typology results, not in scientific objectivity, but in distortion." For her own part, Snell-Hornby developed an integrated approach towards translation for text types, while not forgetting the blurred edges and overlapping existed among them. From level A to F, level B presents a prototypology of the basic text types. At the end of the scales are the special language text-types, the main fare of the modern professional translator (ibid. p.33); in the training institutes the major areas are law, economics, medicine, science and technology, and these are now being further dealt with intensively in academic and business studies, quite a number of such research can be found in the two volumes edited by Trosborg (1997,

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2000): For example, Bhatia (1997) argues that it is crucial to maintain generic integrity of the intended genre when translating legal texts and proposed the adaptation to readership in terms of “easification”.

Göpferich (1995) analyzes a number of German and English professional genres (e.g. instructional manuals, patent specifications, conference reports) and finds, among other things, that conference reports and book reviews seem to have more flexible macrostructures in contrast to patent specifications in the scientific and technical areas. Schäffner (2000) illustrates the advantages of parallel text analysis based on two sample genres, i.e. between English and German job offers and news reports.

2. Legal Genres in Translation

According to Alcaraz and Hugues (2002), ‘genre’ or ‘text type’ refers to “each of the specific classes of texts characteristic of a given scientific community or professional group and distinguished from each other by certain features of vocabulary, form and style, which are wholly function-specific and conventional in nature.” Texts belonging to a given genre display at least the following stylistic and formal features:

- A shared communicative function expressed by means of the same performative verb. For example, all injunctions are in the form of orders that must be strictly complied with, whether they involve performing an act or refraining from a specific action; this peremptory nature of the order is thus built into the text in the form of a warning as to the consequences of non-compliance.
- A similar macrostructure, i.e., format or organizational outlines. For instance, all judgments are arranged into a minimum of three basic sections: facts as found, relevant law, and decision or ruling.
- A similar discursive mode of developing the macrostructure (narrative, descriptive, imperative, and optative) and similar discourse techniques aimed at satisfying the discourse expectations of the recipient or addressee.
- A common lexical and syntactic arrangement of the material and a common set of functional units and formal features, e.g. in statutes and other legislative texts, the abundant use of indefinite pronouns, passives and impersonal forms of the verb, “shall” forms of the future to indicate legal obligation, extensive lists of categories or classes of persons and objects to whom or to which the law applies, and so on.
- Common socio-pragmatic conventions, e.g. the hierarchical structure of the judiciary as reflected in the abbreviated titles of different judges, and the appropriate style of address (‘my Lord,’ ‘your Lordships,’ ‘your Honor,’ ‘your Worship,’ together with the highly conventional use of certain verbs or verb phrases in given contexts (‘submit,’ ‘put it to you,’ ‘crave,’ ‘petition,’ ‘pray,’ ‘grant,’ ‘give leave,’ ‘restore [an injunction],’ ‘discharge [an injunction],’ ‘strike out,’ etc.)(Alcaraz and Hugues, 2002: 101-102).

3. The Nature of Legal Language

Cao (2007:13) classifies legal language with respect to the nature of its use that can be described as normative, performative and technical.

3.1. Normative

The Language of law is used to impose rights and obligations; it is largely prescriptive. Law’s basic function is to regulate human behaviour and human relations. Law exists as a set of prescriptions having the form of imperatives defining and enforcing the arrangements, relationships, procedures and patterns of behaviour that are to be followed in a society (Cao 2007). Legal language serves to communicate the legal norms to their addressees.

3.2. Performative

The speech act theory developed by Austin (1962) makes language responsible for effects in reality. Speech is not only words but also actions. By uttering certain words, the facts may be changed. Legal effects and legal consequences are commonly obtained by merely uttering certain words (Cao, 2007:14), for example in a court's judgement or in front of a clerk or a priest during the marriage ceremony.

3.3. Technical

The question of technicality of legal language is not perceived consistently. One position argues that there is no legal language as such and it is a part of the ordinary language. The other holds that legal language is a technical language. If the latter view is accepted, what makes the language of law different from other types of language use? The chief differences may be discussed in relation to the following aspects:

1. speakers
2. stylistic differences
 - a) specific vocabulary – terminology issues
 - b) syntactic structures

3.3.1. Speakers

The language of law is a language of legal norms and related discourse. The language of legal norms is that of legislation, judicial decisions or contracts. It is said that it is the language created and used specifically by lawyers. Although the lawyers form the core of the language-of-law-speaking community, people with no legal educational background, yet who adopt the legal terminology and expressions to a certain extent, for example, influence legislation. Drawing on the situation in the civil law system, the circle of the legal language users may be described as: the legislators (the drafters who actually write the laws; members of the parliament, whose knowledge of all the terminology and concepts is not complete and sufficient but who try to sound as if it was), i.e. all those who create the laws in the written form and who have real influence on definitions of legal terms; the judiciary (judges and people who influence the written judgements – assistants to the judges or court clerks); the lawyers (when negotiating, giving speeches in court, drafting documents etc.; and when talking to one another).

The circle of the law language speakers in common law systems is generally the same. The major difference is that the origins of certain terms and the evolution of the language are somewhat different due to the different sources of law (the main body of legal rules is to be found in judicial decisions not in legislation). The type of speaker influences the particular style of the legal language: there is a difference between the language of an Act of Parliament and the language used by lawyers when talking to one another about legal matters. Nevertheless, at times the language the lawyers use does not seem to resemble the language of legislation at all. Lawyers seem to have developed some linguistic quirks that have little communicative function, and serve mainly to mark them as members of the legal fraternity (Tiersma, 1999:51).

3.3.2. Style

Language of law is said to be purposive and pragmatic (Knapp, 1995:22). These characters therefore govern its style. There have been numerous attempts on defining 'style'. Vilém Mathesius made one of them. He defines style as "individual, unifying character found to be present in any work resulting from intentional activity" (Vachek, 1974:114). Legal style refers to the linguistic aspects of the written legal language and also to the way, in which legal problems are approached, managed and solved (Cao, 2007:22, quoting Smith, 1995:190). The style of the language of law is one of the functional styles. It is said to be marked and sometimes described as being a sub-style and the most typical specimen of the officialese style, the style of official documents (Vachek, 1974:187). On the other hand, in the last decades there have been authors who believed the style of the language of law to be a separate functional style alongside other functional styles, the officialese, or administrative, being one of them. The style of the language of law can be described mainly with regard to its syntactical structure and specific vocabulary.

3.3.2.1. Specific Vocabulary

The most important difference that sets off legal language from ordinary language is its lexicon. Legal language makes use of numerous words and terms that are not common in ordinary language or carries an additional meaning different from their ordinary meaning. Legal language utilizes vocabulary from standard language in their both ordinary meanings (the majority of legal language vocabulary) and specialized meanings.

This second class of words may create confusion because in legal texts they may appear in both their meanings – ordinary and specialized. Knapp (1978:17-20) distinguishes the following groups of words:

1. legal terms
2. words with specific legal meaning and specific meaning in another specialized language
3. words with both specific legal meaning and ordinary meaning
4. words having specific legal meaning, specific meaning in another specialized language as well as ordinary meaning
5. words with neutral meaning

In his later writing, Knapp (1995:122) describes legal lexis as follows:

1. words with ordinary meaning
2. words with both specific legal meaning and ordinary meaning
3. specific legal vocabulary
4. legal language does not use some of the words with ordinary meaning (e.g. beauty, darkne

To complete the enumeration of characteristics of legal language, Mellinkoff (1963: 11) gives the following characteristics of legal English terms: frequent use of common words with uncommon meanings; legal archaisms (words from Old and Middle English, Old French and Anglo-Norman); terms of art; argot; formal words; use of expressions with flexible meanings.

3.3.2.2. Syntactic Structures

Vachek (1974: 188) describes the sentences in English legal texts to be long and complex, yet clearly built up, using various typographical devices of distributing phrases, division of the text into parallel paragraphs and capitalizing certain crucial points of the document. When describing the typical features of legal English, Tiersma (1999: 51-71) gives the following list of typical features, which overlap with Vachek's description at some points: lengthy and complex sentences, unusual sentence structure, wordiness and redundancy, conjoined phrases, frequent use of negation and impersonal constructions. Cao (2007:22) gives two general characteristics of the legal language: impersonal constructions and extensive use of declarative sentences pronouncing rights and obligations. Mellinkoff (1963: 285) argues that the language of law should not be different from the ordinary language without reason. For such differences, the following rationales are usually given: legal language is more precise, shorter, more intelligible and more durable. Of these arguments, precision seems to be the leading feature of the language of law that should give reason to all the other features, which are sometimes said to be its vices.

4. Translation of Legal Texts

Legal translation is a special type of LSP translation involving cross-linguistic communication in the legal context. In contrast to other types of LSP translation, legal translation tends to involve more culture specific components (Biel, 2008: 22). The main problem when dealing with the translation of legal texts is the fact that legal texts are not just typical special-purpose text, such as medicine or biology. Legal texts are usually produced to bear some real-life consequences such as granting rights or imposing obligations. The main functions of legal language are normative and performative: legal texts usually contain legal norms and consequently carry an obligation to follow this legal norm, otherwise a punishment might follow. Therefore, it is greatly important to make sure what the actual purpose of the translation of an individual legal text is.

Every translator of legal texts must face and finally try to solve the tension between the need of legal certainty and the fact of linguistic indeterminacy. Knowing the concepts behind the terms is more important in legal translation than in other translational areas. Translation of legal texts seems to stand at the crossroads of legal theory, language theory and translation theory as Cao writes (2007: 7).

5. Legal Translator

Translation is a special type of communicative language use that requires language competence in two languages, the SL and TL. In addition to the language competence, legal translation requires a certain degree of understanding of law. There have been many opinions on what the ideal legal translator should be like. Sarcevic (1997, quoted by Cao 2007: 37) believes that the legal translator's competence presupposes in-depth knowledge of legal terminology, thorough understanding of legal reasoning and the ability to solve legal problems, to analyze legal texts, to foresee how a text will be interpreted and applied by the court. Weisflog (1987, quoted by Cao, 2007: 37) wants the legal translator to have a thorough acquaintance of law as the subject matter, including laws and legal systems of the SL and TL countries. One can start wondering whether such ideal translators exist. Both these 'definitions' mention one very important element, though. A translator of medical science writings can translate them without any deep understanding of the subject, knowing only the relevant terminology. A translator of legal texts is lost without an insight into the legal systems of both, the SL and TL. I agree that a competent legal translator must have three prerequisites proposed by Smith (1995:181 as quoted by Cao, 2007: 37): basic knowledge of the legal systems, knowledge of the relevant terminology and competence in the TL specific legal writing style.

6. Legal and Official Documents

Regrettably, fuzzy demarcation in relation to other fields of translation is one of the criticisms leveled against official translation. As pointed out by Mayoral Ascencio (2003: 1), it overlaps with fields such as oral translation, legal translation, court translating and interpreting, and community interpreting. Nevertheless, he proposes the following broad definition for official translations "translations that meet the requirements to serve as legally valid instruments in a target country" (2003: 1). These may include birth, death, marriage or divorce certificates, academic transcripts, and legal documents. This specialized field of translation is as important as it is fraught with difficulties, for only in few fields are cultural differences so acute and the consequences of errors so palpable. In a globalizing world, and in the increasingly smaller world we live in, official institutions increasingly depend on translations of official documents, and yet relatively little is being done to develop the necessary skills and tools to help translators working in this field.

As pointed out by Zaro and Truman (1998: 77), the language used in legal and official documents has some common characteristics: it is highly stereotypical, conventionalized and conservative in nature, with a high proportion of set formulae. In addition, it retains morphological, syntactical and lexical features that are no longer used in other types of texts. For instance, the first and second excerpts taken from a power of attorney document, while the third one deals with a birth certificate:

- KNOW ALL MEN by the Presents that I, Edward J. Morrison, HEREBY APPOINT Eleanor Abercrombie, hereafter called my Attorney, to act for me in every respect as fully and effectually as I could act in person concerning all my present and future affairs.
- AND I HEREBY DECLARE that these presents shall be irrevocable for Twelve months from the date hereof and shall at all times be conclusively binding on me and my personal Representatives in favor of third parties.
- IN WITNESS whereof I have hereunto set my hand and affixed my Seal this 23rd day of the month of March in the year of our Lord, One thousand, nine hundred and Ninety-eight.

The main aim of this style of language is to make very specific and precise statements, and to avoid wherever possible connotations and ambiguities, to such an extent that it frequently becomes reiterative and repetitive. Nevertheless, there are significant differences in terms of cultural contexts. The functionalist approaches in translation science lay great stress on the principle of cultural embeddedness of the source and the target languages and accordingly view translation as an intercultural transfer (Gambier 2004: 160). In legal communication based on legal texts, communicative situations are directly affected by the legal systems of the source and target cultures. The legal system of one of the parties involved or, more rarely, a supranational legal system is generally adopted as the communication framework and thus defines the language to be used. The translatability of legal texts, however, directly depends on the relatedness of the legal systems underlying the translation. The communicating parties therefore need to be well acquainted with the legal system(s) involved. This is especially the case when using English as the language of communication, as the Anglo-American legal system, based essentially on common law differs substantially from continental law, to which most of European

countries belong as well as Persian legal system founded on the Islamic law. The nonequivalence of many legal concepts and terms pertaining to these systems thus has to be taken into consideration (Shiravi, 2004:7).

Given the differences between legal systems, the translator often has to resort to adaptation and is obliged to convey the message by replacing cultural elements in the source language with their nearest equivalents in the target language.

Zaro and Truman (1998: 77) emphasize that legal translation represents something of a compromise. Translators usually strive to achieve acceptability in both the target language and the cultural references that it contains, especially in official translations, which have a clearly defined role to play in legal processes. One fact that makes life easier for the translators is the constant repetition of set formulae and text types, which can facilitate the translation process, assuming, of course, that the translator has acquired the experience and knowledge to deal confidently with the specialized terminology.

7. The Macrostructure of Legal Genres

7.1. University Degrees

A good example of a highly conventional genre is the university degree or diploma. Because of the increasing mobility of university students and researchers, translators encounter this type of administrative text on a regular basis. A brief look at the standard macrostructure (layout or outline) of Persian and English examples shows a striking similarity of scheme, which may be brought under the following heads:

English: Identification of the issuing authorities:

Persian: وزارت آموزش، تحقیقات و فناوری

English: The Chief Registrar of the University ofhereby attests to the fact that:
Academic justification for the award:

Persian: مدیر کل آموزش دانشگاه...بدین وسیله تأیید می نماید
با توجه به اختیارات تفویضی

English: ... on the recommendation of the Senate of the University ...
Purpose of the certificate (expressed by a performative verb):

Persian: نظر به پیشنهاد شورای عالی دانشگاه...
اعلام می دارد:

English: ... does hereby confer uponthe degree of
Rights and privileges conferred by the award:

Persian: بدین وسیله دانشنامه... به ... اعطاء می گردد.

English: ... with all the rights and privileges appertaining thereto
The marking scale:

Persian: باکلیه حقوق و امتیازات مربوط به آن...
با معدل کل ...

English: Marking scale: Failing marks range from "0" to "10" and passing marks, from "11" to "20."

Place and date of issue:

Persian: با موفقیت به پایان رسانیده است
تاریخ و محل صدور:

English: Drawn up at ..., this twelfth day of June, nineteen hundred and eighty-eight.
Signature:

Persian: تاریخ تنظیم: بیست دو خرداد ماه هزار و سیصد و شصت و هفت

امضاء:

English: The University Chancellor/Rector/Board of Trustees.

Persian: رئیس دانشگاه/رئیس/هیأت امناء

(Adapted from Alcaraz and Hugues, 2002: 103-104)

7.2. Birth Certificate

Birth certificate can be defined as an official record of the date and place of a person's birth, usually including the names of the parents, details of the time and place of a person's birth, and his or her name, sex, mother's name and father's name. *Comparing and analyzing the contents of the Persian and English birth certificates, the following legal genres are discernible:*

- English:** Country or district emblems
Persian: آرم کشور یا منطقه
English: The name of the country, registration district or province
Persian: نام کشور، حوزه ثبت یا استان
English: Names and dates of acts according to which registration is performed
Persian: اسامی یا تاریخهای مصوبات که بر طبق آن ثبت صورت گرفته است
English: The seat of a registrar's office
Persian: ریاست دفتر ثبت
English: The number of the certificate
Persian: شماره گواهی
English: The place and the date of birth registration
Persian: مکان و تاریخ ثبت تولد
English: The title of the document
Persian: عنوان سند
English: Information concerning the child: surname, first name, middle name, sex, date of birth, place of birth, birth specification (single, twin etc.)
Persian: اطلاعات مربوط به بچه: نام خانوادگی، نام، نام میانی، جنس، تاریخ تولد، محل تولد، مشخصات تولد (یک قلو، دو قلو و غیره)
English: Information concerning parents: surname, first name, middle name and maiden name for the mother, place of birth, residence at the child's birth, parents' occupation, age at the child's birth
Persian: اطلاعات مربوط به والدین: نام خانوادگی، نام، نام میانی، نام خانوادگی مادر، محل تولد، محل اقامت، شغل والدین، سن هنگام تولد بچه
English: Information concerning the person reporting the birth (name, address, relationship, signature and function of an informant or a certifier)
Persian: اطلاعات مربوط به شخص گزارش کننده (نام، نشانی، نسبت، امضاء و وظیفه اطلاع دهنده یا گواهی دهنده)
English: Additional remarks
Persian: توضیحات
English: Signatures (of the registrar or another certifier and an informant) with the official phraseology used in certification
Persian: امضاءها (ثبات یا گواهی دهنده دیگر و یک اطلاع دهنده)
English: The place and date of document issue
Persian: محل و تاریخ صدور سند

7.3. Contracts

The macrostructure of Persian and English contracts does not generally differ – the only visible difference being the English custom of giving titles to individual sections. The basic genres of a contract are:

- English:** Title – descriptive phrase identifying the type of undertaking
Persian: عنوان - عبارتی توصیفی نشان دهنده نوع تعهد
English: An introduction identifying the parties to the transaction

Persian: مقدمه ای که متعاملین قرار داد را مشخص می کند

English: Recitals – historical and economic reasons for concluding the contract, sometimes closely defining the nature of the parties' businesses

Persian: شرح محتویات قرارداد: دلایل تاریخی و اقتصادی انعقاد قرارداد

English: Definitions of terms used in the contract – an English feature slowly finding its way into other legal languages

Persian: تعاریف مربوط به شرایط قرارداد

English: Operative provisions containing rights and obligations, usually introduced by a performative verb

Persian: مفاد اصلی سند شامل حقوق و تعهدات که معمولاً با یک فعل کنشی مانند: بدین وسیله اعلام می گردد.

English: Various provisions (on applicable law, expressing the consideration, giving guaranties); testing clause – sentence introducing the signatures, sometimes containing the date and place

Persian: تعهدات گوناگون مربوط به قانون حاکم بر قرارداد، بیان ثمن، دادن تضمین ها ماده معیار که معرف امضاء ها و بعضی مواقع شامل محل و تاریخ می شود.

English: Signature lines

Persian: امضاء

English: Schedules (annexes)

Persian: الحاقیات

Generally speaking, this layout may serve for both the Persian and English contracts. Particular provisions are structured to sections and subsections.

8. Pedagogical Implications

Until recently genre theory had not been developed exclusively as an educational tool even though the insights it provides into language structure and function have many useful educational applications (Coffin, 2001). This paper has established that Translation students need the cognitive processes to understand the construct of any professional legal genre to enable them to translate these genres effectively. This can be achieved by genre-based instruction (GBI). Genre analysis is a powerful pedagogic tool for instructors and is beneficial for students as knowledge of the generic features of any type of genre provides insight into the working of the genre. Understanding the structural patterns of the target legal genre by identifying the structural moves and the strategies the translators use to achieve their communicative purpose and being able to identify the occurrence of obligatory and optional moves and the sequence in which these moves occur provides the opportunity for Translation students to manipulate the moves based on their understanding of the specialist culture and on their creativity. At the same time, instructors are able to teach these genres more effectively.

This paper attempts to emphasize this fact that the genre approach is not a rigid, formulaic way of constructing texts. Instead, students can learn through the process of translating by knowing what the end product should look like. Therefore, this approach is recommended not only as a basis for teaching LSP but also for the instructors' professional development. Analyzing professional genres and GBI help LSP practitioners gain insight into pedagogical implications. Findings from genre analyses have also contributed to developments in curricula for LSP.

9. Conclusion

A useful innovation in the theory and practice of specialized translation is the concept of genre. The identification of genres is useful for translators since it helps them focus on the particular needs and functions being catered to in the original document, and to look further and deeper into the nature of the particular texts they are dealing with, such as issues of lexical equivalence (polysemy, synonymy), syntactic equivalence (nominalization, passivity, modality, word order) or stylistic equivalence (solemnity, formality, figures of speech and other rhetorical devices, severity or asperity of tone in oral utterances, and so on). In this article, an attempt was made to present genre analysis as a feasible strategy towards the translation of official documents as well as to indicate how genre analysis can be effectively carried out to maintain genre integrity in specialized translations. Although further research on this issue is highly desirable in the days to come, it is hoped that least

to show how genre analysis can facilitate translation of other types of documents such as birth, marriage, divorce, death, police clearance, power in attorney, bank capability letter, and the like.

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