Legal Translation Problems: The Trials of Specialised Translation Competence

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Abstract

This paper presents the results of an empirical study aimed at investigating the translation problems faced by a cohort of graduates in translation with no specialisation in legal translation on the one hand, and a cohort of linguistically-skilled law graduates with no translation background on the other, who translated the same criminal law document from English into Italian. The acceptability of the translations produced by the sample has been assessed by using PACTE's (2009) methodology to contrast the overall performance of each group. These qualitative findings have then been triangulated with process-related data collected through keystroke logging, screen and video recording to assess the significance of subject-field knowledge on the participants' translation performance in specialised translation (cf. Hjort-Pedersen and Faber 2005; Cao 2007).

Key-words: legal translation, empirical study, translation acceptability.

1. Investigating competence in legal translation

Over the last few decades, a definition and conceptualisation of general translation competence has become increasingly urgent (and seemingly controversial) in both Translation Studies and the profession. In parallel, many scholars have tried to outline the profile of a competent legal translator (e.g. Obenaus 1995; Wilss 1996; Trosborg 1997; Sofer 2006; Cao 2007), highlighting the need for a sound legal background, though without a proper delineation of the scope and extent of such knowledge. Furthermore, very few models of legal translation competence have been devised. Thorough lists of the competences to be developed by prospective legal translators through adequate training were compiled as part of a series of EU projects, which started in 1998 with *Aequitas* (98/GR/13) (Corsellis and Ostarhild 2001: 57-59). From the academic perspective, Prieto

Ramos (2011) proposed an integrative process-oriented approach to developing legal translation competence – which builds on, while attempting to avoid duplications typical of, previous paradigms on general translation competence –, incorporating distinctive thematic elements particular to the legal translation process. A few years later, Piecychna (2013) devised a hermeneutical model of legal translation competence. More recently, the QUALETRA research group has proposed a model based on the general EMT reference framework for translation competences (EMT Expert Group 2009), which has been integrated with additional core components more strictly related to legal translation (Scarpa and Orlando, forthcoming). Most of these multi-componential models include rather similar sub-components, despite the use of partially different terminology – e.g. strategic or methodological, communicative and textual, thematic and cultural, instrumental, and interpersonal and professional management competence as termed in Prieto Ramos (2011: 12-13) –, which appear to mirror those of general translation competence models (e.g. Kelly 2002; EMT Expert Group 2009; Göpferich 2009). The underlying assumption thus appears to be that "a competent legal translator is first of all a competent translator" (Cao 2007: 39).

In a didactic perspective, this paper seeks to test this notion by reporting on some partial results of an empirical study conducted at the University of Trieste to investigate the quality issues faced by prospective legal translation trainees with different backgrounds.

2. The empirical study

The distinctive feature of this empirical study is the additional variable of the participants' prior education. This is particularly relevant in today's language industry and in the legal context, because while translations to and from the foreign language are mostly produced by professional translators in collaboration with lawyers, occasionally lawyers themselves make their own legal translations (Faber and Hjort-Pedersen 2009: 340). To this end, the study analyses thirty translations from English into Italian produced by a sample comprising two different cohorts, as follows:

i)   15 MA-level translation graduates (hereinafter, 'Group T' or 'Ts') at the University of Trieste with no specialisation in legal translation; and

ii) 15 linguistically-skilled postgraduate lawyers ('Group L' or 'Ls') at the Law Faculty of the University of Genova, with no translation background.

The 500-word source text to be translated from English into Italian was a criminal law document, i.e. a European Arrest Warrant, presenting a variety of translation problems (e.g. comprehension, pragmatic, terminological, and syntactic problems). To ensure ecological validity, the subjects were allowed to use any resource they wished.

Recent studies have focused on the different product-related preferences shown by the two groups of participants (e.g. SL and TL orientation in Fischer 2008; explicitation vs. implicitation in Faber and Hjort-Pedersen 2009). However, a twofold perspective was preferred for this study.

Firstly, the analysis focused on the translation process, by triangulating data from different collection methods, i.e. screen and video recording, and keystroke logging (cf. Göpferich 2009; Enríquez Raído 2011; Martín-Mor 2011; Morado Vázquez 2012; Teixeira 2014) using Blueberry's BB FlashBack. Pauses in the translation process were analysed as potential occurrences of problems, using an amended list of the primary and secondary problem indicators devised by Krings (1986, transl. in Göpferich 2009). Further, the identified problems were classified with a specific taxonomy developed for this project, including the main sub-categories of content- and language-related problems (i.e. meaning and culture-bound differences, and non-specialised language, specialised terminology and phraseology, mechanics and smoothness, respectively), drawing on Mossop's (2014) list of revision parameters. These data were then correlated with the type of reference materials used, i.e. internal and external support (Alves 1997).

Secondly, the study adopted a product-oriented perspective, as all process-related data were mapped onto the participants' target texts (TTs). Particularly, an error analysis (Vollmar 2001; Mossop 2014) and assessment of the translations' *acceptability* were conducted. It is on the latter that this paper focusses, by presenting the translation acceptability assessment results produced in the empirical study with the methodology developed by PACTE (2009), and triangulating acceptability with the relevant process-oriented data.

3. Assessing translation quality through the indicator 'Acceptability'

3.1. Methodological background

In Translation Studies, the term 'acceptability' was first adopted by Toury (1995) to describe a translation which complies with the rules of the target culture, in contrast with an 'adequate' translation, i.e. one adhering to the rules of the source text. However, the definition of acceptability is not univocal and several scholars use this parameter to refer to translation quality in more general terms (cf. Castillo 2010; Williams 2009). In particular, the research group PACTE took up this notion as a transversal indicator for overall translation product quality. This indicator is evaluated on the basis of a limited number of pre-selected elements in the source text, referred to as "rich points" (RPs), which should "(1) […] provide variety in the types of translation problems studied, (2) […] not lead to immediate and acceptable solutions and (3) […] be homogeneous in all the languages (so comparisons can be made)"[1] (PACTE 2005: 614).

The possible drawbacks of this methodology, which relies on a sample assessment only focussing on specific elements of the TT, can be considered overcome in this study based on two main considerations. Firstly, PACTE's (2009: 215) pilot tests and the studies conducted by Castillo (2010) and Quinci (2015) testify to the validity and reliability of this sample evaluation, which appears to be consistent with and to provide comparable results with respect to holistic and analytic assessment[2]. Secondly, other sample evaluation methods have been devised in recent years, with reference to legal translation as well: particularly, the "Preselected Items Evaluation" (PIE) method developed in Antwerp (Kockaert and Segers 2012; 2014) and tested on a legal translation.

The selection of the RPs for this study was conducted by a composite group, i.e. three external evaluators (a full professor in specialised translation, a Ph.D. graduate in translation specialised in legal terminology, and a criminal law professor), and two participants

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[1] This last criterion is not relevant in this study, given its single translation direction, i.e. English into Italian.
[2] The *f-test* run to compare sample and analytic evaluation in this study showed no statistically significant difference.

from each cohort. The seven selectors were instructed to identify at least twelve RPs in the source text (ST) and rank them on a scale from what they perceived as the most to the least problematic. Finally, the rankings were compared to identify the nine RPs which had been (a) chosen by most selectors, and (b) consistently ranked as the most problematic. The resulting RPs comprise the following:

i) four RPs deemed as problematic in terms of ST comprehension (e.g. "on conviction on indictment");

ii) three RPs posing problems with reference to legal phraseology (e.g. "be liable to");

iii) two RPs presenting terminological issues (e.g. "affray").

The renderings of each RP were then assessed (first individually and then jointly between the three evaluators) based on the three main criteria identified by PACTE (2009: 217), i.e.:

(a) the meaning of the source text; (b) the function of the translation (within the context of the translation brief, the readers' expectations, genre conventions in the target culture); and (c) use of appropriate language.

Each of these criteria was then ranked on a scale from acceptable (A), semi-acceptable (SA) and unacceptable (U), and given a score of 1, 0.5 and 0 points, respectively (PACTE 2005: 614). Twenty-six permutations are thus obtained by shuffling the three possible assessments for each criterion, with meaning (followed by function in second place) having a greater weight in determining the acceptability of a RP. "In other words, using Mossop's terminology [(2014)], acceptable solutions cannot involve transfer and content errors affecting meaning, but might involve language errors" (Quinci 2015: 111).

The general hypothesis is that acceptability might be mostly affected by content and transfer errors for Group T – that is the legal concepts involved – and mainly linguistic for Group L. The results of the assessment of the RPs are presented in the following section.

3.2. Results

As an indicator of the quality of the solutions found by the participants, the mean of the participants' acceptability index, i.e. "the mean of all the solutions analysed" (PACTE 2008: 117), was calculated. Figure 1 presents the summary statistics for the average acceptability level attained by each group in the empirical study.

FIGURE 1
Mean acceptability per group
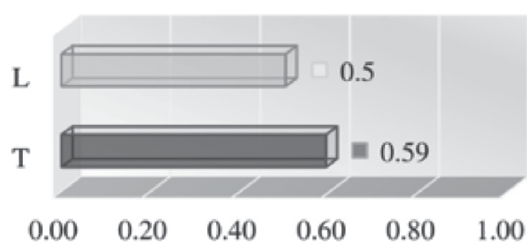
Already at first glance, the mean acceptability indices seem to suggest that Ts have produced higher quality translations than Ls, outperforming them by a tenth. This result is further substantiated when observing the distribution of the participants in the five performance levels in Figure 2 below, calculated as the sum of the weighting of each RP (Quinci 2015: 109)[3].

FIGURE 2
Distribution across the performance levels

|	PL1 (0-1.9)	PL2 (2-3.9)	PL3 (4-5.9)	PL4 (6-7.9)	PL5 (8-9)
■ Ls		33.33%	53.33%	13.33%	
■ Ts			73.33%	26.67%	
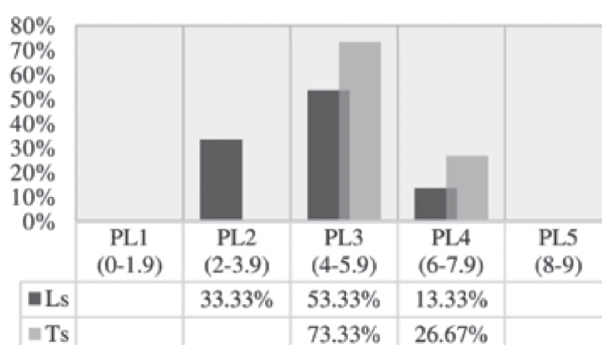
[3] Quinci (2015: 109) devises five performance levels (PLs) based on the participants' acceptability index, as follows: PL1 from 0 to 1.9; PL2 from 2 to 3.9; PL3 from 4 to 5.9; PL4 from 6 to 7.9; PL5 from 8 to 9.

Group L does not homogeneously spread across the scale, a third of its components occupying the low Level 2, slightly more than half of the group clustering in the central level and only two falling within the higher Level 4. In contrast, Ts tended to be more consistent, occupying in 75% of cases the middle of the spectrum and moving up to Level 4 for the remaining quarter, i.e. in twice as many instances as for Group L.

Quantitatively speaking, the lower dispersion of Ts on consistently higher performance levels is confirmed by a low standard deviation of their indices, i.e. 9% as opposed to the other group's 13%.

Particularly significant is the analysis of RPs from a qualitative perspective; inter-group differences can be observed with reference to the proportion of acceptable, semi-acceptable and unacceptable renderings in the TTs considered in this study (Figure 3).

FIGURE 3
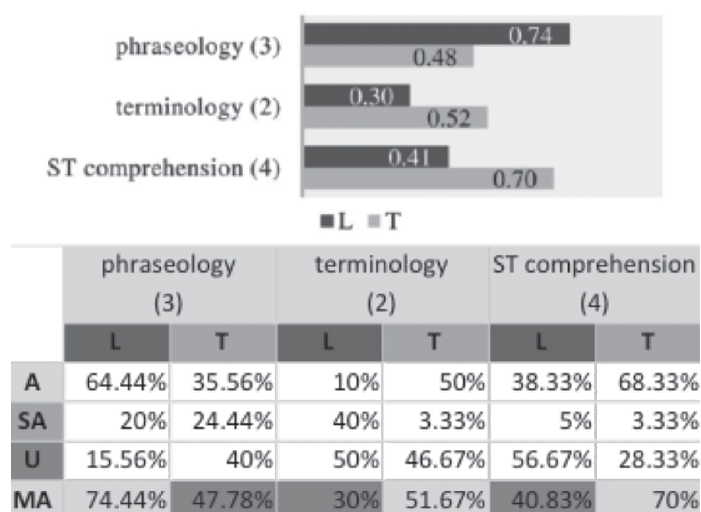Proportion of RPs per level of acceptability
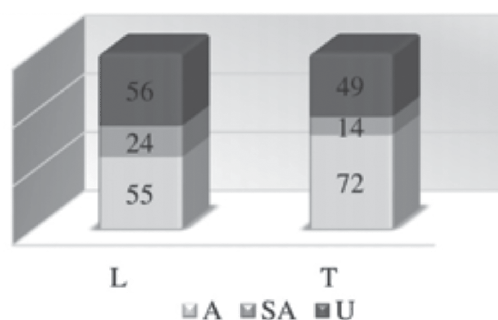
Of the 135 total renderings per group, 56 were unacceptable for Ls, levelling out their 55 acceptable solutions; a lower total of 49 unacceptable RPs was obtained by Ts, definitely outweighed by 72 acceptable RPs. Semi-acceptable solutions are similarly low in number for both groups, i.e. 14 for Group T and 24 for Group L. The preponderance of acceptable and unacceptable solutions in Groups T and L respectively are even more significant when

considering that, for an RP to be acceptable, the category of 'Meaning' has to be at least semi-acceptable. Hence, the specialised nature of the ST does not appear to have favoured Ls, despite their greater thematic knowledge, as will be confirmed below. In other words, the preponderance of acceptable solutions in Group T might suggest that "training and experience [in translation] have a strong influence on transfer- and content-related errors" (Quinci 2015: 111).

The results concerning the acceptability of the nine RPs per type of difficulty are summarised in Figure 4; the top half of the figure shows the mean acceptability indices per category obtained by both groups, while the bottom part presents the breakdown of the distribution of the solutions proposed.

FIGURE 4
Mean acceptability (MA) of RPs per category

	phraseology (3)		terminology (2)		ST comprehension (4)	
	L	**T**	**L**	**T**	**L**	**T**
A	64.44%	35.56%	10%	50%	38.33%	68.33%
SA	20%	24.44%	40%	3.33%	5%	3.33%
U	15.56%	40%	50%	46.67%	56.67%	28.33%
MA	74.44%	47.78%	30%	51.67%	40.83%	70%

Also from a qualitative perspective, better results are shown to have been obtained by Group T in two cases out of three. More specifically:
i) The three RPs selected for posing a potential problem of phraseology appeared to be more difficult for Group T, with a mean

acceptability almost 30% lower than that of Group L. In particular, the proportion of unacceptable solutions for this group is higher than that of acceptable RPs by almost 5%. Breaking down the three variables determining each RP's acceptability, on average Ls scored better in terms of function (avg.: 64.44% of acceptable solutions) as compared to Ts (avg.: 37.77%), who show a higher number of semi-acceptable and unacceptable solutions (avg.: 26.66% and 35.55%, respectively). These findings might appear rather predictable, considering the familiarity with the text genre on the part of Group L, who show a greater mastery of the recurring phraseology of legal documents.

ii) With reference to terminology, the mean acceptability is clearly affected by one RP in particular, "affray", which called for the adoption of an explicitation strategy. However, this strategy was only chosen by one participant from each group, resulting in a single SA solution per group outweighed by 14 unacceptable ones. This is rather surprising, considering that a literal translation of this term would have blatantly corresponded to a very different offence in the target language and, ultimately, in the Italian legal system from the one under discussion, as becomes apparent in the ensuing lines of the ST; the hypothesis contradicted here was that Ls would have detected such a discrepancy and then glossed or annotated their renderings, instead of sticking to a literal, inaccurate transfer. For the second RP presenting terminological difficulties an official translation was available. In this case, Ls were particularly penalised in terms of both the categories of function (i.e. for not adopting the official translation) and language (i.e. for proposing a wrong collocation). These considerations are mirrored in the overall indices reported in Figure 4, where Ts appear to outperform Ls by over 20% as concerns the category of terminology.

iii) Similarly, the four RPs relating to aspects of ST comprehension proved more difficult for Ls, even though dealing with legal content is the bread and butter of their day-to-day profession. This might suggest that the foreign language represents a greater obstacle as compared to the specialised nature of the ST. In numbers, this equals to a mean acceptability of 0.70 out of 1 for Ts and 0.41 for Ls. More specifically, the category of "Meaning" severely affected the overall assessment of these RPs: Ls scored 51% unacceptable solutions

with reference to this category and a significant 40% in terms of "Function", as compared to Ts with 30% and 15%, respectively.

The findings outlined thus far, both qualitative and quantitative, seem to confirm the possible alignment of the five performance levels identified by Quinci (2015: 109) to the five levels of quality proposed by Prieto Ramos (2014) for legal translation, i.e. unacceptable, poor, borderline, acceptable, and excellent. The overall mean acceptability of 49.63% (Level 3) for Ls appears to qualitatively correspond to the third level of Prieto Ramos's scale, i.e. borderline quality, where the main functions and textual aspects are hindered by a high number of errors. In contrast, the 58.52% scored by Ts places them on the verge of the acceptable level, though still presenting a number of inaccuracies.

4. Triangulating acceptability with process-related data

Triangulating process-oriented data with a selection of textual items in the target texts, i.e. RPs, has a series of methodological advantages, which contribute to the need for efficiency and "scientific economy" (cf. Giegler 1994) in the analysis of results in large-scale studies. More specifically, by addressing different types of problems as representative of the overall text difficulty, they allow for an in-depth analysis of the same RP using the results obtained from several indicators, thus facilitating the triangulation of data obtained from multiple sources and guaranteeing greater economy in the experiment (PACTE 2009: 213).

In the following sections, the mean acceptability indices obtained by the participants in each group will be traced back to process-related data, such as the time spent on these problematic items and the use of reference sources.
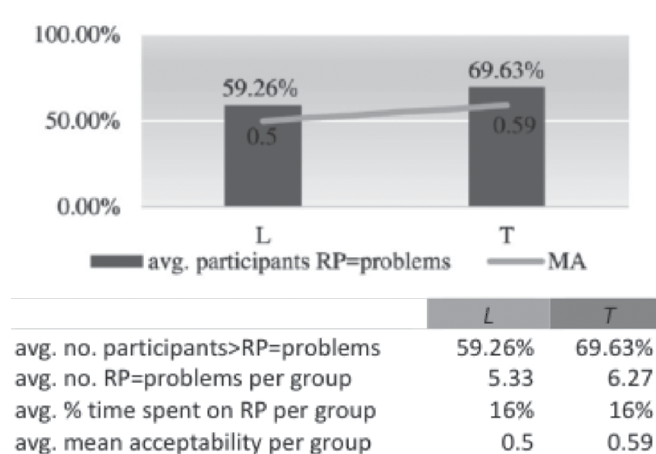
4.1. Problems, time and acceptability

From a process-oriented perspective, translation problems are considered here as "those particular source text items […] problematic for translation […] as manifested in, and inferred from the participants' recorded translation processes" (Enríquez Raído 2011: 151). As explained in Section 2, the participants' translation processes were recorded using the software Blueberry's BB FlashBack (keystroke logging, and screen and video recording), in order to identify pauses as potential indicators of problems, which were then classified per type.

Figure 5 provides some quantitative data on the pre-selected RPs used as representative items of the different potential difficulties of the ST. As can be observed, the nine RPs posed problems for 59.26% of Group L and for a higher 69.63% of Group T; in other words, an average of 5.33 Ls and 6.27 Ts had problems with RPs. Furthermore, the standard deviations for the two groups suggest that Ls (1.45) tended to consistently encounter a rather low number of problems, as compared to Ts for whom a greater inter-group deviation was to be observed (2.22). Nevertheless, from a product-oriented perspective, such process-related problems did not correspond to unacceptable solutions in the same proportion. Conversely, the average mean acceptability of the two groups appears to be in direct proportion with the number of problems encountered, i.e. 0.5 for Ls and 0.59 for Ts. Interestingly, though, both groups spent an average 16% of their overall delivery time on working on the RPs. However, this result entails an interesting difference: considering the respective delivery times of 62.25 minutes for Group L and 108.31 for Group T, the more time spent by the latter eventually led to better results.

These conclusions are further substantiated as more results are presented below.

FIGURE 5
Mean acceptability (MA) of RPs per category

	L	T
avg. no. participants>RP=problems	59.26%	69.63%
avg. no. RP=problems per group	5.33	6.27
avg. % time spent on RP per group	16%	16%
avg. mean acceptability per group	0.5	0.59

4.2. RP-specific problems, time, sources and acceptability

A series of qualitative observations can be made when relating variables to the different categories of RPs selected, as summarised in Table 1. The first line reports the percentage of participants who encountered problems with the specific category of RPs, the second the percentage of problem-related time they spent on those RPs, the third the sequence of actions (SoA) when using reference material, and the fourth the mean acceptability per category.

As for sequences of action, the analysis focusses on the type of problems that led participants to consult (different types of) reference support (Göpferich 2009: 33), either internal or external (Alves 1997: 25-26). In particular, the four chains of cognitive implication devised by PACTE (2009: 223) are considered, which are: (1) internal support (IS), when there is no external consultation; (2) predominantly internal support (PIS), when the solution is not found consulting, among others, a bilingual resource; (3) predominantly external support (PES), when the solution is found consulting, among others, a bilingual resource; (4) external support (ES), based exclusively on consultation of bilingual resources.

TABLE 1
Triangulation of RP-specific data

	Phraseology (3)		Terminology (2)		ST comprehension (4)	
	L	T	L	T	L	T
RP = problem	48.89%	60.00%	66.67%	50.00%	68.33%	75.00%
Time	15.19%	36.34%	18.05%	15.37%	66.76%	48.29%
SoA	PIS	PES	ES	ES	PIS	PES
MA	0.74	0.48	0.30	0.52	0.41	0.70

As emerges from these data, the three phraseological items were the least problematic RPs for Ls (48.89%), whereas these items were in second place for Ts, 60% of whom dealt with them as problems. This consideration is reflected in the average time spent on these RPs, 15.19% (i.e. their lowest percentage) of the overall problem-

related time for Ls and 36.34% (i.e. their second-high percentage) for Ts. In contrast, ST comprehension proved to be the most problematic category for both groups (68.33% Ls and 75% Ts), who spent the majority of their problem-related time focussing on these two RPs. Interestingly, as regards these two categories, covering seven out of nine RPs, the two groups consistently used different reference sources, i.e. PIS was the most frequent sequence of action for Ls, contrasted by PES for Ts. Nevertheless, the acceptability of the renderings for the two categories shows inverted scores in the two groups. More precisely, an acceptable MA index can be observed for Ls with reference to phraseology and for Ts to ST comprehension, perfectly mirrored by an overall semi-acceptable level for both groups in the inverted categories. This finding entails two considerations:

i)   the familiarity with the textual features and rhetorical conventions of the legal discourse undoubtedly favoured Ls, who encountered fewer problems with, and spent less time on, phraseology, generally scoring better acceptability indices for these RPs;

ii) on the one hand, for Ls, it was possibly the foreign language that led to greater difficulty in understanding the ST, rather than the subject-field specificities dealt with in the text, which they are familiar with; on the other hand, for Ts, translation-specific automatisms and familiarity with the procedures particular to language transfer proved helpful, especially when paralleled by use of reliable and pertinent reference sources. In general, though, they problematised almost twice as much as Ls, thus recording twice as long delivery times; more precisely, from a process-oriented perspective Ts faced a much higher number of problems of terminology and phraseology than meaning.

Regarding this last point, it should be noted that, in addition to the different sequences of actions identified above, a qualitative difference can also be observed with reference to the type of sources used by each group. Besides online dictionaries, mostly concordancers, google searches and comparable texts were used by Ts, in contrast with non-specialised online dictionaries or machine translation for Ls.

All these considerations are reflected in the triangulation of data concerning the four RPs relating to ST comprehension. The situation is most interesting: though problematic for two thirds of

Ls (in second place among the three categories), these problems proved to be the least common among those encountered by Ts (50%). Consequently, even the time they spent on these items was the lowest average compared to the other categories, i.e. 15.37%, paralleled by a similarly low 18.05% for Ls, again in second place. Further, the sequence of action generally followed by both groups is interestingly equal, i.e. ES. Nevertheless, it was the qualitative use of the external support that proved most successful, especially in the case of legal translation, where a simple search for equivalents in a non-specialised bilingual dictionary might not be sufficient: this was the case for Ls, who in fact scored an unacceptable MA index of 0.30. For Ts, though still in the semi-acceptable range, the mean acceptability is almost double, i.e. 0.52. Indeed, research for terminological equivalence is a very translation-specific competence, which put Ts, who are more used to selecting more sophisticated and relevant reference sources for their searches, in a better position.

5. Conclusions

This paper has reported the results of an empirical study focussing on the translation problems faced by potential legal translators with different educations, i.e. graduates of translation and graduates of law. In particular, the acceptability of their renderings was assessed using the methodology devised by PACTE (2009) and mapped onto the participants' translation processes, with particular reference to the problems encountered, delivery time and use of reference sources.

Overall, translation graduates appeared to produce more acceptable translations as compared to law graduates; however, they recorded longer delivery times, which need to be reduced through proper, specialised training, in order for them to become more efficient. This finding, observed from both a qualitative and quantitative perspective, can be compared to the trends observed in other studies on (non-specialised) translation (specifically, Jääskeläinen 1996; Quinci 2015). Lawyers tended to "problematise relatively little. As a result, they translate[d] quickly and effortlessly (and perhaps wrongly, depending on the difficulty of the task), i.e. novices are blissfully unaware of their ignorance" (Jääskeläinen 1996: 67). Hence, we can consider the law graduates who participated in

the study as a sample representative of novice translators. Similarly, the trends observed with reference to the translation graduates are in line with the main results of the above-mentioned studies, especially the conclusions drawn by Quinci with reference to her group of intermediates, i.e. first- and second-year translation trainees at MA level, a composition similar to that of Group T in the study presented in this paper. In particular, both Quinci's intermediates and Group T of this study were the slowest in completing the tasks, encountered the most problems and obtained average results; ultimately, they constituted "a middle stage between inexperienced and professional translators" (Quinci 2015: 164).

Looking at the bigger picture, what clearly emerges is the need for specialised training for both groups of participants in legal translation/discourse as represented in this study. The results, partially presented in this paper, seem to suggest however that a translation background is in fact a fundamental component of legal translation competence, to be integrated with the necessary legal knowledge. It was in fact the strategic competence that proved to be crucial in the experiment and to which most of the differences between the two groups can be ascribed; similarly, the information mining competence appeared to favour Ts, who resorted to more relevant reference sources. The specialisation required of translators in specific subject matters, though, is to be viewed "not necessarily as a sequential trajectory but rather in a hierarchical sense" and "should be considered as a sub-component of translation competence and be complemented by further sub-competences, both innate and acquired" (Scarpa and Orlando, forthcoming).

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