

Balanced Approach Developed in Macao for Legal Translation and Principle of Respect Adopted in Construction of Social Harmony

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To achieve equivalence in legal translation, Sarcevic (2000) proposes the equal treatment in effect, intent and meaning. In the case of Macao, the first two requirements are fulfilled by publishing legislations in the Official Gazette. To meet equal meaning, Macao has developed a balanced approach, which composes of two principles (literalness and conceptuality). This paper, by studying the translation of social welfare legislations, illustrates that this approach serves as an efficient tool to deal with legal translation. And due to the nature of social welfare legislations, the principle of respect is added as well in the process.

Keywords: Balanced approach, principle of literalness, principle of conceptuality, social welfare legislations, principle of respect.

1 Introduction

Under the national principle of “One country, two systems”, Macao enjoys the capitalist system and continues its socio-economic development. And economic development is the definite road and the priority task of the Macao Government.

Without economic development, the society will not have progress and the living of citizens will not be improved as well. In the scope of economic law, there is social security law which regulates the reasonable redistribution of social economic resources, in order to achieve social equilibrium (Chen, 2003). Within social security law, the most essential part is social welfare law, which assures social assistance and social services to the underprivileged groups of the society and guarantees their human rights. Social assistance law is the last defense in the social security system (Tong & Cao, 2007). Therefore, social assistance law plays an irrefutable role in the maintenance of social stability, which is the indispensable condition for the local economic development. Moreover, it allows Macao to keep its social economic competitive ability in the international platform. Owing to the undeniable importance of social welfare legislations, it is absolutely worthy to take these fundamental legislations for the whole society as a starting point to observe, examine and analyze the legal translation theory, strategy and a unique approach – balanced approach, gradually and unwittingly adopted in the Macao Special Administrative Region (Macao SAR) of the People’s Republic of China.

Macao adopts a bilingual (Chinese and Portuguese) legal system based on the Continental European Law. This is recognized by the articles 8, 9 and 40 of the Basic Law of the Macao SAR. For all these subsidies and services to become effective, relevant legislations have been drafted by professionals of the field and declared effective through their publication in the Official Gazette of the Government of the Macao SAR of the People’s Republic of China. According to the article 9 of the Basic Law of the Macao SAR, the two official languages of Macao SAR are Chinese and Portuguese. And therefore, all legislations being published in the Official

Gazette must be exposed in both official languages (Decree-Law no. 101/99/M, articles 1 & 4). Under such circumstances, it is of no doubt that the process of translation is involved. And for the translation of the legislations of Macao, there is no “shift of *skopos*” - communicative purpose (Reiss and Vermeer 1984: 101), because both the source text and the target text, published simultaneously in the Official Gazette and having the status of authentic texts (parallel texts), have only one purpose - normative purpose.

For long, legal translators in Macao have been following the golden rule of fidelity to the letter of the law. In other words, for the sake of preserving the letter of the law, the main guideline for legal translation in Macao is “fidelity to the source text” (Sarcevic 1997: 16). In earlier days, due to the lack of qualified translators in Macao, legal translation practitioners insisted on a “strict, literal” legal translation (Sarcevic 1997: 24), as a prudent attitude. In the course of time, with more legal translators in the field, the practice shifted slightly to stay “close to the source text by conveying the exact or near exact meaning” in the translation (Hjort-Pedersen & Faber 2001: 379), instead of engaging in the “literalist transcription” of the source legal text (Kasirer 2001: 340). Taking references from the United Nations Handbook for Translators, which stipulates fidelity to the original source as the primary consideration in official translation (Harvey 2002: 181; Sarcevic 1997: 16), and from Didier who advocates that translations of legislation and other normative texts require absolute literalness (1990: 280, 285), as well as from Poon’s point of view (2005: 305-6): translations of Chinese legal texts should fully reflect the style and form of the source legal text and those more functional approaches that permit adaptation of the source legal text to achieve equivalent legal effect in the target culture should be rejected, the strategy

of literal translation is, therefore, still the main orientation for the legal translators of Macao. However, with the gradual appearance of more and more legal translators in the field after their university degree courses in translation studies, emerged a group of “more liberal” professionals, who propose an adoption of a more functional approach to legal translation, by applying a freer theory of translation (advocated by Sarcevic 1985, 1989, 1997, 1998), which accepts communicative and covert translation (Nida 1964, Nida and Taber 1969, Newmark 1981, Snell-Hornby 1988/1995). According to this approach, the success of a legal translation is measured by equivalence of legal effects, instead of only formal textual correspondence, in the source and target cultures (Harvey 2002: 180-81); and in this context, both Stolze (2001: 302) and Chroma (2004: 202) propose an application of several flexible techniques, such as phrasing adjustment, modification of sentence length and structure, as well as addition of complements to the target text, in order to aid intelligibility. Despite of the existence of two main groups of professional legal translators in Macao, including university professors – conservative and pro-liberal, both recognize the principle of fidelity as the first rule to be observed while dealing with legal translation and accept the position of Sarcevic (2000), who at first refers that “the translator’s task is to reconstruct the form and substance of the source text as closely as possible” (p. 331) and then proposes, most importantly, the observance of the principle of equal treatment to guarantee the equivalence of the parallel texts (the source text and the authenticated translation) of a legal instrument in meaning, effect and intent (p. 332) for the purpose of uniform interpretation and application.

In the case of Macao, through publishing legislations in the Official Gazette, the elements of effect (Decree-Law no.

101/99/M, article 4) and intent (by exposure of the intention in words) have been guaranteed. To achieve equivalence in meaning, upon considering the historical and linguistic background of Macao, and taking references from the experiences and practices in EU, Canada and Hong Kong, Macao SAR has adopted and developed unconsciously and informally a balanced approach to deal with legal texts based on its own situation. Under this approach, translation equivalence is achieved not only by translating legal texts with focus on legal terminology and legal language - principle of literalness, but also by transmitting the legal and cultural concepts and philosophy from the source text to the target text - principle of conceptuality. Apart from the above, having considered also the nature of social welfare legislations, Macao SAR has taken one more principle into consideration, i.e. the principle of respect. This principle proposes that translators should use more respectful terminology in translating social welfare legislations. With the coexistence of all the aforesaid elements, it is expected that translators are able to deal with social welfare texts with satisfactory results.

Before the handover of sovereignty of Macao from the Portuguese government to the Chinese government, the legislations in Macao were drafted in Portuguese and then translated into Chinese. After Macao's reunification with China, in principle, the practice was reverted, taking Chinese as the drafting language and Portuguese as the translation language. However, there are always exceptions due to the serious shortage of experienced Chinese legal drafters in Macao. Most of the important legislations are still drafted first in Portuguese and then translated into Chinese, maintaining in many cases the previous practice as a more convenient, secure and efficient way for dealing with legal translation.

Although the legal translation enterprise of Macao started formally in 1986, with some loose orientations always linked to the golden rule of fidelity, no one has ever attempted to make an objective and scientific study of the issue, in order to establish a steady theoretical framework, based on the logic of international trend, for the legal translators of Macao. It is time to break this passive silence and make an active but prudent voice on the creation of the necessary condition for a healthy and sustainable development of the legal translation in Macao, in the spirit of the Basic Law of Macao SAR and in front of the challenges of its integration in the world of Portuguese-speaking countries / regions and the unavoidable process of globalization.

Most legal translators in Macao respect the principle of fidelity and the requirement of equivalence in legal translation. Nevertheless, about how to achieve them, it is still quite polemic to reach a unified approach, well accepted by all, to handle with legal translation, in spite of the existence of several predominant theories at international level and the balanced approach already in practice in the Macao SAR, at regional level. This intensive study attempts to demonstrate how fidelity can be met by adopting the balanced approach in the translation of a specific area of legislations of Macao. The author hopes it could serve as a kind of useful reference for other scholars, researchers and practitioners who are interested in doing further studies or researches on the topic and as an inspiration for the further development of legal translation theory.

2 Incorporation of Balanced Approach and Principle of Respect

Social welfare mainly consists of social assistance and social services (Decree-Law no. 52/86/M, article 1). The former refers

to the providing of financial and material support including various kinds of subsidies, allowances etc., while the latter consists of the offering of services to different social groups such as persons with disability, persons living in poverty, persons suffering from sickness, persons in disaster, the homeless, the elderly, children and juveniles. These two parts gather together to build up a comprehensive protection package for the underprivileged and the needy, so that their basic needs as well as other special needs in daily life can be guaranteed. And as the society continues to develop and the social security system continues to expand, more types of subsidies, allowances and services have been established accordingly.

In Macao, social assistance scheme mainly includes:

- a) Subsidy for senior citizens;
- b) Subsidy for families with income lower than Minimum Subsistence Index;
- c) Special subsidy for vulnerable families
- d) Special subsidy for persons with disabilities
- e) Short term food assistance through the Food Bank

For social services, Social Welfare Bureau mainly offers:

- a) Service for elderly people (e.g. home referral, granting of Senior Citizen Card);
- b) Service for juveniles and children (e.g. protection against home violence, home referral) ;
- c) Service for persons with disability (e.g. granting of Disability Evaluation and Registration Card, day-care center referral;
- d) Disaster assistance (e.g. 24-hour supporting service, arrangement of accommodation);
- e) Service for prevention and treatment of drug dependence (e.g. provision of drug treatment, education and advisory service);

Apart from offering direct social services, Social Welfare Bureau also provides social services to citizens in cooperation with other non-governmental organizations (NGOs) in Macao. The Bureau oversees the operation of these NGOs and provides professional consultancy services to them, so as to ensure that their services are up to the standard and copes with the needs of their target service receivers.

According to the Basic Law of Macao SAR, the Macao government has the right to establish its own policy on social welfare development and strategy for its improvement (article 130). Thus it is absolutely lawful for Macao to implement its own legislations related to this field. Through this process of legislation, it not only helps to guarantee the rights of citizens, but also clearly identifies the responsibility of the government on social welfare issues.

2.1 Exploration on Social Welfare Legislations

Legal translation in Macao began in year 1986 and has undergone several stages of development. To cope with the golden rule of fidelity, for quite a long period, literal translation was commonly regarded as the best solution to legal translation. The following are some typical examples in social welfare legislations of earlier period before the adoption of the balanced approach. By that time, as literal translation was the only method to deal with legal texts and sometimes even literal translation was not well applied in the translation process, it is not difficult to find problems and imperfections in the official translations.

- a) *Em situa ções de car ência* (Decree-Law no. 52/86/M)

This legislation focuses on the reform of the Macao social work system as well as its functions. The item 1 of the article 1 specifies the target of assistance, i.e. “*indivíduos e grupos sociais em situação de carência* (缺乏所需状况的个人及社会团体, *que fa suo xu zhuang kuang de ge ren ji she hui tuan ti*)”. Literally, it means individuals and social groups in situation of lacking. In Portuguese, it is well understood that “*indivíduos e grupos sociais em situação de carência*” refer to those who are in need of daily necessities. However, due to cultural difference, the same logic cannot be applied to the Chinese translation, in which lacking of what kind of material or the things needed in daily life must be mentioned clearly. So, instead of translating only the literal meaning of the phrase, it is suggested that conceptual translation should be applied as well, in order to have the phrase being translated as “缺乏生活所需状况的个人及社会团体, *que fa sheng huo suo xu zhuang kuang de ge ren ji she hui tuan ti*”, so that the Chinese receivers can have a clearer idea on the needs of the target groups.

b) *Princípio da eficácia* (Decree-Law no. 52/86/M)

One of the orientation principle of social welfare system is the principle of effectiveness (有效原则, *you xiao yuan ze*). However, in the article 2 of this legislation, the term *Princípio da eficácia* (principle of effectiveness) was translated as 效率原则, *xiao lu yuan ze* (principle of efficiency), which is a totally different concept from the original. The Portuguese term “*eficácia*” carries the meaning of effectiveness, while the Chinese term “效率, *xiao lu*” means “efficiency”. The two cannot correspond to each other and thus the translation should be amended, without any room, as 有效原则, *you xiao yuan ze* (principle of effectiveness).

c) *Pensão de invalidez* (Decree-Law no. 58/93/M)

This legislation regulates the operation of the social security system in Macao. In the item b) of the article 5, there is the Portuguese term “*Pensão de invalidez*” which refers to the kind of subsidy to the disabled. Upon applying literal translation to the work, the term was translated as “残废金, *can fei jin*” (残废, “*can fei*” means useless, 金, “*jin*” means subsidy/allowance in this linguistic combination). Though it cannot be said that the translation is wrong, but it does carry a sense of discrimination to those subsidy receivers. To promote social harmony and non-discrimination, it is suggested that the additional principle of respect be applied to the translation, and the term should be translated as “残疾金, *can ji jin*” (subsidy for disabled people, not subsidy for useless people). In fact, “disabled” does not mean “useless”. This neutral treatment brings a sense of respect to the disabled, thus avoiding their hard feeling.

d) *Acessibilidade* (Decree-Law no. 33/99/M)

The Portuguese term “*Acessibilidade*” is a specialized term related to the field of rehabilitation. It is a highly conventional term which carries the meaning of eliminating barriers and obstacles for persons with deficiencies. In the stated legislation, the term was translated literally as “活动方便, *huo dong fang bian*” (convenient for movements). This is not appropriate for such a specialized term, with its conceptual meaning being hidden. The proper translation of this term should be “无障碍, *wu zhang ai*” (without barriers or obstacles that might affect the outdoor movements of the disabled), which has become more than a translation, but a conventional and international technical term of that field in the Chinese speaking community worldwide nowadays.

e) *Pessoas deficientes* (Law no. 6/94/M)

In the item 1 of the article 11 of the legislation (regulating family strategy of the Macao Government), the Portuguese term “*Pessoas deficientes*” (disabled people) was literally translated as “有缺陷人士, *you que xian ren shi*” (people with defects). This is not a proper translation as it carries a sense of serious discrimination. In addition, as the term is a highly conventional one, the translator should just apply the commonly agreed Chinese term “残疾人, *can ji ren*” (disabled persons) to stand for the Portuguese term. By using such a neutral term, the principle of respect is thus being expressed.

f) *Equipas multidisciplinares* (Law no. 6/94/M)

In the article 16 of the legislation, the Portuguese term “*Equipas multidisciplinares*” (multidisciplinary working team) was translated as “多方面队伍, *duo fang ming dui wu*” (working team of several aspects). The translation has several problems. Firstly, the term “*multidisciplinares*” here carries the meaning of cross-disciplines, which means combining the specialties of a number of fields. Thus its meaning is not only limited to “多方面, *duo fang ming*” (several aspects) but “跨学科, *kua xue ke* (cross-disciplines)” instead. As for the Portuguese term “*equipas*”, generally there is no problem for it to be translated as “队伍, *dui wu*” (team), just like in the case of football team and working team. However, there is a difference in Chinese between sport team (队伍, “*dui wu*”) and working team (团队, “*tuan dui*”). So, for the situation here, it is sure that the team is not a sport team, but a working team, as the term “*equipas multidisciplinares*” carries a sense of professionalism and the spirit of cooperation, it would be more appropriate if the term is

translated as “跨学科工作团队, *kua xue ke gong zuo tuan dui* ” (multidisciplinary working team). Once again, the principle of conceptuality serves as a practical means to complement the insufficiency of the literal translation.

g) *Um bom gestor* (Decree-Law no. 22/95/M)

This legislation mainly regulates the qualities of the social facilities in Macao. According to the item 3 of the article 14 of the legislation, each social facility should have a good manager to ensure that the facility (such as the premise) is being managed properly. Here the Portuguese term “*um bom gestor*” refers to a good manager of the facility, which is different from the literal Chinese translation “一个善良管理人, *yi ge shan liang guan li ren*” (a good-hearted manager). In this case, the principle of conceptuality should be applied and the term should be translated as “一个妥善管理人, *yi ge tuo shan guan li ren*” (a proper manager).

h) *Equipamentos sociais* (Directive Order no. 160/99/M)

This legislation restricts the set up and operation of the child and youth care centers in Macao. In the article 1 of its content, the Portuguese term “*equipamentos sociais*” (which means social facilities, according to the context) was translated as “社会设备, *she hui she bei*” (social apparatus/instrument/device). This is an example of downright blind literal translation. In fact, the misleading official translation “社会设备, *she hui she bei*” usually refers to those equipments to be used in the social facilities. The term “*equipamentos sociais*” here actually refers to those non-governmental organizations (NGO), serving the society with a variety of services. Thus, the appropriate

translation for the term should be “社会设施, *she hui she shi*” (social facilities).

i) *Do aspecto agradável* (Directive Order no. 160/99/M)

In this legislation, the item 2 of the article 11 specifies the quality of the furniture in the social facilities. The Portuguese term “*Do aspecto agradável*” (which means beautiful outlook or simply good looking) was translated as “外观令人悦意, *wai guan ling ren yue yi*” (the outlook pleases people). Such an awkward translation although reflected the literal meaning of the term (i.e. the outlook requirement of the furniture), included, at the same time, excess meaning (the pleasant impression which the furniture should give to the people). Such a treatment damaged the clarity of the original phrase, making the translation clumsy. To enhance readability of the translation, it is recommended that the term should be translated, in just a simple but elegant way, as “美观, *mei guan*” (good looking) instead.

j) *Da satisfação do requisito de idoneidade do requerente* (Decree-Law no. 90/88/M)

Before starting operation, every social facility in Macao has to obtain license from the Social Welfare Bureau. For these social facilities to gain a license, they must fulfill a number of quality requirements as fixed by the Social Welfare Bureau. Here the Portuguese phrase “*Da satisfação do requisito de idoneidade do requerente*” carries the meaning that “the applicant should be able to satisfy the appropriate requirements as specified”. However, when being translated into Chinese, it becomes “申请人应具备良好品行, *shen qing ren ying ju bei liang hao pin hang*” (the applicant should have good character and conduct), which is totally different from the original Portuguese text.

Though good character and conduct of the applicant may also be considered as one of the requirements for granting license, it is not the only requirement. The Chinese translation has limited the scope of the requirements. To recover the full meaning of the Portuguese phrase, the translation should be changed to “申请人须符合适当要件, *shen qing ren xu fu he shi dang yao jian*” (the applicant must satisfy the appropriate requirements as specified).

2.2 Exploration on Social Assistance Legislations

As time goes by, translators began to recognize that the sole application of literal translation is not sufficient for handling certain tasks of legal translation. Then, they began to look for other ways to solve the problem. After years of experiment, the translators of Macao have adopted a balanced approach as a better answer to the issue. The following section shows how the balanced approach and the principle of respect have been incorporated in the process of legal translation.

a) *Risco social* (Administrative Regulation no. 6/2007)

This legislation regulates the granting of subsidy to those who are in severe impoverishment economically, i.e. with family income below the Minimum Subsistence Index. In the Portuguese version of the legislation (ST), the term Minimum Subsistence Index is being named as “*Risco social*” which, when translated literally, should be named as “社会风险, *she hui feng xian*” which means “Social risk”. However, in the Chinese translated version of the legislation, the term is being translated as “最低维生指数, *zui di wei sheng zhi shu*” (Minimum Subsistence Index). From this example, we can see that cultural factors do play an important role in the usage of

language. In order to ensure that the target readers can easily understand the content of the legislation, the translator has applied the balanced approach in the work. Instead of transmitting just the surface meaning of the term “*Risco Social*”, the translator has also brought the conceptual meaning of the term to the surface. In addition, the translator has avoided using those negative terms such as “贫穷, *pin qiong*” (which means “poverty”) in the translation of the term. From this, we can see that the principle of respect has also been applied in the translation (Internal Meeting Record of the Technical Commission for Legal Translation in March 2007).

The core reasons why Macao did not follow the practice of some other countries or nearby regions (like Hong Kong), using negative terms like “poverty line” – “贫穷线, *pin qiong xian*” and “poor people” - “贫民, *pin min*” in the legislation are: 1. To avoid labeling those people living below the poverty line; 2. To avoid those people living below the poverty line having the feeling of being discriminated or getting ashamed of themselves, in order to maintain social harmony.

b) *Subs  lio para Idosos* (Administrative Regulation no. 12/2005)

This legislation regulates the terms and conditions for applying Subsidy for Senior Citizens. With reference to the content in the website of the Social Welfare Bureau, the purpose of this subsidy is to show the care for senior citizens of Macao SAR and advocate the merit of respect for the elderly. In the Portuguese version of the legislation (ST), the item is being named as “*Subs  lio para Idosos*” which means “Subsidy to Elderly People”. When being translated into Chinese (TT), it now becomes “敬老金, *jing lao jin*”. From this example, we can see that a balanced approach and the principle of respect have been applied to the TT. Literally, the term “敬老, *jing lao* ”

means “to respect the elderly”. It echoes with the purpose for granting the subsidy. Here the translator not only transmits the literal meaning of the Portuguese term but also its conceptual meaning as well. In addition, it has applied a sense of respect onto the term so that subsidy receivers not only can feel the care of the government for them, but also that their personal dignity is maintained and enhanced. In return, it helps to build up a sense of belongingness in the society among the elderly people as well as promoting harmony of the society (Internal Meeting Record of the Technical Commission for Legal Translation in July 2005).

c) *Famílias em Situação Vulnerável* (Legal Authorization no.18/2003 of Secretary for Social Affairs and Culture)

In this legislation, the Portuguese term “*Famílias em Situação Vulnerável*” (which means vulnerable families), becomes “弱勢家庭, *ruo shi jia ting*” when being translated into Chinese. This serves as a good example on the application of principle of respect. Here the translator has used a relative neutral term “弱勢, *ruo shi*” (which means “the disadvantaged”) to stand for the Portuguese term “*Situação Vulnerável*”, in order to avoid a discriminative meaning and maintain harmony of the society (Internal Meeting Record of the Technical Commission for Legal Translation in February 2003).

d) *Programa de Apoio Alimentar de Curto Prazo* (Decree-Law no. 22/95/M)

This is a short term food aid program provided to those low-income individuals and families, the unemployed and those who are pending for financial assistance. The Portuguese term of the program is being translated literally into “短期食物补助计划, *duan qi shi wu bu zhu ji hua*”. Again this is an example on the

application of principle of respect. The translator just used a relative neutral term “补助, *bu zhu*” (which means “assistance”) instead of other negative terms such as “救济, *jiu ji*” (which means “relief”) in the translation (Internal Meeting Record of the Technical Commission for Legal Translation in April 1995 and Agreement of Cooperation with NGOs).

2.3 Exploration on Social Services Legislations

And from the legislations on social services, the following also serves as representing examples of the balanced approach in combination with principle of respect:

a) *Cartão do idoso* (Legal Authorization no. 78/GM/96)

This is a card issued to the senior citizens of Macao SAR, so that they are able to obtain the welfare and preferential rights offered by Social Welfare Bureau, public institutions and enterprises. Here the Chinese translation of “*Cartão do idoso*” serves as a good example of the application of the balanced approach together with principle of respect. Instead of translating the term literally as “老人咭, *lao ren ka*” (which means “Card for Elderly People”), the translator has transmitted it to “颐老咭, *yi lao ka*” which in one way, carries a sense of politeness and respect to the elderly and in another way, carries a deeper conceptual meaning of “颐养天年, *yi yang tian nian*”, i.e. wishing the elderly people to lead a happy and comfortable life thereafter (Internal Meeting Record of the Technical Commission for Legal Translation in September 1996).

b) *Departamento de Solidariedade Social* (Decree-Law no. 24/99/M)

Under the organization structure of Social Welfare Bureau, there

is a Department of Social Solidarity (DSS) which is responsible for all social assistance issues related to juveniles and children, elderly people as well as persons with disabilities. The Portuguese term of the unit “*Departamento de Solidariedade Social*” is now being translated to Chinese as “社会互助厅 *she hui hu zhu ting*”. Again this is an example of the balanced approach. In Portuguese, the meaning of “互助 *hu zhu*” (mutual help) has been hidden and we can only sense the meaning of “团结 *tuan jie*” (unity) and “融合 *rong he*” (consolidation) from its name. Apart from translating the literal meaning, the translator has disclosed the conceptual meaning of the term, i.e. the major role of the department to the target addresses. By translating the term in this way, the translator maintains the sense of social harmony in the term. Thus we can see that the principle of respect has also been applied (Internal Meeting Record of the Technical Commission for Legal Translation in May 1999).

c) *Lares de Crianças e Jovens, Lares para Deficientes, Lares para Idosos* (Decree-Law no. 90/88/M)

There are a number of social facilities in Macao which provides accommodation and daily care for orphans, persons with deficiencies as well as the elderly people. In Portuguese, these centers are being termed as “*Lares de Crianças e Jovens*” (Homes for Juveniles and Children), “*Lares para Deficientes*” (Homes for Persons with Deficiencies) and “*Lares para Idosos*” (Homes for the Elderly) respectively. However, when those terms were being translated into Chinese, they became “儿童及青年院舍 *er tong ji qing nian yuan she*”、 “残疾人士院舍 *can ji ren shi yuan she*” and “老人院舍 *lao ren yuan she*” (which means “Children and Youth Center, Center for Persons with Disabilities as well as Center for Elderly People). Such variance

arises mainly due to difference in culture and language habits. The Portuguese terminology “*lares*” focus more on showing love and care, with the purpose of making the occupants feel like at home. On the other hand, as it is not a happy experience to stay in those social centers, the Chinese version of the terminology “院舍 *yuan she*” (center) tends to be more neutral, focusing mainly on the services being offered to the needy. In this example, it is essential for the translator to deliver both literal and conceptual meaning of the terminology in order to ease readability of the legislation, as well as to maintain dignity of the underprivileged group. Therefore the balanced approach has been applied again together with principle of respect (Internal Meeting Record of the Technical Commission for Legal Translation in December 1995).

The above analysis of the translation examples of social welfare legislations, with indication of the existing problems and the recommended solutions in each case, shows clearly that the literal translation just could not work independently, without also taking account of the cultural differences, the language habits of the two official languages and the most important, the conceptual meaning (the real message to be transmitted in the target text), as well as observing the principle of respect (to avoid a sense of discrimination to the addressees of the respective legislations) in construction of social harmony. In contrast, the study (presented immediately after the analysis of translations with problems) of some typical and generally well accepted translation examples of social assistance legislations and social services legislations, with in-depth explanation in each case, illustrates unequivocally the positive results after the adoption of balanced approach to the translations – apply always literal translation first as a primary treatment and then conceptual translation as an indispensable, prudent and also

effective means (like a “necessary filtering step” in the translation process) to complement the insufficiency of literal translation. In the meantime, the principle of respect, apparently, was also introduced in the process of translation when necessary, in order to achieve and maintain social harmony. The construction of social harmony has been always regarded as core values of the Macao society and concretely written as an important guideline in the Annual Policy Address of the Macao SAR Government, especially in the policies related to the livelihood issues of the citizens. No doubt, the Macao Government uses legislations as a powerful tool to implement its policies. Thus, the wording options of the respective legal instruments, whether in the original text or in the authenticated translation, should be in accordance with the directives of the Policy Address.

3 Brief analysis of the development of legal translation practice in Macao

For Macau, legal translation is still considered a newly developing issue, starting only from 1986. And it can be divided mainly into two stages. In the first stage, the principle of fidelity for translation appeared for the very first time in legislation with this provision: “incumbent upon the interpreter-translator: perform the translation of written texts from Portuguese to Chinese and *vice-versa*, trying to respect the content and literary form of both texts; making consecutive or simultaneous interpretation of speeches from Portuguese to Chinese and *vice-versa* and trying transmit faithfully what is said by the speakers ...” (Decree-Law no. 57/86/M, article 11, no. 2)

In the second stage, the Office for Legal Translation was created on 21st June 1993, according to the Decree-Law no.

30/93/M, and the respect to the principle of fidelity as the golden rule for legal translation remained unchanged. That can be proved by an article written by Nuno Calado (1995), and published in the no. 27 of Public Administration Government Magazine, entitled “Legal Translation – Experience and Prospects”, in which the author mentioned the first rule for legal translation was fidelity; another article in the same magazine, entitled “The Meaning, Mode and Technical Criteria of the Chinese Translation of the Laws of Macao” published by Liu Gaolong (1995) defended also the principle of fidelity as the first rule for legal translation, followed by the principle of fluency.

Nevertheless, both of these two specialists in legal translation area did not mention how to achieve this golden rule of fidelity, generally accepted by lawyers and linguists (Sarcevic, 2000: 331). As time goes by, the legal translators in Macao SAR have reached unconsciously and naturally consensus and built up a balanced approach to fill up the vague room of fidelity with concrete and objective elements: the principle of literalness and the principle of conceptuality. The first indicates the preservation of using precise legal language and legal terminology while the second requires the transmission of legal and cultural concepts and values conveyed by the original text to the target text. Therefore, to achieve equivalence in meaning, it is adequate and prudent to say that the ideal strategy would be balanced approach, as at least Macao has put it in practice with satisfactory results. This new structure, in other words, involves the combination of literal translation with the conceptual translation. Only in this situation, the fidelity, both in form and in substance can be satisfactorily guaranteed. And according to the specific nature of each type of legislation, additional principle may be added as well, in order to achieve social

harmony. For example, in the translation of the social welfare legislations, an additional principle – the principle of respect is introduced in the translation process.

4 Conclusion and Implications

As stated in *Ethics Law and Society* (Gunning, Holm and Kenway, 2009), “Laws are framed to prevent bad practices by a minority in the interest of sustainability for the whole community” and “civilized societies have used laws to prevent wrong-doing defined as actions not in the best interest of the society as a whole.” The same logic applies to the case of social welfare legislations in Macao. By drafting social welfare legislations and getting them published in official gazettes (in both Chinese and Portuguese versions), the Macao government has explicitly disclosed, with full legal effect, its social welfare policies to the public. All these not only guarantee the rights of Macao citizens, but also regulate practices of the involved governmental parties. And as the Basic Law of Macao SAR declares that both Chinese and Portuguese enjoy equal legal status in Macao SAR, it is thus very important that the quality of translation be guaranteed. To achieve this goal, Macao has been adopting and developing a practical theory, based on the concept of equal treatment of all authentic texts of a legal instrument defined by Sarcevic (2000), with its own way to solve the fundamental issue of equal meaning – the balanced approach. From this study, it is discovered that when dealing with translation of legislations, translators not only have to pay attention to the literal and conceptual meanings of the content, but also the characteristics of languages involved as well as the nature of texts. For certain cases, additional principles may have to be applied, such as principle of respect, principle of politics

etc., all in service for the sake of maintenance of social harmony, which in turn can provide social stability and a suitable environment for social development. It is believed that the balanced approach has still plenty of room to be explored and further developed, as more different types of legislations are made due to the arising of different kinds of new social situations and problems, which are getting more and more complicated. As technical basis to be developed, it is very important that the legal translator needs an awareness of the strong complementarity of the principle of literalness and the principle of conceptuality. One cannot exclude the other and they two work together, just as the two sides of a coin. Only in this sense, the balanced approach can gain its logic and function well in legal translation. Literalism, in this context, is not to be denied but well conserved instead as the first measure to be adopted in each case of legal translation (for the sake of preserving the letter of the law), and only when it fails to achieve the desired effect, conceptualism comes into play as a supporting measure. So the intervention of the latter is not absolute but relative. However, the principle of conceptuality should always be present, walking side by side with the principle of literalness. With the balanced approach getting consolidated in practice and gradually recognized as one of the possible methods to deal with legal translation, it is believed that future legal translation theory may need to accommodate an additional post-linguistic thinking, changing adequately its way of development ahead, from literalism which has been already subject of plenty studies, to conceptualism, a potential supporting solution for legal translation.

References

- Calado, Nuno (1995) *Tradução Jurídica – Experiência e Perspectivas* [Legal Translation – Experience and Prospects]. *Revista Administração*, no. 27, vol. 8.
- Chen, X. Y. (陈信勇) (2003). <社会保障法原理>, 浙江: 浙江大学出版社
- Chroma, M. (2004). Cross-cultural traps in legal translation. In C. N. Candlin and M. Gotti (eds.), *Intercultural Aspects of Specialized Communication*. Bern: Lang, 197-221.
- Didier, E. (1990). *Langues et langages du droit*, Montréal, Wilson & Lafleur.
- Gunning, J., Holm S. and Kenway I. (2009). *Ethics Law and Society*, vol. 4, Aldershot: Ashgate.
- Harvey, M. (2002). What's so special about legal translation?. *Meta*, 2,177-85.
- Hjort-Pedersen, M. and Faber, D. (2001). Lexical ambiguity and legal translation: a discussion. *Multi-lingua*, 20, 379-92.
- Kasirer, N. (2001). Francois Geny's libre recherché scientifique as a guide for legal translation. *Louisiana Law Review*, 61, 331-52.
- Liu, G. L. (刘高龙) (1995) *O Significado, o Modo e os Critérios Técnicos da Tradução para Chinês das Leis de Macau* [The Meaning, Mode and Technical Criteria of the Chinese Translation of the Laws of Macau]. *Revista Administração*, no. 27, vol. 8.
- Newmark, P. (1981). *Approaches to Translation*. Oxford: Pergamon Press.
- Nida, E. (1964). *Toward a Science of Translating: With Special Reference to Principles and Procedures Involved in Bible Translating*. Leiden: Brill.

- Nida and Taber, C. R. (1969) *The Theory and Practice of Translation*. Leiden: Brill.
- Poon, W.Y.E. (2005). The cultural transfer in legal translation. *International Journal for the Semiotics of Law*, 18, 307-23.
- Reiss, K. and Hans Vermeer (1984) *Grundlegung einer allgemeinen Translationstheorie*. Tübingen: Max Niemeyer.
- Sarcevic, S. (1985). Translation of culture-bound terms in law. *Multilingua*, 4, 127-33.
- (1989). Conceptual dictionaries for translation in the field of law. *International Journal of Lexicography*, 2, 277-93.
- (1997). *New Approach to Legal Translation*, The Hague: Kluwer.
- (1998). Creativity in legal translation: how much is too much?. In A. Chesterman, N. G. San Salvador, and Y. Gambier (eds.). *Translation in Context: Selected Contributions from the Est Congress, Granada 1998*. Amsterdam: Benjamins, 281-92.
- (2000). Legal Translation and Translation Theory: A Receiver-oriented Approach. *La traduction juridique: Historie, theorie(s) et pratique, Geneve, Universite de Geneve, Ecole de Traduction d' Interpretation / ASTTI*, 329 – 347.
- Snell-Hornby, M. (1988/1995). *Translation Studies: An Integrated Approach*. Amsterdam: Benjamins.
- Stolze, R. (2001). Translating legal texts in the EU. *Perspectives*, 9, 301-13.
- Tong, X & Cao, X. B. (eds.) (童星、曹信邦) 主编 (2007). < 社会保障学 >, 北京: 科学出版社

Legislations:

Basic Law of the Macao Special Administrative Region of the People's Republic of China, Government Printing Bureau of Macao SAR.

Law no. 6/94/M in Official Gazette no. 31 (1st Series), published on 1 August 1994.

Decree-Law no. 52/86/M in Official Gazette no. 46 (Appendix), published on 17 November 1986.

Decree-Law no. 57/86/M in Official Gazette no. 52 (1st Series), published on 29 December 1986.

Decree-Law no. 30/93/M in Official Gazette no. 25 (1st Series), published on 21 June 1993.

Decree-Law no. 58/93/M in Official Gazette no. 42 (1st Series), published on 18 October 1993.

Decree-Law no. 22/95/M in Official Gazette no. 22 (1st Series), published on 29 May 1995.

Decree-Law no. 90/88/M in Official Gazette no.4 (1st Series), published on 22 January 1996.

Decree-Law no. 24/99/M in Official Gazette no.25 (1st Series), published on 21 June 1999.

Decree-Law no. 33/99/M in Official Gazette no. 29 (1st Series), published on 19 July 1999.

Decree-Law no. 101/99/M in Official Gazette no. 50 (1st Series), published on 13 December 1999.

Administrative Regulation no. 12/2005 in Official Gazette no. 31 (1st Series), published on 1 August 2005.

Administrative Regulation no. 6/2007 in Official Gazette no. 14 (1st Series), published on 2 April 2007.

Legal Authorization no. 78/GM/96 in Official Gazette no. 41 (1st Series), published on 7 October 1996.

Legal Authorization no.18/2003 of Secretary for Social Affairs and Culture in Official Gazette no. 10 (1st Series), published on 10 March 2003.

Directive Order no. 160/99/M in Official Gazette no. 21 (1st Series), published on 24 May 1999.

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