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Translations of Legal Texts and Competence Errors

Emrah ERİŞ1

ABSTRACT

This study seeks to investigate how competence errors committed by trainee translators of the Department of Translation and Interpreting at Siirt University influence their writing and translations. Competence errors are serious issues in language as they reflect inadequate learning (Touchie, 1986). Noam Chomsky (1965) argues that the focus of linguistic theory must be on the underlying language system (competence), not the act of speaking (performance). Competence errors become more important when being taken into consideration along with translations of legal texts as these texts contain a highly specific terminology that should be combined to form linguistically correct sentences. Otherwise, drawing upon solely correct terminology would not be sufficient to make what is translated understandable and clear. Based on these assumptions, a legal text translated by more than 50 Siirt University sophomores shall be taken as a basis for the study to reveal whether competence errors have something to do with errors and misunderstandings or not. Furthermore, the relationship between linguistic competence and success in translation shall be determined under a specific issue of language. Performance errors shall not be taken into consideration as students were given a good amount of time to translate the relevant texts. Finally, it is recommended that studies which shall be designed to reveal the relationship between competence errors and other texts translations be conducted.

Keywords: Competence errors, legal translation, performance errors, inadequate learning

Hukuki Metin Çevirileri Ve Yeterlik Hataları

ÖZET

Bu çalışma Siirt Üniversitesi Mütercim Tercümanlık öğrencileri tarafından yapılan yeterlik hatalarının yazdıkları cümleleri ve çevirilerini nasıl etkilediğini araştırmayı amaçlamaktadır. Yeterlilik hataları, yetersiz öğrenmeyi yansıttığı için dilde ciddi sorunları işaret eder (Touchie, 1986). Noam Chomsky (1965), dilbilimsel kuramın odağının, konuşma (performans) değil, temel dil sistemi (yeterlilik) üzerinde olması gerektiğini savunur. Hukuki metinlerin tercümeleriyle birlikte dikkate alındığında yeterlilik hataları daha da önem kazanmaktadır, çünkü bu metinler dil bakımından doğru cümleler oluşturmak için birleştirilmesi gereken oldukça spesifik bir terminoloji içermektedir. Aksi takdirde, sadece doğru terminolojiye dayanmak tercüme edilen şeyi anlaşılır ve net hale getirmek için yeterli olmaz. Bu varsayımlara dayanarak, 50'den fazla Siirt Üniversitesi ikinci sınıf öğrencisi tarafından tercüme edilen hukuki bir metin, yeterlilik hatalarının hatalar ve yanlış anlamalarla ilgili olup olmadığını ortaya koymak için çalışma için temel alınacaktır. Ayrıca, dilsel yeterlilik ile çeviride başarı arasındaki ilişki, belirli bir dil meselesi altında belirlenecektir. Öğrencilere ilgili metinleri çevirmek için iyi bir zaman verildiği için performans hataları dikkate alınmayacaktır. Son olarak, yetkinlik hataları ile diğer metin çevirileri arasındaki ilişkiyi ortaya çıkarmak için tasarlanacak çalışmaların yapılması önerilmektedir.

Anahtar Kelimeler: Yeterlik hataları, hukuki çeviri, performans hataları, yetersiz öğrenme

 $^{^{\}rm 1}$ Dr. Öğretim Üyesi, Siirt Üniversitesi, emraheris1@hotmail.com, ORCID: 0000-0001-6753-9746

1. Introduction

No matter how you perceive the relationship between language and translation, you are driven to the notion that there is a fine line between having a good command of a certain language and the skill of translating properly. It has been more than three decades since scholars in the field of Translation Studies ploughed a lonely furrow with attempts to dissociate the field from the linguistics. Sara Oliviera (1999) states that "For almost three decades now, Translation Theory has frantically been developing, permanently searching for a niche and an identity of its own." However, it would not be right to assert that everyone involved in the field of translation has realized this dissociation as there are a substantial number of people who still are of the opinion that if they are capable of speaking a language at an advanced level, they are able to translate any documents. This brings to mind the issue of the fine line between performance and competence as well. Just as linguistics and translation studies should be evaluated separately, so the speaking skill (performance) and what actually is known by the learner (competence) should be evaluated as two different issues. Failure to wellunderstand these concepts and the distinctiveness between the two notions has brought about several problems, one of the most important of which is to admit students to translation departments with low-level language skills. This failure is also observed in Turkey as in other parts of the world. Sakwe George Mbotake (2013: 51) connotes that "It is often assumed that students have an adequate command of their working languages when they are admitted to translation programmes and therefore do not need further language enhancement courses." It is also true that in Turkey students are admitted to university programmes via examinations that only assess students' proficiency in a certain language under some basic skills such as reading. As crucial parameters and requirements of translation are ignored to a large extent, trainee translators are exposed to high-level courses which mostly result in unsuccessful results during subsequent periods of education. For the sake of example, legal translation is a specific type of translation that requires students to have a good command of language as well as a theoretical background that does not exist in the background of students. Let alone the ability to translate legal documents properly, students lack the basic ability to form accurate sentences in the working language, which is mostly English. Thus, the issue of competence should be taken into consideration comprehensively and with befitting approaches. In this context, an error analysis based on competence rather than performance may give an insight into whether trainee translators pay the piper of not having a good knowledge of translation theory and linguistic skills and how this lack of ability drives them to commit errors even in basic sentence translations of legal documents.

Given the explanations stated above, this study has been designed to reveal the errors committed by the sophomores studying at the Department of Translation and Interpreting of Siirt University, Turkey in legal document translations.

Literature Review

Harvey (2002: 177) cites Gémar (1995:26-30) and Sarcevic (1997: 23-48) regarding the history of the legal translation stating that "The debate over fidelity to the "letter" or the "spirit" in legal translation is a longstanding one, dating back to the days of the Roman empire when it was decreed that formal correspondence between source and target text was essential to preserve the meaning of both Biblical and legal documents." Mankind has resorted to the power of translation to communicate among people not only in daily life situations but also in terms of legal issues throughout history. As of the very beginning of civilization, countries have exchanged ideas when preparing drafts of laws in any

issue. One of these countries is Turkey which was totally transformed following the collapse of the Ottoman Empire under the rule of Atatürk, the founder of the Turkish Republic. In this context, Öner and Karadağ (2015) studied the role of translation in law-making with particular attention to the import of the French Penal Code (1810) to the Ottoman Penal Code (1858). They concluded that "the Ottoman Code was a translation which was not produced as a translation but so as to entertain the status of an original code in the target system. Esin Örücü (2013), on the other hand, explains the democratization and westernization of the Turkish Republic based on the reform efforts that solely rest on import from major continental jurisdictions both as to form and content including the Civil Code of Switzerland, the Commercial Code of Germany, and the Criminal Code of Italy. She further suggests that "Reception—and translation as its vehicle—was used as the sole method of law reform when the ideological and technological decision was made in 1924 to move outside the framework of the endogenous system of laws rather than to integrate and modernize the existing systems; that is, to receive foreign codes." (ibid: 446). Based on an analysis towards the legal translator's approach to texts, Radegundis Stolze (2013) also mentions the function of translation which he believes can be a basis for humanistic investigations with an attempt to define the link between law and translation by stating that "The link between both areas of research-comparative law and translation studies-is the fact that law is set down, handed down, and interpreted within texts, by language."

There is a myriad of other studies that focused on legal translations based on language issues. Ana et al. (2018) took notarial documents as a basis for their study in which they found out that linguistic and non-linguistic issues are the two causes for translators when translating and that strategies applied in translating notary deeds are literal translation, established translation, calque, transference, cultural translation and official translation in word level, and literal translation, transposition, and adaptation in sentence level. Maurizio Gotti (2016) analysed the process of legal translation of legal texts in terms of interlinguistic and intralinguistic perspective. According to him, "The complexity of the interlinguistic rendering of a legal text is particularly due to the fact that the translation from one language to another is generally bijural, due to the differences in the source and the target legal and linguistic systems" (ibid: 6). As regards intralingual translation, he draws upon the popularization process in which information is transferred linguistically in a way similar to periphrasis or to intralingual translation by illustrating that "A trial by jury represents a typical example of the knowledge asymmetries that may exist among the various participants, some of whom are legal experts and some non-experts" (ibid: 17).

The Translation of Legal Texts

The debate over whether legal texts should be translated bound by fidelity to the source text or the target text still goes on. Sarcevic (2000) puts forward that "for the sake of preserving the letter of law, legal translators have traditionally been bound by the principle of fidelity to the source text" while she also believes that "like other areas of translation, the translation of legal texts is (ought to be) receiver oriented." She further claims that though the issue of whether authenticated translations should be literal or free is a controversial issue, translation techniques and methods vary from jurisdiction to jurisdiction even when the same type of text is the case (ibid).

Legal texts have a specific nature which means that they have their own terminology which may also be unknown to the layperson. Thus, those who are assigned to translate such texts should be chosen from among experts who are not only linguistically experts but also have a good command of understanding legal issues. In the ever-changing world that heads towards globalization, people and

institutions that are run by people are obliged to communicate in an accurate way so that business-to-business relations can go on by carrying out any operations or transactions easily. Besides, "there are a lot of texts that need legal translation, including birth certificates, application letters, technical patent confirmation, deposition records, financial statement, evidence documents, litigation materials, and business contracts" (Kobyakova, 2017). Particularly the translation of legal texts are required by consulates of any country that requires a visa for entry and thus, a huge number of people are obliged to apply agencies that offer translations of such legal documents.

Gotti (2016: 7) purports that "although legal documents in all languages address similar issues, they do so in distinctive ways, because of the different languages in which they are constructed and the cultural differences of the societies in question and of their legal systems." True, cultural connotations and national realities are also factors that may lead to changes in the interpretation of legal issues as in the example of the Ottoman Penal Code that was imported from the French Penal code. Thus, it may be argued that "a legal translation is particularly challenging not only because of the culture-laden nature of legal discourse but also because of a need for formal correspondence between equally authoritative versions of the same text" (Gotti, 2016: 7). Another difficulty can stem from specific jargon or framework of legal discourse. Salmasi (2003) points to the specificity of a common European legal framework adding that "translators into English find it difficult to express such culturallyspecific French collocations as acteurs sociaux, acteurs économiques, acteurs institutionnels, actthuseurs publics, acteurs politiques, which have no direct equivalent in the target language." Thus, he offers a calque as a translation strategy to be carried out by the translator to fill a semantic gap in the target language. Oner and Karadağ (2015) illustrates such a difference between Turkish (or Ottoman Turkish) and French through the word "banissemen", which means "banishment in English and is included in Article 102 of both penal codes but is translated as "perpetual exile" which according to them is heavier in degree compared to its French counterpart.

Competence Errors

Touchie (1986: 76) suggests that "researchers in the field of applied linguistics usually distinguish between two types of errors: performance errors and competence errors." One of the reasons for such a division is that learners may perform at a good level in terms of the language yet may also be deprived of basic forms and structures of language no matter how good speakers or readers they may be. Besides, performance errors should be taken as a basis for most of the time as Touchie cites that they are errors made by learners when they are tired or hurried and can be overcome with little effort by the learner in due course. Nevertheless, competence errors pose a huge problem for learners as they may lead to fossilization or other types of problems in language learning and may be embedded in the learner's brain for a long time. Touchie (1986:76) describe competence errors as "more serious than performance errors since competence errors reflect inadequate learning."

Noam Chomsky (1965) defines competence as the underlying knowledge each speaker-hearer has about the language of his or her community. Unless this knowledge is acquired by the learner, potential mistakes or errors are more likely to occur, leading to irreparable errors in subsequent learning. He further suggests that the focus of linguistic theory must be on the underlying language system (competence), not the act of speaking (performance).

Competence errors should be taken into consideration in translation as having a good command of language if sine qua non for trainee translators besides other requirements such as knowledge of cultural issues, world knowledge, etc. Mbotake (2013) explains the duty of the translator as to unlock

the prison of language and help a text break free of its limited original language, culture, and audience. He sets conditions to do this as to be able to read and comprehend the source language and to write comprehensibly in the target language, and to choose the equivalent expression in the target language that both fully conveys and best matches the meaning intended in the source language (referred to as congruity judgment) (ibid: 53). Galdia (2003), on the other hand, points to a misconception which is based on the fact that only terms are the subject of translations claiming that an entire text – and not just terms – is the subject of translation, even though many translators concentrate only on the terms as such and that every text also has a connotative level, which is semantically as important as the denotative level. In this context, he suggests

"The existing findings of mostly terminology-orientated studies on the translation of legal texts have defined the essential problem in legal translation as the legal and technical qualification of legal institutions. The problem of qualification, which is the reinterpretation of mostly incompatible legal terms, can be solved only by comparative law methods. Nevertheless, the scope of debate surrounding legal translation is characterised by an increasing amount of questions which relate to the technical language and pragmatic aspects of legal language. These are in turn elements of legal linguistics — which is indeed an evolving field of study for which the conditions and methods must still be clarified. The conceptual convergence of these two disciplines may result in procedures that will facilitate the methodically sound translation of legal texts." (2003:2)

Methodology

This study has been designed to reveal the errors arising from the competence of second-year trainee translators studying the Department of Translation and Interpreting of Siirt University. Thus, about 50 examination papers of trainee translators were taken as a basis for the study. The examination in question is normally taken under the course of commercial text translation though trainee translators were given two sentences taken from legal documents as legal terminology is highly used in commercial texts. One of the sentences is in Turkish while the other one is in English. The Turkish sentence is about the workplace of the employees while the English sentence contains information about an article of the Turkish Penal Code. As trainee translators were given enough time (45 minutes) to translate the two sentences and the time and place of the examination was already scheduled, performance errors were excluded from evaluation. The two sentences are as follows:

- (a) İşverenin il/ilçe sınırları içindeki işyerlerinde, işveren veya vekilinin göstereceği işyerleri. İşçi, gerektiği takdirde işyeri içinde unvanı veya niteliği benzer yahut birbirine yakın başka işlerde muvafakat aranmaksızın geçici veya devamlı olarak işveren tarafından görevlendirilebilir. (*The Recommended English Translation*: Workplaces to be shown by the employer or his/her assignee in the workplaces within the provincial/district borders of the employer. If necessary, the employee may be employed temporarily or permanently by the employer, without seeking consent in the workplace, in other similar duties with a similar title or qualification.)
- (b) In the implementation of the Criminal Code no one shall receive any privilege and there shall be no discrimination against any individual on the basis of their race, language, religion, sect, nationality, color, gender, political (or other) ideas and thought, philosophical beliefs, ethnic and social background, birth, economic and other social positions. (Original Text: Ceza Kanununun uygulamasında kişiler arasında ırk, dil, din, mezhep, milliyet, renk, cinsiyet, siyasal veya diğer fikir yahut düşünceleri, felsefi inanç, millî veya sosyal köken, doğum, ekonomik ve diğer toplumsal konumları yönünden ayrım yapılamaz ve hiçbir kimseye ayrıcalık tanınamaz.)

Trainee translators were not allowed to make use of mobile phones, dictionaries, glossaries or any other materials to help them translate. However, they were given "helping words or phrases" which could be unknown to them. For the Turkish sentence, helping words or phrases were: employee, employer, workplaces, similar, consent, and permanent; whereas, for the English sentence, helping words or phrases were: ayrıcalık (privilege), ayrım (discrimination), ırk (race), mezhep (sect), cinsiyet (gender), sosyal köken (social background), and toplumsal konumlar (social positions).

Errors committed by trainee translators will be interpreted in terms of competence errors based on the correct use of terminology, linguistic competence, grammar rules, connotative and denotative meaning of the words or phrases, and structural differences of both languages.

Analysis

In this section, Turkish and English sentences will be interpreted separately. In so doing, examples will be given under separate headings such as the correct use of terminology, grammar rules, etc.

The Translations of the Turkish Sentence by Trainee Translators

Example 1: The Correct Use of Terminology

Words or phrases: employee, assign, assignee, provincial, district, without seeking consent, if necessary, borders

- a) In workplaces in district/city of employer ...
- b) On workplaces border of cities of employee ...
- c) In border of il/ilçe ... (not translated)
- d) Workplaces within the provincial district bounders ...
- e) ... or similar works as consent ...
- f) If it entails
- g) ... cases in which needn't look for ...
- h) ... or other similar jobs consent by the employee ...
- i) Employee city/county burdens ...
- j) When employee need in workplace ...
- k) Workers, if necessary in the workplaces ...
- l) Employee may be dutied permenant or
- m) Employee can be duty by employer ...
- n) If it will be necessary case ...
- o) Workplaces of employees into cities/villages ...
- p) Employer's at workplaces in country boundaries ...
- g) ... needn't to consent ...
- r) Employer's on the workplace of the border of the city ...
- s) Workplaces where employee district in area ...

One may notice from the translations included in example 1 that trainee translators have a great number of incorrect uses of terminology. To start with, the phrase *provincial/district borders*, which is one of the crucial phrases in the sentence, has been translated in many different ways showing that trainee translators have yet to acquire competence in using legal terminology. The wrong phrases preferred by trainee translators are district/city, the border of city, district in area, in country boundaries, cities/villages, etc. Second, another wrong use is observed in the word *employee*. Some of trainee translators are seen to have used *workers* rather than *employee*. Third, the phrase *if necessary* is frequently used in legal documents and thus should be translated properly if the translator wants to make the document clear enough. Considering the translations, it is obvious that mostly it has been incorrectly used. Among these incorrect uses are *if it entails, if it will be necessary case*, and *case in which needn't look for*. Finally, the words and phrases such as assign and borders have been exchanged by words or phrases such as duty and boundary.

Example 2: Linguistic Competence

- a) Employee can be duty by employer as permanent or temporary without consent title or quality similar or near in the other works ...
- b) Employer's in the border of workplaces where will show by employer or assignee of employer. Employee can be responsibility temporary or permanent if need in the workplace ...
- c) The worker, if necessary in the workplaces temporary or permanent employment without seeking consent in other similar to close works of title ...
- d) Employee was given a job by employer as nonpermenant or permanent without consent, at another works, the same title ...
- e) Employee, as need, title or same quality yet each other by employer ...
- f) The workplaces where will showing that employer or of his assignee into the boundary province ...

Example 2 reveals the lack of competence of trainee translators in every sense in terms of linguistic competence as can be seen in the translations. One may also notice that trainee translators have formed sentences that are not only linguistically wrong but also semantically senseless. One of the important factors that may have driven trainee translators to such incorrectness is that long sentences including highly specific terminology are not easy to translate and thus trainee translators seem to have attempted to write anything that has come to their mind without a conscious way of thinking. This lack of consciousness and ability to combine two or more sentences into one single sentence has led to unreasonable and linguistically incorrect pieces of words and phrases. Another crucial factor may be the insufficient linguistic background of trainee translators as most of them were admitted to the programme without any solid knowledge of working language that is required to translate properly.

Example 3: Grammar Rules (preposition, punctuation, misspelling, capitalization, etc.)

- a) Employee may working ...
- b) ... another work without find consent ...
- c) Employer's workplaces In the Cities Boundaries, ...

- d) In workplace into city border employer or assigned ...
- e) In workplaces which in the period of city or district that shall be showed
- f) ... or like to each other ...
- g) Employer in around workplaces city/town ...
- h) The workplace can be give by assignment or employer into the border ...
- i) The workplaces which are in districts or provinces Employee or assignee will show ...

Example 3 contains highly incorrect usages that are grammatically wrong and lead to meaningless sentences. First, model verbs are used in the wrong way as shown in sentences including usages such as *may working, can be give*. Second, prepositions are seen to have been used in an incorrect way given the examples such as *into city border, in around workplaces* or *into the border*. Third, the issue of capitalization appears to have been ignored as one may notice that trainee translators have made use of upper cases instead of lower cases as can be seen in words such as *Cities, Boundaries, Employee*, and so on. Finally, incorrect use of punctuations is available throughout the sentence.

The Translations of the English Sentence by Trainee Translators

Example 4: The Correct Use of Terminology

Words or phrases: in the implementation of ('nin/nın uygulamasında), receive any privilege (ayrıcalık tanımak), on the basis of (yönünden)

- a) Ceza kanununda geçtiğine göre ...
- b) Ceza kanununda şart koşulduğu üzere ...
- c) Ceza Kanunu'nun esaslarına göre; ...
- d) Ceza kanununda
- e) ... ekonomik ve sosyal konuma karşı ayrımcılık yapalamaz ...
- f) ... herhangi bir ayrıcalık yada bireylere karşı ayrımcılık yapamaz.
- g) ... ya da diğer sosyal konumda olanlara karşı hiçbir ayrımcılığı yoktur.

It is clear from the example 4 that trainee translators have made use of incorrect terminology regarding the words or phrases such as *in the implementation of, receive any privilege,* and *on the basis of.* Though it is also observed that trainee translators have not carried out a fully wrong translation, the use of terminology in their translations do not reflect the true and accurate equivalence as legal texts require a full correspondence based on the specific terminology included in legal documents. Thus, the first phrase of the sentence *Ceza Kanununu uygulamasında* has been translated as either by preferring *Ceza kanununda geçtiğine göre or ceza kanununda şart koşulduğu üzere* or other usages. It should be noted that as far the Turkish language is concerned, these usages are not incorrect, yet proper translation is not the case either. Thus, the terminology seems to have been translated against the rules and parameters of the translations of legal texts. Another issue is that the word *privilege* and *discrimination* have been used in the same phrase with same the same preposition and verb though it is obvious that these names should be followed by different prepositions or verbs. The main reason for this incorrectness is probably the idea that within the source text the preposition *against* is the only preposition that comes before the words *privilege* and *discrimination* though it should also be clarified

that both words belong to two different phrases (no one shall receive any privilege; there shall be no discrimination against). Finally, the phrase *on the basis of* is a highly frequent term used in legal texts which means *yönünden* in Turkish. It is mainly preferred in long sentences as it may follow a great number of verbs to avoid confusion arising from case suffixes such as -i (to) or -a (to) which indicate location or direction.

Example 5: Linguistic Competence

- a) Ceza kanununda hiç kimseye bir ayrıcalık tanınamaz ve onların kişisel olarak ırk, dil, din, mezhep, ulu, renk, ya da sosyal konumda olanlara karşı hiçbir ayrımcılığı yoktur.
- b) Ceza Kanunun yasaları içinde hiç kimse ayrıcalık alamaz ve onların ırk, dil, din ve sosyla konumları bir ayrımcılık ilkesi olarak tanımlanamaz.
- c) Ceza kanunu incelemelerinde onların ırk, dil, din diğer bir sosyal konumunda hiçbir ayrıcalık ya da herhangi bir ayrımcılığa rastlanmamıştır.
- d) Ceza kanununa göre, hiç kimse herhani bir yarıcalıklı olmamalı, ekonomik ve diğer sosyal position, doğum ve temel bireysel ırklarında herhangi bir ayrımclıkla karşı karşıya gelmemelidir.

Legal texts are generally known to contain long sentences and should be treated meticulously, particularly in the process of translating. Besides, as mentioned above, the Turkish language is a highly appropriate language for long sentences as case suffixes allow a great number of verbs to be combined in a single sentence. However, a lack of linguistic competence may bring about rather wrong meanings as can be observed in sentences in example 5. Though in a general sense the sentences seem to be right, in a broader sense and based on legal terminology, sentences contain incorrect usages not only in terms of verbs and nouns but also in terms of cohesion. The English text should be treated in a manner to combine all phrases in a single sentence so that readers may understand the message fully. Otherwise, the sentence may make no sense in case of an improper translation. As trainee translators do not have full knowledge of linguistic differences between the two languages and their "A" language, which is Turkish in this case, these sentences can be labelled as "highly irrational pieces of words and phrases". In addition to this, verbs do not correspond to the subject and thus cause an incomplete understanding.

Conclusion

Linguistic competence is an inbuilt quality for proper translation as without any sign of competence in language "B", language "A" should not be expected to make sense in the process of translating. This study, which has been designed based on this assumption, has been conducted to reveal competence errors of trainee translators studying at the Department of Translation and Interpreting of Siirt University regarding the translations of legal texts. One of the striking findings of this study is that trainee translators tend to commit errors when translating from Turkish to English. This is most likely due to competence in the English language as trainee translators do not have a good linguistic background in this language. In addition, trainee translators commit errors in terms of grammar rules, the incorrect use of terminology, and grammar rules including punctuation, preposition, misspelling, and verb usages.

One should well-understand that speaking a language fluently does not guarantee to perform a proper and accurate translation as there exist a plethora of other factors that may bring success such as intercultural understanding and background, connotative and denotative meanings of words, legal framework and terminology, and a good level of language. Without these prerequisites, a translator should not be labelled as "good". Thus, trainee translators should be trained based on these factors.

It is highly recommended that the translator training be planned by bearing in mind the notion that translation is not solely a linguistic act but also a field that requires many other competencies apart from linguistic competence. Providing that studies focusing on the translations of other text types, crucial findings may be obtained.

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