GRAMMATICAL FEATURES OF TRANSLATING
BILATERAL INTERNATIONAL TREATIES

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Abstract: The article focuses on the study of some grammatical and structural aspects of international treaties discussing the problems of their equivalent conveyance from English into Armenian. In particular, the article is aimed at studying the use of certain syntactic structures, passive constructions, modal verbs and other grammatical features of international treaties which frequently undergo transformations in the process of translation due to substantial differences between the English and Armenian language systems. To this end, the following methods have been applied: comparative and contrastive methods to study similarities and differences in the scope of the discussed linguistic phenomena, the method of deductive research for studying various types of transformations and testing them from practical perspective, and the method of logical syllogism to work out conclusions to finalize the research. The significance of this study consists in the fact that there is a lack of research on the translation of this type of legal documents in Armenia, and the article will contribute to raising the awareness of Armenian researchers about the problems of translating international treaties. The corpus used in this paper comprises the official translation of authentic bilateral international treaties concluded between the Republic of Armenia and a number of other states and published in the RA Official Bulletins of International Treaties of 2007 and 2009.

Key words: translation, legal text, international treaty, transformation, grammatical feature, equivalence

1. Introduction

International treaties have become an indispensable part of the modern globalized world involving practically all spheres of political, economic and public life of any state. The importance of these treaties has highly grown in relation to the modern international law. In this context, the enforcement of international law is regulated through an intensive process of treaty making which implies drafting equally authentic texts in different languages. While lawyers are more interested in theoretical aspects of comparing legal
systems and legal consequences (de Groot 1988), translation scholars often embark on a quest for equivalence and try to solve problems practically (Cao 2007).

El Ghazi (El Ghazi 2019: 134) indicates that “legal translators need to familiarize themselves with the legal systems of both source and target languages before they start translating, because the difference of the legal systems imposes on the translator a painstaking effort to decipher the meaning of the source text and convey it to the target language.”

Due to its high importance, translation of treaties may be a truly complicated and sensitive task. Loiacono & Bertoli (Loiacono & Bertoli 2018: 264) rightfully observe that the problems arising in translation of bilateral treaties do not appear to have been explored as extensively when compared with the analysis of the translation of equally authentic texts undertaken in national, supranational and international contexts. In translation of this type of legal discourse the idea of achieving equivalence is the most challenging part of it. As a special type of legal documents, international treaties are characterized by a number of linguistic peculiarities that should be given special consideration on the part of translators. In this paper, by means of a comparative analysis, an attempt has been made to reveal some structural and grammatical features of the selected source texts that pose certain difficulties for translators and require an application of certain strategies in the process of translation.

As a rule, translation of official documents mainly follows the principles of formal equivalence or correspondence proposed by E. Nida, which focuses on the source message form and content (Nida 1964: 159). However, translators frequently make use of the transformational approach to the translation process, since in translation of official documents, as in all other varieties of translation, the two most important conditions of equivalent translation are precise conveyance of the ST content and preservation of the requirements of the TL norms. In the event of an inconsistence between these two conditions, the translator has to apply certain transformation techniques in order to overcome it. As argued by Miram, in the transformational approach, a number of substitution levels are distinguished, such as morphological, syntactic, lexical, etc., and the process of translation consists in making transformations of the units and structures of the source language into those of the target one at all those levels. These substitutions may often consist in deviations from literal inter-lingual correspondences aimed at proper transmission of the source content and securing the norms of the target language (Miram 2006: 38). The transformational approach to the translation of documents implies application of various translation devices, which have been named and classified differently by various scholars, but actually serve the same purpose of ensuring equivalent rendering of the source message in the target language making use of the linguistic means available in the target language. With regard to these translation devices, which come under different categories in classifications proposed by various scholars - such as strategies and procedures suggested by Vinay and Darbelnet (1995), translation shifts suggested by J. Catford (2000), translation transformations suggested by L. Barkhudarov (1975), etc., it should be mentioned that many of them are complementary in terms of various language aspects and are often combined by translators in the process of translation.
According to V. Stepanova the method of translation transformation comprising such techniques as concretizing, generalization, sense development, antonymic translation and additions, subtractions and alterations is fairly believed to be extremely valuable as it contributes to the so-called adjustment of two language different systems (Stepanova 2017: 1335).

In particular, grammatical problems of translation can be caused by the differences in the grammatical structures of the languages involved in translation. So we have tried to reveal the most common translation transformations, such as transpositions, syntactic substitutions of sentence types, substitutions of parts of speech and word forms, including the number of nouns and verb tenses. We have also touched upon translation of modal verbs with special reference to translation of ‘shall’ and ‘may,’ as well as translation of the passive structures widely employed in this type of texts.

2. Conceptual and Structural Features of International Treaties

A treaty is an international agreement, generally concluded in writing, between two or more subjects of international law, in which they express their joint will to assume obligations governed by international law or to renounce rights, whether this agreement is embodied in a single instrument or in two or more related instruments and whatever its particular designation (Art. 2 para. 1 let. a of the Vienna Convention of 23 May 1969 on the Law of Treaties).

Bilateral and multilateral treaties essentially differ in the way they are concluded, their entry into force and their administration. A bilateral treaty generally takes the form of a single instrument signed by the two parties or the exchange of two documents, diplomatic notes or letters, confirming the agreement of the parties. A multilateral treaty is made up of a single document. In exceptional circumstances, a multilateral treaty may be concluded by an exchange of documents if the number of signatories does not exceed three or four. The title of an international act is not decisive in determining its nature. However, establishing whether the parties wish to make their agreement legally binding is essential. If this is not the intention, it is not a treaty (Practice Guide to International Treaties 2015: 4).

Unlike literary translation, where the translation process is unprecedented and non-standardized, if not unique, the translation of legal documents, and particularly treaties, highly restricts the freedom of translators in terms of their actions and choices. These texts are completely standardized in both structure of the whole text and arrangement of specific linguistic units. The analysis of the text structure is the initial step taken by the translator when embarking on translation of such standardized texts, as international treaties. As Langer states, “the structure of a thing is the way it is put together: anything that has structure, then, must have parts, properties, or aspects which are somehow related to each other” (Langer 1953: 60). Looking at text structure - how text parts function to create a whole - is a key concept when analyzing texts. The overall text structure of an international treaty is regarded as its macrostructure, whereas the specific linguistic units it contains form what is called the microstructure of the document. Each type of a treaty has its specific composition and content, but on the whole, the
macrostructure of any international agreement is quite the same consisting of the following standardized parts: the preamble, the main body and the concluding part. This standard language structure is called a frame, and the changeable elements within this frame are called slots (Miram 2006: 181). A frame, as a rule, is a standard text with constant elements, which must be filled in with slots (changeable elements). As an illustration to the above-discussed structural peculiarities, let us take the preambles and concluding parts of a number of bilateral international treaties concluded between the Republic of Armenia and other states:

AGREEMENT
BETWEEN THE GOVERNMENT OF THE REPUBLIC OF ARMENIA
AND THE GOVERNMENT OF ____________________ FOR ________________

The Government of the Republic of Armenia and the Government of
_________________, hereinafter referred to as “the Contracting Parties”;
Desiring to conclude an agreement for ____________________;
Have agreed as follows:

……………………………………………………

In witness whereof the undersigned, duly authorized thereto, have signed this agreement.

Done in duplicate in _______________ on _________________ in the Armenian,
______________ and English languages, all texts being equally authentic. In case of any
divergence, the English text shall prevail.

The agreement has entered into force on ________________

In the given text frame the blank fragments (slots) are designed to be changeable
according to the peculiarities (the subject, conditions, etc.) of each specific agreement.
The primary task of the translator is to search for proper TL equivalents and formulate
an appropriate target text frame utilizing it as a substitute at the macro level and to fill in
the blanks (slots) in accordance with the source document content.

3. Challenging grammatical aspects in the translation of treaties

Grammatical problems of translating treaties may frequently arise, first of all, due to the
analytic and synthetic character of the languages involved, as in the case of English and
Armenian. In terms of syntactic features, this often results in making transpositions in
the process of translation, i.e. changes of the arrangement of linguistic elements in the
target text as compared to that of the source one (Barkhudarov 1975: 190). The
transposed elements may be words, word combinations, complex or compound sentence
clauses, etc. Change of word order in the sentence structure is one of the most common
transformations in translation of such documents from English into Armenian, as these
languages have different word order rules (fixed vs. free). E.g.:

“Charter” means the Charter of the Organization of the Black Sea Economic Cooperation,
done at Yalta on 5 June 1998.

In general, syntactic substitutions of sentences constitute one of the most common types of grammatical transformations. These include replacement of a simple sentence by a complex one, replacement of a complex sentence by a simple one, or substitution of a complex sentence with a compound one and vice versa. For instance, intricate complex and compound sentences are frequently used in English official documents in order to reflect the succession of facts, their causes and circumstantial characteristics. In the Armenian language, on the other hand, it is more typical of this style to use simple extended sentences overloaded with diverse adverbial modifiers. As a result, translators often have to replace complex sentences by simple ones, which may often seem even more intricate than its original counterpart:

If the dispute cannot thus be settled within six (6) months following the date on which such negotiations were requested by either contracting party, it shall at the request of either Contracting Party be submitted to an Arbitral Tribunal.

Another interesting grammatical point in legal documents, such as contracts, agreements, memorandums and treaties, is the use of the participle II form of the verb ‘to do’ as a frame element in their final part which is used for introducing the time and place, as well as some other circumstantial details of the document conclusion:

Done in duplicate in Yerevan on June 12 2006 in the Armenian, German and English languages, all texts being equally authentic.

These participle constructions are transferred into Armenian by means of impersonal sentences where the passive voice form of the verb ‘իջատվել’ (‘to do’) is used in the

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present perfect tense. In the given English example we also come across the use of absolute construction with participle I (‘all texts being equally authentic’) which was conveyed into Armenian by means of a separate clause introduced through a connective phrase ‘ինչպես նրանք’ (‘in fact’). In general, absolute constructions with participles I and II are frequently used in the English legal discourse and may be rather challenging for translation into Armenian. The Armenian language system lacks this kind of structures, and translators often have to resort to various syntactical substitutions in order to render them in the target language. As argued by Proshina, “systemic dissimilarity of forms takes place when one of the languages lacks some grammar category and, therefore, has no corresponding form. To translate these forms, one has to compensate them or restructure the sentence” (Proshina 2008: 53).

According to Barkhudarov, substitutions are the most prevalent and diverse type of translation transformations. In the process of translation, both grammatical and lexical units may by substituted; thus, substitutions can be grammatical and lexical, respectively (Barkhudarov 1975: 193).

Grammatical substitutions include several categories: besides syntactic substitutions discussed earlier in this article, there are also substitutions of parts of speech and word forms, including substitutions of the number of nouns and verb tenses, as illustrated in the following examples:

This agreement shall come into force on the date when the Contracting Parties have notified each other about completion of the internal procedures which are necessary for entering into force of this agreement.

Սույն համաձայնգիրն ուժի մեջ կմտնի, երբ Պայմանավորվող կողմերը կծանուցեն միմյանց սույն համաձայնագրի ուժի մեջ մտնելու համար անհրաժեշտ ներպետակարգերի կատարման մասին։

In the given example the Present Perfect tense of the verb ‘to notify’ used in the English sentence is substituted with the Future Simple (Imperfective) tense in the Armenian one due to the differences between the grammatical principles of forming conditional sentences in English and Armenian. Here is another example from the same document illustrating a part-of-speech substitution:

The Contracting Parties will cooperate in the following ways…

Պայմանավորվող կողմերը համագործակցությունը իրականացնեն հետո:

Here the verb ‘to cooperate’ is substituted with the noun ‘համագործակցություն’ (‘cooperation’) used in combination with the verb ‘իրականացնել’ (‘to implement’); thus, the SL verb is transformed into a V+N combination in the TL.

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Another important feature typical of legal texts is the use of passive structures. Obviously, frequent application of passive voice in legal writing is mainly functional. Passive constructions mainly serve the purpose of creating an effect of impersonality emphasizing the “action” and not the “doer” of the action (e.g. The facts of the case are set out in the in the copy.) or as an emphatic emphasis on the subject of the sentence (e.g. A request is made in accordance with this article.). It may also be used to avoid mentioning the real “subject” (e.g. It is agreed that the Parties may refuse to divulge information which…) or to refer to certain historical, economic or social realia (e.g. The Convention was adopted in 2008.).

Generally, the passive form of the verb is considered to be more common in English, since this construction is applicable not only for transitive verbs with a direct object but also for verbs followed by a prepositional or indirect object: for example, to deal with, to send for, to attend, to call upon. Another explanation of the wide use of passive constructions may be the scarcity of cases in English which makes it hard to use the object of the action in the proper case of the noun or the pronoun.

Moreover, certain language means used for thematic division such as constructions with a passive voice play one of the main roles in creating a communicative coherence of the text. Such language means include the phrases in which the pronoun it plays the role of the formal subject of the sentence, e.g. be reported, be considered, be known, be regarded, be related, etc.

Based on the following examples we have attempted to reveal some similarities and specific features of translating the Passive constructions in Multilateral International Treaties.

The ordinary costs of complying with a request shall be borne by the requested party. Where costs of a substantial or extraordinary nature are necessary to comply with a request, the parties shall consult in order to agree the conditions on which the request is to be executed and how the costs shall be borne.

In the above-given example, for the English passive constructions ‘costs shall be borne,’ ‘the request is to be executed’ we may observe one-to-one correspondence to the Armenian passive constructions ‘ինչպես են հատուցվելու ծախսերը,’ ‘պայմանների հիման վրա է կատարվելու ᶷռազմը’ respectively. However, the passive construction in ‘The ordinary costs of complying with a request shall be borne by the requested party’ is transferred into Armenian with the help of the active voice: ‘…նպատակին դառնող պայմանը տալիս է հատուցվելու ծախսերը անաղջիկ կողմը’ (‘The requested party shall

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bear the costs…’). Here we observe a grammatical substitution of sentence structures, which is often applied by translators.

In the following example, we may observe the same situation with similar constructions. The English passive ‘has been initiated by a person’ is replaced by Armenian active structure ‘որևէ անձ իրավական գործողություն է նախաձեռնում’:

When legal action on liability for damages resulting from an act or omission in relation to co-operation under this chapter has been initiated by a person, the Parties concerned shall consider consulting each other…

In the scope of the article, we shall also try to reveal the most commonly used modal verbs in international treaties, as well as the ways modality is expressed in the corresponding Armenian texts. Accordingly, the corpus of the study is based on the official Armenian and English versions of bilateral international treaties.

In spite of the fact that quite a good deal of research has been carried out on the use of modal verbs in English, rather few studies refer to the specific use of modals in the diplomatic discourse. According to Trosborg, the two primary functions of law are regulative and constitutive, i.e. the first one is concerned with ordering the activities which are permitted and prohibiting the ones which are not, while the second function is about creating new relations where they did not exist before (Trosborg 1997: 19). Thus, modal verbs are one of the means of expressing these functions in legal texts. It can be presumed that the highest frequency of modal verbs used in treaty texts is to be found among the group of modals expressing duty and obligation. Knežević and Brdar distinguish two degrees of possibility and necessity in legal texts: “deontic possibility marked by may and can that convey permission, and deontic necessity marked by must and shall that imply obligation” (Knežević and Brdar 2011: 118).

Accordingly, in international treaties, as in most types of legal documents, we notice a specific use of shall and may. In particular, “shall” has been considered ‘ubiquitous’ in legal texts since it expresses a deontic modality intrinsically projected towards situations and behavior located in the future (Williams 2007: 116). In treaties “shall” is mostly used to indicate necessity or legal obligation and mainly corresponds to the meaning of must in general English. In other cases, which may sometimes be problematic for translators, shall may frequently be used to express futurity of actions or state. In the frames of our analysis we have studied the examples of shall which have the meaning of obligation, duty or permission:

\[7\] Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, Article 45, pp. 219, 472.
Each party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct contained in article 4 of this convention, when committed intentionally.

Յուրաքանչյուր կողմը պետք է ձեռնարկի օրենսդրական և այլ անհրաժեշտ միջոցները, որպիսինը 4-րդ հետևականությունների կատարված արաքն այնպիսի բառերով պատմվելու համար, համարվում են. 8

Each party shall ensure that investigations into or prosecution of offences established in accordance with this Convention shall not be dependent upon the report or accusation made by a victim, at least when the offence was committed in whole or in part on its territory.

Յուրաքանչյուր Կողմը պետք է ապահովի, որ սույն Կենվենցիայով սահմանված հանցավոր արաքների հանցանիշը կատարված լինելու դեպքում քրեորեն պատժելի դարձնելու համար. 9

In the given examples modal constructions shall adopt, shall ensure express duty and obligation and are conveyed into Armenian as պետք է ձեռնարկի (must adopt) and պետք է ապահովի (must insure) correspondingly. In most cases, we observe that the meaning of modality is completely preserved through the direct equivalent of the modal verb. However, the negative shall not be dependent is substituted by կախված չլինի (will not be dependent); thus, the meaning of the modal verb shall is omitted being replaced by a structure meaning futurity of actions.

If an authority having jurisdiction under articles 5 to 10 contemplates the placement of the child in a foster family or institutional care, it shall first consult with the Central Authority or other competent authority of the latter State. To that it shall transmit a report on the child…

Եթե 5-10-րդ հոդվածների համաձայն իրավասություն ունեցող մարմինը քննարկում է երեխային խնամատար ընտանիքում, ապա նա առաջին հերթին կախված չլինի (will not be dependent); հետագայում պետք է առաջին հերթին կոմսակալիստական համալիրում այն իրավասություն տալ, որը նպատակավոր է մոտավոր թռիչքի կատարման համար. 10

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8 Council of Europe Convention on Action against Trafficking I Human Beings, Chapter 4, Article 18, pp. 161, 430.
9 Council of Europe Convention on Action against Trafficking I Human Beings, Chapter 5, Article 27, pp. 165, 433.
10 Convention on Jurisdiction, applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, Article 33, pp. 281, 538.
In the given example we observe grammatical substitution of modal structures *shall consult* and *shall transmit* with the Present forms of the corresponding Armenian verbs խորհրդակցում է (consults) and ուղարկում է (transmits). In both cases, the meaning of modality is lost in the Armenian translation representing just a sequence of actions.

In the case of the modal verb *may* we deal with permission or authorization. This modal verb is less frequent in general English, as compared to *can*, as it expresses a more polite permission. However, it is more appropriate in legal discourse where it is frequently used to emphasize entitlement.

A party *may*, within the limits of its internal law, without prior request, *forward* to another Party information obtained within the framework of its own investigations…

Prior to providing such information, the providing Party *may request* that it be kept confidential or used subject to conditions.

Any Party *may*, at any time, *denounce* this Convention by means of notification addressed to Secretay General of the Council of Europe.

In all the above mentioned examples *may forward, may request, may denounce* are transferred into Armenian via կարող է (can, may) showing entitlement. Thus, we may presume that in most cases the translation of *may* serves more or less the same function of entitlement in the target language.

4. Conclusion

The article aimed to study the grammatical features of international treaties, particularly focusing on the use of certain syntactic structures, passive constructions, modal verbs, and some other grammatical, as well as structural features of these legal texts, which

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11 Council of Europe Convention on Action against Trafficking I Human Beings, Chapter 5, Article 34, pp. 169, 437.
12 Council of Europe Convention on Action against Trafficking I Human Beings, Chapter 5, Article 34, pp. 169, 437.
13 Council of Europe Convention on Action against Trafficking I Human Beings, Chapter 5, Article 46, pp. 175, 444.
frequently undergo transformations in the process of translation due to substantial differences between the English and Armenian language systems. We may conclude that to achieve adequacy and compliance with language norms in the translation of legal texts it is necessary to produce certain grammatical modifications so that the communicative and cognitive functions of the text can be preserved. Summarizing the results of our study, it should be noted that translators often have to resort to various grammatical transformations due to the differences between the English and Armenian language systems and norms.

With regard to syntactic features, the change of word order in the sentence structure and substitutions of sentence types are among the most common transformations in the translation of such documents from English into Armenian. As for the use of the passive voice, it is still relevant both in English and Armenian legal texts as a linguistic means of creating an official tone and an effect of impersonality characteristic of legal texts. As shown in the examples above, it is not always preserved in the Armenian language; translators often make grammatical substitutions of word-forms and sentence structures replacing passive constructions by active or impersonal ones. Modal verbs should also be given special consideration in the process of translation as there are various ways of rendering their meaning in Armenian. The results of the investigation reveal that prescriptive texts in English use modality to raise expectations in terms of future behavior. In the Armenian translation, as a rule, different tenses are employed, and the meaning of modality is usually lost.

Undoubtedly, the preciseness of document translation is conditioned not only by the proper solution of grammatical problems of translation but also the equivalent conveyance of the lexical and stylistic peculiarities of the text. In particular, the translator must possess a thorough knowledge of the corresponding terminology and digital data, as well as abbreviations and contractions used abundantly in all types of legal documents, including international treaties. And certainly, while working on the translation of such documents, some sociocultural peculiarities should also be considered by the translator due to the differences in the national mentality of the source and target users, as well as the legal systems of various countries.

References


