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Wanda Wakula-Kunz¹

COGNITIVE CONSEQUENCES OF TRANSLATIONS FOR RENDERING THE MODALITY OF LEGAL DOCUMENTS (A SEMANTIC STUDY BASED ON *THE AMSTERDAM TREATY* AS AN EXAMPLE)

ABSTRACT: This study aims at examining how the manifestation forms of linguistic modality, which plays a rule-constitutive role in the content of legal documents, may be changed in the process of translation. Basing on the achievements of cognitive linguistics the author tries to find a solution for a proper translation of root and epistemic modals that would serve the same communicative function. In concluding remarks she notices that the role of linguists in solving the problems of the legal world is essential for checking the occurrence of ambiguity in the interpretation of translated texts.

KEY WORDS: cognitive linguistics, the language of law, modality, translation studies,

1. Introduction

The objective of this study¹ is to find out how the interpretation and translation of modals may be consequential in the understanding of their meaning with respect to their rule setting roles in legal documents. Theoretical foundations of this study constitute the characteristics of modality in general, and the classificatory divisions of modals into root and epistemic types. Following the opinions of some cognitive linguists, the reasons are explained why the root not epistemic modals are used in legal documents and what problems they create for translators. Linguists give solutions to these problems, and according to these difficulties they suggest which modals should be used

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in texts and which should be avoided. Examples of the most popular modals from Polish and English versions of *The Amsterdam Treaty* (signed on 2 October, 1997 and came into effect on 1 May 1999) show that these pieces of advice are not always used by authors and translators. But still, the explanations can be found why the rules of some linguists are avoided and other definitions are applied.

2. Determining the roles of modals and cognitive solutions for their translations

Modality is one of the most important semantic categories which operate at the sentence level, as we may read in *Semantics* written by John I. Saeed (1998: 125). This term covers devices allowing speakers to express various degrees of commitment to, or belief in a proposition; and one of the strategies employed in communicating the modality is the use of auxiliary words, which are called modal verbs. Discussing “Types of modality and types of modalisation” at the *Second International Conference on Modality in English*, Paul Larreya derives the two categories of meaning, root and epistemic, embodied in modal verbs, from two different domains of human mental activity, namely “the domain of *affect and/or action* and the domain of *knowledge*” (2004: www-site page 1).

There are historical, sociolinguistic, and psycholinguistic evidences for considering the epistemic use of modals as an extension of a more basic root meaning, rather than viewing the root sense as an extension of the epistemic one. For example, the studies of child language conducted by Stan A. Kuczaj and Mary J. Daly (1979), and Susan C. Shepherd (1981), as Eve Sweetser (1994 [1990]: 50) mentions, have revealed that children acquire root senses of modal verbs earlier than epistemic ones. It is probable that past historical changes in the domain of root modality are shaped by general rules of semantic linkages which underlie inherent psycholinguistic motivations. Sweetser argues that root-modal meanings are extended to the epistemic domain precisely because people generally use the language of the external world to apply it to the internal mental world, which is metaphorically structured as parallel to that external world. Thus, the reasoning processes of communicating people are to be viewed as being subject to compulsions, obligations, and other modalities, just as real-world actions as subject to modalities of the same sort. In addition to this, Sweetser (1994: 50)

claims that English modal verbs, constituting essential cases of homonymy rather than ambiguity, independently of their historical development, are synchronically unrelated. Finally, she notices also that root-modal meanings are often analyzed as lexical predicates involving force or obligation, while epistemic readings are treated as combinations of logical operators.

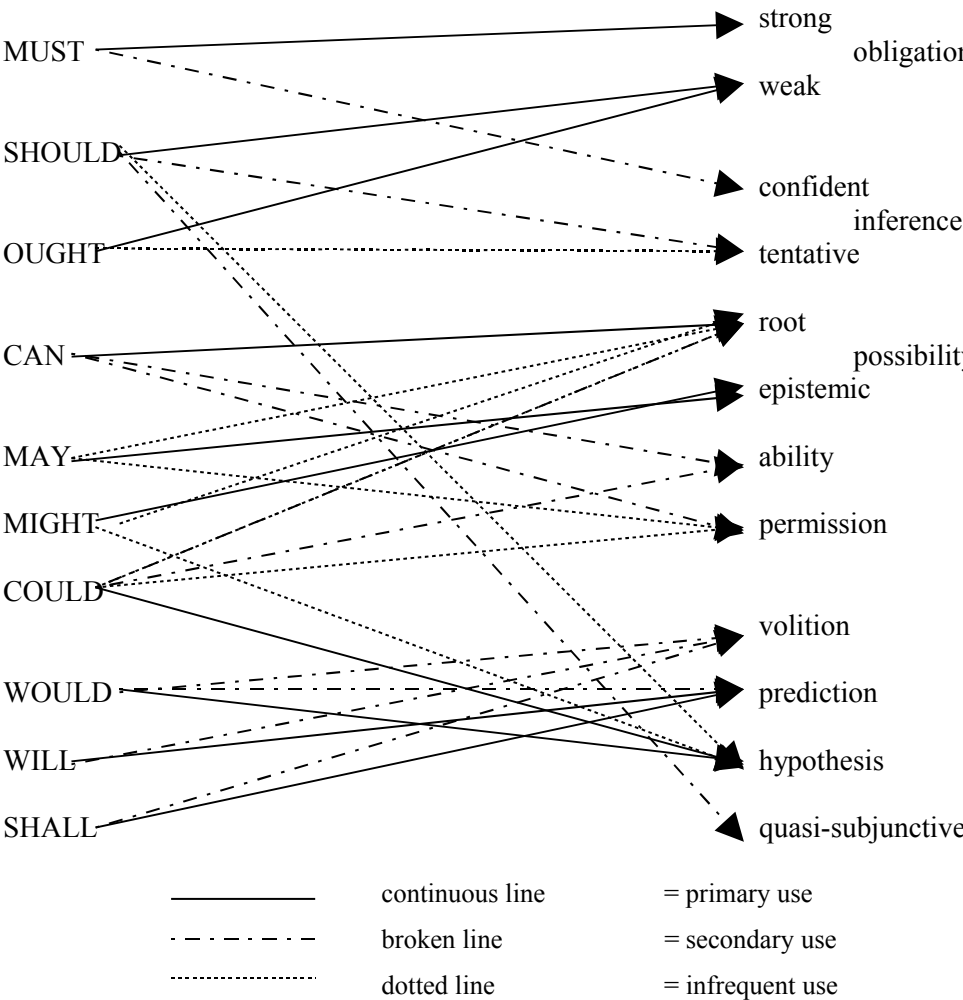
While pointing to linguists who characterize as “root modality” those meanings which denote the real-world obligation, permission, or ability, Saeed (1998) exposes root modals that communicate two types of social information, namely obligation and permission. Root modals, like epistemic modals, signal the speaker’s judgment. However, while with epistemics the judgment is about the way the real world is, with roots it is about how people should behave in the world. This means that the use of roots is tied in with all sorts of social knowledge: the speaker’s belief system about morality and legality and his or her estimations of power and authority. That is, to say, following Saeed (1998: 126): “A stronger statement of obligation, a weaker granting of permission – the use of them would depend on different judgments by the speaker of her authority over the listener and the degree of formality of their relationship.”

Ronald Langacker (2000 [1999]: 308) claims that root modals generally convey force-dynamic relationships in the domain of interaction. In his view, there is a shift from physical to social force which constitutes attenuation in regard to domain. What is very important in a legal document, as he states, the source of potency is no longer identified with the subject. It is not necessarily any specific individual. Moreover, the target of the potency is also diffuse, although the modal force may be directed at a specific individual – be it the subject, the addressee, or some third party. According to Langacker (2000: 307) the force is simply directed toward the realization of a target event, to be apprehended by anyone who might be in position to respond to it. And because the subject is usually not the source of potency, and need not be its target, the root modals exhibit transparency.

In *Translating by Factors* Christoph Gutknecht and Lutz J. Rölle introduce the notion of “multiple meanings of the modals” (1996: 100); by this they talk about the conceptual or denotative meanings of modal verbs; that is, their meanings by virtue of the concepts they denote (“possibility”, “ability”, etc.). In reality, showing eclectically how these meanings act as translation factors, they have never given a full account of all the conceptual meanings of each modal in question. To provide at least some graphical overview, they have reproduced, as illustrated in Figure 1, the interrelationships of modals and meanings distinguished by Jennifer Coates

(1983: 26), who differentiates between “primary, secondary”, and “infrequent uses”. She also notices that groups of modals share certain meanings. Worthy of quotation is here the opinion of Coates (1983: 246) that: “It is often asserted that the polysemy of the modals leads to ambiguity. Corpus study reveals, however, that, in context, sentences containing modal auxiliaries are very rarely ambiguous; in particular, prosodic features serve to disambiguate utterances”.

Figure 1. The English Modals and Their Conceptual Meaning (adapted from Gutknecht and Rölle 1996: 101)



The meaning of modals is especially important when the legal statements are translated from one language into another. As Judith J. Levi (1986: 260) emphasizes, the value of this language variety for linguistics: “linguists should be interested in examining the language of the law for their own professional purposes, that is, to further their understanding of the structure, organization, and use of natural language”. Vice versa, the knowledge of linguistics is seen by her to be relevant to legal questions and problems: “linguistics can be applied to solve real-world problems and to assist individuals who must deal with the legal system to work more successfully towards their own objectives”.

To identify the actually intended meaning of modals in such legal contexts, the translator can only try to follow the legal specialist’s strategy just outlined and aim at achieving a correct interpretation of the modals consistent with their co- and contexts. It is as if the translator were declaring: “Instead of shall the speaker should have used may”, which amounts to an actual restructuring of the source language (SL) text. Because the translator thus goes far beyond the usual task of “merely” translating what is presented, he or she enters a new professional field, and it is fitting to acknowledge this new status by referring to the person as a “translator-editor”. In view of such complexity, which can only increase the semantic indeterminacy of how to interpret the modals, a requirement for intervention and the setting up of binding guidelines for the use of modals seems to be urgent, at least in the field of language for special purposes. This would alleviate the translator, as Gutknecht and Rölle state (1996: 247), to the burden of an unduly great amount of “editing” activity.

Many linguists have tried to find a solution for a proper translation of modals. Some proposals are very general and some of them are very detailed. Therefore, it is clear for Gutknecht and Rölle (1996: 67) that the definition of modality cannot be a necessary condition for the purpose of translating the modals. For theoretical unilingual purposes it may be interesting to discuss different notions of modality. But, from the translational point of view, “possibility, necessity, prepositional attitudes” and “speaker’s attitudes” are all just factors that, if appearing in SL, have to be taken into account for producing target language (TL) renditions, irrespective of the label “modal”.

As Christiane Nord (1991 [1988]: 51) points out, “in almost all approaches to translation-relevant text analysis, the recipient is considered to be a very

important, if not the most important, factor". However, for Sider Florin (1993: 127) there is no need to make global reference to "the" hearer(s) or reader(s) TL. The question emerges: "which factors characterize the 'average readers' of the target text ...?". They include the level of education, age group, occupation, previous knowledge of the subject, degree of bilingualism, and language attitudes. In this case, Coates (1983: 14) observes that "the clearest cases are those where the enabling or disabling circumstances are actually specified", while referring to the example, numbered here as utterance (2):

(2) You can't see him because he's having lunch with a publisher. (Coates 1983: 15)

Because the most popular modals in *The Amsterdam Treaty* are *shall* and *may*, examples in this paper concentrate mainly on them in comparison with modals which have more or less similar and sometimes very confusing meanings. Attempts are made to explain translations of chosen presented modals.

As Dietrich Nehls (1986: 49) notices the use of *shall* to express the imposition of a strict obligation has occurred for the first time in Early Modern English and is to be found in contracts and official provisions to this day. However, in the analyses of Clive R. Meredith (1979: 63): "In many cases, *shall* to the surprise of many, is contraindicated, particularly after a negative subject: The phrase "No debtor shall" ought to become "No debtor may". Thus, *shall* has always to be replaced by the present indicative in giving a definition: "Debtor means" is preferable to "Debtor shall mean". The only case in which *shall* is admitted is that where someone is actually commanded to do something. This situation is rare indeed in juridical acts". But, if *The Amsterdam Treaty* is taken into consideration, *shall* is a very popular element of this document, and that means, according to Meredith, that creators of the document command the rest of Europe to do something. Yon Maley (1987: 30) also notices that the expression "shall be treated" in a legislative text "appears to" create a rule with the force of a command. He justifies the interpretative reservation by pointing out that *shall* – as well as *must* and *may* – are notorious sources of ambiguity in legislative interpretation, e.g. in certain cases, one may argue that the legislature intended *shall* to be not mandatory, but only discretionary, and courts may decide that *shall* means *may* or vice versa. Moreover, from the translator's point of view, it is very important that *shall* has no epistemic reading, so it does not seem to be ambiguous. Nevertheless, its translation in *The Amsterdam Treaty* is

sometimes very confusing and not consequent. As it is suggested above by Meredith, in this document, in most cases *shall* is translated into present tense, and *will*, according to English grammar books, is treated as the form representing the future. While numbering in square brackets the different uses of modal verbs in the Articles of the Treaty (excerpted from the text elaborated by Przyborowska-Klimczak and Skrzydło-Tefelska 1999, where respective pages are given in round brackets), we will show how the selected English phrases (distinctions in italics is ours: WW-K) have been rendered with Polish equivalents in question. To begin with the first example, Article 53, numbered as [1], one can notice that *shall* is translated as pertaining to future, only *will* in [2] and *shall* in [3] are translated according to the mentioned rules. Cf. Article 53 (92):

This Treaty, drawn up in a single original in the Danish, Dutch, English, French, German, Greek, Irish, Italian, Portuguese and Spanish language, the texts in each of these languages being equally authentic, *shall be deposited* [1] in the archives of the government of the Italian republic, which *will transmit* [2] a certified copy to each of the governments of the other signatory States.

Pursuant to the Accession Treaty of 1994, the Finnish and Swedish versions of this Treaty *shall also be* [3] authentic.

Niniejszy Traktat, sporządzony w jednym oryginalnym egzemplarzu, w językach: angielskim, duńskim, francuskim, greckim, hiszpańskim, holenderskim, irlandzkim, niemieckim, portugalskim i włoskim, przy czym teksty we wszystkich językach są na równi autentyczne, *będzie zdeponowany* [1] w archiwum Rządu republiki Włoskiej, który *wyda* [2] uwierzytelniony odpis każdemu z rządów innych Państw-Sygnatariuszy.

Zgodnie z Traktatem Akcesyjnym z 1994 r. wersja fińska i szwedzka niniejszego Traktatu *są* [3] także autentyczne.

But in the second example, Article 19, one can notice that both modals, *shall* and *will*, included in phrases [4] [5] and [6] are translated into the present tense. Cf. Article 19 paragraph 2 (66):

Without prejudice to paragraph 1 and Article 14(3), Member States represented in international organisations or international conferences where not all the Member States participate shall keep [4] the latter informed of any matter of common interest.

Member States which are also members of the United Nations Security Council will concern and keep [5] the other Member States fully informed.

Member States which are permanent members of the Security Council will, in the execution of their functions, ensure [6] the defence of the positions and the interest of the Union, without prejudice to their responsibilities under the provisions of the United Nations Charter.

Nie naruszając ustanowień ustępu 1 i artykułu 14 ustęp 3, państwa Członkowskie reprezentowane w organizacjach międzynarodowych, w których nie uczestniczą wszystkie państwa Członkowskie, informują [4] te ostatnie o wszelkich sprawach ogólnego zainteresowania.

Państwa Członkowskie, które są także członkami Rady Bezpieczeństwa Organizacji Narodów Zjednoczonych, działają zgodnie i informują [5] w pełni inne Państwa Członkowskie.

Państwa Członkowskie, które są stałymi członkami Rady Bezpieczeństwa, przy wykonywaniu swoich funkcji zapewniają [6] obronę stanowisk i interesów Unii, nie naruszając swoich obowiązków wynikających z postanowień karty narodów Zjednoczonych.

In some way, Article 19 gives the “universal” truth, condition which is supposed to be natural in some procedures as law is supposed to be a kind of the universal truth for societies. This problem can be explained in terms of Langacker’s distinctions (2000: 280) who proposes to analyze a sentence, numbered here as (3), which refers to the universal truth:

3) Water will boil when heated to 100 degrees centigrade.

For Langacker (2000: 280) *will* does not have its future-time epistemic value in this example, since it does not pertain exclusively to future events. It is not a present time epistemic for the sentence is the description of “known” reality. It is quite similar to “habitual” expressions. It does not designate a single instance of the event. In the article above *will* indicates that an event of that type is in some sense a regular or expected occurrence. Using *will* and not present simple give the regularity matter-of-factly, while the sentence in present simple tense is in some way “predictive” and seem more “energetic”. For Langacker the verb *will* exposes the force-dynamic aspects of the structured world model. Using Present Simple the inclusion of the process type in the structure of the world is portrayed in static terms, as a part-whole relation. The effect of *will* is to invoke the full dynamic evolutionary model, which brings to the force the force-dynamic implications of this relationship.

According to Figure 1, pertaining to the English modals and their conceptual meaning, the primary use of *can* means root possibility and the

secondary means permission; and the infrequent use of *may* means root possibility and permission. Moreover, dictionaries give epistemic meaning of *may* as the first definition. But, taking into consideration the root meaning of both words, the modal verb *can* has two meanings which are different: “to be able to” in Polish “móc coś zrobić, mieć na to pozwolenie” and “know how to” “umieć, potrafić”. *May* has one root meaning – “it indicates permission” – “you may do it” “możesz to zrobić – pozwolono ci”. This may be one reason for using the modal *may* in documents which state law. Following Randolph Quirk (1987: 36) *may* in the document is to be treated as a more formal substitute for *can*. Though, in accordance with Sweetser’s opinion (1994: 53) the overlap of *can* and *may* is equally explicable in terms of a more intuitively satisfying definition of *can*. For Sweetser the word *can* denotes positive ability on the part of the doer and *may* the lack of restriction on the part of someone else. This lack of restriction reflects as well the meaning of *may* in the Treaty. In the analyzed document, there are few sentences with *can*. For example, in phrase [7] *cannot* is translated similarly as in the case of *may not*, but in [8] to avoid the same translation, the future form is used instead. Cf. Article 5 (106):

In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and insofar as the objectives of the proposed action *cannot* [7] be sufficiently achieved by the Member States and *can* [8] therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.

W zakresie, który nie podlega jej wyłącznej kompetencji, Wspólnota podejmuje działania, zgodnie z zasadą subsydiarności, tylko wówczas i tylko w takim zakresie, gdy cele proponowanych działań *nie mogą* [7] być skutecznie osiągnięte przez Państwa Członkowskie, a zatem, z uwagi na skalę lub skutki proponowanych działań, *zostaną* [8] lepiej zrealizowane przez Wspólnotę.

Must is also very rarely used in the Treaty. Referring to Sweetser (1994: 52) *must* is equally to be understood as a compelling force directing the subject towards an act. Citing Talmy, Sweetser (1994: 52) considers *must* as a barrier restricting one’s domain of action to a certain single act; and it is true that force or constraint would have the same physical result. “But *must* has the force of an order to do something, a positive compulsion rather than a negative restriction” (1994: 52).

In the analyzed examples of modal verbs included in Article 120, *must* is translated as “*musieć*”. One can see that *must not* is translated here as “*nie mogą*” similarly as it is the case with *may not* in Article 195. Moreover, in the first sentence of Article 120, *may* is translated as “*może*” and in the second sentence, there is a clear emphasis on the necessity of the action connected with “disturbances”. The following *must not* is the consequence of the previous *must* in the same sentence, and at the same time it forbids some activities stronger than *may*. In the Polish version, *must not* is translated as “*nie mogą*” so as *may not*, although the best direct translation would be “*nie wolno im*”. Probably the translator did not want to be very strict in his interpretation. Cf. Article 120 (196):

Where a sudden crisis in the balance of payments occurs and a decision within the meaning of Article 119(2) is not immediately taken, the Member State concerned may [9], as a precaution, take the necessary protective measures. Such measures must [10] cause the least possible disturbance in the functioning of the common market and must not [11] be wider in scope than is strictly necessary to remedy the sudden difficulties which have arisen.

Jeżeli pojawia się nagły kryzys w bilansie płatniczym i decyzja, w rozumieniu artykułu 119 ustęp 2, nie zostaje natychmiast podjęta, Państwo Członkowskie może [9] podjąć, w celach prewencji, konieczne środki ochronne. Takie środki muszą [10] powodować możliwe jak najmniejsze zakłócenia w funkcjonowaniu wspólnego rynku i nie mogą [11] mieć szerszego zakresu, niż jest to absolutnie konieczne do pokonania nagłych trudności, które powstały.

Cf. also Article 195 paragraph 3 (258):

The Ombudsman may not [12], during his term of office, engage in any other occupation, whether gainful or not.

Rzecznik Praw Obywatelskich nie może [12], w trakcie swojej kadencji, podejmować żadnej innej działalności zawodowej, płatnej lub niepłatnej.

It should be underlined here that *cannot*, *must not*, and *may not* are translated in the same way. This is probably the reason why only one of them is chosen to be used in the international treaty. Summarizing, therefore, the analysis of the selected articles it may be suggested that *can* and *must* are very seldom to be used in the Treaty because they create problems with translation and in consequence with interpreting legal texts.

3. Conclusions: the role of linguists in solving legal world's problems

The category of modality discussed and exemplified in legal contexts is one of the most problematic in translation but by no means the only one that causes difficulty. The expression of modal meanings can vary widely from language to language and has to be handled sensitively and carefully in translation. As linguists state, modality or modal meanings have to do with the attitude of the speaker to the hearer or to what is being said, with such things as certainty, possibility, and obligation. Moreover, the expression of modal meanings can take quite a different form in each language. Especially if a legal text such as *The Amsterdam Treaty* is taken into consideration. In the interpretation of a text involving an English modal verb, the knowledge of pragmatic linguistic definitions involved in identifying the modality in question is very helpful. The correct identification of meaning is very important for appropriate translation, because the word is not transferred, but rather its meaning. This is why the practice of translating modals must provide criteria for identifying the source language uses and their subcategories referred to. As it is presented on some examples from *The Amsterdam Treaty*, most of translations may be explained using cognitive grammar. This is why it must be underlined again, that linguists are important for interpreting legal documents to avoid ambiguity in texts.

¹Note: My special thanks are due to Zdzisław Wąsik, Professor of the Adam Mickiewicz University in Poznań and Nicolaus Copernicus University in Toruń, who carefully reviewed this paper acting as a true co-author of its scientific style and editorial supervisor of its content. I am also very grateful for his encouragement to take part in the international conference, where I could present the results of my initial studies. Wanda Wakula-Kunz

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Kognitywne konsekwencje tłumaczenia modalności w tekstach prawnych (badania semantyczne oparte na traktacie amsterdamskim)

Streszczenie

Celem pracy jest ukazanie konsekwencji, jakie może mieć tłumaczenie czasowników modalnych, które ustanawiają reguły i zasady rozumienia norm w tekstach prawnych. W oparciu o rozróżnienia językoznawstwa kognitywnego zostały wyjaśnione przyczyny, dlaczego deontyczne czasowniki modalne są tak często używane w legislacji. Jako materiał do analizy wybrano *Traktat amsterdamski* w jego angielskiej oraz polskiej wersji. Przykłady pochodzące z tegoż tekstu ukazują, iż tłumaczenie deontycznych czasowników modalnych może być źródłem wieloznaczności dla jego odbiorców i to właśnie badania oraz definicje lingwistyczne pomagają rozwiązać problemy związane z błędnym rozumieniem znaczenia słów w tak ważnym tekście międzynarodowym.