

USES OF THE VERB SHALL IN MARITIME LEGAL TEXTS IN ENGLISH AND THEIR CROATIAN TRANSLATIONS

Summary. The paper investigates the use of the modal verb *shall* in maritime legal texts. The analysis was carried out on a parallel corpus of two maritime legal texts written in English and their translations into Croatian. The tool *Sketch Engine*, borrowed from the field of corpus linguistics, was used in the analysis. The analysis has shown that the modal verb *shall* is frequently used in maritime legal texts with a variety of different meanings, which make the interpretation and translation of such texts rather challenging at times. Such semantic diversity at the same time violates the main requirements for the legal texts to be clear, precise and unambiguous. Also, the analysis of translated texts shows that the typical way in which the modal verb *shall* is translated into Croatian is by simple use of the main verb, instead of the verb *shall*, in present tense, which is a reflection of the traditional legal drafting technique in Croatian legislation and at the same time a tool which resolves some of the issues pertaining to the ambiguous use of the verb *shall* in legal documents in English, making translated documents in this case more accessible to users.

Keywords: maritime legal texts, modal verb *shall*, parallel corpus of legal texts, drafting technique.

Introduction. The general function of legislative writing is to impose obligations and to confer rights. “As legal draftsmen are well aware of the age-old human capacity to wriggle out of obligations and to stretch rights to unexpected limits, they attempt to guard against such eventualities by defining their model world of obligations and rights, prohibitions and permissions as precisely, clearly and unambiguously as linguistic resources permit. A further complication is the fact that they deal with a universe of human behaviour which is unrestricted, in the sense that it is impossible to predict exactly what may happen within it. Nevertheless, they attempt to refer to every conceivable contingency within their model world and this gives their writing its second key characteristic of being all-inclusive.” [Bhatia 1993, pp. 102]. Thus, it is seemingly this impossible task of achieving the dual characteristics of clarity, precision and unambiguity on the one hand, and all-inclusiveness on the other, that makes legislative provisions what they are.

This paper focuses on one of the most typical features of legal texts, i.e. the extensive use of the verb *shall* and observes its functions in a sample of maritime legal texts in English and whether they contribute to the legal texts’ clarity, precision and unambiguity. The paper also analyses the ways in which the verb *shall* has been translated into Croatian language.

According to Pritchard [2001] “Maritime legal text is a written legal document that grants certain rights or stipulates and regulates contractual relationships in the maritime industry”. The concept of maritime legal text refers to a very specific set of legal instruments and documents that have legislative force in national law and legally binding force in international maritime law. Maritime legal texts of institutional nature, such as international conventions, regulations, codes, national legal acts, treaties, contracts, directives, etc. are strictly organized written texts with legally, or in some other way, binding force. Their principal traits, which are considered typical of all legal texts in general, are formulaic and predictable textual and discursive patterns, extremely complex syntax and specialized terminology. Grammar of such texts displays, apart from complex syntactic forms, a limited use of tenses, frequent use of affixal negation (ex. *unnecessary*, *in-*

efficient, *none*, etc.), special use of modal verbs (such as use of *shall* to express legal obligation), complex prepositional phrases, etc. Although, legal texts of this type abound with special features at almost all language levels, available research is mainly focused on the lexical level, i.e. specialized legal terminology, such as in the works of Šarčević [2000] and Bhatia [1993; 1998] or Tetley [2004] and Pritchard [1995; 2011], whose works are concerned more specifically with maritime law terminology. Although the analysis of maritime legal texts in this paper focuses on the lexical level, it is specifically concerned with the pragmatic use of a modal verb whose usage is rather scarce in general English and quite pronounced in legal drafting, i.e. the verb *shall* and does not deal with specialized terminology. Therefore, the paper is based on the previous research on the role of the modal verb *shall* in legal texts done by authors such as Krapivkina [2017], Williams [2008, 2011], Cooper [2001], Triebel [2006], Foley [2002] and others.

Methodology. For analysing the parallel corpora the *Sketch engine* tool was used. The two analysed texts comprising the corpora were: the *Directive 2005/65/ec of the European Parliament and of the Council from 26 October 2005 on enhancing port security* and the *Regulation no 725/2004 of the European Parliament and of the Council from 31 March 2004 on enhancing ship and port facility security*, as well as their counterparts in Croatian: *Direktiva 2005/65/ez europskog parlamenta i vijeća* and *Uredba (ez) br. 725/2004 europskog parlamenta i vijeća*. The former text in English counts 5 291 tokens, while the latter counts 44 441 tokens.

Parallel corpus can be uploaded into the *Sketch engine* from a translation memory or one can use the ready-made parallel corpora that already exist for many languages, but cover mostly general language or strictly legal discourse. For more specific and specialized fields, such corpora are not available and have to be created. So, even though *Sketch engine* is one of the most commonly used and sophisticated programs for corpus analysis and parallel concordancing, a thorough pre-processing of the texts is a necessary prerequisite for further analysis. Whereas many formats can be used in corpus compilation of monolingual corpora, multilingual or parallel corpora processing allows .xls formats and requires adherence to strict rules. Texts

Fig. 1. Parallel concordance of ‘shall’

in .pdf, .docx or .txt formats have to be copied manually or formatted as .xls in two columns, whereby in the column A the source language text is presented and in column B the target language text can be found. All rows from source language must correspond to target language. i.e. the corpus has to be aligned. Thus, compared to older programs and existing tools (e.g. ParaConc), there does not seem to be much of an improvement and a lot of ‘manual work’ is still required.

Thus, once the texts analysed in this paper had been pre-processed, they were fed into Sketch Engine for corpus compilation and further analysis followed upon which frequency information, word sketches, concordances, etc. were obtained for specific corpus queries.

Based on the hypothesis of the paper, we looked at parallel concordances for the single term query ‘shall’ (see Fig. 1).

Results were downloaded in .xls format and further analysed, qualitatively. The main concerns were different functions of the verb shall (both in its positive and negative form) and their translations into Croatian.

The use of the verb shall in maritime legal texts: results and discussion. *Shall* is in present-day English a rather rare auxiliary and only

two uses, both with a 1st person subject, are generally current: prediction and volition [Quirk et. al., p. 229–230]. However, the excessive use of the modal verb *shall* is one of the most common features of legal texts. Typically, its main purpose is to impose an obligation, legal duty or, if used in negative form, prohibition. However, as will be seen from our analysis, the verb *shall* has many other uses. Thus, what follows is an analysis of different functions of the verb *shall* that have been noted in our corpus. Another point of analysis concerns the ways in which translators render the verb *shall* into Croatian.

When observing frequency data, the modal verb *shall* appears 372 times in our corpus and it is the most frequently used modal verb.

“In corpus linguistics, **frequency** is the number of times a given form or phenomenon occurs in the corpus”.¹ Frequency can be expressed as: a) an absolute value, e.g. the lemma *shall* occurs 65 times in the corpus entitled DIRECTIVE 2005/65/EC and 307 times in the corpus REGULATION 725/2004 (372 times in total) and b) a relative value, which shows absolute frequency in proportion to the total size of the corpus. Thus, the lemma of verb *shall* has a relative frequency of 12,285 ppm (parts per million) in DIRECTIVE 2005/65/EC and 6,907 in REGULATION 725/2004.

	Directive 2005/65/EC (5 291 tokens)		Regulation 725/2004 (44 451 tokens)	
	absolute frequency	relative frequency	absolute frequency	relative frequency
shall	65	12,285 ppm	307	6,906 ppm
may	22	4,158 ppm	191	4,298
might	1	189 ppm	8	178 ppm
can	4	756 ppm	41	922 ppm
could	0	0 ppm	36	810 ppm
would	1	189 ppm	4	90 ppm
will	44	8,316	46	1,304 ppm
should	20	3,780 ppm	361	8,121 ppm
must	0	0 ppm	13	292 ppm

Fig. 2. Absolute and relative frequency of the verb shall in the corpus

¹ <https://wiki.korpus.cz/doku.php/en:pojmy:frekvence>

“The relative frequency (*REL*), based on the total size of the corpus (*N*), is calculated using the absolute frequency (*ABS*) with the following formula:

$$REL = \frac{ABS}{N} \times 1000000$$

The relative frequency in such cases is at the same time an estimate of the probability of the given phenomenon in the language (times 1 million)².

Relative frequency allows us to compare frequencies in texts or corpora of various sizes. Hence, even though the absolute frequency of the lemma *shall* in the text entitled REGULATION 725/2004 is greater, its relative frequency is smaller since this text is larger than the text against which it is being compared.

Since *shall* is a modal verb that takes on various different meanings, the following passages examine different examples taken from the corpus.

The main function of the verb *shall* in legal language is to impose a legal duty or obligation or express command. Such as in the examples [1] and [2] extracted from the corpus.

[1] *Member States shall conform to the following paragraphs of Part B of the ISPS Code as if they were mandatory.*

[2] *Where at least one of these conditions is no longer being met, Member States shall immediately withdraw the privilege of the exemption from the company concerned.*

In its negative form *shall not* is used to express prohibition.

[3] *Documents, the inspection reports and the answers of the Member States referred to in Articles 4(3), 5(2), 5(4) and 9(6) shall be secret and shall not be published.*

However, other uses of *shall not* have been noted in our corpus. Thus apart from expressing prohibition in majority of cases found in the corpus, *shall not* is also used to perform a declarative function, especially when defining or limiting the legal scope of a particular directive or regulation, such as in the example [4].

[4] *This Regulation shall not apply to ships of war and troopships, cargo ships of less than 500 gross tonnage, ships not propelled by mechanical means, wooden ships of primitive build, fishing vessels or vessels not engaged in commercial activities.*

Declarative function can also be performed by the positive form of the verb *shall*, which appears frequently in the corpus, as can be seen in the example [5].

[5] *A Certificate issued under section 19.2 shall cease to be valid in any of the following cases: ...*

Another function of *shall not* found in the corpus is to deny permission (meaning *may not*)

[6] *No Certificate shall be extended for a period longer than three months, and the ship to which an extension is granted shall not, on its arrival in the port in which it is to be verified, be entitled by virtue of such extension to leave that port without having a new Certificate.*

Shall is also used to confer rights and give permissions, as can be seen in examples [7] and [8].

[7] *The Contracting Governments shall decide the extent of application of this Part of the Code to those port facilities within their territory which, although used primarily by ships not engaged on international voyages, are required, occasionally, to serve ships arriving or departing on an international voyage.*

[8] *If a ship is thereby unduly detained, or delayed, it shall be entitled to compensation for any loss or damage suffered.*

The verb *shall* in our corpus is frequently used to give direction.

[9] *By 15 December 2008 and every five years thereafter, the Commission shall submit an evaluation report to the European Parliament and the Council based, among other things, on the information obtained pursuant to Article 13.*

Shall is also frequently used to state circumstances:

[10] *The conditions of application of such arrangements shall be subject to the Commission inspections provided for in Article 9(4), (5) and (6) of this Regulation under the procedures defined therein.*

In the corpus the verb *shall* is also used to express what Butt [2006] terms a condition precedent [11] and a condition subsequent [12]:

[11] *Unless it is clear that the inspection reports and answers shall or shall not be disclosed, Member States or the Commission shall consult with the Member State concerned.*

[12] *The Administration may entrust the review and approval of ship security plans, or of amendments to a previously approved plan, to recognised security organisations. In such cases, the recognised security organisation undertaking the review and approval of a ship security plan, or its amendments, for a specific ship shall not have been involved in either the preparation of the ship security assessment or of the ship security plan, or of the amendments, under review.*

Shall can also be used in its temporal form to express future.

[13] *This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.*

The analysis of the various uses of the verb *shall* in a small sample of maritime legal texts has shown that the verb *shall* has quite a variety of functions in legal discourse that range from imposing obligation or prohibition to conferring rights or denying permission. It seems that this semantic diversity of the verb *shall* does not contribute to the legal texts' main drafting requirements of clarity, precision and unambiguity. Thus, the authors of this paper found it difficult to determine the exact meaning of the verb in certain cases. For instance, it was sometimes unclear whether certain regulations expressed by the verb *shall* were imperative and mandatory or merely permissive or directory (equivalent to *may*), which do not impose sanctions for breaching [Garner 1995; Dickerson 1990]. Therefore, some writers suggest that *shall* should be used to impose mandatory obligations and should mean only *has a duty to*, while modal *must* should be used for directory regulations and have a meaning *is required to* [Garner 1995]. Apart from restricting *shall* to one sense, other approaches to its use in legal documents recommend its avoidance or keeping its all existing meanings or replacing it with other modal verbs as appropriate.

Translation of the verb *shall* from English into Croatian in maritime legal texts. Since the analysis of the maritime legal texts in English had shown that the verb *shall* has many uses in legal context, we started the qualitative analysis of the Croatian translations with the assumption that they would reflect that diversity. However, the statistics showed the following: out of 372 instances of the verb

² <https://wiki.korpus.cz/doku.php/en:pojmy:frekvence>

shall, 318 of them (85%) were translated into Croatian simply by using the present tense alone, without using the modal *must*, such as in the example provided below. The Croatian translation of *shall communicate* in the example [14] is *dostavlja* (eng. *delivers*)

[14] *Each Member State shall communicate to the IMO, the Commission and the other Member States the information required pursuant to regulation 13 (Communication of information) of the special measures to enhance maritime security of the SOLAS Convention.*

Svaka država članica dostavlja IMO-u, Komisiji i drugim državama članicama informacije koje se zahtijevaju sukladno pravilu 13. (Dostavljanje informacija), o posebnim mjerama jačanja pomorske sigurnosti SOLAS Konvencije.

Other translations of the verb *shall* found in the Croatian translations were the following:

– Modal verb *morati* (eng. *must*) in 36 instances (9.7%)

[15] *Member States shall designate a focal point for maritime security*

Države članice moraju odrediti kontaktnu točku za pomorsku sigurnost. (must designate)

– Modal verb *trebati* (eng. *should*) in 9 instances (2.4%)

[16] *A report shall be kept of the procedure followed in respect of each ship subject to a security incident, as defined in paragraph 1.13 of regulation 1 (definitions) of the special measures to enhance maritime security of the SOLAS Convention.*

Treba voditi izvještaj kako je utvrđeno stavkom 1. 13.... (should be kept)

– Verb *smjeti* (eng. *may*) in negative form (*may not* meaning *must not*) in 5 instances (1.3%) to express prohibition; only used when translating *shall not* from the original text.

[17] *Any decision which a contracting Government makes shall not compromise the level of security.*

Niti jedna odluka koju donese ugovorna vlada ne smije ugroziti razinu sigurnosne zaštite. (may not)

– Verb *moći* (eng. *may/can*) in one instance (0.2%)

[18] *The officers duly authorised by the Contracting Government shall impose any one or more control measures.*

Časnici koji imaju propisno ovlaštenje od ugovorne vlade mogu za taj brod naložiti jednu ili više mjera nadzora. (may/can order/impose)

– Future tense in 3 instances (0.8%)

[19] *Any such temporary security measures under this regulation shall, to the highest possible degree, be commensurate with the prevailing security level.*

Svaka takva privremena mjera sigurnosne zaštite prema ovom pravilu će, u najvećoj mogućoj mjeri, biti usklađena s razinom sigurnosne zaštite koja je na snazi.

Conclusion. The aim of the paper was to analyse the uses of the modal verb *shall* in a sub-genre of legal texts, namely maritime legal texts, and their translations into Croatian language. The results have shown that, unlike in general English, the verb *shall* is extensively used in maritime legal texts. The verb *shall* performs a number of semantic roles. Thus, it is used to impose obligations, duties and prohibitions, confer rights, express preconditions, requirements, circumstances or perform a declarative function. However, such diversity of use causes ambiguity and violates the basic requirements for the legal texts to be clear, precise and unambiguous, thus rendering them challenging for the users. When it comes to legal drafting practice, several approaches can be taken to solve the problem of ambiguity pertaining to the use of the verb *shall*: restricting the use of the verb *shall* to one meaning, completely avoiding it or simply keeping all of the existing meanings. In texts translated into Croatian the dominant approach of dealing with the semantic variety of the verb *shall* is to simply translate it by avoiding it, i.e. by replacing it with the main verb in the present form. However, this approach is probably mainly the result of the traditional way in which legislative documents are drafted in Croatian. Finally, the summary of the uses of *shall* in maritime legal documents could be useful to legal translators from English and further investigation into how *shall* is translated into other languages in legal context would surely yield interesting results.

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