

A Study of the Use and Translation of Archaic Functional Vocabulary in the Berne Convention*

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The archaic functional vocabulary is highly with the legal features of formality and conservativeness and still holding a place in legal English. The Berne Convention is a good example to study the use and translation of the archaic functional vocabulary. By studying what archaic functional words or phrases are used in the Berne Convention, their meanings and the different use frequencies of them between the Berne Convention and the Copy Right Law of PRC, it has been found that archaic adverbs are used of low frequency, while some adjectives or adjectival groups as well as some prepositions or prepositional phrases are used of high frequencies. The use frequencies of the archaic functional vocabulary is higher in the Berne Convention than those in the Copy Right law of PRC. Some suggestions can be put forward to help improve translating Chinese legal documents into English or writing English legal documents.

Keywords: archaic functional vocabulary, the Berne Convention, use frequency, translation

Introduction

The Berne Convention for the Protection of Literary and Artistic Works (hereinafter referred to “the Berne Convention”), was formulated on Sept. 9th, 1886 with its latest amendment on Sept. 28th, 1979. As an important international convention accepted by more than 172 states, the Berne convention is a key player for the protection of the rights of the authors in their literary and artistic works. Since China is a member state, studying the Chinese translation of the said convention seems particularly necessary, especially the translation of vocabulary with legal features. Undoubtedly, the archaic functional vocabulary is one of the typical examples. Just as its name implies, archaic functional vocabulary, highly with the legal features of formality and conservativeness, interrelates different parts of meaningful groups, but antiquated and seldom used in modern legal instruments. Just as a Chinese professor points out that the frequency of archaisms used in the United States Code is about 1.23% (ZHAO, 2016, p. 42), archaisms still holding a place in modern legal texts. The Berne Convention was completed in the 19th century with a certain amount of archaic functional vocabulary in it. Good Chinese translation of them is directly affecting understanding the said convention as well as the protection of the rights of the authors.

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Literature Review

Chinese scholars have done certain research about the use of archaisms in legal English, one focusing on their textual function and Chinese translation (LIU, 2022, pp. 32-35), one comparing the use of archaisms in Chinese and American legislative texts by corpus-based method (ZHAO, 2016, pp. 41-46), another discussing the compositions and meanings of archaic adverbs and the translation theory (NI, 2011, pp. 94-99). In a word, Chinese scholars have mainly studied the archaic adverbs in legal English, such as hereby, thereunder, thereafter and thereof, etc. Seldom did they explore other archaic functional vocabulary in a specific legal instrument. This paper will use the Berne Convention as a major legal instrument to analyze the use and translation of archaic functional words or phrases in a legislative text. At the same time, English translation of a Chinese legislative text will also be studied so as to put forward some suggestions for the proper use of archaic functional vocabulary in the English translation of a Chinese legislative text or writing an English legal document. Translating is no more than writing that happens to be rewriting (Chesterman, 2012, p. 13). To some extent, the imitation process of using the archaic functional vocabulary is the process of transmitting memes (Dawkins, 1976) of legal language, which is beneficial to the legal and cultural exchanges between different countries.

Research Questions

This paper is designed to discuss the following four questions:

- (1) What archaic functional vocabulary is used in the Berne Convention?
- (2) What are the usage and meanings of the archaic functional vocabulary?
- (3) What are the features of the Chinese translation of the archaic functional vocabulary?
- (4) How to use the archaic functional vocabulary in translating Chinese legal documents into English or writing English legal documents?

Analysis of the Archaic Functional Vocabulary Used in the Berne Convention

What Archaic Functional Vocabulary is Used in the Berne Convention?

Table 1

The Archaic Functional Words or Phrases Used in the Berne Convention (BC for short) and Their Use Frequencies

No.	Archaic functional words Used in the BC	Use Frequencies in the BC	No.	Archaic functional phrases Used in the BC	Use Frequencies in the BC
1	such	48	15	subject to	18
2	under	22	16	in accordance with	14
3	Said	20	17	provided that	8
4	concerning	15	18	without prejudice to	4
5	thereof	9	19	Pursuant to	3
6	hereinafter	3			
7	deem	3			
8	hereafter	2			
9	expiration	2			
10	aforesaid	1			
11	thereto	1			
12	thereon	1			

13	therein	1	
14	thereby	1	

According to statistics, there are altogether more than 60 archaisms in legal English. However, as shown in Table 1, the number of the archaic functional words or phrases used in the Berne Convention is 19, including 7 adverbs such as *thereof*, *hereinafter*, *hereafter*, *thereto*, *thereon*, *therein* and *thereby*; 4 prepositions or prepositional phrases, such as *under*, *concerning*, *in accordance with*, *without prejudice to*; 5 adjectives or adjectival groups, such as *said*, *aforesaid*, *such*, *subject to* and *pursuant to*; 1 conjunction provided with and 1 verb *deem*. As shown in the above table, the adjectives, prepositions or prepositional phrases and the conjunction are used more often than the adverbs, with “*such*” used 48 times, “*said*” 20 times, “*concerning*” 15 times, “*subject to*” 18 times. As for the adverbs, only “*thereof*” is used 9 times, such other adverbs as *thereto*, *hereafter* or *hereinafter* are used for 1 to 3 times at most. Obviously, the study of archaic adverbs is necessary, so is other archaic functional vocabulary.

What are the Usage and Meanings of the Archaic Functional Vocabulary in the Berne Convention?

Table 2

The Usage and Meanings of the Archaic Functional Vocabulary

No.	Words or phrases	Parts of speech	Meanings (from Black's Law Dictionary)
1	such	adj.	of this or that kind; that or those; having just been mentioned
2	under	prep.	according to (an agreement, a law or a system)
3	said	adj.	above-mentioned; aforesaid
4	concerning	prep.	(formal) about sth; (usually used in everyday speech, too)
5	thereof	adv.	of that, it or them
6	hereinafter	adv.	later in this document
7	deem	v.	to consider, think, or judge
8	hereafter	adv.	from now on; at some future time
9	expiration	n.	the ending of a fixed period of time
10	aforesaid	adj.	mentioned above; referred to previously; said
11	thereto	adv.	to that place, thing, issue or the like
12	thereon	adv.	on that or them
13	therein	adv.	inside or within that thing/those things; in that place or time; in this regard
14	thereby	adv.	by that means; in that way
15	subject to	adj. group	exposed to, liable to, or prone to ; dependent on or exposed to;
16	in accordance with	prep. group	(formal) according to a rule
17	provided that	conj.	on the condition or understanding that; except that;
18	without prejudice to	prep. group	without damage or detrimental to one's legal rights or claims
19	pursuant to	adj. group	in accordance with; under; in compliance with

The meanings of the archaic functional vocabulary used in the BC are explained in Table 2, most of which are from the Black's Law Dictionary (Garner, 2014). Obviously, based on the explanation in the dictionary, the archaic functional vocabulary is much succinct and formal. Due to the big difference of use frequencies, this paper will focus on analyzing the use and translation of adjectives, adjectival groups, prepositions or prepositional groups which are used of higher frequencies in the Berne Convention, instead of the archaic adverbs with lower use frequencies in the aforesaid legal document.

What are the Features of the Chinese Translation of the Archaic Functional Vocabulary?

Table 3

The Features of the Chinese Translation of Archaic Functional Vocabulary

No	Sample sentences	Chinese translation
1	<u>Such</u> works shall be protected as artistic works.	<u>这些</u> 作品将作为艺术作品得到保护。
2	The Executive Committee shall perform such other functions as are allocated to it <u>under</u> this Convention.	执行委员会履行 <u>在本公约范围内</u> 赋予它的其他一切任务。
3	The person or body corporate whose name appears on a cinematographic work in the usual manner shall, be presumed to be the maker of the <u>said</u> work.	以通常方式在电影作品上署名的自然人或法人, 推定为 <u>该</u> 作品的制片人。
4	The Assembly shall deal with all matters <u>concerning</u> the maintenance and development of the Union and the implementation of this Convention;	大会处理 <u>有关</u> 维持及发展本同盟以及实施本公约的一切问题;
5	By “contrary or special stipulation” is meant any restrictive condition which is relevant to the <u>aforesaid</u> undertaking.	“相反或特别的规定” 指与 <u>上述</u> 应允有关的任何限制性条件。
6	The application of this principle shall be <u>subject to</u> any provisions contained in special conventions to that effect existing or to be concluded between countries of the Union.	本原则应 <u>按照</u> 本同盟成员国之间现有的或将要缔结的有关特别公约所规定的条款实行。
7	If the budget is not adopted before the beginning of a new financial period, it shall be at the same level as the budget of the previous year, <u>in accordance with</u> the financial regulations.	如在新的会计年度开始前还未通过预算, 则可 <u>按照</u> 财务条例规定的手续将前一年的预算延期实行。
8	The provisions of the preceding Article shall also apply in the case of a work of joint authorship, <u>provided that</u> the terms measured from the death of the author shall be calculated from the death of the last surviving author.	前条的规定同样适用于版权为合作作者共有的作品, <u>但</u> 作者死后的保护期应从最后死亡的作者死亡时算起。
9	Translations, adaptations, arrangements of music and other alterations of a literary or artistic work shall be protected as original works <u>without prejudice to</u> the copyright in the original work.	翻译、改编、乐曲改编以及对文学或艺术作品的其他变动享有与原作同等的保护, 但 <u>不得损害</u> 原作的版权。
10	Countries become party to this Act shall apply it with respect to any country of the Union not bound by this Act or which, although bound by this Act, has made a declaration <u>pursuant to</u> Article 28(1)(b).	成为此公约文本缔约国的非本同盟成员国, 对于不受此公约文本约束或虽受其约束但已 <u>根据</u> 第二十八条第一款 b 项规定作过声明的本同盟任何成员国, 适用此公约文本。

In Black's Law Dictionary, “such” is an adjective, often used to modify singular or plural nouns to refer to what has or have been mentioned. Its usage is quite similar to that of the “said” or “aforesaid”. Where it is used differently from that in everyday English lies in that there is no article “a” before a noun. Based on the sentences in the Berne Convention, “under” has the same meaning as “in accordance with”, but it is used more often. “Concerning” is an everyday English word, but often used in legal English due to the fact that it is more formal than “about”. “Provided that” is a conjunctive phrase used to express a condition or an exception. Although “subject” and “pursuant” are adjectives, “subject to” and “pursuant to” are used as prepositional phrases, often translated into “根据, 按照”, which is the same as the Chinese translation of “in accordance with”. However, “without prejudice to” is usually used as a conditional phrase at the end of a sentence followed by a noun phrase to indicate prohibition, which is often translated into “在不妨碍/损害.....的情况下”, or “不得损害/妨碍.....”. Without doubt, the use of the archaic functional vocabulary makes the legislative text more concise, formal, compact, conservative, solemn and serious. With their existence, a legislative text has obvious legal features which are different from everyday English and reflecting the professionalism of a legal language.

Comparative Analysis of the Use of Archaic Functional Vocabulary in the BC and CRL

Table 4

The Use of Archaic Functional Vocabulary in the Berne Convention (BC for short) and the Copy Right Law of PRC (CRL for short)

No.	Archaic Functional Vocabulary	Use Frequencies in the BC	Use Frequencies in the CRL
1	such	48	22
2	under	22	17
3	Said	20	2
4	concerning	15	0
5	thereof	9	3
6	hereinafter	3	0
7	deem	3	4
8	hereafter	2	0
9	expiration	2	0
10	aforesaid	1	0
11	thereto	1	0
12	thereon	1	0
13	therein	1	0
14	thereby	1	0
15	subject to	18	3
16	in accordance with	14	13
17	provided that	8	9
18	without prejudice to	4	1
19	pursuant to	3	4

As indicated above, the use frequencies of the archaic functional vocabulary in the BC is much higher than those in the CRL. In details, for the adjectives or adjectival groups, “such” is used 48 times in the BC, whereas it is used less than half with only 22 times in the CRL. “Said” with the use frequency of 20 in the BC is only used 2 times in the CRL. “Subject to” is used 18 times in the BC but only 3 times in the CRL. “Pursuant to” has almost the same use frequency in the BC and CRL. As for the prepositions or prepositional groups, “under” has the use frequency of 22 in the BC with only 17 in the CRL. “Concerning” has 15 times but zero in the CRL. The use frequency of “in accordance with” is nearly the same in the BC and CRL. So is the conjunction “provided with”. One thing has to be pointed out that no archaic functional adverbs are used in the CRL except for “thereof” with the use frequency of 3 times.

Analysis of the Expressions in the CRL Translated into Archaic Functional Vocabulary

Apart from the comparative analysis of the use of the archaic functional vocabulary both in the BC and CRL, it is also necessary to explore what Chinese expressions have been translated into archaic functional vocabulary in the English version of legal documents.

Table 5

Expressions in the CRL of PRC Translated into Archaic Functional Vocabulary

No.	Expressions in the CRL of PRC	Translated into Archaic Functional Vocabulary	Features
1	但行使著作权时，不得侵犯原作品的著作权	Provided that the exercise of <u>such</u> copyright shall not prejudice the copyright in the original work	adding “ <u>such</u> ” before a noun mentioned

			above.
2	科学技术作品中应当 <u>由</u> 专利法、技术合同法等法律保护的, 适用专利法、技术合同法等法律的规定。	Where any scientific or technological work is protected <u>under</u> the Patent Law, the Law on Technology Contracts or similar law, the provisions of those laws shall apply.	“由” which means “by” is translated into “under”.
3	合同另有约定的, 也可以按照合同支付报酬。	Where otherwise agreed to in a contract, remuneration may be paid in accordance with the terms of the <u>said</u> contract.	adding “ <u>said</u> ” before a noun mentioned above.
4	美术等作品原件所有权的转移, 不 <u>视为</u> 作品著作权的转移。	The transfer of ownership of the original copy of a work of fine art, or other works, shall not be <u>deemed</u> to include the transfer of the copyright in such work.	often in passive voice
5	当事人不履行合同义务或者履行合同义务不符合约定条件的, 应当 <u>依照</u> 民法通则有关规定承担民事责任。	A party who fails to perform his contractual obligations, or performs them in a manner which is not in conformity with the agreed terms shall bear civil liability <u>in accordance with</u> the relevant provisions of the General Principles of the Civil Law.	indicating applicable law
6	为学校课堂教学或者科学研究, 翻译或者少量复制已经发表的作品, 供教学或者科研人员使用, <u>但</u> 不得出版发行;	translation or reproduction in a small quantity of copies, of a published work for use by teachers or scientific researchers, in classroom teaching or scientific research, <u>provided that</u> the translation or reproduction shall not be published or distributed;	expressing a condition
7	出版者、表演者、录音录像制作者、广播电台、电视台等 <u>依照</u> 本法取得他人的著作权使用权的, 不得侵犯作者的署名权、修改权、保护作品完整权和获得报酬权。	Publishers, performers, producers of sound recordings and video recordings, radio stations, television stations and other entities who or which have, <u>pursuant to</u> this Law, obtained the right of law exploitation included in the copyright of others, shall not prejudice such authors’ rights of authorship, alteration, integrity and their right to remuneration.	indicating applicable law

In Table 5, when a Chinese noun is repeated in the following text, it is usually translated with the adjective “such” or “said” before it to modify, showing the same noun mentioned again. The Chinese character “由” is often translated into “under” to mean “by”. “Deem” is used in passive voice to translate “视为” in an English legal document, as a formal or legal expression of “be seen as” or “be considered as”. “依照” or “依据” is translated into “in accordance with” or “pursuant to” to indicate an applicable law. “但” is translated into “provided that” to express a kind of condition for the application of an article in a legal document.

Suggestions for Translating Chinese Legal Documents into English or Writing English Legal Documents

Based on the above analyses, some suggestions can be put forward for translating Chinese legal documents into English or writing English legal documents. First, the archaic functional vocabulary reflects the features of conservativeness, formality, conciseness and solemnity. The proper use of them in a legal document will improve the professionalism of a legal language. Second, systematic learning is required before using the archaic functional vocabulary in translating or writing legal documents. What need to be learned includes their meanings, when to use them, their use frequencies both in the source language and the target language. Third, adhering to the principle of consistency is quite necessary even when using the functional vocabulary in translation or writing. For example, when expressing conditions, “provided that” can be used throughout a document. Moreover, “依照/根据……法/约定/规定” can be translated into “in accordance with the law/terms/regulations” in the whole document.

Conclusion

To sum up, archaic functional vocabulary, highly with the features of formality and conservativeness, is a typical example with legal features. They are antiquated and seldom used in modern legal instruments but still holding a place in them. Archaic functional vocabulary includes adverbs, prepositions or prepositional phrases, adjectives or adjectival groups, etc. By analyzing the usage, meanings and the features of the Chinese translation of the archaic functional vocabulary in the Berne Convention as well as comparing the use of them in the Berne Convention and the Copy Right Law of the PRC, it can be found that a study of the use and translation of the archaic functional vocabulary will improve Chinese people's understanding of legal English and facilitate legal cultural exchange. In addition, writing English documents with the formality, solemnity, conciseness that are close to the target language can help increase the acceptance of the target language readers and improve the efficiency of legal communication.

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