

Finally, reconsidering the text of I, 16 // II, 16 - while applying the rules of case-grammar - we notice a significant difference as for the predicative accusative. H has two accusatives and A one accusative and "ana". For H a complete identification between both accusatives is possible. This is an example of a juxtapositional *affectum/effectum* - *obiectum*. A however prefers an abstractum. In my opinion the construction can be defined as follows : *agens* - *predicate* - *obiectum affectum* - *terminus*. While analyzing syntactical structures at the deep level, a parallel purpose or intention in the meaning of the text does not allow the statement of an equality and similarity of deep level structures between translations. Most important is to view syntactical upbuilding.

Much more research on the accusative in Hittite as in Accadian is still required. We hope to be able to do so for Hittite and we intend to use all possible techniques gain a better view not only on this case but also on syntax in general.

## ON SOME ASSERTIONS IN THE 'HISTORICAL PROLOGUE' OF THE ŠAUŠGAMUWA VASSAL TREATY AND THEIR ASSUMED LEGAL MEANING

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### I

The aim of this paper is to draw attention to the potential of the so-called "historical prologues" of the ancient Near Eastern vassal-treaties as a rich source for the study of the international law of the ancient Near East, a source which as such has so far almost entirely been ignored<sup>1</sup>.

The reason for this negligence of the potentialities of this source for legal studies rests in the fact that its legal aspect was almost entirely denied or ignored<sup>2</sup>. Ever since V. Korošec's analysis of the Hittite state treaties<sup>3</sup> the historical prologue has been commonly viewed as an address to the vassal king and his court. The purpose of this address was considered to be either a reminder to the vassal of his moral obligations toward his overlord in return for benefits conferred on him, his people or land, or a veiled warning intended to convince him that it was in his own best interest to remain faithful to his overlord<sup>4</sup>. Such an approach raises, however, some difficulties.

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<sup>1</sup> Exceptional is Guy Kestemont, *Diplomatique et droit internationale en Asie occidentale (1600-1200 av. J.C.)*, Louvain-La-Neuve 1974, pp. 277-340.

<sup>2</sup> V. Korošec, in his *Helhitische Staatsverträge (Leipziger Rechtswissenschaftliche Studien*, H. 60), Leipzig 1931, p. 32f., pointed to the possibility that these "prologues" have also legal aspects. Later, H.B. Huffmon, in *CBQ* 27 (1965), p. 105, and K. Baltzer, *The Covenant Formulary*<sup>2</sup>, Eng. Tr. Oxford 1971 (1964), pp. 19-21 and passim, expressed the view that the "prologue" was intended to provide a legal basis for the covenant. None of them, however, have proceeded beyond this general express of the view.

<sup>3</sup> See in previous note.

<sup>4</sup> See the summing up of the current opinions by D.J. McCarthy, S.J., *Treaty and Covenant*<sup>2</sup>, Rome 1978, p. 53f.

First, one would expect the "historical prologue", being attached to a pure juridical document, the treaty, to embody, if not exclusively then at least *inter alia*, a purely juridical purpose.

Second, it is entirely unreasonable to assume that the ancient Near Eastern suzerains truly believed in the power of such statements as those presented in the historical prologues to have so strong an effect on the conscience or reason of the vassal and his notables as to prevent them from committing treason against their overlord, should the circumstances change and they be tempted or pressured into breaking away. It is also unlikely that those suzerains indeed relied on the vassal's fear of their power as the sole guarantee of the loyalty of the vassal in a period of crisis, precisely at which time they could not deal with those who violated the treaty.

Third, in certain "prologues", to the extent that the available documentation allows us to verify the correctness of their statements, there are some assertions which either had been formulated by misleading wording that tricked the unfamiliar reader into believing what the formulators — the suzerain's ones — would have liked him to believe<sup>5</sup>; or, in more extreme cases, were clearly falsifiable claims distorting completely the true historical picture<sup>6</sup>. Now, the vassal and his people surely knew the true facts. What purpose then could such falsehoods have served in being addressed to them?! If we are right in regarding some of these assertions as having been intentionally formulated in order to mislead, then one *has* to assume that the formulators had in mind other readers or listeners of the treaty than the vassal and his court.

Recently the present writer advocated a new approach to these prologues, the essence of which is that the sole object of the "historical prologue" was a legal one, and that it was directed to the gods, the divine tribunal to which the Hittites would have to appeal if the vassal repudi-

<sup>5</sup> For an example of a misleading statement see in the Šuppiluliuma-Š/Mattiwaza treaty where Šuppiluliuma asserts: "I brought Qatna with its property and all its belongings to the land of Hatti" (Obv. 37). A reader, who is not aware of the facts, is liable to get the impression that Qatna was conquered and annexed to the Hittite kingdom during Šuppiluliuma's so-called "First Syrian War"; actually, however, such an event took place much later, and the above statement may here refer, at most, to a limited raid on Qatna. For further examples see in the first article mentioned above in note 5, in pp. 67-75.

<sup>6</sup> See below.

ated the treaty<sup>7</sup>. As the arguments in favour of this new approach were already given there in quite detail form, we shall limit ourselves here to demonstrate first the existence of false assertions in these "prologues", a fact which poses one of the most serious arguments against the conventional approach, and then an interpretation of one such "prologue" from a juridical standpoint. For these ends the "historical prologue" of the Šaušgamuwa treaty<sup>8</sup> was chosen, due to the relatively simple and clear construction of its case, and because it contains the most extreme distortion of historical fact the present writer is aware of in these "prologues". Let us turn then first to this distortion.

## II

In the "historical prologue" of the Šaušgamuwa treaty, in lines i, 17-18, there is the assertion that previous to Aziru's submission to Šuppiluliuma Amurru was under the overlordship of the Hurrians. This claim contradicts all that is known to us about the history of Amurru in the days of Aziru or his father 'Abdi-Aširta<sup>9</sup>. The available documents make it entirely clear that Amurru was at that time under the rule of Egypt and, furthermore, that this rule lasted continuously from the days of Thutmose III, in the 15th century. There is no other available evidence to support the assertion made in the Šaušgamuwa treaty about Hurrian rule over Amurru. Moreover, in the Šuppiluliuma-Aziru treaty, in a paragraph which has been preserved for us in the Hittite version of that treaty, there is an explicit statement that Aziru "came out of the gate of Egypt" when he threw himself at Šuppiluliuma's feet<sup>10</sup>. This fact is acknowledged again in the Hattušili-Pentešina treaty<sup>11</sup>, which in turn makes it clear that at least in the days of Tuthalia's father, this fact was still known in the Hittite court. It does not stand therefore to reason that in

<sup>7</sup> "The 'Deliverance Motif' in the 'Historical Prologues' of Šuppiluliuma I's Vassal-Treaties", *Bar-Ilan Studies in History II* (ed. by P. Artzi), Ramat-Gan 1984, pp. 41-76 (see particularly pp. 42-43, 46-53). see also the same writer's, "The Historical Prologue of the Kizzuwatna Treaty (KBo I, 5)", *Bar-Ilan Studies in Assyriology I* (forthcoming).

<sup>8</sup> C. Kühne und H. Otten, *Der Šaušgamuwa-Vertrag* (StBoT 16), Wiesbaden 1971.

<sup>9</sup> For the known history of Amurru in the 15th-14th centuries see H. Klengel, *Geschichte Syriens im 2. Jahrtausend v. u. z II*, Berlin 1969, pp. 182-212, 231-241, 245-306.

<sup>10</sup> KBo X, 13(+)12 (CTH 49, II): i, 18' and 24'.

<sup>11</sup> CTH 92: Obv. 4-5.

the days of Šaušgamuwa this historical fact was forgotten in both courts<sup>12</sup>. One is thus inevitably led to the conclusion that we have here an intentional distortion of a basic historical fact. Even if we allow some degree of uncertainty with regard to our knowledge of the relevant facts, still the most that we would be able to accept is the possibility that sometime between the two campaigns of Šuppiluliuma to the Lebanon, Aziru came to some agreement with the king of Mitanni<sup>13</sup>. But even then it is absolutely clear that the Hurrians never exercised any kind of suzerainty over Amurru in his days.

What goal could then such a distortion of historical facts serve in being addressed to the vassal and his people? Certainly, it would not help the suzerain to establish a base of confidence in his relationship with the vassal. One should in light of such cases assume, then, that the drafters had in mind as an objective audience other readers or listeners, who were ignorant of the true facts.

The only categories of such readers or listeners which one may take into account in this case are the divine judges and the future human generations. The members of the former category, just the same as those of the latter one, at least according to the Hittite perceptions, could have an idea of the facts relevant to the treaty in question only if they were supplied with the relevant documents<sup>14</sup>. Of these two categories, the divine judges were by far the more important for the drafters as the intended audience for the "historical prologue", since these divine judges were considered the ones before whom the suzerain would bring the case if the vassal concerned violated the treaty. In such a case, upon appealing to the gods to punish the violator, the tablets of the treaty had to be presented and read aloud to the (images of the) gods<sup>15</sup>. However, in such cases the second party would have also been expected, upon violating his vassal treaty, to counteract by appealing to the same gods. It was then of

<sup>12</sup> The more so as from the fact that both the Aziru and Pentasina treaties were discovered nowadays in the archives of Hattuša it is absolute clear that they were available to the drafters of the Šaušgamuwa treaty.

<sup>13</sup> Cf. EA 90: 19-20, which may allude to some agreement between 'Abdi-Aširta and Mitanni. EA 101: 6-10 may also be taken to support such view.

<sup>14</sup> For the Hittite perception of the gods, not as omniscient but as of limited ability of knowing the true facts, cf. G. Steiner, *RLA* 3, p. 568 (§ 4clib).

<sup>15</sup> See in 679/z: H. Otten, *A/O* 22 (1968/9), p. 112f.

greatest importance for the drafters of a vassal treaty that in such cases these judges be informed by such information which would nullified any appeal to the gods by the rebellious vassal. The formulators of the treaty were thus required to find in advance remedies to neutralize any possible excuse by the vassal to justify the repudiation of the treaty, even to the extent of inserting false assertions in the treaty.

If these assumptions are accepted, we may assume further the following assumptions: First, that the "historical prologue" of a vassal treaty contains these arguments, statements, assertions and descriptions of "historical" events, including false ones, which would best serve the drafters' ends to nullified any attempt of the vassal to justify the repudiation of the treaty before the divine judges; as such, the "historical prologue" must be perceived as having legal aim, much the same as the other sections of the vassal treaty. Second, that the wording of these "prologues" was carefully done, so as that each statement, assertion or description of certain event, inserted in the "prologue", served a certain legal object. Third, that false assertions, to the extent they exist in these "prologues", hide behind them certain legal problems which caused the insertion of these assertions. Fourth, that the legal problems which concerned the drafters of such a "prologue" were first and foremost those pertaining to the question on what conditions the treaty was to be regarded as void or unenforceable; one may expect, thus, that the exposure of the legal considerations which dictated the wording of the various "historical prologues" will improve our understanding of the required conditions for a vassal treaty of the ancient Near East to be valid and enforceable.

With these observations in mind let us turn now to examine the "historical prologue" of the Šaušgamuwa treaty as a whole.

### III

Let me open with a general observation. Due to the fact that the Šaušgamuwa treaty has reached us in a fragmentary state we cannot be sure to what extent the original terms of the Aziru treaty were changed. But at least with regard to the "historical prologue" there is a clear departure from the prevailing line of argumentation of the previous treaties with Amurru. The present treaty stresses the difference between the circumstances of the original submission of Aziru to Šuppiluliuma, which was made "out of love" (i, 31-32), namely out of free will, without being

forced by Hittite arms (i, 13-14), as against the later situation whereby Amurru was conquered by Hittite forces, following a revolt of the people of Amurru against their Hittite overlord (i, 28-38).

Though the present treaty does not explicate the legal meaning of the difference between these two ways of becoming a subordinated country, this difference was undoubtedly clear to the ancient readers or listeners of the treaty: by violating the treaty Amurru lost its previous privileges, limited and few as they might have been, and its legal status was now reduced to that of a fully subjugated country. Amurru now became a property under the full ownership of the Hittite king, who would from now on have the right to do with Amurru as he wished, including the right to remove the dynasty of Aziru at will (i, 39).

This change in the legal standing of Amurru finds actual expression in the Šaušgamuwa treaty in the fact that at least in one significant point, as far as we may judge from its extant portion, the terms of the present treaty departed from those of the previous treaties with Amurru: whereas in both the Duppi-Tešub and the Pentešina treaties, in the first clause of the stipulations' section of the treaty, the Hittite overlord assures his vassal the throne of Amurru for himself as well as for his offspring<sup>16</sup>, the Šaušgamuwa treaty neither assures the throne of Amurru to the vassal and to his offspring, nor guarantees protection to them. Instead, there is a strong emphasis put on the personal obligation of Šaušgamuwa toward Tuḫaliya, personally, and toward his close family (ii, 4-41).

Furthermore, the Šaušgamuwa treaty seems to refrain from relying on the original treaty with Aziru. Whereas the Pentešina treaty speaks at length about the original treaty, with explicit reference to the facts that both Du-Tešub and Duppi-Tešub abided by that original treaty, and that the Pentešina treaty was drawn up according to this original treaty with Aziru<sup>17</sup> the Šaušgamuwa treaty does not claim to be similar to the original treaty, and it also ignores entirely Du-Tešub and Duppi-Tešub.

As was said already, this prologue strongly emphasizes the personal obligation of Šaušgamuwa toward Tuḫaliya, personally, and toward his close family. This obligation was created by two acts of Tuḫaliya: 1) Tuḫaliya gave his sister in marriage to Šaušgamuwa, making the latter,

<sup>16</sup> CTH 62, I: D, i, 23-27; CTH 92: Obv. 30-33.

<sup>17</sup> CTH 92: Obv. 6, 9-10, 24-26, 28-30.

thus, the brother-in-law of the "Great King" with all its significance (lines i, 8-9; ii 2-3, 8); 2) Tuḫaliya enthroned Šaušgamuwa in Amurru (ii, 3). To this obligation another one was added: the obligation created by the fact that Šaušgamuwa is the legitimate heir of Pentešina who had an obligation to Ḫattušili (and to his heir - Tuḫaliya) due to the fact that Ḫattušili III enthroned Pentešina on Amurru's throne. One should note the emphatic "Your father", made in this context on line i, 44, namely: it is your father's obligation which you, as his son, inherited.

The legal basis for the obligations created by the enthronement of Pentešina and Šaušgamuwa was the fact that both Ḫattušili and Tuḫaliya no longer had any obligation to keep the offsprings of Aziru on the throne of Amurru. If they nevertheless enthroned Pentešina and Šaušgamuwa it was then a special beneficial act which in turn created the obligations on the part of Pentešina and Šaušgamuwa.

Yet, there was still the need to justify this legal change in the standing of Amurru in order to deprive the vassal of the claim that this change was illegal, namely that the Hittites violated the original treaty by changing the terms of Amurru's subordination, a claim which might have turned the present treaty to a void or unenforceable one. To this effect the drafters had to demonstrate that the defection of Amurru to Egypt in the days of Muwatalli was a violation of the original treaty, and for that the drafters had to go back to the circumstances of the establishment of that original treaty.

The Hittite case with regard to these points is as follows: (1) Aziru submitted by his free will to Šuppiluliuma (i, 13-17, 20-21, 31-32). (2) Aziru afterward kept to the treaty with Šuppiluliuma and remained loyal to Hatti (i, 21-27); by that he acknowledge that his subordination to Hatti was legal. (3) Admittedly, there was a protest raised by the people of Amurru, but this protest was raised not by the king of Amurru, the legal authority of the country, but by the *people* of Amurru (i, 28-34). Moreover, when declaring their abandonment of Hatti the people of Amurru did not claim that the Hittite domination over Amurru was not legal; on the contrary — they admitted that it was legal, since Aziru submitted himself "out of love" to Šuppiluliuma. Furthermore, that part of the declaration, which presents the motivation of the people of Amurru to desert the Hittites (i, 32), does not give any legal justification for that act: they only declare that they are no longer Hittite subjects. A modern reader may

perhaps wrongly interpret this declaration as claiming that the people of Amurru had indeed free choice. But such an idea was entirely foreign to the concepts of ancient Near Eastern peoples. Once you became a subject of another, either by force or by free will, you no longer had the choice to leave your master at will. And once Šaušgamuwa confirmed, by his oath on the treaty, the above version of the declaration of the people of Amurru, the revolt became legally unjustified, and as such could not pose any more legal difficulties.

Finally, there was still the possibility that the vassal would claim that the original treaty of Aziru was illegal, as it involved a transgression against Egypt on the part of Hatti, since taking Amurru from Egypt was a clear violation of the treaty that existed at that time between Egypt and Hatti<sup>18</sup>. In order to circumvent this danger the drafters of the Aziru treaty inserted the accusation that Egypt was hostile to Hatti together with the Hurrians and the North Syrian countries<sup>19</sup>. Egypt was, accordingly, the one who violated the treaty with Hatti, and this violation gave the latter an excuse to renounce that treaty with Egypt. The drafters of the Šaušgamuwa treaty, however, decided to depart from this solution and to adopt another approach. They denied that Amurru was previously under Egyptian rule and asserted instead that Amurru was before the submission of Aziru to Hatti under the overlordship of the Hurrians, who at that time were at war with Hatti<sup>20</sup>.

The reasons for the drafters' decision to prefer the insertion of the above falsehood upon the approach which had been used in the previous treaties with Amurru, must apparently be sought in the political changes

<sup>18</sup> For a transgression against a third party in connection with the circumstances that led to the establishment of the original treaty, as an act which might have turned the treaty to be unenforceable, see in our discussion of the Kizzuwatna treaty in the paper mentioned above in note 7.

<sup>19</sup> *KBo* X, 13(+)12; I, 14'-17'.

<sup>20</sup> Providing that the restoration [ *ku-u-ru-u* ]<sub>r</sub> in line i, 18 by Kühne and Otten is correct, we may see in the statement made on lines i, 17-19, that Amurru, because of being under Hurrian rule, was regarded as an enemy of the Hittites, also a statement which was intended to make it clear that the Hurrians at that time were indeed regarded as enemies of Hatti. Yet, the main purpose of that statement seems to me to be connected to other legal problem which the treaty with Aziru poses. The discussion of that problem, as well as the discussion of the assertions made on lines i, 13-21, must, however, be left to another paper.

that occurred in Hattušili III's days: first, the former Mitannian territory, which had been under the control of Hatti since the last years of Šuppiluliuma, was incorporated into Assyria, at first by Adad-nirari I and then, finally, by Šalmaneser I; and second, Egypt, which since the last years of Šuppiluliuma have been an open enemy to the Hittites, now became an allied country, and the peace treaty between the two countries was augmented by a marriage alliance between the two royal houses. One may assume accordingly, that the Hittites were much concerned by the possibility that Amurru would claim its right to return to Egypt while the political circumstances would deprive Hatti of the ability to take military action against Amurru. In such a case, one may further assume, the Hittites would have to rely on the gods to punish the transgressor, and for this end the drafters of the Šaušgamuwa treaty had to deprive Amurru (or also Egypt?) of any ability to claim that Egypt still had any rights over Amurru.

Support for this assumption may be found in the statement that there was an armed struggle between Hatti and Egypt over Amurru (i, 34-37). It should be noted, that for the drafters there was no necessity to mention this battle even if the very defection of Amurru to Egypt was mentioned. For the question of the legality of the conquest of Amurru by Hatti the battle with Egypt was irrelevant. Yet, the description of that battle as presented here has an important message, which the modern reader might miss, but certainly not the ancient readers or listeners: the result of that battle indicates that the gods decided the case in favor of the Hittites, which means in turn that Egypt had no right to take Amurru from Hatti<sup>21</sup>.

By that we are still far from exhausting all the questions raised by this "historical prologue"; these must be left to another paper. I hope, however, that the main line and structure of the Hittite case in this "prologue", as were discussed here, are sufficient to substantiate the claim made at the opening of this article.

<sup>21</sup> The whole problem, including chronological, juridical and religious questions, still needs, however, much more elaboration than we can give here.