

Researching Legal Translations: The Whys and Hows

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PART I: The "Whys"

It has been my experience that translators often rely excessively on bilingual legal dictionaries or linguistic approaches when faced with legal terminology with which they are unfamiliar or passages in legal documents that they do not readily understand. Research into the law itself is more time consuming, but almost always provides a much more accurate understanding of the term in question, however, and, in my opinion, should become a standard element of one's approach to deciphering legal terminology and language usage.

It should be noted that bilingual legal dictionaries are always SECONDARY authorities on the proper meaning of a legal term. They are compiled by translators and bilingual attorneys, based on their author's own experience with legal documentation, are limited to the context with which that author is familiar, and invariably include some degree of error. The PRIMARY source for legal terminology is the law itself.

Linguistic approaches to deciphering terminology are also quite often unproductive or incorrect. Judges and lawyers who write pleadings and decisions are familiar with the facts of the case and the applicable law as they communicate to one another. The translator must also familiarize himself/

herself with that context in order to properly comprehend the concepts referred to in their writings. As I once stated in one of my more blunt and irreverent moments, "The Judge wasn't reading María Moliner when he wrote his decision, and either was I when I translated it."

For my colleagues who work in languages other than Spanish, María Moliner's *Diccionario de Uso del Español* is indeed one of the most prodigious works ever written on Spanish lexicon, and does, in fact, include excellent examples of general legal usage of terminology. Nonetheless, there is an inherent drawback when one relies on even the best general sources of linguistic information when translating law. The problem lies in the fact that **legal writing often employs language in reference to a particular provision of law or with a special meaning, used in a very restricted context.** In such a case, if the translator is not aware of the special context, he or she is likely to come up with a vague, inaccurate, and/or meaningless translation.

It is my hope that legal translators will routinely read laws and other primary source-language legal materials referred to in their documents. Related legal materials that use the same terminology or explain the concepts in question are also of great assistance, especially if they are

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from the same country and field of law, as are monolingual legal dictionaries and encyclopedias, which often extensively quote the law and legal precedents, and as such are often at least a near-primary authority.

In this sense, it is hoped that this article will help to contribute to professional standards for legal translation, by deeming that the **research of legal terminology in relevant primary legal source language materials is a necessary, proper, preferred approach** to handling legal language whose meaning is not readily apparent or specifically defined in the source-language document itself.

PART I: The "Hows"

EXAMPLE ONE - A STEP BY STEP ILLUSTRATION

Here is an intriguing example of how proper research leads to proper translation:

A source document from Ecuador that I recently translated included the following language:

*El Estado percibirá el **excedente** de la **participación laboral**, conforme a lo previsto en la cláusula siete de este Contrato.*

Literally:

*The Government shall receive the **surplus** of the **labor participation**, pursuant to the terms of Clause seven hereof.*

What does "*excedente de la participación laboral*" mean in this context? A good guess would be that "*participación laboral*" it is referring to some type of profit sharing, but it doesn't make much sense to talk about a "profit sharing surplus."

Our research would logically start with a reading of Clause seven, which in this case mentioned:

"la participación laboral del 15 % previsto en el Código del Trabajo"
Literally: "the 15% labor participation provided for in the Labor Code"

Now it's time to look up the Labor Code of Ecuador and see what it has to say about "*participación laboral*". A little creativity on Google will get you there. In this case, I had earmarked another Ecuadorian law in the past. The following site had led me to Ecuador's Ley de Contratación Pública, or "Public Procurements Act: http://www.estade.org/derec_hopublico/LCP-PGE-1.htm

To get from there to the Labor Code, I went to Google and inputted the following in the search box:

site: www.estade.org "Código del Trabajo".

This means that Google will search for the exact term "Código del Trabajo" on the www.estade.org site, which limited my search to the laws of Ecuador.

Google actually offers a special bar that can be downloaded, called the "Google Toolbar," available at <http://www.toolbar.google.com/>, which will automatically search for pages within a given website when you enter the site and press on the toolbar's "search site" icon. I use this toolbar often, as several of its features speed up and keep track of my Web searches.

After browsing through the sites offered by Google, I ended up selecting one called

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www.estade.org/textoslegales.htm, which led me to Ecuador's Labor Code, found after a few more clicks at http://www.estade.org/leyes/C%F3digo_del_Trabajo_reformado.doc.

Other approaches to finding such a site would include searching through governmental Web pages for the country in question, particularly those of the legislature or assembly, or searching through pages that contain the words "Código del Trabajo" until one is found with the country's extension in the web site name or on the web page itself. In some cases, Web browsers will also restrict searches to a specific country.

It is interesting to note that the Ecuadorian Labor Code does not contain the words "*participación laboral*". It does refer, however, to "*Participación de trabajadores en utilidades de la empresa*", the Spanish-speaking world's classic terminology for the concept of "profit sharing." Article 97 of the Code states:

Art. 97.- Participación de trabajadores en utilidades de la empresa.- El empleador o empresa reconocerá en beneficio de sus trabajadores el quince por ciento (15%) de las utilidades líquidas [...]

Translation: Article 97. Employee Profit Sharing. The employer or company shall set aside fifteen percent (15%) of net profits to the benefit of its workers.

In addition to finding this particular provision, I also skimmed through the entire Labor Code [with special attention to section headings] in order to make sure that no other interpretation could be

given to the words "*participación laboral*" found in my original document. The fact that Article 97 is the only provision in the code referring to the quantity of 15% also reinforced the conclusion that "profit sharing" is the intended meaning of that term.

But what about the true mystery of the phrase, the troublesome word "*excedente*" [literally "surplus" or "excess"]?

PARÁGRAFO 2do., "DE LAS UTILIDADES" ["Additional Section 2, Profits"] of the Ecuadorian Labor Code deals exclusively with profit-sharing and the determination of profits for estimated income-tax payments. It covers Articles 97 to 110 of the Code, equivalent to approximately 3 pages of text. Reading through that section, Article 106 states:

Art. 106.- Saldo de utilidades no distribuidas.- Si hubiere algún saldo por concepto de utilidades no cobradas por los trabajadores, el empleador lo depositará en el Banco Central del Ecuador a órdenes del Director General o Subdirector del Trabajo [...]

Translation: Article 106. Balance of Undistributed Profits. If there is any balance for "profits" [that is, profit-sharing] not collected by the workers, the employer shall deposit said balance in the Central Bank of Ecuador, following instructions from the Director General or Assistant Director for Labor Affairs.

The mysterious word "*excedente*" now makes sense. It refers to UNDISTRIBUTED profit sharing. Our original phrase can, indeed, be accurately and meaningfully translated:

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El Estado percibirá el **excedente** de la **participación laboral**, conforme a lo previsto en la cláusula siete de este Contrato.

Literally:

The Government shall receive the **surplus** of the **labor participation**, pursuant to the terms of Clause seven hereof.

Translation:

The Government shall receive **undistributed employee profit sharing**, pursuant to the terms of Clause seven hereof.

The process of researching this phrase is not as exhausting as one might expect. In fact, it took slightly more than five minutes to complete. As demonstrated above, it is a fairly unsophisticated process, though it sometimes demands a certain degree of creativity. Many countries — Mexican and Venezuela, for instance— have almost all their laws posted on the Internet. Print copies of laws are also a must, however, since some countries' laws (such as those of Guatemala and even Argentina) are not as readily available.

EXAMPLE TWO - SPECIALIZED TERMINOLOGY

The term "*autoridad responsable*", often seen in decisions of Mexican Constitutional Relief Petitions, known as "*amparos*", also illustrates the need for such an approach. This term has only recently been included in bilingual dictionaries.

Javier

F. Becerra's "*Diccionario de Terminología Jurídica Mexicana (Español -Inglés)* -

Dictionary of Mexican Legal Terminology (Spanish - English)" lists "*autoridad responsable*" as meaning "government defendant, authority held responsible for an unconstitutional action; in federal rules of procedure, the government authority, legislature or court of law which is the defendant in a *juicio de amparo* (writ of amparo)".

Thomas L. West III, in his "Spanish - English Dictionary of Law and Business" lists the term as "the respondent authority {the authority against whom an *amparo* proceeding was filed}."

This entry was actually one of the few contributions that I was privileged to make to Mr. West's most praiseworthy dictionary. How did I arrive at this translation, and why did Mr. West accept it? The answer is found in Article 5 of Mexico's Law on Constitutional Relief Actions, whose proper name is the "*Ley de Amparo, Reglamentaria de los Artículos 103 y 107 de la Constitución Política de los Estados Unidos Mexicanos*". Mexican Federal Law can currently be accessed at:

<http://www.cddhcu.gob.mx/leyinfo/>

a site well worth bookmarking on your computer if you work with Spanish-language legal documents.

Article 5 lists the parties to an *amparo* [Constitutional Relief] action as follows:

Son partes en el juicio de amparo: I.-El agraviado o agraviados; II.-La autoridad o autoridades responsables; III.-El tercero o terceros perjudicados, pudiendo intervenir con ese carácter:

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The parties to the *amparo* action are:
I. The petitioner or petitioners [literally “the aggrieved party or parties”]
II. The respondent authority or authorities [literally: the authority responsible (for the act that allegedly harmed the petitioner)]
III. The affected third party or parties, who may intervene in said capacity.

It is worth noting that the “affected third party” is, in practice, the adversary in the underlying dispute that led to the *amparo* action. However, since an *amparo*, by law, can only be filed against a government authority who violated the constitution to one’s detriment, one can only petition against the “*autoridad responsable*”, who is usually the judge that allegedly violated the constitution by deciding the underlying case or appeal in favor of the “affected third party,” or at times the court clerk who wouldn’t let you file a pleading in what he wrongly considered to be an untimely fashion. I prefer the term that Mr. West accepted, “respondent authority,” over Becerra’s use of “government defendant,” although both of these translations are fundamentally on-target. On the one hand, the authority in question can be from the executive, judicial, or even legislative branch of government. In English, the term “government” is sometimes used to refer specifically to the executive branch. Furthermore, the *autoridad responsable* is not a party to the underlying dispute, although he is being challenged for his or her official actions. I therefore preferred the translation “Respondent,” a term used in petitions and administrative matters, over “Defendant,” which would imply an actual

interest by said party in the underlying matter.

EXAMPLE THREE: “DE OFICIO” - A CASE OF SPECIALIZED USAGE

In the course of my practice, research into the law has often deciphered seemingly unintelligible or unclear language. One of my favorite examples was a court decision from Quintana Roo which stated that “*el latrocinio es un delito de oficio*” (Literally: “larceny is a crime at the court’s own initiative”). A look at a particular article of the penal code referred to in that same paragraph made it clear that the phrase actually meant “larceny is a crime prosecuted by the government on its own initiative” as compared to an act such as slander, which is considered a crime in Mexico, but is only prosecuted if the victim files a complaint.

A Venezuelan court decision also makes usual use of the term “*de oficio*”, referring to

“Casación de oficio ... en ejercicio de la facultad que confiere el artículo 320 del Código de Procedimiento Civil”

Translation: The deciding of a Cassation Appeal based upon the court’s own determination of grounds ... in exercise of the authority granted under Article 320 of the Code of Civil Procedure.

Article 320 of Venezuela’s Code of Civil Procedure, sheds light on this term, by stating, in part:

Podrá también la Corte Suprema de Justicia en su sentencia hacer

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pronunciamiento expreso, para casar el fallo recurrido con base en las infracciones de orden público y constitucionales que ella encontrare, aunque no se las haya denunciado.

Translation: The Supreme Court of Justice, in its decision, may make an express finding through which it determines that violations of public law or the constitution exist, in order to reach its decision on a ruling challenged in a Cassation Appeal, even if such grounds have not been alleged.

It is worth noting that the actual term “*de oficio*” does not appear in the Article of reference. The term is used by the court to paraphrase that Article.

In both of these examples, familiarity with the dictionary definition of the term “*de oficio*” is helpful. Becerra’s dictionary, cited above, translates the term as:

“officially, ex-officio, by operation of law, on the court’s own initiative or authority (contrasted with a *petición de parte* [at the request of one of the parties])”

Indeed, in both instances, consistent with part of the dictionary definition, “*de oficio*” refers to some act on an authority’s own initiative, yet this understanding is too vague for our purposes. One could hardly translate these phrases as “Larceny is a crime that has something to do with an authority doing something on its own initiative.” A phrase such as “Cassation Appeal in which the Court Acts on its

Own Initiative” doesn’t sound all that bad, but is overly broad and confusing, nearly implying that the court is bringing the case. A true abuser of the dictionary might come up with “*Ex Officio Cassation*,” which sounds so sophisticated, but no one on earth, not even the translator, knows what it’s supposed to mean. In both of these examples, however, reference to the particular article of law makes a clear and accurate translation possible, **IF** the translator reads it.

EXAMPLE FOUR: CLARIFYING AMBIGUITY THROUGH RESEARCH

Another subtle but interesting example was seen in an Ecuadorian court decision, which stated:

La Administración fundamenta el recurso en la causal 1a del art. 3 de la Ley de Casación y alega que al expedirse la sentencia impugnada se ha incurrido en errónea interpretación de las normas contenidas en los artículos 271 de la Constitución Política.

Literally: The Administrative Body bases its appeal on the grounds set forth in Article 3, Subdivision 1 of the Law on Cassation Appeals, and alleges that the challenged decision made an erroneous interpretation of Article 271 of the Constitution.

The literal translation is deceptively fluid. Nonetheless, it creates the impression that there are two grounds for the appeal: 1) Article 3, Subdivision 1 of the Law on Cassation Appeals, and 2) Article 271 of the Constitution. A conscientious

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translator, upon reading the cited article of the Law of Cassation Appeals would realize otherwise. That provision reads as follows:

Art. 3.- CAUSALES.- El recurso de casación solo podrá fundarse en las siguientes causales: 1ra. Aplicación indebida, falta de aplicación o errónea interpretación de normas de derecho [...].

Translation: Article 3. Grounds. A cassation appeal may be based on the following grounds only: 1) Improper application, non-application, or erroneous interpretation of legal provisions [...]

This means that Article 3, Subdivision One applies to the case in question, according to the administration, BECAUSE Article 271 of the Constitution was erroneously interpreted. It does not mean that Article 271 provides separate grounds for the lawsuit.

Taking this information into account could lead to a clearer translation of the original passage, in line with a logical legal interpretation of the passage:

Suggested translation: The Administrative Body bases its appeal on the grounds set forth in Article 3, Subdivision 1 of the Law on Cassation Appeals, alleging that the challenged decision made an erroneous interpretation of Article 271 of the Constitution.

There are times when a translator should leave ambiguity alone, particularly when

there is more than one logical legal interpretation to a passage with legal force and effect. In this case, the “literal” version (“and alleges”) is not a logical interpretation for a person who has read the provision of law to which the paragraph makes reference. Nor is this a typographical error. The text should therefore be translated in a manner consistent with the provision of law to which it refers.

FIVE: THE SPECIAL EXAMPLE OF MULTILINGUAL INTERNATIONAL INSTRUMENTS

Several international conventions have official versions in more than one language. Documents that make reference to these conventions should be translated in the context of that official terminology. By way of example, a Mexican law regarding that country’s ratification of the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters states as follows. The bold type is mine, and indicates terminology set by the official versions of the Convention:

*En relación con el **artículo 10**, los Estados Unidos Mexicanos no reconocen la **facultad de remitir directamente los documentos judiciales** a las **personas** que se encuentren en su territorio conforme a los procedimientos previstos en los incisos a), b) y c); salvo que la **Autoridad Judicial** conceda, excepcionalmente, la simplificación de formalidades distintas a las nacionales, y que ello no resulte lesivo al orden público o a las garantías individuales. La petición*

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*deberá contener la descripción de las formalidades cuya aplicación se solicita para diligenciar la **notificación o traslado** del documento.*

Suggested Translation: In relation to **Article 10**, the United Mexican States does not recognize the **freedom** to **directly send judicial** documents to **persons** who are in its territory using the procedures indicated in Subdivisions a), b) and c); unless the **Judicial Authority**, as an exception, grants a simplification of formalities, different from those of Mexico, and provided that it is not harmful to the public order or individual guarantees to do so. The request must contain a description of the formalities whose application is sought for purposes of effecting **service** of the document.

The word "*facultad*" would usually translate into English in such a sentence as "authority," "power," or even "right." "Freedom" is an unusual synonym, derived from the terminology of the Convention's official versions. One might also expect "*notificación*" and "*traslado*" to translate into two different English terms, yet the official English version uses a single term, "service." "Judicial documents," in reference to court documents, is seldom heard in U.S. legal parlance, yet this "internationales" should also be preserved when referring to this convention. The following is an excerpt of the provision in question:

CONCLUSION

All good translations apply words within their context, parts of which are not necessarily apparent from a mere reading of the document alone. When an American speaker says "The speed limit on the 10 is 55," we know that the 10 is the name of the highway/ expressway/freeway, and that "55" means "55 miles per hour," because we are familiar with a context that goes beyond the words themselves. "It's 10 below in Minnesota" means -10°F for the same reason. When we make mention of a "liberated woman," we all know it's probably a woman with an attitude, not one who just got out of jail.

Legal documents are written in the context of the law in general, and specifically in the context of legal provisions applicable to a given matter. An intelligent, coherent, accurate rendering of their language demands that the translator research the law, in an effort to achieve the same plane of contextual awareness as the players in the legal issue at hand. Such information is available to a large extent over the Internet, on CDROMs available for purchase, through monolingual legal encyclopedias, in printed copies of laws, and in legal text books.

Research of terminology in the law itself helps to clarify context, understand specialized terminology and particular restricted uses of that terminology. It can also clarify ambiguities and allow the translator to have a better grasp of the issues in question.

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<p>Convenio sobre la Notificación o Traslado en el extranjero de Documentos Judiciales o Extrajudiciales en materia civil o comercial</p>	<p>Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters</p>
<p>Artículo 10. Salvo que el Estado de destino declare oponerse a ello, el presente Convenio no impide:</p> <p>a) la facultad de remitir directamente por vía postal, los documentos judiciales a las personas que se encuentren en el extranjero;</p> <p>b) la facultad, respecto de funcionarios judiciales, ministeriales u otras personas competentes del Estado de origen, de proceder las notificaciones o traslados de documentos judiciales directamente a través de funcionarios ministeriales o judiciales u otras personas competentes del Estado de destino;</p> <p>c) la facultad, respecto de cualquier persona interesada en un procedimiento judicial, de proceder a las notificaciones o traslados de documentos judiciales directamente a través de funcionarios judiciales, ministeriales u otras personas competentes del Estado de destino.</p>	<p>Article 10. Provided the State of destination does not object, the present Convention shall not interfere with:</p> <p>a) the freedom to send judicial documents, by postal channels, directly to persons abroad,</p> <p>b) the freedom of judicial officers, officials or other competent persons of the State of origin to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination,</p> <p>c) the freedom of any person interested in a judicial proceeding to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination.</p>

In the course of writing this article, the author also noted a tendency among writers of legal briefs to paraphrase provisions of law. As a result, terms are sometimes used in legal briefs that are a creative rendering by the brief's writer, and are therefore unavailable in any dictionary whatsoever. In such cases, looking up the provision in question will almost invariably unravel the meaning of the terms, and no alternative method of research is likely to be fruitful.

Particularly in light of the wealth of information now readily available to the public over the Internet, such research should become a bottom-line standard practice in the legal translation field. Practice in researching such sources should be incorporated into the curriculum of educational programs in the translation field, and the methodologies involved

should be discussed in programs offered by our professional organizations.