

Translating the first *Spanish Yearbook of International Law*

Cynthia Miguélez
Universidad de Alicante

The *Spanish Yearbook of International Law* (SYIL) was the product of the collaborative effort of professors, judges and other experts on international law throughout Spain. The effort came about as the result of a proposal submitted by Martinus Nijhoff Publishers in Holland to the *Asociación Española de Profesores de Derecho Internacional y Relaciones Internacionales*. This publishing house wished to add the Spanish yearbook to a series of similar annual publications on the international law of several countries including The Netherlands and Great Britain. The Spanish *Consejo Superior de Investigaciones Científicas* (CSIC) became involved and eventually became co-publisher of the volume. The editorial staff was comprised of a group of young professors at the University of Alicante who put in very long hours of work doing the more thankless parts of the editing task such as elaborating the indexes and lists of abbreviations, checking for correct and uniform spacing, being the liaison between translators and contributors, and so on. The director of the project was Dr. Carlos Jiménez Piernas, full professor of international law at the University of Alicante. He headed up a team of more than a dozen contributors and section editors located throughout Spain who were charged with preparing the different sections of the manuscript. The translating team itself was comprised principally of two individuals. I did the bulk of the translating including all of the speeches, addresses, case law and treaty material, while one of my colleagues, a young man named John Sanderson, did the chapter on the bibliography related to international law. Dr. Enrique Alcaraz, the head of the Dept. of English at the University of Alicante, served as editorial supervisor of the English language version, and Dr. Brian Hughes, given his extensive knowledge of both of the working languages and of legal terminology, served as special consultant to the translation.

In this paper, I intend to share with you the nuts and bolts of a translating project of this size and nature. This was a unique project in some ways, but no more arduous or exacting than many of the projects I am sure some participants here at the Congress have undertaken in the past. I would like to talk briefly about the process of collaboration and coordination that went into this project, both in terms of the translation task itself and the technical elaboration of the final manuscript. I will also discuss problems related to the difficulties involved in attempting to unify the style and mechanics of a project to which several different scholars and personalities contributed. The scope of the material involved was perhaps the most challenging aspect of the project and I will discuss the sections and subject matters included in the text. Finally, I will give some specific examples of translating problems that we encountered, and how we dealt with them and how we are trying to use the experience we have gained translating the first volume to improve the translation of the second volume which is currently in progress.

The approach that was used in translating the text was basically for me to do a first draft and a first revision of one section of the manuscript. I marked any phrase or passage that I felt uncertain about and then, in long afternoon sessions, Dr. Alcaraz, Dr. Hughes and I would grapple with discerning the meaning and intent of the original and coming to an agreement on how the English version should be worded. There were often disagreements during these sessions and this forced us to examine very carefully both the Spanish version and our own English language renditions. This scrutiny usually allowed us to arrive at a mutual agreement on the translation. However, when we could not agree, we usually deferred to Dr. Alcaraz, a native speaker of Spanish on questions related to the Spanish version, and Dr. Hughes and I had the final word on the English version.

The section editors of the text also contributed to the translating effort. Most of them were fairly proficient readers of English and were especially knowledgeable about the terminology in English related to their particular fields. In general they were quite insightful, especially about the nuances of legal terminology and the use of specific terms in specific contexts. However, their knowledge of grammar and syntax was often deficient and they sometimes *corrected* our English and ended up inserting mistakes into the text. On occasion, they were quite adamant about their suggestions being respected, and so, if the option they provided was a correct alternative to our version, we incorporated it. If not, we had to insist that it would not be appropriate to do so. There are even a few cases in which the editorial team inserted text after we had delivered what we considered to be the final version of the translation. Their intentions were good—they did not want to bother us with last minute additions or alterations that they felt they could handle—but the result was sometimes distressing. For example, in the section on treaties, it was decided

at the last moment to enter an introductory line as a means of clarification to several of the citations. The original phrase must have been something like *algunos de los artículos dicen* and the English version inserted into the text several times is *Some of the articles say as follows*. This kind of basic error is indeed unfortunate and a bit embarrassing, especially given the complexity of the texts the phrase introduces.

Some errors and inconsistencies are bound to occur in any project that involves so many participants. This aspect of the project —the diversity and number of the contributors— also presented several challenges in terms of the preparation of the manuscript itself. As many of you know, many publishing companies no longer provide technical editing services for these types of projects and therefore the authors or editors are responsible for the format and mechanical preparation of the text. Everyone involved found this aspect of the project to be the most taxing and unpleasant and, for some participants, the most time-consuming. All texts had to be made uniform and decisions had to be made about many details. For example, simple things such as if we were going to cite dates day/month/year or month/day/year had to be decided. Some of the original texts used one format and some, another one. We had to go through and check every date in the entire text (and there were hundreds). Another issue was which items to leave in Spanish and which to translate. A decision was made to leave in Spanish names of laws, codes, courts, and so on in the text and then provide a bilingual glossary. That meant that all of the texts had to be screened for slips so that no *Civil Code* or *Spanish Constitution* got into the final version of the text. This was really a much more arduous task than any of us had imagined.

Nevertheless, no other aspect of this project was as daunting as simply dealing with the awesome scope of the material itself. (Document 1).

A look at the table of contents of the first volume gives us an idea. As you can see, the book is divided into two main sections, the first called Articles and the second *Documentation*. In the first section, we find two articles written by legal scholars on subjects related to international law. The section on documentation is also divided into two main categories: one related to public international law, and the other to private international law.

The first chapter deals with Spanish diplomatic and parliamentary practice in the area of public international law. It is comprised of a series of short articles explaining Spanish practices on topics such as international law in general, the sources of international law, the relationship between international law and municipal law, and the various subjects of international law including, for example, international status, the recognition of states, the succession of states (related to the changing nature of the previous Soviet Union, for example), and self-determination (the situation of the West Saharans). It also deals with the individual in international law and covers

issues such as nationality, diplomatic and consular protection, human rights and international crimes. Issues related to the seas, waterways, shipping, international spaces and the environment are covered in one section as are the legal aspects of international cooperation such as assistance to developing countries, issues of international terrorism and international cooperation in judicial matters. A discussion of the position Spain has taken on the use of force and other issues of war and neutrality are included in this broad overview of Spanish legal practice.

The survey of international treaties to which Spain is a party has, as its purpose, to record the legal effects of the treaties including dates of ratification or accession, entry into force, provisional application, reservations and declarations, and, in some cases, termination and abrogation. This section includes exchanges of letters and notes, protocols, reservations and exceptions, and provisions. The scope of topics covered is even broader than in the previous section.

The next two sections deal with the aspects of Spanish municipal legislation passed in 1991 related to questions of public or private international law. This section covers virtually every area of life that is somehow conditioned or regulated by the rules made by man and society to try to avoid conflict and ensure just and equal treatment for all.

The two chapters on case law were by far the most difficult to translate. Many judicial decisions on cases related to private or public international law are cited verbatim. Once again, the variety of issues dealt with is overwhelming, and the differences in style of the justices whose decisions were included added yet another dimension of difficulty to the task.

The final chapter brings together short abstracts on the literature published in Spain during 1990-1991 on private and public international law and related matters.

Now, having gone through that short synopsis of the main sections of the yearbook, I would like to look more closely at some of the translating challenges we encountered while dealing with this material.

It is really quite difficult to decide which aspects of the text presented more difficulties. There were issues related to lexicon, structure and syntax and pragmatic issues such as intention, tone, purpose, etc.

In terms of lexicon, the broad scope of the project meant that we encountered specific and specialized terminology on a myriad of subject matters. This partial list gives you an idea of the topics covered. (Document 2). One of the problems related to lexicon was the polysemous nature of some of the commonly used words in legal language. For example, the word *auto* at times refers to a writ, at other to a court order, and in yet another context it refers to the judicial decision itself. The translator must understand the different contexts and make the appropriate choice even if the contexts are not

crystal clear or complete. A related issue is when corresponding lexical fields exist in the two languages but there is not necessarily an exact correspondence between the items in each group. For example, the word family in English made up of *agreement, convention, covenant, pact* corresponds generally to the Spanish word family made up of *acuerdo, convenio and pacto*. However, a translator cannot assume that when the official name of a document is *acuerdo* in Spanish, it will be *agreement* in English. The official name of each instrument must be sought out and verified. One of the places from which I sought help in this regards was the Office of Translation of the Ministry of Foreign Affairs in Madrid. In a desire to conform to already established practices, I contacted this office to ask for any lists they might have with the officially accepted names of instruments or documents and also of governmental offices and agencies. Much to my surprise, I was told that none existed. When I asked about specific terms such as *Asesoría Jurídica Internacional, Diputación Permanente, or Secretaría General Técnica* I was told that no official English version was available. Therefore we had to make our own choices and, as the translator asked me to send her a copy of the book for reference purposes, some of our choices may even serve as precedents. Because of this lack of information, and because some of the texts I translated into English were already translations into Spanish, we added a short disclaimer at the front of the book stating that this was an unofficial translation of these documents.

Another difficulty related to lexicon was the translation of terms that have no exact equivalent term but do have equivalent concepts. Such was the case with the word *régimen* which came up several times in the text in a variety of contexts. For example, there was one text on the *régimen general* and *regímenes especiales de la Seguridad Social*. The *Diccionario de Términos Jurídicos* offers the terms regime, basis and scheme. We did not consider any of these to be acceptable in this case and so we used a conceptual equivalent which was *the general and specific guidelines that govern the Social Security system*.

Structurally and syntactically, we found some errors and complications in the original text. Those of you who are experienced translators know that the translator's eye picks up all of these. The author of a text focuses mainly on meaning as he writes, and correctness and coherence sometimes suffer as a consequence. Legal language is particularly difficult to the layman as a corpus of information even when it is well-written. When it is not, understanding it is a nightmare.

I have brought along a few short examples from the first yearbook that I thought might be interesting to see. The first presents a rather complicated syntactic situation. The original text reads:

Es cierto también que el derecho a la tutela comprende también el derecho a ejercitar los recursos legalmente preestablecidos y que los derechos fundamentales al plazo

razonable de la prisión provisional (art. 17.4) y a un proceso sin dilaciones indebidas (art. 24.2) no tienen como límite o causa de justificación la sobrecarga de trabajo de un órgano jurisdiccional determinado si bien también hay que recordar que, cuando el retraso es circunstancial y el Estado mediante las reformas orgánicas y procesales oportunas consigue el normal funcionamiento del órgano, el TEDH tiene declarado que dicha sobrecarga puede operar como causa de justificación (Bucholz, S. de 6 de mayo de 1981; Zimmermann y Steiner, S. de 13 de julio de 1983), pero tampoco lo es menos que todos, incluidas las propias partes, están obligados a colaborar con los Jueces y Tribunales en el curso del proceso (art. 118 CE).

Now this passage is quite long and, while we understand the meaning after the first reading, we find that the last few lines trip us up a bit. The flow of the sentence is interrupted by the convoluted syntax and the citation of law. The main problem is that two closely related semantic units are separated by a great deal of secondary information, namely the clause clarifying that the European Court of Human Rights does recognize the court's workload as justification for delay in some cases, when the opposite has just been stated. This information places the semantic unit *tampoco lo es menos* so far from the related unit *es cierto también* that we must study the text carefully to see that *tampoco lo es menos* really means *no es menos cierto*. Also the use of *lo* is not as clear as if the author had been more direct and said *también es verdad* or *no es menos cierto*. In spoken language, a pause after *menos* would tie together *que todos and están obligados*, but the written version does not afford us that pause and so we read on to the comma and are momentarily confused.

The final English version is divided into three sentences, each containing one of the major semantic units, and the order of presentation of the sentences places the *tampoco lo es menos*, translated as “it is no less true” —which ties in with “it is also true” from the beginning of the sentence— in the middle position with the clarifying clause related to the European Court of Human Rights at the end.

This convoluted syntax and the use of very long sentences is quite common in legal decisions. As a matter of fact, one of the decisions I have just finished translating for the second volume was well over 1200 words long and had only three periods. The first sentence of the text consisted of 425 words, had 29 commas and included eight different citations of law.

Another type of problem is the register used. Simple concepts are often expressed in complicated terms. In a case related to equal pay for equal work, the judge defined the issue as follows:

Para calibrar la legitimidad de la diferencia de trato en materia salarial no puede tomarse en consideración otro elemento que no sea el trabajo efectivamente prestado, y la concurrencia en él de circunstancias objetivamente acreditadas que no se vinculan directa or indirectamente al sexo de la persona, salvo en los casos excepcionales, que

deben ser apreciados de forma restrictiva en los que el sexo sea un elemento determinante de la aptitud profesional para el desempeño de ciertas tareas. Sólo la efectiva diferencia entre los trabajos prestados, valorados de forma no discriminatoria, permitirá diferenciar a efectos retributivos como se desprende de la esencial vinculación entre el salario y el trabajo, del que aquél resulta ser la contraprestación.

We certainly understand the simple message here that the salary paid to a worker for a specific job should depend upon the work done and not on the sex of the individual unless the job requires some special physical ability, but it is stated in a quite complex way. Another example is this short sentence with a very simple message but expressed in somewhat confusing terms:

En este particular la cuestión sobre los inmuebles de carácter privativo del esposo no reviste complicaciones en cuanto se confirma una cualidad que no altera su régimen de propiedad.

In this particular case, the question as to the real estate held exclusively by the husband presents no complications as there is no question as to the type of property ownership involved.

The English version of this text contains all of the semantic load and I think maintains the register fairly well, although there is some syntactic variance and little literal correspondence.

Other problems that we frequently encountered were missing or ambiguous referents and false cognates that tempted us to make silly mistakes (sentence for *sentencia*).

Finally I would simply like to comment on one additional hurdle related to this project. As usual, time was of the essence. It seemed there was always a great deal of pressure to get things done, and this was particularly true during the final stages of preparation. All of the chapters of the manuscript had been turned in except one, and this happened to be the chapter which contained speeches by the President of the Government to the Parliament, by the Minister of Foreign Affairs, and by other important dignitaries. These were done quite hastily and without enough time for review. As we look through the published version we see things we could have done differently and some errors that we did not pick up. A final cold reading of the text, some time after we finished translating, would have been helpful. This is something we are insisting upon for the second volume which is already in progress.

All in all, this project was a major undertaking that, while not perfect, it is a respectable contribution to the dissemination of information about Spain and Spanish legal practices throughout Europe and the rest of the world. It joins an admirable set of equivalent texts from other countries. We hope to improve and produce an even better second volume and thereby set a precedent for other international projects of this nature.

ANNEX

DOCUMENT 1

Table of Contents

Abbreviations

Foreword

Articles

J. A. Carrillo Salcedo, The International Dimension of Human Rights during the Political Transition in Spain

José Antonio Pastor Ridruejo, The Spanish Declaration of Acceptance of the Compulsory Jurisdiction of the International Court of Justice

Documentation

Spanish Diplomatic and Parliamentary Practice in Public International Law

Treaties to which Spain is a Party Involving Questions of Public International Law, 1991

Treaties to which Spain is a Party Involving Questions of Private International Law, 1991

Spanish Municipal Legislation Involving Questions of Public International Law, 1991

Spanish Municipal Legislation Involving Questions of Private International Law, 1991

Spanish Judicial Decisions in Public International Law

Spanish Judicial Decisions in Private International Law

Spanish Literature in the Field of Private and Public International Law and Related Matters, 1990-1991

Table of Cases

Index

DOCUMENT 2**Partial List of Subject Areas Included in SYIL:**

Human Rights
Freedom of speech and of the press
Right to privacy
Right to honor and good reputation
Right to equal treatment under the law
Right to work, work permits, residency
Due process - effective judicial control
Borders and Border Controls
Maritime Issues: Territorial Waters, Fishing Rights
Nuclear Energy
Mutual Cooperation Treaties (Defense, Military, Cultural, Scientific and Technical)
International Commerce
Taxes, Import Tariffs, Customs Duties
International Transport by air, sea or waterway and roads
Sanitation and Health Issues
Foreign degrees and studies
Use of Force
Divorce-Community property, Adoption and Custody Rights
Voting Rights
Last Wills and Testaments, Inheritance
Jurisdictional Competence, Enforcement of Foreign Judgements
Probation and pre-trial detention
Dual citizenship
Diplomatic Immunity
Official EEC languages
Religious Freedom