PEACH

MŰHELYTANULMÁNYOK / WORKING PAPERS

No. 30. | 2022

VIKTÓRIA LAURA HERCZEGH

THE ROLE OF LANGUAGE IN INTERNATIONAL LAW

PÁZMÁNY

Pázmány Péter Katolikus Egyetem
Bölcsészet- és Társadalomtudományi Kar

BUDAPEST, 2022

ABSTRACT

The Role of Language in International Law

International law is known as a stable set of rules, regulations and norms that are generally accepted in relations between international actors (sovereign states and other entities). However, it is also a structure constructed over the centuries by Western nations, using exclusively English and French language for its procedures, written and oral alike.

Non-Western countries certainly have a different way of thinking, a distinct mindset towards affairs with other states including international relations and the norms of international law. That difference by itself tends to make the settlement of bi- or multilateral conflicts by international law more difficult and often quite long-drawn-out.

My notion is that much of that complexity lies in language difference. English may be the global language and French the accepted *lingua franca* of law, the participants of a given conflict brought to court still have their thought processes in their mother tongues. Certainly, some words and expressions cannot be perfectly translated from *lingua franca* to another language or *vice versa*, especially in a case when that language has a completely different writing system.

In my work I intend to present some specific bi- and multilateral conflict situations brought to the International Court of Justice where such discrepancy can be detected, through them displaying the issues that might be caused by language difference.

ÖSSZEFOGLALÓ

A nyelv szerepe a nemzetközi jogban

A nemzetközi jogot a nemzetközi szereplők (szuverén államok és egyéb entitások) közötti kapcsolatokban általánosan elfogadott szabályok, előírások és normák stabil összességeként ismerjük. Ugyanakkor ez egy olyan szerkezet, amelyet a nyugati nemzetek évszázadok során építettek fel, írásban és szóban egyaránt kizárólag angol és francia nyelvet használva.

A nem nyugati országokban rendkívül eltérő a gondolkodásmód a más államokkal folytatott vitákat illetően, beleértve a nemzetközi kapcsolatokat és a nemzetközi jog normáit is. Ez a különbség önmagában is megnehezíti a két- vagy többoldalú konfliktusok nemzetközi jog általi rendezését, és gyakran meglehetősen hosszan elhúzódnak.

Elképzelésem az, hogy ennek a bonyolultságnak nagy része a nyelvi különbségekben rejlik. Habár az angol a világnyelv, a francia pedig az elfogadott *lingua franca* a jogban, a bíróság elé állított konfliktus résztvevőinek gondolatmenetei azonban továbbra is anyanyelvükön vannak. Természetesen bizonyos szavakat és kifejezéseket nem lehet tökéletesen lefordítani a *lingua francáról* egy másik nyelvre, és fordítva, különösen abban az esetben, ha az adott nyelv teljesen más írásrendszerrel rendelkezik.

Munkámban egy konkrét, a Nemzetközi Bíróság elé terjesztett vitás helyzetet kívánok bemutatni, melyben ilyen eltérések észlelhetők, rajtuk keresztül bemutatva a nyelvi különbségek okozta problémákat.

VIKTÓRIA LAURA HERCZEGH

THE ROLE OF LANGUAGE IN INTERNATIONAL LAW

I. INTRODUCTION

International law is a system of rules and norms generally accepted by the nations of the world. Although its origins can be traced back to ancient Mesopotamia, Egypt, India, and China in addition to the archaic Greek and Roman empires, there is no doubt that the fundamentals of what is now known as modern international law in were created in the West, by Western scholars.[1]

According to Article 38 of the Statute of the International Court of Justice, the governing sources of international law are international conventions, international customs and general principles of law recognized by civilized nations. Article 59 adds to all this judicial decisions, the teachings of the best experts from different nations, as aids to law-making.[2]

Given that the elements listed above provide a continuous opportunity to shape the system of international law, it would not be necessary for the foundations laid down mainly by Europeans in Europe to be hindering for any nation in the world. Nevertheless, the legal history of non-Western cultures, and consequently their current relationship to law, at several points differs significantly from that of the states of the said Western region. An extremely important cause of this discrepancy is certainly the language difference.

Starting from the fact that language structure and national thinking are two mutually transforming factors, my theory is that the differences between languages, and

[1] FASSBENDER 2012: 77-87.
[2] *Statute of the International Court of Justice.*

even more so between language families, play a significant role in the conflicts of international law between nations.

In my work, I attempt to support this hypothesis by presenting a bilateral, yet globally important conflict situation - the South China Sea dispute brought before the International Permanent Court of Arbitration – an issue that was affected by the language differences between its participant nations.

II. HISTORICAL OVERVIEW

Among the scholars who have contributed to the modern international legal system over the centuries are the Italians (Baldus de Ubaldis, Alberico Gentili), the Spaniards (Francisco de Vitoria, Francisco Suárez), the Dutch (Hugo von Grotius, Cornelis van Bynkershoek), the Germans (Samuel von Puf Christian Wolff) and the English (Richard Zouche). These scholars conducted their dissertations and studies in their mother tongues, in the former language of international communication (literature and law) Latin.

Starting from the 17th century, studies were authored mainly in French, which was already becoming a recognized world language for diplomacy. It is worth mentioning here that the French language was intertwined with laws and their application much earlier than the 1600s. The dialect called *droit français*, based mainly on the Anglo-Norman language but later incorporating more and more Parisian French elements, dates back to the 11th century. It has been used as a legal language in English courts since the 16th century. Some of the legal terms known in modern English are the legacy of the *droit français*, many of them, due to the neo-Latin nature of French language, of Latin origin.[3] Given the former complete dominance of Latin as an international language of communication, it should not be surprising that many of the official terms of English and French used today in international law are of Latin origin.

[3] HALPÉRIN 2020: 201-203.

This "inwardness" based on the Latin language was perfectly common in medieval Europe, and it has characterized all other major disciplines besides the law. But what happens to linguistic unity when law gains an international tract and seeks to operate with universality across states and regions?

III. THE LINGUISTIC SYSTEM OF INTERNATIONAL COURTS

How do the complex relationships between law and language develop in the context of the functioning of international courts? The staff of these institutions is made up of native speakers from many different countries, who naturally have different professional backgrounds and distinct legal traditions. Judges and other court staff increase this diversity by bringing the different languages they speak into their work environment. This simple fact distinguishes the international justice system from the national ones and has significant implications for the work performance of international courts.

The role of languages in the functioning of international courts can be divided into three distinct levels:

1) The internal level, where oral and written communication must take place regularly and effectively between judges and those with whom they work on a daily basis.

2) The level of communication of the court with the parties before it, both live and in writing.

3) Level of communication with the general public - they should be informed about significant aspects of their work, including issuing arrest warrants and indictments and sentencing.[4]

The two official languages (in other words, the working languages) of international courts are English and French. This is despite the fact that the UN has a total of six official languages and, accordingly, multilateral treaties concluded under the auspices of the United Nations are being drafted in all six languages. The parties to the

[4] GAMBLE 1993: 56-61.

court proceedings may agree on which of the two languages is to be used in the proceedings, in which case the judgment will be delivered in the same language. In the absence of an agreement, the parties may present their case in the language of their choice during the proceedings, but the judgment will be delivered in English and French. In the latter case, the court must also decide which of the two texts of the order, written in two different languages, takes precedence. Upon special request, the court shall allow any of the participating parties to use any language other than English and French.[5]

The existence of the latter possibility would suggest that the linguistic differences in international court proceedings can be bridged by a translation of adequate quality and efficiency. In an international and multilingual legal system, translation and interpretation will always be needed. In this way, translators and interpreters play a key role in the work of international courts, yet these tools create their own sets of problems. It is a significant difficulty for many judges to translate different legal terms from "just" English to French. In fundamentally complex court cases, the "semantic shift" from one language structure to another is particularly problematic.

There is no doubt that the work of translators requires outstanding talent and dedication, and translators can play a more important role in creating and shaping legal knowledge than is generally acknowledged. However, there are situations where even the best translation does not completely eliminate differences in interpretation.

IV. WHAT EXACTLY IS A ROCK?

On 12 July 2016, the Permanent Court of Arbitration in The Hague delivered a judgment in a lawsuit in the South China Sea case between the Philippines and the People's Republic of China, and the ruling clearly favored the former. The lawsuit, initiated by the Philippines in 2013 against China, alleges that Beijing's excessive territorial claims on the South China Sea are inconsistent with international law. China, however, did not

[5] MOWBRAY 2013: 135-139.

recognize the jurisdiction of the court from the outset, so it did not take part in the proceedings and still insists that the region is indisputably part of the People's Republic of China. In addition to the occasional unrest in the area, the situation also threatens to have long-term legal and geopolitical consequences. [6]

The 2016 judgement is based on the United Nations Convention on the Law of the Sea (UNCLOS). Its English text, which entered into force in 1992, discusses in detail, among other things, the delimitation and components of maritime areas, in an attempt to clarify their affiliation and thus resolve legal conflicts. The text of the Convention on the Law of the Sea has been commented on and criticized by a number of international legal and geopolitical experts since the sentencing. The commentary below points to some differences in interpretation due to linguistic differences.[7]

Article 121 (2) of the United Nations Convention on the Law of the Sea states that "the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf shall constitute territorial property of a State within the meaning of that convention." This statement is of great importance to islands in defining maritime areas. However, paragraph 3 of the same article provides for the following exception: "rocks which are not capable of sustaining human or economic life on their own may not have their own exclusive economic zone or continental shelf." These rocks can only have the right to own a territorial sea and an adjacent zone. [8]

The question rightly arises here: what exactly does the word *rock* in the original text mean? What is the official definition that clarifies which marine elements fall into this category, so to which the above clause applies?

Further clarification of the term in relation to the contrast between the islands of the South China Sea was first expressed in the text of the arbitration award published on 12 July 2016. In that text, the arbitral tribunal complains that the United Nations Convention on the Law of the Sea does not deal with the material constituting the rock in question or with any other defining characteristics. In addition, the judgment criticizes

[6] KIM 2015: 107-141.
[7] *The South China Sea Arbitration (The Republic of Philippines v. The People's Republic of China).* 2016.
[8] *United Nations Convention on the Law of the Sea (UNCLOS).* 1994.

the Convention for applying the words rock and island alternately to the same sea element, which could be particularly confusing.

The interpretation may be further complicated by the French version of the United Nations Convention on the Law of the Sea, in which two different words appear corresponding to the rock term in the English version: *roche* and *rocher*. The word *roche* is defined in the Académie Française's interpretive dictionary as follows: 'it may consist of aggregates of minerals and, in some cases, of organic matter. These materials may vary in hardness, including soft clays.'[9] The Oxford English Dictionary gives the different definitions of both French words as meanings of the word rock. Correcting the arbitration's objection that it would have been necessary to mention in the English wording of the Convention on the Law exactly what meaning the word rock has in different contexts.[10]

V. Chinese language, Chinese interpretation

It can be seen that there may already be differences between the word interpretations of two languages with two similar structures but different roots, which interfere with the clarity of the legal text. However, what happens if a country whose official language is fundamentally different from that of any European country comes to the fore in the debate in question?

The People's Republic of China has indicated at the outset of its proceedings before the Philippines that it does not wish to take part in the formal international debate and has stated from the beginning that it will not accept the court's ruling. China's argument was that it would only be legal and necessary to settle the conflict bilaterally with the Philippines.[11] However, China did not remain completely passive: in the form of open comments, Beijing objected to many elements of the procedure. Perhaps one of the

[9] *Dictionnaire de l'Académie française (Littérature Française) (French Edition) – Tome 3, Maq – Quo. 2011..*
[10] *Oxford Dictionary of English (Oxford Dictionary Of English Third Edition). 2010.*
[11] *Republic of the Philippines v. The People's Republic of China, Award on Jurisdiction and Admissibility (Perm. CT. Arb.), China's Official Position Paper. 2017.*

most interesting such objection was that the jury was dominated by judges of predominantly Western origin, while a fully East Asian dispute would also need to be handed over, at least in part, to those from that exact region. Here, the People's Republic of China does not refer specifically to linguistic differences, but since my theory is that national and regional thinking are closely linked to the roots and structure of the language, differences in this regard also contribute to the objection of Eastern superpower.

Returning to the term "rock" discussed above, the word in the Chinese version of the UN Convention on the Law of the Sea is 礁岩 (pinyin: jiāo yán). The first character, 礁 found in the interpretive dictionary, means "a steep, high cliff, cliff on the shore or in the sea". The second, 岩, is "hard stone, rock, mass of mineral stone." [12] It should be noted here that in Mandarin Chinese, there are many expressions made up of two Chinese characters (汉字, pinyin: hàn zì) in which those two characters mean nearly the same, but at least something very similar. In these cases, it is appropriate to use either only one or only the other punctuation as a synonym within a text - this is often done simply to avoid complete repetition. In this way, both the 礁 and 岩 characters alone are used for describing the same marine element. Although the definitions of the two characters are indeed very similar, one contains information about the material and texture of the marine element, while the other does not.

VI. SHADES OF INTERPRETATION

Looking only at the English, French and Mandarin Chinese versions of the Convention on the Law of the Sea, we already have at least six similar but slightly different terms for the formation in the sea referred to as *rock* in English. As the text in question is an international law convention in which certain terms are intended to resolve disputes over

[12] 新华字典 *(Xīnhuá Zìdiǎn) – Chinese Character Dictionary, 2011.*

the ownership of certain maritime areas, the lack of a uniform interpretation could lead to obstacles.

In addition to Mandarin Chinese, the term "rock" *скалы* in the Russian text[13] and *roca* in the Spanish text[14] of UNCLOS also corresponds to the definition of the word *rocher* in the French version in that it clearly defines the material of the marine element in question as being something hard. Based on these, it would have been a logical decision to categorize the English word *rock* precisely on the basis of the material as well, and possibly to use only the term *rocher* in the French version. No matter how insignificant the differences analyzed above may seem, I still believe that consistency in international law is essential, because if the boundaries of a given category are not clearly defined, it will not be possible to decide clearly what is covered by international law. This was already evident in the general customary law exercised by states prior to the 2016 arbitration objection. Many countries - including Australia, Mexico, Brazil, Japan, Norway, Portugal, USA etc. - designated an exclusive commercial zone for itself or claimed a continental shelf for islands classified as *rock* under the English version of Article 121 (3).[15] These claims were not followed by any legal resistance even though some of the *rocks* in question are soft sand or loess-based marine elements.

VII. National language, national rules

Although relevant differences can be observed between the linguistic structure and interpretations of the countries belonging to the Western cultural sphere, it may be more representative to observe a state of a completely different region in this respect.

[13] *Расширенный русско-русский словарь,* 2020.
[14] *Diccionario Esencial de la Lengua Espanola, 2007.*
[15] Az említett követelések tárgyai: Ausztrália: Heard Island, McDonald Islands, Elizabeth és Middleton Reef, Macquarie Island; Mexikó: Isla Clarión és Roca Partida; Brazília: Penedos de São Pedro és São Paulo, Trindade és Martin Vaz; Japán: Minamitori-shima; Norvégia: Bouvet; Portugália: Ilhas Selvagens; USA: Howland és Baker Island, Johnston Atoll, Jarvis Island, Kingman Reef, Palmyra Atoll, Wake Island.

In recent years, some organs of the government of the People's Republic of China have strategically applied domestic law to place Chinese maritime claims in context, creating ambiguity about the legality of Chinese claims. The resulting fragile *status quo* has resulted in the expansion of Chinese influence in the South China Sea and a significant challenge to resolving the conflict situation under international law.

Because the two areas — language and way of thinking — are closely intertwined, the basic structure of Mandarin Chinese is as different from any Western language as the interpretation of the law of the People's Republic of China, its attitude to international law, and its own national laws and regulations are different from the general one. The confusing factor in how China applies domestic law to challenge international rules and standards is that the terminology of the East Asian superpower in its own national law does not comply with definitions in international law. This, of course, includes the law of the sea, so another complicating factor is emerging in connection with the controversy surrounding the islands of the South China Sea.

The People's Republic of China states in a 2009 *note verbale* submitted to the United Nations: "China has indisputable sovereignty over the islands and associated waters of the South China Sea (相邻 海域, pinyin: xiānglín hǎiyù) and sovereign rights and jurisdiction. has control over the waters concerned (相关 海域, pinyin: xiāngguān hǎiyù) and over the seabed and subsoil."[16]

Neither the adjacent waters nor the affected waters are defined by international law for the designation of a particular marine zone. This unique terminology serves as the foundation of Chinese law of the sea and helps the government of the Eastern superpower[17] to change domestic thinking to deviate from the international norm. Abroad, this definition allows China to remain ambiguous about the exact delimitation of maritime claims. This is especially beneficial for China, as allegations that have no international basis will legally fail before the courts. This was also the case when the People's Republic of China attempted to claim maritime territories on the basis of historical rights instead of determining its distance from its mainland territory, and its

[16] *Note verbale from the People's Republic of China to the United Nations, 2009.*

argument was rejected for violating the United Nations Convention on the Law of the Sea.

Although not recognized in international law, China uses the term “seas of jurisdiction” (管辖 海域, pinyin: guǎnxiá hǎiyù) to refer to inland waters, the coastal sea, adjacent zones, the exclusive economic zone, the continental shelf and other areas described as belonging to the People’s Republic of China. A term not used in this form in the terminology of international law serves to substantiate the claims of the People's Republic of China against the rules of the United Nations Convention on the Law of the Sea.

VIII. Conclusion

Regarding the dispute over the islands of the South China Sea, there is currently a kind of very fragile *status quo*. The “importation” of terms created in their own language, based on the domestic legal system, on the international stage seems to have been a winning move on the part of the People's Republic of China. Although the process of controversy has not yet reached that stage, given the general attitude of the East Asian country to international law, it can be assumed that the precise definition of the above-mentioned Mandarin Chinese terms would be favorable to its needs, but at least it can be interpreted in so many different ways that it helps maintain a *status quo* currently to China.

As it can be seen through just one significant conflict of international law, the differences between the languages of the participating nations have a key role to play in international law. It is enough to compare the terminology of the two official languages, English and French, to find a difference. Adding a few other definitions to this may create a confusion of interpretation that, no matter how insignificant it may seem at first reading, may open gates through which some nations could improve their status in a given situation of controversy, or even question or halt the ongoing legal proceedings. A good example of the latter is the importation into international law of the expressions of national and domestic law in the language of a given nation.

In international law, as in all other areas of law, the uniform and accurate laying of rules, norms and terms is vital, and perhaps the greatest difficulty in this is the completely different thinking, approach to law of different nations and, along with that, the very distinct structure of the world's languages. Superficially, appointing two official languages may seem to be the perfect solution, but as my work shows, this is far from enough. Along with the presence of excellent legal translators, there would be a need for a universal, detailed, multi-step system that would be able to bridge linguistic differences in a way that leaves no room for loopholes, ambiguity or even free interpretation.

BIBLIOGRAPHY

Diccionario Esencial de la Lengua Espanola. Larousse, 2007.

Dictionnaire de l'Académie française (Littérature Française) (French Edition) – Tome 3, Maq – Quo. Académie Francaise, 2011.

FASSBENDER, BARDO. 2012. *Introduction: Towards A Global History Of International Law*. Oxford Handbooks Online. pp. 77-87.

GAMBLE, JOHN KING. 1993. *Choice of Language in Bilateral Treaties – 50 Years of Changing Practice*. Indiana International & Comparative Law Review. Vol. 3. pp. 56-61.

HALPÉRIN, JEAN-LOUIS. 2020. *FRANCE (Histoire et institutions) - Le droit français*. Universalis. pp. 201-203.

KIM, JIHYUN. 2015. *Territorial Disputes in the South China Sea: Implications for Security in Asia and Beyond*. Strategic Studies Quarterly Vol. 9, No. 2. pp. 107-141.

MOWBRAY, JACQUELINE. 2013. *Linguistic Justice – International Law and Language Policy*. Oxford Scholarship Online. pp. 135-139.

Note verbale from the People's Republic of China to the United Nations, 2009. https://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2009re_mys_vnm_e.pdf (accessed 29 April, 2022)

Oxford Dictionary of English (Oxford Dictionary Of English Third Edition). Oxford University Press, 2010.

Расширенный русско-русский словарь, 131336 статей, Kindle Edition, 2020.

Republic of the Philippines v. The People's Republic of China, Award on Jurisdiction and Admissibility (Perm. CT. Arb.), China's Official Position Paper. Cambridge, 2017.

Statute of the International Court of Justice. - https://www.icj-cij.org/en/statute (accessed 29 April, 2022)

The South China Sea Arbitration (The Republic of Philippines v. The People's Republic of China). https://pca-cpa.org/en/cases/7/ (accessed 29 April, 2022)

United Nations Convention on the Law of the Sea (UNCLOS). https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf (accessed 29 April, 2022)

新华字典 *(Xīnhuá Zìdiǎn) – Chinese Character Dictionary, 11th Edition*. Commerce Press, 2011.

PEACH Műhelytanulmányok / PEACH Working Papers

HU ISSN 2786-1228

Kiadja:

Pázmány Péter Katolikus Egyetem Bölcsészet- és Társadalomtudományi Kar

Nemzetközi és Politikatudományi Intézet

Modern Kelet-Ázsia Kutatócsoport

1088 Budapest, Mikszáth Kálmán tér 1.

E-mail: salat.gergely@btk.ppke.hu

Tel.: 06-1-235-3030/1010

Honlap: https://btk.ppke.hu/karunkrol/intezetek-tanszekek/nemzetkozi-es-politikatudomanyi-intezet

Felelős kiadó: Dr. Salát Gergely szakmai igazgató

Minden jog fenntartva!

A PEACH Műhelytanulmányok a Magyar Nemzeti Bank támogatásával jönnek létre.

A PEACH Műhelytanulmányokban megfogalmazott vélemények és következtetések a szerző sajátjai, melyek nem minden esetben tükrözik a Modern Kelet-Ázsia Kutatócsoport vagy a Pázmány Péter Katolikus Egyetem bármely más egységének álláspontját.