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FUTURE OF INTERNATIONAL LAW

# The future of international law: shaped by English

JACQUELINE MOWBRAY — 18 June, 2014

'The world will never be the same. It will not obey aggressive orders given in English any more.' (*Margarita Simonyan, head of Russia's state-owned external broadcaster RT, after President Putin signed the treaty to accept the 'Republic of Crimea' into the Russian Federation: BBC News, 18 March 2014*)

The Russia-Ukraine situation is a crisis for international law. It is also a crisis of *language*. In addition to its concern to protect Russian speakers within Ukraine, Russia has in part framed its rejection of pressure to 'comply with international law' as resistance to being dictated to 'in English'. Seeking to prevent conflict, the Ukrainian prime minister, who had been addressing the UN Security Council

in English, therefore ‘dramatically switched’ to Russian to ask whether Russia wanted war.

The language in which the work of international law is conducted matters. The language in which we choose to speak international law has political and practical implications: it is not a neutral choice. In this light, the increasing dominance of English within the international legal field is something with which international lawyers should be concerned. In a world where more than 6000 languages are spoken, the predominance of English raises concerns about linguistic imperialism and challenges international law’s claims to be ‘universal’. This in turn requires reflection on the language in which we, as practitioners and academics, discuss international law, including through blogs such as this one.

Examining the role of language in the creation, application and analysis of international law reveals a number of mechanisms through which *language* becomes associated with *power* in the international legal field. In terms of the creation of international law, English is now the main language in which inter-state diplomacy and negotiation over legal texts is conducted. This raises practical difficulties for those who do not have English as their native language, who may be at a disadvantage when it comes to the detailed, technical negotiations over the wording to be used in legal texts. Under pressure, it can be hard for non-native-speaking delegations to keep up with fast-moving negotiations and rapidly changing draft texts, a fact which offers a significant strategic advantage to English speakers.

Choice of language also affects the *application* of international law by international organisations, including

courts and tribunals. International organisations have a limited number of official languages (English, French, Spanish, Russian, Mandarin and Arabic, in the case of the UN), and a more limited number of 'working languages' (usually English and French). In practice, much of the work of these organisations is conducted in English: https://www.unjiu.org/en/reports-notes/JIU%20Products/JIU_REP_2011_4.pdf; http://www.euractiv.com/culture/french-eu-elite-abandons-defensi-news-519244. This raises concerns that those who do not speak English may be marginalised or excluded from the work of these bodies. This marginalisation or exclusion operates on two levels. The first is practical: without knowledge of English, individuals won't be eligible to work for these organisations, and, more generally, will be unable to engage effectively with their work. The second is symbolic: individuals and groups may feel that an institution that does not use their language does not truly represent them. This accounts, for example, for the depth of feeling associated with moves to make Irish an official language of the EU, in spite of the fact that most, if not all, Irish speakers can also speak English.

Finally, English dominates the *analysis* of international law by practitioners and academics. English is increasingly a prerequisite for working as an international lawyer in multinational corporations and in private practice. English is also becoming the pre-eminent language for academic communication: the majority of the most prestigious journals, conferences, learned societies and works of scholarship are in English. Works in English are more influential within the international legal canon than those in lesser-used languages, and native speakers of English have a significant advantage in having their views heard.

In these ways, proficiency in English becomes associated with power in the field of international law, a fact which privileges some groups over others. But what is the alternative? After all, there are considerable advantages to using one language in the international sphere, most obviously that it allows individuals and states from diverse linguistic backgrounds to communicate with each other in one common language. On this basis, the predominance of English seems a natural, inevitable, *and beneficial*, feature of international legal discourse. However, 'international legal discourse' is not a monolithic entity: it is not a single discussion, but a number of simultaneous, overlapping conversations. The concern about 'fragmentation' of international law has highlighted the discrete and fragmented nature of international legal discourse in the contemporary world. In this context, we must question whether it is really a problem for more of these simultaneous, overlapping conversations to take place in languages other than English.

Further, even if the predominance of English is an inevitable feature of contemporary international law, it does not follow that international lawyers should not be attentive to the problematic *consequences* of this development. It may be 'practical' to use one language for communication, but this clearly benefits some individuals and states over others. In this sense, arguments about practicality are not neutral: 'efficiency' may be an apology for power. If we truly want international law to function as a 'universal' system of global governance, equally applicable to and representative of all, then we need to be attentive to the costs of predominantly using one language in the international sphere, and to the important question of who pays those costs.

We also need to consider ways of reducing those costs, ways in which we can usefully create opportunities for greater use of other languages. Blogs such as this one play an important role in this context, with the potential to open up space for new voices to enter international legal discourse. This offers the possibility both of reinforcing the predominance of English and also resisting or contesting that predominance. This is an important opportunity: let's make the most of it.

Richard Lehun has posted a response to this post.

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