

Unfinished and Challenging Business:

Language, Exclusion and Human Rights at the United Nations

(Fernand de Varennes, NY, May 7 2015)

Since I'm seldom in New York, I hope you'll allow me to briefly mention something humorous about language from a well-known American intellectual closely associated with this city:

Woody Allen, in one of the early movies, had the character of a revolutionary announce as his very first order of business as Presidente soon after a revolution in the fictional Central American Republic of San Marcos



Of course everyone was silenced: they were silenced practically speaking through an official language policy because, well because none of them could speak Swedish. They were silenced and indeed excluded for all intents and purposes As you probably would expect, this and a few other choice decisions meant El Presidente did not last very long as the head of the country.

Of course, this is a comedy and fiction - except that it isn't entirely fiction. Governments have in the past and in fact even today in a few countries will decree that only one official language must be used by public authorities,

even if it is not spoken fluently by the majority of its population: Burkina Faso with French, and Namibia with English, could be described for example as belonging to this rather unusual type of language and legal situation – that the language of the state and of government is by and large not the language of its people.

Whether Swedish in the San Marcos of Woody Allen's imagination, or French or English in the real world of Burkina Faso or Namibia, they all raise matters of exclusion through official language preferences.

But that is not the only thing such a mismatch between language and the use of a language or language preferences gives rise to.

The first reason for our position on multilingualism is respect of the equality between States. We all know that forcing international officials, diplomats or ministers to express themselves in a language which is not theirs amounts to putting them in a position of inferiority. It deprives them of their capacity for nuance and refinement, which amounts to making concessions to those for whom it is the mother tongue. We also all know that concepts which may seem similar are often different between civilisations. Words express a culture, a way of thinking, and a world view. For all these reasons, I believe that in the same way as democracy in a State is premised on pluralism, democracy between States is based must be based on multilingualism.

Former UN Secretary General Boutros Boutros-Ghali, Symposium on multilingualism in international organisations, Geneva 5-6 November 1998.

It can also raise issues of equality as Former UN Secretary General Boutros Boutros-Ghali refers to in discussing the importance of multilingualism in international organisations.

And from an international human rights point of view which is my background, as soon as I hear the word equality, or even in other cases of exclusion through language, these should give rise to legal, international human rights concerns, particularly though not exclusively in relation of discrimination.

But notice that Mr Boutros Ghali mainly talks about equality between states as the basis for multilingualism for the UN – not equality for individuals.

There has been a reluctance in the UN as an institution to go beyond the use of languages by states because the United Nations is state-centered organisation, and this has had a deep impact on how it deals with languages even though this has been changing in more recent decades as we move more towards a more people-concerned, if not centred, entity.

While English and French, and to a degree Spanish, were the main languages of diplomacy and the official languages for most international organisations at the beginning of the 20th Century, this had started to change somewhat at the time of the establishment of the UN in part because of the changes to the international community itself starting with the decolonisation process.

Changing Language Approaches within the UN from the 1970s

- (a) In response to the decolonisation process and increased state membership in UN – and changing linguistic prominence
- (b) Increased communication and involvement of UN with populations in general – and presence of NGOs and civil society – especially but not exclusively in field of human rights

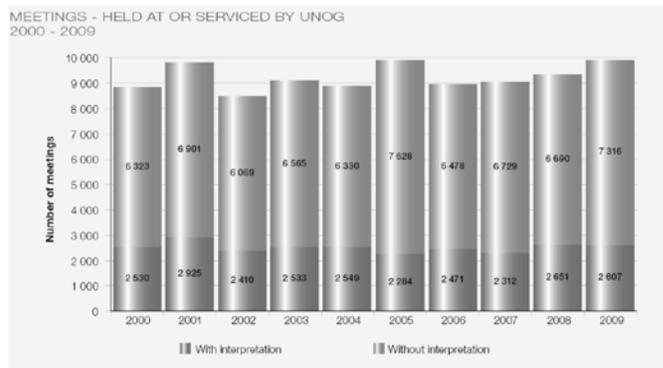
This has led to an overall increase in the number of official languages at the UN – though not necessarily of working languages and not for every section within the organisation. The various language policies in the UN are too numerous and complex to detail in a few minutes this morning, though here you can see some of the main aspects. The UN, and most of its components, practice more or less prominently and more or less extensively some form of multilingualism:

- 1945 Charter of the United Nations enacted in the “Big Five” (Chinese, French, Russian, English, and Spanish)
- 1946, UN General Assembly adopts “Big Five” as official languages, English and French working languages.
- 1948, Spanish added as working language
- 1968, Russian added as working language of the General Assembly
- 1973, Chinese adopted working language; Arabic becomes both official and working language – with limitations.
- 1982, ‘full’ status for Arabic.

Today:

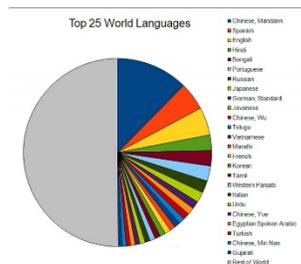
- Security Council and the General Assembly have six official and working languages (Arabic, Chinese, English, French, Russian, and Spanish)
- Economic and Social Council has six official languages (Arabic, Chinese, English, French, Russian and Spanish) and three working languages (English, French, and Spanish)
- UN Secretariat, the International Court of Justice, and the International Criminal Court have only two working languages (English and French).

Notice the question mark in this slide: in practice – despite the increase over time in the number of official languages - it is still increasingly becoming monolingual in many internal practices, though I will have to leave that particular issue aside for this presentation.



Almost all the meetings in lighter grey you have here at the UN held without interpretation over a period of 10 years were in English only.

The increase in now having six official and working languages in some parts of the UN still represent in the main state interests, and not necessarily the interests of the world's populations. Notice that three of the world's largest languages, Hindi, Bengali and Portuguese which have more primary speakers than French, Arabic or English, are nowhere to be found in these languages with status at the UN.



But the evolution of the UN and the place of languages within and with it did not freeze in the 1980s: there is another phenomenon which also is significant because it deals more precisely with the changing role of the United Nations, the recognition of the impact language policies and practices have in terms of individuals, to the need to communicate

effectively with people, and not only governments – and to a degree to the human rights dimension involved.

International organisations like the United Nations are no longer exclusively organisations representing states. People – in the sense of individuals, civil society, and non-governmental organisations - also have their place within these institutions as a result to their changing role, demands for transparency, accessibility and perhaps even democratic characters.

And it means in more recent decades that the UN no longer only responds to states or governments – it must speak to, reach out and communicate with others, and that means also in their languages – since the official language of the state, as El Presidente of San Marcos showed us, is not necessarily the same thing as the language commonly spoken and understood by the entire population of a country.

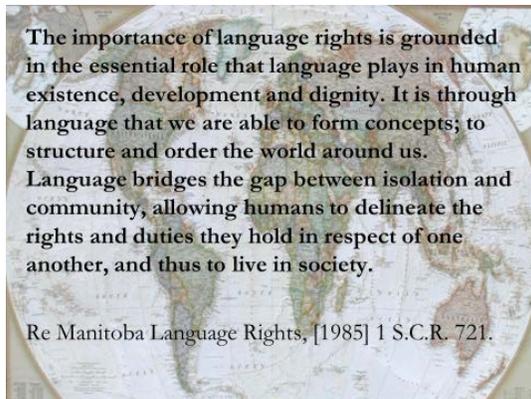
That's why the UN and others now recognise that to be effective other languages and not only official languages must be used if international organisations are to communicate and offer services to a more general public:

“...the universality of the United Nations and its corollary, multilingualism, entail for each State Member of the Organization, irrespective of the official language in which it expresses itself, the right and the duty to make itself understood and to understand others”.

UN General Assembly Resolution A/RES/50/11, 15 November 1995. See also the *Report of the Secretary General on Multilingualism*, UN Doc A/56/656, 27 November 2001, and UN General Assembly Resolution A/RES/63/306, 30 September 2009.

And yet, despite the worldwide threats facing linguistic diversity, the importance of language to the identity for many individuals and communities, and even how language preferences by governments directly impacts individuals in terms of participation in public life, access to employment and other opportunities or educational performance, and yet the UN has still been noticeably timid in addressing from a legal point of view anything to with language rights or linguistic diversity.

There is no international treaty, no legal document for language rights or linguistic diversity, even though there are all kinds of treaties for almost every aspect of human life – and despite the centrality of language in human existence and identity. We have treaties on just about everything today in international law: migrant workers, persons with disabilities, refugees, women, children, on genocide, human trafficking, but none dealing with language, or more appropriately really the rights of some of the most vulnerable in many countries – minorities, and in particular linguistic and religious minorities. This would cover language and religious rights by the way.



But that's not the full or final story yet – and it is here that human rights have an impact, if not constituting a complete or sufficient response to the central role of language in human societies.

Neither the UN – nor national governments – can limit themselves only to using one official language – because in some cases human rights considerations may also be involved.

Let me explain by briefly describing why human rights are relevant if there is exclusion or inequality because of language preferences by officials.

After the last world war individuals begin to be a matter of concern for international organisations, linked in to the movement towards recognising human rights as part of international law from the 1950s. The creation of the United Nations itself is after all intimately linked to the recognition that state sovereignty had to be limited by human rights because of the horrors of the Holocaust.

Because of its obligation to promote universally human rights, the United Nations has gradually found that beyond the use of the UN's official or working languages, it has had to reach out to the world's population with information documents, basic human rights treaties, campaigns for health, education, and other efforts, etc.

This has led to an extensive array of language preferences and practices at the UN as you can see with this description of the different levels or tiers of languages it uses, including for individuals and the general public, not only states:

- Tier 1, 6 languages: Generally all public documents and information in the 6 official languages of the UN (though in practice mainly first in English, then translated)
- Tier 2, 29 languages: “Regional languages” covered by 63 UN Information Centres

- Tier 3, <100 languages: for UN offices in different countries and regions (public documents and information)
- Tier 4, +350 languages: A handful of core documents and materials for specific country campaigns (UN Charter; UN Declaration on Human Rights).

Regardless of the 6 official languages it uses at the UN General Assembly's, limiting its activities to these 6 languages would neither be appropriate, effective or practical in many of parts of the world.

So to communicate effectively the United Nations has had to use the language most understood in different parts of the world, and that is why the second tier of language practices at the UN involves 29 other languages for regional information purposes.

In the case of the third tier practices, as a general rule, the main UN mission in a country will have some staff able to respond to information requests and queries in the languages most appropriate for that country.

And the UN's approach with the 4th Tier involves the use of languages for services, campaigns and to reach individuals in general – at least in very specific cases. For example, in the Ebola prevention campaign everyone knows it would have been criminally irresponsible to only use English in Sierra Leone – even though that is the country's only official language - because a very large percentage of the population is not fluent in English.

International campaigns including by UN agencies almost always use local languages as a matter of practicality where the public must actually be reached effectively. And if you want everyone to have access to the Universal Declaration on Human Rights, you can't limit it to only 6 official languages – or even all the world's official languages. You try to

have it accessible in as many languages as possible, more than 350 right now I think.

Thus the effectiveness of various initiatives for the UN requires an effort to communicate in the languages that people on the ground most easily understand – and in a number of countries and contexts, that obviously cannot only be an official language.

This is also shown in other situations such as the United Nations Food Programme’s activities in Angola, where use of local languages by this UN institution occurs, despite these languages having no place “officially”:

10. In the area of reproductive health, the most important achievement was the increased availability and accessibility of high-quality reproductive health services in Benguela, Huila and Luanda, the three provinces covered by the programme.

Country programme document for Angola, United Nations Population Fund, UN Doc. DP/FPA/CPD/AGO/5, 13 October 2004.

By the way, your own federal government in a sense does something similar in areas such as public health and even voting in federal elections, and here you link this clearly to a human rights determination of discrimination based on exclusion or disadvantage involving language practices and preferences as a proxy for race or ethnicity:

Title VI of the Civil Rights Act of 1964 which prohibits discrimination in programs and activities receiving federal financial assistance = language rights

- Common Language Access Questions, Technical Assistance, and Guidance for Federally Conducted and Federally Assisted

Programs,

http://www.lep.gov/resources/081511_Language_Access_CA_Q_TA_Guidance.pdf

Exclusion, disadvantage, discrimination, and human rights.

Language is an important part of this mix, but unfortunately there has still been a reluctance on the part of the United Nations to go beyond its own internal commitments to multilingualism.

This reluctance is disappointing since claims for language rights or discrimination and exclusion through state language preferences have been and still are instrumentalised in many of the world's conflicts involving minorities, such as we've seen in the Ukraine, Southern Thailand or Sri Lanka.

But this hesitancy is in a sense quite understandable. One of the reasons for this is that decisions relating to an official language have in traditional international law been deemed to be matters falling completely within the prerogative or sovereignty of the state. The position of quite a few governments, and this affects the UN at times still today, is that language rights or any language policy concerns should not be dealt with by the UN or international law, even if it makes no sense in places such as San Marcos, Namibia or Burkina Faso.

For these states, reflected in part by some within the UN, a government is entitled to make any language official, and even make the use of any other language illegal. I call this the official language fallacy which you still find expressed today, including by a few members here of the UN Human Rights Committee:

Once a State party has adopted any particular language or languages as its official language or languages, it would be legitimate for the State party to prohibit the use of any other language for official purposes...

J.G.A. Diergaardt (late Captain of the Rehoboth Baster Community) et al. v. Namibia, UN Human Rights Committee 2000.

They are entitled to ban any other language – regardless of international law – well, according to a few of the committee members anyway.

This is a fallacy however, because the increasingly prevailing views are no longer comfortable with what I would suggest is a pre-human rights state-centred mindset – that the state can do almost anything it wants to its citizens when it comes to language, and is partially based on the assumption that one country should only have one language.

I have to say this is also intimately associated with the idea of a nation-state: that a state could only be made up of one nation or people. This ideology still exists in countries such as France where it took an extremely aggressive and exclusionary form. To put it bluntly, linguistic minorities there had to be eliminated for the sake of the unity of the French nation after the French Revolution: if not physically at least their languages had to disappear as a threat. This is the view of one nation, one state, one language – a view strongly shared even in some countries today such as Turkey, though this is also changing.

Federalism and superstition speak Breton; emigration and hate for the republic speak German; counterrevolution speaks Italian, and fanaticism speaks Basque. Let us destroy these instruments of damage and error!

27 January 1794, Bertrand de Barère denounces languages other than French on the floor of the Convention as enemies of the Republic.

Language is one of the essential characteristics of a nation. Those who belong to the Turkish nation ought, above all and absolutely, to speak Turkish. [...] Those people who speak another language could, in a difficult situation, collaborate and take action against us with other people who speak other languages (Mustafa Kemal, Atatürk, 1931).

Such an ideological policy where it does not reflect the linguistic makeup of a state's population, which does not connect with the linguistic reality on the ground, is a policy which is antagonistic to linguistic diversity, and also in all likelihood in breach of basic rights and obligations in international law.

Let me just give two quick examples from the point of view of international human rights: after the 1990s, it's become universally accepted in international that a state cannot forbid the private use of a particular language, even in the name of defending a country's official language. We now know that freedom of expression in international law includes language as a component of private expression.

Private use of language = human right (freedom of expression – Ballantyne v. Canada UN Human Rights Committee, 1995, & Şükran Aydın and Others v. Turkey, European Court Human Rights, 2013

- Use of non-official (and other) languages may be required through the application of non-discrimination, where reasonable and justified (Diergaardt v. Namibia)

As you have here also in the US with federal civil rights legislation prohibiting discrimination, the prohibition of discrimination in international human rights may also require the use by authorities of non-official languages where it is reasonable and justified - though this is controversial and unsettled. Still, the case you have here of *Diergaardt v. Namibia* and others show that there is an evolution occurring with various UN institutions acknowledging a link between language preferences, even for an official language, and issues of exclusion, disadvantage and potentially discrimination – one of the most basic human rights in international law.

I am running out of time, but let me emphasise to you that language is power – language can exclude, and as soon as you use the word exclude or even just disadvantage this raises a human rights red flag.

Just to give concrete examples of human rights red flags, there is the issue of education and exclusion through language.

Take a look at this.

The world’s lowest literacy rates occur where only French and English are the medium of instruction – and where these are not the languages of the country’s population. Afghanistan is excluded because of ongoing warfare.

Correlation between world’s lowest literacy rates and disconnect between language of instruction and language of the population

Lowest Youth Literacy Rates (15-24)(a)	Population in relation to official language of instruction (b), (c), (d)	Language(s) of instruction in public schools	Poorest Countries (GDP 2014)
Niger (26.56%)	<ul style="list-style-type: none"> • About 13%, fluent • 0.1% native speakers 	French (except for “experimental” or “pilot”	Malawi

		schools with mother tongue for first 3 years)	
Guinea (45.24%)	<ul style="list-style-type: none"> • Between 24%, fluent • 0.1% native speakers 	French (except for “experimental” or “pilot” schools with mother tongue for first 3 years)	Burundi
Burkina Faso (45.43%)	<ul style="list-style-type: none"> • About 22%, fluent • 1.3% native speakers 	French (except for “experimental” or “pilot” schools with mother tongue for first 3 years)	Central African Republic
Ivory Coast (50.23%)	<ul style="list-style-type: none"> • About 34%, fluent • 0.2% native speakers 	French (except for “experimental” or “pilot” schools with mother tongue for first 3 years)	Niger
Benin (52.55%)	<ul style="list-style-type: none"> • About 35%, fluent • 0.3% native speakers 	French (except for “experimental” or “pilot” schools with mother tongue for first 3 years)	Liberia
Liberia (54.47%)	<ul style="list-style-type: none"> • About 50%, fluent • 2.5% native speakers 	English (except for “experimental” or “pilot” schools with mother tongue for first 3 years)	Madagascar

(a) 2015 Estimate, Unesco Institute for Statistics

(b) Estimation des francophones dans le monde en 2015, Observatoire démographique et statistique de l'espace francophonie.

(c) Geographical distribution of French speakers,

http://en.wikipedia.org/wiki/Geographical_distribution_of_French_speakers

(d) Liberia - L'aménagement linguistique dans le monde,

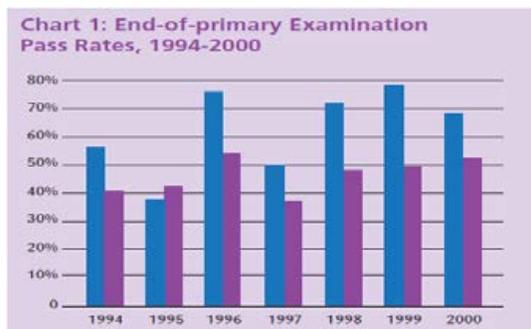
www.axl.cefan.ulaval.ca/afrique/liberia.htm

Poverty is an important factor in low literacy rates in the world by the way, but as you can see with the last column here poverty alone is not determinative: poverty connected to a complete disconnect between the language understood well by the population and the language of instruction would appear to most important factors towards the perfect storm for illiteracy. That's what the countries of Niger, Guinea, Burkina Faso, Ivory Coast and Sierra Leone share – and which directly and clearly contributes most to extremely low literacy rates when combined with poverty. Poverty is still widespread in many parts of the world, but what

makes these five countries stand out so much is that the majority of children are not taught in their own languages. And that is extremely rare in the world: most children in Mongolia are taught – well in their own language in this case Mongolian. The vast majority of children in Canada are taught in their own languages – French, English and to a lesser degree a few indigenous languages. In Switzerland, the vast majority of children are taught in their own languages: German, French, Italian and Romanesh. Etc, etc, etc. Where there is a complete disconnect between the language of the children and the language of education combined with poverty – you have the conditions for a perfect, terrible storm.

And this makes perfect sense.

There are numerous studies within countries by researchers as well as organisations such as UNESCO, the UN and even the World Bank which show that children learn best when they are taught in their own language – as you have shown here graphically in research in Mali where the blue line shows 32% higher pass rates for children taught in their own language (blue line) compared to those taught in official language (French) only in what is that purple.



These slides at the macro and micro levels show disadvantage even exclusion in education because of language policies and preferences that could, from an international human rights point of view, could be argued as either a denial of the right to education, or of a difference of treatment through a language preference in education which is discriminatory

because in the contexts of Niger and Sierra Leone, and other countries is unreasonable and unjustified – even if the preferences are linked to a country’s only official language.

Because to many advocates and activists around the world there is a crying need to address more clearly these dramatic consequences of denying language rights as human rights in education and other areas, and to try to move the UN to “do the right thing”, there are currently the beginnings of efforts to push for the drafting of a legal document to protect language rights and linguistic diversity. I myself think it would be better to do that within a treaty that would protect minorities in general – but that’s a debate for the future.

You can however imagine that there is no great enthusiasm for such a venture at the UN – in part because of the lack of understanding by many governments of the relevance or importance of language, or at times even because they are convinced national unity or even development can only be maintained through a single language – even to the exclusion of all others.

Quite frankly, some governments don’t really care as to what are the consequences on their own population: they assume that the matter is entirely at their discretion, and in any event they firmly believe it is too risky for unity, or expensive, or complicated, or impractical to even consider anything resembling language rights.

And yet... there are models and guidelines out there that show how the UN and member states could embrace an approach respectful of languages, and how in practical terms this could be accomplished. Multilingualism is a fact of life in many parts of the world.

You can see with countries like India, Ethiopia, Belgium, Switzerland, Finland and Canada how a state could have in place practical plurilingual approaches to the use of more than one language by authorities – Switzerland uses 4 languages, Ethiopia 6 – and India something like 30 when you count state level official languages.

To finish my presentation, though not conclude the points which I raise much too superficially, there are examples thousands of years old that recognise the need, desirability and practicality of authorities using more than one language.

This is an extract from what Christians know as the **Book of Esther**, read during Purim, and it is a story which may be more than 2 and a half thousands years old about how Esther convinced the King of Persia to reverse a previous order to kill all Jews.

To make sure that it is understood throughout his empire as quickly and effectively as possible, she explains to him he needs to have the order in the languages of the different provinces of his domain, from India to Ethiopia, rather than only in the one official language of the court.

ויקראו ספרי המלך בעת ההיא בחדש השלישי הוא חדש סיון בשלושה ועשרים בו ויכתב
 ככל אשר צוה מרדכי אל היהודים ואל האחשדרפנים והפחות ושרי המדינות אשר מהדו
 ועד כוש שבע ועשרים ומאה מדינה ומדינה ככתבה ועם ועם כלשנו ואל היהודים
 ככתבם וכלשונם:

It worked – because it was in fact reasonable and practical and reflected the reality on the ground.

One would hope that after thousands of years, we can at the global level understand and embrace the wisdom contained in the Book of Esther. A wisdom which is enshrined in some of the approaches which I have referred

to you as a human rights approach to exclusion and discrimination on the ground of language.

And a wisdom which in the end I think we can find in many other of the world's traditions respectful of the beauty of our human, linguistic diversity.

فِي إِنَّ وَ أَلْوَانِكُمْ أَلْسِنَتِكُمْ وَ أَلْوَانِكُمْ وَ الْأَرْضِ السَّمَاوَاتِ
خَلَقُ آيَاتِهِ وَ مِنْ لِّلْعَالَمِينَ لآيَاتٍ ذَلِكِ

Merci – thank you.