Choice of Official Text in Multilateral Treaties: The Interplay of Law, Politics, Language, Pragmatism and (Multi)-Nationalism

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Abstract

This article examines all multilateral treaties signed from 1500 until 2000 (more than 6,000) in order to analyze trends and patterns in choice of official texts (languages). While few would argue that official texts of treaties are as consequential as substantive provisions, choice of language has changed significantly over the centuries, and in a globalizing world of nearly 200 states, is a factor that should be better understood.

I. Introduction

This paper examines a topic not generally viewed as central in scholarship focused on international law and treaties: patterns and trends in languages chosen as official texts of multilateral treaties. There is of course extensive literature on the importance of language in the creation and maintenance of modern nation states; this certainly affects languages used in treaties as well how treaties are interpreted. The examination of language choice related to international treaty-making has not received much attention.1 It is broadly accepted that English is becoming the global language. This examination of all multilateral treaties signed between 1500 and 2000 will help us to assess the extent of this “Englishization” as well as many other trends and patterns of multilingualism in the globalizing world.2

Idealists and pragmatists alike lament problems of waste, cost, inefficiency, and confusion caused by the use of hundreds of languages in treaty texts, intergovernmental organization (IGO) activities, diplomatic communication and transnational commerce. The obvious solution is an artificial language that is: “(a) learnable (because of grammatical and lexical regularity), (b) powerful (having true-to-nature terminologies, logical structures, and freedom from idiomatic restrictions), and (c) fair (having no native speakers).”3 This is precisely what Esperanto endeavored to accomplish as described by its advocacy association:

The Universal Esperanto Association (UEA), whose membership forms the most active part of the Esperanto community, has national affiliate associations in 70 countries and individual members in 120 countries.

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1. “Treaties constitute a major source of international law. Without a doubt, human languages are their indispensable tools. However, it would appear that scholarly investigation of the languages of international treaties has not received enough attention.” Sunday Babalola Ajulo, Myth and Reality of Law, Language, and International Organization in Africa: The Case of African Economic Community, 41 J. Afr. L. 27 (1997).
Based on the number of textbooks sold and membership of local societies, the number of people with some knowledge of Esperanto is in the hundreds of thousands and possibly millions. There are speakers of Esperanto all over the world, although there are notable concentrations in countries as diverse as China, Japan, Brazil, Iran, Madagascar, Bulgaria, and Cuba.\(^4\)

The United Nations, especially through UNESCO, has supported Esperanto. However, on balance, these efforts seem like tokenism and lip service, ironic yet accurate descriptors.\(^5\) Nationalism, hegemony, politics, bad luck, and perhaps the transient nature of opportunity\(^6\) have combined to make this aspiration impossible. Esperanto seemed like an ideal “solution” but has been a failure,\(^7\) never used by more than one person in ten thousand and probably never as an official text of a treaty.\(^8\)

It will be argued that the international Esperanto movement suffers from a catch 22 kind of problem: it is difficult to raise the number of Esperanto learners to a critical mass, not until it is perceived as a ‘useful’ and ‘practical’ second language serving a broad range of communicative functions in a great variety of communicative settings. At the same time, so long as the Esperanto community remains small, Esperanto learners have little impetus to use Esperanto—either in place of or in addition to other languages of wider communication—voluntarily for creative purposes such as literary, artistic, and academic writing. Until the catch is resolved, Esperantists will continue to be fighting an uphill battle vis-à-vis its arch rival, English.\(^9\)

Not only do very few people use Esperanto, but figures about its use seem imprecise, often little more than optimistic guesses.\(^10\)

Without a universal language, the international community must find a way to balance nationalist and diplomatic interests with expense and efficiency. There have

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5. See id. (Further information provides: “In 1954 the UNESCO General Conference recognised that the achievements of Esperanto match UNESCO’s aims and ideals, and official relations were established between UNESCO and UEA. In 1985 the General Conference called on member states and international organisations to promote the teaching of Esperanto in schools and its use in international affairs. UEA also has official relationships with the United Nations, UNICEF, the Council of Europe, the Organisation of American States, and the International Standards Organisation (ISO).”)
7. But cf. Detlev Blanke, Causes of the Relative Success of Esperanto, 33 LANGUAGE PROBLEMS & LANGUAGE PLANNING, 251, 251 (2009) (“The frequently expressed assertion that Esperanto ‘did not succeed’ is both right and wrong, depending on how one looks at it.”).
been attempts to reduce the cost and complexity of operating in multiple languages; these occur in IGOs, NGOs, foreign ministries, and multinational corporations. The European Union (EU), with 24 official and 5 semi-official languages, certainly has the distinction of spending the most on matters dealing with multiple languages and translation costs. The exact cost of translation services within the EU is difficult to calculate and influenced by definitions and assumptions made. One study examined the “language industry” within the EU and member states and valued it at 8.4 billion € (as of 2008) and is expected to grow to 16.5 billion € by 2015.

Another study placed language services within the broader category of administration and found:

The costs of running the EU (administration) amount to 6% of total spending. This includes running costs for all the institutions (mainly the European Commission, Parliament and EU Council) and the translators and interpreters who make information available in all of the EU’s official languages.

Sources disagree on the total amount of budget spent on language services, but expenditure of resources is substantial. One specific aspect of translation cost is multilingualism in treaty texts.

Multilingualism in treaty texts is a complex issue that transcends cost involving the balancing of tangible and intangible values. Christopher Kuner claimed that the increasing number of official texts “poses dangers to the peace and stability of the international order, given that a number of diplomatic incidents and even wars have been triggered by differences between language versions of multilingual treaties.” While this may be an overstatement, the appeal of cost cutting must be balanced against a plethora of language issues. Linguistic rights often are linked to nationalism and the legal status of minorities. Many “solutions” have been proposed including compensation for disadvantaged language groups, but problems might arise including:

14. Id. (The most favorable cost estimate of “all language services” placed them at “less than 1% of the general budget” or about “€2 per person per year.”)
the possible deterrent effect of compensation on assimilation, the incentive to misrepresent language-group membership, and the opportunity to achieve greater efficiency through linguistic federalization and specialized or partial official statuses for languages.17

There have been many attempts at taming official language proliferation within the EU.18 These began long before the number of official languages reached 23. A rather humorous example of the difficulty of the situation occurred in 1973 when Denmark acceded to the Treaty of Rome.

Denmark was prepared to make the concession of not using Danish, and favoured restricting the number of languages to two—English and French—on condition that French-speaking members only spoke English and that English-speaking members only spoke French. This proposal was immediately rejected by the British and the French.19

The analysis presented here is possible because of the Comprehensive Statistical Database of Multilateral Treaties (CSDMT) begun at Penn State Erie in 1999 when I prepared a review of Christian L. Wiktor, Multilateral Treaty Calendar, 1648-1995 (1998) for the American Journal of International Law.20 The review was very positive. The Calendar was the most comprehensive record ever compiled of all multilateral treaties and it covered 350 years and more than 6,000 instruments. It was fortuitous that, in the fall of 1999, several undergraduate honors students were willing to begin some modest tabulations that, over the years, grew into the CSDMT. First, we examined all major treaty series and indices to be sure we had found virtually all multilateral treaties. Many macroscopic analyses have enormous sampling problems, i.e., they draw conclusions based on treaties that may be unrepresentative of the entire group about which they wish to draw inferences. We avoid sampling problems by including all multilateral treaties. In statistical parlance, our sample is the universe.21 The CSDMT presents a unique study of language behavior because we track trends and development using the most important source of international law: multilateral treaties.

18. “European Union” is understood to also include the European Communities and European Economic Community.
20. John King Gamble, Book Review, 93 AM. J. INT’L. L. 565-66 (1999). “This book is important and ambitious, listing the name and indicating the substance and other information (but not the text) of all multilateral (but not bilateral) treaties signed from 1648 through 1995...It has clear advantages over the other indices indicated, including ease of use, longer chronological reach, excellent citations to treaty series and a bilingual (English-French) character.”
21. Only multilateral instruments, not bilaterals, are represented in the database because of the vast number of bilateral treaties, many of which could not be located in part because they have not been registered with an IGO.
We applied a reasonable, explicit approach to what constitutes a multilateral treaty, e.g., omitting final acts, and, of course, instruments that never entered into force. A quantum leap was made with the decision to go beyond indices and compendia and locate the text of each treaty to add much more complex information. We did not have external funding and could not compete with research centers that specialize in a particular subfield of international law, e.g., human rights law, economic law, laws of war, etc. Given the fact the CSDMT had become a cottage industry financed only with internal Penn State funds; we spent on average 30 minutes coding each treaty. The project does not collect the two kinds of information most commonly associated with a treaty: the full text and a complete list of parties.

As of mid-2012, we have collected more than 40 variables for all of the 6000-7000 multilateral treaties signed during the 500-year period, 1500—2005. Several of these are especially pertinent to our analysis here, the first being the variable “Laterality,” whether a treaty is general (open to all states), or plurilateral (parties restricted based on subject matter or region). “Official Languages” is a variable that records specific language groups for each instrument. For example, the option “English and French” is an instrument with English and French as official texts. “UN-6” indicates that the treaty was rendered in the United Nation’s current six official languages: Arabic, Chinese, English, French, Russian, and Spanish. The CSDMT also separately tracks the use of ten specific languages in multilateral treaty making: Latin, French, English, Spanish, Russian, Chinese, Arabic, German, Dutch and Italian. We use this variable to document trends in the use of individual languages. “Number of Languages” is the number of

22. We have collected location information for the full text of most treaties. A list of parties is not a simple matter since it constantly changes as states become party to treaties, withdraw from treaties, make reservations, object to the reservations of another party, etc.

23. List of CSDMT variables: **Headnote**, **Name of instrument** (e.g., convention), **Nature of Instrument** (e.g., amendment, protocol, and original instrument), **Regional focus** - 13 options (e.g., Asia/Pacific), **Treaty series and location**, **Laterality** (plurilateral/general), **Signature date**, **Force date** (for the treaty), **IGO Relation** (none, creates, action by), **List of IGO's involved (which IGO's are related)**, **IGOs as parties** (none, one, > one), **List of IGO's that are party**, **Committee created by IGO (y/n)**, **Is it an ILO treaty (y/n)**, **Narrow Topic** - 125 options (e.g., peace, bodies of water, telecommunications, rules of warfare), **Broad Topic** - 8 options (e.g., political/diplomatic, economic, environmental, human rights), **Dispute settlement provisions** (e.g., none, vague, binding), **Reservations provisions** (e.g., none, “object and purpose,” prohibited), **Duration clause** for the treaty (e.g., automatic lapse), **Duration/escape clause for parties** (e.g., withdraw with notice), **Length of text** (number of articles and number of words), **Official languages** - 36 options (e.g., French and English, and other common groups), **Number of languages**, **Languages** (10 variables tracking these languages individually: Latin, French, English, Spanish, Russian, Chinese, Arabic, German, Dutch and Italian), **Total number of parties** (where feasible), **Party** (11 variables track the party status of specified countries for each treaty – e.g. France, Germany, China, Canada, U.S.), **Code number** (a rational, intuitive numbering system for all multilateral treaties).

24. We include treaties when they enter into force. However, analyses included here go through the year 2000. Because treaties “trickle” into force for years after they are signed, figures from 2001-2010 are likely to be confusing and unrepresentative.
official texts for each treaty. This permits us to calculate statistics such as the average number of official texts.

II. The Legal, Political and Historical Contexts of Language

The role of language in international relations and international law is complex and has its roots in the earliest development of human society. Language often has been seen as a hegemonic force where “more powerful social groups and states themselves have sought to impose their language on the less powerful by requiring linguistic accommodation as a condition of economic and political opportunities and advantages.”

Language has been important both in the building and disintegration of states. A single language can be a major asset in defining and preserving the territorial limits of the state, but also can mean the dominance of one language over others. And it is not just the number of people who speak “a global language (but) . . . has much more to do with who those speakers are.”

Certain languages gain (or lose) prominence for a number of reasons including religion, colonization, commerce and culture. Over the last century, all of these factors have contributed to the ascendancy of English:

Current debates on the possible linguistic consequences of the process of globalization concentrate on the complementary issues of Englishization and language loss. Most writers view today’s linguistic world as a site of contestation between the global and the local: the spread of English as the lingua franca of the information age is viewed as the linguistic counterpart to the process of economic globalization.

As much as one might revere Shakespeare, Pope, Twain, Joyce, and Hemmingway, it is important to remember that the dominance of the English language is due to a complex set of social and political forces, not to some intrinsic superiority of the language.

In the early 20th century, some seemed to confer an almost mystical power on the then-dominant French language:

Dr. James Brown Scott states in enthusiastic terms the position of the French language as a medium of international intercourse. His view seems to have been that the ‘more civilized’ nations of the world have given to French the character of an ‘official and authentic’ language, in

29. Dor, supra note 26, at 97.
such a way that its primacy is established as a rule of international law.30

One of the most extravagant claims made on behalf of French came from British diplomat and historian Sir Harold Nicolson:

It is impossible to use French correctly without being obliged to place one’s ideas in the proper order, to develop them in a logical sequence, and to use words of almost geometrical accuracy. If precision is one of the major virtues of diplomacy, it may be regretted that we are discarding as our medium of negotiation one of the most precise languages ever invented by the mind of man.31

Others saw no particular advantage of one language over another.32 Professor Leslie Green concluded “there are no scientific grounds for thinking any human language is better, either in general or for some special purposes, than any other.”33

Instead of untestable hypotheses, e.g., the intrinsic superiority of one language over another, we focus on the actual use of languages. In addition to unproven claims about the explanatory power of certain languages, one finds inaccurate estimates about how widely used languages are. Inflated claims have been made on behalf of the French language; many of these seemed to ignore the growing use of the English language.34 Extrapolating from a somewhat dated estimate, there probably are 1.5 billion people (about 1/5 of the world) with some command of English.35 Later we discuss how this might relate to language choice in treaties.

The European Union, wrestling with problems of multilingualism for 60 years, provides a fascinating case study in the interaction of complex language forces. Perhaps the EU is the canary in the mine presaging language problems in other fora. It is hardly surprising that language issues were less problematic in the early years of the EEC. With only six members, three of which had French as a national language, relatively

31. HAROLD NICOLSON, DIPLOMACY 234 (1939). Nicolson’s requirement of correct use raises many questions.
32. It is possible that statements about no intrinsic superiority of one language over another are Eurocentric. See, e.g., Alex Glashauser, What We Must Never Forget When It Is a Treaty We Are Ex-pounding, 73 U. CIN. L. REV. 1243, 1281 (2004-2005) (“In contrast, Japanese is considered notoriously vague, both because the language itself is ambiguous and because cultural habits value ambiguity.”).
33. Leslie Green, Are Language Rights Fundamental?, 25 OSGOODE HALL L. J. 639, 662 (1987). A similar point was made about the use of Latin and its dominance over Oscan: “There is no reason to believe that Latin was inherently a nobler speech than Oscan, for instance. Latin secured certain political and social advantages and became a highly polished medium of communication, while Oscan, spoken ultimately only by rude peasants, became less and less capable of expressing noble thoughts.” E.C. Hills, Drift in the Romance Languages, 11 HISPANIA 123, 123 (1928), available in JSTOR, File No. 331757.
34. Hudson, supra note 30, at 369.
fewer problems developed; French usually held sway. In 1973, Ireland, the United Kingdom and Denmark acceded to the Treaty of Rome and “efforts to maintain the status of French in Europe become more difficult”36 a development perhaps presaged in 1971 when French President Georges Pompidou said “if French does not remain the first working language of Europe, the latter will not be completely European.”37

According to a study in 2001 requested by the European Commission, English was found to be the most spoken language in the European Union, (47% speak it as a first, second or foreign language) although German had the most native speakers (24%). French had the third highest number of total speakers in Europe (28% speak it as a first, second, or foreign language).38 Jonathan Pool observed that the “[o]fficial status in the EU is also likely to promote the vitality of small languages, which in some cases appears to be damaged by the economic integration that the EU is promoting.”39 This might be creating the not unusual situation of two positive goals of an IGO working at cross purposes with each another.

Officially, the EU favors multilateralism; in 2009, the Charter of Fundamental Rights of the European Union gained full legal status with the ratification of the Treaty of Lisbon.40 Article 22 of the Charter codifies the European Union’s commitment to language rights: “The Union shall respect cultural, religious and linguistic diversity.”41 This has meant the number of official languages (now at 23) increases along with membership. EU budget discussions often point to the high cost of translation services. The massive expense of translating high-level policy debates into 23 official languages may have inspired different approaches to advancing the goals of multilingualism.42 In fact, it seemed to be becoming a higher priority in 2004 when the EU created a Commission portfolio that included multilingualism. The first incumbent, Jan Figel, explained his goals:

Multilingualism is clearly an asset to anyone and I am sure that I do not need to expand on that here in the company of so many highly

36. Oakes, supra note 19, at 375.
37. Id.
41. Id. art. 22.
42. Brian McCluskey, Respecting Multilingualism in the Enlargement of the European Union-The Organisational Challenge, Speech delivered during the European Year of Languages delivered in Vienna, (June 7, 2001).
accomplished specialists. That is of course why the Commission’s target for language learning is summed up in the expression ‘mother tongue plus two.’

Beginning in 2007, a commission portfolio, held by Romanian Leonard Orban, focused exclusively on multilingualism. However, Orban was to be the only commissioner of multilingualism. Because of perceived overlap, the responsibility of multilingualism and language policy has now fallen to the Commissioner for Education, Culture, Multilingualism, and Youth, a position held by Androulla Vassiliou since 2010. Vassiliou explained the EU’s language goals this way:

One of my key tasks will be to promote language learning from a young age. Our goal is for every EU citizen to speak at least 2 foreign languages as well as their own. Knowledge of languages improves job prospects, communication and understanding, both inside Europe and beyond.

There have been attempts to reduce the cost of translation within the EU. “This concern is frequently raised in discussions of language policy in European institutions.” France seems to have realized that a French-language-dominated EU has become impossible and instead cast its lot with multilingualism. When Romano Prodi was president of the Commission, he endeavored to reduce the number of working languages. Maintaining many official texts in treaties may motivate states to reconcile themselves to fewer working languages, whether those languages are for negotiating a major multilateral convention or informal backroom discussions during a meeting of Ecofin. Regardless of posturing that occurs, “ninety nine per cent of European institutions cite English as their working language”, a percentage that probably is increasing.

The legal aspects of choice of official text(s) are simple, clear and settled. Arnold McNair, once a judge on the International Court of Justice and President of the European Court of Human Rights, states “parties are free to choose the language or languages in which a treaty is expressed.” The Vienna Convention on the Law of Treaties reads:

When a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty

44. COMMISSIONER LEONARD ORBAN, DISCOURS D’INTRODUCTION TABLE RONDE “MULTILINGUISME ET COMPÉTITIVITÉ” SALON EXPOLANGUES (2009).
46. Patten, supra note 25, at 702, 714.
47. Oakes, supra note 19, at 371.
48. Dor, supra note 26, at 103.
provides or the parties agree that, in case of divergence, a particular text shall prevail. . . The terms of the treaty are presumed to have the same meaning in each authentic text.\textsuperscript{50}

This should not be conflated with the very difficult matter of assuring consistency when identical meaning is sought among texts rendered in different languages. The use of “legally untranslatable terminology” is an important consideration.\textsuperscript{51} “Indeed, linguists are unanimous in the view that no language can express fully any idea primarily conceived in another language.”\textsuperscript{52} Compromises must be made for example, if declaring absolute equality— equally authoritative— among many languages opens the door to disagreement on the meaning of especially complex provisions. “If the two can, without violence to the language, be made to agree, that construction which established this conformity is to prevail.”\textsuperscript{53} Professor Dinah Shelton provides an excellent analysis of problems and advantages of rendering treaties in many languages:

Legal certainty, predictability, and conflict avoidance require the greatest clarity and precision in the drafting of legal texts. Those governed must be made aware of their rights and obligations. Yet, language as a means of communication is fraught with ambiguities, mistakes, and deception. These problems may be alleviated or exacerbated by drafting texts in multiple languages. On the one hand, a comparison of different texts may help to resolve an ambiguity inherent in a term or phase used in one language, making clearer the intention of the drafters.\textsuperscript{54}

Better translation and assistance from information age technologies might address some of these problems, assuming states wish uniformity and consistency in meaning among official texts.

It is important to emphasize that even though states have virtually no legal restriction on the use of official texts, the choices made may be very significant on an operational level. Do states insist on their national languages in all their treaties? The US and UK were among the first to do so.\textsuperscript{55} “Larger states have more resources at their disposal to devote to treaty making, and can tailor their commitments to their needs more efficiently.”\textsuperscript{56} What other effects do the operational devices of a treaty have on its

\textsuperscript{52} Ajulo, supra note 1, at 40.
\textsuperscript{53} Samuel Crandall, Treaties: Their Making and Enforcement 389 (2nd ed. 1916).
\textsuperscript{55} Biswanath Sen, A Diplomat’s Handbook of International Law and Practice 458-59 (2nd ed.1979).
\textsuperscript{56} Gregory Shaffer & Tom Ginsburg, The Empirical Turn in International Legal Scholarship, 106 AM. J. INT’L L. 1, 13 (2012).
substantive provisions? Professors Paul Diehl and Charlotte Ku explore this concept in their book *The Dynamics of International Law*.

The operating system of international law provides the platform and structure to govern and to manage international relations... Most of the trends in the operating system are toward expansion, in the number and kind of actors, in the creation of new courts, and the scope of international lawmaker Safety.57

“The absence of an international law standard hardly obviates the need to understand practice.” Multilingualism since the mid-20th century is a complex, dynamic phenomenon that, while less important than substantive legal norms, can impede or facilitate agreement on those norms.59

This analysis of official texts used in multilateral treaties can help us to understand of this complex developing world order characterized by globalization and democratization. The current situation has a neo-Wilsonian feel to it. U.S. President Woodrow Wilson’s call for “open covenants, openly arrived at” cast a shadow that extends into the 21st Century. Professor Benedict Kingsbury explains the durability of this in his work regarding the long history and contemporary relevance of transparency and openness in global governance:

> Publicity – openness to all to know – is a requirement given by Hobbes for the sovereign to make effective law... When Woodrow Wilson called for an end to ‘secret diplomacy’ and a new order of ‘open covenants, openly arrived at’ (a norm still embodied in the UN Charter requirement that treaties be registered with the UN Secretary-General for publication in the UN Treaty Series), he had in mind that this publicity, in causing leaders to take more account of public sentiment and to defend their international commitments in public debates, would democratize foreign policy and dampen diplomatic tendencies to bellicosity. Almost every public institution of global governance currently faces demands to increase the openness of its decision processes...62

David Stasavage approached this issue from the angle of transparency:

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59. “A variety of important influences (power, interests) affect which norms are adopted and their configuration.” See Paul F. Diehl & Charlotte Ku, *The Dynamics of International Law* 156 (2010), for an excellent discussion of their normative and operating systems of international law.
60. We use neo-Wilsonian narrowly applying it only to transparency in diplomacy.
The motivation behind demands for transparency in international bargaining is clear; the more that citizens know about the actions of government officials, the easier they will find it to judge whether officials are acting in the public interest. Ultimately, transparency can make officials more accountable for their actions. It may also have other benefits. Advocates of deliberative democracy emphasize that deliberations that occur in public increase the quality and the legitimacy of decisions taken.\(^63\)

The rendering of international agreements in multiple languages\(^64\) to provide transparency leads to the complex issue of exactly what constitutes literacy, made more complex in the 21\(^{st}\) century since it often includes "numeracy."\(^65\) If one’s goal is broader access to government actions including treaty commitments, the public must be able to read and to understand those treaties.\(^66\) UNESCO’s attempt at defining literacy is almost tautological:

A person is functionally literate who can engage in all those activities in which literacy is required for effective functioning of his group and community and also for enabling him to continue to use reading, writing and calculation for his own and the community’s development.\(^67\)

Of course, reading and comprehending treaty texts requires much more than basic literacy. Legal terminology is complicated and inconsistent — even between states that share the same official language.\(^68\)

\(\text{[R]eading a legal text is often not so much reading for a single meaning as reading for a range of possible meanings. Law is in a full sense a language, for it is a way of reading and writing and speaking and, in doing these things, it is a way of maintaining a culture, largely a culture of argument, which has a character of its own.}\(^69\)

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63. David Stasavage, *Open or Closed-Door? Transparency in Domestic and International Bargaining*, 58 INT’L ORG. 667, 668 (2004). (“While transparency has attracted much recent attention, the subject is hardly a new one; after World War I there were frequent demands for greater openness in international diplomacy, symbolized by Woodrow Wilson’s call for “open covenants of peace, openly arrived at.”).

64. ANTHONY AUST, *MODERN TREATY LAW AND PRACTICE* 254 (2011) (“In practice the translations of multilateral treaties are done by translators who though highly professional, will not have been at the negotiations, and may not necessarily appreciate all the nuances of the final text.”).


66. UNESCO and many other international organizations strongly advocate and support efforts for global literacy. For more on this goal and sponsored programs, see id.


68. Kuner, *supra* note 15, at 957. “The interrelation between legal terminology and the legal system in which it is used is so strong that substantial differences in usage exist even among States that (supposedly) share a common language.”

How do states meet the challenge of full transparency and communication with their citizens while working in legal “language”? The European Union again provides an interesting example by offering versions of most of its materials, including treaties and official budgets, in a simplified version available online. These efforts help to clarify complicated provisions of EU legislation.

III. Language Behavior as Seen Through the CSDMT

We turn now to the data, i.e., concrete information about choice of official texts in multilateral treaties. The goal of our approach was described very well in Schaffer and Ginsburg’s tour d’horizon: “The power of quantitative methods is an ability to test hypotheses in a rigorous manner against large quantities of data using statistical techniques . . . .” We can provide precise answers to certain questions such as: is English replacing French as the predominant official text of multilateral treaties? On a broader level, we speculate about the role of multilingualism in providing transparency as governments must justify their transnational actions to publics who have the power to remove them.

As discussed earlier, choice of official language for treaties is not as important as substantive content. Further, there is no international legal requirement about choice of texts; this does not imply that these choices do not have significant effects on the legal and political dimensions of treaties. Consider this “extreme” example. Assume a group of five states is negotiating a plurilateral treaty and that all five have different official national languages, none of which is English. Further, assume that the foreign ministries of all five routinely operate in English and are comfortable doing so. It would be less expensive and simpler to have the treaty negotiated in English with English as the only official text. But our data shows that this occurs less often than many believe. For example, treaties among Nordic states often use the national languages of all parties, e.g., the 1986 treaty creating the Nordic Development Fund for the Western Nordic Region has seven official texts, Danish, Faeroese, Greenlandic, Finnish, Icelandic, Norwegian, and Swedish. There are reasons for choice of official texts that go far beyond linguistic abilities of civil servants and economic efficiency. An interesting—but difficult to test—hypothesis is whether flexibility permitting the use of many official texts might smooth ruffled feathers of diplomats easing agreement on substantive

71. Shaffer & Ginsburg, supra note 56, at 1. “Instead, [the empirical scholarship in international law] focuses on midrange theorizing concerning the conditions under which international law (IL) is formed and those under which it has effects in different contexts, aiming to explain variation.” Id.
72. Id, at 4.
provisions.74 Furthermore, making treaty provisions available to broad publics in each member country is part of the EU’s transparency mandate.

A very important distinction that must be borne in mind is that this article examines only multilateral treaties. Bilateral treaties—about 90% of the total—may demonstrate far different patterns. The most obvious is whether a particular language is one of the official texts. This is easier with bilateral treaties because there is less range in the number of officials languages used and it is possible to focus on one important kind of treaty: those that have official texts that are not simply official languages of both parties. A related study that illustrates this concept examined 15,000 bilaterals signed between 1920 and 1970 and analyzed exceptions defined as treaties of which the official texts are “not simply the official language(s) of the parties.”75 The article analyzed treaties in the entire League of Nations Treaty Series (LNTS) and the United Nations Treaty Series (UNTS) from 1945-1969 and found that the LNTS contained 45% (1,983) exceptions while the UNTS contained only 13% (1,059) exceptions. This is evidence of a strong trend towards adoption of both state parties’ languages as official text.76

Anthony Aust’s excellent book discusses bilateral treaty negotiations, concluding “(i)t is also quite common for two states with different languages to negotiate in a third language (these days often English), and for the only authentic text to be in that language. Ironically these include even cultural agreements.” Aust’s statement is accurate on one level. Our approach is different from Aust’s in two principal ways: we use multilaterals, and we examine all of them. We have actual numbers of treaties so are able to be much more precise than “quite common.” The overall accuracy of Aust’s statement was tested in an earlier article (Gamble and Ku), but that dealt with an earlier time period.77

The CSDMT tracks official texts of multilateral treaties in several ways. We found that ten languages make up more than 90% of choices over our 500-year period: Arabic, Chinese, Dutch, English, French, Italian, German, Latin, Russian, and Spanish. We also examine the most common sets of languages used as official text; sets range in size from a single language to common groups, e.g., the UN’s current Arabic, Chinese, English, French, Russian and Spanish.78

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74. See Diehl & Ku, supra note 57.
75. Gamble & Ku, supra note 58, at 241.
76. Id.
77. See generally, Gamble & Ku, supra note 58.
78. The 5 languages were made “official” with a General Assembly resolution at the first session in 1946 (only English and French were “working languages”). The other 3 would also become “working languages” in later years. In 1973, the UN added Arabic as official and working language.
There are many ways these data can be displayed and analyzed. The CSDMT has very complete data for all multilateral treaties signed between 1500 and 2000, some 6,000 instruments. We use signature date as the most accurate chronological marker.\(^{79}\)

To show treaty trends we use tables and graphs that are broken down by six time periods, the first being 1500-1899, and then five twenty-year intervals within the 20\(^{th}\) century. The most common way CSDMT data are displayed shows all treaties signed during each time interval. For presentation of the language data, we use graphic displays most often showing the number of treaties newly signed during each of our six epochs, and we adopt an additional approach tailored to the nature of these data. The average multilateral treaty has about 2.7 official texts yielding approximately 16,000 official texts in total. One can tabulate and compare the aggregate number of official texts in addition to the number of treaties. We find both approaches useful.

Figure 1 provides the big picture, as it were, of 500 years of multilateral treaty making. It displays the absolute number of plurilateral (parties limited by geography and/or interest) and general (open to all states) treaties for each of the above-described six epochs. Plurilateral treaties were almost 90% of the total before 1900, about 80% from 1900-1959, and about 83% since 1960.

### Figure 1

500-Year Trend in Multilateral Treaties by Signature Date

<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>Plur.</td>
<td>429 (88%)</td>
<td>308 (79%)</td>
<td>679 (79%)</td>
<td>837 (79%)</td>
<td>1407 (83%)</td>
<td>1107 (83%)</td>
</tr>
<tr>
<td>Gen.</td>
<td>58 (12%)</td>
<td>80 (21%)</td>
<td>184 (21%)</td>
<td>225 (21%)</td>
<td>287 (17%)</td>
<td>221 (17%)</td>
</tr>
<tr>
<td>Total</td>
<td>487 (100%)</td>
<td>388 (100%)</td>
<td>863 (100%)</td>
<td>1062 (100%)</td>
<td>1694 (100%)</td>
<td>1326 (100%)</td>
</tr>
</tbody>
</table>

Figure 2 shows the trend in the average number of official texts for plurilateral and general treaties over 500 years. The values are quite close and trend virtually identically, i.e., from only about one official text per treaty for the pre-1900 epoch to slightly more than three languages per treaty for the most recent interval. One would expect significant differences between plurilateral and general treaties since this has been an important distinction in most other analyses performed on CSDMT data.\(^{80}\)

\(^{79}\) Provided that a treaty is in force, we use signature date as a chronological marker for categorizing treaties.

How do we account for the clear, consistent increases in the averages for both the plurilateral and general categories? One might surmise two macro forces are at work. First is the demise of a single linga franca, initially Latin, and then French after 1918. Second is the influence of intergovernmental organizations, most conspicuously the League of Nations, the UN, and the EU, whose explicit policies require multiple languages.

Figure 3 displays the same mean values from Figure 2 juxtaposed for comparison of variations around the mean. The data are segmented into the same six time intervals, but each segment contains two points – one for the plurilateral and another for the general average (mean). This approach allows for the comparison, side by side, of the ranges of official text averages for general versus plurilateral treaties by using percentiles. The 95th percentile indicates that 95% of the data are below that value and the 5th percentile that 5% are below. This provides an indication of the level of dispersion of the data. While the average number of official texts trends closely between plurilateral and general treaties (this is highlighted by the trend line that demonstrates a slow increase over time), the ranges, as shown by the 95th percentile values, are significantly different.

For example, the final time interval of 1980-1999 shows that the 95th percentiles for plurilateral and general treaty official texts are separated by a value of 4.0. This shows

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that, although the averages are quite close, there were certainly many more plurilateral treaties with a higher number of official texts than general treaties. One explanation for this is the increase of European Union treaty making, which during that time period had 11 official languages. The 'maximum' value (the 95th percentile) for “general treaties” is 5.0 for 1940-1979 but increases to 6.0 thereafter. The effect of the UN's decision to add Arabic as a 6th official language is clear. The dramatic increase in the 95th percentile value for plurilateral treaties (to 10.0) is attributable to the increased size of the European Union and its multilateral treaty making. These results illustrate in the clearest possible terms that averages (or means) alone often do not provide a complete, accurate picture of data—in this case multilateral treaties.
Figure 4 displays the incidence of eight widely-used languages across our six time periods. Latin was important before 1900 but has not been used since then. French was the dominant multilateral language from about 1700 through 1940 after which it has lost some ground to English. Arabic and Chinese did not begin to appear until after 1940, probably reflecting Eurocentrism and imperialism. Russian also became more important after 1940 and, unlike Chinese and Arabic, shows a decline in the last time period. The situation with Spanish is interesting; it is used during the entire 500-year

81. Although the CSDMT tracks 10 individual languages used as official texts, only 8 are included here. Dutch and Italian are excluded. The choice to omit 2 languages was made to help simplify the chart. The languages remaining were kept because they represent one of the top languages in one or more of the time periods or they represent a region of the world.

82. For a description of the linguistic dilemma involving ex-colonial states in the contemporary African international community, see Ajulo, supra note 1, at 27.
period. There is one possible anomaly, 1900-1919—30% Spanish, but otherwise a slow increase in the role of Spanish reaching 14% for the 1980-1999 interval. It might seem surprising that the role of the German language remains prominent—this was not the case in bilateral treaties.\textsuperscript{83} Much of the multilateral German activity probably is attributable to the European Union.

Figure 5 contains most of the same information from Figure 4 displayed according to the most frequently occurring combinations of languages.\textsuperscript{84} The size of these

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{figure5.png}
\caption{Eight Most Common Language Sets}
\end{figure}

\textsuperscript{83} See Gamble & Ku, supra note 58.
\textsuperscript{84} There are 36 options for language sets, only 8 are presented in Figure 5 so as not to crowd the chart. The 8 were chosen based an aggregate count over the entire 500 year span.
combinations can range from a single language up to 11, the total number of European Union languages at the time. The aforementioned issue of the German language becomes clear. German does not appear as a distinct language category; it is subsumed in the “EU Plurilateral” category that is significant from 1958 onwards and increases with the expansion of the organization. There are a number of resilient—and perhaps unexpected—groupings. There are a number of Scandinavian (Nordic) plurilateral treaties where the sub-region uses most of their national languages, despite many of the countries sharing a proficiency in English. This grouping accounts for more than 6% of treaties for the most recent period.

Another interesting finding from Figure 5 is that the percentage of treaties with only one official text dropped precipitously. Paul Eden hypothesized that “(T)he authentication of the Charter of the United Nations in five languages - Chinese, French, Russian, English, and Spanish – marked the beginning of a new era of multilingualism in the drafting of multilateral treaties.” Many IGOs created after World War II followed a comparable pattern to the UN itself. This raises a related question of whether the UN and the EU restrict the rights of member states to choose whatever languages they wish as official texts. Does joining those two organizations, specifically becoming parties to the requisite treaties, limit subsequent language choices? There are intriguing parallels, e.g., to the optional clause of the ICJ Statute, where a long-term, open-ended obligation is assumed.

Figure 6 examines one of the principal issues of language use in the last hundred years: to what extent has English displaced French as the language of diplomacy and commerce. Figure 6 begins to answer these questions by examining four language choices options:

- English as the only official text
- French as the only official text
- English as one of multiple official texts
- French as one of multiple official texts.

The French language is dominant through World War II and remains the most frequent choice until 1950. Overall, it seems that English is the most important treaty language after 1960, but French remains a major force. The largest decline in French is in the category of “only official text.” Seventy-nine percent of the pre-1900 treaties had French as the only official text compared to only 2% of those in the 1980-1999 period.
Those concerned about the position of the French language might be reassured by the fact French continues to be employed as an official text in a high percentage of multilateral treaties trailing English only a little and just in recent years. However, one might ask if the official text resilience of the French language is less important than the working language employed. There is little doubt English is has become the overwhelming preference in Brussels, New York City, The Hague and other centers of IGO activity.

IV. Summary and Prognostications

This paper, relying on data from the CSDMT, deals only with multilateral treaties. A major advantage of this approach is the inclusion of virtually all multilateral treaties, avoiding issues of whether a representative sample has been drawn. However, multilateral treaties comprise only about 10% of all treaties. The only comprehensive analysis of language choice in bilateral treaties examined 15,000 treaties signed between 1920-1970. In some ways, bilaterals are easier because one can concentrate on the relatively few exceptions, i.e., those treaties that do something other than employing the national languages of both parties-- because they account for only about 13% of all bilateral treaties. This is especially true when we view “exceptions” that have only one official text. In such cases, bilateral treaties show a pronounced shift away from French in favor of English (compared to the very modest shift we found for multilateral treaties). Before World War II, French was used 80% of the time; after World War II, English was used 80% of the time. The change was even more dramatic for certain states. Japan has a large number of uni-lingual bilateral treaties, probably due to the insularity of the Japanese language. Before World War II, 39% of these treaties used French. After World War II, 97% used English.

Turning to our major focus, choice of official languages in multilateral treaties should be viewed in the broader context of diplomacy, the goal of which is facilitating wider acceptance of treaties with effective substantive provisions that can be implemented successfully. No one would suggest that continuing widespread use of a large number of official texts would resolve intractable policy disagreements, but the expanding multi-textualism found here might provide a diplomatic lubricant that could garner the needed increase in the number of states parties. Treaty provisions that prove controversial

86. Gamble & Ku, supra note 58.
87. Id.
88. Id, at 243.
89. Id, at 241.
90. Although reservations to treaties are very different from multilingualism, compare with, John Gamble, Reservations to Multilateral Treaties: A Macroscopic View of State Practice 74 Am. J. Int’l L. 372-394 (1980).
during national ratification processes might be made a bit more palatable through greater transparency. One element of transparency is availability of treaties in national languages. This may be largely symbolic, but symbolism can be very important. For example, was the Treaty of Lisbon read by large numbers of citizens of EU-member states because that treaty was available in the national language of each EU member?

There are many broader issues that, while beyond the immediate focus of this article, are important and pertinent. Is it the availability of treaties in multiple languages that matters most or whether the content of those treaties is available in a mode that people can understand? The EU probably leads all IGOs in making its activities known to citizens of member states, often under the rubric of transparency:

- It provides citizens with a direct and single access to information about who is engaged in activities aiming at influencing the EU decision making process, which interests are being pursued and what level of resources are invested in these activities.
- It offers a single code of conduct, binding all organisations and self-employed individuals which accept to “play by the rules” in full respect of ethical principles. A complaint and sanctions mechanism ensures the enforcement of the rules and to address suspected breaches of the code.91

We cannot ignore the 800-pound (364 kg) gorilla in the room— the Internet. “Both developed and developing nations are becoming increasingly reliant on the Internet as a unique and essential tool with which to communicate, to conduct business, and to store and transmit data.”92 In the early years of the Internet, usage was overwhelmingly in English and many predicted the Internet would solidify the worldwide dominance of English. Since then, however, different scenarios seem possible. “The Internet has developed into a much more multilingual arena, in direct contradiction to the early predictions of total Englishization.”93 The Internet has made it possible for myriad linguistic groups to communicate. Rather than increasing the dominance of English, the Internet may make it possible to achieve a critical mass of users of esoteric languages who might otherwise be too widely dispersed geographically:

- A multilingual Internet will enhance the local Internet experience in large regions of the world by enabling people to share and access information or use services offered in their own languages

93. Dor, supra note 26, at 99.
Currently, only about 35 percent of all Internet users are native English speakers, although English websites continue to dominate, with approximately 68 percent of all sites readable only in English.94

It is incontestable that for the foreseeable future the Internet will be the principal means people use to find information, including treaty texts, in every language in which they are rendered. It has the potential to make access easier and more convenient than at any time in history. But access does not guarantee reading, let alone understanding. Governments, IGOs, and NGOs already flood the Internet with massive amounts of information. Will people give up in despair and understand and trust nothing they see? Will increasing numbers of users be unable to authenticate the information they receive? And, returning to our principal focus, multilingualism, will the availability of EU treaties in 23 languages make it easier to perform this necessary authentication function?

The approach taken in this article may have exceeded the comfort zone of many law-oriented readers. We believe that statistical analyses, done carefully, can be valuable in understanding international legal phenomena. The devil of course is in the detail of “done carefully.” Harvard Professor and PCIJ Judge Manley O. Hudson, who in the 1930s taught a seminar that tabulated treaties, remarked “[c]ount, by all means count, but count things that count.”95 Eighty years after Hudson, Professor Beth Simmons, also a professor at Harvard, in discussing human right treaties, wrote that research today is much better than in the ancient régime when “in the absence of much systematic evidence. . .” conclusions were “based on naïve faith or cynical skepticism.”96 Simmons also commented that “[t]o quantify is hardly to trivialize; rather, it is an effort to document the pervasiveness and seriousness of practices under examination.”97 We believe we have heeded the advice of both Professors Hudson and Simmons.

Let us conclude with a few comments about our major findings— continuing high levels of multi-lingualism in multilateral treaties— that might be interpreted in two ways. First, the ascendancy of English has been overestimated and we will continue to see a significant role played by other languages. Second, that English has won the day and has begun to consolidate its position. We are beginning to live in a world of de facto uni-lingualism softened and perhaps disguised by a Tower of Babel, de jure hyper-lingualism epitomized by the European Union and manifested in many official texts in multilateral treaties. Perhaps a two-tier international language system is developing. English is increasingly dominant as the principal working language in IGOs, NGOs and business. But some experts maintain that Global English often is of low quality and

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94. Twomey, supra note 92, at 1.
95. PETER ROHN, TREATY PROFILES 4 (1976).
96. BETH SIMMONS, MOBILIZING FOR HUMAN RIGHTS: INTERNATIONAL LAW IN DOMESTIC POLITICS 4 (2009).
97. Id. at 11.
“generally rather impoverished and reductive.”98 Even if the quality of Global English has been improving steadily, there are other factors. German Chancellor Willy Brandt once remarked “If I’m trying to sell you something, we can speak English but if you are trying to sell me something, dann mussen Sie Deutsch sprechen.”99 Even if the use of many official texts in EU and UN treaties is largely of psychological or symbolic value, this does not mean they are unimportant—as De Vries wrote “[t]reaties and other public international agreements today embody not only continuing respect for national sovereignty but also for language sovereignty.”100

98. Figel, supra note 43, at 3.
99. Id.
100. de Vries, supra note 51, at 26.