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17TH ANNUAL ANZSIL CONFERENCE: THE FUTURE OF MULTILATERALISM IN A PLURAL WORLD

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CONTENTS

17TH ANNUAL AUSTRALIA AND NEW ZEALAND SOCIETY OF INTERNATIONAL LAW CONFERENCE: THE FUTURE OF MULTILATERALISM IN A PLURAL WORLD

Foreword
Joanna Mossop..... vii

Opening Address by the Governor-General of New Zealand
His Excellency The Honourable Sir Anand Satyanand GNZM QSO..... 1

Prospects for the Multilateral Security System
Colin Keating..... 9

The International Criminal Law System
Roger S Clark..... 27

Reconciliation as Conflict Resolution
Christopher C Joyner 39

The Security Council's Practice of Blacklisting Alleged Terrorists and Associates: Rule of Law Concerns and Prospects for Reform
Christopher Michaelsen..... 71

Language in the UN and EU: Linguistic Diversity as a Challenge for Multilateralism
Jacqueline Mowbray..... 91

Human Rights Protection in the Pacific: The Emerging Role of National Human Rights Institutions in the Region
Catherine Renshaw, Andrew Byrnes and Andrea Durbach..... 117

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LANGUAGE IN THE UN AND EU: LINGUISTIC DIVERSITY AS A CHALLENGE FOR MULTILATERALISM

Jacqueline Mowbray*

Over 6000 languages are spoken throughout the world. Yet, as a practical matter, international institutions can operate in only a limited number of languages. This article explores the implications of this gap between the languages spoken by the world's people and the languages used in the UN and EU, in the context of concerns about the "democratic deficit" in these two institutions. It suggests that, at both a practical and a symbolic level, limitations on the number of languages used within multilateral institutions may exclude certain groups from effective participation in processes of global governance within these bodies. This highlights a general tension between multilateralism and the accommodation of linguistic diversity, which is then explored in more detail through an analysis of the debate surrounding the adoption of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

I Introduction

In recent years, much concern has been expressed about the so-called "democratic deficit" within the United Nations (UN) and the European Union (EU). Commentators have been troubled by the power of the permanent members of the Security Council,[1] the marginalisation of developing countries within key UN institutions,[2] the lack of accountability of institutions such as the European Commission,[3] and the "participatory gap" which limits the ability of citizens to exercise democratic

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1 I Johnstone "Legislation and Adjudication in the UN Security Council: Bringing Down the Deliberative Deficit" (2008) 102 AJIL at 275.

2 *Secretary-General's Remarks to Group of 77 Meeting in Sao Paulo* UNCTAD/XI/6 (2004).

3 See for example A Verhoeven *The European Union in Search of a Democratic and Constitutional Theory* (Kluwer, The Hague, 2002).

control over the work of these bodies.[4] One issue which tends to be overlooked within such discussions is the role which the language policies of these institutions may play in creating "democratic deficit". In this article, I explore this issue, by considering the implications of the language policies and practices of the UN and EU for participation in, and control over, processes of global governance within these multilateral institutions. I take this as a starting point for considering the relationship between multilateralism and linguistic diversity within the international system more generally. Does linguistic diversity represent an obstacle to multilateralism? Does it restrict or complicate effective multilateral action? And is the opposite also true? Do multilateralism and the work of international institutions present a challenge for the accommodation of linguistic diversity?

In the first part of this article, I focus specifically on the language policies of the UN and EU. I first clarify the language policies and practices at work within these organisations, and then examine ways in which these policies may be problematic from the perspective of creating "democratic deficit". I conclude that the language policies and practices of the UN and EU may affect the ability of particular linguistic groups to participate effectively in processes of global governance through these multilateral institutions. And I note that this suggests a broader tension between multilateralism and the accommodation of linguistic diversity.

In the second part of the article, I consider how this tension between multilateralism and linguistic diversity plays out within the international system more generally. I do so through a case study of one particular multilateral debate where the concept of linguistic diversity featured prominently: the debate concerning trade in cultural products, which culminated in the development of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions. An analysis of this debate suggests a number of ways in which the goals of multilateral action and the protection of linguistic diversity may come into conflict within systems of global governance. It also raises broader issues of how the international system manages diversity and plurality, and poses fundamental questions as to who is represented in that system.

In conducting this analysis, my aim is not to provide a comprehensive overview of the way in which linguistic diversity is addressed within the multilateral system. Nor do I seek to draw conclusions, or make definitive recommendations, as to how the tension between linguistic diversity and multilateralism should best be managed within the UN and EU. To do so would require a much more detailed study than the scope of this article allows. My goal is therefore a more modest one: to identify the sorts of issues which arise in this context, and thus to expose a range of concerns about language in the international system which otherwise tend to be overlooked.

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4 See for example A Geddes "Immigrant and Ethnic Minorities and the EU's 'Democratic Deficit'" (1995) 33 J Com Mar St at 197.

II Language in the UN and EU

A What are the Language Policies of the UN and EU?

At the outset I should note that the language policies and practices within individual offices of the UN and EU are varied and complex, and a detailed analysis of the use of language within these organisations as a whole is beyond the scope of this article.[5] In what follows, I therefore focus on the official language policies of the major institutions of the UN and EU. I also make some general observations about how these policies operate in practice.

The San Francisco Conference established that the UN would have five official languages and two working languages. Chinese, English, French, Russian and Spanish were the official languages, with English and French serving as working languages also. This distinction between official and working languages was a traditional feature of the language policies of many international organisations. Although these terms have slightly different meanings within each organisation, the essence of the distinction is that all documents and speeches should be translated into each of the working languages, whereas only important documents and speeches need to be translated into each of the official languages. Interestingly, although the general linguistic framework of five official and two working languages was established by the San Francisco Conference, individual UN bodies have subsequently established their own rules of procedure concerning language use.

The language policies of the UN General Assembly are contained in section VIII of the General Assembly's Rules of Procedure. These initially provided for the five official and two working languages foreseen by the San Francisco Conference. However, over time, each of the official languages was also granted the status of "working language", such that there is now no practical distinction between the two.[6] Further, following lobbying by a number of Arab states, Arabic was adopted as an official and working language of the General Assembly in 1973.[7] Thus, Rule 51 of the Rules of Procedure now states the official language policy of the General Assembly as follows: "Arabic, Chinese, English, French, Russian and Spanish shall be both the official and the working languages of the General Assembly, its committees and its subcommittees." Rules 52 to 57 then set out in more detail the effect of this policy: essentially, speeches to the General Assembly, summary records, resolutions and other documents should all be available in all six "languages of the Assembly". In addition, Rule 53 provides that a representative may make a speech in a language other than a language of the Assembly, but he or she must provide for interpretation into one of the

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5 For a detailed analysis of the language policies and practices of international institutions, see M Tabory *Multilingualism in International Law and Institutions* (Sijthoff and Noordhoff, Alphen aan den Rijn, The Netherlands, 1980).

6 Ibid, at 7-11.

7 See GA Res 3190, UN GOAR, 28th sess, 2206th plen mtg; GA Res 3191, UN GOAR, 28th sess, 2206th plen mtg (1973).

six official languages (and the Secretariat will then provide for interpretation from this language into the other five). Rule 57 further provides that "[d]ocuments of the General Assembly, its committees and its subcommittees shall, if the Assembly so decides, be published in any language other than the languages of the Assembly or of the committee concerned."

The Security Council's Rules of Procedure reflect those of the General Assembly. Chapter VIII of the Rules, dealing with language, provides, in Rule 41, that "Arabic, Chinese, English, French, Russian and Spanish shall be both the official and the working languages of the Security Council". Rules 42 to 47 mirror the equivalent rules of the General Assembly.

Other UN bodies operate in a more limited number of languages. For example, the working languages of the UN Secretariat are primarily English and French.[8] And the Economic and Social Council uses only English, French and Spanish as working languages. Rule 32 of the Council's Rules of Procedure provides that "Arabic, Chinese, English, French, Russian and Spanish shall be the official languages and English, French and Spanish the working languages of the Council". Similarly, the language policy of the International Court of Justice, set out in article 39 of the Statute of the Court, is that "[t]he official languages of the Court shall be French and English". Article 39(3) goes on to provide that the Court "shall, at the request of any party, authorize a language other than French or English to be used by that party." However, Article 51 of the Rules of the Court provides that, in such cases, the party must also provide a translation into French or English. Tabory notes that these language requirements are strictly enforced by the Court, which has more than once requested states to attach a translation in one of the official languages to correspondence submitted to the Court in a non-official language.[9]

Thus, while the UN has six official languages, the language policies of some of its organs allow for the use of fewer languages. Further, in practice, a more limited number of languages dominate in the day to day work of the UN. The Secretary-General has noted the "tendency for a de facto lingua franca to emerge at each duty station"[10] within the UN Secretariat. This is so that staff members within that duty station can communicate with each other most easily and effectively. Further, the language of the city in which the particular office is located generally functions as the lingua franca for the office. The Office of Legal Affairs, based in New York, operates primarily in English, while those offices located in Geneva favour French.[11] Concerns have also been raised that, in practice, meetings are often held without interpretation, particularly in the case of less formal meetings.[12] A

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8 *Report of the UN Secretary-General on Multilingualism* at [17], A/58/363 (2003).

9 Tabory, above n 5, at 20.

10 *Report of the UN Secretary-General on Multilingualism*, above n 8, at [77].

11 Ibid, at [4]-[5].

12 Ibid, at [20]-[22]; *Report of the UN Joint Inspection Unit on the Implementation of Multilingualism in the United Nations System* at [39]-[40], A/58/93 (2003).

similar concern is that material posted on UN websites is overwhelmingly in English.[13] This has implications for the language used within UN agencies. The Joint Inspection Unit has noted that "[q]uite often, irrespective of whether there are other working languages defined for the secretariats, English is overwhelmingly the language required to access information online."[14] As a result of these and other factors, very few languages are used in the daily operations of the UN, with English and, to a lesser extent, French, clearly dominating. The Joint Inspection Unit cites the operation of the United Nations Development Programme (UNDP) as just one example of this process:[15]

> The secretariat of UNDP admitted that the lack of linguistic parity or equal treatment invariably meant that English was used at the expense of other languages, both in official and unofficial situations, and both in working languages and official languages.

The UN is increasingly aware of these limitations in terms of the number of languages used in its work. Since its inception, the General Assembly has drawn attention to the need to allow for use of all the official languages of the UN, and since the mid-90s it has become increasingly preoccupied with the need for multilingualism.[16] It has repeatedly adopted resolutions, most recently in September 2009, "emphasizing the importance of multilingualism in the activities of the United Nations" [17] and calling on the Secretary-General to take steps to enhance the use of different languages within the UN system. In 2003, in response to a 2002 request by the General Assembly,[18] the Secretary-General prepared a report on steps taken to implement the General Assembly's resolutions on multilingualism,[19] and that same year, the Joint Inspection Unit produced a report on the implementation of multilingualism in the UN system.[20] Further, in 2008, in response to General

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13 *Report of the UN Secretary-General on Multilingualism*, above n 8, at [24].

14 *Report of the UN Joint Inspection Unit on the Implementation of Multilingualism in the United Nations System*, above n 12, at [35].

15 Ibid, at [41].

16 See for example GA Res 2241 B, UN GOAR, 21st sess, 1501st plen mtg, (1966); GA Res 42/207 C, A/RES/42/207C (1987); GA Res 50/11, A/RES/50/11 (1995); GA Res 52/23, A/RES/52/23 (1997); GA Res 54/64, A/RES/54/64 (1999), GA Res 56/262, A/RES/56/262 (2002); GA Res 59/309, A/RES/59/309 (2005); GA Res 61/244, A/RES/61/244 (2006), GA Res 61/266, A/RES/61/266 (2007); GA Res 63/100B, A/RES/63/100B (2008); GA Res 63/248, A/RES/63/248 (2008); GA Res 63/280, A/RES/63/280 (2009); GA Res 63/306, A/RES/63/306 (2009).

17 GA Res 63/306, above n 16, preamble.

18 GA Res 56/262, above n 16.

19 *Report of the UN Secretary-General on Multilingualism*, above n 8; *Report of the UN Joint Inspection Unit on the Implementation of Multilingualism in the United Nations System*, above n 12.

20 *Report of the UN Joint Inspection Unit on the Implementation of Multilingualism in the United Nations System*, above n 12.

Assembly resolutions of 1999 and 2007,[21] the Secretary-General appointed a Coordinator for Multilingualism (Under-Secretary-General Kiyo Akasaka).[22] As a result of measures such as these, there is considerable concern within the UN to implement language policies in a fair and inclusive manner. In particular, emphasis is placed on the need to achieve full parity among the six official languages in terms of material available on websites,[23] recruitment policies,[24] translation of documents,[25] and so on, "with the aim of eliminating the disparity between the use of English and the use of the five other official languages".[26]

In contrast to the UN, which has a relatively small number of official languages, the EU has 23 official and working languages. These consist of the national languages of all 27 member states.[27] Equality of the languages of the member states has been a cornerstone of EU language policy. Under article 314 of the Treaty Establishing the European Community, the wording of the Treaty is equally valid in all 23 languages cited in that article. Further, article 21 of the Treaty provides that every citizen of the EU may write to the EU institutions in any of the languages referred to in article 314, and is entitled to receive an answer in the same language. This principle of equality is reinforced by Council Regulation 1/58 of 1958, which (as amended) provides that the 23 languages referred to in article 314 of the Treaty shall be the official and working languages of the EU institutions,[28] and that individuals and member states are entitled to communicate with the EU institutions in any of these 23 languages.[29] Under the original versions of the Treaty and the 1958 Council Regulation, there were of course only four official languages (Dutch, French, German and Italian), those being the languages of the original six member states. However, over time, as the Union increased in size to its current 27 members, the list of official languages was amended accordingly.

The EU's formal language policy therefore requires the use of a large number of official languages. In practice, however, a number of restrictions on this inclusive language policy have

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21 GA Res 54/64 and 61/266, above n 16.

22 See *Statement of the UN Secretary-General* SG/A/1138 (2008).

23 GA Res 63/306, above n 16, at [17].

24 Ibid, at [25-29].

25 Ibid,at [14(a)].

26 Ibid.

27 The following is only a brief introduction to the language policies of the EU. For a more detailed consideration of these issues, see RL Creech *Law and Language in the European Union: The Paradox of a Babel "United in Diversity"* (Europa Law, Groningen, 2005).

28 Council Regulation 1/58 of 1958, art 1.

29 Ibid, art 2.

emerged, particularly as the number of official languages has grown from four to 23. First, the number of languages used for the internal work of the EU institutions is very limited. The de facto working languages of the EU are English, French, and German.[30] However, there is evidence that German is actually very rarely used.[31] In fact, since the UK and Ireland first joined the European Community in 1973, English has become increasingly dominant, in part because many newer member states prefer English to French. Secondly, in a practical sense, the requirement that EU institutions communicate with citizens in the language of the citizen's choice is affected by the fact that one of the most common ways in which citizens will interact with the EU is online, and yet online information is not always equally available in all the official languages. Again, English will tend to dominate in terms of the availability of online material, and material in the languages of some of the newer member states may be limited.[32] Thirdly, over the past decade, the requirement that EU institutions use the language of the citizen's choice has been challenged by certain EU agencies,[33] and the requirement has been read down by the European Court of Justice. In the case of *Kik v OHIM*,[34] a Dutch trade mark attorney challenged a decision of the Office for Harmonisation in the Internal Market (OHIM) to recognise only English, French, German, Italian and Spanish as its working languages, and to require applicants for Community trademarks to specify one of these as the language in which OHIM will communicate with them. OHIM, as an EU agency, was not one of the institutions required by article 21 of the Treaty to communicate with citizens in any of the 23 official languages. However, the applicant argued that it was nonetheless required to do so as the principle of equality of language laid down in Regulation 1/58 was a principle of Community law from which no derogation was allowed. The European Court of Justice dismissed this argument. In doing so, it limited the scope of the principle of language equality within the EU.[35] As a result, as Urrutia and Lasagabaster conclude, "the principle of equality of languages on which European multilingualism is founded is relative rather than absolute".[36]

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30 I Urrutia and I Lasagabaster "Language Rights as a General Principle of Community Law" (2007) 8 German Law Journal 479 at 482.

31 See "EU Translation Plan Provokes Protest" *BBC News* (United Kingdom, 14 August 2001) <http://news.bbc.co.uk>.

32 *Communication from the European Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: A New Framework Strategy for Multilingualism* (COM(2005) 586 final, 22 November 2005) at 13.

33 Case C-361/01P *Kik v OHIM* [2003] ECR I-8283; Case C-160/03 *Kingdom of Spain v Eurojust* [2005] ECR I-2077.

34 *Kik v OHIM*, above n 33.

35 NN Shuibhne "Does the Draft EU Constitution Contain a Language Policy?" (paper presented at the II Mercator International Symposium: Europe 2004: A New Framework for All Languages?, Tarragona - Catalunya, Spain, 2004).

36 Urrutia and Lasagabaster, above n 30, at 482.

Like the UN, the EU is increasingly aware of these limitations and is concerned to address them and to promote multilingualism in its activities. This has particularly been the case since the accession, in 2004, of 10 new member states, which resulted in the introduction of nine new official languages.[37] In 2005, for example, the European Commission released its first-ever Framework Strategy for Multilingualism, committing itself to "establishing a pro-active multilingual communication policy", under which it will, in particular, "enhance its on-line information in the official languages and improve the multilingual nature of its many websites".[38]

From this brief survey of the linguistic practices of the UN and EU, it is evident that the language policies of these organisations are varied, having evolved to meet the particular needs of each individual institution. Nonetheless, it is possible to identify three common elements of these policies which are relevant for our purposes. The first, and most obvious, is that the UN and EU function in a limited number of official languages, and with an even more limited number of de facto working languages. From the analysis above, it seems that, in practice, offices within these organisations effectively function in one or two languages only. The second point to note is the dominance of English and, to a lesser extent, French, among these de facto working languages, and in the operations of these institutions generally. Thus, in spite of the diversity of states represented within the UN and EU, the linguistic practices of these bodies overwhelmingly favour the languages of two dominant European powers. Similar concerns are raised by the fact that the national languages of the five permanent members of the Security Council constitute four of the six official languages of the UN. Thirdly, although the UN and EU are aware of the limitations of their language policies, and have implemented policies to encourage the use of a greater number of languages, particularly in their communications with the public, the focus of these policies is on expanding use of *official* languages. Thus, within the UN, the focus of efforts regarding multilingualism is on achieving "full parity among the six official languages",[39] rather than extending the availability of material in non-official languages. This approach is even more evident within the EU, with the Commission's Framework Strategy for Multilingualism not mentioning non-official languages at all. As a result, the "consecrated status" of official languages is enhanced and confirmed by measures to increase multilingualism within these institutions, and non-official languages tend to be excluded from these efforts to improve access. With these three points in mind, let me turn now to consider how they may be problematic from the perspective of facilitating participation in these multilateral institutions.

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37 See for example *Communication from the European Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: A New Framework Strategy for Multilingualism*, above n 32; *Council Conclusions of 22 May 2008 on Multilingualism* 2008/C 140/10 (2008).

38 Ibid, at 13.

39 See for example GA Res 63/306, above n 16, at [17].

B What is the Effect of these Language Policies?

It is tempting to jump to the simple conclusion that the language policies of the UN and EU exclude groups who do not speak the relevant official languages from effective participation in these institutions. In fact, it could be argued, the language policies of these bodies favour participation by those with knowledge of English and French, at the expense of those with different language skills. And it could be concluded that this represents a shortcoming of these institutions, an example of how linguistic diversity presents an obstacle to multilateralism. However, such an analysis is clearly too simplistic. In order to draw such conclusions, we need to consider more carefully *how* the language policies in question might function to exclude certain groups from participation in these organisations. And, more fundamentally, we need to ask *why* such exclusion matters.

This is where we return to the debate about the "democratic deficit" within the UN and EU.[40] Through this debate, and the significant literature on the issue of global democracy which has developed as a result, there has emerged a consensus that the UN and EU should, to the greatest extent possible, function in a democratic way. In other words, democratic governance is now seen as central to the legitimacy of these institutions. From this perspective, the exclusion of particular groups from effective participation in the work of international institutions, whether on the basis of language or otherwise, is a problem because it threatens the legitimacy of multilateral systems of global governance. If democracy is understood, in general terms, as popular participation in collective decision-making on the basis of equality,[41] then all those affected by the work of these institutions should have equal opportunity to participate in them.

Having thus established *why* exclusion is problematic from the perspective of multilateralism, let me turn now to consider in more detail *how* the language policies of the UN and EU may function to exclude particular groups from democratic participation in the work of these institutions. It is important here to make a fundamental point: language is the means by which we communicate with each other, and therefore the means by which we participate in processes of collective decision-making. Language and democracy are thus inextricably linked. Theories of deliberative

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40 The literature on this issue is substantial. For some examples of the various positions within this debate, see for example RA Dahl "Can International Organizations be Democratic? A Skeptic's View" in D Held and A McGrew (eds) *The Global Transformations Reader: An Introduction to the Globalization Debate* (Polity Press, Cambridge, 2003) 530; D Held *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance* (Polity Press, Cambridge, 1995); FW Scharpf *Governing in Europe: Effective and Democratic?* (Oxford University Press, Oxford, 1999); A Verhoeven *The European Union in Search of a Democratic and Constitutional Theory* (Kluwer, The Hague, 2002).

41 Of course, the term "democracy" is capable of bearing multiple meanings, of referring variously to different models of political participation and to different ideas about collective decision-making. However, as political theorist David Beetham has demonstrated, it is possible to identify, within these different understandings of the term, a common core idea of democracy: popular control over collective decision-making on the basis of equality: D Beetham *Democracy and Human Rights* (Polity Press, Cambridge, 1999), at 4-5.

democracy offer further insights into this relationship between language and democracy.[42] Deliberative models of democracy, also known as communicative or "talk-centric" models, tie democratic legitimacy to the processes of discourse and deliberation through which public consensus is created. It is through rational-critical debate within an informed "public sphere" that societies are able to reach consensus as to what course of action is best.[43] Language assumes enormous significance under such theories of democracy, for language is the medium through which the discourse and dialogue which ensures democratic legitimacy occurs. This gives us an important insight into why the languages used in the UN and EU matter: those who do not speak official or working languages may be marginalised within public discussion and debate, and therefore excluded from effective democratic participation.

Investigating this idea of exclusion more closely, it is possible to identify two different ways in which language may function to exclude particular groups from effective participation in the work of international bodies like the UN and EU. The first is practical: those who are unable to speak or understand the language in which debate within these institutions takes place will be unable to take part in that debate. The second is symbolic: to the extent that language is reflective of identity, or is, more simply, an aspect of who we are, the absence of our language within these organisations can be seen as a symbolic form of exclusion.

Turning first to consider how language policies can exclude participation in a practical sense, it is evident that those who are unable to speak one of the official or working languages of the UN or EU will have difficulty participating in the work of those institutions. These practical difficulties manifest themselves in different ways and in different contexts. The first, and perhaps most obvious, is that state representatives who do not speak a required official language, or do not speak it well, will be unable effectively to present their state's position in negotiations and debate. The full, and equal, participation by all states in international decision-making within the UN and EU is fundamental to the democratic nature of these institutions. And yet the language policies of these bodies may effectively marginalise state representatives who do not have the requisite language skills. The UN Joint Inspection Unit has noted that representatives of member states "tend to use mostly English during informal negotiations", which may "marginalize some linguistic groups and

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42 Two of the best known models of deliberative democracy are those developed in the work of Habermas (see especially J Habermas *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Polity Press, Cambridge, 1996)) and Rawls (see his theory of public discourse in J Rawls *A Theory of Justice* (Oxford University Press, Oxford, 1999)). For an excellent summary of theories of deliberative democracy, as they relate to language in particular, see W Kymlicka and A Patten "Introduction" in W Kymlicka and A Patten (eds) *Language Rights and Political Theory* (Oxford University Press, Oxford, 2003) 1 at 13-16.

43 See generally J Habermas *The Structural Transformation of the Public Sphere* (Polity Press, Cambridge, 1989).

particularly developing countries".[44] This is particularly the case given that interpretation is often not provided at such meetings.[45] According to the Joint Inspection Unit, it is argued "that such informal meetings without interpretation increase the efficiency of the intergovernmental deliberative process", but "it can also be argued that this trend thwarts the overall aim of a multilateral organization and may seriously limit the effective participation/contribution of some Member States to the legislative process".[46]

Secondly, language requirements affect who can be employed to work in the offices of the UN and EU. While major decision-making within these institutions takes place at the intergovernmental level, the daily decision-making and work of these organisations is carried out by their employees. As a result, language requirements for appointment dramatically influence who is able to participate in the daily work of these bodies. In general terms, those who do not speak one of the official languages of these institutions will usually be unable to obtain positions within them. And in practice, additional language requirements further limit who may be eligible. As noted above, different agencies within international institutions generally operate in a limited number of working languages, in which case knowledge of one of these languages will be required for employment with these agencies. Such requirements may be official or unofficial. For example, there is no official requirement that judges of the International Court of Justice speak both English and French. However, the fact that these are the official languages of the Court, such that proceedings before the Court are always conducted in one of these languages, effectively demands that judges are able to speak both these languages, in order to understand the proceedings before them. Similarly, the general policy of the UN Secretariat officially requires employees only to be proficient in any one of the two working languages (that is, in English *or* French). In practice, however, the particular position in question may specifically require proficiency in English, thereby excluding individuals whose proficiency is in French, and vice versa.[47] Further, particular duty stations may tend to work in only one language, with the result that preference will be given, when recruiting a new member of the team, to individuals who speak that language. More generally, recruitment practices may also be affected by the linguistic backgrounds of those making appointments. Thus, the UN Joint Inspection Unit has noted that:[48]

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44 *Report of the UN Joint Inspection Unit on the Implementation of Multilingualism in the United Nations System*, above n 12, at [48].

45 According to the General Assembly, "the principle of equality of the official languages is being called into question with increasing frequency by the holding of so-called 'low-cost' informal meetings": GA Res 50/11 preamble, A/RES/50/11 (1995).

46 *Report of the UN Joint Inspection Unit on the Implementation of Multilingualism in the United Nations System*, above n 12, at [39].

47 Ibid, at [50].

48 Ibid, at [74].

> Some staff members expressed the view that the language imbalance in recruitment patterns, with preference being given to English-speaking candidates, was partly attributable to the language mix apparent among senior human resources managers.

Other recruitment practices of international organisations may also affect employment patterns. For example, concern has repeatedly been expressed within the UN that jobs are advertised in English first, and that therefore English-speakers have an advantage.[49] Similar concerns about recruitment policies have been raised within the context of the EU. For example, in 2003, Spain complained to the European Court of Justice when Eurojust, an EU body designed to improve cooperation between member states in relation to law enforcement, advertised positions but stipulated that applicants needed to have a good knowledge of English and French in order to apply.[50]

Thus far, I have focused on how language policies and practices of the UN and EU restrict democratic participation by certain linguistic groups, and therefore affect state participation in the work of these institutions. I have therefore implicitly conceptualised "democracy" in terms of participation by states and other groups in processes of international decision-making. However, there is now a significant literature suggesting that a wider view of democracy should be adopted at the international level, requiring direct involvement by *individuals* in the work of international institutions, to enhance the transparency, accountability and legitimacy of these organisations.[51] Of course, this may be seen to represent an overly idealistic view of the role of the individual in the work of international institutions. However, two factors suggest that we should, at least briefly, take this view of democracy into account when assessing the impact of language on democratic participation in the UN and EU. The first, and most compelling, is that these institutions themselves have indicated that they see direct participation by individuals in their work as central to their legitimacy. As early as 1995, the UN Commission on Global Governance[52] suggested the creation of a "world assembly", a new UN institution directly elected by citizens of the world.[53] Although

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49 Ibid, at vi; *Report of the UN Secretary-General on Multilingualism*, above n 8, at [8].

50 Case C-160/03 *Kingdom of Spain v Eurojust* [2005] ECR I-2077.

51 This is particularly evident in work on the democratic deficit within the EU, where it has led to, for example, calls to increase the power of the European Parliament: see for example S Williams "Sovereignty and Accountability" in RO Keohane and S Hoffmann (eds) *The New European Community* (Westview, Boulder, Colorado, 1991); J Lodge "The European Parliament and the Authority-Democracy Crisis" (1994) 531 Annals of the Am Academy of Pol and Soc Science 69. Regarding global or transnational democracy more generally, see the work on radical democratic pluralism: for an excellent summary of this work see A McGrew "Models of Transnational Democracy" in A Carter and G Stokes (eds) *Democratic Theory Today* (Polity Press, Cambridge, 2002).

52 The Commission was established in 1992 with the support of, and financed by, the UN.

53 Commission on Global Governance *Our Global Neighbourhood: The Report of the Commission on Global Governance* (Oxford University Press, Oxford, 1995).

this has not eventuated, the UN has implemented a number of measures to enhance involvement by individuals and civil society in its work. For example, procedures for individual "youth delegates" to the UN have been established because "[p]articipation in decision-making is one of the key priority areas of the UN's agenda on youth".[54] And, under the slogan "It's Your World",[55] a number of outreach programmes have been implemented to inform citizens about the work and relevance of the UN.[56] Interestingly, the UN has specifically noted the relevance of language in this context: in December 2009 the UN Coordinator for Multilingualism issued a statement concerning the need for material on the internet to be available in a greater number of languages, noting that "[o]ur aim in all of this is to inform and engage civil society – in their own languages – on the work of the United Nations and how it affects their daily lives".[57] Recognition of the need for individual interaction and participation is even greater within the EU, where European legislation directly affects the rights and responsibilities of individual citizens.[58]

The second reason that we should consider democracy in terms of individual participation in the work of the UN and EU is that, even if we are sceptical about the necessity, or possibility, of individuals participating in these organisations *generally*, we might nonetheless accept that there are *particular* aspects of their work which individuals should be able to find out about and participate in. While it is impractical for individuals to become involved in the negotiation of Security Council resolutions, for example, it was clearly important for indigenous peoples to be involved in the drafting of the UN Declaration on the Rights of Indigenous Peoples. And individuals who feel their human rights have been violated by their governments need access to information on how to bring complaints to UN bodies such as the Human Rights Committee. Similarly, within the EU, individuals need information on how existing and proposed EU legislation will affect them. Those whose businesses will be affected by amendments to EU merger control legislation, for example, need to find out about proposed changes and be given the opportunity to present their views. Ordinary citizens need to know their rights under EU law, such as rights to seek employment or establish their own business in other EU member states, in order to challenge governments that

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54 See Youth and the UN "Youth Delegates to the United Nations" <www.un.org/youth>.

55 See UN <www.un.org>.

56 One fascinating example is the use of screenings and discussion of *Battlestar Galactica*, relating the issues raised in the series to the work of the UN: see "UN and Battlestar Galactica Host Discussion of Human Rights and Armed Conflict" *UN News Centre* (17 March 2009) <www.un.org/News>. I am grateful to Charlie Peevers for bringing this particular example to my attention.

57 UN Coordinator for Multilingualism, Kiyo Akasaka, quoted in "Top UN Official Stresses Need for Internet Multilingualism to Bridge Digital Divide" (14 December 2009) *UN News Centre* <www.un.org/News>.

58 This can be seen to lie behind the development of the concept of "citizenship of the Union", the expansion of the powers of the European Parliament, and the adoption of a range of measures to provide information to citizens concerning their rights in the EU: see generally Your Europe "Citizens" European Commission <http://ec.europa.eu>.

violate these rights. The need for individual participation in the UN and EU may be uneven, but that does not mean it is entirely absent.

Against this background, it is worth considering how the language policies of the UN and EU might affect participation by individuals in the work of these organisations. Quite obviously, individuals who do not speak one of the official or working languages of the UN or EU will have difficulty participating in the work of that institution, as they will have difficulty informing themselves about its activities. We have seen that most UN documents are available only in the official languages of the UN. And in practice, only important documents are translated into all six official languages; other, less formal working and discussion papers may only be available in English or French. While UN information centres seek to translate documents of particular relevance to certain groups into the language of those groups, this has only been done with respect to around 30 or 40 languages,[59] a very small proportion of the thousands of languages spoken worldwide. This problem of access to information becomes more significant when we consider that perhaps the most common way in which the average person would seek to access information about the UN, or other international organisations, is through the internet. And yet this is precisely the domain where international institutions struggle to make multilingual content available. As noted by the UN Coordinator for Multilingualism, the overwhelming dominance of English on websites means that individuals who do not speak English may have difficulty discovering even basic information about which international organisations and projects might be of relevance to them.[60]

Further, even if individuals are able to access information about the activities of the UN and EU which are relevant to them, they will have difficulty in communicating with those institutions if they do not speak one of the official languages. And in practice, if they wish to engage with the activities of these bodies in any depth, they will need to speak one of the de facto working languages of the relevant office. Say, for example, an individual chocolate manufacturer wished to ascertain how the proposed changes to the EU's famous "chocolate Directive", to allow vegetable fat rather than cocoa butter to be used in the manufacture of chocolate,[61] would affect his or her business. He or she would need to make inquiries with the relevant Commission personnel in the language spoken by those personnel. This becomes particularly significant in the context of oral, rather than written, communication. Documents may be translated. However, if an individual wishes to speak to the policy officer responsible for the development of the revised "chocolate Directive", the individual will need to speak one of the languages spoken by that policy officer.

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59 *Report of the UN Secretary-General on Multilingualism*, above n 8, at [68]. See also "Top UN Official Stresses Need for Internet Multilingualism to Bridge Digital Divide", above n 57.

60 "Top UN Official Stresses Need for Internet Multilingualism to Bridge Digital Divide", above n 57.

61 These changes were implemented in Directive 2000/36/EC relating to cocoa and chocolate products intended for human consumption [2000] OJ L 197/19.

In a practical sense, then, the language policies and practices of international institutions may exclude certain groups, and also individuals, from participating effectively in the activities of those organisations. More specifically, those who speak English, and, to a lesser extent, French, are at a clear advantage when it comes to participation in the work of these bodies. This raises a particular concern that those who are included in the international system are primarily from dominant European powers, while those from other parts of the world may be excluded. Such concerns can be seen to lie behind claims for Urdu or Hindi[62] and Bengali[63] to be included as official languages of the UN.

Thus far, I have focused on practical ways in which language policies may function to marginalise or exclude certain groups. However, as noted previously, exclusion may operate not only at a practical level, but also at a symbolic one, in that groups may feel that an organisation which does not use their language does not truly represent them. This sense arises from the fact that language is connected with identity. An analysis of the vast sociolinguistic literature on this topic is clearly outside the scope of this article. However, the general theme which emerges from this literature is that there is a connection between language and identity.[64] Although the precise nature of this connection is significantly contested,[65] in general terms, it seems clear that, at least in certain contexts, language plays a significant role in the construction of identity. This is particularly so with respect to group identity, as language can function as a boundary,[66] which separates, or distinguishes, one group from another:[67]

> If certain [language] varieties are indicative of certain interests, of certain backgrounds, or of certain origins, then they come to represent the ties and aspirations, the limits and the opportunities with which these interests, backgrounds, and origins, in turn, are associated.

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62 See material quoted in Tabory, above n 5, at 43.

63 See for example "Bangladesh calls for Bengali to be Official UN Language" *The Daily Times* (Pakistan, 28 September 2009) <www.dailytimes.com.pk>.

64 See for example the detailed discussion of the literature on language and identity in JE Joseph *Language and Identity: National, Ethnic, Religious* (Palgrave Macmillan, Houndmills, 2004).

65 Structuralist linguists, such as Chomsky, allow for only a very weak link between language and identity, as they believe that at a "deep" level all languages are the same. The opposing view is represented by the Sapir-Whorf hypothesis: namely, that different languages embody different ways of viewing the world. The link between language and identity is therefore fundamental, as language shapes the way in which we view the world, and ourselves. The vast body of literature falls somewhere between these two positions. In other words, it suggests that there is *some* relationship between language and identity, but that the relationship is more complex than the Sapir-Whorf hypothesis allows. See generally Joseph, above n 64.

66 See L Green "Freedom of Expression and Choice of Language" in W J Waluchow (ed) *Free Expression: Essays in Law and Philosophy* (Clarendon Press, Oxford, 1994) at 149.

67 JA Fishman *The Sociology of Language: An Interdisciplinary Social Science Approach to Language in Society* (Newbury House, Rowley, 1972) at 6.

If language is connected with identity, then institutions' choice of language assumes a particular symbolic significance, signalling who is included and excluded in the "identity" of the organisation. Groups whose languages are not used by the UN or EU may therefore feel a sense of exclusion, even if they are able to participate in the work of these bodies by learning other languages. Considering these issues at a domestic level, Rodriguez has noted how policies of official monolingualism cause speakers of non-official languages to feel alienated rather than "socially invested".[68] When their language is excluded from the public sphere, these groups feel less engaged and less inclined to participate in the life of their community, which has dangerous consequences for social cohesion and for public life generally. Conversely, according to Rodriguez, use of multiple languages in the public sphere is an important means of cultural recognition, a symbolic inclusion of different linguistic groups within the body politic as a whole.[69]

Similar phenomena can be observed at the international level. So, for example, in 2007 the Secretary-General of "La Francophonie", the international French-language organisation, raised concerns about the increasing dominance of English within the EU in the following terms:[70]

> Language is inseparable from democracy. The Union will not move forward without its people. The people of the Union will not move forward without their cultures, that is, without their identities.

Similar ideas emerged in the 60s and 70s in the context of the debate concerning the introduction of Arabic as an official language of the UN. The Arab states argued passionately for the inclusion of Arabic as an official language, on grounds that extended far beyond mere practicalities. Thus, they emphasised the "social and religious importance of Arabic … and the positive effect its adoption would have on the image of the United Nations".[71] In particular, they focused on the significance of Arabic to the religious identity of a large number of the world's peoples, in light of the fact that Arabic is the sacred language of the Koran. Thus, the representative of Egypt, speaking to the General Assembly on behalf of the 36 co-sponsors of the draft resolution to include Arabic as an official language "explained that the inclusion of Arabic was essential in order to achieve cultural universality of the United Nations, since it was the official language of nineteen sovereign States, was spoken by over 120 million people, and was the language of the Koran, held sacred by 700 million persons".[72] Other speakers also "based their arguments on the religious sentiment of Arabic as the torchbearer of Islam".[73] The significance of Arabic to cultural identity was also raised in the

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68 CM Rodriguez "Language and Participation" (2006) 94 Cal L Rev 687 at 722.

69 Ibid, at 728-730.

70 "Diouf: 'Language is inseparable from democracy'" *EurActiv* (2 October 2007) <www.euractiv.com>.

71 Tabory, above n 5, at 11.

72 Ibid, at 12.

73 Ibid.

debates, with "[r]epresentatives of nations as distant as Brazil, the Phillippines and Spain stress[ing] their common heritage with Arab culture".[74]

The sense of symbolic exclusion engendered where international institutions do not use the language of a particular group also accounts for the depth of feeling associated with moves, over the last decade, to make Irish an official language of the EU, in spite of the fact that very few, if any, Irish speakers do not also speak English.[75] It also explains why, in recent years, some European governments have vigorously challenged decisions by EU agencies to restrict the number of languages in which those agencies will communicate with the public.[76]

It can therefore be seen that, at both a practical and a symbolic level, the language policies of the UN and EU function to exclude particular groups from participation in the international system. And yet what is the alternative? It is obvious that, as a matter of necessity, these bodies can operate only in a limited number of languages. It is simply not possible for the UN, for example, to translate documents into over 6000 languages. Increasing the number of languages used by these organisations creates enormous difficulties: the massive cost of translation services, the problem of ensuring that employees are able to communicate effectively with each other in a multilingual workplace, and legal issues of how to interpret legislative texts which are equally authentic in a number of different languages. As a result, it is simply not possible for the UN and EU to communicate in every language, and so the selection of a restricted number of languages for use by these institutions is inevitable. In raising concerns about exclusion, I do not, therefore, seek to argue that international institutions should operate in every conceivable language. Nor do I claim that they should provide translation services such that every individual can communicate with them in the language of his or her choice. Rather, my argument is that the different types of exclusion suffered by groups whose languages are not used by international institutions should be more consciously taken into account in debates about language policy within these institutions. The detriment suffered by those who are excluded needs to be *balanced* against the practical difficulties associated with operating in a greater number of languages, and we need to be more attentive to the balances we are striking between practicality and inclusion.

At the same time, I should note that this idea of "practicality" itself requires close consideration. From the perspective of the UN and EU, it may well be most practical, or efficient, to operate in a

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74 Ibid.

75 See for example "Irish Language Recognised by EU" *BBC News* (United Kingdom, 13 June 2005) <http://news.bbc.co.uk>. Irish was recognised as an official language of the EU in 2005. Prior to that time, Irish had the more limited status of "Treaty language", that is, it was among the languages recognised in Article 314 of the Treaty Establishing the European Community, but was not recognised as an official language under Regulation 1/58.

76 *Kik v OHIM*, above n 33, in which the Greek government intervened to support the applicant's claim; *Kingdom of Spain v Eurojust*, above n 33.

limited number of languages. From this perspective, the cost of using a greater number of languages would outweigh the benefits of being able to communicate with more people in the language of their choice. However, if we shift perspective and consider the issue from the point of view of those whose languages are thereby excluded, the costs of such arrangements outweigh the benefits. These groups are precluded from participating fully in the work of the UN or EU, or are required to bear the costs of translation in order to do so. In this sense, limiting the number of languages used by multilateral institutions simply passes on the costs associated with the use of multiple languages, such that they are borne by speakers of non-official languages rather than by the international organisation. One person's practicality is another person's impracticality; arguments about what is "practical" inevitably presuppose a particular standpoint.

In view of this, we must also ask questions about *which* languages are chosen for use by the UN and EU, and how those choices are made. In most cases, as noted above, the dominant languages within these organisations are major European languages, particularly English and French. And within the UN, the choice of official languages largely favours the permanent members of the Security Council. Such linguistic practices can function to create *patterns* of inclusion and exclusion along geographical and political lines, favouring Western liberal democracies and major powers at the expense of other political systems and the developing world. In this sense, arguments about practicality are neither neutral nor innocent, but can function to advantage dominant groups and disadvantage others. "Efficiency" may be an apology for power. Concerns about practicality are not self-evident, but require careful scrutiny.

As a result, my aim in this article has been to highlight the costs inherent in limiting the number of languages in which the UN and EU operate, and to draw attention to the question of who pays those costs. In broad terms, I therefore suggest that we need to pay greater attention to the *differential* costs of language choice and to give greater consideration to how disparities could be reduced. This requires us to consider carefully the injustices associated with limiting the number of official languages of these organisations, and to weigh these costs against the practical difficulties associated with operating in a greater number of languages. In doing so, concerns about practicality should not obscure questions about which languages are chosen as "official", and who bears the costs and benefits of a particular language policy.

This conclusion highlights a more general point to emerge from the above discussion, namely that there is a tension between linguistic diversity and multilateralism. If choosing language policies requires us to *balance* the benefits of including different language groups in processes of global governance against the need for efficient international institutions, this suggests that the goals of accommodating linguistic diversity and encouraging effective multilateral action may be in conflict. In the next part of this article I explore how this tension between linguistic diversity and multilateralism plays out within the international system more broadly, by shifting my focus from the language policies of international institutions to international debates about the protection of linguistic diversity generally.

III The Tension between Multilateralism and Linguistic Diversity

A full analysis of multilateral debates relevant to the issue of linguistic diversity would be a substantial project. For the purposes of this article, I have therefore chosen to focus on one such debate which highlights a number of important points concerning the relationship between multilateralism and linguistic diversity. This is the debate concerning international rules on trade in cultural products, which culminated in the adoption of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

The inclusion of cultural items within the multilateral trade regime has long been controversial, as states have been concerned that liberalisation of trade in cultural products would lead to cultural homogenisation, with US films, television programmes and books becoming increasingly dominant, at the expense of other national cultural expressions.[77] From the earliest days of the General Agreement on Tariffs and Trade (GATT), an exception was included for cinematograph films, allowing states to establish screen quotas.[78] Similarly, during the Uruguay Round of trade negotiations, the European Communities and Canada sought to exempt the audiovisual sector from continued negotiations, and it was even suggested that this sector be excluded from the scope of trade regulation altogether.[79] Ultimately, however, these efforts failed and "the audiovisual sector (and indeed all cultural sectors, including the print and electronic media) were fully embraced by the GATS [General Agreement on Trade in Services] disciplines".[80] As a result, all cultural products were included within the trade liberalisation regime laid down in GATT and GATS.

Over time, however, states and others became increasingly concerned that the inclusion of cultural products within the framework of the multilateral trade regime was threatening cultural diversity. As a result, from 2002, a number of different groups started advocating for an international convention on cultural diversity.[81] The end result was the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, which was overwhelmingly adopted by the General Conference of UNESCO in 2005.[82] The Convention seeks to protect cultural diversity by requiring states to take measures to protect and promote such diversity within their territories. Significantly, for our purposes, the Convention protects linguistic diversity as "a

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77 See generally T Voon *Cultural Products and the World Trade Organization* (Cambridge Univeristy Press, Cambridge, 2007). See also ME Footer and CB Graber "Trade Liberalization and Cultural Policy" (2000) 3 J Int'l Econ L 115.

78 General Agreement on Tarriffs and Trade (opened for signature 30 October 1947, entered into force 1 January 1948), art 4. For further discussion of this point, see Footer and Graber, above n 77, at 117.

79 See Footer and Graber, above n 77, at 119-121.

80 Ibid, at 121.

81 See T Voon "UNESCO and the WTO: A Clash of Cultures?" 55 Int'l Comp LQ 635, at 637.

82 148 states voted in favour, with only two votes against and four abstentions. See further ibid, at 635.

fundamental element of cultural diversity".[83] This includes protecting linguistic diversity in "cultural expressions", including "cultural activities, goods and services".[84]

For the purposes of this article, there are three interesting points to note about the Convention and the circumstances surrounding its adoption. The first is that multilateral action, in the form of the world trade system and "globalisation" generally, was seen as a threat to linguistic (and cultural) diversity. The problem of increasing cultural homogenisation was framed in terms of a "showdown … between the homogenizing forces of economic globalization and unhindered free trade on one hand, and the protection of local, traditional cultures for the sake of diversity on the other".[85] The forces of globalisation, within which we must include multilateral action, and in particular the multilateral trade regime, were explicitly posited as the main threat to cultural diversity which the Convention needed to address. Thus, the Preamble to the Convention specifically notes that "processes of globalization … represent a challenge for cultural diversity" particularly "in view of risks of imbalances between rich and poor countries". The purpose of the Convention was therefore "to protect and promote the diversity of cultural expressions … against the sweeping tide of globalization".[86] And a focal point for the debate was how to protect cultural diversity against the threat posed by the multilateral trading system:[87]

> The major bone of contention in the negotiations was not about finding the most effective policy for different cultures to flourish. It was rather about how the new treaty – explicitly permitting the protection of cultural industries – would relate to existing free trade rules at the WTO.

The second important point to note is that the international community's response to the threat which multilateralism posed to linguistic diversity was to seek to re-establish the authority of states to take *individual* action to protect "the diversity of cultural expressions" within their borders. In other words, the protection of linguistic diversity was seen as possible only by states withdrawing, to some extent, from the multilateral system. Thus, the Convention seeks to protect cultural diversity by empowering each state to "adopt measures aimed at protecting and promoting the diversity of cultural expressions within its territory"[88] and, more generally, by requiring states to take action to protect cultural diversity. Throughout, the Convention seeks to "reaffirm the sovereign rights of

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83 Convention on the Protection and Promotion of the Diversity of Cultural Expressions (opened for signature 20 October 2005, entered into force 18 March 2007), preamble.

84 Ibid, art 6.

85 F Pinto "Book Review of *Blockbusters and Trade Wars: Popular Culture in a Globalized World*" (2004) 7 J Int'l Econ L 922 at 923.

86 J Pauwelyn "The UNESCO Convention on Cultural Diversity, and the WTO: Diversity in International Law-Making?" *ASIL Insight* (15 November 2005) <www.asil.org/insights>.

87 Ibid.

88 Convention on the Protection and Promotion of the Diversity of Cultural Expressions, above n 83, art 6(1).

States to maintain, adopt and implement policies and measures that they deem appropriate for the protection and promotion of the diversity of cultural expressions on their territory".[89] Article 2(2) specifically establishes this "sovereign right" as a "guiding principle" of the Convention. Even more significantly, article 8 of the Convention empowers states to take "all appropriate measures to protect and preserve cultural expressions" where those expressions are "in need of urgent safeguarding". The precise effect of this article, and in particular whether it could be used as a "shield" by states to escape their liberalisation obligations under GATT and GATS, has been the subject of much debate.[90] However, even if this article does not achieve such an effect, it is clear that the Convention as a whole positions states as the guardians of linguistic diversity, and authorises them to take individual action in order to protect linguistic diversity on their territories. The Convention can therefore be read as a statement that multilateralism cannot protect the "common [cultural] heritage of humanity";[91] that only states can protect our cultural heritage, which is in danger of being eroded by the multilateral system. In this way, concerns about the protection of cultural and linguistic diversity led states to pull back from the multilateral system, to try to establish mechanisms for the protection of diversity which would allow them to take individual, rather than collective, action.

The positioning of states as the key protectors of linguistic diversity is the third important point to which I wish to draw attention, because it has implications for *which* languages will be protected under the Convention scheme. The concern here is that the empowering of states to take "all appropriate measures"[92] within their territories encourages a general focus on the protection of the *national* culture, and national languages. This focus on national culture may obscure the diversity of culture and language *within* states, such that it is only the culture and language of dominant groups, rather than those of minorities within the state also, which is protected. Allowing states to take measures to protect national languages could in fact have an adverse effect on linguistic diversity. Take, for example, the Toubon Act in France, which requires the exclusive use of French in certain contexts, such as in public meetings.[93] It was enacted in the name of cultural diversity, to protect the French language from the increasing use of English in France. But it not only prohibits the use of

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89 Ibid, art 1(f).

90 Although a robust interpretation of the Convention might raise this possibility, the literature suggests that the role which the Convention will play in this area will likely be a more modest one, which will not directly affect states' liberalisation obligations under existing trade rules: see Voon, above n 81, and Pauwelyn, above n 86.

91 Convention on the Protection and Promotion of the Diversity of Cultural Expressions, above n 83, preamble.

92 Ibid, art 8(2).

93 See S May, *Language and Minority Rights: Ethnicity, Nationalism and the Politics of Language* (Longman, Harlow, 2001) at 161-162.

English; it also prohibits the use of French regional languages, such as Breton and Corsican, and the languages of immigrant groups, such as Arabic, Portuguese and Polish. Within France, it therefore confirms the dominance of French and functions to *limit* diversity.

In a similar way, focusing on the state's role in protecting linguistic diversity obscures the existence of linguistic communities that cross state borders, thereby backgrounding the need to protect these languages. Kurdish, for example, is widely spoken across a number of different states, but is not a national language of any. We might therefore ask serious questions about whether Kurdish will benefit from measures adopted under the Convention, given that the Convention requires such measures to be adopted by states. The concern here is that, in focusing on national culture, and affirming the centrality of the state, the Convention may ultimately only protect particular forms of culture, namely those of dominant groups within society. The cultural products, and languages, of minorities within and across states are likely to be overlooked. Thus, even this form of multilateral agreement, which is designed to protect languages by empowering states to take appropriate action, may ultimately be problematic from the perspective of the protection of linguistic diversity. This demonstrates that the tension between multilateralism and linguistic diversity plays out in a number of different ways within the international system, and is not easy to resolve.

The fact that the Convention gives states a central role in the protection of linguistic diversity thus raises questions about whose languages are likely to be protected under this system. It also poses broader questions about who is represented in multilateral discussions on the protection of linguistic diversity. Specifically, it raises the concern that if it is only states which are represented in these discussions, then the multilateral system will tend only to protect the languages of states, thus excluding the languages of minorities within states. This brings us back to the discussion of inclusion and exclusion in the previous section of this article. Specifically, it suggests a deeper problem with multilateralism, a more fundamental way in which the international system excludes particular linguistic groups, namely the fact that the system is set up to accommodate the language interests of states rather than of peoples.

It is trite to say that states are the primary subjects of international law, and that within the international system states are the primary participants in international organisations. The UN is, quite clearly, an organisation of states. The same can be said of the EU and other international bodies. This basic feature of the international system has significant implications for its treatment of language issues and, in particular, for the language policies of international institutions. Since the members of these organisations are states, it is the languages of states which are to be accommodated in the operations of their institutions. Thus, within the EU, it is "state languages", that is languages which are official throughout the territory of a state, which are the official languages of the Union.[94] Similarly, within the UN, a factor in which languages are chosen as

94 Urrutia and Lasagabaster, above n 30, at 482.

official languages is the number of states of which the language is an official language. So, as noted above, one of the arguments made for the introduction of Arabic as an official language of the UN was that fact that it was "the official language of nineteen sovereign States".[95]

This means that languages which are not the official languages of states, such as languages spoken by minorities within states, are rarely used within international organisations. So, for example, within the EU, Catalan and Basque are not recognised as official languages, even though they have more speakers than official languages such as Danish and Finnish.[96] Further, the central role played by states within international institutions means that speakers of "minority" languages have no representatives to lobby on their behalf for the right to use their languages within international organisations. In the examples of lobbying efforts to make languages such as Arabic (within the UN) and Irish (within the EU) official languages, discussed in the second section of this article, it was clear that the leading proponents of these efforts were states. Similarly, within the EU, it was evident that complaints about EU agencies operating in only a limited number of languages were always made or supported by states. In all these cases, it was states that were responsible for challenging the language policies of international institutions. The structure of the international system, and the central role played by states within that system, thus functions to exclude linguistic minorities within states from effective participation in international institutions, both because their languages are not used within those bodies, and because they are excluded from the very debates about language policy which would enable them to argue for the inclusion of their languages. Of course, it could be argued that increased representation of minorities (linguistic or otherwise) is simply not possible within multilateral bodies. However, as noted in the previous section of this article, there is significant literature suggesting that international institutions need to provide for increased participation by sub-state entities. And institutions such as the UN and EU themselves claim to allow for participation by minority groups. Through bodies such as the Committee of the Regions and the European Bureau for Lesser-Used Languages (within the EU) and the Permanent Forum of Indigenous Peoples (within the UN), these organisations claim to include sub-state entities and minorities within their processes. Against this background, it is worth examining how the structure of these institutions, in spite of their goal of being inclusive, may nonetheless function to exclude linguistic minorities. And it is worth considering who benefits and who loses as a result of claims that it is "not practical" to include greater participation by such groups. Such examination reveals ways in which the structure of the multilateral system may fail to take adequate account of linguistic diversity within and across states, and so function to exclude linguistic minorities.

The above analysis demonstrates that there is indeed a tension between the current multilateral system and the accommodation of linguistic diversity. The international system generally, and international institutions in particular, are not set up to accommodate linguistic diversity, and as

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95 Tabory, above n 5.

96 Urrutia and Lasagabaster, above n 30, at 483.

result, various linguistic groups are excluded from participation in this system of global governance. Further, as the first two points to emerge from my analysis of the Convention demonstrate, this tension between multilateralism and linguistic diversity is fundamental and far-reaching, and reveals itself in a variety of ways. Within the context of the Convention debates about the protection of cultural heritage, multilateralism was characterised as a threat to linguistic diversity; and the need to protect linguistic diversity led to states pulling back from the multilateral system and seeking to take individual action. Thus, while multilateralism may threaten linguistic diversity, the reverse is also true: the challenges of linguistic diversity may ultimately threaten the multilateral system itself.

IV Conclusion

Some time ago *The New Yorker* printed a cartoon depicting two delegates at a UN meeting. They sit behind rows of representatives from different countries at what appears to be a General Assembly meeting, while various discussions take place. Clearly bored with the proceedings, one turns to the other and comments: "What is most depressing is that these platitudes are being simultaneously translated into five languages."[97]

This cartoon clearly raises the question of whether UN proceedings are of significance and are worth translating into five (now six) languages. However, through this article, I have sought to suggest that the questions we should be asking about the language policies of the UN are slightly different ones. I would argue that we need to think more deeply about why we only translate into six languages, which six we choose, and the consequences of those choices for representation and participation in the international system. Through an analysis of the language policies of the UN and the EU, I noted how, at both a practical and a symbolic level, these language policies may function to exclude certain individuals and groups from effective participation in processes of global governance within these institutions. In doing so, I sought to highlight the costs inherent in limiting the number of languages in which these organisations operate, and to draw attention to the question of who pays those costs. I concluded that, when considering questions of language policy, we need to weigh these costs against the practical difficulties associated with operating in a greater number of languages, and to ask fundamental questions about who wins and who loses under current linguistic arrangements.

This analysis raises the broader question of the relationship between multilateralism and linguistic diversity. In the second part of this article I explored how these two concepts appear to be in conflict, and considered how that conflict plays out within the international system, through an examination of the debate surrounding the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions. This demonstrated that the tension between multilateralism and linguistic diversity is fundamental, far-reaching and manifests itself in a variety of ways. It also

97 Reproduced in Tabory, above n 5, at XX.

revealed that the relationship between these two concepts is complicated by the central role given to states within the international order.

Two points emerge clearly from this analysis. The first is that linguistic diversity will present an ongoing challenge to multilateralism. The second is that a key aspect of this challenge will be to include equally all individuals and groups, regardless of linguistic background, in the work of multilateral bodies. This raises broader issues of how the international system manages diversity and plurality, and poses fundamental questions as to who is represented in that system. In this way, issues of language may provide a starting point for exploring broader questions of representation and participation, and more detailed consideration of how the international system accommodates the diversity inherent in a plural world.