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Remarks on Language and International Law

Abstract: The main assumption behind this study is that the relationship between language and international law is particularly interesting due to the complexity and special nature of this relationship when compared to national law. The author focuses on some selected issues connected with the fact that from the legal point of view the multiplicity of languages in international law is an important factor affecting its interpretation. Due to this, apart from the issue of the dominant position of the English language in international law, the major focus of the study is on the specific problems associated with the interpretation of international treaties. The study suggests that there are certain intrinsic tensions and contradictions involved in the relationship between language and international law. The dominant position of English language in international law is at odds with the principle of sovereign equality laid down in the UN Charter, which entails equal opportunities for all nations to participate in the global legal discourse. Moreover, the interpretation of plurilingual treaties involves significant problems when it comes to the interpretation of authentic texts made in various languages, which need to be reconciled. In turn, the tensions between the meaning of terms used in international legal norms and their corresponding meaning in national legislation are addressed through the use of the autonomous method of interpretation. Moreover, considering the growing importance of the legitimacy of international law, the role of the language of

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international law in this context is also considered. The problems related to the problems of language in the context of international law outlined in this study confirm the need for further continuous and in-depth research in this field.
Keywords: international law, language, interpretation of international law, autonomous interpretation.

General Remarks

It may appear obvious to observe that law is determined by language. It is true, however, that in whatever way law is perceived, it is primarily a linguistic phenomenon. Language can be said to be both a medium for the existence of the law and the form in which law is communicated. Given the primary significance of language for the existence and operation of law, it is no wonder that the relations between language and the law are often the subject of scholarly analysis. Indeed, the issue of the operation of law through language and the influence of law on language is the subject of a discipline called jurilinguistics. This encompasses, among other things, critical analysis of the relations that can be established between language and the law.[1]

The relationship between language and international law is particularly interesting, mostly because of the complexity of the links between these two phenomena and the specificity of this relationship as compared to national law. International law is supposed to regulate behaviour of the multilanguage international community, including primarily sovereign states as well as other actors, such as international organisations, non-governmental organisations, individuals, etc. This community is based on, inter alia, the principle of the sovereign equality expressed in Article 2(1) of the UN Charter which refers to states as sovereign members of the international community. This principle

1 Juan Jiménez-Salcedo, and Javier Moreno-Rivero, "On Jurilinguistics: the principles and applications of research on language and law", *Revista de Llengua i Dret / Journal of Language and Law*, no. 68. 2017: 3.

implies, *inter alia*, that, as C. Tomuschat observed, "all nations should have equal opportunities to participate in the global discourse on legal issues."[2]

Nowadays, according to some calculations by experts, more than 6,000 languages exist in the world.[3] International treaties are drafted in languages of state-parties and some language texts acquire the statues of authentic texts. There is no specific language of international law *per se*. From this perspective, the dominant position of the English language at the world level and in international law appears to be striking.[4] It seems to be at odds with the aforementioned principle of the sovereign equality underlying the position of the primary subjects of international law, namely states.

It is worth mentioning in this context that international law is itself considered as a new language for conducting international relations.[5] It may facilitate communication by providing commonly understood terms, institutions, etc. For example, it can be claimed that the language of international criminal law has provided assistance in categorizing the brutal atrocities committed during the Russian invasion on Ukraine of 2022, through such concepts as international crimes, war crimes, crimes against humanity or genocide. This is a very important aspect connected with the relationship between international law and language, and it is also closely related to the legitimacy of international law and the often-asserted claim that that international law is suffering from a legitimacy crisis.[6] The role of the language of international law should therefore also be considered in this context.

Considering the scope of issues connected with the relationship between language and international law, this study can by no means be regarded as ex-

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2 Christian Tomuschat, "The (Hegemonic?) Role of the English Language", *Nordic Journal of International Law* 86. 2017: 198.

3 Tomuschat, 197.

4 Tomuschat, 197.

5 See for example Dino Kritsiotis, "The Power of International Law as Language", *California Western Law Review* 34, no. 2. 1998: 398.

6 Mattias Kumm, "The Legitimacy of International Law: A Constitutionalist Framework of Analysis", *The European Journal of International Law* 15, no. 5. 2004: 907.

haustive. Instead, it focuses on some selected aspects connected with the fact that from the legal point of view the multiplicity of languages in international law is an important factor affecting its interpretation. Therefore, apart from the aforementioned issue of the dominant position of the English language in international law, the major focus of this study is on the specific problems associated with the interpretation of international treaties, given the fact that they are drafted in various languages, and some of these languages are authenticated. Another aspect of the language perspective of international law is suggested by the use by some international courts of the method of autonomous interpretation, which consists in assigning some concepts contained in international instruments a special meaning that is independent of the meaning that these concepts have in domestic law.[7] Some tensions between the language of international law and national law come to light through the application of this method, therefore it merits broader consideration. Moreover, the importance of the language of international law will be considered in the context of the debate on the legitimacy of international law. The latter topic is attracting increasing interest in the academic literature on international law and merits consideration in the context of the language of international law. The research methods used in this study are mainly the analytical method based on critical evaluation of existing legal texts and other documents and available information, as well as the method of linguistic analysis of legal texts referred to in the text.

The Dominant Position of the English Language in International Law

As the history of international law demonstrates, despite the existence of various national languages, some languages managed to acquire a preferred position in the realm of the "law of nations." For example, Latin was favoured in

7 John G. Merrills, *The Development of International Law by the European Court of Human Rights*. Manchester, 1995, 71.

international discourse and in international law until the middle of the 17th century. It is worth mentioning that the two peace treaties signed in October 1648 in the Westphalian cities of Osnabrück and Münster, which ended the Thirty Years War, were still drafted in Latin. Their translation into German was only made a few months later, assisted by private initiative.[8] Latin was replaced by French only in the second half of the 17th century, and the domination of French was not even undermined by the defeat of Napoleon by an international alliance. The prevailing influence of both Latin and French as European languages reflected to a large extent the position of international law as 'European' international law.[9]

It was only in the course of the 20th century that the monopoly of French was gradually undermined by English. In fact, the domination of English as the language of international law and international relations became particularly apparent after the end of the Second World War. The reasons for this development need to be seen from a wider perspective. The changes regarding the dominant position of Latin, and later French and English, reflected the changes in the balance of powers in Europe and in the world.[10] The domination of English was referred to by R. Phillipson as "linguistic imperialism."[11] This term clearly refers to British imperial politics, which managed to spread the English language all over the world. However, as some authors rightly observed, the dominant position of the English language after the Second World War was rather the effect of the process of globalisation encompassing the economy and other areas, and benefiting such countries as the United States.[12]

Irrespective of reasons which make it possible for a particular national language to become dominant, this domination, as it was already mentioned, is at odds with the principle of sovereign equality. A state whose national lan-

8 Tomuschat, 197.
9 Tomuschat, 197.
10 Tomuschat, 198–199.
11 Robert Phillipson, *Linguistic imperialism*. Oxford, 1992, 1.
12 Maria Dolecka, "Pozycja języka angielskiego w świecie", *Białostockie Archiwum Językowe*, no. 2. 2002: 53–54.

guage acquired the status of a dominant language in the international sphere evidently acquires a privileged position. C. Tomuschat is certainly right to note that: “A state that succeeds in elevating its national language to the status of preferred means of communication in international relations ensures for itself a massive advantage. It can make its voice heard without any difficulties of a semantic nature.”[13]

Moreover, it is important to note that the choice of language in the case of international law cannot be said to be neutral with regard to its consequences. This is because it determines to a large extent the way in which international law is made, interpreted, and applied.[14] The legal traditions behind the dominant language exerted their influence over the interpretation and application of law when the law was drafted in this particular language. With perhaps some exaggeration, some authors warn that using English in the international sphere threatens to make it into an instrument of political hegemony.[15] Due to this, it is advised, for example, that international lawyers have at least a passive knowledge of other traditional European languages in order to avoid a “déformation linguistique.”[16]

One of the consequences of the domination of English is that negotiations concerning international legal texts tend to be conducted in English. As a result, practical difficulties arise for those persons participating in negotiations for whom English is not their native language. They become disadvantaged at the stage when detailed, technical negotiations over the wording to be used in legal texts are under way. As J. Mowbray observed, when under pressure, it can be difficult for such persons, that is, non-native-speaking delegations, “to keep up with fast-moving negotiations and rapidly changing draft texts,

13 Tomuschat, 199.

14 Justina Uriburu, *Between Elitist Conversations and Local Clusters: How Should we Address English-centrism in International Law?*. Opinio Juris, 2.11.2020. <http://opiniojuris.org/2020/11/02/between-elitist-conversations-and-local-clusters-how-should-we-address-english-centrism-in-international-law/>, access: 28.04.2022.

15 Tomuschat, 196.

16 Tomuschat, 196.

a fact which offers a significant strategic advantage to English speakers."[17] In fact, a knowledge of English has become the *conditio sine qua non* of working as an international lawyer in international organisations, being a judge in international courts, or being capable of academic communication on the topic of international law. It is well known that publications in English tend to be more influential within the international legal canon than those published in languages which are less known, and native speakers of English certainly have a considerable advantage when it comes to having their views heard.[18]

On the other hand, as was already mentioned, no specific language of international law has been developed and international law as a legal system is bound to rely on the national language of a particular state or states. It is worth noticing in this context that, in general, attempts at creating an artificial, neutral language that could become a medium for international communication failed. By way of the main example, Esperanto, created by Ludwik Zamenhof, which managed to become the most popular artificial language, is nowadays almost completely forgotten.[19] In view of these developments it is difficult to consider an alternative to this particular language domination. Moreover, the domination of English in international law has to be perceived not in only in the area of international law and inter-state diplomacy. The English language is nowadays the modern *lingua franca*, the primary and global language enabling communication between various countries and nations. In the legal area this phenomenon has the advantage of facilitating communication among lawyers, and in particular international lawyers.

It is important to keep in mind all these pros and cons of the dominant position of the English language in international law and international practice. This awareness is of particular importance when it comes to the interpretation of international

17 Jacqueline Mowbray, *The future of international law: shaped by English*. *Völkerrechtsblog*, 18.06.2014, <https://voelkerrechtsblog.org/the-future-of-international-law-shaped-by-english>, access: 28.04.2022.

18 Mowbray.

19 Dolecka, 52.

law, which is considered in the further part of this work. As J. Mowbray rightly pointed out "if we truly want international law to function as a 'universal' system of global governance, equally applicable to and representative of all, then we need to be attentive to the *costs* of predominantly using one language in the international sphere, and to the important question of who pays those costs."[20]

The Interpretation of Treaties Drafted in Various Languages

The Vienna Convention of 1969,[21] which codified the customary norms already in force in the field of the law of treaties, adopted a special solution – a general rule of interpretation binding on the parties. According to Article 31(1) VCLT, "a treaty shall be interpreted in good faith in accordance with the normal meaning given to the terms of the treaty in their context and in the light of its object and purpose." This general rule is considered to be a compromise between different approaches to interpretation. It tends towards a textual approach, but takes into account the teleological approach and allows for some elements of the intentional approach.[22] As explained by the International Law Commission,[23] Article 31(1) VCLT contains three rules: "the first – interpretation in good faith – results directly from the principle of *pacta sunt servanda*. The second rule constitutes the heart of the textural approach: it is assumed that the parties had the intent resulting from the ordinary meaning of the expressions they use. The third rule is a rule of both common sense and good faith: the ordinary meaning of an expression cannot be determined in abstract terms, but has to be grounded in the context of the treaty and in the light of its object and purpose."[24]

20 Mowbray.
21 Hereinafter: VCLT.
22 Maria Frankowska, *Prawo traktatów*. Warszawa, 2007, 123.
23 Hereinafter: ILC.
24 Cited by Anna Wyrozumska, *Umowy międzynarodowe. Teoria i praktyka*. Warszawa, 2006, 335.

The specific feature of international agreements is that they are made in various languages. Bilateral agreements are usually drafted in the languages of both parties, and both languages are usually authenticated. The situation is different in case of multilateral agreements, which are often drafted in more than two authenticated languages. As was observed by the International Law Commission in 1966: "The phenomenon of treaties drawn up in two or more languages has become extremely common and, with the advent of the United Nations, general multilateral treaties drawn up, or finally expressed, in five different languages have become quite numerous."[25] This phenomenon of drafting treaties in various language versions was certainly enhanced by the increase in languages admitted or officially recognised by international organisations. Moreover, there is the growing requirement of states to use their own language in international relations.[26]

The advance of plurilingual treaties in the sphere international law has caused significant problems as regards the interpretation of such treaties. The term "authentication" used in the VCTL refers to the procedure by the text of a treaty is established as authentic and definitive. According to article 10 of the Vienna Convention, the text of a treaty is established as authentic and definitive: "(a) by such procedure as may be provided for in the text or agreed upon by the States participating in its drawing up; or (b) failing such procedure, by the signature, signature ad referendum or initialling by the representatives of those States of the text of the treaty or of the Final Act of a conference incorporating the text." The significance of the act of authentication is that states cannot unilaterally change the provisions of an authenticated treaty. If states which negotiated a given treaty do not agree on specific procedures for authentication, a treaty will usually be authenticated by signature, signature ad referendum or the initiating by the representatives of those states.

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25 International Law Commission, "Draft Articles on the Law of Treaties with commentaries 1966", *Yearbook of the International Law Commission* 2. 1966: 224.

26 Claude Schenker, *Practice Guide to International Treaties*. Bern, 2015, 16.

If a treaty was made in more than one language, the status of the different language versions for the purpose of interpretation may vary. Some language versions of a treaty may have the status of authentic texts while some may be recognized only as “official texts.” An “official text” can be defined as a text which has been signed by the negotiating States but not accepted as authoritative.[27] The authenticated texts of a treaty should not be confused with official or unofficial translations of a treaty. Such translations do not have the status of authenticated texts and are not binding in the international sphere. However, as A. Wyrozumska observed, such official translations may have some legal significance in the internal law of a state party to a treaty, as national law protects the rights of the individual derived from the officially published translation of a treaty even if it is incorrect.[28]

According to the Vienna Convention, authentic texts, in principle, are treated as equivalent for the purpose of interpretation. However, the relevant regulation in the VCTL is of a dispositive nature. Article 33 section 1 of VCTL provides that “when a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail.” The majority of treaties nowadays contain an express provision determining the status of the different language versions.[29] For example, article 111 of the United Nations Charter stipulates that its “Chinese, French, Russian, English, and Spanish texts are equally authentic.” The same provision is usually contained in a number of other treaties adopted under the auspices of the United Nations. In the case of regional treaties, the number of authentic texts is usually smaller. For example, American Convention on Human Rights was made in four authentic texts: Spanish, English, Portuguese and French, whereas the European Convention on Human Rights of 1950 provides that the English and French texts are equally authentic.

27 International Law Commission, 224.
28 Wyrozumska, 362.
29 Wyrozumska, 362.

The important consequence of the establishment of the authentic versions of a treaty is the presumption following from article 33 section 3 of VCLT, namely that the terms of the treaty are presumed to have the same meaning in each authentic text. The additional important rule of interpretation contained in the VCLT refers to the situation in which a comparison of the authentic texts discloses a difference of meaning which cannot be removed by the application of rules of interpretation contained in articles 31 and 32. In such a case, the provision of article 33 section 4 of VCLT provides that the meaning should be adopted which "best reconciles the texts, having regard to the object and purpose of the treaty." As the ICL remarked, in case of the interpretation of plurilingual treaties, the unity of the treaty and of each of its terms is of fundamental significance. This unity is achieved by linking the principle of the equal authority of authentic texts with the aforementioned presumption that the terms used in a text of a treaty are intended to have the same meaning in each text.[30] As may be expected, in practice discrepancies between various language texts appear quite often. As ICL remarked "the different genius of the languages, the absence of a complete *consensus ad idem*, or lack of sufficient time to co-ordinate the texts may result in minor or even major discrepancies in the meaning of the texts. In that event the plurality of the texts may be a serious additional source of ambiguity or obscurity in the terms of the treaty."[31] However, the presumptions provided in article 33.4 of VCLT implies taking every effort in order to find a common meaning for the texts before preferring one over another. As the ILC remarked: "The plurilingual form of the treaty does not justify the interpreter in simply preferring one text to another and discarding the normal means of resolving an ambiguity or obscurity on the basis of the objects and purposes of the treaty, *travaux preparatoires*, the surrounding circumstances, subsequent practice, etc. On the contrary, the equality of the texts means that every reasonable effort should first be made to

30 International Law Commission, 225.
31 International Law Commission, 225.

reconcile the texts and to ascertain the intention of the parties by recourse to the normal means of interpretation."[32]

The provisions on interpretation of the VCTL assume the principle of the harmonisation of various authentic texts. Moreover, since according to the VCTL, in the event of a divergence between authentic texts, the meaning which as far as possible reconciles the different texts shall be adopted, the provisions of the Convention give effect, as was remarked by the ICL, to the principle of the equality of texts.[33]

In connection with this, an important issue arises, namely whether there is some general rule that restrictive interpretation should be adopted in the event of divergence between authentic texts, as some jurists appeared to claim based on the remark by the Permanent Court Of International Justice in the *Greece v. Britain* case, i.e. the so called the Mavrommatis Palestine Concessions. The Court had to interpret, *inter alia*, the notion "public control" and "control public" used in the English and French authentic versions of the Palestine Mandate. The Court stated that:

"The Court is of opinion that, where two versions possessing equal authority exist one of which appears to have a wider bearing than the other, it is bound to adopt the more limited interpretation which can be made to harmonise with both versions and which, as far as it goes, is doubtless in accordance with the common intention of the Parties. In the present case this conclusion is indicated with especial force because the question concerns an instrument laying down the obligations of Great Britain in her capacity as Mandatory for Palestine and because the original draft of this instrument was probably made in English."[34]

32 International Law Commission, 225.
33 International Law Commission, 225.
34 *The Mavrommatis Palestine Concessions*, Judgement No. 2 of 30 August 1924, par. 41. <http://www.worldcourts.com/pcij/eng/decisions/1924.08.30_mavrommatis.htm>, access: 11.09.2022.

However, according to the ICL, the Court "does not appear necessarily to have intended by the first sentence of this passage to lay down as a general rule that the more limited interpretation which can be made to harmonize with both texts is the one which must always be adopted. Restrictive interpretation was appropriate in that case. But the question whether in case of ambiguity a restrictive interpretation ought to be adopted is a more general one the answer to which hinges on the nature of the treaty and the particular context in which the ambiguous term occurs."[35] In addition, international law scholars are of the opinion that in the Mavrommatis Palestine Concessions case the Court did not adopt the "mechanical restrictive interpretation" rule but instead it made reference to "the object and purpose of the treaty.[36]

In the Mavrommatis Palestine Concessions case the Permanent International Court of Justice gave priority to the English language version of the treaty. In this context it is important to remember that if a treaty was negotiated in one language and subsequently other language versions were also adopted as authentic, the negotiated version is considered to better reflect the intentions of the parties. As A. Wyrozumska obverved, in the Mavrommatis Palestine Concessions case the Permanent Court of Justice relied on the English text because it was the language in which the treaty had been negotiated. Although it is true that, according to article 33 section 4 of the VCTL, the various authentic texts of the treaties have to be harmonised, however, as A. Wyrozumska rightly pointed out, treating the text in a negotiated language as a primary text finds its justification in the reference to this text as an element of preparatory works, which is a supplementary means of interpretation.[37]

The need to reconcile various language versions of the authentic texts of a multilingual treaty poses a significant challenge in the process of interpreting international legal norms. However, a no less important challenge may occur if certain concepts contained in international norms have to be interpreted dif-

35 *The Mavrommatis Palestine Concessions*.
36 Wyrozumska, 362.
37 Wyrozumska, 362.

ferently from the equivalent concepts contained in national legislation. Such challenge is connected with the reference to the so-called autonomous interpretation by some international courts.

Autonomous Interpretation

International courts such as the European Court of Human Rights[38] and the Court of Justice of the European Union have developed reasoning in their case law according to which the concepts contained in the multilateral instruments under their jurisdiction possess an autonomous meaning. This meaning cannot be established simply by deducing it from the relevant meanings in domestic legislation. On the other hand, an international lawyer, especially in case of doubt, will be looking for clues primarily in the law of those countries where the controversial concept has acquired a specific legal connotation.[39] In a wider perspective it is claimed that autonomous interpretation transcends the uniform application of unified rules, since it is based on specific systematic and teleological elements.[40]

For the purpose of this study it will be useful to analyse the significance of the autonomous interpretation of an international treaty, taking as an example the interpretation of the European Convention on Human Rights[41] by ECtHR. The Strasbourg Court has developed its own methods and techniques of interpretation tailored specifically for the needs of the interpretation of one particular instrument, namely the ECHR, which provides the basis for the protection of human rights under international law in Europe. The method of autonomous interpretation as developed by the Strasbourg Court consists in essence in assigning some concepts used in the ECHR a special meaning under this Convention that is independent of the meaning that these concepts have in the domestic

38 Hereinafter: ECtHR.

39 Tomuschat, 199.

40 Martin Gebauer, “Uniform Law, General Principles and Autonomous Interpretation”, *Uniform Law Review* 5, iss. 4. 2000: 683.

41 Hereinafter: ECHR.

law of individual Contracting States.[42] In its rulings, the ECtHR has repeatedly mentioned the 'principle of autonomy' when referring to the determination of the autonomous meanings of specific terms employed in the Convention.[43] Through the application of this method some tensions between the language of international law and national law are brought to light and therefore it merits broader consideration. This may look peculiar, as when the Court determines the standards of human rights protection for individual Contracting States it employs terms that are used in the domestic law of these countries. Concepts such as *a court*, *a witness*, *a punishable offence*, *a charge* and *civil* do not possess any traditional meanings in international law, as they were incorporated from the legal language of domestic legal systems.[44] This suggests that the determination of the meaning of these terms should be made through reference to domestic legal systems. However, in order to ensure that the same standards of protection of the rights provided for in the Convention are binding for all Contracting States, these concepts should be understood uniformly, on the basis of the Convention, irrespective of the legal system to which they refer.

It should be emphasised that the application of the Convention allowing as many interpretations of its terms as there are states would weaken both the integrity of its goals and the principle of equality of obligations of all states.[45] Therefore the conflict between autonomous and national meanings appears to be an inextricable aspect of the use of autonomous interpretation by the ECtHR. Autonomous interpretation is considered to be necessary to ensure uniform standards of protection under the Convention. However, on the other

42 Merrills, 71.

43 *König v. Germany*, Application No. 6232/73, § 88, Judgement of 26 June 1978.

44 Rudolf Bernhardt, "Thoughts on Interpretation of Human-Rights Treaties" in *Protecting Human Rights: the European Dimension. Studies in Honour of Gerard J. Wiarda*, eds. F. Matscher, and H. Petzold. Köln, Berlin, Bonn, and München, 1990, 66–67.

45 François Ost, "The Original Canons of Interpretation of the European Court of Human Rights" in *The European Comenius for the Protection of Human Ranges: International Protection Versus National Restrictions*, ed. M. Delmas-Marty. Dordrecht, Boston, and London, 1992, 305.

hand, the Court cannot completely disregard the meanings that these legal concepts have in the systems of domestic law from which they derive.

The reasons for the Court's application of autonomous interpretation were given in the judgment of *Engel and Others v. the Netherlands*, in which the term 'criminal charge' was assigned an autonomous meaning. The case concerned the penalties imposed on five Dutch soldiers for offences against military discipline. In the justification of the ruling in this case, the Court stated: "If the Contracting States were able at their discretion to classify an offence as disciplinary instead of criminal, or to prosecute the author of a 'mixed' offence on the disciplinary rather than on the criminal plane, the operation of the fundamental clauses of Articles 6 and 7 (art. 6, art. 7) would be subordinated to their sovereign will. A latitude extending thus far might lead to results incompatible with the purpose and object of the Convention. The Court therefore has jurisdiction, under Article 6 (art. 6) and even without reference to Articles 17 and 18 (art. 17, art. 18), to satisfy itself that the 'disciplinary' does not improperly encroach upon the 'criminal'. In short, the 'autonomy' of the concept of 'criminal' operates, as it were, one way only."[46]

In this case, the reasons for applying autonomous interpretation were the Court's fear that allowing the Contracting States to interpret the words used in the Convention could lead to interpretations which are unfavourable to human rights. The ruling in the *Engel* case provides a good an example of an application of autonomous interpretation which in effect strengthens the guarantees of the protection of human rights contained in the Convention; this is done by restricting the freedom of States to interpret the meaning of the terms used in the Convention.

Autonomous interpretation is underpinned by the assumption that the object and purpose of the Convention can be more fully realized if it is recog-

46 *Engel and Others v. the Netherlands*, Application Nos. 5100/71, 5101/71, 5102/71, 5354/72, 5370/72, § 81, Judgement of 8 June 1976.

nized that it has independent existence and autonomous content.[47] Autonomous interpretation emphasizes the importance of the Convention's own normative system, the individual concepts of which do not have to be identified with similar concepts of other legal orders.[48]

The autonomous interpretation applied by the Court has primarily concerned a number of terms contained in Article 6 of the ECHR, on the right to a fair trial. Thus, the autonomous interpretation applied, for example, to the term "charged with a criminal offence"[49] or the phrase "civil rights and obligations." The autonomous interpretation of the latter phrase led to the inclusion of all proceedings which have decisive outcomes for private rights and obligations.[50] As a result, it became apparent that it is possible to apply Article 6 not only to courts, but also to administrative cases or those involving social security and welfare.[51] Autonomous meanings were also assigned to other terms, such as 'witness'[52] and 'criminal', which appear in Article 6 of the Convention. The term 'criminal' was extended to prison discipline, thus enabling prisoners to receive protection under Article 6 of the Convention.[53]

Autonomous interpretation was also applied to other provisions of the Convention including terms that appear in Article 5, such as 'court',[54] and 'lawful',[55]

47 Cezary Mik, *Koncepcja normatywna prawa europejskiego praw człowieka*. Toruń, 1994, 235.

48 Walter Ganshof van der Meersch, "Le caractère "autonome" des termes et "la marge d'appreciation" des gouvernements dans l'interprétation de de la convention des Droits de l'Homme" in *Protecting Human Rights: the European Dimension. Studies in honour of Gerard J. Wiarda*, eds. F. Matscher, and H. Petzold. Köln, Berlin, Bonn, and München, 1990, 203–204.

49 See *Demicoli v. Malta*, Application No. 13057/87, § 3, Judgement of 27 August 1991.

50 See, for example, the judgments in: *Ringeisen v. Austria*, Application No. 2614/65, § 45, Judgement of 16 July 1971; *König v. Germany*, § 88.

51 Mik, 235.

52 *Bönisch v. Austria*, Application No. 8658/79, § 30, Judgement of 6 May 1985.

53 *Campbell and Fell v. the United Kingdom*, Applications Nos. 7819/77 and 7878/77, §§ 68–71, Judgement of 28 June 1984.

54 See, for example, the Separate Opinion of Judge Evrigenis in *Engel and Others v. the Netherlands*.

55 *Ashingdane v. the United Kingdom*, Application No. 8225/78, §§ 46–49, Judgement of 28 May 1985.

and to the phrase "a judge or other officer authorised by law to exercise judicial power."[56] In Article 7, the term 'punishment' was assigned an autonomous interpretation.[57] In Article 8 of the Convention, the term 'home' was also extended to rooms used for economic purposes. Similarly, the term 'family life' in this provision may be understood as covering some professional or economic activity, as this understanding is said to be in line with the essential object and purpose of Article 8 ECHR.[58] When using the autonomous method in the process of interpreting the concept of 'possessions' in Article 1 of Protocol I, the Court recognized that in an autonomous sense it is not limited to the ownership of physical goods, but also includes certain rights and interests constituting assets, which may be considered as proprietary rights and, consequently, 'possessions'.[59]

Autonomous interpretation has found application not only to the terms used in the substantive-legal parts of the Convention – it was also used to interpret reservations and interpretative declarations made pursuant to Article 64 of the Convention.[60] Autonomous interpretation can also be detected in the provisions of the Convention which are of a procedural nature. In the *Cruz Varas and Others v. Sweden*, the method of autonomous interpretation was employed to justify deducing temporary measures from the procedural provisions of the Convention, although such measures are not mentioned *expressis verbis* in the provisions.[61] In some judgments, autonomous interpretation has even

56 *Sheisser v. Switzerland*, Application No. 7710/76/34, §§ 25–31, Judgement of 4 December 1979.

57 See the judgment in *Jamil v. France*, Application No. 15917/89, § 30, Judgement of 8 June 1995.

58 *Niemetz v. Germany*, Application No. 13710/88, § 31, Judgement of 16 December 1992.

59 *Gasus Dosier-und Fördertechnik GmbH v. the Netherlands*, Application No. 15375/89, § 53, Judgment of 23 January 1995.

60 See the judgments in: *Frydlender v. France*, Application No. 30979/96, § 31, Judgement of 26 June 2000; *Pellegrin v. France*, Application No. 28541/95, § 63, Judgement of 8 December 1999.

61 See the dissenting opinion of judges Cremony, Vilhjálmsson, Walsh, Macdonald, Bernhardt, de Meyer, Martens, Foighel and Morenilla in the ruling of *Cruz Varas and Others v. Sweden*, Application No. 15576/89, Judgement of 20 March 1991.

been applied to concepts that do not appear in the Convention, such as 'civil service' and 'civil servants'.[62]

It is noteworthy that the autonomous method of interpretation has potentially a wide scope of application and as G. Letsas argues, all concepts in the ECHR are autonomous. According to this author, who bases his analysis on Ronald Dworkin's philosophy, the autonomous nature of concepts used in the Convention should be perceived in two senses. First, according to Letsas, people do not share the same linguistic criteria on how to identify their meaning. Secondly, the correct meaning may radically transcend the way the ECHR concepts are classified and understood within the national legal order. Therefore, Letsas argues that judges have to construct substantive theories that aim at capturing the nature or purpose of the right involved and of the ECHR more generally.[63]

Since the use of the method of autonomous interpretation entails a departure from the interpretative directive pursuant to Article 31(1) VCLT, which provides that terms should be interpreted in accordance with their ordinary meaning, the question that arises is whether autonomous interpretation can be reconciled with provisions of the Vienna Convention on interpretation.

The answer to this question may be the view that the basis for applying the autonomous method can be found in Article 5 VCLT, since this provision extends the application of the Vienna Convention to treaties adopted within the frameworks of international organizations, stipulating, however, that this application is to take place "without prejudice to any relevant rules of an organization." Due to the fact that the Convention was adopted within the framework of the Council of Europe, it can be assumed that the interpretation of this Convention may depart from the ordinary meaning of the words in favour of autonomous

62 See the judgments in: *Pellegrin v. France*, § 63; *Frydlender v. France*, §§ 31–32.
63 George Letsas, "The Truth in Autonomous Concepts: How to Interpret the ECHR", *European Journal of International Law* 15, no. 2. 2004: 279.

meaning.[64] Moreover, it is worth drawing attention to the interpretative directive contained in Article 31(4) VCLT, according to which a "special meaning shall be given to a term if it is established that the parties so intended." Thus, abstracting from arguments which appeal to Article 5 VCLT, an autonomous interpretation could therefore be justified in the light of Article 34(4) VCLT. It should, however, be associated with the application of a subjectivist approach, i.e. determining what the actual intent of the parties was with regard to the meaning of particular terms. A review of Court judgments in which the autonomous method was used indicates that the Court associates the use of this method rather with teleological interpretation, which seeks to ensure the compliance of the interpreted concepts with the object and purpose of the Convention. The "object and purpose" of the Convention is to guarantee human rights so that they correspond with changing social conditions, rather than to guarantee rights as they were understood at the time when the Convention was signed and ratified.

Autonomous interpretation can be assessed positively for at least two reasons. Firstly, it is a method of interpretation which is conducive to the protection of the rights of the individual. It allows interpretation that broadens the standards of the ECHR and through it the scope of protection resulting from its provisions is extended. Secondly, the importance of autonomous interpretation also consists in the fact that it harmonizes the standards of basic rights in the diverse Contracting States that are party to the ECHR,[65] thanks to which the objectives of the Convention set out in its Preamble are implemented, including, above all, "a common understanding and observance of the Human Rights."

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64 Franz Matscher, "Methods of Interpretation of the Convention" in *The European System for the Protection of Human Rights*, eds. R. St. J. Macdonald, F. Matscher, and H. Petzold. Dordrecht, Boston, and London, 1993, 71.

65 Matscher, 73. See also Merrills, 72.

The Language of International Law and Its Legitimacy

The language of international law also appears to have important significance when it comes to the legitimisation of international law. It is not possible to explore in this study all the aspects of the legitimisation of international law through its language. However, it is necessary to make certain observations on this topic. It is noteworthy that the issue of the legitimacy of international law has become an increasingly important topic. This is to a large extent the result of the transition of international law during the past decades from the consensual legal order centred on interstate relations with sovereignty as one of its pivotal values into a developed and complex normative framework which encompasses new subject areas which until recently appeared to be alien to international law, such as human rights, international criminal law or the international protection of the environment. Moreover, as Mattias Kumm observed, obligations of international law "are no longer firmly grounded in the specific consent of states and its interpretation and enforcement is no longer primarily left to states. Contemporary international law has expanded its scope, loosened its link to state consent and strengthened compulsory adjudication and enforcement mechanisms."[66] As a consequence the legitimacy of international law is increasingly questioned also from a domestic perspective, based on such values as democracy and constitutional self-government.[67] These changes have led to the dispute in which the suitability of the conventional basis of legitimacy of international law was put into question.[68] Moreover, due to the increasingly direct impact on individuals of international legal norms in areas previously covered by national law, a legitimacy gap has appeared, making the legitimiza-

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66 Kumm, 907.

67 Kumm, 907.

68 Javier Alexis Galán Ávila, *International Law and Legitimacy: A Critical Assessment*, European University Institute, Department of Law. Florence, 2016, 5. <https://cadmus.eui.eu/bitstream/handle/1814/39005/GalanAvila_2016.pdf?sequence=1&isAllowed=y>, access: 10.09.2022.

tion of international law a pressing concern.[69] In this context, the issue of the language of international law appears to be of considerable importance.

On the one hand, as it was already mentioned, there is no specific language of international law and therefore the "law of nations" is bound to rely on the particular languages of particular states. However, bearing in mind the aforementioned various aspects of the dominant position of the English language, one should also be aware that the importance of the language of international law in the context of the legitimacy debate is also connected with international law being itself considered as a new language for conducting international relations. Therefore it may facilitate communication by providing commonly understood terms, institutions, etc. The communications of States are extremely important in the international sphere, and states routinely employ what has come to be known as the "language of international law" in their communications. As it is suggested by some international law scholars, by employing this language "States claim international legitimacy for their actions, allege international legitimacy in the conduct of other States, and shape the course of evolution of the norms that determine legitimacy of future conduct."[70] Moreover, as D. Kritsiotis observed, "as a so-called language for international relations, international law introduces states to a new communicative medium which professes to be: more peaceful in its outlook on solving problems; more economical as far as human and financial resources are concerned; more secure in terms of the answers and solutions it provides; and, finally, more inclusive of the participants that make up the international system."[71] However, as international law norms are becoming more and more often applicable directly in relation to individuals, the language of these norms, their understandability also for non-state actors including individuals, is also becoming an issue

69 Galán Ávila, 5.

70 Deepak Raju, and Zubin Dash, "Balancing The Language Of International Law And The Language Of Domestic Legitimacy – How Well Does India Fare?", *Indian Journal of International Law* 57. 2017: 63.

71 Kritsiotis, 398.

of growing importance. Therefore, the communicative aspect of international law needs to be perceived not only in the context of interstate relations but also from the wider perspective of the international community in which various non-state subjects refer to international law. Thus, the linguistic aspect of international law as a universal tool for communication in the international community plays a very important role as a factor contributing to enhancing the legitimacy of international law as such.

The dominant position of English in international law nowadays, as the *lingua franca* of modern times, can be perceived in this situation not necessarily as a disadvantage but, taking into account the lack of alternative, as a factor facilitating the communicative aspect of international law due to the huge popularity and universality of this language.

Conclusions

As this study demonstrates, the relationship between language and international law is complex and it entails certain specific problems which do not exist in the case of national legal systems. Moreover, there are certain intrinsic contradictions and tensions involved in the relationship between language and international law. The dominant position of English language in international law, which appears to some extent inevitable, due to the lack of an alternative, appears to be difficult to reconcile with the principle of sovereign equality laid down in the UN Charter, which implies equal opportunities for all nations to participate in the global, legal discourse.

International law is essentially the legal system for countries with different languages. Having no specific language other than national languages, international law is bound to find its form through the national languages of respective countries. However, it is practically impossible for international law to operate in all national languages and for all the texts in these languages to be recognized as authentic texts. Therefore, the authentic texts of multilateral

treaties are usually limited to only a few national languages. This, in turn, creates significant problems when it comes to the interpretation of authentic texts made in various languages which need to be reconciled as required under the VCTL rules of interpretation.

The tensions between the meaning of terms used in international legal norms and their corresponding meaning in national legislation are connected with the use of the autonomous method of interpretation. The application of this method is justified in case of the interpretation of international norms in particular, as it strengthens the human rights standards and assists in harmonizing standards of human rights in the diverse legal systems of state parties to the ECHR.

As was also demonstrated in the above analysis, the language of international law is also important in the context of the legitimisation of international law. It is particularly crucial that the communicative aspect of international law should be considered beyond the context of interstate relations, from the wider perspective of the whole international community. Thus the linguistic aspect of international law as a universal tool for communication in the international community can be perceived in terms of its very important role as a factor contributing to enhancing the legitimacy of international law.

The analysis and considerations conducted in this study can be classified as falling, at least to some extent, in the area of interest of jurilinguistics, which focuses on issues concerning relations that can be established between language and the law. The problems connected with the relationship of language and law in the context of international law, outlined above, confirm the need for further continuous and in-depth research in this field. The importance of this research is underlined not only by the close relationship of these issues with the interpretation of norms of international law, but also, in the long run, with the legitimacy and effectiveness of the entire system of international law.

References

Bernhardt, Rudolf. “Thoughts on Interpretation of Human-Rights Treaties.” In *Protecting Human Rights: the European Dimension. Studies in Honour of Gerard J. Wiarda*, edited by Franz Matscher, and Herbert Petzold. Köln, Berlin, Bonn, and München, 1990.

Dolecka, Maria. “Pozycja języka angielskiego w świecie.” *Białostockie Archiwum Językowe*, no. 2. 2002: 41–54.

Frankowska, Maria. *Prawo traktatów*. Warszawa, 2007.

Galán Ávila, Javier Alexis. *International Law and Legitimacy: A Critical Assessment*, European University Institute, Department of Law. Florence, 2016. <https://cadmus.eui.eu/bitstream/handle/1814/39005/GalanAvila_2016.pdf?sequence=1&isAllowed=y>, access: 10.09.2022.

Ganshof van der Meersch, Walter. “Le caractère “autonome” des termes et “la marge d’appreciation” des gouvernements dans l’interprétation de de la convention des Droits de l’Homme.” In *Protecting Human Rights: the European Dimension. Studies in honour of Gerard J. Wiarda*, edited by Franz Matscher, and Herbert Petzold. Köln, Berlin, Bonn, and München, 1990.

Gebauer, Martin. “Uniform Law, General Principles and Autonomous Interpretation.” *Uniform Law Review* 5, iss. 4. 2000: 683–704.

International Law Commission. “Draft Articles on the Law of Treaties with commentaries 1966.” *Yearbook of the International Law Commission* 2. 1966.

Jiménez-Salcedo, Juan, and Javier Moreno-Rivero. “On Jurilinguistics: the principles and applications of research on language and law.” *Revista de Llengua i Dret / Journal of Language and Law*, no. 68. 2017: 1–4.

Kritsiotis, Dino. “The Power of International Law as Language.” *California Western Law Review* 34, no. 2. 1998: 397–410.

Kumm, Mattias. “The Legitimacy of International Law: A Constitutionalist Framework of Analysis.” *The European Journal of International Law* 15, no. 5. 2004: 907–931.

Letsas, George. “The Truth in Autonomous Concepts: How to Interpret the ECHR.” *European Journal of International Law* 15, no. 2. 2004: 279–305.

Matscher, Franz. “Methods of Interpretation of the Convention.” In *The European System for the Protection of Human Rights*, edited by Ronald St. J. Macdonald, Franz Matscher, and Herbert Petzold. Dordrecht, Boston, and London, 1993.

Merrills, John G. *The Development of International Law by the European Court of Human Rights*. Manchester, 1995.

Mik, Cezary. *Koncepcja normatywna prawa europejskiego praw człowieka*. Toruń, 1994.

Mowbray, Jacqueline. *The future of international law: shaped by English*. *Völkerrechtsblog*, 18.06.2014, <https://voelkerrechtsblog.org/the-future-of-international-law-shaped-by-english>, access: 28.04.2022.

Ost, François. “The Original Canons of Interpretation of the European Court of Human Rights.” In *The European Comenius for the Protection of Human Ranges: International Protection Versus National Restrictions*, edited by Mireille Delmas-Marty. Dordrecht, Boston, and London, 1992: 283–316.

Phillipson, Robert. *Linguistic imperialism*. Oxford, 1992.

Raju, Deepak, and Zubin Dash. “Balancing The Language Of International Law And The Language Of Domestic Legitimacy – How Well Does India Fare?.” *Indian Journal of International Law* 57. 2017: 63–85.

Schenker, Claude. *Practice Guide to International Treaties*. Bern, 2015.

Tomuschat, Christian. “The (Hegemonic?) Role of the English Language.” *Nordic Journal of International Law* 86. 2017: 196–227.

Uriburu, Justina. *Between Elitist Conversations and Local Clusters: How Should we Address English-centrism in International Law?*. Opinio Juris, 2.11.2020. <http://opiniojuris.org/2020/11/02/between-elitist-conversations-and-local-clusters-how-should-we-address-english-centrism-in-international-law/>, access: 28.04.2022.

Wyrozumska, Anna. *Umowy międzynarodowe. Teoria i praktyka*. Warszawa, 2006.

Ashingdane v. the United Kingdom, Application No. 8225/78, Judgement of 28 May 1985.

Bönisch v. Austria, Application No. 8658/79, Judgement of 6 May 1985.

Campbell and Fell v. the United Kingdom, Applications Nos. 7819/77 and 7878/77, Judgement of 28 June 1984.

Cruz Varas and Others v. Sweden, Application No. 15576/89, Judgement of 20 March 1991.

Demicoli v. Malta, Application No. 13057/87, Judgement of 27 August 1991.

Engel and Others v. the Netherlands, Application Nos. 5100/71, 5101/71, 5102/71, 5354/72, 5370/72, Judgement of 8 June 1976.

Frydlender v. France, Application No. 30979/96, Judgement of 26 June 2000.

Gasus Dosier-und Fördertechnik GmbH v. the Netherlands, Application No. 15375/89, Judgment of 23 January 1995.

Jamil v. France, Application No. 15917/89, Judgement of 8 June 1995.

König v. Germany, Application No. 6232/73, Judgement of 26 June 1978.

Niemetz v. Germany, Application No. 13710/88, Judgement of 16 December 1992.

Pellegrin v. France, Application No. 28541/95, Judgement of 8 December 1999.

Ringeisen v. Austria, Application No. 2614/65, Judgement of 16 July 1971.

Sheisser v. Switzerland, Application No. 7710/76/34, Judgement of 4 December 1979.

The Mavrommatis Palestine Concessions, Judgement No. 2 of 30 August 1924.