

Language Law and Language Rights

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There are, in many political contexts, contacts, conflicts and inequalities among languages used within the same territory. The political and legal intervention of modern States and public authorities (at all levels, national, regional, local and municipal) on languages, id est the language law, is to resolve the linguistic problems arising from those linguistic contacts, conflicts and inequalities phenomena. Comparative Emphasis is put on the different ways used by the States in legally determining and establishing the status and use of the languages in question, especially in the official usage of languages. There are official and non-official language legislation. There are also institutionalizing, standardizing and liberal language legislation and the historical and universal linguistic rights (the right to “the” language and the right to “a language”). This kind of intervention is relatively new due especially to three relatively recent social phenomena and problems, the democratization of education, the globalization of communications and the growing importance of linguistic diversity in our world.

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1 Introduction

There are, in many political contexts, contacts, conflicts and inequalities among languages used within the same territory. Objectively or

apparently, these languages co-exist often in an uneasily dominant-dominated relationship, thereby leading to a situation of conflicting linguistic majorities and minorities.

The fundamental goal of modern linguistic legislation is to resolve, in one way or another, the linguistic problems arising from those linguistic contacts, conflicts and inequalities, by legally determining and establishing the status and use of the languages in question. Absolute or relative preference is given to the promotion and protection of one or some designated languages through legal language obligations and language rights drawn up to that end. The legal language policy of a State is constituted by the all legal measures on language field. These legal measures are the linguistic law (or *language law*) of a State.

Canadian linguistic legislation (the Official Languages Act) is an example of official legislation that applies language obligations and language rights to two designated official languages, English and French.¹ Quebec's linguistic legislation (the Charter of the French Language) is an example of exhaustive legislation that applies, in a different way, language obligations and language rights to the official language, French, to the English language, to a few more or less designated languages and to other languages to the extent that they are not designated.²

Increasing legal intervention in language policy gave birth, or recognition, to a new legal science, comparative linguistic law. Comparative linguistic law (or *language law*) refers to the different legal and linguistic norms pertinent to the law of language, the language of law and the linguistic rights (or *language rights*) as fundamental rights all over the world. To the extent that language, which is the main tool of the law, becomes both the object and the subject of law, linguistic law becomes metajuridical law. To the extent that comparative linguistic law recognizes and enshrines linguistic rights in our world, albeit sometimes rather timidly and implicitly, it becomes futuristic law, since it builds on historical roots.

This in itself is remarkable, since the growing recognition or historical enshrinement, in time and space, of linguistic rights promotes the linguistic diversity of our word and the cultural right to be different,

¹ Official Languages Act, R.S.C., 1970, c. C-02.

² Charter of the French Language, R.S.Q., c. C-11. The Charter is popularly known as *Loi 101* (*Bill 101*).

which is a promise of creativity for individuals and families, as well as for societies, nations and the international community.

The intervention of States and public authorities (at all levels, international, national, regional, local, municipal, etc...) is relatively recent due especially to three relatively recent social phenomena and problems, the democratization of education and the globalization of communications and the growing importance of linguistic diversity in our world.

The great importance of such intervention gave birth, in September 1984 in Montreal and Paris, to the International Academy of Linguistic Law. Since then, our Academy has held thirteen international conferences on language and law. Our next international conferences will be held in Barcelona, Spain, in 2014 and in Hangzhou, China, in 2016. I am pleased to remember that our Second and Ninth International Conferences were held in Hong Kong (February 1990) and Beijing (September 2004).

2 Linguistic legislation

Linguistic legislation is divided into two categories, depending on its **field of application**: legislation which deals with the **official** (or *public*) usage of languages and that which deals with their **non-official** (or *private*) usage. *Needless to say, there are grey areas in this classification.*

Linguistic legislation can be divided into four categories, depending on its **function**; it can be official, institutionalizing, standardizing or liberal. *Legislation that fills all these functions is **exhaustive** linguistic legislation, while other linguistic legislation is **non-exhaustive**.*

The majority of modern countries are linguistically multilingual. However, the majority of modern States are legally unilingual or moderately bilingual or multilingual, by virtue of their official linguistic legislations.

Official linguistic legislation is legislation intended to make one or more designated, or more or less identifiable languages totally or partially, countrywide or regionally, in a symmetric or asymmetric way, official in the domains of legislation, justice, public administration and education, to the exclusion of other languages. The other languages existing in the State are not official. A language is legally official as far as

it implies, *substantially and explicitly de jure*, legal rights and legal obligations in the official domains, no matter how it is formally defined (official, national, the language of...). An official language then is a legally usage compulsory language for the States and their inhabitants and citizens in the language official domains. Depending on the circumstances, one of two principles is applied: linguistic **territoriality** (basically, the obligation to use one designated language within a given territory) or linguistic **personality** (basically, the right to choose a language among official languages).

In principle, in the multilingual States, the obligation to use the official languages stands only the public authorities, while the inhabitants and the citizens have the choice among the official languages. Save exceptions, the majority of people in an officially bilingual or multilingual State are not necessarily bilingual or multilingual.

Generally speaking, the official language of a unilingual State is the most spoken language of the country while in the multilingual State the official languages are the most spoken languages or the historical national languages of the country. This is not the case in many States of black Africa and in some States of Asia where the languages of foreign colonizers is still important. In Ethiopia, however, while all the Ethiopian languages are legally recognized, Amharic is the working language of the federal government. In Indonesia, Malay of Indonesia (Bahasa Indonesia) is the official language while the most spoken language is Javanese. In Malaysia, Malay of Malaysia (Bahasa Malaysia) is the official language even though it is not yet the most spoken language of the country. In some States, there is more than one language which is official, even though the official languages are the same language about linguistic point of view, like for instance in Bosnia-Herzegovina where Bosnian, Croat and Serb are the official languages of the country, for evident political reasons. This is not unusual in itself if we think for example to Catalan and Valencian, Portuguese and Galician, Hindi and Urdu, Romanian and Moldovian.

In China, according Section 9 of the linguistic law of 2000-2001, "Putonghua and the standardized Chinese Characters shall be used by the State organs as the official language".³ However, it is the only Section of

³ Law of the People's Republic of China on the Standard Spoken and Written Chinese Language. Law adopted October 31, 2000; into force January 1, 2001.

the Act where the adjective “official” is used (in the English translation).

Making one or more designated languages official does not necessarily or automatically entail major legal consequences. The legal sense and scope of officializing a language depends on the effective legal treatment accorded to that language. Otherwise, an official language without legal teeth is not substantially official; in this case, it is only formally official and then only a symbolic official language. In Bolivia, Section 5 of the new Constitution of 2009 recognizes 38 official languages, Castilian and 37 Indigenous languages. Actually, Castilian is still, for the moment at least, the only official language used, even though the official recognition of the 37 Indigenous languages is a very significant step towards the recognition of the historical linguistic diversity of the country.

About linguistic point of view, the domain of education is the most important domain in the field of an important officially legal language policy.⁴

The majority of modern States have their own official linguistic legislations. In some countries, there are also, apart from the official(s) language(s), *implicitly de facto* official languages. In Morocco, by instance, the only *de jure* official language is Arabic, but French remains an important *de facto* official language since it is used in many official documents. Moreover, many important States like the USA (at the federal level), the United Kingdom, Germany (at the federal level), Japan, Australia and Argentina (at the federal level) do not have any official language.

Institutionalizing linguistic legislation is legislation which seeks to make one or more designated languages the normal, usual or common languages, in the non-official domains of labour, communications, culture, commerce and business. About linguistic point of view, the domain of communications is the most important domain in the field of an important legal language policy. The interventions of modern States on the non-official domains are relatively less important than in the official domains.

Standardizing linguistic legislation is legislation designed to make

⁴ Fleiner, Thomas, Nelde, Peter H. & Turi, Joseph-G.(2001).Ed.,dir., *Law and Languages of Education - Droit et langues d'enseignement*, Institut du Fédéralisme de Fribourg, Bâle, Genève, Munich : Helbing & Lichtenhahn, 561 p.

one or more designated languages respect certain language standards and linguistic terminology in very specific and clearly defined domains, usually official or highly technical. The intervention of modern States on the domain of linguistic terminology is rather minor, save exceptions.

The standardizing process had good success in the past century with Afrikaans, Hebrew, Malay and Hindi. Moreover, there are some linguistic international agreements in the field of linguistic standardization, like for instance, between Malaysia, Brunei Darussalam and Indonesia for the Malay language, between Brazil and Portugal for the Portuguese language and between Belgium and Netherlands for the Dutch language.

It is the written form (the language as medium) and not the written linguistic content (the language as message) that is usually targeted by legal rules dealing explicitly with language. The linguistic content can be the object of legislation that generally is not explicitly linguistic, such as the Civil, Commercial and Criminal Codes or Acts, the Charters of Human Rights or the Consumer Protection Acts. Moreover, while the presence of a language or the "quantity" of its usage can be the object of exhaustive language legislation, language "quality" or correct usage (what the ancient Greeks called "analogy" against "anomaly") belongs to the realm of example and persuasion where language usage is non-official, and to the schools and government where language usage is official.

Liberal linguistic legislation is legislation designed to enshrine legal recognition of language rights implicitly or explicitly, in one way or another. Linguistic law, viewed objectively (as legal rules on language), make a distinction on linguistic rights, which are subjective so that they belong to any person. There are the right to "the" language (the historical right to use one or more designated languages, belonging to majorities or some historical minorities, in various domains, especially in official domains) and the right to "a" language (the universal right to use any language in various domains, particularly in non-official domains). These linguistic rights, based respectively on the principle of territoriality and the principle of personality, allowing for specific exceptions, are essentially individual about legal point of view, particularly for linguistic minorities, for evident political reasons, id est to avoid possible coincidence with the self determination principle. These rights are naturally individual and collective about cultural point of view. However,

according to section 16.1 of the Canadian Charter of Rights and Freedom (enacted by the 1993 Constitution Amendment concerning New Brunswick), linguistic rights in the Canadian province of New Brunswick belong equally to the “English linguistic community” (the majority one) and to the “French linguistic community” (the minority one). Moreover, the Supreme Court of Canada stated, in the 1998 **Secession of Quebec Case**, 1999 **Beaulac Case** and 2000 **Arsenault Case**, that some historical rights to French and English in Canada had to be interpreted in a liberal and collective way.⁵ In any case, the linguistic rights of Indigenous people are indeed considered to be collective ones, according to the 1991 Indigenous and Tribal Convention.⁶

The important but non-official Barcelona Universal Declaration of Linguistic Rights, of June 9, 1996, states that linguistic rights are historical and both individual and collective.

3 Comparative linguistic law

Linguistic legislation never obliges anyone to use one or more languages in absolute terms. The obligation stands only to the extent that a legal act of fact covered by language legislation is accomplished. For example, the obligation to use one or more languages on product labels stands only if there is, in non-linguistic legislation, an obligation to put labels on products.

Generally speaking, linguistic terms and expressions or linguistic concepts (mother tongue, for instance) are the focus of language legislation only to the extent that they are formally understandable, intelligible, translatable or identifiable, in one way or another, or have some meaning in a given language. According to the Supreme Court of Canada, in the 1988 **Forget Case**, “The concept of language is not limited to the mother language but also includes the language of use or habitual communication. There is no reason to adopt a narrow interpretation which does not take into account the possibility that the mother tongue and

⁵ Reference re **Secession of Quebec**, [1998] 2 S.C.R. 217; **R. v. Beaulac**, [1999] 1 S.C.R. 768; **Arsenault-Cameron v. Prince Edward Island**, [2000] 1 S.C.R. 3.

⁶ Indigenous and Tribal Peoples Convention of the International Organization of Labour, of June 27, 1989, enforced September 5, 1991. The Convention has been so far ratified by 22 States, including 14 States from Latin America. The rights protected by the Convention belong to “peoples”.

language of use may differ".⁷ This being said, anything that is linguistically "neutral" is not generally targeted by language legislation according for example to Quebec's Regulation respecting the language of commerce and business.⁸

Section 58 of Quebec's Charter of the French Language stated that, allowing for exceptions, non-official signs had to be solely in French (the practical target of this prohibition was the English language). Therefore, if a word was posted and it was understandable in French, it was legally a French word (for instance, "ouvert"). In other respects, if a word was posted and it was not understandable in French, it was not legally a French word only if it has some meaning in another specific language and it was translatable into French. In this case, the public sign was illegal (for instance, "open"). However, this Section has been partially repealed, after the Supreme Court of Canada, in the 1998 **Ford Case**, stated that that Section 58 contravened the freedom of expression and the principle of non-discrimination and was then incompatible with the Canada's and Quebec's Charters of Human Rights. According to the Supreme Court of Canada, a State can impose a language on non-official public signs, but it can't forbid other languages. In this Case, the Court declared that "Language is so intimately related to the form and content of expression that there cannot be true freedom of expression by means of language if one is prohibited from using the language of one's choice".⁹ The Court also stated that section 58 was discriminatory since it had the effect of "nullifying the fundamental right to express oneself in the language of one's choice". This decision was partially upheld by the United Nations Human Right Committee, in 1993, which declared that Section 58 was incompatible with the freedom of expression as foreseen by the

⁷ **The Attorney General of Quebec v. Nancy Forget**, [1988], 2 S.C.R. 100.

⁸ L.R.Q., c. C-11, r. 9.01, sections 9, 14 and 26.

⁹ **Ford v. Quebec**, [1988] 2 S.C.R. 712, p. 748 and 787.

As regards to the non-discriminatory nature of certain provisions of Bill 101 (Section 35 of the Act requires that professionals have an appropriate knowledge of French language), see the Supreme Court of Canada decision in the **Forget Case**, *supra* note 7.

In the **Attorney General of Quebec v. Irving Toy Limited**, [1989] 1 S.C.R. 927, p. 970, the Supreme Court gave this definition of freedom of speech: "Indeed, freedom of expression ensures that we can convey our thoughts and feelings in non-violent ways without fear of censure". For the Court, freedom of speech means, in principle, any content (any message, including commercial messages) in any form (any medium, and therefore, any language), except violence.

International Covenant on Political and Social Rights of December 16, 1966, enforced March 23, 1976.¹⁰ However, the Committee Stated that section 58 was not discriminatory. Moreover, the European Court of Justice declared, in the 1991 **Peeters Case**, that a State cannot impose an exclusive regional language on the labels of products if the information is made in an "easy understandable language" so to respect the principle of free trade in Europe.

In principle, linguistic legislation is aimed at the speakers of a language (as consumers or users) rather than at the language itself (as an integral part of the cultural heritage of a nation) unless legislation establishes the contrary or is clearly a public policy law. A public policy law is any law comprising legal standards so fundamental and essential, individually and collectively, in the interests of the community, that they become imperative or prohibitive in absolute terms so that they cannot be avoided in any way.

Legal rules in linguistic matters are less severe than grammatical rules. There are three fundamental reasons for this (apart from the one which says that the best laws are those that legislate the least, particularly in the non-official usage of languages): firstly, language, as an individual and collective way of expression and communication, is an essential cultural phenomenon, in principle difficult to appropriate and define legally; secondly, legal rules, like socio-linguistic rules, are only applied and applicable as far as they respect local custom and usage and the behaviour of reasonable people (who are not necessarily linguistic paragons) while grammatical rules are based on the teacher-pupil relationship; thirdly, legal sanctions in the field of language like criminal sanctions (fines or imprisonment) and civil sanctions (damages, partial or total illegality), being generally harsher than possible language sanctions (low marks, loss of social prestige or loss of clients), are usually limited to low and symbolic fines or damages.

Since the legal sanctions of a public policy law are formidable (partial or total illegality, for instance), many jurists prefer not to think of language laws as being exclusively public policy laws, except when their legal context is clearly in favour of such an interpretation, as it could be in

¹⁰ **Ballantyne, Davidson and McIntyre v. Canada** (March 31 and May 5, 1993). Communications Nos. 359/1989 and 385/1989, U.N.Doc. CCPR/C47/D/359/1989 and 385/1989/Rev.1 (1993).

some official domains of languages. True, the French *Cour de cassation* declared implicitly, in the **France Quick Case** (October 20, 1986) that French Language legislation was a public policy law. But that did not prevent the *Cour d'appel de Versailles*, in the **France Quick Case** (June 24, 1987) from considering terms such as "spaghettis" and "plum-pudding" to be, for all practical purposes, French terms that is to say to be in keeping with such legislation, because they were "known to the general public". The fundamental goal of this legislation, then, is to protect both francophones and the French language. A francophone is anyone whose language of use is French, that is to say, from legal point of view, any person who can speak and understand French, in an ordinary and relatively intelligible manner.¹¹

In the **Macdonald Case** (May 1, 1986) and the **Ford Case** (December 15, 1988), the Court recognized and enshrined then the main differences between the "governmental" (official) and "non-governmental" (unofficial) usage of languages. The Supreme Court of Canada recognized and enshrined also, to all intents and purposes, the distinction between the right to "the" language (principal right for English and French languages, foreseen as such in the Canadian Constitution, explicitly historical owing to the historic background of the country, in the domains of the official usage of languages) and the right to "a" language (accessory right, not explicitly foreseen as such in the Canadian Constitution, *being implicitly an integral part of the human rights and fundamental freedoms category*, in the domains of the unofficial usage of languages). According to the Supreme Court of Canada, the right to "a" language is therefore implicitly an integral part of the explicit fundamental right of freedom of speech.¹²

An old research enquiry carried for the United Nations in 1979, the Capotorti Report, indicated that, although the use of languages other than the official language(s) in the domains of official usage was restricted or forbidden in various parts of the world, the use of languages in the domains of non-official usage was generally not restricted or forbidden.¹³

¹¹ Arrêt no 85-90-934, October 20, 1986, Chambre de criminelle de la Cour de cassation. Arrêt no 69-87, June 24, 1987, 7e Chambre de la Cour d'appel de Versailles.

¹² **Macdonald v. City of Montreal**, [1986] 1 S.C.R. 460.

¹³ Capotorti, Francesco. (1979). *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*, United Nations, New York (see p. 81 and 103, in particular). It must

We arrived at the same conclusion, in the late 1970s, when we made an analysis of the constitutional clauses of 147 States in the field of languages.¹⁴ Since then, many States, among others Algeria, Malaysia, South Africa, East Timor, 29 States of USA and especially the ones that are issued from the former USSR and the former Yugoslavia, have made important and often drastic linguistic legislation.

France has made French the official language of the State in 1992 (the "language" of the Republic, according to Section 2 of the French constitution). The Constitutional Council of France has declared unexpectedly the 15th of June of 1999 that the 1992 European Charter for Regional or Minority Languages (that applies only to historical and individual linguistic rights) was incompatible with the French Constitution and his principle of equality among French citizens. However, the situation has changed since 2008 when the French Constitution was amended so to recognize the "regional languages" as being part of the "Heritage of the Republic" (Section 75-1).

There are only a few prohibitive linguistic legislations in the world in the field of non-official linguistic legislation. We had in the past some examples of this kind of linguistic legislation in francoist Spain and fascist Italy (among others, in public signs, trademarks and firm names). There were also some examples in the recent past of some prohibitive linguistic legislation in Quebec and in Turkey (and also indirectly in Indonesia by permitting only Latin characters in the public signs) in the field of non-official usage of languages, but this kind of linguistic legislation has been totally or partially revoked. Turkey prohibited, in some cases, the use of some languages, languages other than the first official language of each country which recognizes the Republic of Turkey, practically the use of the Kurdish language.¹⁵ These prohibitive measures contravened, Section 27 of the International Covenant on Civil

be pointed out that according to the Capotorti Report, however, not only the right to be different is a human right, but also the right to be assimilated is of the kind of a human right (p. 103).

¹⁴ Turi, Joseph-G. (1977). *Les dispositions juridico-constitutionnelles de 147 Etats en matière de politique linguistique*, Québec : CIRB-Université Laval, 165 p. Turi, Joseph-G. (1996). "Législation linguistique", in Goebel, Hans, Nelde, Peter H., Sary, Zdeněk & Wolck, Wolfgang, Ed., dir., *Kontaklinguistik – Contact Linguistics - Linguistique de contact*, volume 1, tome I, Berlin-New York : Walter de Gruyter, pp. 160-168.

¹⁵ Republic of Turkey, Law regarding publications in languages other than Turkish, Law No 2832 (October 19, 1983).

and Political Rights, which recognizes to members of linguistic minorities the right to use their own language. This Turkish law has been therefore revoked. The International Covenant applies, moreover, to individual linguistic rights (to "members" only, not to "linguistic minorities"), no matter if they are historical or not.¹⁶

In other respects, we have some examples of legal linguistic tolerance and freedom in many countries like among others Finland (with 2 official languages and where the Swedish minority have the same linguistic rights than the Finnish majority), South Africa (with 11 official languages and where the right to "a" language is explicitly recognized), Canada and Australia (for their policy of multiculturalism for example) and Singapore (with 4 official languages). It makes us relatively optimistic and still absolutely vigilant about the future of comparative linguistic law.

4 Language of law

Comparative linguistic law includes naturally, especially in bilingual or multilingual official States, the branch of the language of law. When a State is officially bilingual or multilingual, it means in principle that the linguistic different official texts have the same legal authority. To avoid major problems, it is clear that the translation or the co-drafting of official texts in more than one language is a very important and serious matter, especially in the countries where all the official texts have the same legal value. In some countries, like for instance in Luxembourg, where the languages of legislation are French, German and Luxembourgish, but only the French text is authentic, the situation is in principle less serious.

The situation is quite different in Canada, at the federal level, and in the Province of Quebec, where the official languages of legislation are English and French and where the legislative acts have the same legal value in both languages. Actually, The Quebec Charter of French Language qualifies formally as "official" only the French language. However, substantially, the official languages of legislation are French and English since the legislative acts of Quebec have the same legal authority in both languages.

¹⁶ General Comment No. 23 of the UN Human Rights Committee April 6, 1994.

Canada and Quebec use a different kind of drafting legislative acts in the two official languages. Since 1978, in Canada, at the federal level, the legislative acts are co-drafted in both official languages. Co-drafting involves two language version of legislation at the same time by using a team of two drafters one of whom is responsible for the English version while the other is responsible for the French version. This technique ensures that each language version is properly drafted and reflects both the civil law and the common law systems. The same rule also generally applies to the drafting and examination of subordinate legislation. In Quebec, on the contrary, the legislative acts are drafted in French and then translated in English.

Canada is not only a bilingual country, at the federal level; it is also a bijural country since it has two legal systems in the law of property and civil rights: the French Civil Law in Québec and the English common law system elsewhere. According to Canadian Constitution, property and civil rights belong to provincial jurisdiction.¹⁷ However, an important part of the private law is of federal jurisdiction, like marriage and divorce, bankruptcy and insolvency, bills of exchange and promissory notes, interest on money, admiralty law, patents of invention and copyright. The “private” federal statutes do not create an independent legal system. There is a complementary relationship in this matter between federal legislation and the *jus commune* of the provinces. Canada, at the federal level, has taken the leadership in this field with the legislative bijuralism with the 2001 *Federal Law-Civil Law Harmonization Act No 1* and the 2004 *Federal Law-Civil Law Harmonization Act No 4* and also with the 2011 Bill S-12 of the Canadian Senate (the *Federal Law-Civil Law Harmonization Act No 3*).¹⁸ These acts recognize in the preamble that the “civil law reflects the unique character of the Quebec society”. The general principle of these acts is the following: when an enactment contains both civil law and common law terminology, or terminology that has different meanings in the civil law and the common law, the civil law terminology or meaning is to be adopted in the Province of Quebec and the common law terminology or meaning is to be adopted by other provinces. It means that in provisions where a legal concept is expressed

¹⁷ The Canada Constitution Act, 1867, sections 91 and 92.

¹⁸ S.C. 2001, c. 4; S.C. 2004, c. 25. See also Canada Interpretation Act: R.S.C. c.I-21 sections 8.1 and 8.2.

using distinct common law and civil law terminology, the common law term appears first in the English version and the civil law term appears first in the French version. For example, the terms “real property” will be followed by the “or immovable” in the English version, and the term “immeuble” will be followed by “ou bien réel” in the French version.

It must be said that co-drafting is possible in bilingual countries. In multilingual countries, the translation is the only way to assure a good treatment of different official languages. In any case, it is imperative for legal translation to be as perfect as possible to avoid serious legal problems. Canada and Quebec give us a good example of what can be done in this domain.

Other solutions can be found in some international organizations. In the United Nations and UNESCO, for instance, Arab, Chinese, English, French, Russian and Spanish are the official languages while the working languages of the Secretariat are English and French. However, all the official texts are equally authentic. In the European Union, there are 23 official and working languages but only three procedural languages, English, French and German, in the European Commission. The official languages of the International Court of Justice are English and French. However, when a decision is taken in both English and French, the Court determines which of the two texts shall be considered as authoritative.

5 Conclusion

The right to “a” language will become an effective fundamental right only to the extent that it is explicitly enshrined not simply in higher legal norms, but also in norms with mandatory provisions that identify as precisely as possible the holders and the beneficiaries of language rights and language obligations, as well as the legal sanctions that accompany them. Otherwise, the right to “a” language will be but a theoretical fundamental right, like some human rights, proclaimed in norms with directive provisions that do not have real legal corresponding sanctions and obligations.

Whereas the law inhabits a grey zone, especially regarding the usage of languages, we do believe that the right to “a” language (and therefore the right to be different) will only have meaning, legally speaking, if it is enshrined (especially for historical linguistic minorities), in one way or

another (particularly, in the official usage of languages), in norms with mandatory provisions, as the right to "the" language generally is.

As an historical right (that takes into account the historic background of each country), the right to "the" language deserves special treatment in certain political contexts, even if it is not in itself a fundamental right. As a fundamental right (right and freedom to which every person is entitled), the right to "a" language, even if it enshrines the dignity of all languages, cannot be considered an absolute right under all circumstances. A hierarchy exists that must take into account, in ways which are legally different and not discriminatory, the historical and fundamental linguistic imperative of the nations and individuals concerned, including also the imperative of establishing a legally equity treatment between languages coexisting in a given political context.

It is clear that the States (at all levels) have the right to legally impose as official, in one way or another, a language or some languages (especially the national ones and some minority historical languages) to assure, according to circumstances, a kind of a social cohesion among citizens. It is also clear that citizens and inhabitants have the duty to respect legally the official language(s) of their States. However, the modern States must respect the linguistic diversity of our world. This has to be done in an equitable way. Equity is the key word to find acceptable solutions in the linguistic comparative law.¹⁹ There are thousands languages and dialects in our world (even if about 75 % of the population speak twenty-three languages one of which is spoken by more than 1 % of the word population). According to UNESCO, there more than 6000 languages in the world (among them almost 3000 are considered endangered languages). The Bible has been translated in more than 2000 languages and dialects. There are international, national, regional and local languages and dialects. All languages and dialects are equally dignified. But they are not all equal among them. A natural and sometimes artificial hierarchy is setting up among languages. The most spoken languages in the word are Chinese and Hindi-Urdu while the most international languages are English and French, especially English-

¹⁹ Su Jinzhi, Turi, Joseph-G. & Wang, Jie (2006). Ed., *Law, Language and Linguistic Diversity* Beijing: Law Press China, 507 p. Turi, Joseph-G. (1989.) "Introduction au droit linguistique", in Pupier, Paul & Woehrling, José. Ed., dir., *Language and Law – Langue et Droit*, Montréal : Wilson et Lafleur, pp.55-84.

American since is spoken by millions of native and millions of non-native people.

Lingua francas are essential for technical and scientific international communications, not necessarily for deep cultural expressions (in the past, Latin and French, now English-American, and tomorrow maybe Portuguese-Brazilian and Chinese). The only real "danger" we can see from the lingua francas is that a strong lingua franca could prevent a good teaching and a good learning or third languages as foreign languages. However, the dangers are not coming only from "globalization" but also from "localization" as far as localization becomes "ultra-nationalization".

The recent political trend in favour of linguistic and cultural *diversity* is inspiring if it promotes the right to "a" language. It is not so inspiring if it is only in favour of the right to "the" language, as far as is aimed to defend above all strong languages like for instance French, German, Italian, Spanish Russian and Portuguese. This trend should also defend and promote the ones that are lesser used (less than a million speakers and in some cases some with a few million speakers) or the ones that are in minority situation, id est where their speakers represent less than 50% of the population of a country or of a region, as far as they are vulnerable. It is the historical minority languages that have to be promoted and protected above all! For his reason, the International Academy of Linguistic Law adopted, on June 16, 2006, a *Call to UNESCO* for an International Convention on Linguistic Diversity.

By ruling, in Section 89 for instance, that "Where this act does not require the use of the official language (French) exclusively, the official language and another language may be used together", Quebec's Charter of the French language recognizes and enshrines the right to "a" language and the right to "the" language, by creating an interesting hierarchical solution between them in the field of language policy. The problem was that the "exclusive" use of French was too much important at the enactment of the Charter. It is not any more totally the case now, since the Charter has been substantially modified on this regard.

The importance of linguistic law, that is the heavy legal intervention of States in the field of languages, shows that the globalization of communications seems so dramatic that it has to be controlled by promoting and protecting, according to circumstances, national, regional and local languages and identities, in other words the linguistic and

cultural diversity of the our world. In this respect, linguistic law is the realm of "linguistic regionalisation".

Let us hope that it will not become the triumph of "linguistic ultra-nationalization", where nationalisation means in some public territories both the right to "the" language and the realm of linguistic fundamentalism. In this respect, it will create new walls and boundaries and therefore major and new conflicts among nations. To paraphrase Clausewitz, is language becoming a new way to wage war? Let us hope not. Language must not become the new religion of the new Millennium and will not, if we remain vigilant on this matter.

For all these reasons and others, we are relatively satisfied that the natural Tower of Babel is stronger than the artificial and technical globalization of communications. However, we are relatively worried that the Tower of Babel is not necessarily stronger than the possible and dangerous ultra-nationalisation of languages.

In conclusion let me mention an extract of the 2006 Galway Call to UNESCO:

“The linguistic diversity of our world must be recognized in a clear and effective way. We consider, therefore, that an International Convention on Linguistic Diversity is necessary if we want linguistic rights to become effective fundamental rights at the beginning of the new Millennium. *The world needs an International Convention on Linguistic Diversity*”.²⁰

Let us hope that UNESCO will react positively in this matter as soon as possible since the linguistic diversity of our word is indeed an integral part of our biodiversity. As the Supreme Court of Canada said in the 1990 **Mahé Case**, “Language is more than a mere means of communication, it is part and parcel of the identity and culture of the people speaking it”.²¹

²⁰ Call to UNESCO and to Member States of the United Nations for an International Convention on Linguistic Rights, June 16, 2006, Galway, Ireland, 10th International Conference on Language and Law.

²¹ **Mahé v. Alberta**, [1990] 1 S.C.R. 342, p.362.

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