The European Journal of International Law Vol. 33 no. 3

Language Bias in International Legal Scholarship: Symptoms, Explanations, Implications and Remedies

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Abstract

In her much-acclaimed book published in 2017, Anthea Roberts examines whether international law is indeed international. The answer to this question is 'no', one reason being the deep language biases that pervade international legal scholarship. One of the clearest symptoms of this distortion is the unprecedented dominance of English. While such a lingua franca *has numerous advantages, it is connected to significant drawbacks. In this article, I first define what I mean by language bias in international legal scholarship before highlighting some of its symptoms. I then show that language bias is an underexplored topic in international legal scholarship and that this lack of engagement with the issue warrants further analysis. Next, I identify possible explanations for language bias, and I delineate its main implications for international legal scholarship and international law-making. Finally, I examine various strategies that can be pursued to minimize the negative consequences of language bias. While there are no easy answers, this article is a first attempt at highlighting the problematic effects of language bias on international legal scholarship, at outlining several strategies for tackling these effects and, importantly, at generating a scholarly debate on the dangers of language bias for the international, legal and scholarly character of our research.*

> Voler son langage à un homme au nom même du langage, tous les meurtres légaux commencent par là.
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> — R. Barthes, *Mythologies* (1957), at 50

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> Our language is the greatest asset, greater than North Sea Oil, and the supply is inexhaustible; furthermore, while we do not have a monopoly, our particular brand remains highly sought after. I am glad to say that those who guide the fortunes of this country share my conviction in the need to invest in, and exploit to the full, this invisible, God-given asset.
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> — *British Council Annual Report*, 1983–1984, at 9

1 Introduction

In her much-acclaimed book, Anthea Roberts examines whether international law is indeed international.[1] The answer to this question is 'no', one reason being the deep language biases that pervade international legal scholarship (the focus of this article) and international legal practice (of which scholarship forms an integral part).[2] The most obvious symptom of linguistic distortion is the dominance of English,[3] which has become what linguists call a 'hyper-central' language.[4] This dominance not only affects the natural sciences but also the social sciences and the humanities.[5] Linguists notice a 'regression of multilingualism'[6] and the existence of only a dozen 'supercentral' languages (Arabic, French, German, Hindi, Japanese, Malay, Mandarin, Portuguese, Russian, Spanish, Swahili and Turkish).[7] Ironically, this article, by relying on English to convey its message, cultivates the very bias that it is denouncing.[8] By relying on a hyper-central language, it will reach a wide audience that is of particular relevance to the topic at hand (namely, individuals who read and/or produce international legal scholarship in English). Yet this strategy is of little comfort for those who – like me – consider that English exerts too great an influence on international legal scholarship. This is why I will argue that collective efforts, including institutional measures and broader scholarly (self-)reflection,[9] are needed to effectively address this issue.

I do not intend to suggest that I am not guilty of language bias myself or that I am not perpetuating it, including through this article, which mainly relies on scholarly

1 A. Roberts, *Is International Law International?* (2017).

2 Besson, 'International Legal Theory qua Practice of International Law', in J. d'Aspremont *et al.* (eds), *International Law as a Profession* (2017) 268.

3 English is not monolithic: in the late 1990s, there were approximately 30 types of English in the world. See Macdonald, 'Legal Bilingualism', 42 *McGill Law Journal* (1997) 119, at 123.

4 A. de Swaan, *Words of the World: The Global Language System* (2001).

5 Gordin, 'Introduction: Hegemonic Languages and Science', 108 *Isis* (2017) 606, at 606.

6 Adami, 'La domination de l'anglais est-elle inéluctable?', 23 *Revue française de linguistique appliquée* (2018) 89, at 92.

7 Swaan, *supra* note 4.

8 For other examples, see J. Mowbray, *Linguistic Justice* (2012), at 12ff; Lentner, 'Law, Language, and Power: English and the Production of Ignorance in International Law', 8 *International Journal of Language and Law* (2019) 50; Gordin, *supra* note 5.

9 Arguably (and I am grateful to Jean d'Aspremont for challenging me on this point), self-reflection is impossible because one cannot escape one's own situatedness. Therefore, this effort needs to be collective and to include a diversity of voices. For a critique of 'self-proclaimed self-reflectivity', see d'Aspremont, 'Martti Koskenniemi, the Mainstream, and Self-Reflectivity', 29 *Leiden Journal of International Law* (*LJIL*) (2016) 625.

writings in English and, occasionally, on writings in other languages, when such writings are accessible and not behind a pay wall. Nor do I claim that avoiding language bias is easy. What I argue is (i) that language bias – and the dominance of English in particular – is an underexplored topic in international legal scholarship; (ii) that, while the use of English in international legal scholarship has important advantages, it is problematic on several counts; and (iii) that giving this issue the attention it deserves requires collective reflection and action.

In this article, I first define what I mean by language bias in international legal scholarship, and I highlight some of its symptoms. I then examine the extent to which international legal scholarship has critically reflected upon language bias. Next, I identify possible explanations (not justifications) for language bias, before delineating the main implications of language bias. Finally, I examine how international legal scholars can, if not fully eliminate language bias, at least reduce it. I rely not only on international legal scholarship but also on other disciplines, including semiotics, linguistics, social psychology, sociology, geography and philosophy, which – much more than international legal scholarship – have reflected upon issues of bias and linguistic dominance.

This article deliberately avoids referring to the linguistic 'core' or 'centre' versus the 'periphery', as these terms carry a normative judgement about the respective levels of importance of different languages. Moreover, the language skills and attitudes to language of researchers belonging to the 'core' versus the 'periphery' vary greatly. Instead, I will refer (except when quoting other authors) to English versus other 'dominated' languages. Yet these other languages do not stand on equal footing either, and the relationships of domination that exist between them are no less problematic. While, for reasons of scope, this article focuses on English, these other linguistic imbalances need to be addressed in future research.

2 Language Bias in International Legal Scholarship: Definition and Symptoms

A *Definition*

A bias is an 'inclination or prejudice for or against one person or group, especially in a way considered to be unfair'.[10] It involves 'the association of attributes (such as, for instance, good, bad, skilled, unskilled, strong, weak, positive, negative, trustworthy, untrustworthy, rich, or poor) with social categories (such as, for example, those based on gender, race, nationality, religion, skin colour, age, clothing, voice, body languages, or narratives)'.[11] Bias need not be conscious or intentional: an implicit ('hidden')[12]

[10] 'Bias', *Oxford Lexico*, available at www.lexico.com/definition/bias.

[11] Kanetake, 'Blind Spots in International Law', 31 *LJIL* (2018) 209, at 211.

[12] M. Banaji and A.G. Greenwald, *Blindspot: Hidden Biases of Good People* (2013).

bias 'escape[s] from our mind's implicit cognitions'.[13] Implicit bias may contradict our explicit (for example, our political) beliefs,[14] a phenomenon that psychologists call 'dissociation' or 'cognitive dissonance'.[15]

Accordingly, language[16] bias is as an explicit or implicit prejudice for or against one (or a set of) language(s) to the detriment of others. In international legal scholarship, language bias is the tendency of researchers to favour one (or a set of) language(s) to the detriment of others. Specific attributes (for example, relevance, originality, accuracy, intellectual rigour and so on) are associated with this language, so that content expressed in this language receives more attention. In medical research, for instance, language bias has been defined as '[t]he tendency for editors and readers to pay greater attention to scientific studies reported in English than to those studies written in other languages'.[17] Language bias is related to, but different from, linguistic bias – that is, bias that expresses itself in word choice.[18]

In applied linguistics, Robert Phillipson uses the word 'linguicism' to describe 'a favoring of one language over others in ways that parallel societal structuring through racism, sexism, and class'.[19] Linguicism 'involves representation of the dominant language, to which desirable characteristics are attributed, for purposes of inclusion, and the opposite for dominated languages, for purposes of exclusion'.[20] Phillipson also coined the concept of linguistic imperialism, an attitude whereby 'the dominance of English is asserted and maintained by the establishment and continuous reconstitution of structural and cultural inequalities between English and other languages'.[21] Phillipson focuses on English language teaching and on how states have relied on language to strengthen and consolidate their power, but not on the effect of language on international law-making and scholarship. Although he is influenced by human rights law and the principle of non-discrimination, this influence is limited to a few references to international legal instruments on language.[22] Similarly, while Jacqueline Mowbray's book *Linguistic Justice* examines how international law deals

[13] Kanetake, *supra* note 11, at 209.

[14] *Ibid.*, at 212.

[15] Banaji and Greenwald, *supra* note 12, at 56ff.

[16] A language is a 'system of communication used by a particular country or community'. 'Language', *Oxford Lexico*, available at www.lexico.com/definition/language.

[17] 'Language Bias', *Oxford Lexico*, available at http://medical-dictionary.thefreedictionary.com/language+bias. For an example, see Egger *et al.*, 'Language Bias in Randomised Controlled Trials Published in English and German', 350 *Lancet* (1997) 326; see also 'Language Bias', *Oxford Lexico*, available at http://catalogofbias.org/biases/language-bias/.

[18] Linguistic bias is 'a systematic asymmetry in word choice that reflects the social-category cognitions that are applied to the described group or individual(s)'. C.J. Beukeboom and C. Burgers, 'Linguistic Bias', *Oxford Encyclopedia of Communication*, available at http://oxfordre.com/communication/view/10.1093/acrefore/9780190228613.001.0001/acrefore-9780190228613-e-439.

[19] Phillipson, 'Linguistic Imperialism', in C.A. Chapelle (ed.), *The Encyclopedia of Applied Linguistics* (2018) 1, at 1, with reference to Skutnabb-Kangas; see also Phillipson, 'Realities and Myths of Linguistic Imperialism', 18 *Journal of Multilingual and Multicultural Development* (1997) 238, at 239.

[20] R. Phillipson, *Linguistic Imperialism* (1992), at 55.

[21] *Ibid.*, at 47.

[22] Phillipson, 'Realities', *supra* note 19, at 239; Phillipson, *supra* note 20, at 93ff.

with linguistic issues in various areas (education, culture and the media, work, interactions with state authorities and participation in public life), and while Mowbray briefly mentions academia,[23] her book is not devoted to linguistic imbalances in international legal scholarship. Therefore, the gap between the study of language bias and international legal scholarship remains to be bridged.

I choose the word 'bias' rather than 'linguicism' or 'linguistic imperialism' to highlight that prejudices with regard to language are cognitive processes that are not always conscious and to emphasize their epistemic and legal consequences. The term 'bias' is particularly apposite to describe and question our (un)conscious preferences as researchers and to point out their epistemic consequences.[24] I also prefer 'language bias' to 'linguistic privilege' – that is, 'social or economic advantages [gained] due to one's socialisation in one particular language culture'.[25] Privilege, like discrimination, is a consequence of bias,[26] but the concept of privilege highlights the advantages enjoyed by the locutors of specific languages more than the practices that consolidate these advantages.[27] Finally, I prefer 'language bias' to 'linguistic (in)justice', a notion used in philosophy as well as in other disciplines, including international law.[28] This expression – like the broader term of 'epistemic injustice'[29] – points at the moral issues connected to linguistic imbalances (for example, issues of distributive justice), a topic that, while of crucial importance, is beyond the scope of this article.

B *Symptoms*

International law 'aspires to be the world's Esperanto' – that is, 'an easy-to-learn, politically neutral means of expression that would transcend nationality and foster peace and international understanding among a variety of peoples'.[30] Besides the fact that it seems odd for a body of law to claim neutrality, agency and the power to 'pacify' (even Esperanto does not live up to these expectations[31]), whether international law

[23] Mowbray, *supra* note 8, at 102–104.

[24] Philippe Van Parijs occasionally refers to the notion of 'ideological bias'. P. Van Parijs, *Linguistic Justice for Europe and for the World* (2011), at 32ff.

[25] Müller, 'Worlding Geography: From Linguistic Privilege to Decolonial Anywheres', *Progress in Human Geography* (2021), at 4; see also Pronskikh, 'Linguistic Privilege and Justice: What Can We Learn from STEM?', 47 *Philosophical Papers* (2018) 71; Politzer-Ahles *et al.*, 'Is Linguistic Injustice a Myth? A Response to Hyland (2016)', 34 *Journal of Second Language Writing* (2016) 3.

[26] Banaji and Greenwald, *supra* note 12, at 140ff.

[27] Still, privilege shares some features with bias: it is 'often invisible and little remarked', the advantages it confers may 'not result from ill will or even animus' and it mainly hinges on structural features and not just on individual behaviour. Müller, *supra* note 25, at 4.

[28] See, e.g., Van Parijs, *supra* note 24; Mowbray, *supra* note 8; I. Piller, *Linguistic Diversity and Social Justice: An Introduction to Applied Sociolinguistics* (2016), ch. 8; A. Baker-Bell, *Linguistic Justice: Black Language, Literacy, Identity, and Pedagogy* (2020); Politzer-Ahles *et al.*, *supra* note 25; Hyland, 'Academic Publishing and the Myth of Linguistic Injustice', 31 *Journal of Second Language Writing* (2016) 58.

[29] For a reflection on international legal scholarship and epistemic injustice, see M. al Attar, *Subverting Racism in/through International Law Scholarship* (2021), available at http://opiniojuris.org/2021/03/03/subverting-racism-in-international-law-scholarship/.

[30] Roberts, *supra* note 1, at 3.

[31] Van Parijs, *supra* note 24, at 39ff.

succeeds in delivering on this promise is open to doubt, given the English language bias that pervades its scholarship.

Many scholars probably sense that language bias exists in international legal research, but offering more than anecdotal examples of this bias is not easy.[32] Given the multifaceted character of bias and the breadth of international legal scholarship, this article highlights specific instances of language bias. Although each subfield of international legal scholarship is characterized by its own research culture and tools, these specific examples can inform other areas of international legal research. They can also show the need for fully-fledged empirical studies.

1 Limited Reliance on International Legal Scholarship in Other Languages

The first example is a post titled 'How Many International Law Books Are Published in a Year?' published in 2015 by *Opinio Juris*.[33] The post summarized the results of a study conducted by John Louth, editor-in-chief of Academic Law at Oxford University Press, on public international law books published between April 2014 and March 2015.[34] For this purpose, Louth mainly relied on the books mentioned by the *International Law Reporter* and on the websites of several (Western) publishers.[35] He reported that 401 books had been published in English, French and German. Other languages were not surveyed due to the author's own language skills. Of these 401 books (which included edited books), 340 books (84.8 per cent) were in English, 36 (9 per cent) in French, 19 (4.7 per cent) in German, five (1.2 per cent) in both French and English and one (0.3 per cent) in German and English.

It would be unfair to criticize Louth's study as flawed: such surveys map contemporary trends in Western international legal scholarship, which is rare. Moreover, Louth did not claim to have conducted a comprehensive empirical study. Still, the example illustrates some problematic patterns of linguistic dominance. First, through its title, the post published by *Opinio Juris* promises more than it can deliver – that is, an overview of all books published in the field, versus an overview of books published in three Western languages. The title contrasts with the rest of the text, as Louth is candid about the linguistic limitations of his survey. Second, close to 85 per cent of the books surveyed by Louth are in English, which

[32] For examples of such anecdotes, see Hernández, 'On Multilingualism and the International Legal Process', in H. Ruiz Fabri, R. Wolfrum and J. Gogolin (eds), *Select Proceedings of the European Society of International Law*, vol. 2: *2008* (2010) 441, at 442. Phillipson himself acknowledges that linguicism is a 'somewhat broad and amorphous' concept. See Phillipson, *supra* note 20, at 318.

[33] J. Louth, 'Guest Post: How Many International Law Books Are Published in a Year?', *Opinio Juris* (2015), available at http://opiniojuris.org/2015/04/08/guest-post-how-many-international-law-books-are-published-in-a-year.

[34] The study was originally published at http://opil.ouplaw.com/page/book-survey, but was no longer available online at the time this article was published.

[35] The criteria that John Louth used to establish this pool of publishers remain unclear. Within this pool, Louth chose the publishers that had published the greatest number of international law books in the survey period.

gives us a rough idea of the extent to which English dominates international legal scholarship.

A second example is Jacqueline Mowbray's aforementioned book *Linguistic Justice* published by Oxford University Press in 2012. Mowbray writes:

> I have drawn primarily on sources in English. As a result, much of the literature on which I base my analysis comes from the UK or the US. … It follows that the discussion here of the relationship between language policy and international law may be skewed, in that it does not take account of alternative perspectives on linguistic justice which may be developed within writing in other languages. To this extent, the present book itself exhibits aspects of the very linguistic injustice which it seeks to consider, for … a recurring concern about language use relates to the increasing dominance of English.[36]

Thus, even leading scholars in the field of law and language limit themselves to one dominant linguistic perspective. It is worth noting that not all scholars are as transparent and lucid as Mowbray and Louth about the biases inherent in their own work.

2 Language Bias and Research Tools

Another example pertains to the research tools that international legal scholars use. One of them is the database International Law in Domestic Courts (ILDC), which was launched in 2006 and is hosted by Oxford University Press.[37] Case analyses are published in English, as are the translations of the most relevant passages. ILDC is widely used in (Western)[38] international legal scholarship. Besides the fact that ILDC informs scholarship, assessing language bias in the field of international law in domestic courts is important due to the place of domestic judgments in the sources of international law and as an auxiliary[39] means.[40] ILDC makes potential language bias quantifiable, at least to a certain extent, as judgments can be sorted based on various criteria, including their geographic origin, so that one can compare the number of judgments originating from various states and regions. The ambition of the ILDC project is to provide a representative and comprehensive overview of domestic cases on international law.[41] But how diverse is the ILDC database in reality?

[36] Mowbray, *supra* note 8, at 12ff.

[37] The database, which requires institutional access, can be found at http://opil.ouplaw.com by selecting the filter 'Oxford Reports on International Law in Domestic Courts'.

[38] Of course, one could query whether there is such a thing as 'Western' international legal scholarship. See Verdirame, '"The Divided West": International Lawyers in Europe and America', 18 *European Journal of International Law* (*EJIL*) (2007) 553; Jouannet, 'Les visions française et américaine du droit international: cultures juridiques et droit international', in Société française pour le droit international (SFDI) (ed.), *Droit international et diversité des cultures juridiques* (2008) 43.

[39] As I have argued elsewhere, it is more appropriate to use the term 'auxiliary means' than 'subsidiary means' in the context of Article 38(1)(d) of the Statute of the International Court of Justice (ICJ Statute) 1945, 33 UNTS 993. O. Ammann, *Domestic Courts and the Interpretation of International Law* (2019), at 153ff.

[40] Ammann, *supra* note 39, ch. 4.

[41] 'International Law in Domestic Courts', *OUP*, available at http://global.oup.com/academic/product/international-law-in-domestic-courts-9780198739753?cc=ch&lang=en&#.

As of 10 January 2021, ILDC contained 2,236 domestic court cases:[42] 973 from European jurisdictions (43.5 per cent), 672 from North America (30.1 per cent), 237 from Asia (10.6 per cent), 131 from Africa (5.9 per cent), 113 from Oceania (5.1 per cent) and 110 from Central America, South America and the Caribbean (4.9 per cent). If we think of the population of these continents, we notice that North America, Europe and Oceania are massively over-represented, while Africa, Asia, South America, Central America and the Caribbean are clearly under-represented. Of course, the population is only a rough indicator of the weight that should be given to each geographic region. It is impossible to know how many judgments on international law exist, at least not without establishing clear criteria of what qualifies as 'pertaining to international law'. Admittedly, ILDC only publishes judgments deemed relevant to 'the identification and interpretation of rules of international law' and/or to 'the reception and application of international law by states in their national legal orders'.[43] Still, these criteria leave room for bias, and non-Western continents remain under-represented.

To understand whether this selection results in language bias, let us turn to the geographic areas featured in ILDC and examine which countries – and, therefore, which linguistic communities – are particularly prominent. North American (that is, Canadian but especially US) judgments play a disproportionate role in the database. In Europe, the country with the greatest number of judgments is Germany (130), the European country with the largest population by far, followed by the United Kingdom (UK) (110) and Italy (107). France, which has roughly as many inhabitants as the UK, counts 63 judgments; other well-populated European states – namely, Poland and Romania – are represented by 12 and 11 judgments, respectively.

Of course, the judgments of English-speaking states were not included because they were in English (and the same applies, *mutatis mutandis*, to judgments of other well-represented states). Rather, the ILDC reporters are likely more numerous and more active in these states. Moreover, ILDC may be better known in these countries – for example, because universities provide institutional access to it. Language bias is caused by an imbalanced feeding of the database: the judgments of some states receive disproportionate attention from scholars because the database is not geographically (and, therefore, linguistically) balanced.

The upshot is that the ILDC database suffers from a double language bias: its content is only accessible to an English-speaking readership, and the judgments of Western and English-speaking states are over-represented and hence enjoy disproportionate attention. Again, it would be unfair to single out a helpful resource that aims to make international legal research more representative. Yet it is precisely because such

[42] The figure I rely on is the one indicated under the filter 'Geographic Regions' on the left-hand side of the website and not the one highlighted under the (more general) filter 'International Law in Domestic Courts'.

[43] 'International Law in Domestic Courts', *OUP*, available at http://opil.ouplaw.com/page/212.

resources are essential that we must strive to improve them, for example by including active reporters from a variety of regions.

3 International Legal Scholars' Awareness of Language Bias: A Conspicuous Silence and Some Critical Voices

Language bias in international legal scholarship is underexplored and under-theorized, but its critique is not new. In 1988, Alain Pellet wrote a letter to the *American Journal of International Law* (*AJIL*) to complain about the journal's linguistic homogeneity and neglect of French.[44] Of course, Pellet is linguistically privileged, and advocating for an English and French 'duopoly' is not satisfactory, but, since the 1980s, several bilingual or non-English-speaking international law journals have turned to English, confirming the trend highlighted by Pellet.[45] More recently, the dominance of English and other languages in international legal scholarship has been increasingly criticized.[46] This criticism has mostly been voiced by early career scholars and/or by researchers whose native language is not English; more established voices have usually remained silent.

Our discipline's lack of self-criticism with regard to language bias warrants further scrutiny. It is hardly surprising that scholars who are native or highly proficient English speakers, and whose academic writings meet the expectations of the dominant interpretive community, do not challenge practices from which they benefit. While some authors have highlighted the existence of cultural differences in international law, they have not provided in-depth analyses of the language issues involved, and they have focused on dominant legal cultures.[47] In other disciplines too, the hegemony

[44] Pellet, 'Correspondence', 82 *American Journal of International Law* (*AJIL*) (1988) 331.

[45] The *EJIL* decided to exclusively publish in English due to the low number of submissions in French, the frustration of European scholars whose native language was neither English nor French and 'some pressure from [the] publishers'. Weiler, 'Demystifying the EJIL Selection and Editorial Process: How Does One Get Published in *EJIL*?', 22 *EJIL* (2011) 1, at 5; see also 'About the EJIL', *EJIL*, available at www.ejil.org/about. The *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht / Heidelberg Journal of International Law* (*ZaöRV/HJIL*), originally published in German, is now bilingual and states that it is 'committed to bringing the specific contribution of German legal scholarship to the development of the theory and practice of international law to the attention of an international readership' and that 'this tradition is most directly conveyed in the German language'. 'Aims and Scope', *ZaöRV/HJIL*, available at www.mpil.de/en/pub/publications/periodic-publications/zaoerv.cfm#subm.

[46] Lentner, *supra* note 8; A. Gurmendi and P. Baldini Miranda da Cruz, *Writing in International Law and Cultural Barriers*, Part I (2020), available at http://opiniojuris.org/2020/08/07/writing-in-international-law-and-cultural-barriers-part-i; A. Gurmendi and P. Baldini Miranda da Cruz, *Writing in International Law and Cultural Barriers*, Part II (2020), available at http://opiniojuris.org/2020/08/07/writing-in-international-law-and-cultural-barriers-part-ii; J. Uriburu, *Between Elitist Conversations and Local Clusters: How Should We Address English-Centrism in International Law?* (2020), available at http://opiniojuris.org/2020/11/02/between-elitist-conversations-and-local-clusters-how-should-we-address-english-centrism-in-international-law; Tomuschat, 'The (Hegemonic?) Role of the English Language', 86 *Nordic Journal of International Law* (2017) 196; Hernández, *supra* note 32; see also Roberts, *supra* note 1, at 89ff.

[47] One example is Jouannet, *supra* note 38.

of English in science has been deemed problematic because it disadvantages other European languages, not other languages *tout court*.[48]

This does not mean that the power imbalances that characterize international legal scholarship have been ignored. Although critical and structuralist legal scholarship does not directly address the issue of cognitive bias, it does highlight '[h]istorical and political assumptions … [that] may inform and reinforce the biases of decision makers and legal scholars'.[49] Critical discourse analysis has studied language as a source of power and domination,[50] and Third World approaches to international law (TWAIL) have highlighted the role of legal language as a tool of violence.[51] However, this scholarship does not focus on language bias, perhaps because this topic is deemed less urgent than, and a symptom of, underlying socio-economic inequalities. Another explanation is that, strategically, TWAIL scholars view English as the only tool that can realistically dismantle the proverbial master's house,[52] though the *TWAIL Review* has pledged to 'diversify to other languages [than English] when the platform establishes itself and [its] resources grow'.[53]

Tackling language bias is important because it is not merely a side effect of deeper-rooted inequalities: language bias is (also) based on epistemic and institutional factors and generates distinct epistemic and legal problems. These problems, though less obvious than the harm caused by exploitative governance structures and post-colonial dependencies,[54] are serious and warrant specific analysis and measures.[55] To illustrate, let us take the related examples of racial and gender bias. If such biases are mere side effects of racial and gender inequality, then arguably fighting them is useless until these deeper inequalities have been eradicated. Yet bias makes the underlying structural problems even more difficult to solve.

Of course, the significant advantages of relying on English in international legal scholarship should be duly acknowledged. English makes it possible to reach out to a large readership, instead of remaining confined to a narrower linguistic community to which many lack access. The use of English also means that one can communicate and collaborate with a broader audience, which serves the advancement of science. English is a tremendous amplifier and empowering device through which

[48] J. Mittelstraß, J. Trabant and P. Fröhlicher, *Wissenschaftssprache: Ein Plädoyer für Mehrsprachigkeit in der Wissenschaft* (2016).

[49] Kanetake, *supra* note 11, at 212. For seminal examples, see M. Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument, Reissue with a New Epilogue* (2006); D. Kennedy, *International Legal Structures* (1987).

[50] Mertz and Rajah, 'Language-and-Law Scholarship: An Interdisciplinary Conversation and a Post-9/11 Example', 10 *Annual Review of Law and Social Science* (2014) 169, at 173; N. Fairclough, *Language and Power* (3rd edn, 2015).

[51] See, e.g., Anghie, 'Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law', 40 *Harvard International Law Journal* (1999) 1, at 7.

[52] I am grateful to Daniel Ricardo Quiroga-Villamarin for pressing me to make this point more explicit.

[53] Natarajan *et al.*, 'Third World Approaches to International Law Review: A Journal for a Community', 1 *TWAIL Review* (2020) 7, at 9.

[54] Müller, *supra* note 25, at 4.

[55] Banaji and Greenwald, *supra* note 12.

knowledge is created and disseminated.[56] Yet expressing oneself in a foreign language can also make it harder to establish oneself as what Martin Müller calls 'an authoritative speaker'.[57] Relying on a specific language is never neutral. Therefore, while we should not downplay the advantages of English, we should not turn a blind eye to its problematic dimensions either.[58]

4 Language Bias in International Legal Scholarship: Explanations and Implications

A *Explanations*

To address language bias, we first need to understand what encourages it.[59] While some of these drivers of language bias are difficult, if not impossible to change, others are within our control. This section deliberately refers to 'explanations' and not to 'causes' because I am not seeking to establish causal relationships. Rather, my goal is to tentatively explain (but not to justify) the current situation in international legal scholarship. At least four explanations can be identified – namely, 1) epistemic, 2) institutional, 3) economic and strategic and 4) historical ones. These aspects are often entwined; for instance, institutional factors have played a significant role in the past – for example, in the context of colonialism – as have strategic reasons and so on. This list of explanations does not purport to be exhaustive. Identifying the roots of language bias is one of the larger tasks that international legal scholarship needs to undertake, ideally as part of broader institutional and scholarly efforts.

1 Epistemic Explanations

The first factor pertains to scholars' necessarily limited language skills. While polyglots are less prone to language bias, they are of course not immune from it. The resulting availability bias[60] – the propensity to focus on what is easily accessible or already known[61] – has always existed, but it has not always been as pronounced. Today, most US lawyers (including scholars) are 'homegrown', while, in the 20th century, many lawyers living in the USA had fled Europe and spoke other languages besides English.[62] With the development of digitalization, learning languages and achieving a higher language proficiency has never been as easy, but it remains time-consuming.[63]

56 In the same vein, see Van Parijs, *supra* note 24, at 31ff.
57 Müller, *supra* note 25, at 6ff.
58 For a similar argument, see Politzer-Ahles *et al.*, *supra* note 25.
59 Adami, *supra* note 6, at 90.
60 Redelmeier and Ng, 'Approach to Making the Availability Heuristic Less Available', 29 *BMJ Quality and Safety* (2020) 528.
61 See also Lentner, *supra* note 8, at 57.
62 Roberts, *supra* note 1, at 50.
63 Mittelstraß, Trabant and Fröhlicher, *supra* note 48, at 35.

Therefore, such a goal is unrealistic for many researchers, not least due to institutional constraints.

A related explanation is the perceived need for unity – as opposed to fragmentation – in international law.[64] This unity has an epistemic component: some argue that international legal scholars should speak in a common language, as this facilitates mutual understanding and communication, instead of remaining confined to their respective linguistic communities.[65] Epistemic nationalism, Anne Peters writes, is a 'political scandal'.[66] In the context of such epistemic claims, the word 'language' often designates common concepts and interpretative norms, but it could also be understood as referring to a 'system of communication used by a particular country or community'.[67] As highlighted in relation to TWAIL, expressing oneself in a common language can mean emancipating oneself from parochialism and making one's work more broadly available without giving in to a dominant narrative.[68] While form influences substance, English can serve as a packaging for a great variety of content.[69] One could even claim that, in terms of its number of locutors, 'English is no longer owned by native speakers'.[70] These various points illustrate the tremendous potential of English as the main language of international legal scholarship.

2 Institutional Explanations

Beyond the individual, cognitive level, language bias is often institutionalized: it is turned into social (and sometimes legal) norms that are internalized by the participants in a practice, even when these norms 'are not objectively in their interest'.[71] Social psychologists even show that 'people in fact are willing to sacrifice their self-interest for the sake of maintaining the existing social order'.[72] This is what Nico Krisch calls 'hegemonic socialization'.[73] One obvious example of institutionalized language bias concerns the working languages of international institutions. English and French have been particularly prominent in this regard. They are the two working languages of the United Nations (UN) and dominate the organization, although the UN has six

64 International Law Commission (ILC), Fragmentation of International Law: Difficulties Arising From the Diversification and Fragmentation of International Law, UN Doc. A/CN.4/L.682, 13 April 2006.

65 Peters, 'Die Zukunft der Völkerrechtswissenschaft: Wider den epistemischen Nationalismus', 67 *ZaöRV* (2007) 721.

66 *Ibid.*, at 775.

67 See note 16 above.

68 See J. d'Aspremont, 'International Law, Universality, and the Dream of Disrupting from the Centre', 7 *ESIL Reflections* (2018), available at https://esil-sedi.eu/wp-content/uploads/2018/10/ESIL-Reflection-DAspremont.pdf (last visited 18 July 2022), at 2; see also Lorde, 'The Master's Tools Will Never Dismantle the Master's House', in A. Lorde, *Sister Outsider: Essays and Speeches* (1984) 110.

69 For a telling example, see d'Aspremont, *supra* note 68.

70 D. Stein, *Weltsprache Englisch: Dominanz und Beherrschung*, at 5, available at www.phil-fak.uni-duesseldorf.de/anglist3/weltsprache_englisch.pdf (author's translation).

71 Phillipson, *supra* note 20, at 8. This matches findings in social psychology that one can be biased against one's own group. Banaji and Greenwald, *supra* note 12, at 111.

72 Banaji and Greenwald, *supra* note 12, at 118.

73 Krisch, 'International Law in Times of Hegemony: Unequal Power and the Shaping of the International Legal Order', 16 *EJIL* (2005) 369, at 375.

official languages.[74] They are the working languages of the International Court of Justice (ICJ),[75] the European Court of Human Rights (ECtHR)[76] and the International Criminal Court,[77] and they were the working languages of the International Criminal Tribunal for the former Yugoslavia[78] and for Rwanda.[79] The Extraordinary Chambers in the Courts of Cambodia uses Khmer, English and French;[80] the Special Tribunal for Lebanon works in French, English and Arabic.[81] With respect to the Inter-American Court of Human Rights, its official languages are Spanish, English, Portuguese and French.[82]

Scholars speak of a 'French capture' to describe the dominance of French and of French lawyers' propensity towards 'control and preservation' through language.[83] In an article that was fiercely criticized by the French ambassador to the Netherlands,[84] Peter Laverack argued that 'French is unfit for purpose as a common working language due to the bias that its use creates against Asian and Latin American nations'[85] but without questioning the supremacy of English. Another recent example is the (unsuccessful) proposal by some (francophone) politicians that French should replace English as the dominant language in the European Union after Brexit.[86] The pervasiveness of language bias in international legal practice does not mean that international legal scholarship must necessarily reproduce these biases. Legal scholarship forms an integral part of the law *qua* argumentative practice:[87] '[A]cademics, too, practise the law, and it is only the context in which they do so that makes them special.'[88] International legal scholarship should aim to improve this practice and not just replicate it.

Another institutional explanation is the traction of 'elite' (especially US and UK but also other Western) universities,[89] which are often monolingual, English-speaking and part of the Anglo-American common law tradition. These institutions exercise

[74] GA Res. 2 (I), 1 February 1946; GA Res. 3190 (XXVIII), 18 December 1973.

[75] ICJ Statute, *supra* note 39, Art. 39(1).

[76] Rules of Court of the European Court of Human Rights (ECtHR Rules), 1 January 2020, Art. 34(1).

[77] Rome Statute of the International Criminal Court 1998, 2187 UNTS 90, Art. 50(2).

[78] Statute of the International Criminal Tribunal for the Former Yugoslavia 1993, 32 ILM 1159 (1993), Art. 33.

[79] Statute of the International Criminal Tribunal for Rwanda 1994, 33 ILM 1598 (1994), Art. 31.

[80] Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea, 27 October 2004, Art. 45.

[81] Statute of the Special Tribunal for Lebanon, 17 July 1998, 2187 UNTS 90, Art. 14.

[82] Rules of Procedure of the Inter-American Court of Human Rights, 24 November 2000, Art. 20(1).

[83] Cohen, 'On the Linguistic Design of Multinational Courts: The French Capture', 14 *EJIL* (2016) 498, at 499.

[84] Pic, 'Letter to the Editors: A Reply to Peter Laverack, "The Rise of Asia and the Status of the French Language in International Law"', 15 *Chinese Journal of International Law* (2016) 215.

[85] Laverack, 'The Rise of Asia and the Status of the French Language in International Law', 14 *Chinese Journal of International Law* (2015) 567, at 567.

[86] D. Keating, 'Despite Brexit, English Remains the EU's Most Spoken Language by Far', *Forbes* (6 February 2020), available at www.forbes.com/sites/davekeating/2020/02/06/despite-brexit-english-remains-the-eus-most-spoken-language-by-far/?sh=67ce0ccc412f.

[87] Besson, *supra* note 2.

[88] Koskenniemi, *supra* note 49, at 617.

[89] Of course, what qualifies as an 'elite' university is open for debate and constitutes itself a value judgment.

tremendous influence on legal practice and scholarship, including in international law. They shape standards in legal research via the publications of their researchers as well as via university presses, university journals and peer review. Moreover, they attract numerous foreign researchers. Some research institutions in non-English speaking states, like the Max Planck Institute, have even started requiring that prospective hires have 'a doctoral degree in law from a German university or from a renowned English-speaking university or law school'.[90] Proficiency in English is deemed an essential prerequisite for access to key institutions, networks and publication outlets.

Given that English is the *lingua franca* of science, it is not surprising for English-speaking universities to act as standard-setters. The problem, however, is that these institutions, which stand for cutting-edge research and would be in a position to improve existing research standards, do not seem to care much about language bias. Aiming for scientific work that is less biased, including from the perspective of language, should be a priority for these institutions, unless high rankings are merely a reflection of perceived prestige and not, among other factors, quality of research output.

Even non-English-speaking universities are rarely oriented towards multilingual research. This is sometimes apparent in their research facilities. Law libraries 'stimulate some academic tribes and territories, while discouraging others, simply by deciding which scholarship is worthy of shelf space'.[91] The same applies to digital resources, which are not equally accessible to all. Moreover, in some states, including in Western Europe, the digitization of academic publications remains rudimentary, making access to this scholarship difficult. Regardless of how many languages one speaks, relying on scholarship in multiple languages demands a real effort that is easily defeated by institutional obstacles. Last but not least, institutional culture influences scholars' individual strategies: the fact that researchers are incentivized to make specific choices (for example, to aim for publications in 'top journals') leads to the emergence of specific linguistic patterns.

3 Economic and Strategic Explanations

Another set of explanations includes economic and strategic considerations. In regard to the former, the publishing industry is driven by imperatives of profitability and efficiency. Yet what sells – at least from the perspective of Western academic publishers – is not representative of the various styles of scholarship that exist across the globe. A monograph that exclusively looks at UK or US approaches to international law is more likely to be successful on the market, and, therefore, to be deemed publishable, than a study that focuses on another state.[92] Such a monograph also needs to meet specific linguistic and stylistic standards, and the fact that it must be published in English

[90] Max Planck Institute for the Study of Crime, Security and Law, 'Postdoc/Senior Researcher (m/f/d)', *Max-Planck-Gesellschaft* (2020), available at www.mpg.de/16035932/postdoc1.

[91] N. Graaf, 'Why German Law Libraries Are Not Neutral and Why We Should Care', *Law Log* (2019), available at http://lawlog.blog.wzb.eu/2019/07/25/why-german-law-libraries-are-not-neutral-and-why-we-should-care.

[92] See the examples mentioned by Gurmendi and Baldini Miranda da Cruz, 'Part II', *supra* note 46. In the same vein, see Hyland, *supra* note 28, at 64.

is often non-negotiable. Thus, 'scholars may sometimes have to adjust not only their styles, but also research topics towards the preferences of the intended editors'.[93] Just like 'multilateral norms can significantly reduce the transaction costs of regulation',[94] a common language lowers transaction costs. Relying on translation services is time-consuming and expensive. The *Asian Journal of International Law* highlights that its choice of English as a language of publication is 'a matter of practical convenience rather than political endorsement' to 'attract a global audience'.[95] Without doubt, globalization is one of the drivers of linguistic homogeneity.[96]

With respect to strategic reasons, scholars naturally strive for accessibility and visibility, though making research publicly accessible is also necessary to contribute to law as a normative practice. Strategic considerations determine the outlets for which scholars write and, consequently, the language of their work. In the USA, for instance, international legal scholars consider that one should 'forget about publishing in a language other than English'.[97] In Germany, researchers are caught between 'the Scylla of having to publish in English' and the 'Charybdis of publishing in German' and risking that one's work will not be noticed by the larger scholarly community.[98] This also applies to international legal scholarship, where German plays a limited role.[99]

The quest for visibility also determines the audience for which scholars write and, hence, what they write about. International legal scholars who aim to reach a global readership focus on a handful of English-speaking universities, publishers and publications, while '[o]ther sites, especially in Africa, Asia, and Latin America, are perceived as more peripheral'.[100] Domestic concepts, debates and schools of thought may need to be presented in a simplified way or even ignored altogether to ensure that a piece is read by a global audience (which may entail losing one's domestic readership). In light of this, some scholars who acknowledge the strategic advantages of publishing in English have pledged to regularly publish in other languages (for example, 'at least every 18 months').[101] While one could argue that non-native English speakers

[93] Gurmendi and Baldini Miranda da Cruz, 'Part II', *supra* note 46. The authors focus on Global South scholars.

[94] Krisch, *supra* note 73, at 373.

[95] 'Preparing Your Materials', *Asian Journal of International Law*, available at www.cambridge.org/core/journals/asian-journal-of-international-law/information/author-instructions/preparing-your-materials; 'A Checklist for Publishing Your First Journal Article', Tips from the Asian Journal of International Law', *Asian Journal of International Law*, available at www.cambridge.org/core/services/aop-file-manager/file/575ac32baacaf65b2c79463b/AJL-tips-for-1st-time-authors.pdf.

[96] Adami, *supra* note 6, at 96ff.

[97] Roberts, *supra* note 1, at 98.

[98] Stein, *supra* note 70, at 10. Similarly, see Genard and Roca i Escoda, 'Publier en français dans un monde globalisé: raisons et déraisons', *SociologieS* (2019), n. 63, available at http://journals.openedition.org/sociologies/9731.

[99] Sandrock, 'Die deutsche Sprache und das internationale Recht: Fakten und Konsequenzen', in U. Hübner and W.F. Ebke (eds), *Festschrift für Bernhard Grossfeld zum 65. Geburtstag* (1999) 971.

[100] Krisch, 'The Many Fields of (German) International Law', in A. Roberts *et al.* (eds), *Comparative International Law* (2018) 93.

[101] A. Gurmendi, 'Publish in the Global South: A Call for Rebellion', *Opinio Juris* (28 January 2022), available at http://opiniojuris.org/2022/01/28/publish-in-the-global-south-a-call-for-rebellion.

(and, more generally, plurilingual scholars) have a competitive advantage because they have access to a wider range of materials than monolingual authors, this advantage is not clear considering the statistics published by leading Western international law journals regarding the linguistic origin of their articles.[102]

4 Historical Explanations

The fourth explanation is historical.[103] After Latin and French, English acquired the status of the *lingua franca* of international law with the 1919 Treaty of Versailles (a status it first shared with French).[104] After World War II, English began to displace French, becoming international law's main language.[105] The formation of nation states had already led to a significant decrease in linguistic diversity.[106] In international law, this trend was accelerated by colonialist, imperialist and Eurocentric tendencies.[107] The French linguist Louis-Jean Calvet uses the word 'glottophagie' to describe the absorption of local languages by the colonizers.[108] This absorption also consolidated the domination of two legal traditions: the Anglo-American common law (influenced by English as well as by Latin and French) and the continental civil law tradition (influenced by Roman law and Latin terminology as well as by languages such as French and German).[109]

In many states, English is a 'colonial linguistic inheritance'.[110] The British Council has been a key institution in the dissemination of English.[111] The USA also played an important role in the wake of globalization. Other hegemonic languages, like Castilian[112] and French,[113] have similar histories. While German was 'boycotted' as a language of science after World War I and further lost in significance after World War II,[114] its importance for international legal philosophy cannot be underestimated. Even in recent years, scholars have focused on the so-called 'great legal traditions' of international law.[115] Thus, some legal systems and cultures (especially the

[102] S. Nouwen, 'Vital Statistics', *EJIL Talk!* (5 August 2020), available at www.ejiltalk.org/vital-statistics-5.

[103] As Roland Barthes puts it, 'la mythologie ne peut avoir qu'un fondement historique, car le mythe est une parole choisie par l'histoire: il ne saurait surgir de la nature des choses'. R. Barthes, *Mythologies* (1957), at 182.

[104] Hernández, *supra* note 32, at 444ff; Treaty of Versailles 1919, 225 Parry 188.

[105] Hernández, *supra* note 32, at 448.

[106] Adami, *supra* note 6, at 93ff; see also Stein, *supra* note 70, at 7ff.

[107] L.-J. Calvet, *Linguistique et colonialisme: Petit traité de glottophagie* (1974), at 65.

[108] *Ibid.*, at 12.

[109] On this topic, see Tiersma, 'A History of the Languages of Law', in L.M. Solan and P.M. Tiersma (eds), *The Oxford Handbook of Language and Law* (2012) 13.

[110] Phillipson, *supra* note 20, at 109ff. As Phillipson writes, 'whereas once Britannia ruled the waves, now it is English which rules them. The British empire has given way to the empire of English' (at 1).

[111] *Ibid.*, at 136ff.

[112] Phillipson, 'Imperialism', *supra* note 19, at 2.

[113] Schlobach, 'Langue universelle et diversité des Lumières. Un concours de l'Académie de Berlin en 1784', 21 *Dix-huitième siècle* (1989) 341.

[114] R. Reinbothe, *Deutsch als internationale Wissenschaftssprache und der Boykott nach dem Ersten Weltkrieg* (2nd edn, 2019), at 530ff.

[115] SFDI (ed.), *Droit international et diversité des cultures juridiques* (2008).

Anglo-American common law system and some continental civil law traditions) are still deemed more relevant than others.

B *Implications*

1 Epistemic Bias

Language bias skews knowledge production and creates an epistemic bias. At first sight, English, the *lingua franca* of international legal scholarship, serves as a universal language that enables mutual understanding. Yet assumptions about the neutrality of language are 'myths', as Roland Barthes calls them, or 'fausses évidences'.[116] The biases inherent in the use of any language – and even any linguistic or non-linguistic communicative symbol[117] – have mainly been highlighted by semiotics, the 'science of signs', which can be applied to any discipline engaged in interpretation, including law.[118] Semiotics is the 'study of meanings that are present in our day-to-day systems of communication and signification'.[119] By examining what it calls 'signifiers' (which can be apprehended by our senses – for example, words printed on a sheet of paper), semiotics uncovers 'hidden meanings' or 'signifieds' (the mental representations triggered by signifiers).[120] Umberto Eco thus describes semiotics as 'the discipline studying everything which can be used in order to lie'.[121] Signs always stand for something; they emerge from the relationship between the signifier and the signified.[122]

Semiotics 'explodes the myth of semantic correspondence between sign and referent'[123] (the referent being the thing signified) by showing that signs influence how we think about the world.[124] The use of a specific language, too, leads to distortion: language is culturally embedded and hence 'fraught with uncertainties inviting and necessitating interpretation'.[125] This applies, *a fortiori*, to legal language, given 'our inability to define its crucial words in terms of ordinary factual counterparts'.[126] Within semiotics, one strand of thought that highlights the epistemic problems created by

[116] Barthes, supra note 103, at 9.

[117] Macdonald, *supra* note 3, at 131.

[118] S. Tiefenbrun, *Decoding International Law: Semiotics and the Humanities* (2010), at 3, 20; see also Barthes, *supra* note 103, at 183 ('postuler une signification, c'est avoir recours à la sémiologie').

[119] S. Hammouri, 'Roland Barthes: Myth', *Critical Legal Thinking*, available at https://criticallegalthinking.com/2020/06/12/roland-barthes-myth.

[120] As Umberto Eco notes, Ferdinand de Saussure's concept of the signified leaves it 'halfway between a mental image, a concept and a psychological reality'. U. Eco, *A Theory of Semiotics* (1976), at 14ff; Tiefenbrun, *supra* note 118, at 3.

[121] Eco, *supra* note 120, at 7; see also Tiefenbrun, *supra* note 118, at 4.

[122] On this relational dimension, see Barthes, 'Éléments de sémiologie', 4 *Communications* (1964) 91, at 103ff; see also Barthes, *supra* note 103, at 185.

[123] De Man, 'Semiology and Rhetoric', 3 *Diacritics* (1973) 27, at 28.

[124] Tiefenbrun, *supra* note 118, at 23; see also Eco, who defines signs as 'everything which can be taken as significantly substituting for something else'. Eco, *supra* note 120, at 7.

[125] Tiefenbrun, *supra* note 118, at 23ff.

[126] Hart, 'Definition and Theory in Jurisprudence', in H.L.A. Hart, *Essays in Jurisprudence and Philosophy* (1983), at 25.

language bias is structuralism.[127] Structuralists show that meaning is the product of human experience – that is, of context and use and of underlying structural features; it is not dictated by, or inherent in, words themselves.[128] Importantly, they highlight that 'language … mold[s] discourse beyond the consciousness of the individual, imposing on his thought conceptual schemes which are taken as objective categories'.[129] It is part of 'the concealed forces that shape our legal unconscious'.[130]

The epistemic consequences of relying on English as a *lingua franca* in international legal scholarship are manifold (and each of them would need to be illustrated by empirical examples, although such a project is beyond the scope of this article). First, English is a code (a system of signification[131]) that stands for a specific family of legal cultures, traditions and ideas. The use of English 'conveys to us a certain interpretation of the social reality to which it is addressed, under the veil of objectivity, or naturalness'.[132] The dominance of some languages over others in international legal scholarship 'reinforce[s] a culture, a framework of legal reasoning, and the transposition of legal norms from the national to the international'.[133] The use of English thus 'exert[s] a control over how ideas are expressed and, more fundamentally, over what ideas can be expressed'.[134] Second, language bias leads to a loss of 'linguistically unique knowledge'.[135] This lost knowledge is tied to 'national traditions, intellectual histories, and … differing cultural interpretations'.[136] This defeats the very purpose of scientific research, which is to create and refine – and not to exclude or ignore – knowledge. Language bias 'produces ignorance', consolidates hegemonic modes of thinking[137] and leads to intellectual conformism.[138] Third, English language bias

[127] The boundaries between structuralism (which includes authors such as Ferdinand de Saussure and Claude Lévi-Strauss) and post-structuralism (which encompasses authors such as Jacques Derrida, Roland Barthes, Michel Foucault and others) are fluid. The criterion commonly used to distinguish them is that, 'while structuralism attempted to explicate the internal laws whereby experience reproduces itself, deconstruction [or post-structuralism] does away with such laws, stressing the unbounded, imaginative character of experience'. Koskenniemi, *supra* note 49, at 6. For a critique of Saussurean linguistics, see P. Bourdieu, *Langage et pouvoir symbolique* (2001). On structuralism in legal thought, see Desautels-Stein, 'Structuralist Legal Histories', 78 *Law and Contemporary Problems* (2015) 37.

[128] Koskenniemi, *supra* note 49, at 566; see also Koskenniemi, 'What Is Critical Research in International Law? Celebrating Structuralism', 29 *LJIL* (2016) 727.

[129] Lévi-Strauss, cited in Koskenniemi, *supra* note 49, at 12; see also more generally Koskenniemi, *supra* note 49, at 733 ('[b]ecause we experience the world in contrasting ways, we project different meanings on the words we use to describe it').

[130] Singh, 'International Legal Positivism and New Approaches to International Law', in J. Kammerhofer and J. d'Aspremont (eds), *International Legal Positivism in a Post-Modern World* (2014) 291.

[131] Eco, *supra* note 120, at 8.

[132] Koskenniemi, *supra* note 49, at 12.

[133] Hernández, *supra* note 32, at 449.

[134] Macdonald, *supra* note 3, at 131 (referring to symbols).

[135] In medicine, see Cámara-Leret and Bascompte, 'Language Extinction Triggers the Loss of Unique Medicinal Knowledge', 118 *Proceedings of the National Academy of Sciences of the United States of America* (2021) 1, at 1; see also Orford, 'A Journal of the Voyage from Apology to Utopia', 7 *German Law Journal* (2006) 993, at 1004.

[136] Hernández, *supra* note 32, at 442.

[137] Lentner, *supra* note 8.

[138] Genard and Roca i Escoda, *supra* note 98, n. 22ff.

sidelines perspectives that do not conform with Anglo-American standards of scholarship and academic writing. It leads to a de facto dominance of Anglo-American 'scientific traditions, e.g. conceptually or methodologically'.[139] While one could argue that this amounts to 'scientific' or 'academic' bias, and not to language bias, it remains true that the expectations of academic gatekeepers are often influenced by Anglo-American scholarly standards. Alonso Gurmendi and Paula Baldini Miranda da Cruz thus criticize the 'lack of regional representation' in international legal scholarship.[140] Fourth, language bias leads to a skewed understanding of the issue that is being researched.[141] It constrains the search for research topics, restricts the way problems are framed, influences citation practices, excludes alternative approaches and influences how issues are eventually solved. In international legal scholarship, English language bias leads to an incomplete account of state practice. In other words, language bias contradicts the most fundamental objectives of (international) legal research.

For all these reasons, English language bias creates an epistemic bias that jeopardizes the open-endedness of scientific inquiry. It skews scholarly assessments and unduly restricts the scope of possible solutions. International legal scholars should be concerned about whatever prevents them from providing a balanced, accurate account of legal reality and even more so given the international dimension of their discipline. Indeed, there is not much left of international legal scholarship if it is neither 'international' nor 'scholarly'. Worse, English language bias even threatens the 'legal' in international legal scholarship.

2 Legal Bias

Besides leading to epistemic bias, language bias also skews international law-making processes. Indeed, Article 38(1)(d) of the Statute of the International Court of Justice (ICJ Statute) refers to 'the teachings of the most highly qualified publicists *of the various nations*' as auxiliary means.[142] This element of the wording of Article 38(1)(d) (let us call it the representativeness requirement), which is often neglected in international legal practice and scholarship, makes clear that systematically giving more weight to the writings of publicists of some nations (typically, English-speaking and, more generally, Western ones) is not acceptable. The International Law Commission (ILC) has emphasized that Article 38(1)(d) commands 'having regard, so far as possible, to writings representative of the principal legal systems and regions of the world and in various languages'.[143] The fact that this requirement is often disregarded in

[139] Mittelstraß, Trabant and Fröhlicher, *supra* note 48, at 36.

[140] Gurmendi and Baldini Miranda da Cruz, 'Part I', *supra* note 46.

[141] Regarding medical research, see 'Language bias', *Catalog of Bias*, available at http://catalogofbias.org/biases/language-bias/.

[142] ICJ Statute, *supra* note 39 (emphasis added).

[143] ILC, Draft Conclusions on Identification of Customary International Law, with Commentaries, UN Doc. A/73/10 119 (2018), at 151, n. 4; see also Helmersen, 'Finding "the Most Highly Qualified Publicists": Lessons from the International Court of Justice', 30 *EJIL* (2019) 509, at 530.

practice does not make it less relevant, as Alain Pellet and Daniel Müller note in their commentary to Article 38(1)(d).[144]

Sondre Torp Helmersen identifies four criteria based on which the ICJ 'ranks' the writings of publicists: quality, expertise, official position(s) of the author(s) and agreement between authors.[145] Yet the elephant in the room[146] is the language(s) in which publicists write. Helmersen acknowledges that these four criteria leave room for subjective value judgments, but one needs to go even further: the said criteria (for example, scholars' 'official positions'[147] and affiliation with 'prestigious' institutions) contribute to the exclusion of some (especially non-anglophone and non-Western) scholarly perspectives. Among the 10 most-cited writers in the ICJ's case law,[148] six are British, and one is American; the remaining three are Israeli, German and Belgian. While the present article does not focus on international legal practice, the way in which the ICJ applies Article 38(1)(d) of the ICJ Statute influences international legal scholars' self-understanding and research.

The nexus between scholarly writings and states requires further clarification. Of course, scholars' role is precisely not to be their states' advocates. Academic freedom, which is guaranteed under both domestic and international law,[149] protects their intellectual independence. Thus, the neglect of some scholarly voices does not, as such, violate sovereign equality. However, the representativeness requirement of Article 38(1)(d) of the ICJ Statute makes clear that scholars' country of origin (whatever that refers to) is (or, rather, must be) a relevant criterion when consulting scholarly writings. Moreover, the ILC has stated that the writings of publicists 'may reflect the national or other individual viewpoints of their authors'.[150] Indeed, while scholars should not act as the mouthpieces of their state, their origin (again, however this term is defined) influences how they approach international law. Thus, what gets lost when we fail to consider the writings of scholars from specific countries who publish in languages other than English are these authors' distinctive perspectives. These perspectives are shaped, among other factors, by scholars' domestic legal culture and linguistic background.[151] Of course, our belonging to a specific legal culture hinges not only on our domestic origin but also on our personal and professional intellectual trajectories.[152]

[144] Pellet and Müller, 'Article 38', in A. Zimmermann *et al.* (eds), *The Statute of the International Court of Justice: A Commentary* (3rd edn, 2019) 819, at 961, n. 340.

[145] Helmersen, *supra* note 143.

[146] Of course, there are several elephants in the room, such as scholars' gender, race and socio-economic background.

[147] On this criterion, see Helmersen, *supra* note 143, at 520ff.

[148] Helmersen, *supra* note 143, at 513. If self-citations were included, ICJ Judge Cançado Trindade would be the most frequently (self-)cited publicist in the ICJ's case law (0 citations by the ICJ versus 297 self-citations). *Ibid.*, at 534.

[149] See, e.g., International Covenant on Economic, Social, and Cultural Rights 1966, 993 UNTS 3, Art. 15(3).

[150] ILC, *supra* note 143, at 151, n. 2.

[151] On the influence of domestic legal culture on states' approach to international law, see Jouannet, *supra* note 38.

[152] Jutras, 'Énoncer l'indicible: le droit entre langues et traditions', 52 *Revue internationale de droit comparé* (2000) 781, at 789.

Another reason that makes a variety of scholarly perspectives valuable is that scholars' perspectives build upon a thorough knowledge of 'their' state's (or states') practice of international law.[153] While international legal scholars are not supposed to defend domestic interests in their work, they can contribute insights about the practice of their state(s) that may be of relevance to the international legal practice at large.[154] Although the analogy is of course imperfect, one could compare this with the fact that judges serving on the ECtHR are always included in the chamber called to examine a case involving their own state.[155] They are included not because they are expected to defend their state's position (which would obviously be in blatant contradiction with judicial independence) but, rather, because their knowledge of their state's legal system is superior to that of their colleagues.

The representativeness requirement of Article 38(1)(d) of the ICJ Statute is thus at least partly linked to the fact that states have an equal role to play as international lawmakers. This brings us to a more fundamental international legal principle on which Article 38(1)(d) (and the rest of Article 38(1)) is based – namely, sovereign equality. The meaning of sovereign equality – a concept famously enshrined in Article 2(1) of the UN Charter – is notoriously disputed, but its core components are relatively uncontroversial. The 1970 Friendly Relations Declaration provides that 'States have equal rights and duties and are equal members of the international community, notwithstanding differences of an economic, social, political or other nature'.[156] Sovereign equality guarantees a 'right to equality in law', which also means that states are equal *qua* international lawmakers.[157] As Bardo Fassbender highlights, '[t]he rights ensuring equal membership in the international community are principally *rights of participation* in the exercise of the functions of governance of that community, that is to say, *in making and applying international law* and adjudicating international legal claims'.[158] Hegemony – namely, 'the striving for leadership or the institutionalized supremacy of one or more States over other States' – erodes this juridical equality.[159]

The fact that scholarly writings from a few nations dominate international legal scholarship (and international legal practice via Article 38(1)(d) of the ICJ Statute) is one such manifestation of hegemony. The dominance of some domestic and linguistic perspectives – and, as a result, the disproportionate attention given to the practice of some states – distorts processes of identification and interpretation of international law. Linguistic hegemony 'privileges the transfer of concepts and ideas from municipal

[153] It is unclear whether the representativeness requirement of Art. 38(1)(d) ICJ Statute refers to publicists' nationality, place of legal education and training or institutional affiliation.

[154] For such an attempt, see Ammann, *supra* note 39.

[155] ECtHR Rules, *supra* note 76, Rule 26(1)(a).

[156] Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations, GA Res. 2625, UN Doc. A/8082, 24 October 1970.

[157] Fassbender, 'Article 2(1)', in B. Simma *et al.* (eds), *The Charter of the United Nations: A Commentary*, vol. 1 (3rd edn, 2012) 133, at 149.

[158] *Ibid.*, at 158 (emphasis added); see also Krisch, *supra* note 73, at 377.

[159] Thürer, 'Hegemony', in *Max Planck Encyclopedia of Public International Law* (online edition) (2011), n. 1.

orders into international law'; some municipal orders displace others by taking up disproportionate space.[160]

Some authors explicitly link sovereign equality to linguistic particularities. Jeannine Drohla, for instance, argues that language is an attribute of states' identity and that '[i]t was no coincidence that the attempt to introduce official State languages into multilateral public international law was for the first time made during the negotiations for the two Westphalian peace treaties of 1648, which are considered to be the origin of the principle of State sovereignty'.[161] For Drohla, 'linguistic diversity appears as a precondition for a diversity of national legal cultures that may influence public international law, enrich it and, thus, contribute to a culture proper to international law'.[162] This linkage between sovereign equality and language is also plain in Henry Wheaton's work, even if he acknowledged that the practice of international law did not always reflect it. In a chapter of his *Elements of International Law* titled 'Rights of Equality', Wheaton writes that sovereign equality 'authorizes each nation to make use of its own language in treating with others; and this right is still, in a certain degree, preserved in the practice of some States'.[163]

5 Is There a Remedy?

Language bias in international legal scholarship is pervasive and deep-rooted. This grim diagnosis raises the question of whether an appropriate cure even exists: 'Protesting [the dominance of the English language] seems like yelling at the moon.'[164] Yet the current state of affairs is not inevitable: history cannot be modified, and economic factors are difficult to eliminate, but individual and institutional epistemic commitments can change.[165] As social psychologists have shown, bias can be 'outsmarted' in a way that '[does] not need to be complicated or costly'.[166] The working languages of international law may well consolidate linguistic imbalances, but this does not give scholars a licence to display language bias in their work. Quite the contrary, scholarship is part of international legal practice, which it must continuously strive to improve, and this also requires improving scholarship itself.

[160] Hernández, *supra* note 32, at 452.

[161] Drohla, 'The Languages of Public International Law: Power Politics under the Cloak of Cultural Diversity?', in SFDI (ed.), *Droit international et diversité des cultures juridiques* (2008) 153, at 179.

[162] *Ibid.*, at 174.

[163] H. Wheaton, *Elements of International Law: The Literal Reproduction of the Edition of 1866 by Richard Henry Dana, Jr.* (1964), at 197.

[164] J. Mikanowski, 'Behemoth, Bully, Thief: How the English Language Is Taking over the Planet', *The Guardian* (27 July 2018), available at www.theguardian.com/news/2018/jul/27/english-language-global-dominance; see also Stein, *supra* note 70, at 11 ('[d]as wäre der Kampf mit den Windmühlen. Man kann sich auch über den Regen beschweren').

[165] In the same vein, see Adami, *supra* note 6.

[166] Banaji and Greenwald, *supra* note 12, at 147 (with reference to the strategy applied in American symphony orchestras in the 1970s, consisting in placing a curtain between auditioning musicians and the selection committee).

Due to its serious epistemic and legal implications, language bias in international legal scholarship needs to be actively addressed. This section highlights several strategies that can be pursued to reduce language bias. Besides the fact that international relations and shifting power dynamics might change language dynamics in the future, modifying these patterns requires adapting our individual behaviour, enhancing existing research tools and, importantly, adopting institutional measures and undertaking collective scholarly efforts. Who are the primary addressees of these recommendations? As Justina Uriburu highlights, 'the focus should be placed on scholars and institutions from the [so-called] core'.[167] Just like it is not the task of black people to educate whites about racism, we cannot ask those whom current practices disadvantage the most (and whose resources are often limited) to do the heavy lifting. At the same time, it is important that such measures are supported and actively shaped by scholars whose languages are neglected by the discipline. This article is only a first tentative step in the hope that concrete and inclusive initiatives will follow.

A *Individual Behaviour*

One strategy consists in changing individual behaviour by minimizing cognitive bias and path dependencies. The linguist Rainer Enrique Hamel has addressed several recommendations to 'critical researcher[s] oriented towards plurilingualism':

1. To actively read scientific literature in as many languages as possible.
2. To prefer texts in their original languages over translations.
3. To quote the original texts – with translation only if necessary – to counteract the growing 'invisibilisation' of other languages than English in scientific texts.
4. To avoid the translation of titles into English in reference lists.
5. To present whenever possible one's own papers in the host country's language.[168]

These strategies are worth pursuing because they give visibility to languages other than English. However, they presuppose that authors are plurilingual or that they have resources at their disposal that enable them to work in different languages. Another problem is that these recommendations can only have the desired effect if many scholars effectively implement them. Finally, putting the onus on linguistically disadvantaged authors by asking them to make their work in languages other than English more visible is not satisfactory.

These caveats demonstrate the necessity of going beyond the individual level to tackle structural issues, especially those connected to research tools, the institutional context in which international legal research is conducted and scholarship itself. Without collective initiatives, individual strategies bring about change slowly and incrementally at best. Important as they are, relying on them to change the current

[167] Uriburu, *supra* note 46.

[168] Hamel, 'The Dominance of English in the International Scientific Periodical Literature and the Future of Language Use in Science', 20 *AILA Review* (2007) 53, at 68.

situation amounts to wishful thinking.[169] Moreover, becoming aware of one's biases seems difficult without adequate advice, support and collective reflection, and even this awareness 'does not always outsmart one's own automatic categorical thinking'.[170]

Still, researchers who are conscious of their own biases are certainly better equipped to adjust their behaviour (or, as Machiko Kanetake puts it, 'to imagine alternative realities').[171] Based on this awareness, they may consciously decide to lead by example by relying on literature in other languages than English or by writing for various linguistic communities. Awareness raising is precisely what implicit bias tests and trainings seek to achieve (though this does not always suffice to reduce bias).[172] Moreover, encouraging all scholars to become multilingual and to improve their research practices has the advantage of requiring everyone, including especially those who speak dominant languages, to make an effort.[173]

B *Research Tools and Resources*

A second strategy consists in changing the tools and resources that scholars use. The development of new technologies and computer-generated databases has been an important catalyst of English hegemony,[174] and the example of ILDC shows that existing tools need to be improved. Such databases should be as comprehensive and representative as possible, which could partly be achieved by relying on artificial intelligence (for example, by scraping data from a greater pool of resources). They should also be broadly accessible.

Another interesting proposal, made by Carina Bury on social media, would be to create 'a database at a global scale compiling the best non-English language papers, including French, Spanish, German, Russian, and Chinese'.[175] While many have applauded this proposal, others have objected that it would create new barriers and that it seems preferable to stick to English[176] or to reflect upon the dominant, elitist role of these various languages.[177] Another difficulty is that establishing a list of the 'best' papers in the discipline would exclude many voices based on criteria that are inherently subjective. More generally, expecting scholars to read work in specific dominating

[169] According to Sandrock, *supra* note 99, requiring people to learn new languages 'wäre ein Warten auf den "Sankt Nimmerleins-Tag"'.

[170] Kanetake, *supra* note 11, at 209, 218. On outsmarting bias, see Banaji and Greenwald, *supra* note 12, at 145ff.

[171] Kanetake, *supra* note 11, at 217. This strategy consists in exposing oneself to counter-stereotypes. See Banaji and Greenwald, *supra* note 12, at 151ff.

[172] Banaji and Greenwald, *supra* note 12, at 70, 149.

[173] See, e.g., the following recommendations, addressed at medical researchers: 'Language bias', *supra* note 141.

[174] Gordin, *supra* note 5, at 608; Stein, *supra* note 70, at 3.

[175] Carina Bury, *Twitter*, 12 July 2021, available at http://twitter.com/CarinaBury/status/1414566766903181312.

[176] Behesti, *Twitter*, 12 July 2021, available at http://twitter.com/calintikus/status/1414597456168472580.

[177] Radhika, *Twitter*, 13 July 2021, available at http://twitter.com/Radhikaaah/status/1414879630402617346. On the drawbacks of 'lingua franca pluralism', see Van Parijs, *supra* note 24, at 46ff. See further Hernández, *supra* note 32.

languages would reinforce patterns of linguistic dominance.[178] Still, Bury rightly points out that scholarship in other languages needs to be easily searchable and accessible. De-biasing starts with the tools that researchers use.

Improvements are also necessary for other resources, such as machine translation software. DeepL is highly accurate when it comes to translating from and into 'dominant' languages but much less so in regard to other languages. Moreover, given that it relies on inputs of textual data by its users, it may reflect stylistic biases. DeepL is currently limited to 26 languages, excluding languages such as Arabic or Hindi, and it cannot (yet) replace professional legal translators (for example, for conveying nuances or capturing the context in which a term is used). Finally, law libraries are not neutral, as Niels Graaf explains.[179] This brings us back to accessibility: the harder it is for scholars to access linguistically diverse resources, the less likely they are to take them into account.

C Institutional Measures

As Phillipson writes, 'linguicism, like racism, is not a "problem" that will disappear if people are well-informed about it. Attitudes are embedded in structure, and structural change is also needed'.[180] Individual efforts and the improvement of existing tools need to be backed and accelerated by institutional change – for example, via universities, publishers, editorial boards, peer reviewers and funding bodies. By taking a stance on the issue of language bias and investing resources in fixing it, these institutions can create incentives for scholars to rely on a broader linguistic range of materials since language bias is a collective action problem. Proposing a comprehensive set of measures is beyond the scope of this article. In what follows, I highlight several measures I consider particularly important. My focus lies on (Western) academic journals. Of course, other institutions are important players as well. For instance, bibliometrics (such as impact factors or citation analytics) reinforce language bias because they are often tailored to publications in English.[181] Focusing on journals seems appropriate because they usually collaborate with for-profit publishers and are therefore more economically resourceful than other institutions. By contrast, universities are often constrained by their domestic environment. Moreover, journals are crucial gatekeepers in international legal research.

Academic gatekeeping is based on conscious and unconscious conceptions of good scholarship, and these conceptions include linguistic aspects. Unfortunately, the criteria applied by gatekeepers are rarely 'openly addressed by academic editors and publishers'.[182] Still, some journals, like the *AJIL* and the *European Journal of International Law* (*EJIL*), have issued publishing tips aimed at prospective authors,[183] made efforts

[178] Sachintha Dias, *Twitter*, 13 July 2021, available at http://twitter.com/chimied/status/1414822952911081477.

[179] Graaf, *supra* note 91.

[180] Phillipson, *supra* note 20, at 264.

[181] *Ibid.*, at 9; Gordin, *supra* note 5, at 609.

[182] Gurmendi and Baldini Miranda da Cruz, 'Part I', *supra* note 46.

[183] A. Bradley and L.R. Helfer, 'Tips for Publishing in the American Journal of International Law (AJIL)', *Cambridge University Press*, available at www.cambridge.org/core/services/aop-file-manager/file/5dcc2e17843bea9f0a610946/AJIL-Tips-for-Authors.pdf.

to 'demystify' their selection process[184] and spelled out the features of a good peer review.[185] Academic English[186] differs from other writing styles. Even native English speakers may not be familiar with these codes.[187] Unlike ascribed characteristics such as race or gender, this lack of familiarity cannot be made invisible to reviewers (blind review being a straightforward way to reduce bias, though many US law journals do not practise it anyway).[188] Scholars are thus coerced into adopting the style favoured by academic gatekeepers (typically, reviewers and editors). As Roberts notes, the editorial boards of 'transnational' journals (that is, journals that are not explicitly linked to a particular jurisdiction) are 'drawn exclusively or predominantly from Western states', and their linguistic requirements disadvantage non-English-speaking and non-Western scholars.[189]

English-speaking international law journals often take a clear stance on language. The *Leiden Journal of International Law* states that 'submissions should be written in good English' and that '[a]uthors, particularly those whose first language is not English, may wish to have their English-language manuscripts checked by a native speaker before submission' to improve the intelligibility of their article. Its website includes a list of professional language editing and translation services, the use of which is 'voluntary', 'at the author's own expense' and not a guarantee of publication.[190] Analogous wording is used by other Cambridge journals.[191] The *Asian Journal of International Law* adds that 'many journals seeking to attract a global audience' rely on English, 'poor English' being one of the most frequent reasons for desk rejection.[192] The *German Law Journal* recommends that non-native speakers have their submissions checked by a native English speaker 'for accuracy'; it also mentions the option for authors to rely on professional language editing services at their own cost, though 'there is absolutely no commitment that their paper will be accepted'.[193]

The *AJIL* uses more cautious wording: non-native English speakers should 'consider asking a colleague or editor to review how the paper is written'.[194] The *African Journal*

[184] See, e.g., Weiler, *supra* note 45; Nouwen, 'On My Way In – I: Impressions of a New Editor-in-Chief's First Months in the EJIL Engine Room', 30 *EJIL* (2019) 711.

[185] Weiler, 'Editorial: Editor-in-Chief Sarah M.H. Nouwen; Best Practice – Writing a Peer-Review Report; In This Issue', 30 *EJIL* (2019) 355.

[186] Even this is a simplification: 'Difference in style and substance can also make it difficult to place the same piece in US and non-US journals'. Roberts, *supra* note 1, at 98.

[187] Gurmendi and Baldini Miranda da Cruz, 'Part I', *supra* note 46.

[188] Kanetake, *supra* note 11, at 216.

[189] Roberts, *supra* note 1, at 91.

[190] 'Preparing Your Materials', *Leiden Journal of International Law*, available at www.cambridge.org/core/journals/leiden-journal-of-international-law/information/author-instructions/preparing-your-materials.

[191] 'Preparing Your Materials', *International and Comparative Law Quarterly*, available at www.cambridge.org/core/journals/international-and-comparative-law-quarterly/information/author-instructions/preparing-your-materials.

[192] 'A Checklist for Publishing Your First Journal Article', *supra* note 95.

[193] 'Instructions for Authors', *German Law Journal*, available at www.cambridge.org/core/journals/german-law-journal/information/instructions-contributors.

[194] Bradley and Helfer, *supra* note 183.

of International and Comparative Law, which publishes articles in English and French, points out that Edinburgh University Press has a partnership with a private provider and offers a discount to authors who wish to rely on these professional language editing services.[195] Other international law journals that publish some or all of their articles in English, such as the *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, the *Heidelberg Journal of International Law*,[196] the *Nordic Journal of International Law*,[197] the *Melbourne Journal of International Law*,[198] the *Yale Journal of International law*,[199] the *Harvard International Law Journal*[200] and the *Cambridge International Law Journal*,[201] do not mention anything about academic English and non-native English speakers. This does not tell us much about the standards applied by their editors and reviewers, however: they could differ from those I have just highlighted, but they could also be similar. In regard to the *EJIL*, it 'encourages authors to refer to research material published not only in English but also in other languages'.[202] Provided that this requirement is taken into account in the review process, this (rare) example shows that journals have tools at their disposal to instil change in research practices.

Instead of highlighting that international legal scholarship needs to account for a range of domestic perspectives, many submission guidelines require that authors submit papers in excellent English. Such a requirement is far from neutral. If the *lingua franca* was Mandarin, and Chinese scholarship was the most influential type of international legal scholarship, the efforts most Western scholars would need to make to get published would be excruciating. This is not to say that scholars should not strive to read scholarship in foreign languages – quite the contrary. My point is that current practices have a disparate impact on non-native English speakers, on native[203] English speakers who do not master the 'right' kind of English and, more generally, on scholars who do not speak a 'dominant' language.

How can journals limit language bias and remove linguistic barriers? First, besides providing publishing tips (which may level the playing field somewhat), they can adapt their submission guidelines. For example, they can highlight the importance of citing diverse sources (of course, to the extent that this appears appropriate, as some research topics may not be suited to this – for example, those that focus on

[195] 'Submit an Article', *African Journal of International and Comparative Law*, available at www.euppublishing.com/page/ajicl/submissions.

[196] 'Submission Guidelines', *ZaöRV/HJIL*, available at www.zaoerv.de/Zaoerv_Submission_Guidelines.pdf.

[197] 'Instructions for Authors', *Nordic Journal of International Law*, available at http://brill.com/fileasset/downloads_products/Author_Instructions/NORD.pdf.

[198] 'Submissions', *Melbourne Journal of International Law*, available at http://law.unimelb.edu.au/mjil#submissions.

[199] 'Article Submissions', *Yale Journal of International Law*, available at www.yjil.yale.edu/submissions/article-submissions.

[200] 'Print Submissions', *Harvard International Law Journal*, available at http://harvardilj.org/submissions/print-submissions.

[201] 'Editorial Information: Author Submissions', *Cambridge International Law Journal*, available at www.elgaronline.com/view/journals/cilj/cilj-overview.xml?tab_body=editorial%20info#AuthorSubmissions.

[202] 'Submitting Manuscripts', *EJIL*, available at www.ejil.org/about/manuscripts.php.

[203] The distinction between native and non-native English speakers neglects the effect of class, socio-economic background and geographical origin on language. For a critique, see Hyland, *supra* note 28, at 61ff.

the practice of a specific jurisdiction). In doing so, they would help elevate linguistic diversity to a criterion of scholarly excellence. Journals could go even further. In migration studies, the journal *Migration and Society* is 'committed to inclusive citation and scholarly practice' and 'encourage[s its] contributors to ensure they reference and engage with the work of female, black, and minority ethnic writers, and work by other under-represented groups'.[204] As one of its editors notes, what is needed is 'meaningful engagement with and acknowledgement of the intellectual work of people who have often either been excluded from the "authorized shortlist", or whose work has been ignored, or merely "footnoted", in academic publications'.[205] Another way for journals to take linguistic diversity seriously is to regularly publish statistics, for example, on the share of published articles written by, presumably, native English speakers, as the *EJIL* does once a year.[206]

Second, journals could broaden their understanding of scholarly writing to accommodate foreign research cultures. One highly effective way of doing so would be to publish articles in multiple languages. This would be a significant step, as it would also require diversifying editorial boards and pools of reviewers. The *Brazilian Journal of International Law* 'publishes in Portuguese, Spanish, English and French and has a pool of reviewers for submissions in these languages'.[207] The *European Journal of Legal Studies* 'is committed to the promotion of linguistic diversity and accepts submissions in any language, subject to the competence of the editorial board'.[208] The editors of the *TWAIL Review* work mainly in English but encourage the authors of submissions in other languages to contact them to see whether they could find suitable reviewers and editors for the piece.[209] There is no reason why other journals could not emulate these practices, even if some of them, like the *EJIL*, which started out as a bilingual journal, already stated decades ago that multilingualism would not be 'financially viable'.[210] This brings us back to economic considerations, which, important as they are, come at significant costs themselves.

One less radical – but no less important – step would be for English-speaking journals to publish translations of articles originally written in other languages, like the *Revista latinoamericana de derecho internacional*, which publishes Spanish translations of specific international law articles.[211] While the limitations of translation are well

[204] 'Manuscript Submission', *Migration and Society*, available at www.berghahnjournals.com/view/journals/migration-and-society/migration-and-society-overview.xml?tab_body=submit.

[205] Fiddian-Qasmiyeh, 'Introduction: Recentering the South in Studies of Migration', 3 *Migration and Society: Advances in Research* (2020) 1, at 10.

[206] See, e.g., Nouwen, *supra* note 102; J.H.H. Weiler, 'The EU – A Community of Fate, at Last; Vital Statistics', *EJIL Talk!* (28 May 2019), available at www.ejiltalk.org/the-eu-a-community-of-fate-at-last-vital-statistics.

[207] 'Workshop: Language Walls in International Law, Call for Papers', (2021), available for instance at https://styluscuriarum.files.wordpress.com/2021/01/cop-languaguewalls.pdf (last visited 20 July 2022).

[208] 'Author Guidelines', *European Journal of Legal Studies* (*EJLS*), at 1, available at http://ejls.eui.eu/wp-content/uploads/sites/32/2021/10/EJLS-Author-Guidelines.pdf.

[209] Natarajan *et al.*, *supra* note 53.

[210] 'Letter to M. Emil Noël, President of the EUI, from Antonio Cassese and Joseph Weiler' (13 October 1987), at 4, available at www.ejiltalk.org/wp-content/uploads/2019/05/Editorial-Birth-of-EJIL.pdf.

[211] Roberts, *supra* note 1, at 100. For a similar proposal, see Müller, *supra* note 25, at 19.

known (‘*traduttore, traditore*’), translations remain crucial to facilitate the linguistic and, hence, intellectual openness of international legal scholarship.[212] In 1987, the founders of the *EJIL* stated that they would ‘accept … for publication articles written in other languages (so that authors may write and submit in their mother tongue) and … translate these into the languages of the Journal (English/French)’.[213] The offer is still featured on the journal’s website, at least with regard to French, Spanish, Italian and German, and it deserves to be better known.[214]

Third, journals – and, perhaps most importantly, the publishers who work with them – could invest in language editing to support authors who are not linguistically privileged. While editing risks ‘obliterat[ing] the “voice” of the author’,[215] it seems paradoxical for journals and publishers committed to academic excellence to strive to improve the substance of the submissions they receive but not their linguistic quality when the substance is good enough. Journals and publishers should view language editing as one of their main tasks.[216] Moreover, they should rely on the assistance of professional editors, instead of shifting the burden to scholars, which puts those who have the resources to pay for professional language editing services at an advantage. It is precisely because of these individual differences (which can be traced back to broader inequalities and are therefore difficult to avoid in the first place) that journals and publishers can be important vectors of change.

D *Scholarly Responses*

Besides institutional measures, scholarly responses are also needed. While we cannot change past research practices, we can influence how scholarship is conducted today and develop new attitudes to international law as an object of study. Although Mahzarin Banaji and Anthony Greenwald acknowledge that eliminating hidden biases remains difficult, these social psychologists ‘are not similarly pessimistic about prospects for research to develop and refine methods for outsmarting mindbugs’.[217] This type of research can and should also be developed by international legal scholars. Ideally, scholarly efforts should not remain confined to the individual level. They should be conducted collectively – for example, by organizing conferences,[218] convening discussion groups (like the Coloquio Iberoamericano[219]) or setting up dedicated

[212] This also applies to domestic scholarship. See, e.g., Wissenschaftsrat, *Perspektiven der Rechtswissenschaft in Deutschland. Situation, Analysen, Empfehlungen* (2012), at 71ff.

[213] ‘Letter to M. Emil Noël’, *supra* note 210, at 4, 9.

[214] ‘About the EJIL’, *EJIL*, available at www.ejil.org/about.

[215] Weiler, *supra* note 45, at 2.

[216] One journal that does this is the *EJLS*. Jacob-Owens, ‘Editorial: Whiteness in the Ivory Tower’, 13 *EJLS* 1 (2021) 1, at 6.

[217] Banaji and Greenwald, *supra* note 12, at 167.

[218] ‘Workshop: Language Walls in International Law, Call for Papers’, *supra* note 207.

[219] ‘Coloquio Iberoamericano’, *Max Planck Institute for Comparative Public Law and International Law*, available at www.mpil.de/en/pub/research-interaction/discussion-and-working-formats/discussion-groups/coloquio-iberoamericano.cfm.

committees (for example, within the International Law Association) or interest groups (for example, within the European Society of International Law).

Granted that such scholarly initiatives emerge, what should be on their agenda? One important task would be to provide further explanations for language bias, to 'engag[e] critically with the geopolitics of knowledge production'[220] and to contribute to establishing linguistic diversity as a criterion of scholarly excellence. Topics requiring further research include the politics of citation, the contribution of linguistic balance to scholarly excellence, the (dis)advantages of relying on a *lingua franca* and the effects of implicit bias in academic research. International legal scholars should engage with epistemology more.[221] Further empirical work that highlights the actual significance of language bias in international legal scholarship and practice is also needed. To explore the roots and pitfalls of language bias, comparative international law and critical approaches to international law could be mobilized and developed further. By providing the impetus for concrete institutional reforms, scholarship on these topics could help overcome language bias as a collective action problem.

6 A Call for Collective Reflection and Action

Outsmarting bias is hard but not impossible. The difficulty of honouring linguistic diversity should 'serve as a reminder of the importance of the subject' and of the need for international legal scholars to tackle such difficulties.[222] The over-reliance on hegemonic languages in the context of international legal scholarship is not only problematic from the perspective of the sources of international law; it is also unscientific. If international legal researchers want to be recognized as such, and not as individuals who disseminate parochial views about a purportedly 'international law', they need to strengthen the international, scholarly and legal character of their discipline. This requires collectively reflecting upon, and actively addressing, the intricate, yet crucial, issue of language bias: '[T]here must be limitations on the continued moulding of international law to fit the vision of one particular legal order or group of legal orders.'[223]

While there are no easy answers, this article is a first attempt at highlighting the negative consequences of language bias in international legal scholarship, at outlining strategies for tackling it and at generating a scholarly debate on the issue. Using English as a vehicle for this message can only be a first step. Actual change requires that, in the long run, we emancipate ourselves from path dependencies that foster exclusion. International legal scholarship cannot afford to ignore the language biases that it creates and perpetuates unless it is willing to sacrifice its own credibility and relevance. If we do not address language bias, the legality and legitimacy of international law will continue to suffer.

[220] Fiddian-Qasmiyeh, *supra* note 205, at 1.
[221] See also al Attar, *supra* note 29.
[222] Mowbray, *supra* note 8, at 13.
[223] Hernández, *supra* note 32, at 457.