The University of the Pacific Law Review

Volume 48 | Issue 2 Article 10

1-1-2017

Linguistic and Cultural Diversity in Interntational Criminal Justice: Toward Bridging the Divide

Leigh Swigart
Brandeis University

Linguistic and Cultural Diversity in International Criminal Justice: Toward Bridging the Divide

*Leigh Swigart**

I. INTRODUCTION

In his January 2016 keynote address at the Linguistic Society of America's annual conference, Stanford University Professor John Rickford spoke on the topic of "Language and Linguistics on Trial: Hearing Vernacular Speakers in Courtrooms and Beyond."[1] His remarks centered on the 2013 trial of George Zimmerman, who was accused of shooting Trayvon Martin, an unarmed African American teenager in the state of Florida.[2] The principal prosecution witness was a young woman named Rachel Jeantel, who was speaking to Martin on the phone as Zimmerman pursued him in the street. Despite the fact that Jeantel was on the witness stand for many hours, the jury did not consider any of her testimony.[3] Indeed, the jury did not appear to fully understand her testimony nor did the court reporter accurately transcribe it.

Rickford's subsequent examination of Jeantel's testimony during the Zimmerman trial suggests that it was discredited largely because of the young woman's speech patterns.[4] He pointed out, however, that Jeantel is "fluent in a variety of English that's been in existence for centuries. She speaks a very systematic, regular variety of African American vernacular English."[5] Rickford concluded, "[w]idespread ignorance and hostility about authentic linguistic and cultural difference in America led to a verdict that may well have been different had the key witness been better understood and viewed as more credible by the jury."[6]

This situation, and its subsequent analysis by a sociolinguist, should lead us to ask some important questions about criminal proceedings that are not often discussed in legal circles. First, in the context of the courtroom, how might the

* Director of Programs in International Justice and Society at the International Center for Ethics, Justice, and Public Life of Brandeis University. She oversees the Brandeis Institute for International Judges, the only regular event convening members of the international judiciary across a wide spectrum of geographic and subject matter jurisdictions. She also organizes the Brandeis Judicial Colloquia series, which brings together international and national judges for dialogue about the growing intersections between their spheres of work.

1. *See* John Rickford, *Language and Linguistics on Trial: Hearing Vernacular Speakers in Courtrooms and Beyond*, YOUTUBE (Jan. 1, 2016), https://www.youtube.com/watch?v=sMMxufNN4pg (on file with *The University of the Pacific Law Review*).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. Marguerite Rigoglioso, *Stanford Linguist Says Prejudice Toward African American Dialect Can Result in Unfair Rulings*, STANFORD REPORT (Dec. 2, 2014), http://news.stanford.edu/news/2014/december/vernacular-trial-testimony-120214.html (on file with *The University of the Pacific Law Review*).

linguistic and cultural mismatch between a person testifying and those whose role it is to evaluate the testimony impact the fairness of a trial and its very outcome? Second, even if the challenges associated with such a linguistic and cultural divide are acknowledged, how can a court as an institution try to avoid misunderstandings that can result in the imperfect rendering of justice?

I have described here a challenge in a domestic criminal proceeding, and one that involved different dialects of the same language and an American subculture that is not unfamiliar to the broader public, although often the subject of bias. When this whole dilemma is transferred to the domain of international criminal justice, these questions take on a particular importance for several reasons: (1) justice institutions with broad geographic jurisdictions tend to have linguistically and culturally diverse constituencies; (2) it is not only the parties before the court, such as defendants and witnesses, but also the judges, prosecutors, defense counsel, and staff at all levels of international courts and tribunals who represent a broad array of national, cultural, linguistic, and legal backgrounds; and, (3) in the situation of international criminal tribunals, the stakes are extremely high, with defendants charged with crimes deemed the most serious by near universal agreement—that is, war crimes, crimes against humanity, and genocide—and the proceedings tend to come under close scrutiny by the press, legal scholars, and victim communities.

In this paper, I examine some of the linguistic and cultural challenges that arise in processes of international criminal justice. Part II will look at challenges associated with the interactions that courts and tribunals have with their varied constituents, while Part III will focus on interactions that take place among the diverse staff of the institutions themselves. Although such challenges are daunting and may require a special awareness to handle, I suggest that having staff, and particularly judges, with diverse linguistic and cultural skills can be beneficial as institutions seek to bridge a variety of external and internal divides. This would seem to be particularly true now, when the expanding diversity of the constituencies of international criminal justice coincides with a certain homogenization of those who administer it.

II. Linguistic and Cultural Mismatches Between International Criminal Institutions and Their Constituents

Used here, the term "constituent" covers a wide range of actors involved in international criminal justice proceedings, including accused persons and witnesses, victims of the violent acts under consideration by the court or tribunal, and the larger communities affected by these acts. More than 20 years have elapsed since the International Criminal Tribunals for the Former Yugoslavia and Rwanda (ICTY and ICTR, or collectively the Ad Hoc Tribunals) were established. Subsequently, hybrid criminal courts were created to prosecute persons alleged to have committed grave crimes in Sierra Leone, Cambodia,

Lebanon, and Chad.[7] Some of these institutions have come and gone, having completed their mandates and closed their doors. The baton has now passed to the permanent International Criminal Court (ICC), which can theoretically prosecute a wide range of crimes committed in countries across the globe.[8] Legal experts and scholars of diverse disciplines, and to a lesser extent the broader public, have closely followed the trials and other activities of all these criminal institutions. It has been noted not infrequently that these institutions have faced certain challenges stemming from their lack of knowledge about the broad spectrum of languages and cultures that they inevitably encounter.[9]

During the 2010 session of the Brandeis Institute for International Judges (BIIJ), participants had the opportunity to explore the impact of diversity on the international rule of law.[10] They approached this topic using the concept of "dissonance," described by scholar Tim Kelsall as the "poor sociological fit" that exists between the methods and concepts used in international criminal justice and some of the non-Western contexts in which they are applied.[11] This concept of dissonance can be extended to signify any kind of mismatch created by the coming together of distinct languages and cultural systems in the pursuit of international criminal justice.

Below, I provide examples of the kinds of dissonances that have arisen at the ICTY, ICTR, and Special Court for Sierra Leone (SCSL), as described both in the scholarly literature and in interviews conducted with judges, legal practitioners, and other staff in these institutions.[12] These courts served as

---

7. Int'l Crim. Trib. for the Former Yugoslavia, *About the ICTY*, ICTY, http://www.icty.org/en/about (last visited Aug. 21, 2016) (on file with *The University of the Pacific Law Review*); United Nations International Criminal Tribunal for Rwanda, *About the UNICTR*, UNICTR, http://unictr.unmict.org/en/tribunal (last visited Aug. 21, 2016) (on file with *The University of the Pacific Law Review*); The Special Court for Sierra Leone, *The Special Court for Sierra Leone and its Jurisprudence*, http://www.rscsl.org/ (last visited Aug. 21, 2016) (on file with *The University of the Pacific Law Review*); Special Tribunal for Lebanon, *About the STL*, STL, http://www.stl-tsl.org/en/about-the-stl (last visited Aug. 21, 2016) (on file with *The University of the Pacific Law Review*); Extraordinary Chambers in Courts in Cambodia, *About the ECCC*, ECCC, https://www.eccc.gov.kh/en/about-eccc (last visited Aug. 21, 2016) (on file with *The University of the Pacific Law Review*); *Q&A: The Case of Hissene Habre before the Extraordinary African Chambers in Senegal*, HUMAN RIGHTS WATCH (May 3, 2016), *available* at https://www.hrw.org/news/2016/05/03/qa-case-hissene-habre-extraordinary-african-chambers-senegal (on file with *The University of the Pacific Law Review*).

8. As of this writing, there are 124 States Parties to the ICC's Rome Statute. *See* International Criminal Court, *Understanding the International Criminal Court*, INTERNATIONAL CRIMINAL COURT 1, 3–4, 13, https://www.icc-cpi.int/iccdocs/PIDS/publications/UICCEng.pdf (on file with *The University of the Pacific Law Review*).

9. Tim Kelsall, *International Criminal Justice and Non-Western Cultures*, OXFORD TRANSITIONAL JUSTICE RESEARCH WORKING PAPER SERIES 1 (2010), https://www.law.ox.ac.uk/sites/files/oxlaw/kelsall_internationalcriminaljustice_final1.pdf (on file with *The University of the Pacific Law Review*).

10. Brandeis Institute for International Judges, *Toward an International Rule of Law*, BRANDEIS INSTITUTE FOR INTERNATIONAL JUDGES 1, 32 (2010), http://www.brandeis.edu/ethics/pdfs/internationaljustice/biij/BIIJ2010.pdf (on file with *The University of the Pacific Law Review*).

11. Kelsall, *supra* note 9, at 1.

12. These interviews are from two sources: (1) Ad Hoc Tribunals Oral History Project of Brandeis University's International Center for Ethics, Justice and Public Life, BRANDEIS UNIVERSITY,

important models for the ICC in numerous areas, including in its practices vis-à-vis translation, interpretation, and handling of cross-cultural issues. I then describe some of the special challenges associated with the broad language and cultural diversity found among ICC constituents.

A. International Criminal Tribunals for the Former Yugoslavia and Rwanda, and the Special Court for Sierra Leone

The work of international courts and tribunals is shaped significantly by one elemental fact—the judges or "fact finders" assessing the evidence presented at trials rely almost solely on the interpretation of testimony.[13] It has even been suggested that international judges' lack of knowledge of the language and culture of the accused and witnesses might reinforce their "splendid isolation."[14] However, this reality also means that there must be methods for ascertaining the accuracy of interpretation, particularly in the courtroom, as well as awareness by judges and other court staff of the potential pitfalls and misunderstandings that may accompany interpretation and cross-cultural communication.

It appears that the ICTY, ICTR, and SCSL's approaches to and institutional understanding of the impacts of language diversity on their work evolved progressively. At the ICTR, 90 percent of the testimony was given in Kinyarwanda, the most widely spoken language of Rwanda.[15] Despite the fact that no ICTR judge ever hailed from Rwanda or spoke Kinyarwanda, the tribunal had the advantage of having only one language in which to train simultaneous interpreters—those working between French and English, the official languages of the tribunal, were already available.[16] Trial proceedings used consecutive interpretation—sometimes in a "chain" from Kinyarwanda to French to English and back again—until simultaneous interpretation was possible, a change that shortened trial times significantly.[17] Eventually, according to Tribunal insiders,

---

http://www.brandeis.edu/ethics/internationaljustice/oral-history/index.html (last visited Aug. 20, 2016) (on file with *The University of the Pacific Law Review*); and (2) personal research carried out by the author, some of it featured in a 2015 article: Leigh Swigart, *African Languages in International Criminal Justice: The International Criminal Tribunal for Rwanda and Beyond*, *in* PROMOTING ACCOUNTABILITY UNDER INTERNATIONAL LAW FOR GROSS HUMAN RIGHTS VIOLATIONS IN AFRICA: ESSAYS IN HONOUR OF PROSECUTOR HASSAN BUBACAR JALLOW 578 (Charles Chernor Jalloh & Alhagi B.M. Marong eds., Brill Njihoff 2015) (on file with *The University of the Pacific Law Review*).

13. ELLEN ELIAS-BURSAĆ, TRANSLATING EVIDENCE AND INTERPRETING TESTIMONY AT A WAR CRIMES TRIBUNAL: WORKING IN A TUG-OF-WAR 2 (Palgrave and Macmillan, 2015); Nigel Eltringham, '*Illuminating the Broader Context': Anthropological and Historical Knowledge at the International Criminal Tribunal for Rwanda*, 19 J. ROYAL ANTHROPOLOGICAL INST. 338, 338–55 (2013).

14. ELIAS-BURSAĆ, *supra* note 13, at 2; René Provost, *Judging in Splendid Isolation*, 56 AM. J. COMP. L. 125, 125, 139 (2008).

15. Swigart, *supra* note 12, at 581.

16. *Id.*

17. *Id.* at 583.

Kinyarwanda became a de facto working language of the ICTR.[18] Legal terminology in Kinyarwanda was also developed and standardized.[19]

The situation at the SCSL was different in two ways. First, it was a hybrid court where Sierra Leonean judges served alongside international judges. Thus, there were members of the bench who understood some testimony in local languages without needing to depend upon interpreters. And second, there were many more languages in the "mix"—the Court's working language English, the Sierra Leonean lingua franca Krio, as well as Temne, Mende, Limba, and other local languages. As one SCSL judge noted, the conflict that affected Sierra Leone and gave rise to the Court knew no ethnic boundaries; hence, the diversity of languages in which both accused persons and witnesses testified.[20] As at the ICTR, simultaneous interpreters needed to be trained and a standard vocabulary in various Sierra Leonean languages for international criminal law terminology had to be developed and instituted.[21]

Language diversity played out in different ways at the ICTY. Although there are distinct dialects in the Balkan region spoken by Bosnians, Serbs, and Croatians, the Tribunal created its own working language known as "BCS" (Bosnian-Serbian-Croatian),[22] a cross-dialectal linguistic variety that aimed for comprehension by speakers across the region. A number of trials also used Albanian and Macedonian, while French and English served as official languages.[23] While the ICTY was able to recruit experienced interpreters and translators in all these languages with relative ease, they came from widely differing professional backgrounds. Language staffers who saw the Balkan conflict up close, and even worked initially as field interpreters for ICTY investigators, began their work somewhat at odds with those who had come from the privileged field of conference interpretation.[24]

In all of these international criminal institutions, it is clear that persons who speak the language of the accused person can play an important role in checking the accuracy of interpreted testimony. At the SCSL, Sierra Leonean judges could stop the proceedings to correct the official record if they heard an interpretation into English that they deemed incorrect. But at the ICTR and ICTY, judges did not have the linguistic knowledge to do so. It has more generally fallen on members of defense teams who speak the language(s) of the accused to follow the interpretation of testimony closely and call to the attention of judges any

18. *Id.* at 582.

19. *Id.* at 582–83.

20. *Id.* at 595–96.

21. *Id.* at 596.

22. Int'l Crim. Trib. for the Former Yugoslavia, *Translation and Interpretation*, http://www.icty.org/en/about/registry/translation-and-interpretation (last visited Aug. 20, 2016) (on file with *the University of the Pacific Law Review*).

23. Swigart, *supra* note 12, at 594.

24. ELIAS-BURSAĆ, *supra* note 13, at 27.

problems they detect.[25] Indeed, tracking interpretation problems and other linguistic misunderstandings became, at the ICTY, one of the primary strategies of defense teams.[26] Language ambiguity in certain situations could even constitute grounds for appealing a conviction.[27]

A careful analysis of ICTY judgments by long-time Tribunal translator/reviser Ellen Elias-Bursać also shows that the majority of them explicitly reference language issues of one kind or another.[28] ICTR judgments also described linguistic difficulties in the assessment of evidence, significantly in the first *Akayesu* judgment.[29] As noted by Jessica Almquist, "[a]n entire section of the judgment in *Akayesu* was devoted to an explanation of the enormous practical difficulties involved in translation and interpretation, and how the ICTR seeks to resolve them."[30] Other judgments referenced particular Kinyarwanda lexical items and language practices as powerful drivers of the violent behavior of perpetrators. In the so-called *Media* case, for example, certain Kinyarwanda terminology was found to incite genocidal acts, while the *Bikindi* and *Muvunyu* judgments described how traditional song and proverbs played a similar role.[31]

Linguistic diversity goes hand in hand, of course, with cultural variation. The most striking dissonances in this area emerged at the ICTR and SCSL, where the Western legal framework guiding the international criminal justice project regularly ran up against non-Western cultural practices and understandings.[32] Almquist notes, "international criminal tribunals primarily understand the problem of cultural diversity as one of how to cope with linguistic variation. However, a persistent focus on culture as language hides differences in terms of other culture-specific components of equal relevance to their work, notably socio-cultural norms and convictions about justice."[33] Nancy A. Combs also examined international criminal proceedings that took place in non-Western settings, noting that "cultural divergences between witnesses and courtroom

25. ELIAS-BURSAĆ, *supra* note 13, at 240; Beth S. Lyons, *Enough is Enough: The Illegitimacy of International Criminal Convictions: a review essay of Fact-Finding Without Facts, the Uncertain Evidentiary Foundations of International Criminal Convictions by Nancy Amoury Combs*, 13 J. OF GENOCIDE RES. 287, 289 (2011).

26. ELIAS-BURSAĆ, *supra* note 13, at 240.

27. *Id*. at 242.

28. *Id.* at 243.

29. Jessica Almquist, *The Impact of Cultural Diversity on International Criminal Proceedings* 4 J. INT'L CRIM. JUSTICE 745, 749 (2006).

30. *Id.* at 748.

31. For more detail on the linguistic aspects of these ICTR cases, *see* Swigart, *supra* note 12.

32. TIM KELSALL, CULTURE UNDER CROSS-EXAMINATION: INTERNATIONAL JUSTICE AND THE SPECIAL COURT FOR SIERRA LEONE 2 (Cambridge University Press, 2009); Gerhard Anders, *Testifying About 'Uncivilized Events': Problematic Representation of Africa in the Trial against Charles Taylor*, 24 LEIDEN J. INT'L L 937, 944 (2011).

33. Almquist, *supra* note 29, at 745.

personnel, along with linguistic and conceptual divergences, magnify the distortion wrought by language interpretation."[34]

Witnesses at the ICTR carried the dual burden of recounting horrific personal experiences while in the unfamiliar and intimidating environment of an adversarial trial where their testimony came under cross-examination. They were sometimes confused or offended by the defense counsel's attempts to impugn their painful testimony, which they had traveled a long distance to offer.[35] Women were asked to describe acts of sexual violence they endured, and when the Kinyarwanda terms they used proved too vague to meet Western standards of proof, they were asked to provide intimate details.[36] This proved especially difficult for members of a society that ordinarily does not speak of sexual activity, much less of a forced nature, in a public forum.[37]

The actions of some Rwandan witnesses proved surprising even to ICTR staff from other African countries. In a videotaped interview, Roland Amoussouga of Togo, then ICTR Chief of Witness Protection and later its Chief of External Relations, described the courtroom behavior of an elderly Rwandan woman who had been raped and her family members massacred.[38] She repeatedly declined, when asked by the bench, to point out with her finger the alleged perpetrator of these crimes so that he could be definitively identified for the record.[39] The witness explained that this would be a rude gesture toward someone who held the powerful position of mayor of her commune. She also bowed to the accused when she first saw him in the courtroom.[40]

Cultural dissonances also frequently emerged in proceedings at the SCSL. Combs noted that witnesses tended to have low levels of literacy and educational attainment and were often at pains to understand what was expected of them in the courtroom.[41] Indirect discourse styles and taboos around discussing certain topics also constituted hurdles to efficient fact-finding by the bench.[42] Tim Kelsall chronicled one of the Special Court's trials closely and analyzed the transcripts of its proceedings. He provided an important perspective on how international criminal tribunals function in non-Western societies, describing in detail "some of the challenges posed. . . by the fact that the Court is surrounded

34. NANCY A. COMBS, FACT-FINDING WITHOUT FACTS: THE UNCERTAIN EVIDENTIARY FOUNDATIONS OF INTERNATIONAL CRIMINAL CONVICTIONS 68 (Cambridge University Press, 2010).

35. Author interview with legal officer and juris linguist, International Criminal Tribunal Rwanda (Nov. 2006).

36. Swigart, *supra* note 12, at 589.

37. *Id.* at 584.

38. Video interview with Roland Amoussouga, Voices from Rwanda Tribunal, TRIBUNAL VOICES (Oct. 30, 2008), http://www.tribunalvoices.org/voices/video/621 (on file with *The University of the Pacific Law Review*).

39. *Id.*

40. *Id.*

41. COMBS, *supra* note 34, at 66.

42. *Id*. at 22.

by an unfamiliar social and legal culture, in which the way people think about human rights, human agency and appropriate social conduct often differs radically from the way international lawyers think about these things."[43] Witnesses' non-Western beliefs about supernatural powers were one important area of dissonance. For example, many witnesses described an "immunization" or bullet-proofing process that was believed to render soldiers invincible to enemies, a process that neither SCSL judges nor the prosecution could accept as more than a superstitious belief despite sincere testimony to the contrary. Perhaps paradoxically, the prosecution argued that exploiting this belief, given its ability to recruit soldiers, was an element in the joint criminal enterprise allegedly undertaken by the co-accused. The defense contended that the immunization and recruitment were separate activities and that mystical leaders played a role analogous to that of a modern European army priest. Kelsall notes that SCSL judges found themselves "caught in a similar jurisprudential dilemma to the colonial and post-colonial common law courts that have tried African witchcraft cases," and adds that the judges were loath to invite "the ridicule of international observers."[44] Gerhard Anders described a similar phenomenon associated with the SCSL trial of former Liberian leader Charles Taylor. Anders' analysis of the testimony of one prosecution witness shows the difficulty of ascertaining the veracity of statements about acts that are linked to African religious and spiritual beliefs. His analysis furthermore "reveals striking parallels between the prosecution narrative and colonial representations of Africa as a mysterious and savage place."[45]

These kinds of cultural challenges were not prevalent at the ICTY, given that the crimes under consideration occurred in Europe and all persons involved in the proceedings were also European. Nonetheless, interpreters and scholars attest that ICTY language services were carried out at "the junction of cultures," and described the various strategies and practices that were developed to handle the resulting difficulties.[46]

From her examination of the impact of cultural diversity on international criminal justice proceedings, Almquist draws the following conclusion: "The need for cultural sensitization in relation to differing norms for the sake of accuracy cannot be underestimated. Without understanding the local culture, i.e. the specific norms regulating the transmission and dissemination of knowledge as

43. TIM KELSALL, CULTURE UNDER CROSS-EXAMINATION: INTERNATIONAL JUSTICE AND THE SPECIAL COURT FOR SIERRA LEONE 2 (Cambridge University Press, 2009).

44. *Id*. at 144–45.

45. Anders, *supra* note 32, at 937.

46. Nancy Schweda Nicholson, *Interpreting at the International Tribunal for the Former Yugoslavia (ICTY): Linguistic and Cultural Challenges*, *in* THE TRANSLATOR AS MEDIATOR OF CULTURES (2010) (ebook); Ludmila Stern, *At the Junction of Cultures—Interpreting at the International Criminal Tribunal for the Former Yugoslavia in the Light of Other International Interpreting Practices*, 5 THE JUDICIAL REVIEW 255, 255–74 (2001).

well as culture-specific taboos and inhibitions, interrogators and international judges face a serious risk of making erroneous assessments of points of evidence."[47] For his part, Joshua Karton makes this suggestion relative to multilingualism in international criminal courts and tribunals: "The most important thing is for judges to always remain actively aware of interpretation. Understanding the ways in which interpretation can alter testimony will help to make judges more sensitive to inconsistent testimony and more likely to think twice in the face of vague or ambiguous statements, rather than making a snap judgment."[48]

Elias-Bursać, a long-time ICTY language staffer, quotes this same statement by Karton and writes that she believes the judges of her tribunal have met the difficult standard of remaining "actively aware of interpretation":

> I would suggest that many ICTY judges have done just that. We are so steeped in the assumption of loss in translation that it is difficult to contemplate the possibility that trials that rely so heavily on translation and interpretation may, in fact, benefit from the necessary extra attention paid to interpreted testimony. . . Judges who have sat on the Tribunal bench for many years have become adept at running multilingual trials and have learned how to refine the instrument of translation and interpreting to the benefit of justice."[49]

Elias-Bursać also believes that ICTY judges developed a real appreciation of the work of interpreters and the myriad challenges these professionals face in the courtroom.[50]

Lengthy service by certain international criminal judges, in addition to institutional longevity, appear to have enhanced the Rwandan Tribunal's ability to handle linguistic and cultural challenges as well. According to a long-time ICTR judge, an informal "in-house transfer of knowledge" about the particularities of witness testimony in ICTR trials developed over time.[51] This knowledge helped mitigate the negative impacts of judicial unfamiliarity with a foreign language and culture.[52]

---

47. Almquist, *supra* note 29, at 758.

48. Joshua D. H. Karton, *Lost in Translation: International Criminal Courts and the Legal Implications of Interpreted Testimony*, 31 VAND. J. TRANSNAT'L L. 1, 48–49 (2008).

49. ELIAS-BURSAĆ, *supra* note 13, at 242–43.

50. *Id.*

51. Swigart, *supra* note 12, at 592.

52. *Id.*

B. Special Challenges Facing the International Criminal Court

Since it opened its doors, the ICC has confronted a number of challenges unknown to international criminal courts and tribunals established to address crimes in a specific zone of conflict. The ICC is an institution with broad geographic reach, and a wide array of crimes fall under its jurisdiction.[53] The lack of territorial and situational specificity in its mandate means that the ICC cannot foresee the locations of the crimes it might be called upon to investigate, nor the languages in which accused persons or witnesses might choose to communicate.[54] The ICC also cannot count upon having speakers of relevant languages or persons knowledgeable about relevant regions and cultures among its own large staff, much less sitting on its eighteen-person bench.

Unlike trials at the Ad Hoc Tribunals or the SCSL, which saw an accumulation of institutional knowledge and staff expertise about their respective geographic jurisdictions develop over time,[55] new trials at the ICC essentially have to "start from zero." The Court must endeavor to come up to speed as quickly as possible in terms of accommodating the languages, cultural practices and understandings of its constituents—that is, the persons participating in trials as well as members of affected communities who are the targets of the extensive ICC outreach programs.[56] Diederick Zanen, head of the Field and Operational Interpretation Unit in the ICC Registry, described the challenge like this:

> At the ICC, for every case different languages are relevant because it's a different country and it's a different situation. For example, in Kenya, people may speak Swahili, or Luhya or Kikuyu. In Côte d'Ivoire they speak Jula or Bambara or French, or another local language. In the Central African Republic, Sango is an important language. In Libya, they are going to speak Arabic. All the languages change, which means that the requirements are different for each case. That's why we have very little—there's only staff for those languages in cases that are either at the trial stage or for languages that are needed for a longer duration, languages that are widely spoken, that may be relevant to several cases. A lot of the languages that I work with now are only relevant to one situation country or maybe even unique to one case, or maybe even for one or two witnesses. We do recruitment constantly for different language combinations in different countries. Preparations need to be

53. International Criminal Court, *supra* note 8.

54. Alexandra Tomić & Ana Beltrán Montoliu, *Translation at the International Criminal Court*, *in* 1 NEW TRENDS IN TRANSLATION STUDIES 221, 221–42 (2013).

55. Swigart, *supra* note 12, at 592.

56. *See Interacting With Communities Affected by Crimes*, INTERNATIONAL CRIMINAL COURT, https://www.icc-cpi.int/about/interacting-with-communities (last visited Aug 20, 2016) (on file with *The University of the Pacific Law Review*).

> made for when language services in these combinations may be needed, but they may be needed for one day, for one week, for one month, or for one year. We often don't know that until much further in the investigations.[57]

The ICC policy of victim participation further complicates the work of its Language Services Section. As stated on the Court website, "[f]or the first time in the history of international criminal justice, victims have the possibility to share their views and concerns in the proceedings, represented by a lawyer."[58] This possibility requires the ICC to inform victims of the aims and procedures of the institution and what victims might personally expect if they join a proceeding against an accused person whose actions have allegedly harmed them. This experiment in international justice has been lauded by some observers and criticized by others. Regardless of how one assesses victim participation, it is clear that the policy greatly expands the Court's constituent pool along with its potential for encountering linguistic and cultural dissonance. For instance, what an affected population thinks justice should consist of in the wake of atrocities and human rights violations may be quite different from what the Court is able to offer.[59] Indeed, a recent study by the Berkeley Law School's Human Rights Center on victims who have participated in ICC proceedings suggests that the Court has more work to do in reconciling disparate visions of its responsibilities toward victims. "The study found that most victim participants lacked access to information about the ICC and its mandate, were deeply frustrated by the slow pace of the proceedings, and expected to receive individual reparations—even though reparations might not be forthcoming."[60] The study also concludes that more outreach and educational programs are needed for victim participants, especially those residing in rural areas.[61] Such programs would clearly have to use local languages and cultural mediators to be effective.

Setting aside thorny issues of differing expectations and cultural (mis)understandings, it is clear that adequately addressing the linguistic needs of the ICC is, in and of itself, a daunting challenge. All of the Court's current cases involve African conflicts, and they have necessitated communication—during investigations, in the courtroom, and for outreach activities—in over 30 "situation languages." Many of these fall into the category of "languages of

---

57. Interview by David P. Briand & Leigh Swigart with Diederick Zanen, Operational Interpretation Coordinator, ICC, The Hague, Neth. 1, 28–29 (May 4, 2015) (on file with *The University of the Pacific Law Review*).

58. *Victims*, INTERNATIONAL CRIMINAL COURT, https://www.icc-cpi.int/about/victims (last visited August 14, 2016) (on file with *The University of the Pacific Law Review*).

59. Almquist, supra note 29, at 2.

60. Andrea Lampros, *Victims' Rights: A New Study Finds ICC Must Do More For Survivors Seeking Justice*, BERKELEY LAW (Dec. 15, 2015), https://www.law.berkeley.edu/article/victims-rights-a-new-study-finds-icc-must-do-more-for-survivors-seeking-justice/ (on file with *The University of the Pacific Law Review*).

61. *Id.*

lesser diffusion," and are neither habitually written nor widespread by territory or function. Simultaneous interpreters are rarely available for these languages yet remain indispensable for the optimal conduct of trials.[62]

Over its relatively short lifespan, the ICC Language Services Section (until recently known as la Section de Traduction et d'Interprétation de la Cour) has developed a method for filling this gap. The section recruits potential interpreters for target languages, ideally identifying lawyers or other educated professionals who speak them with native fluency. The candidates are then vetted for security and health risks. Finally, those selected undergo months of training in the technique of simultaneous interpretation. If the target language is very rare, an interpreter may be trained through the intermediary of a third language instead of through one of the Court's working languages—English or French. This less-than-optimal strategy was used, for example, in the training of interpreters for Zaghawa, a Sudanese language with a very small speaker base, via Arabic.[63]

It has been reported that when the charges are confirmed against an accused person and it becomes definite that he or she will stand trial, this recruiting/vetting/training process begins its long unwinding. It may take up to eighteen months to have an interpreting team for certain languages. Some frustration has been expressed that judges seem to need reminding at the onset of each trial that a simultaneous interpreter for key languages cannot necessarily be located and begin work from one day to the next. Indeed, some ICC language staffers feel that institutional budget allocations do not acknowledge the difficult and time-consuming nature of their critical work and the fact that virtually every aspect of the ICC's work is dependent upon translation and interpretation.[64]

Another challenge associated with communication in languages of lesser diffusion is that there are very few people who can check the accuracy of courtroom interpretation. Whereas at the ICTY, ICTR and SCSL, where native speakers of the language of testimony served on defense teams or in other courtroom positions—even as judges in Sierra Leone—there may be very few "ears on the testimony" in certain ICC trials. This may ultimately raise questions about fair trial rights.

However difficult responding to the almost overwhelming demands of a highly multilingual institution may be, the ICC has no choice but to carry on. And once again, cultural variation will be certain to accompany this broad linguistic diversity. The Court has benefitted from the experience of both the ICTR and SCSL vis-à-vis African languages,[65] and the organization of language

62. *See* Swigart, *supra* note 12.

63. Author interviews with Language Services staff member, International Criminal Court (Sept. 2014, June 2016).

64. Author interview with Language Services staff member, International Criminal Court (June 2016).

65. *Id. See also* Interview by Linda Carter and Leigh Swigart with Jean Pelé Fomété, Deputy Registrar, International Court of Justice, in The Hague, Neth. (May 26, 2015), *available at* http://www.brandeis.edu/

services at the ICTY has also been instructive. For example, the ICC decided from the beginning that it should keep the language services of the Office of the Prosecutor separate from those of the Registry—a strategy adopted only over time at the ICTY. In this way, each organ can have a dedicated cadre of interpreters and translators and thereby eliminate unintended breaches of confidentiality.[66]

The ICC's foundational complementarity principle, which states that it should act as a court of "last resort" and undertake prosecutions only when national jurisdictions have failed to address international crimes,[67] may perhaps offer a way around the potentially unlimited linguistic and cultural diversity to be encountered by the Court. Almquist makes this point by suggesting that "judicial proximity" may be the solution to the kinds of cultural and linguistic disconnects that arise when international courts encounter diversity.[68] If prosecutions take place in national systems, the proceedings will be staffed from top to bottom with local language speakers and culture-bearers. However, Almquist concedes that judicial proximity can also be disadvantageous in situations where violent conflict has resulted in the kinds of international crimes covered by ICC jurisdiction. In such situations, the distance and dispassion offered by an international criminal institution—with prosecutors, judges, and staff hailing from other countries and regions—may outweigh the drawbacks of unfamiliarity with relevant languages and cultures.[69]

III. DIVERSITY AND ITS EFFECTS ON THE INTERNAL OPERATION OF INTERNATIONAL CRIMINAL INSTITUTIONS

Focusing on the expansive range of languages and cultures represented among the constituents of international criminal courts and tribunals should not divert attention from another important reality—that significant variation also exists *inside* the institutions themselves. This internal variation is not surprising, given that the benches of international criminal courts and tribunals rarely, if ever, have two judges of the same nationality and most have a predictable regional mix à la United Nations. The large staffs of these institutions often follow the same recruitment pattern. What are the implications of such internal diversity? Below, I will describe a number of ways in which language and cultural variation play out in these institutions.

---

ethics/internationaljustice/oral-history/interviews/fomete.html (on file with *The University of the Pacific Law Review*).

66. Tomić & Montoliu, *supra* note 54; ELIAS-BURSAĆ, *supra* note 13.

67. *See Complimentarity*, COALITION FOR THE INTERNATIONAL CRIMINAL COURT, http://www.iccnow.org/?mod=complementarity (last visited Aug. 14, 2016) (on file with *The University of the Pacific Law Review*).

68. *See generally* Almquist, *supra* note 29.

69. *Id.*

Starting from the cultural perspective, it should be recognized from the outset that there are unifying factors across the staffs of international criminal courts and tribunals that minimize the manifestation of dissonance. The majority of staff working in these institutions in medium- or high-level positions have almost certainly undertaken legal studies. Many hold a Master's degree in international law in addition to a domestic law degree. Many have also practiced law and/or taught law at the university level. The result of this similar educational and practical experience is a shared appreciation that international law constitutes a powerful response to the commission of international crimes. Whatever one's "home culture," choosing to work in an international criminal court or tribunal assumes a familiarity with the legal framework that gave rise to such institutions and some degree of willingness to adapt to how they function.[70]

That does not mean, however, that there are not differences in "legal culture." The divide between an adversarial common law system and an inquisitorial civil law system can create both tensions and misunderstandings. Many scholars have analyzed how these distinct legal systems and trial procedures each contributed important elements to a hybrid system of international criminal law and procedure.[71] Many also note that this body of law and procedure has developed in such a way as to be *sui generis*. That being said, those who joined the ICTY and ICTR in the early years had to adjust to a combined system that was still developing.[72] And this system may continue to pose problems for newly arriving staff at the ICC who beforehand only followed the legal traditions of their respective countries or whose legal philosophies were shaped there.[73] As scholar (and current judge of the Extraordinary Chambers in the Courts of Cambodia) Michael Bohlander observes, the result of a diverse staff may be "the clash of doctrines and sometimes fundamental attitudes inherited by the representatives of the jurisdictions making up the spectrum of opinions at any international criminal court."[74]

Other dissonances found within international criminal courts and tribunals can be attributed to issues of "institutional culture" or "the culture of work." For example, judges and other principal staff may bring with them the local work ethic of their home country or legal system, which may be at odds with those of their colleagues. In the case of judges, some may rely more heavily on the input of their legal assistants than others, or have a different sense of what it means to work collectively. Like other large international organizations, international

70. DANIEL TERRIS ET AL., THE INTERNATIONAL JUDGE: AN INTRODUCTION TO THE MEN AND WOMEN WHO DECIDE THE WORLD'S CASES (Brandeis Univ. Press, 2007).

71. *See, e.g.*, EDWARD ELGAR, INTERNATIONAL CRIMINAL PROCEDURE: THE INTERFACE OF CIVIL LAW AND COMMON LAW LEGAL SYSTEMS (Linda Carter and Fausto Pocar eds., 2014).

72. TERRIS ET AL., *supra* note 70.

73. Michael Bohlander, *Language, Culture, Legal Traditions, and International Criminal Justice*. 12 J. OF INT'L CRIM. JUST. 491, 491–513 (2014).

74. *Id.* at 495.

courts have hierarchies, alliances, and other internal dynamics that may either help or hinder the work they do.[75]

Finally, it is worth mentioning that working in any international organization represents differing advantages depending upon one's home country and standard of living. What may be considered a fabulous salary and benefits package by a legal professional from one part of the world may represent a loss of income and professional continuity for someone from another. In other words, there are different motivations to work for an international criminal tribunal, not all of which are associated with its mission to prosecute those alleged to have committed high-level crimes and to end impunity for such crimes. It goes without saying, of course, that a legal professional may choose to work in an international tribunal to make a contribution to international justice, regardless of the financial advantages or disadvantages.

The tensions that emerge around language within international criminal courts and tribunals are in many ways more intense and significant than those around culture. All employees of these institutions have to speak at least one of its working official languages—in most cases English or French.[76] That means that there is a given language skill "baseline" within the ranks of the staff. Yet even the day-to-day translation and interpretation between English and French manage to create a substantial workload for language staffers.[77]

The need to accommodate both English and French speakers also raises some interesting linguistic phenomena. The mixing of elements in international criminal courts and tribunals from different legal systems and trial procedures has necessitated the creation of terms in working languages that did not previously exist. At the ICTY at least, it has been noted that the common law system proved dominant in this regard:

> While there is an acknowledgment and accommodation of other cultures at the ICTY, they do not enjoy equal status with the Anglo-Saxon legal and communicative culture that dominates the Tribunal. This legal and cultural asymmetry forces representatives of other cultures to adjust, both procedurally and linguistically. One of its results has been the creation of "ICTY-speak" - otherwise described as jargon by the speakers of French. While being routinely used by the ICTY in-house interpreters, this language-hybrid may not be understood by the outsiders or the newcomers to the Tribunal, such as witnesses and newly appointed judges and lawyers.[78]

---

75. TERRIS ET AL., *supra* note 70.

76. At the SCSL, English was the sole working language; TERRIS ET AL., *supra* note 70.

77. ELIAS-BURSAĆ, *supra* note 13, at 2; Tomić & Montoliu, *supra* note 54.

78. Ludmila Stern, *Interpreting Legal Language at the International Criminal Tribunal for the Former Yugoslavia: Overcoming the Lack of Lexical Equivalents*, 2 J. OF SPECIALISED TRANSLATION, 63, 72 (2004).

Language staff at the ICTY also found it challenging to create new legal terms in BCS to express legal concepts and procedures unfamiliar to accused persons, witnesses, and defense counsel from the conflict region.[79] This exercise was perhaps even more difficult at the ICTR and SCSL where legal terminology had to be painstakingly developed in African languages, as already mentioned. This activity continues today at the ICC within a specialized Translation Support and Terminology Unit.[80]

One of the responses to multilingualism within international criminal courts and tribunals—and a worrying one for a number of insiders as well as outsiders—is the privileging of one working language over the other. That language is, of course, English. Terris, Romano and Swigart had this to say about the dominance of the world language in international justice institutions generally:

> This natural evolution toward a single working language in courts may appear beneficial, as it might eventually reduce the need for translation altogether, at least among judges. Many judges point out, however, that those who have English as a native language find themselves in an advantageous position in relation to their peers. Only native speakers have the full range of lexicon and usage that allows them to express complex legal ideas with the greatest subtlety and skill.[81]

That non-native speakers of English carry an extra linguistic burden is not, of course, limited to judges. A Dutch ICTY defense attorney, for example, expressed his frustration about the need not only to function in a foreign language but also in an unfamiliar legal system, which necessitated extra effort on the part of his team:

> . . . we were very impressed by the top echelon of the international judiciary. At the same time, you're also aware that we needed additional training to be able to defend before [Judges] McDonald, Sir Ninian Stephen, and Vohrah. They all have a common law background. We had to familiarize ourselves sufficiently with a second language. We're defending as non-native speakers before an English-speaking court, although Judge Deschênes very much emphasized that French was one of the official languages of the court as well. But you have to express yourself, all your written submissions, your oral arguments—you have to do it in a language which is not your own. That makes it not easy to do. Of course, we then had Stephen Kay and Sylvia de Bertodano as native

79. ELIAS-BURSAĆ, *supra* note 13, at 27.

80. Author interviews with Language Services staff members, International Criminal Court (Sept. 2014, June 2016); Swigart, *supra* note 12.

81. TERRIS ET AL., *supra* note 70, at 73.

> English speakers, but of course, we had to be able to argue in court as well. If you do the appeal of jurisdiction on your own, there's no one to assist you.[82]

It is generally recognized that the ICC has introduced more civil law elements into its own hybrid system and is, consequently, less dominated by the "common law adversarial model."[83] This is seen as positive by many in the international justice field, given that two-thirds of the world's legal systems are based on civil law or other legal traditions, and that a purely adversarial trial procedure is likely to be foreign not only to many accused persons but to defense counsel as well, as described above. It has also been reported that one hears French spoken more often at the ICC than at the ICTY, [84] perhaps because of the numerous cases involving francophone Africa.

The increasing use of English by international criminal judges—many of whom are not native speakers but have chosen English over French as their professional language—may have further implications for their role as assessors of evidence. Karton points out that judges listening to interpretations of original language testimony into English and French might hear slightly, or even significantly, different versions. The consequences for the role of fact-finder may be considerable:

> [I]nternational criminal tribunals are presided over by panels of judges drawn from different countries. This diversity reflects the multinational nature of the enterprise, emphasizes that violations of human rights are a crime against all of humanity, and protects against bias. However, it also has an important unintended consequence; because the judges may listen to testimony (and the submissions of counsel) in either of the working languages of the court, they may hear different interpretations of the same testimony. In other words, the judges render their decisions based on testimony that may differ subtly or grossly in substance.[85]

To point, a recent ICC Registry report in the case of *The Prosecutor v. Bosco Ntaganda* revealed that a number of discrepancies had been found between the edited versions of English and French transcripts of witness testimony. In response, the Trial Chamber recommended that the Registry adopt a procedure

---

82. Interview by David P. Briand and Linda Carter with Alphons Orie, Judge of the Int'l Crim. Trib. for the Former Yugoslavia, in The Hague, Neth. (May 21, 2015), *available at* http://www.brandeis.edu/ethics/internationaljustice/oral-history/interviews/ORIE.html (on file with *The University of the Pacific Law Review*).

83. *See* Julie Rose O'Sullivan, *The Relationship Between the Office of the Prosecutor and the Judicial Organ*, *in* LAW, MEANING, AND VIOLENCE: FIRST GLOBAL PROSECUTOR: PROMISE AND CONSTRAINTS 54 (Martha Minow et al. eds., 2015).

84. Interview with Dierderick Zanen, *supra* note 57.

85. Karton, *supra* note 48, at 44–45.

whereby the transcripts would be checked against the original audio recordings as well as against one another to ensure accuracy and consistency.[86]

There is thus a logical argument to be made for international judges, and other court personnel, being able to speak both working languages of their court or tribunal. As an international judge who served at the ICTR said of his personal multilingualism, which involved mastering both English and French (and probably other languages) in addition to his native language:

> We all speak with our accents, but judges should certainly be fluent in at least one and, hopefully, in *both* languages of the court. I think that what we should strive for in the future, at the international level, is a situation where we have *bilingual* judges. I speak English and French and I find that it is a *huge* advantage.[87]

Such an advantage notwithstanding, Elias-Bursać observes that multilingual judges at the ICTY may take on a very large job in the courtroom. Not only do they check the French and English (and sometimes other language) transcripts of interpreted testimony against one another as they scroll in front of them on screens, but they must continue "observing the witness's demeanour and evaluating the credibility of his or her testimony."[88]

Those who seem most resistant to the idea that multilingual skills would enhance their ability to function optimally within their institutions are, not surprisingly, monolingual native English speakers. Some have expressed dismay, if not exasperation, that members of their own judicial panel chose to speak French or that documents were presented in French, despite the fact that it was an authorized working language of their court or tribunal.[89] Bohlander notes that when there are panels of judges at the ICC with mixed language or legal backgrounds, "it would almost appear that English trumps all other languages as long as there is one judge on the panel who does not speak any language but

86. *See* Prosecutor v. Katanga, ICC-01/04-02/06, Registry's Report pursuant to Trial Chamber VI's direction of 24 August 2016 (Sep. 5, 2016), *available at* https://www.icc-cpi.int/CourtRecords/CR2016_06481.PDF (on file with *The University of the Pacific Law Review*).

87. TERRIS ET AL., *supra* note 70, at 74.

88. ELIAS-BURSAĆ, *supra* note 13, at 65.

89. Interview by David P. Briand and Leigh Swigart with Gabrielle Kirk McDonald, former Judge of the Int'l Crim. Trib. for the Former Yugoslavia, in East Hampton, NY (July 15, 2015), *available at* http://www.brandeis.edu/ethics/internationaljustice/oral-history/interviews/mcdonald.html (on file with *The University of the Pacific Law Review*); Interview by David P. Briand and Susana SáCouto with Patricia M. Wald, former Judge of the Int'l Crim. Trib. for the Former Yugoslavia, in Washington, D.C. (Dec. 12, 2014), *available at* http://www.brandeis.edu/ethics/internationaljustice/oral-history/interviews/wald.html (on file with *The University of the Pacific Law Review*).

English."[90] He further notes, "common law judges display a command of foreign languages to a clearly lesser degree than their civil law counterparts."[91]

The impacts of the dominance of English in international criminal courts and tribunals may well extend beyond issues of inter-judicial communication and the assessing of evidence. It can also be argued that English is shaping the very development of the law. Cesare Romano has observed this phenomenon, noting that English has become a "conveyor belt of American legal culture to the international level."[92]

Michael Bohlander has focused his research more specifically on the ICC and the unique interplay of legal tradition, language, and modes of law making found there. The corollary to common law judges' lack of foreign language skills is that the legal sources they draw upon are almost entirely from the English-speaking world. Working with multilingual legal assistants cannot and should not, he suggests, fill the knowledge gap created by a judge's inability to consult a broad body of legal sources in many languages. Bohlander summarizes his argument as follows:

> English has become the lingua franca in international legal academic and practical dialogue, and there is a related concern that English – or its direct descendant, Anglo-American – intellectual and legal culture has drawn a thick veneer over the canvas of international criminal law as well. The differences in linguistic and cultural influence need attention as they are a primary determinant of the dialogue that constitutes international justice, not only in form but also in substance.[93]

If Bohlander's assessment is correct, it would seem that the linguistic and cultural diversity found within institutions of international criminal justice is narrowing. Significantly, this is occurring at the same time that the range of languages and cultures represented among their outside constituents is widening. This situation constitutes perhaps the ultimate mismatch. Although it is unclear what the future implications of this mismatch might be for the success of the international criminal justice project overall, it seems likely that less diversity within courts and tribunals will result in a diminished level of understanding and insight among those who work there.

---

90. Bohlander, *supra* note 73, at 499.

91. *Id.* at 497. *See* generally *Judges of UNAT*: OFFICE OF ADMINISTRATION OF JUSTICE: UN APPEALS TRIBUNAL, http://www.un.org/en/oaj/appeals/judges.shtml (last visited Aug. 19, 2016) (on file with *The University of the Pacific Law Review*) (for information on the language skills of international judges of the United Nations Dispute Tribunal).

92. TERRIS ET AL., *supra* note 70, at 78.

93. Bohlander, *supra* note 73, at 491.

IV. CONCLUSION

This paper illustrates some of the difficulties that inevitably accompany the exercise of criminal justice at the international level, where the coming together of multiple languages and cultures is a *sine qua non*. It is obvious that international criminal courts and tribunals have no control over the backgrounds of their constituents, which languages they need or choose to communicate in, and the cultural understandings—about international justice and everything else—that they bring with them.

International criminal courts and tribunals do have control, however, over internal diversity. Clearly, their staffs are already mixed by nationality. But geographic diversity would appear to mask a growing homogeneity in preferred language and legal outlook. I argue that institutions should strive to have staff members who speak multiple languages and who also have a deep knowledge of more than one culture or part of the world. The multiple perspectives such a background affords can increase the ability to recognize situations of dissonance and the capacity to address the potential misunderstandings that accompany them. In short, being multilingual and multicultural would help those working in international justice to bridge the divide between international criminal institutions and their constituents, as well as to value the wide spectrum of backgrounds represented by those who work in the institutions themselves.

Furthermore, being conversant solely in the dominant Anglo-American language and culture makes it particularly difficult to appreciate and negotiate diversity in these domains. The important notion here is not that those working in international criminal institutions should know everything about the world's cultures and languages, a clearly impossible task. It is rather that these important actors should possess the intellectual flexibility to imagine what it means to see the world in different ways and to express that world through different languages. This flexibility is cultivated through being pushed outside of one's native linguistic and cultural frame, experiencing the resultant disorientation, and reimagining what one assumed to be the norm as instead one possibility among many. Those who function entirely in the dominant language and culture are rarely required to go through this difficult but ultimately eye-opening process.

It is perhaps most important that those who serves as judges in international criminal courts and tribunals demonstrate their ability to think outside of their native linguistic and cultural frame. It is clear that these individuals will never have an expert knowledge of all the languages and cultures associated with the cases before them. At the minimum they should, as Karton suggests, take the initiative to inform themselves to the extent possible, along with the translators and interpreters, about "the cultural and linguistic particularities that will become relevant at trial."[94] Indeed, if jurors in the Zimmerman trial, referenced in the

94. Karton, *supra* note 48, at 51.

Introduction, had had such information, they might have listened to Jeantel's testimony with more sensitivity and assessed its credibility differently. International judges are entrusted with an enormous responsibility: deciding the guilt or innocence of accused persons whose life experiences and worldviews may be completely foreign to their own. To have judges best prepared for this challenge, I believe that breadth of linguistic and cultural knowledge—and not just diversity by region, gender and legal expertise—should be considered when candidates are vetted for judicial positions in international criminal courts and tribunals.

As noted at the beginning of this paper, participants at the 2010 session of the Brandeis Institute for International Judges wrestled with the question of how diversity impacts the development of an international rule of law.[95] An excerpt from the report of the institute proceedings is a fitting way to conclude:

> It is clear that despite the global dissemination of information and commodities, the world will continue to be diverse – in culture, language, religion, political belief, and many other ways – for the foreseeable future. International justice institutions, like other entities meant to serve broad constituencies, would do well to consider what this fundamental characteristic of human life means for their work.[96]

95. *See generally*, *infra* Part II.

96. Brandeis Institute for International Judges, *supra* note 10, at 36.