Malaysia and Indonesia on common ground: An insight from the case on the legal consequences of the construction of a wall in the occupied Palestine territory

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ABSTRAK

Pada 25 Februari 2004, perwakilan dari Malaysia, Indonesia dan beberapa buah negara lain termasuk Arab Saudi, Bangladesh, Cuba, Jordan, Madagascar, Afrika Selatan dan Palestin berada di Mahkamah Keadilan Antarabangsa (ICJ) di The Hague, Netherland bagi menghadiri kes berkaitan kesan pembinaan tembok pemisah di kawasan jajahan Palestin. Kertas ini bertujuan membincangkan gaya bahasa yang digunakan oleh ketua perwakilan Malaysia dan Indonesia.

OF DIPLOMATS AND INTERNATIONAL LAWYERS

Consistently of late, my foray into the dominion of diplomacy and international law has suitably convinced me that the enthusiastic endeavor to demarcate and distinguish some defining characteristics of diplomats and international lawyers through their discourse can increase the level of both curiosity and complex for researchers who are neither diplomats nor international lawyers. This is especially so when the object of the inquiry and scrutiny is the type of discourse present in cases bought before the International Court of Justice, henceforth, ICJ. Here, before a case appears before the 15 judges or the ICJ, it is customary for diplomats and international lawyers to work very closely together to address critical issues pertaining to soverignty and nationhood. However, the anticipation that the international lawyers would deliver their arguments within the framework of *de lega lata*, the law as it is, and diplomats, *de lega ferenda*, the law as it should be or their vision of the world as it should be, can sometimes be an understatement due to the observation of following two situations. Firstly, there can be the subtle passage of diplomats to the realm of *de lega lata*, and lawyer vigorously sprouting a vision of a better world. Or secondly, both diplomats and lawyers conveying the law as it is and

the law as it should be in tandem with one another. Thus exist a state of affairs where the diplomat speaks like an international lawyer and where the international lawyer thinks like a diplomat. Adding to the complexity for those interesterd in conducting genre or discourse analysis is the presence of diplomats having a background in international law and international lawyers who have a background in diplomacy. In such an event, they travel from one role to the next with considerable ease. Challenge for sociolinguists aside, however, the enactment of solidarity, consensus and collaboration among 45 or so countries in the case on the legal consequences of the construction of a wall in the occupied Palestinian territory is a triumph for diplomacy and a demonstration of the sanctity of international law. All this despite the fact that there remains some on-going issues of conflict between some of the countries present.

On 25 February, 2004 the Government of Malaysia and Republic of Indonesia stood shoulder to shoulder with 43 or so other countries to respond to the following (www.icj-cij.org):

> What are the legal consequences arising from the contruction of the wall being built by Israel, the occupying power, in the occupied Palestinian Territory, including in and around East Jerusalem, as described in the report of the Secretary-General, considering the rules and principles of international law, including the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly resolutions?

The aims of this paper is to indicate and commonality in argument between Malaysia and Indonesia through the language used in the texts presented by both Malaysia and Indonesia at the ICJ. By doing so, the unity of both countries towards Palestine can be documented.

Section III of this paper provides excerpts that will illustrate such unity in discourse between the two countries.

DIPLOMATIC AND LEGAL LANGUAGE

First, due to the presence of both diplomats and international lawyers in cases before the ICJ, what are some cited characteristics of diplomatic and legal language? With regard to diplomatic language, research by scholars such as Cohen (1997), Matos (2004), Satow (1908) and Sharp (1999) endorse the nature of diplomatic language to be peace-building tool avert possible conflict and damage to the bilateral or multilateral relations between countries. In

concordance with the goal of diplomacy aforesaid, language choices in diplomacy is expected to be tactful, polite and littered with words and phrases that assist the diplomat's goal to construct an atmosphere of cordiality language also suggest the presence of a professional diplomatic culture (Claes, 2004, Hofstede, 2004) where despite all odds due to on-going issues, diplomats from the countries concerned must not only strive to remain on speaking terms for international or regional interests but also act as a buffer between the leaders of such countries who feel growing tensions between the countries concerned. In the latter, the use of appropriate discourse is paramount to maintain peace.

Research on international legal discourse with regard to the wide field of language studies on the other hand, have so far been elusive. What is available is the description and analysis of legal discourse with regard to legal documents and analysis of language used in the domestic courtroom. In the domestic courtroom domain, there is sustained interaction between the judge, the prosecution and the defendant in criminal cases and the appellant and respondent in civil cases. This is in addition to the number of witnesses that will take the stand and the members of the jury. Except for the members of the jury, the atmosphere in the domestic courtroom thrives with multiple speech acts including assertion, questions, propositions, disagreement and sometimes irony and sarcasm. The following two scholars, Solan (1993) and Tiersma (1999), provide some aspects of legal language in written documents and in the domestic legal scene. Here, according and redundancy, conjoined phrases, the use of negation and questions, impersonal constructions and the use of general of vague language. These characteristics, aforesaid, however, seem more typical of written legal documents such as wills, sale and purchase agreements, rental agreements and the like. This can then be compared to the more direct usage of spoken language cited in the domestic courtroom domain during a criminal or civil case due to the necessity to get immediate feedback. In these instances, there is less redundancy and sentences can be short and precise.

At the ICJ in The Hague, on the other hand, lead stained-glass rooms reverberating with history are the venue of cases that need adjudication. Out of 15 judges from all over the world, only one judge, appointed as the Chairman, speaks on behalf of the other judges. Usually two countries are in attendance comprising mainly of officials from the Ministry of Foreign Affairs, their international legal team and members of the other relevant Ministries. Here, each country presents their case to the presiding judges. The oppurtunity to respond to questions and statement raised by either party is also provided, often on the second or third day of the oral proceedings. Like the members of the jury in a domestic courtroom, the 15 judges of the ICJ deliberate and coem to a decision based on the merits of arguments heard. The difference here is that the ICJ can deliberate for a few months before a decision is made.

A general look at the texts selected for this paper indicate the language used in cases before the ICJ as a mixture of what is described as aspects of legal language by Tiersma (1999) plus short and precise sentences. In addition, the former, that is, lengthy and complex sentences, wordiness and redundancy, conjoined phrases, the use of negation and questions and impersonal contructions together with the latter in international legal discourse is also in juxtaposition with some features of diplomatic language. This, in my opinion, makes the nature of international legal language with regard to adjudication cases a class of its own.

VOICES OF SOLIDARITY AND COMMUNALITY FROM MALAYSIA AND INDONESIA AT THE ICJ

The discussion in this section aims to records a message of solidarity and commonality between the Government of Malaysia and the Republic of Indonesia with regard to the constuction of a Wall in the occupied Palestine Territory. As mentioned earlier, this will be achieved through some observed features of the type of language present in selected experts of the Malaysian and Indonesian text used at the ICJ.

At the ICJ, February 25, 2004, the spokesman and elegation head for Malaysia was HE Datuk Seri Syed Hamid Albar, henceforth SHA, the Foreign Minister of Malaysia and on behalf of Indonesia was delegation head HE Mr. Mohamad Jusuf, henceforth MJ, Ambassador of the Republic of Indonesia to the Kingdom of the Netherlands.

For the purpose of this paper, three examples illustrating commonality and solidarity in argument between Malaysia and Indonesia are highlighted and discussed below.

Example 1 presents the opening remarks by both Malaysia and Indonesia to the Court. The type of language at the onset of the remarks is a conventional one, that is, all countries appearing before the ICJ address members of the Court prior to presenting the crux of their arguments. The use words like *honor, privilege, pleasure* to greet the Court are frequently the norm according to research and personal observaton. Similarly, the use of words like *distinguished* and *honorable* to decribe the members of the Court and the use of *Mr. President* to address the designated Chairman for that particular session.

Compared to the domestic courtroom scene where lawyers are only given the privilage to speak for their client, both SHA and MJ are empowered to speak on behalf of their countries despite the fact that vast majority of members of their country may not even have known that such a case emerged at the ICJ

last year and much less that their countries were involved. This is also commonly observed in international diplomacy where leaders are sanctioned by their position to articulate what they feel is best for their nation towards a particular issue.

Example 1 below indicate a common view by both countries regarding the role of the Court to render an advisory opinion identifying the legal consequences of the Israeli construction of a Wall in Occupied Palestinian Territory. This can be viewed as sign of international and regional solidarity, indicating the strong commitment by both Malaysia and Indonesia to the question of Palestine and the quest for a just and durable peace in the Middle East. Both countries use in addition "positivisers" (Matos, 2004-285), that is, words and phrases aimed to build cooperation in a tactful and tactial way through the use of contructive adjectives, verbs and nouns. Also a feature of diplomatic language, such words contain an element of praise and trust for the addressee's capability to initiate the action desired by the addressor. Examples of such words and phrases are present in the second paragraph of Malaysia's and Indonesia's text in example 1 below.

Example 1

Malaysia

> Mr. President, distinguished members of the Court, it is indeed a great honor to appear before your Court in this advisory opinion procedure concerning the legal consequences of the construction of a wall in the Occupied Palestine Territory. On behalf of Malaysia, I would like to record Malaysia's highest regard for the International Court of Justice as the principal judicial organ of the United Nations... No institution is better placed than your Court to assess in an authoritative way the situation form an international law perspective.

Indonesia

> Mr. President, honorable members of the Court, it is an honor and privilege for me to represent my government before the Court in these proceedings. As the principal judicial organ of the United Nations, the Court's response to the advisory opinion request would reassert its considerable credibility among nations. Its independent consideration of this request would also be a true testimony to the validity of this trust.

Malaysia and Indonesia's common view of the Court's responsibility to render an advisory opinion is repeated in example 2 below. This shared version is consistent throughout Malaysia's and Indonesia' text. This has also been observed in other adjudication cases that have appeared before the Court where the singular most important argument is constantly repeated. Here, the repetition of the Court's role is possibly to remind the Court of its influence on international law and to convince the Court to act favorably.

In example 2, constructive words and phrases are used to appeal to the Court. Malaysia describes the Court as the *custodian of international law* where if it carries out its role as the keeper, the warden of international law, it can bring about *equality, peace, security, prosperity* and *justice* to the Middle East. If the Court assumes the role of custodian, then they can be regarded as a part of those that *advocate the rule of law, human rights, freedom and democracy*, a part of those that uphold *standards at the international level without discrimination and exception*. This is a vision of law as it should be, and the 'custodian' can exert influence on the sanctioning of such visions to be fully part of codified international law in any similar case before the Court.

Indonesia's vision of what the world should be in example 2 is that peace can be achieved through dialogue. This is consistent with diplomacy where the emphasis on dialogue in times of conflict is of paramount importance for the sake of bilateral relations. The pursuit of peace, however, must not be *at the expense of the legal rights of the Palestinian people*. Here, we witness a call for a better synergy of what the law should be in juxtaposition of what is law is, at the moment.

Both Malaysia and Indonesia are again, in example 2 below, on common ground in empowering the Court to render an advisory opinion on the construction of a Wall in the Occupied Palestine Territory.

Example 2

Malaysia

> Mr. President, I stand before you today with the conviction that this Court is in the best position as the custodian of international law, which binds us as a community of nations that stand together in order to promote justice, equality, peace, security and prosperity for mankind. Those of us that advocate the rule of law, human rights, freedom and democracy, are duty bound to ensure that these standards are also upheld at the international level without discrimination and exception...

Indonesia

> Indonesia shares the view that the establishment of a Palestinian State, living side by side with Israel must be realized through political dialogue. It consistently maintains that the interest of the very fundamental principle of international law shall not be compromised. As mentioned by the distinguished Palestinian respresentative yesterday, the implementation of the peace process should not be at the expense of the legal rights of the Palestinian people. In this regard, the Indonesia Government believes that the advisory opinion of the Court could contribute positively to the peace process.

The inclusion of example 3 below is to illustrate solidarity and commonality between Malaysia and Indonesia with regard to the use of two established components, firstly in treaty law, the Armistice Line of 1949 and secondly in international law, the Fourth Geneva Convention. When an argument is made based on what the law is, the use of language is observed to be more direct, forceful and precise. This was also personally noted in other adjudication cases at the ICJ. A possible reason perhaps is what the law already is cannot be ignored especially when it is relevant to the case at hand. Thus, there is not much need to use language conductive to gaining the support of the Court as the latter is obliged to act in accordance with aspects of the law that is, law that exists. This renders the Wall illegal by law.

In this case, too, the law that is, can assist in building a vision of the world and laws that should be; a world there is justice, peace and human rights for the Palestinian people. This is the same world desired by both Malaysia and Indonesia. Here, as seen in the last paragraph, the voices of solidarity and commonality between the two countries cannot be stronger with regard to peace in Palestine.

Example 3

Malaysia

> The Wall, sections of which are contructed deep inside the Occupied Palestinian Territory departs from the Armistice Line of 1949 and therefore illegal under international law. The Wall gravely violates the Fourth Geneva Convention in that it involves the illegal, *de facto* attempt at annexation of substantial parts of the Palestinian territory and its resources; the transfer of a large number of Palestine civilians, and further deprivation of human rights of the Palestinians, resulting in further dire humanitarian consequences among an already deprived people.

Indonesia

> The contruction of the Wall by Israel in the Occupied Palestinian Territory, including East Jerusalem, departing from the Armistace Line of 1949, is illegal under relevant norms and principles of international law and must be ceased and reversed. Israel is under an obligation to fully and effectively respect the Fourth Geneva Convention as well as Additional Protocol 1 to the Geneva Conventions to the Occupied Palestinian Territory including East Jerusalem, and therefore Israel is under obligations (sic) to stop its grave breaches of international human rights law, and to bring all the perpetuators of human rights atrocities to justice.

CONCLUSION

The objective of the paper was to document voices of solidarity and commonality between Malaysia and Indonesia through language use in the case of the legal consequences of the construction of a Wall in the Occupied Palestinian Territory.

Three examples were presented to illustrate the goal aforesaid. These three examples must be regarded as the tip of the iceberg as they were by no means the extent to which Malaysia and Indonesia were consonant in discourse

during the case. In fact, a close enough reading of the Malaysian text comprising of 18 pages and the Indonesia text of 10 pages revealed a greater level of solidarity and commonality between the two countries with regard to the Wall.

There is still obviously, much research to be done in the sociolinguistics of international law due to the complexity of legal and diplomatic identities operating in this domain in addition to the considerable amount of both legal jargon and diplomatic language.

This is, however, one of the roads not taken for those who wish to seek new frontiers in language studies.

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