

A race apart?

by Patricia Wheeler, LL.M

The author takes a rather more measured view of the role played by translators in international courts and tribunals than Norman Birkett, who once described them as ‘a race apart – touchy, vain, unaccountable, full of vagaries, puffed up with self-importance of the most explosive kind, inexpressibly egotistical, and, as a rule, violent opponents of soap and sunlight’.

A conference on ‘interpreting at international courts and tribunals’ organised in The Hague from 4-7 July by AIIC (International Association of Conference Interpreters) covered the whole gamut of international courts and tribunals. These ranged from the International Criminal Tribunal for the former Yugoslavia (ICTY), where the delegates were addressed on their visit by its President, Claude Jorda, to the European Patent Office, which is also represented in The Hague but whose hearings in patent cases take place in Munich. The delegates included working interpreters from the European Court of Human Rights, the European Court of Justice, the criminal tribunal for the Rwandan genocide (ICTR), based in Arusha, Tanzania, and one veteran interpreter (Patricia Van der Elst) who had worked for the Nuremberg Military Tribunal. This ‘dinosaur’, as she called herself, gave some fascinating insights into the organisation of the interpretation system at the original war crimes tribunal. The Nuremberg proceedings have never been bettered in technical terms, in spite of the sophistication of modern courtroom techniques, deployed to the full at ICTY. Both at ICTY and at ICTR, which share the same appeal chamber in The Hague, witnesses have often to be protected. In these cases they are physically screened in court, and their names and any identifying particulars are expunged from the record. However, care is taken to ensure that they remain in the full sight and hearing of the interpreters, for whom facial expressions and gestures are part of the spoken message.

The conference also heard a riveting description of the work of interpreters at the 1961 *Eichmann* trial and at the much later (1987) *Demjanjuk* trial in Jerusalem, given by Ruth Morris, an AIIC interpreter who had researched the former and worked on the latter. The Australian war crimes trials held following the enactment of special legislation in 1986, involving former Ukrainian nationals domiciled in Australia who were indicted for participation in killings of Jews in their home country, were described by Ludmilla Stern, a former member of the Australian Special Investigations Unit who worked on the trials. She emphasised the difficulty of gathering evidence from elderly witnesses who were living at the time in a

traditional rural environment where dates of remembered events are recalled according to the Orthodox religious calendar, giving rise to recollections such as ‘It was about the time of the feast of the finding of the head of John the Baptist’. Those trials, she explained, collapsed partly because the investigators were unaware of the cultural gap between themselves and their interlocutors, not because of identification problems of the kind which put an end to the *Demjanjuk* trial. An interpreter from the ICTR afterwards said that the very same problem – cultural misunderstandings – constantly arises at ICTR when Rwandan witnesses from rural communities are brought to Arusha to testify against genocide suspects. But the key problem with the Australian trials seems to have been linguistic. A member of the prosecution team conveyed this message to a colleague, after the trials had been moved from Sydney to Adelaide: ‘Cases falling apart – don’t know why – something to do with the language’.

THE NEED FOR ACCURACY

Language is certainly the nub of the difficulty inherent in all multilingual proceedings, whether civil or criminal. How is evidence presented in a language not understood by the judges or by counsel for the parties to be accurately rendered so that it can be reliably used between hearings and afterwards? On the face of it, everything seems simple enough. Interpreters working simultaneously in booths isolated within or above the courtroom interpret the spoken message, so that everything said in court can be understood on the spot. At ICTY, the ‘live notes’ system relays the interpretation into English – if a Bosnian, Croat or Serb witness is giving evidence – to be read immediately on monitors installed at seats in the courtroom. Stenographers working during the hearing produce a record, which is then checked against the tapes of the sound recording. The Bosnian, Croatian or Serbian original is not transcribed, but the recording of evidence in those languages remains available, and in the transcript, which is checked against the sound recording immediately after each hearing, the portions in those languages are clearly identified, for instance by ‘[Interpretation]’ ‘[Bosnian]’. The possibility of error, or indeed of

challenge by the defence based on the interpretation, is therefore reduced to the absolute minimum. The same procedure is followed for French, the language used by several of the present ICTY judges, although the 'live notes' system, which relies on the stenographer rather than the interpreter, is not yet available in French.

The meticulous procedures followed at ICTY are not yet the norm in all tribunals. The conference delegates heard with some dismay from the chief of the interpreting team at the *Lockerbie* trial that the Scottish Courts Service, which was responsible for the trial arrangements at Zeist in The Netherlands, had been oblivious to the needs of the interpreters for prior access to the documents used in the trial, until this was forcibly brought to their notice by a challenge from the defence team on the nineteenth day of the trial:

'The interpreting services which are provided in the court are apparently just that; they are interpretative of the evidence rather than verbatim translations of the evidence which is given ... That which is complained about is not a deficient service of interpretation, but is a service of interpretation which is precisely that. It is not a service of translation at all. My client is entitled to a translation of the proceedings in which he is a participant ...'

Needless to say, the objecting counsel (Mr Taylor) did not understand Arabic.

In this case, the defence team was merely taking advantage of the fact that interpreters were present at all. It can always be implied that an interpreter is not rendering a statement accurately, or is distorting it in the interest of one or the other party. How can interpreters defend themselves against such a charge? In this case, they were highly qualified professionals, hand-picked for the job. But especially in criminal proceedings, interpreters are always vulnerable to attack. Hermann Goering challenged the interpreters at Nuremberg, and as Patricia Van der Elst recalled at the conference, to appreciative laughter, Norman Birkett, the alternate British judge, afterwards vented his disdain of the 'translators' by describing them as:

'a race apart – touchy, vain, unaccountable, full of vagaries, puffed up with self-importance of the most explosive kind, inexpressibly egotistical, and, as a rule, violent opponents of soap and sunlight'.

THE ORIGINAL IS THE EVIDENCE

However accurate the spoken interpretation, it should be a cardinal rule in all multilingual proceedings that the original is recorded and transcribed. This original constitutes the evidence. In the *Eichmann* trial, the judges took the precaution of deciding that the German language version of the proceedings – both they and the defendant spoke German – would be the authentic version, as opposed to the Hebrew official version. In ICTY, the


language of the judgment in each case is the authentic version.

To ensure complete accuracy in translation, the version of spoken material, which is afterwards used, by counsel and judges should either be a fresh translation from the recorded and transcribed original, or a version checked by the interpreters themselves against the transcription. In no circumstances should an unchecked interpretation be circulated as an authentic version of what was said in court. At Nuremberg, where four languages were in use – German, English, Russian and French – two interpreting teams worked in the courtroom while a third team compared the various language transcripts, based on the stenographers' notes, against the sound recordings of the original spoken material. It should be borne in mind that the Nuremberg interpreters initially had to translate at sight, during the hearings, large quantities of documentary material from official Nazi state sources which there had not been time to translate. At a later stage, when the backlog of this material had been cleared, written documents could be submitted directly, and did not have to be read into the record. The defence duly complained about the change in procedure, but because of the sedulous checking by the interpreting teams, the earlier translations could not be faulted. In 403 open sessions of the NMT, a complete stenographic and 'electrical' (sound) recording was made of everything said in court. Unless the system is watertight, there is room for dispute. Adolf Eichmann complained of inaccuracies in the transcripts made for him. He said (session 90 of the trial) that the omission or deletion of the word *nicht* could alter the entire meaning of a sentence. So it could. As Claude Jorda told the AIIC delegates, 'a nuance in a word will be enough to jeopardise or compromise a witness'.

It might be thought that courts working in only two languages and only in civil proceedings, such as the International Court of Justice in The Hague and the International Tribunal for the Law of the Sea in Hamburg, would have an easier time of it. Both these courts work in English and French only. But they too have to produce a faithful rendering of everything said in court, in either language. At ICJ, the practice is to record the original or 'floor' statements, transcribe the tape recordings and translate everything back into the original language from scratch, bypassing altogether the version spoken by the interpreters. This tried and tested method means that the interpreters avoid the additional stress of having to check a recorded interpretation against a recorded original. Alarming, however, the AIIC conference was told by one of its members working at ITLOS that the version spoken by the interpreters of proceedings there is used by stenographers to produce a 'verbatim record' or transcript which is then submitted to the parties and relayed almost immediately on the Internet. Apparently, the interpreters are unhappy with this procedure but have been unable to make their concerns carry any weight with the registry of

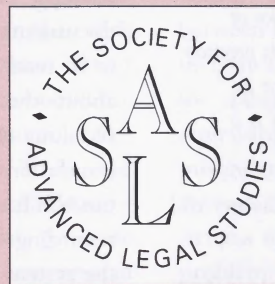
the Tribunal, which is anxious to disseminate its proceedings as quickly as possible and with maximum 'transparency'. There are grave potential pitfalls here, as the ITLOS interpreter pointed out, with poor acoustics and stress forming 'an added source of possible errors'.

In many national courts, as the conference participants were well aware from their work in their home countries, no transcript or even recording is made from the original foreign language evidence. This means that no reliability check can be carried out. Moreover, subsequent evidence heard or read in a different translated version may seem inconsistent with earlier statements; so that the witness loses any credibility he or she could otherwise claim. This is wholly unfair to an entire category of subjects, such as asylum applicants and foreign defendants in criminal proceedings. The impact on the outcome of their cases cannot readily be estimated.

Even in the 21st century, there is surely no better model than Nuremberg for multilingual proceedings, and fortunately there is now a book to describe how this initial experiment in simultaneous interpreting was set up and how it operated. This is Francesca Gaiba's *The Origins of Simultaneous Interpreting: the Nuremberg Trial*, published by the University of Ottawa Press (1998). 

Patricia Wheeler

The author works mainly for UN legal committees, including the Human Rights Committee, and has also worked on the ground for the UN human rights mission in Rwanda and for the OSCE in Croatia. She is the Council member of the ITI (Institute of Translation & Interpreting) responsible for interpreters, and can be reached on: p_wheeler@compuserve.com



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