

# What Can Domestic Courts Learn from International Courts and Tribunals about Good Practice in Interpreting?: From the Australian War Crimes Prosecutions to the International Criminal Court

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*It is widely accepted that 'quality of interpreting is closely linked to the conditions under which interpreters are expected to work' (Hale 2011). This article examines and compares working conditions provided by domestic and international courts to enable interpreters' professional operations. Interpreting requirements include courtroom design that enables satisfactory acoustics and visibility, the provision of a dedicated preparation and work place, as well as conditions that include fatigue prevention and other aspects necessary for competent performance. The article shows that satisfactory terms of employment and working conditions in international courts (ICTY, ICC etc.) are in stark contrast to those in domestic courts (mainly in the common law English-speaking countries, and some civil law countries), and that very few domestic courts provide adequate working conditions for interpreters.*

**Keywords:** court interpreting, international courts, domestic courts, working conditions, professionalization of interpreting

## Background

Over the past fifteen years, there has been a significant increase in court interpreter use. This has occurred both in international criminal courts, including the International Criminal Tribunal for the Former Yugoslavia (ICTY), International Criminal Tribunal for Rwanda (ICTR), International Criminal Court (ICC), amongst others, as well as courts of national jurisdiction

(referred to here as domestic courts) that hear cases of migrants and refugees. As a result, the focus on court interpreting and interpreters has become much more prominent.

Matters associated with interpreting in domestic courts traditionally attract negative attention and interpreters are commonly blamed for any communication problems. However, international courts do not experience these problems – with lawyers and judges generally praising the quality of interpreting, despite occasional criticisms.

What is the source of this dichotomy? After all, relative to their domestic counterparts, international courts have added pressures, including hybrid jurisdiction, multilingual communication and simultaneous interpreting mode. Numerous studies have demonstrated that ‘quality of interpreting is closely linked to the conditions under which interpreters are expected to work’. This conclusion in the report *Interpreter policies, practices and protocols in Australian Courts and Tribunals. A national survey*. Hale (2011: xiv) reiterates, among other things, that in order to perform their duties competently and professionally, court interpreters require adequate working conditions which include comfortable seating arrangements, adequate hearing, regular breaks to prevent fatigue, and preparation opportunities (Dueñas González 1991:177; Colin & Morris 1996; Hale 2011).<sup>1</sup>

This paper forms a part of a broader project on interpreting practices in international and domestic courts. Historical studies of high profile war crimes cases heard in (mainly Anglo-Saxon) domestic courts (Morris 2001; Stern 2001) conclude that the poor quality of interpreted communication resulted from: court interpreters’ substandard skills, interpreter users’ unrealistic expectations and poor working conditions that impede professional

interpreting. The studies of interpreting in international courts, the 1945-6 Nuremberg Tribunal (Gaiba 1998) and contemporary courts (Hajdu 2005; Hof 2000; Stern 2001, 2004, 2011)<sup>2</sup>, led me to conclude that interpreting practices in these courts vary significantly from those in their domestic counterparts.

Three specific areas where interpreting practices have been shown to differ include: **a.** processes and criteria applied to interpreter recruitment, **b.** interpreters’ terms of employment and working conditions (including their support infrastructure) and **c.** the role of interpreter users – i.e. lawyers and judges – in ensuring interpreting quality. In this presentation I will focus primarily on the second and part of the third area, that of **terms of employment, working conditions and infrastructure, and interpreter users’ role** to support the interpreters’ professional activities. Despite the difference in legal systems, domestic courts of different jurisdictions largely share mostly substandard working conditions resulting from the courts’ lack of awareness of the interpreting process and interpreters’ professional requirements. I will illustrate how the approach taken by *international* courts has been more successful in ensuring interpreting quality and highlight some practices that can be adopted by domestic courts.

### Interpreting setting – international v domestic court

In addressing this topic, I will first provide a background to both types of courts and cases and discuss different approaches adopted vis-à-vis interpreting practice.

Domestic courts hear a wide range of cases: from shoplifting and drink-driving to manslaughter and murder. High-profile cases that attract international attention include the abovementioned war crimes and terrorism trials (e.g. Lockerbie 2001, Madrid train bombing 2007). With the exception of war crimes and terrorism cases, domestic court trials seldom run for a period over a few days or weeks. It is, incidentally, very rare for domestic courts to hear a suite of related cases such as those of Ivan Polyukhovich, Nikolai Berezovsky and Heinrich Wagner (1989-1993).

International criminal courts and tribunals investigate and hear major international crimes, such as war crimes, crimes against humanity and genocide (ICTY, ICTR, ICC, the Special Court for Sierra Leone). These trials can involve a large number of witnesses and defendants (e.g. 21 in the 1945-46

<sup>1</sup> Conditions requiring improvement have been consistently voiced at international interpreting conferences (i.e. Critical Link 5: 2007 Legal Interpreting and Translation. EULITA, 26-27 November, 2009, Antwerp (unpublished), <http://eulita.eu/conference-programme>).

<sup>2</sup> In addition to these publications, I am relying on my unpublished data collected through the discussion in an open e-forum regarding court interpreting working condition (2009-2012). Twelve anonymised respondents from Australia, Ireland, Israel, USA and UK (referred to by number) are court interpreters who contributed to the discussion through correspondence. My reference to the Singapore court system relies on the questionnaire filled in by the Deputy Head interpreter of the Singapore Supreme court (January 2012). My data on international courts was collected through regular in-depth interviews with approximately 25 administrators, interpreters, prosecutors, judges, judicial officers and defense lawyers at ICTY (2000-2009) and ICC (2000-2009). Some respondents were interviewed twice and more in follow up interviews. Most of this data contributed to my publications (Stern 2001, 2004, 2010; Hale & Stern 2011).

Nuremberg Trials) and take years (the ICTY has been constituted since 1994).

### Setting and interpreting modes

Domestic courts typically employ one or two interpreters per case to interpret in two modes, *consecutive bi-directional* to interpret witness evidence, and whispered simultaneous (or *chuchotage*), for the defendant who does not speak the court's working language. They may also be required to interpret outside the court and to perform liaison interpreting or sight translation of documents. In situations where more than one interpreter is assigned, this is usually to interpret for different parties rather than to provide relief for the main interpreter who works alone and unrelieved for the duration of the assignment.<sup>3</sup>

In international criminal courts, where all participants rely on interpreted communication, the proceedings are all interpreted in their entirety into each official and working language. This practice dates back to the Nuremberg Tribunal which pioneered the use of simultaneous interpretation into English, French, Russian and German. These booths would be equipped with technical equipment to facilitate comprehensive interpretation of the court's proceedings.

Today's Western international courts usually adopt English and French as their two official languages (e.g. ICTY, ICTR and ICC), as well as any relevant working languages, e.g. Bosnian/Croatian/Serbian and Macedonian at the ICTY – a tribunal tasked with prosecuting war crimes perpetrated in the 1990s on the territory of the former Yugoslavia.

International court interpreters (referred to as 'conference interpreters') work in teams of two or three to permit frequent rest periods, a model first introduced at the Nuremberg trial and one which, in some cases, is written into staff regulations (ICC). ICTY interpreters take a half-hour break after the first half-hour of work. During the third 30 minute period, they remain on standby, follow the proceedings, assist their colleagues and prepare for their turn (Stern 2001: 268).

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<sup>3</sup>In Singapore, one interpreter is assigned to each the defendant and the accused.

## 1. Terms of employment and remuneration

Interpreters in domestic courts are primarily employed on a freelance basis. Only a few countries have staff court interpreters: The USA and Spain, for example, each have approximately 100 permanent interpreting positions.<sup>4</sup> In Singapore, courts appoint full-time interpreters in the most common languages and dialects, and casual interpreters are appointed by the courts to provide additional services.<sup>5</sup>

International courts mostly employ interpreters on a full-time renewable contract basis. ICTY staff interpreters are UN staff members and receive salaries commensurate with those of the other UN-employed professionals. Similarly, their professional role and code of practice are defined by the UN Staff regulations. Where needed, additional interpreters may be employed freelance.<sup>6</sup>

Some domestic courts also provide a professional level of remuneration. In Singapore, staff interpreters who are employed by the Civil Service are paid according to the salary scale for their particular level of service and dependent on academic qualifications and years' experience. In the USA, full-time federal court interpreters are remunerated in the range of \$70,000-\$105,000 depending on their experience, with annual step increases and cost-of-living adjustments.<sup>7</sup>

However, in most cases, domestic court interpreters' remuneration is significantly lesser than that of their international counterparts and varies between countries.

- USA - remuneration in the state courts, full-time and casual, is well below that in federal courts and varies depending on the state and county (NCSC website).<sup>8</sup>
- Australia – freelance interpreters are paid at an hourly rate ranging between \$35 and \$80 per hour, depending on the employing agency.

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<sup>4</sup>Respondent 1, US District Court, Southern District of New York, January 2012, email correspondence; Ortega, Martin: 2009.

<sup>5</sup>Puay Siang Lim, Supreme Court of Singapore, 27 January 2012, personal communication.

<sup>6</sup>ICTY questionnaire filled out by Chief of Interpretation: 2011 b.

<sup>7</sup>Respondent 1, Chief Interpreter, US District Court, Southern District of New York, 24 January 2012, email correspondence.

<sup>8</sup><http://www.ncsc.org> (last checked on 4 May, 2012).

Interpreters' recruitment and remuneration is unrelated to qualifications and experience (Hale 2011: 11) and is 'a point of great dissatisfaction for most interpreters' (ibid: xiii).

- In Israel, free-lance court interpreters are paid NIS 30-40 per hour. Sign language interpreters get NIS 80 per hour.<sup>9</sup>
- In Japan, interpreters are remunerated more generously than other community interpreters (around \$150/hour) although the actual number of hours to be paid is determined by the presiding judge.<sup>10</sup> The payment of approximately 100 euro per hour (which on a full 5-hour day amounts to approximately 530 euro, after the cost of transport and per diem) includes non-remunerated additional time to translate opening and closing speeches, sentencing etc., provided to the interpreters in advance (Tsuda 2009).
- As a rule, European court interpreters' remuneration is well below that of their counterparts in international courts. In Italy, for example, it is also falls below than that of other forms of community interpreting.

## 2. Working conditions

It is widely acknowledged that, in order to perform their task competently, court interpreters require adequate physical working conditions: comfortable seating arrangements, facilitated hearing, regular breaks to counter fatigue, and preparation opportunities (Dueñas González 1991:177; Colin & Morris 1996; Hale 2011).<sup>11</sup> International courts provide these physical conditions and infrastructure. Domestic courts, however, were designed for monolingual interaction, and historically have not provided the necessary working conditions

necessary for interpreting. They therefore fail in every aspect required for interpreters' professional delivery, including the provision of a suitable work place and working conditions.

### 2.1. Physical conditions

#### 2.1.1. Waiting room and work place

International courts (e.g. the ICTY) have provided shared preparation facilities that are equipped with desks and computers that have access to the local network and internet, and kitchen facilities. It is here where interpreters await their shift.

Very few domestic courts have such facilities. In Singapore, staff interpreters are provided with workstations in the Interpreters Section of the court premises to facilitate their preparation for the case before reporting to the courtroom. While waiting to be called, they sit either inside the courtroom or in a witness room.<sup>12</sup>

On the other hand, most domestic courts (i.e. Australia, Ireland, and Israel) provide no designated spaces for interpreters.<sup>13</sup> 'Apart from in the courtroom, interpreters often complain that there is nowhere for them to leave their coats, hats, scarves, no designated room for interpreters. While interpreting they have to keep an eye on their stuff!'<sup>14</sup>

#### 2.1.2. Interpreter's workplace in the courtroom

In international courts, interpreters work in the booth, which has been a dedicated workplace since Nuremberg. Today's ICTY booths are well-designed, spacious and ventilated (Stern 2011: 328). They are fitted with simultaneous interpreting equipment, computer terminals that display an online transcript of the proceedings, and connected to the internet to enable access to online

<sup>9</sup> There are approximately 4 NIS [Israeli new shekel] in 1 \$AU. Average professional payment constitutes NIS 100 per hour. Respondent 2, Israel, January 2012.

<sup>10</sup> Hale, Observation, 2011 (unpublished).

<sup>11</sup> Dueñas González 1991:177; Colin & Morris 1996; Hale 2011. Additional data quoted in this paper derives from an open forum responses including American, Australian, British, Irish, and Israeli court interpreters, a questionnaire by the Deputy Head Interpreter, Singapore Supreme court.

<sup>12</sup> Puay Siang Lim, Deputy Head interpreter, Chinese Interpreters section, Supreme court of Singapore, Answers to Questions on Singapore Court Interpreters, 27 January 2012 (email communication).

<sup>13</sup> 'Some of our [Australian] courts already have a very basic interpreter's preparation room, but not all, it should be standard.' (Respondent 3, 20 March, 2009). It would be helpful to have 'an interpreters' room, complete with a kettle, computer with Internet connection, and printer.' (Respondent 4, Israel, 20 March, 2009)

<sup>14</sup> Respondent 5, Ireland, 20 March, 2009.

references. Working in booths allows interpreters to keep their reference materials and case-related documents on the desk of the booth or next to them: the booth is effectively a dedicated, professional workspace. The anteroom is also equipped with a telephone, which permits, for example, staff to confer the Translation Section of the court).

Very few domestic courts provide interpreters with a professional workplace. In Japan's recently introduced lay-judge courts, the interpreters' workplace is located below the judges' bench, next to the prosecutor's desk (Tsuda 2009). Some newer courts in the USA have also provided interpreter desks: 'The interpreter has a nice spacious desk with electrical outlets for a laptop. I love it!'<sup>15</sup>

However, in most domestic courts, especially in older court buildings, there is no dedicated place for the interpreter. Interpreters point out that this sets them apart from other court professionals and denies them the basic working conditions that would normally be associated with this status.

*There is a place for everyone else in the courtroom - lawyers, judge, registrar, journalists, but no place for the interpreters. A row of seats just for interpreters in the lower courts would be helpful - a place where they could wait in court without being asked 'What are you up for?' And of course [...] a place for the interpreter during court proceedings would be helpful although it's kind of difficult to work out where because of the nature of whispered interpreting. But simultaneous equipment could allow for that distance.*<sup>16</sup>

The lack of the necessary provisions suggests a low status for interpreters in the eyes of the court:

*The fact that a chair, a place to rest your notepad, and a glass of water - all essential tools - are not automatically provided for the interpreter does seem to sum it all up. How can we be respected as a professional when not treated as such? How can we be expected to do our best when our working*

*conditions are so non-conducive?*<sup>17</sup>

Not providing a dedicated place in most domestic courts contravenes ergonomic and even occupational health and safety considerations. The witness stand (or podiums/tables in some countries) has been designed for a sole witness, and not an interpreter.<sup>18</sup> Independent of whether the interpreters are positioned on the inside or outside of this witness box, sitting or standing; they report fatigue and discomfort as interpreting can last for hours.

*As far as the witness stand, I would love to have a seat beside it for the interpreter. In my courtroom, the witness stand is at the same level as the defense and prosecution tables, so if the interpreter stands beside the sitting witness, it feels very awkward to be looking down at the witness. Also, in some instances I have been called to interpret at the witness stand for the better part of a day. It is extremely fatiguing to stand for hour after hour, even with breaks. (Respondent 10, USA, 20 March 2009)*

An ideal situation would seat the interpreter next to, and at the same level as, the witness, providing a microphone to each (e.g. Sydney's Downing Centre).

Interpreting for the defendant presents different challenges. It is performed in simultaneous whispered mode (*chuchotage*), mostly from the dock and with no equipment. Interpreters are expected to interpret the entire proceedings with no relief. It is unrealistic to expect complete simultaneous whispered interpretation in the absence of turn-taking by a team of interpreters and regular breaks, no electronic equipment and no visual materials. Furthermore, sitting next to the offender in the dock and delivering a whispered interpretation is not a preferred option for interpreters.<sup>19</sup>

*Interpreters are expected to sit in the dock with a charged criminal. While*

<sup>18</sup> In a few countries, like Japan, the interpreter doesn't have to be located close to the witness and stays at his or her workstation, using wireless equipment to interpret witness evidence.

<sup>19</sup> In Anglo-Saxon countries and the ICTY, docks for defendants/accused tend to be located on the side of the courtroom, however in a number of other countries with civil law legal system (France, China, Japan), defendants sit in a box in the middle of the court, facing the bench. In the Schapelle Corby case heard in Indonesia (2005) the defendant sat on a chair in the middle of the courtroom facing the bench. Her interpreter sat next to her on another chair, providing what appeared to be a shortened version of whispered simultaneous interpreting.

<sup>15</sup> Respondent 8, USA, 20 March 2009.

<sup>16</sup> Respondent 5, Ireland, 19 March 2009.

<sup>17</sup> Quote by an Indonesian interpreter, posted in the Australian Forensic Interpreters forum in 2010 in Hale (2011: 23).

*this has not presented a danger to me before, this should be risk-assessed. Often the prison guards are at a considerable distance and the interpreter is right next to the prisoner!* (Quote 17, Hale 2011: 24)

These difficulties are compounded by the fact that speakers, particularly counsel, often stand at a distance or with their back to the interpreter, making it difficult for him/her to be heard. In the absence of remote equipment that would allow interpreters to move away from the defendant and closer to the speaker, whispered interpretation is the only option.

Few countries allow the interpreter to stay away from the defendant, but then, as with courts in Japan, there is no requirement that the entire proceeding be interpreted for the defendant. In Singaporean courts, interpreters sit in front of the dock and have access to a fitted microphone.

## 2.2. Courtroom design – acoustics and equipment

Having interpreting booths and electronic equipment in international courts resolves the question of sound quality and audibility: ‘soundproof booths with headphones and microphones ensure adequate acoustic conditions by blocking out external noise, thus preventing vocal strain and premature fatigue...’ (ICTY, The Special Court for Sierra Leone) (Stern 2011: 328).

Booths also provide interpreters with a comfortable position and distance from the defendant and witnesses. Furthermore, this physical distance helps resolve any misconceived association of the interpreter with the defendant or witness, reminding interpreter users of the interpreter’s neutrality and impartiality.

On the other hand, poor acoustics, especially in the older courtrooms, have been reported in the Australian, Israeli and American courts: speakers’ voices are badly projected and distorted. According to a recent Australian survey:

*A considerable number of interpreter respondents spoke of the fundamental need to hear and understand the utterances so they can interpret accurately. A good number (23) mentioned the need for enhanced technologies in the courtroom to improve the acoustics, such as microphones and headsets.* (Hale 2011: 23)

Conversely, microphones are often not provided for the interpreter: ‘The microphone is built into the witness box and is in front of the witness’ face. If there is an interpreter, the microphone is in the wrong place.’<sup>20</sup> Sufficient provision of microphones in newer courts helps amplify the sound:

*Our courtrooms all have sound systems with a microphone for the judge and the witness. There are also smaller microphones hanging from the ceiling to pick up other voices.*<sup>21</sup>

Portable sound equipment in newer courts improves both the acoustics problems and the working conditions:

*I sometimes work in a courthouse that is fairly new. The sound system is excellent. There is a microphone for the witness, the judge, the attorneys, and they use them. Plus, I get to wear headphones hooked up to the microphones. It makes a world of difference. I can hear every speaker clearly and don't have to move around the room.*<sup>22</sup>

## 2.3. Visibility of exhibits and documents

To competently interpret documents that are read out, interpreters need to be able to access lengthy legal documents as they are read (e.g. opening and closing speeches, expert witness statements, judges’ decisions and other written documents). and see exhibits and documents that are made available to the rest

<sup>20</sup> Respondent 10, USA, 20 March 2009.

<sup>21</sup> Respondent 10, USA, 20 March 2009.

<sup>22</sup> Respondent 8, USA, 20 March 2009. The sound can be enhanced by the interior design and proper padding: ‘one of the most important things is the ceiling, they need to be in such a way that it carries no echo.’ (Respondent 9, USA, 19 March 2009). Some newer-built courts, for example, in the states of New York and Texas, have improved their interior design to assist the acoustics.

*All of our courtrooms have carpeting that is very thin and hard but helps keep extraneous noise down. We also have a padded cloth-like material on the walls in the back of the courtroom (where the public sits) that absorbs extra noise. [...] Also, each courtroom has a small anteroom that one enters before entering the courtroom proper (a double set of doors). It helps keep out the noise from the hallways. And the courtrooms all have acoustic ceiling tiles. Lastly, the courtrooms are on the inside of the building, without windows, so there is no outside noise or visual distraction. Helps with heating and cooling as well!* (Respondent 10, USA, 20 March 2009)

of the court. ‘We should be able to see and hear everything that is displayed and said; and that includes exhibits on computer screens when the courtroom is outfitted with such for the judge and jury to see,’<sup>23</sup> say interpreters in domestic courts.

Documents read out in international courts (ICTY, ICC, the Special Court for Sierra Leone), are either provided to interpreters in hard copy in advance, screened on a document camera to be sight translated, or otherwise displayed on all participants’ (including interpreters’) computer screens. These facilities have a significant impact on the accuracy and completeness of interpreting (Stern 2001: 271).

In domestic courts, interpreters are lucky to catch the general idea of the speech (Colin, Morris 1996: 95) and are unlikely to provide adequate sight-translation of documents because of their technical nature (Russell 2002: 53). Interpreting lengthy legal texts or excerpts from statements without seeing the document jeopardises the accuracy of rendition.

These provisions are feasible in domestic courts, too: ‘in Dallas ... in a newly refurbished building, interpreters have their own monitor and space where they can not only hear better but also see documents published to the jury.’<sup>24</sup>

## **2.4. Is portable equipment a solution?**

As mentioned before, in international courts, where interpreters work in soundproof booths, sound quality, proximity to the offender and physical discomfort do not present a challenge to communication. Similarly, vocal strain and premature fatigue are prevented through use of a microphone and headphones (Hale & Stern 2011: 328; Stern 2001). The angle of the booths usually allows the interpreters to see the speakers.

Portable equipment, already in use in Japan and Singapore, and in some courts in USA and Israel, takes care of some of these problems. In Japan, interpreters are provided with wireless headphones and a microphone and stay in a fixed position (Tsuda 2009). Some American interpreters use portable sound equipment (transmitters/receivers) to interpret the proceedings to the

defendant in the simultaneous whispered mode.

*The building where I usually work is fairly new, and it is equipped with infrared equipment to assist the hearing impaired. Interpreters in trials can use the earphones which are of great help; also the witness stand is extra large with two microphones to accommodate the witness and the interpreter.*<sup>25</sup>

Additionally, various countries have introduced equipment for high-profile cases tried in their domestic courts. Simultaneous interpreting booths were installed during the Demjanjuk Trial in Israel (1989), and proceedings conducted in Hebrew were interpreted simultaneously into English for the international media (Morris 2001). Spain’s National Criminal court similarly employed conference interpreters during the Madrid Train Bomb Trial (Madrid 2007) to perform a simultaneous interpretation of the proceedings from booths.

## **3. Infrastructure and support**

Providing professional working conditions for court interpreters is not limited to the physical conditions that concern interpreters’ wellbeing. It also involves supporting competent interpreting and providing quality control by building certain procedures into the courts’ *modus operandi*.

### **3.1. Briefing and preparation as a pre-condition of interpreting quality**

*Preparation* forms an essential component of competent interpreting – it forms an inherent part of interpreters’ work in international courts. Here, it is the court’s obligation to provide pre-trial briefings and case-related materials.

Since Nuremberg, international courts have made documents and other materials essential to the trials available to engaged interpreters (Gaiba 1998: 86-7). Today, the requirement to prepare is inscribed in the Staff Regulations

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<sup>23</sup> Respondent 11, National Association of Judicial Interpreters and translators (NAJIT), March 2009.

<sup>24</sup> Respondent 12, Interpreter, USA, 20 March 2009.

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<sup>25</sup> Respondent 12, USA, 20 March 2009.

of international courts (e.g. ICC Regulation 67.27) and ICTY interpreters are given time to prepare and follow up of the current cases (Stern 2001: 267). '[ICTY interpreters] work four days in the booth with the fifth day devoted to preparation, shorter assignments and/or recuperation time if necessary' (Draženović-Carrieri, interview in Hof 2000). This obligatory preparation on the part of interpreters, comparable with practice in other international courts and similar to the interpreters' preparation for a conference, is one of the crucial keys to the ICTY's interpreting success (Stern 2001: 266).

**Advance preparation** at ICTY includes the provision of trial-related documents, such as a statement of charges, a list of personal and geographic names, witness statements, and other related documents; both before and during the trial. Prior to the hearing, interpreters can download case-related materials from the intranet.

**Short-term preparation** during the hearing includes the search of terminological databases and the ICTY Judicial Database on the computers installed in booths. They are also able to contact colleagues at the Interpretation Unit if they have a terminology problem or need urgent access to a document (Draženović-Carrieri, cited in Hof 2000). Short-term preparation also includes the advance provision of opening and closing addresses, which are provided by the court as well as expert witness statements provided by the administration.

Failure to supply these documents in a timely fashion hinders the quality of interpretation and is indeed one of the current complaints made by ICC interpreters. However, even providing documents at short notice, just before the hearing, permits interpreters to familiarise themselves with the subject matter and any relevant vocabulary, as well as to refer to the written documents when read out in court.

A unique feature of interpreting in international courts is **long-term preparation**, which consists of the build up of experience in certain type of cases over the years. Interpreters who have been working at the ICTY for several years report that years of experience have facilitated their interpretation of legal arguments, opening and closing addresses and testimonies of expert and eye-witnesses (Stern 2001: 263). Others, who initially began to work on these cases as consecutive interpreters with investigative teams or translators, had acquired expertise in wide range of subject matters, acquired a terminological base in a range of technical lexical fields (Stern 2001: 268)

Domestic courts where interpreters are part of staff also provide preparation materials and briefing. In the Singapore Supreme Court, staff interpreters are

given a password to access the Supreme Court electronic filing system database where they can access and retrieve all the documents kept ahead of the hearing. Court interpreters in Japan are provided in advance with documents relating to the case for the purpose of translating them and reading them out in court simultaneously with the speaker (Tsuda 2009).

This practice 'contrasts strikingly with the Australian practice, which, by denying interpreters access to case-related information, denies them the opportunity to adequately prepare for their assignment' (Stern 2001: 267). While briefing and provision of documents for preparation is cost-free, very few domestic courts have adopted this practice and this matter remains highly controversial in most domestic courts.

In most cases, Australian court interpreters are neither briefed about the case nor provided with background documents – even essential ones such as indictment and witness statements. The courts fear that advance information will violate interpreters' impartiality and affect their interpreting. It exemplifies, once again, that interpreters are not seen as part of the team and are excluded from the preparatory process (Hale & Stern 2011: 77; Stern 2011: 328).

When major cases have been held in domestic courts (e.g. Australian War Crimes Prosecutions, the Demjanjuk case), interpreters have been unable to undertake the necessary preparations or have access to the documents. The sole opportunity for interpreters to prepare in the Demjanjuk case, for example, was to see the verdict given in advance in the chambers.<sup>26</sup> Terminological inconsistency in such cases can be explained by the lack of opportunity for the interpreters to be briefed and undertake their own research (Stern 1995).

Judges and lawyers should be reminded that preparation is a precondition for competent and accurate delivery by interpreters, especially in view of the highly complex and specialized nature of legal discourse. Wherever possible, interpreters need to be briefed and provided with relevant documents in advance. For the delivery of written or scripted speeches, for example, judges' decisions, speakers should provide interpreters with written materials, skeletal arguments or notes (Colin & Morris 1996: 95-6).

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<sup>26</sup> Morris 2012, personal communication.

### 3.2. Team work and professional support

Collegiality and mutual support is an important part of interpreters' team work, and is inscribed in a number of interpreters' and translators' Codes of Ethics (CoE), both national (e.g. the Australian AUSIT CoE) and international. The ICTY Interpreters' CoE specifies that 'interpreters and translators should provide their colleagues, whenever possible, with any specialised knowledge they acquire which may be useful to the exercise of their duties' (ICTY Code of Ethics, Art. 11.2, as cited in Stern 2001: 268).

Mutual assistance as a benefit of working as a team was originally observed during the Nuremberg trials where interpreters wrote down lists, names and numbers for each other. Today, assisting a fellow-interpreter through information sharing, solidarity and professional support has become part of professional interaction in the booth. ICTY interpreters receive assistance from their fellow-interpreters, who transcribe numbers, lists and difficult words or terms. Similarly, fellow interpreters have pre-emptively noted down words used in original testimony, which can then be re-used in cross-examination for reasons of consistency in interpretation (Stern 2001: 268)<sup>27</sup> Teaming junior interpreters up with senior ones encourages an atmosphere of mentoring and professional growth.

There is no notion of teamwork amongst interpreters in domestic courts, where they work in isolation, generally with one interpreter per case or party. Current arrangements in domestic courts encourage a competitive spirit rather than cooperation and collegiality. Furthermore, lack of trust in interpreters on the part of domestic courts and a system in which court interpreters cannot benefit from the expertise accumulated during investigation has been damaging in such high-profile cases the Polyukhovich and other Australian War Crimes prosecutions cases (Stern 1995).

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<sup>27</sup>To provide interpreters and translators with lexical and terminological support, ICTY created a Terminology Unit. It was done at a late stage of existence of ICTY, after several years of existence of the Tribunal. The approach consisted of extracting terminology in the working languages and compiling multilingual glossaries based on previous translations. ICC created its terminology unit early in its existence. It involved a terminologist and language experts to coin legal and other terms that are absent in languages with a different or younger legal system, for example Acholi and Lingala (Stern 2010).

### 3.3. Quality monitoring and error identification

In court interpreting where accuracy is paramount and can be challenged, quality monitoring should be built into the infrastructure – this is the onus of the court. Of course, responsibility for assuring a high-quality, professional standard of interpretation is borne by interpreters, who should be required to self-monitor.<sup>28</sup> International courts follow the necessary procedures to monitor quality, identify errors and rectify them.

International courts' CoE empower interpreters in a way that is lacking in their domestic counterparts. ICTY interpreters' CoE encourages them to clarify any ambiguities by addressing the bench:

*Interpreters, when working in the courtroom, shall inform the Judges of any doubt arising from a possible lexical lacuna in the source or target language.* (ICTY Code of Ethics, Art 6.2, cited in Stern 2001: 271)

Another article instructs interpreters about their actions in case of doubt:

*If anything is unclear, interpreters and translators shall ask for repetition, rephrasing or explanation.* (ICTY Code of Ethics, Art. 10.2b)

A similar provision exists in the AUSIT CoE, which states that in the course of the assignment interpreters are expected to undertake all the necessary steps to prevent misinterpretation and other errors (AUSIT 1995: Art. 5). These codes also state that when interpreters are unsure of the meaning of an utterance they should ask for repetition or clarification. Nonetheless, interpreters in domestic courts often feel discouraged from interrupting proceedings, even if in doubt about the meaning of a word, and would often resist correcting themselves or ask for repetition, rephrasing or explanation (Morris 2001: 10). The CoE of domestic courts (e.g. AUSIT 1995: Art. 5) do not spell out steps for interpreters to inform the judge of any doubt arising from possible lexical lacunas in the source or target language.

Over 75 years ago, the organizers of the Nuremberg trials developed a

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<sup>28</sup>*Education* should be a *sine qua non* of interpreters' professional competence (as is preparation for the case) however this is outside the scope of this paper.

system of quality control and safety nets. While the first interpreting team worked in the booth, the second listened to the interpretation to ensure the consistent use of terminology and familiarity with the topics. A court monitor present during the interpretation did a random check of the interpretation in the booths. As simultaneous interpreting was being used on such a scale for the first time and interpreters had no specific training in this practice, sound and print records and the revision of multilingual records provided a safety net to identify possible errors through ongoing checking. This was possible as the Tribunal provided a complete stenographic record, electrical recordings of the proceedings and final revised versions of printed records. Translations of courtroom transcripts were verified against the tape recording of proceedings in all four languages (*cf.* Gaiba 1998: 95ff).

Today, the ICTY's Interpreting Unit follows the example of Nuremberg Tribunal. The same interpreting teams are assigned to the same case for continuity and consistency. ICTY provides digital sound recordings in all the working languages, with the verification of online transcripts against the sound recording.<sup>29</sup> Early detection of errors is possible through the voice-recognition transcription software, *LiveNote*.

The online transcription, which appears on-screen in interpreters' booths, allows interpreters or their colleagues to detect errors and, either correct them in the next utterance or, in the case of crucial uncorrected errors, report them to the Section Chief, who then sends a memorandum to the court. *LiveNote* also provides a full transcript for checking at the end of each session; these are used in case of disputes regarding what was said earlier and whether the interpretation was correct (Stern 2001: 271f).

There is no protocol for error-identification in domestic courts, and challenges to the accuracy of interpretations often arise from one of the parties as a tactical move (known as 'interpreter scape-goating'). In the event of a dispute, it may be impossible to verify the accuracy of interpretation against the original, as, in many courts, the only record is the transcript in the court language. There is a lack of clarity as to which procedures to follow should this arise.

When the prosecution raised the alarm about the communication breakdown with its own Ukrainian witnesses (Polyukhovich case 1990), the committal hearing was well underway. There was no protocol for quality control and

dispute resolutions or for error identification. At a later stage, the defense also challenged interpreting accuracy in the Polyukhovich case which gave rise to the writing of a report by the author of this paper that was tendered in court. However, in the absence of original recordings many of the conclusions that were made were of a general nature regarding cross-cultural communication.<sup>30</sup>

### 3.4. Interpreter users' responsibility

Interpreter users – court administrators and other staff, lawyers, judges, and witnesses and defendants – also bear a significant responsibility for the quality of interpreting.

Interpreter users in domestic courts have been trained in monolingual national jurisdictions and often fail to realize that interpreted communication requires consideration on the speakers' part. As a result, these users often speak unclearly, with excessive speed, or insufficient voice projection (Colin & Morris 1996: 88–9). Confusion as a result of witnesses' unfamiliarity with some interviewing techniques also stands to be amplified by interpreting (Stern 1995: 4).<sup>31</sup>

The Ivan Polyukhovich case (1990-1992) illustrates how the following factors complicated the interpretation: lengthy, poorly phrased sentences by both parties, including double negatives and questions within questions led to inaccurate and incomplete interpretation (Stern 1995: 8, 18). Standard interviewing techniques common in the adversarial Anglo-Australian system undermined the effectiveness of communication: references to the previous statements read out in their back translation, references to video-recorded statements, lengthy questions containing numerous clauses or questions within

<sup>30</sup> As part of the attempt to improve communication, several interpreters were replaced (Ukrainian and Hebrew), and, following the submission of reports, an unofficial bilingual observer was introduced in court for the purposes of monitoring the proceedings. In a recent Australian case, the challenge to interpretation came from a member of the jury in the form of a note written to the judge. Even though the jury member did not speak Indonesian, the interpreter was disqualified and replaced. The report provided to the court was published as an article: Stern, L. (1995). *Non-English Speaking Witnesses in the Australian Legal Context: The War Crimes Prosecution as a case study*, *Law/Text/Culture* 2: 6-31.

<sup>31</sup> During the Australian War Crimes prosecutions trials, it was caused by a series of reasons, including the lack of equivalent functional or grammatical structure in the target language, and included strategic questions in cross-examination, leading questions in evidence-in-chief, tag questions, 'requests' that require a narrative and not a positive-negative answer (Stern 1995).

<sup>29</sup> This is done in, at least, in English and French.

questions, persistent repetitive questions during cross-examination, rhetorical devices (“May I suggest,” “I put it to you”) and attempts to discredit the witnesses’ intelligence. Witnesses’ inability to recognise their earlier statements (they were back translated from Ukrainian into English, quoted to them in English and re-interpreted back into the Ukrainian) was claimed to be as part of the inconsistencies of the witness evidence (ibid: 21).

These lessons from international courts can and should be learned to improve interpreter users’ communicative competence. Deficiencies of speech by counsel and judges lead to the loss of quality of interpreting for the defendant and thus contravene both principles of administration of justice as well as the provisions of the UN International Covenant on Civil and Political Rights (1966), which entitle the defendant to have access to the allegations and evidence against him (Article 14).

The role of the presiding *judge* in monitoring and controlling courtroom communication can be crucial. ICTY judges have been known to intervene for linguistic reasons (for example, in cases of excessively long questions, or questions containing more than one question). Some of them were reported to repeat their statements for clarity of understanding, which benefits the interpreters, the defense and the witnesses. Judges from the continental legal system were reported to restrain allegedly aggressive counsel in order to remind them that their tactics were inappropriate in a bench trial – “*Vous n’êtes pas devant le jury*” (Stern 2001: 272). During the Charles Taylor trial, for example, the judge drew the prosecutor’s attention to the ineffective use of the double negative and requested rephrasing the questioning.<sup>32</sup>

*Counsel* are also responsible for ensuring that the other parties do not take advantage of linguistic means or interpreting challenges to confuse witness. Asking badly phrased, lengthy questions or questions where the intention may be unclear, will be exacerbated by interpreting, leave the witness confused about the purpose of the question and often lead to an inadequate answer. Under such circumstances the counsel should ask for these questions to be rephrased in order to ensure that they are understood by the witness (Stern 1995).

Cross-cultural awareness is primordial for interpreter users. A lack thereof impedes users’ ability to evaluate and present witness evidence (Stern 1995: 30-1)

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<sup>32</sup> The author conducted a series of observations of this trial in 2009.

whereas familiarity with the witnesses’ and defendants’ cultural background helps to lead the witnesses through their evidence in court (Stern 2001: 262).<sup>33</sup>

## Conclusion

What can domestic courts learn from international courts to improve their own interpreting practices? Is it unrealistic to expect immediate improvements in the absence of resources that are available to international courts? According to the evidence, some countries’ court systems have already shown how such improvements can be introduced, immediately or gradually. Underscoring these changes is the recognition of court interpreting as a profession that has to be ‘written in’ to the fabric of the court, alongside the other professions.

- Improvement in professional working conditions includes pre-trial *briefing* of interpreters and provision of background materials for *preparation*. This can be achieved immediately at no cost.
- Improvement in physical conditions includes the provision of regular *breaks* and a *seat to interpret witness evidence*. This can also be achieved immediately at no cost.
- Providing a dedicated place – a waiting and *preparation room* as well as a *workstation* with facilities *inside* the court – can be synchronized with any refurbishments of older courts and the construction of new ones. Structural works can also improve the *acoustics* and provide mounted *microphones* for all speakers.<sup>34</sup>
- Courts’ investment in *portable interpreting equipment* will improve interpreters’ physical and professional conditions by reducing the strain on voice and

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<sup>33</sup> The limited scope of this article makes it impossible to address other reasons behind the problems occurring in domestic courts, such as the lack of interpreters’ specialized education and interpreter users’ cross-cultural awareness.

<sup>34</sup> For example, such improvements have been gradually incorporated in the USA and in the Queensland Supreme and District Court during routine refurbishment. In some instances (ie., USA courts) microphones and headphones were provided for the deaf and heard of hearing.

hearing. Additionally, it alleviates the necessity of placing them in the dock next to the accused, and permits them to move about in the courtroom.

- Interpreter users – lawyers and judges – can assist the process of interpreted communication by being aware of the need to speak more clearly and slowly, pausing between sentences and paragraphs, and avoiding long sentences with numerous clauses. While it may be unrealistic to expect such changes in the short term, international courts and countries like Australia conduct education sessions on court interpreting for judges and counsel as part of their ongoing professional development. These sessions emphasize cross-cultural awareness and sound communication strategies when speaking through an interpreter.<sup>35</sup>
- A longer-term improvement that will require *financial commitment* involves booking *more than one interpreter* per party in trial hearings, especially in common law courts that involve much oral evidence.<sup>36</sup> This would permit turn-taking, alleviate fatigue and encourage teamwork. This, coupled with adequate and progressive remuneration, would aid to institute the professionalization of interpreting.

By improving interpreters' professional working conditions, governments and domestic courts will be doing much more than enhancing the quality of interpreting and interpreted communication between the growing number of people who do not speak the language of the court. They will ensure that they are doing their best to guarantee the administration of justice by the judicial system in their country.

<sup>35</sup> The author of this article has been involved in education seminars for judges and lawyers, raising their awareness of cross-cultural communication and interpreted communication (e.g. 2008 workshops at ICC for judges, lawyers and court officers and annual seminars organised by the National Judicial College of Australia, Judicial Commission of NSW, Bar Association of NSW and Director of Public Prosecution of NSW).

<sup>36</sup> Whereas regular 30-minute breaks following 30 minutes of interpretation is common practice in simultaneous interpreting, to my knowledge there are no recommendations as to for how long consecutive interpreters should work before interpreting fatigue affects the quality of their interpretation. This question requires further studies.

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