

IN THE APPEALS CHAMBER

Before:

Judge Cassese, Presiding

Judge Li

Judge Deschênes

Judge Abi-Saab

Judge Sidhwa

Registrar:

Mrs. Dorothee de Sampayo Garrido-Nijgh

Decision of:

2 October 1995

PROSECUTOR

v.

DUSKO TADIC a/k/a "DULE"

**SEPARATE DECLARATION OF JUDGE J. DESCHÊNES ON THE
DEFENCE MOTION FOR INTERLOCUTORY APPEAL
ON JURISDICTION**

The Office of the Prosecutor:

Mr. Richard Goldstone, Prosecutor

Mr. Grant Niemann

Ms. Brenda Hollis

Mr. Alan Tieger

Mr. William Fenrick

Mr. Michael Keegan

Counsel for the Accused:

Mr. Michail Wladimiroff

Mr. Milan Vujin

Mr. Alphons Orié

Mr. Krstan Simic

Declaration

1. I have taken part in the hearing of this appeal — the first one lodged before the Tribunal — as well as in the deliberations of the members of the Appeals Chamber

and in the drafting of the Judgement. I am in agreement with the conclusions of the Appeals Chamber.

2. As fully however do I find myself in disagreement with the single linguistic mould into which this decision has been cast. This offends two principles which should direct the Tribunal's conduct:

a) the simultaneous publication of the English and French texts of the Judgements of the Tribunal;

b) the equally authoritative character of both texts.

3. Most regretfully both principles are breached to-day. The Appeals Chamber renders this Judgement in English only, it endows this sole version with the character of authenticity and foresees that a non-authentic French version of its Judgement will be published at a later date. The Tribunal's other language is thus relegated to the role of a tool of questionable usefulness, contrary to the spirit and the letter of the instruments which ought to guide the Tribunal's action.

4. At the outset, the Charter of the United Nations provides that its five texts "*are equally authentic*" (art. 111).

5. The Statute of the International Court of Justice, (The Hague), gives however to that Court, in the matter of Judgement, the option of "*determin(ing) which of the two texts (English or French) shall be considered as authoritative*" (art. 39.2). At least there must be two texts.

6. By its Resolution 827 (1993), the Security Council has adopted the Statute of this Tribunal. Without settling directly the question, art.33 provides: "*The working languages of the International Tribunal shall be English and French.*"

7. At the very beginning of its work, the Tribunal considered the question; the more so since a pre-draft of Rules of Procedure and Evidence suggested that English be the only authoritative language in the Tribunal. It was however moved that the relevant provision in the pre-draft be set aside and replaced by the following:

"Authentic Texts

The English and French texts of the Rules shall be equally authentic. In case of discrepancy, the version which is more consonant with the spirit of the Statute and the Rules shall prevail."

8. The judges of the Tribunal agreed to the motion unanimously and this provision is now our Rule 7.

9. From the Statute and the Rules of Procedure and Evidence, it manifestly appears that the English and French languages benefit of a status of equality in the Tribunal. This status however is not reflected in the Tribunal's recent jurisprudence.

10. Since 11 August 1994, the two Trial Chambers have rendered five Judgements. In the first three cases, the English and French texts have been filed simultaneously. This happy practice however has not continued: in the last two cases, the French version is still lacking. Even more ironically, in the present case the Judgement in appeal is issued while the Judgement at trial has not yet even been published in French!

11. So, a usage which has recently taken shape at the trial level is now legitimized in appeal. That process creates an unacceptable situation against which I have lodged a protest, regretfully without success.

12. Yet other international Courts have found solutions to the problem. They however vary, depending upon the functions and purposes of each Court.

13. The Court of Justice of the European Communities (Luxembourg) must answer the requirements of no less than eleven official languages. The version of its Judgements which is authentic is established in the language of the particular litigation, and it is accompanied on the same day by an official version in all the other languages recognized by the Court.

14. The European Court of Human Rights (Strasbourg) operates, as the Tribunal, in English and in French and it renders Judgement simultaneously in those two languages. Up to about 1970, the Court designated one of the two versions as authentic. But for the last quarter century, no such designation is made and both versions appear to be considered as authentic.

15. The Organisation of American States has four official languages: English, French, Portuguese and Spanish. Its Court: The Inter-American Court of Human Rights (San José) has however only two: Spanish and English. By agreement with the Court, the parties choose one of these two languages for their case and it is the text of the Judgement in that language which is authentic. The version in the other official language is published later; the delays, at times months, are irregular.

16. The Organisation of African Unity cannot provide useful examples, because of its lack of experience in the judicial field. It is nonetheless interesting to know that it has added Kiswahili, in 1993, to its three official languages: Arabic, French and English.

17. Thus it appears that the two above-mentioned principles: simultaneity and authenticity are honoured in decreasing order by Strasbourg, Luxembourg, The Hague and San José. It is this last example which the Tribunal follows today more closely.

18. In light of the Statutes, Rules, Regulations and best international usages, one cannot and should not tolerate, in this Tribunal, that the French speaking jurists must, either work in a language with which they are less fluent, or risk to be scientifically overrun while awaiting an official text to which they are entitled.

19. One hopes that, within a suitably improved budget, the Tribunal will find without delay the means of climbing forward from San José to Strasbourg, thus to solve this problem. Otherwise some might call it an injustice.

Signed: Judge Jules Deschênes
2nd October 1995