

1 Tuesday, 1 October, 1946

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3
4 INTERNATIONAL MILITARY TRIBUNAL
5 FOR THE FAR EAST
6 Court House of the Tribunal
7 War Ministry Building
8 Tokyo, Japan

9 The Tribunal met, pursuant to adjournment,
10 at 0930.

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13 Appearances:

14 For the Tribunal, same as before.

15 For the Prosecution Section, same as before.

16 For the Defense Section, same as before.

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20 (English to Japanese and Japanese
21 to English interpretation was made by the
22 Language Section, IMTPE.)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: Mr. Oneto.

4 MR. ONETO: Mr. President, I will continue
5 with my explanation which I started yesterday and I
6 hope the same difficulties which presented themselves
7 yesterday afternoon will not occur today.

8 THE PRESIDENT: Yesterday afternoon the Court
9 decided that you should speak in English, or that the
10 French case should be put in English throughout. That
11 was the decision of the Court as announced by me. That
12 decision must be respected until it is set aside.

13 Mr. Chief Prosecutor.

14 MR. KEENAN: Mr. President, in view of the
15 fact that the opinion of the Court, or the judgment of
16 the Court, on this purely procedural matter, may affect
17 the number of nations who participate in this hearing
18 and prosecution, and, in such manner purely by way of
19 construction of a Charter which has not been fully
20 argued to the content of the prosecution, may I ask
21 that the Court take an adjournment until the matter
22 can be fully explored as the prosecution is not will-
23 ing to proceed, or not ready to proceed, for the
24 reasons that I have stated and will state, until that
25 matter is thoroughly explored and all of the necessary

1 and available facts be put before the Tribunal before
2 this important decision is reached by it. The
3 prosecution --

4 THE PRESIDENT: The Court --

5 MR. KEENAN: Mr. President, may I proceed?

6 THE PRESIDENT: The Court heard all the argu-
7 ment that was offered.

8 MR. KEENAN: Would the Court be good enough
9 to permit me to complete my statement as Chief of
10 Counsel or am I to be refused that right?

11 THE PRESIDENT: You will be refused no rights.
12 On the other hand, I will not be prevented from stating
13 what I know to be the fact.

14 I repeat: The Court heard all the argument
15 offered on this point and came to a decision. It is
16 for the Court to say whether they will reopen that
17 decision and hear further argument. I do not propose
18 to adjourn for that purpose. I propose to confer with
19 my colleagues on the bench.

20 MR. KEENAN: Mr. President, before that is
21 done, I have interrupted my respected associate from
22 France, Mr. Oneto. I would like to have him complete
23 his statement and would like, and respectfully request,
24 that in a matter of this importance the Court announce
25 the decision of each Member of the Tribunal individually

1 and in open court.

2 THE PRESIDENT: That is a matter upon which
3 I cannot speak for the Members of the Court without
4 their permission. I shall consult them.

5 (Whereupon, the Members of the Tribunal
6 conferred upon the bench.)

7 THE PRESIDENT: The Court is prepared to hear
8 further arguments on matters not already brought to
9 their notice. We expect the Chief Prosecutor to put
10 the argument.

11 MR. ONETO: (In French)

12 THE PRESIDENT: He is still speaking French.
13 That is almost contempt.

14 MR. ONETO: (In French)

15 THE PRESIDENT: The Court will adjourn.

16 MR. ONETO: (In French)

17 THE PRESIDENT: We will adjourn for five minutes.

18 (Whereupon, at 0945, a recess was taken
19 until 1050, after which the proceedings were
20 resumed as follows:)
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1 DEPUTY MARSHAL OF THE COURT: The Tribunal is
2 now resumed.

3 THE PRESIDENT: Mr. Chief Prosecutor, the
4 Members of the Tribunal have taken into consideration
5 the conduct of Mr. Oneto which led to the adjournment
6 some minutes ago.

7 We take a serious view of the matter. It
8 appears to constitute contempt of court. However, we
9 propose to adjourn that matter until half past one this
10 afternoon so that Mr. Oneto may have an opportunity of
11 reconsidering the whole matter. He may have a satis-
12 factory explanation, or he may be prepared to apologize.
13 Failing one or the other, he will be liable to pro-
14 ceedings as for contempt of court in the face of the
15 court.

16 In the meantime, we have also decided to hear
17 whatever further argument you and the defense may have
18 to offer on the scope of the Charter as regards the
19 languages that may be used in this court. If you are
20 prepared to go ahead straightaway we will hear you now,
21 Mr. Chief Prosecutor.

22 MR. KEENAN: Mr. President, I believe I
23 would prefer to go ahead straightaway so that no time
24 would be wasted in these proceedings.

25 The section of the Charter which concerns the

1 matter we are discussing is Section III, which is
2 entitled "Fair Trial for Accused"; so that the prose-
3 cution will respectfully contend that as in the inter-
4 pretation of any legislation, the body of the instru-
5 ment in which it appears, the purposes of the provision,
6 the main purpose and the surrounding circumstances,
7 will be taken into consideration by this honorable
8 Tribunal in its interpretation thereof.

9 I assume, may it please the honorable Court,
10 that there need be little time consumed in calling
11 the Court's attention to the inherent difficulties
12 concerning language in any trial where more than one
13 language is used. Further, when it is considered that
14 the experiment of this trial has no precedent in the
15 entire history of the world, it is important that its
16 broad purposes remain forever clear and not be
17 obscured by any unnecessary narrowing of technical
18 interpretations.

19 It is, of course, of prime necessity that the
20 accused, and each of them, understand clearly every
21 matter that transpires within this courtroom affecting
22 his life or liberty. Secondly, it is, of course, of
23 equal importance that each Member of the Tribunal
24 thoroughly understand the evidence to be presented if
25 this proceeding is to conform to the minimum requirements

1 of intelligent judgment.

2 In the only precedent of consequence existing
3 for procedure, the Nuorenberg trial, there was the
4 requirement of the use of the German language, the
5 English language, the Russian language, and the French
6 language. And in giving consideration to the procedure
7 before this Tribunal, or of it, undoubtedly the
8 authorities enacting and proclaiming this Charter had
9 in view the prime requisites that are so obvious,
10 which I have been permitted by the indulgence of the
11 Court to call to its attention.

12 Of course, Mr. President, it would be quite
13 obvious, too, that it was intended that each nation
14 represented on this Tribunal and in the prosecution
15 would receive as near as practical equal privileges,
16 if they may be so called, by way of all practical
17 facilities for a clear understanding of the evidence
18 adduced and for clear presentation thereof in the
19 process of production. The number of nations partic-
20 ipating in this proceeding was known to be, of course,
21 so numerous that any attempt to follow the existing
22 precedent, which would have been desirable if at all
23 practical, of allowing -- of requiring, Mr. President,
24 requiring, that everything in this proceeding from
25 the beginning to the end be presented in the language

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1 of the eleven nations represented on the Tribunal
2 and in the prosecution as well as the Japanese
3 will upon any examination be shown to have been
4 utterly unfeasible for practical purposes and the
5 Court; of course, in its wisdom in construing this
6 instrument of Charter will take such fact into
7 consideration, we contend, we hope, believe it
8 should.

9 Mr. President, the concept that the
10 participation in these proceedings, either in its
11 judgment or the presentation of the evidence on the
12 part of any one of the nations, would be pro forma,
13 would be the shadow and not the substance, would
14 be an ugly and evil one.

15 May I inquire as to the strict legal
16 interpretation, Mr. President? Paragraph b, we
17 contend on fair construction, especially in view
18 of what I believe to be very pertinent remarks
19 previously made as to the background for interpreta-
20 tion, means that the minimum requirement of the
21 presentation of the proceedings in the courtroom,
22 the trial including related proceedings, could not
23 be encumbered as a practical matter by making it
24 mandatory to have translations in any number approx-
25 imating eleven tongues.

1 To hold that no other language than
2 English and Japanese can be employed in the prosecu-
3 tion or the defense would be to add one word to the
4 first sentence which is not there and can only be
5 put in by the Court, to-wit: the word, "only" or
6 "alone." In other words, it is our contention that
7 from a practical view of the purposes of this trial
8 as outlined in the Charter, the English and Japanese
9 language shall be used in every proceeding, every
10 related proceeding from the beginning to the end
11 of this trial; but, if the Court please, nowhere
12 in this Charter is it found that where necessary
13 under the circumstances for accomplishing the just
14 and legitimate purposes of this trial no other
15 language than English and Japanese can be employed.
16 That is simply not in the Charter as it now exists.

17 Section III, if the Court please, we con-
18 tend, clearly relates to no other matter than that
19 stated in the Charter, to-wit: "Fair Trial for
20 Accused." I hope it is not presumptuous to suggest
21 that the Court probably will approach the process
22 of deciding this matter in first determining whether
23 or not this Tribunal has any discretion in the
24 matter as point number one. Then I assume the Court,
25 in the event that there is an affirmative answer as

1 to such discretion, would address itself to the
2 exercise of that in conducting these proceedings.

3 Counsel would feel that there would be
4 some doubt as to whether or not it should present
5 any argument on point number two, or whether the
6 discretion should be exercised if it exists. So,
7 unless directed by the Court, I shall confine the
8 brief remaining words to the first point, namely:
9 Has the Court discretion to permit the use of
10 another language than Japanese or English in the
11 conduct of the prosecution or the defense?

12 In that regard I would advert to the
13 purpose of Section III, "Fair Trial for Accused,"
14 and also the language of Section b to see if there
15 is anything in it that prohibits or inhibits or
16 binds this Court, the jurisdiction of this Court,
17 to permit the use of another language other than
18 English and Japanese.

19 The Court will note, of course, that no
20 effort was made to present anything in the French
21 language without it being interpreted into English
22 and Japanese. Therefore, in so doing the require-
23 ments of "b. Language," with reference to its
24 purpose, Section III--"Fair Trial for Accused,"
25 of course, is fully and completely fulfilled; and,

1 of course, in an unprecedented proceeding, a trial
2 of this nature, it is to be assumed that from be-
3 ginning to end reasonable construction of all
4 matters in the Charter and concerning it will be
5 on the breadth and scope fitting the occasion and
6 resort will not be made to narrow technical inter-
7 pretations that so often defeat the ends of justice
8 in the domestic courts of all of our lands.

9 Therefore, in the procedure suggested
10 and under scrutiny and objection, every sound,
11 reasonable requirement for fair trial for the
12 accused is fully met. The language, Mr. President,
13 is unimportant. It is the substance that goes on
14 under the language; that is the meat of the matter.
15 The language is the shell and a very thin one.

16 Nowhere in Section b is there any statement
17 that no other language than Japanese and English
18 can be used. Plainly there is no inhibition unless
19 it is put in by interpretation. Therefore, with
20 great respect to this Court the prosecution suggests
21 and urges that a fair interpretation of this section,
22 the purpose it serves -- "fair trial for accused,"
23 adverting to the language itself shows at least that
24 the Court would be doing no violence in construction --
25 in holding that there being no inhibition of the use

1 of any other languages other than Japanese and
2 English, there is the privilege of their use if
3 it serves the general purposes of this trial and
4 violates none of the basic provisions of the
5 Charter otherwise.

6 If it be held in the strictest sense,
7 Honorable Members of this Court, that no language
8 other than the two named could be employed in
9 the conduct of the trial, it would lead to the
10 absurd conclusion perhaps in narrow minds that
11 you could not even hear another language from the
12 witness box or in the document presented to this
13 Court. That would be absurd.

14 I assume, Mr. President, that the important
15 legal point, from the standpoint of technical con-
16 siderations, with which we are all familiar, is
17 that a fair construction of Section b means that
18 the use of these two languages is obligatory at
19 all times but other languages than Japanese and
20 English may be employed in the conduct of the trial
21 at any time and under any circumstances that the
22 discretion of this Court dictates to be advisable.

23 I am cognizant of the fact, Mr. President,
24 that this Honorable Tribunal with its distinguished
25 personnel, having to do with points of law, may have

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1 to indulge me in a parting word on what I think is
2 the foundation of the trial and the real reason why
3 other languages should be permitted and must have
4 been intended in the Charter as proclaimed.

5 The important purpose of this trial in
6 that respect, Mr. President, is not alone what
7 happens to these accused, but what will this Court
8 call in its judgment, or what does the prosecution
9 claim in its presentation constitutes criminal con-
10 duct upon the part of individuals in international
11 relations.

12 THE PRESIDENT: I would advise you, Mr.
13 Chief Prosecutor, to keep clear of any argument
14 in terrorem.

15 MR. KEENAN: I don't understand the lan-
16 guage of the Court. Will you please explain the
17 last word? I neither heard it, nor do I understand
18 it.

19 THE PRESIDENT: It is a well known legal
20 phrase.

21 MR. KEENAN: "In terrorem." I didn't
22 understand it.

23 THE PRESIDENT: That is friendly advice.

24 MR. KEENAN: Mr. President, I would clear
25 it up forthwith, not alone with you, but every

1 Member of this Honorable Tribunal, that my remarks
2 at no time have intended to be anything other than
3 helpful to the Court in attempting to relate what I
4 believe to be the obvious purposes of this trial,
5 and the obvious proper construction of the provisions
6 of the Charter.

7 THE PRESIDENT: Before you leave the lec-
8 tern --

9 MR. KEENAN: We have language difficulties,
10 your Honor, that is very embarrassing at times here.

11 THE PRESIDENT: Have you concluded?

12 MR. KEENAN: I have not concluded. I would
13 say, Mr. President, that the facts and circumstances
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1 that exist every day during the conduct of this
2 trial show the difficulties -- transmission of lan-
3 guages and the hearing of the different individuals
4 concerned in all parts of this room -- and make the
5 necessity for the employment of all legitimate
6 languages in this proceeding the more important.

7 It is then, therefore, in summation, that the pur-
8 poses of the trial that are apparent, the purposes of
9 the Section, fair trial for the accused, the fact
10 that no language is found in the Charter to prohibit
11 the use of any other language, and that both an
12 expeditious and thorough conduct of the trial
13 might well require the use of other languages, it
14 is the respectful contention of the prosecution that
15 the determination of what language shall be used in
16 addition to Japanese and English belongs to the
17 Tribunal, and that as long as those two languages
18 are employed the full provisions of the Tribunal are
19 complied with.

20 THE PRESIDENT: For the benefit of some of
21 my colleagues, Mr. Chief Prosecutor, I would like
22 to deal briefly with Article 1, which, among other
23 things, provides that the Tribunal is established
24 for the just and prompt trial of the accused, of
25 Article 12, which provides that the Tribunal shall

1 confine the trial strictly to an expeditious
2 hearing of the issues, and to Article 13, which
3 provides that the Tribunal shall adopt and apply
4 to the greatest possible extent expeditious procedure.
5 I am also referring to 12(b), which says that the
6 Tribunal shall take strict measures to prevent any
7 action which would cause any unreasonable delay.
8 Can you meet this argument, that those provisions
9 enjoining a prompt and an expeditious trial are not
10 the explanation of the provision that the trial
11 shall be conducted in Japanese and English?

12 MR. KEENAN: All right.

13 THE PRESIDENT: Again, if we have a dis-
14 cretion, can we exercise it in favor of a language
15 which would lead to delays, which are prohibited by
16 the Charter? The judges who are affected by those
17 considerations do not overlook the fact that a just
18 trial is of paramount importance always. I need
19 hardly say that the attitude toward admitting other
20 languages is based wholly on the provisions of the
21 Charter. Their reading of the Charter is alone
22 responsible for their attitude.

23 MR. KEENAN: In the light of the Court's
24 remarks, I think I ought to explain that I have at
25 no time intended to suggest that the Court go without

1 the confines of the Charter, but that the Court
2 shall, in interpreting this Charter, as in any other
3 instrument or piece of legislation, examine the pur-
4 poses for an intelligent resolution of any per-
5 missible privilege that the Court may extend to
6 either the prosecution or the defense in procedural
7 matters. To repeat, Mr. President -- am I inter-
8 rupting?

9 THE PRESIDENT: No.

10 MR. KEENAN: To keep, Mr. President, with-
11 in the confines with what, with my limited facilities,
12 would provide an orderly analysis, I have attempted
13 to divide the question into two points. First, has
14 the Court any discretion in the matter; secondly,
15 if it has, then we would like to address ourselves
16 to the question of why we would urge that the dis-
17 cretion be exercised in favor of the use of another
18 language.

19 THE PRESIDENT: Let me put very shortly, and
20 I hope more clearly, the points that give concern to
21 my colleagues, or some of them.

22 MR. KEENAN: Yes.

23 THE PRESIDENT: They think the Charter
24 confines the proceedings to the two languages --
25 English and Japanese -- to insure a prompt trial.

1 Others think that if they have the discretion to
2 allow a third or fourth language, then they cannot
3 exercise it in favor of that language if delays
4 are its result, provided that English or Japanese
5 is available to put the particular case or point in
6 a case, as happened yesterday in the case of the
7 French charges. It was suggested yesterday by me
8 from the Bench that the French case could have been
9 put in English by members of the French Section who
10 speak English well. That may have been wrong, but
11 it has not been contradicted yet.

12 MR. KEENAN: I am getting a little con-
13 fused, Mr. President, in this discussion of the
14 law, when we have to advert to facts that are out-
15 side of the record, and where there may be some
16 differences of facts, and where the Court, if it is
17 interested, since it has said it has not heard the
18 matter discussed, might like to know what the exact
19 facts are. I would want permission of the Court be-
20 fore discussing matters of fact of that nature, or
21 its direction or suggestion at least. Does the Court
22 care to learn of what the situation is with reference
23 to any lawyers who are capable of presenting the
24 case in English more clearly than the Associate
25 Prosecutor named by the Republic of France, or shall .

1 I for the moment confine my remarks to a discussion
2 of the law in this case without reference to any
3 extraneous facts in any section of the prosecution?

4 THE PRESIDENT: We are dealing now with the
5 question whether the Court has a discretion. If the
6 Court has a discretion, it may say, "We will allow
7 French if time is not wasted."

8 MR. KEENAN: It would seem orderly, Mr.
9 President, if we could find out, first, whether or
10 not the majority of the Court felt that that dis-
11 cretion existed before we consumed time in arguing
12 how it should be exercised if it does not exist.

13 THE PRESIDENT: Clearly, we do not want to
14 deal with this matter piecemeal. We may go away and
15 find that we have a discretion, and then we might
16 like to know before coming into court on what grounds
17 we might exercise the discretion in favor of the
18 French case. Those grounds would be matters of fact.
19 You might tell us now if in fact, if you are in posi-
20 tion to do so, that if French is allowed there will be
21 no delay. You might tell us now, if it be the fact,
22 that the French case cannot be put in English because
23 no English-speaking person is available to put it in
24 English. We do not want a number of retirements on
25 this matter. It should be dealt with as a whole,

1 after we have heard full argument this morning and
2 this afternoon.

3 MR. KEENAN: Completing, for just a moment,
4 the reasons advanced for the prosecution's contention
5 that discretion does exist what I call point No. 1,
6 if I may so designate it, the very fact, Mr. Presi-
7 dent, that in the consideration of this matter the
8 Court has considered other parts of the Charter,
9 including such basic words as "unreasonable" and
10 "justice" --

11 THE PRESIDENT: And "promptness" and
12 "expedition."

13 MR. KEENAN: --"expedition." I assume
14 there is no great difference in the substance of the
15 thought. It is because we believe that an examina-
16 tion of the pertinent Section b -- Subsection b
17 under Article 9 of Section III -- shows that there
18 is no inhibition -- no statement that no other lan-
19 guage shall be used. The Court's hands are not tied
20 in that respect by the Charter. Therefore, plainly
21 the Court is not prevented from exercising that
22 basic, inherent power of all courts to use its dis-
23 cretion unless there is a denial of that inherent,
24 basic right and privilege in a section of the Charter
25 itself, to wit, in this instance, paragraph b of

1 of Article 9 of Section III, and our answer is
2 that just no such prohibition exists.

3 THE PRESIDENT: We will adjourn now until
4 half past one.

5 (Whereupon, at 1200, a recess was
6 taken.)
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1 AFTERNOON SESSION

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3 MARSHAL OF THE COURT: The International
4 Military Tribunal for the Far East is now resumed.

5 THE PRESIDENT: Mr. Comyns Carr.

6 MR. COMYNS CARR: Would the Tribunal permit
7 me to add a few words to the argument of the Chief
8 Prosecutor?

9 The Chief Prosecutor has dealt with the
10 question of construction on broad lines. I desire
11 to deal with it primarily as a matter of strict con-
12 struction of the clause in question. I only point
13 out by way of introduction that Article 2 clearly con-
14 templates that judges, and Article 8 b clearly con-
15 templates that counsel, associate counsel, shall be
16 appointed from countries whose language is neither
17 English nor Japanese. Article 9 b reads: "The trial
18 and related proceedings shall be conducted in English
19 and in the language of the accused." The question is
20 whether the word "conducted" governs the language in
21 which the counsel standing at this lectern shall
22 speak. The vital word is the word "and". It is not
23 "in English or in the language of the accused."
24 Therefore, if the contention against me is correct,
25 it would follow that every person, every counsel who

1 stands at this lectern must speak both in English and
2 in Japanese, and, on the strict language, in both lan-
3 guages at the same time. On that view, no part of
4 these proceedings have complied with this clause from
5 the beginning. This is absurd. It follows that the
6 clause cannot mean that and it merely means that it
7 is obligatory that all parts of the proceedings, every
8 word which is spoken, shall be able to be heard in
9 English and in Japanese by anybody who wishes to do
10 so. So long as those conditions are complied with,
11 in my submission there is nothing in the clause to
12 prevent any language, convenient to any counsel, from
13 being used in speaking from this lectern.

14 Now, as to the question of convenience. In
15 my submission, as long as the matter in hand is the
16 making of a speech or the reading of a document,
17 which can be and has been translated and circulated
18 beforehand, it is less conducive to delay that the
19 counsel concerned should be allowed to use his own
20 language than that he should be compelled to use one
21 with which he is unfamiliar. I think experience has
22 shown that the most difficult thing and the thing
23 producing most delay is for the interpreters to have
24 to deal with something which is spoken in English by
25 someone who has not a perfect command of the language.

1 The real difficulty and the inevitable difficulty
2 arises when something has to be said, some argument
3 has to be made, some objection or some interposition
4 and the onset of which cannot have been prepared and
5 translated beforehand. That difficulty works both
6 ways. It is difficult for counsel not fully familiar
7 with English to understand what is being said to him,
8 and I venture to think that that will be found to be
9 the cause of the unfortunate occurrences yesterday
10 afternoon and this morning. It is equally difficult
11 for the Tribunal and other persons in court to un-
12 derstand what is being said in English by a person
13 who has not a full command of the pronunciation.

14 In my submission it will be found to be
15 quicker in the end if, with regard to the reading of
16 documents and the making of speeches, counsel is
17 allowed to make them in his own language, which can
18 be simultaneously reproduced both in English and
19 Japanese, thus causing no delay at all, and if, with
20 regard to discussion, which cannot be prepared be-
21 forehand, it is translated to him in his own language
22 and his reply is translated from his own language
23 into the two languages required to be used by the
24 article.

25 To sum up, therefore, my submissions are

1 three. First, on the strictest construction of the
2 article, there is no prohibition against the use of
3 a language other than English and Japanese, provided
4 everybody can hear in those two languages. Second,
5 the express provision for non-English speaking
6 countries to be represented, both on the Bench and
7 at the Bar, raises a presumption in favor of their
8 being allowed to use their own language if necessary.
9 Third, the use of their own language will in our sub-
10 mission, when all the factors and difficulties of
11 interpretation and reproduction are fully appreciated,
12 be found to lessen rather than to increase the delay,
13 some of which is inevitable under the circumstances.

14 Finally, I would like just to mention a
15 matter of fact on a point referred to by you, Mr.
16 President, this morning. That is the possibility
17 of a member of the French Delegation other than Mr.
18 Oneto reading in English.

19 THE PRESIDENT: Member of the prosecution.

20 MR. COMYNS CARR: Ah, other than the French
21 delegation?

22 THE PRESIDENT: Or the defense, yes.

23 MR. COMYNS CARR: I misunderstood the ob-
24 servation this morning evidently. In answer to that
25 suggestion, I would respectfully submit that although

1 we are, and we are proud to be, working together as
2 an international team, it would be rather hard to
3 expect the delegation of one country to hand over
4 part of its national case to representatives of
5 another.

6 I am reminded, your Honor, that I should have
7 added that when witnesses come to give their evi-
8 dence that is just as much a part of the trial and
9 related proceedings as the making of speeches or the
10 reading of documents. With regard to the witness
11 himself, the Tribunal has already permitted witnesses
12 who did not speak either English or Japanese to tes-
13 tify in their own language. But in my submission,
14 with regard to the counsel examining the witness,
15 there would also be a great deal of confusion and
16 delay if he were required to frame his questions in
17 a language of which he has imperfect command and
18 which the interpreter would have great difficulty
19 for that reason in translating to the witness.

20 THE PRESIDENT: I did not suggest that the
21 French case should be handed over to the prosecutor
22 of another country. I suggested it should be con-
23 ducted by a member of the French Prosecution Sec-
24 tion who could speak English, and I said yesterday I
25 believed there was such a person. In the course of

1 my business in Chambers I thought I discovered that.
2 I may have been mistaken.

3 MR. COMYNS CARR: I apologize. It seems
4 that my first understanding was better than my second.
5 I first thought that that was what the President
6 meant. I ought to inform the Tribunal that the gen-
7 tleman referred to is not a member of the legal pro-
8 fession; he only accompanies the delegation in the
9 character of interpreter. As I have already pointed
10 out, the mere reading of documents -- in the mere
11 reading of documents, the essential thing is what
12 comes over the transmitting apparatus, and that comes
13 just as quickly in English over the transmitting
14 apparatus whatever language it is actually read in.
15 Even if the gentleman who is not a member of the legal
16 profession were permitted to read a document, the
17 moment any discussion arose about it he would have
18 to give way to somebody qualified to deal with the
19 discussion and the real difficulty would then arise
20 as before.

21 THE PRESIDENT: I regret that I was not told
22 yesterday afternoon when I mentioned the matter first
23 that the gentleman was not a member of the legal
24 profession. It is hardly fair to the Court to keep
25 it in the dark that way.

1 MR. COMYNS CARR: I am sorry. I was not
2 present myself and I am afraid I don't know the
3 exact circumstances of those who were, whether they
4 understood the question or not.
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1 THE PRESIDENT: Mr. Levin.

2 MR. LEVIN: Mr. President, and Members of the
3 Tribunal: I have prepared a short and brief reply to
4 the Chief Prosecutor's argument this morning, and with
5 the Court's permission I should like to give a copy of
6 that to the translators so that I can proceed and in
7 that way save some time. Is that satisfactory to the
8 Tribunal?

9 THE PRESIDENT: What has the prosecution to say?

10 I asked the prosecution what they had to say.
11 I cannot hear, and it will not be heard over the micro-
12 phone.

13 MR. KEENAN: Certainly not.

14 MR. LEVIN: Before I begin reading from my
15 short argument, I should like to state to the Court
16 that a number of my associates have advised me that
17 the gentleman of the French delegation who was referred
18 to by Mr. Comyns Carr was presented to the Court as an
19 associate counsel. I do not know that fact of my own
20 knowledge excepting the statements, the information, I
21 received from a number of my associates.

22 At the outset may I say that the determination
23 of the question before the Tribunal does not involve
24 a question of privilege of nations. Were the matter
25 the mere granting of a courtesy to another nation or

1 a customary courtesy of one lawyer to another, a member
2 of the bar, I know that I, and I feel certain all my
3 colleagues would be perfectly willing to join in grant-
4 ing such a courtesy.

5 The question before the Tribunal is a funda-
6 mental one. It cannot be answered merely by stating
7 that it involves the technical construction of language,
8 but must be answered in the light of the Charter.

9 I think it would be helpful to the Court to
10 consider for a moment the preparation of the Charter.
11 Our information is that prior to the preparation of the
12 Charter, members of the prosecution staff made a tho-
13 rough study of the Nuernburg Charter and the proceedings
14 which were conducted there, and after this study pre-
15 pared the Charter in question. Neither the defendants
16 nor anyone connected with the Japanese Government had
17 anything to do with the preparation of the Charter.
18 Whether the prosecution or others prepared the Charter
19 is of no great moment, except that this is the fundamental
20 law which guides the Court. As you, Mr. President, have
21 indicated, the thing with which the Tribunal is concerned
22 is a fair trial of the accused, and under the terms of
23 the Charter they are required to have a fair trial in
24 accordance therewith.

25 In the discussion between the President and

1 the learned Chief Prosecutor for the United States,
2 the various provisions of the Charter under which these
3 defendants are being tried have already been adverted to.

4 Article 1 states: "The International Military
5 Tribunal for the Far East is hereby established for the
6 just and prompt trial and punishment of the major war
7 criminals in the Far East. . ."

8 "Article 12. Conduct of Trial. The Tribunal
9 shall: a. Confine the trial strictly to an expeditious
10 hearing of the issues raised by the charges.

11 b. Take strict measures to prevent any action which
12 would cause any unreasonable delay. . ."

13 These are the general provisions of Section I
14 of the Charter, and throughout the Charter there is a
15 studied attempt to make sure that its various provisions
16 are such as to insure the defendants a fair trial.

17 We come now to Section III of the Charter,
18 which provides for a fair trial for the accused.

19 The Charter specifically provides for a fair
20 trial in Section III. At the beginning we have the
21 legend "Fair Trial for Accused."

22 Article 9 provides: "In order to insure fair
23 trial for the accused the following procedure shall
24 be followed," and in subdivision b of this Article
25 it is provided: "b. Language. The trial and related

1 proceedings shall be conducted in English and in the
2 language of the accused. Translations of documents
3 and other papers shall be provided as needed and
4 requested."

5 It will thus be seen that it is fundamental
6 that the trial and related proceedings shall be con-
7 ducted in English and in the language of the accused.

8 Learned counsel, the Chief Prosecutor for the
9 United States, states that the language is unimportant.
10 He used the words of Telleyrand when he said the
11 language was used to conceal thought. Mr. President,
12 that may be true and for myself I have often regretted
13 that, but, nevertheless, this is the only articulate
14 manner in which we can make ourselves understood.

15 It is no answer to the problem to say that
16 certain witnesses have appeared in the witness box
17 whose language was other than English or Japanese. That
18 is a situation with which courts are confronted every-
19 where. Where a witness testifies in another language
20 and there is a translation of that language, that does
21 not mean that the trial is not being conducted in the
22 language required either by the statute or fundamental
23 law creating the court.

24 The Chinese phase of this case has already
25 been presented to the Court. There was no difficulty

1 in this fine presentation made by the Chief Prosecutor
2 for the government of China and by his able assistant,
3 Mr. Henry Chiu.

4 The President made some inquiry from the dis-
5 tinguished Chief Prosecutor for the United States as
6 to whether or not, in his opinion, the Court could
7 exercise a discretion under the Charter. We insist,
8 Mr. President, that there is no construction open under
9 the terms of the Charter. I need only suggest to the
10 Court the rule of law that where the language is clear
11 and unambiguous, it is not open to construction. We are
12 not merely insisting upon a technical construction of
13 the Charter, but we are asking the Tribunal to construe
14 it for the purpose for which the Charter was created,
15 and that is to try these alleged defendants; and that
16 as part of the fair trial which the accused are
17 guaranteed under this Charter, it does not permit ad
18 libitum fundamental changes.

19 Article 7 of Section II provides:

20 "Rules of Procedure. The Tribunal may draft
21 and amend rules of procedure consistent with the funda-
22 mental provisions of this Charter."

23 Article 7 above gives the Court power to amend
24 the rules of procedure. However, they must be consis-
25 tent with the fundamental provisions of the Charter.

1 And I am interpolating my prepared memorandum
2 to state that the change in the rule would be a viola-
3 tion of the terms of the Charter, because it is only
4 the rules of procedure that the Court is permitted to
5 change, and not the terms and conditions of the Charter.

6 So, Mr. President, it seems to us clearly
7 beyond peradventure that in view of the provisions of
8 the Charter, and especially in view of subdivision b,
9 Section III, that the Court has not the power to amend
10 the rules to authorize the conduct of this case other
11 than in the English language and in the language of the
12 accused.

13 Mr. President, I should like to reply to a
14 portion of the argument made by Mr. Comyns Carr. He
15 refers to the provision of the Charter, subdivision b
16 of Article 8, to the effect that it provides for
17 associate counsel of Allied Nations. I should like to
18 suggest, in the first place, that if it was contemplated
19 by the framers of the Charter that those portions of
20 this case which were being presented, which were to be
21 presented by the Allied Nations, ~~were to be~~ presented
22 in their language, then there would have been a pro-
23 vision to that effect.

24 However, Mr. President, as I read subdivision
25 a of this article, the entire trial is under the

1 jurisdiction of the Chief of Counsel for the prosecution.
2 Subdivision a provides as follows: "The Chief of
3 Counsel designated by the Supreme Commander for the
4 Allied Powers is responsible for the investigation and
5 prosecution of charges against war criminals within the
6 jurisdiction of this Tribunal and will render such
7 legal assistance to the Supreme Commander as is appropriate."
8

9 And the privilege was given to the Allied
10 Nations to appoint associate counsel. But it seems
11 to me in the plain reading of subdivision a of Article 8
12 that the entire jurisdiction and conduct of the trial
13 is in charge of the Chief prosecutor; and the exigencies
14 of the situation where they determine to present
15 these phases by the various governments does not change
16 either the provisions of the Charter or the rights of
17 these accused to have a fair trial under the terms of
18 the Charter.

19 THE PRESIDENT: Well, is there no further
20 argument?

21 Dr. KIYOSE.

22 DR. KIYOSE: The opinion of Japanese defense
23 counsel on this matter is, on the whole, the same as
24 that presented by Mr. Levin. However, we had based our
25 defense on the assumption that the trial would be

1 conducted in English and Japanese. But now, suddenly,
2 we are faced with the prospect of having these accused
3 prosecuted in a language other than English or Japanese.
4 It will be very difficult to correct the translations
5 and to see whether the translations are correct or not.

6 On this point I believe that the rights
7 guaranteed to the defense under the Charter would be
8 changed. I believe that to conduct this trial in Eng-
9 lish and Japanese, as is so clearly provided in the
10 Charter, is one of the great beings which assure the
11 defendants a fair trial.

12 Therefore, not only from the point of expedi-
13 tious trial, as the President stated, but also from the
14 point of view of conducting a fair trial, we sincerely
15 hope that the prosecution's objections will be dis-
16 missed and the Tribunal's original decision to carry
17 on the proceedings in English will be sustained.

18 That is all.

19 MR. KEENAN: If the Court will permit me to
20 bring one fact to its attention that I have been unable
21 to do with the exigencies of the various duties evolving
22 upon me for the moment: Full preparations, if the Court
23 please, have been made to furnish the interpreters with
24 the explanations of the documents to be offered in
25 evidence in this phase, and for simultaneous concurrent

1 transmission through the IBM machines, so that no time
2 whatsoever would be consumed other than the normal
3 procedure of the Court in that instance. The documents,
4 the entire phase, will be presented with no speaking
5 witnesses, only by documents. All of those documents
6 are in either the English or Japanese or German, origi-
7 nally, and they have all been processed into the two
8 languages, Japanese and English, and will be read only
9 in the English language, in any event.

10 The only other delay in the proceedings would
11 be that necessitated by translations into French and
12 English, and vice versa, of any questions from the Court
13 or any objection of opposing counsel.

14 For the record, I am reliably informed that
15 there is no other person available from the French group
16 in the prosecution, members of the bar, who have any
17 more facile knowledge of the English language than that
18 possessed by Mr. Oneto.

19 THE PRESIDENT: My attention has been drawn
20 to the fact that in the appearances for the International
21 Prosecution Section as announced by the Chief prosecutor
22 at the opening of the trial, the following name appears:

23 Mr. Jacques Gouelou, representing Associate
24 Counsel, acting on behalf of the Republic of France.

25 MR. KEENAN: That, Mr. President, was a matter

1 of courtesy only; and the record does not show it, but
2 it is a fact that Mr. Oneto at that time was not in
3 Japan but had made a trip to some point in the southern
4 Pacific for the purpose of gathering evidence.

5 Mr. Gouelou is not a lawyer by profession,
6 has never been admitted to the bar of any country, and
7 we have attempted to confine the presentation of evidence
8 before this high Tribunal to members of the bar in every
9 instance.

10 THE PRESIDENT: He was held out to us as a
11 lawyer, no doubt unwittingly, Mr. Chief Prosecutor.
12 You would have assumed he was one, no doubt, as we did.

13 MR. KEENAN: I am sorry, Mr. President. In
14 the interests of the truth, I must reply that the Court
15 is in error on one of the assumptions. I at no time
16 assumed him to be a lawyer, because I knew better. He
17 told me he was not. And he was introduced only because
18 he was the only available member of the French prosecuting
19 staff present, only male member present, at the time
20 that these proceedings--

21 (The balance of Mr. Keenan's statement
22 was not transmitted over the IBM system.)

23 THE PRESIDENT: We assumed he was a lawyer; we
24 were justified in that assumption. And we were not
25 aware of the contrary until this afternoon.

1 We will recess now for fifteen minutes.

2 (Whereupon, at 1445, a recess was
3 taken until 1540, after which the proceedings
4 were resumed as follows:)

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1 MARSHAL OF THE COURT: The Tribunal is now
2 resumed.

3 THE PRESIDENT: The Tribunal by a majority
4 has decided to allow the use of French to the extent
5 indicated or suggested by the learned Chief Prosecu-
6 tor. As regards objections by the defense, we
7 understand, of course, that they will have to be
8 translated into French and into Japanese or English
9 as the case may be, and so, too, the answers thereto.
10 Those are the terms imposed by the Tribunal; and,
11 of course, they may be altered to suit the exigencies
12 of the case and to enable compliance with the Charter
13 from time to time.

14 Consistent with a just trial we are bound
15 to conduct a prompt and expeditious trial.

16 MR. LEVIN: Mr. President, in view of the
17 present ruling of the Court may we take an exception
18 to the ruling simply for the purpose of the record?

19 THE PRESIDENT: You may, but the position is
20 already covered by a general ruling.

21 MR. KEENAN: Mr. President, might I state
22 that Mr. Oneto has requested me to inform the Court
23 that he is desirous of carefully perusing the record
24 that he may make clear his explanation to the Court;
25 and since it is three:forty-five, I ask if there be

1 objection to the proceedings being adjourned at this
2 time until tomorrow morning?

3 THE PRESIDENT: We are satisfied that Mr.
4 Oneto should appear before us at nine-thirty tomorrow
5 morning with any explanation he may have.

6 I have been advised, Mr. Chief Prosecutor,
7 that part of a statement you made this afternoon
8 was not transmitted over the IBM System. Are you
9 aware of the fact?

10 MR. KEENAN: I was advised by one of the
11 court reporters late in the recess that there had
12 been some failure to transmit the statement completely
13 so the reporter was unable to get it. I don't know
14 what part it is. I have not been advised yet. In
15 the interest of speed, unless there is some particular
16 purpose, I have not been informed that there is any-
17 thing of consequence omitted or anything I know of,
18 but I shall be very glad to see that part of the
19 record or have it referred to me now by the reporter.
20 It is possible that I, perhaps, can recall what I said.

21 (Whereupon, a paper was handed to Mr. Keenan.)

22 MR. KEENAN (Continuing): Oh, I have the
23 part before me.

24 THE PRESIDENT: Before you you have the part
25 that was recorded, Mr. Chief Prosecutor. The dots

1 at the end of that paragraph before you indicate the
2 place at which the reporters ceased to report.

3 MR. KEENAN: The rest of the sentence was
4 in substance, I am quite sure, although I would not
5 make a representation it was in haec verbae -- the
6 last line, I am reading for the continuity:

7 "....only male member present at the time
8 of these proceedings...." representing a part of the
9 French prosecuting staff.

10 The record shows, Mr. President, of 3 May
11 1946, in presenting Mr. Gouelou, the following by
12 myself, line 10, page 24, "Mr. Jacques Gouelou,
13 Professor of English Language and Literature at
14 the University of Paris representing Mr. Robert Oneto."

15 THE PRESIDENT: We always knew that.

16 I suppose the French case cannot be presented
17 again today.

18 MR. KEENAN: I think in the several moments
19 left it would take us more time to get the papers
20 together in this exigency before the Court's ordinary
21 time for adjournment.

22 THE PRESIDENT: I suppose the intention is
23 that Mr. Oneto shall present it, subject to the decision
24 in his own personal matter.

25 MR. KEENAN Does the Court make an inquiry

1 or an observation?

2 THE PRESIDENT: We will treat it as an
3 inquiry, Mr. Chief Prosecutor.

4 MR. KEENAN: That is the intention of the
5 prosecution at present.

6 THE PRESIDENT: We will adjourn now until
7 half-past nine tomorrow morning.

8 (Whereupon, at 1550, an adjournment
9 was taken until Wednesday, 2 October 1946, at
10 0930.)

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