

PANEL 6. THE EVOLVING DEFENCE SYSTEMS AT THE INTERNATIONAL TRIBUNALS

SPEECH BY FRANÇOIS ROUX, HEAD OF DEFENCE OFFICE AT THE SPECIAL TRIBUNAL FOR LEBANON

Allow me to begin my speech with a thought for the late Laity Kama: we are all aware of the exceptional contribution he made to this Tribunal in his role as President. His death came as a shock to us, the only equivalent being the shock we felt following the sudden death of another great President, the President of the Special Tribunal for Lebanon, Antonio Cassese. I find it comforting to think that they are both together in Heaven, drafting the Last Judgment. I also include in my thoughts all those who have been associated with this Tribunal over the past twenty years and who have since died, with a special mention for the former President of the Kigali Bar, Jean Haguma, who was my co-Counsel in the case of Joseph Nzabirinda, in which we pleaded guilty. I also welcome the presence of my former and loyal investigator, Philippe Bimenyanya. For the old-timers here, if you remember, Philippe is the survivor, the miracle man who survived the accident involving a Kenya Airways aircraft which crashed into the sea shortly after taking off from Abidjan where Philippe was on assignment for the Bagilishema defence team.

When the ICTR was first set up, the Defence did not exist as a separate institution, we were “managed” by the Registry.

As President Mose said, the Defence was therefore not part of the Coordination Committee, for example, which was set up to rationalise proceedings, nor was it part of any other structure within the Tribunal. The Registry spoke on its behalf.

This was the situation I discovered in April 1999 when I arrived to defend Ignace Bagilishema.

In May 2014, fifteen years later in other words, thanks to the support of the UN Legal Counsel, Miguel de Serpa Soares, who is here today and whom I thank heartily, I secured a meeting with the Secretary-General of the United Nations in New York in my capacity as Head of Defence Office at the Special Tribunal for Lebanon. To secure the meeting, I argued that the Secretary-General had met with the Presidents of the International Criminal Tribunals and their Prosecutors but never with the Defence.

At the beginning of our meeting the Secretary-General actually said to me, “I have never heard the defence, I am listening Mr Roux.”

Between these two dates it has been a long process to obtain recognition for the major role of the Defence in international criminal justice. In the space of fifteen years we have moved from prehistoric to modern times.

And yet Prosecutor Goldstone said right at the outset: “There can be no international criminal justice without a strong Defence.”

Prosecutor Jallow expressed the same sentiments at the 7th Colloquium of International Prosecutors just recently and I would like to thank him for this: “There can be no fair trial without a well-equipped Defence.”

But because of the original sin of the international criminal tribunals, which was to promote the fight against impunity rather than the fight for justice, all eyes were on the Prosecution and the Defence was merely tolerated and faced the same recurrent question: “But how can you defend perpetrators of genocide?”

Unfortunately one only has to look at the banner behind us to see that the original sin has not gone away.

We therefore have to keep on explaining over and over again that although the international community is right to set up these courts to end impunity after terrible tragedies, once the courts are set up they should focus on one task alone: delivering justice.

Which means that if posts are created for prosecutors, whose role is indeed to fight impunity relentlessly, and if posts are created for judges, who are tasked with handing down judgements, then counsel are needed for the defence. What would a trial without a defence counsel look like?

“To act for the defence,” as one French lawyer once put it, “means not taking for granted anything which has not been examined closely.”

And another lawyer, who has become France’s ambassador for human rights, added: “The paradox of human rights is that in the beginning they are created to protect the victims, the right to life, integrity and so on but they take on their full meaning when it comes to the defence of accused persons and their right to a fair trial.”

This is the work of counsel which is vital for the objectives of justice. But the Defence also needs to be given the means to do the job and be given the position and respect its role demands.

To achieve this, the Defence needs to be allowed to play its role within the institution, an independent role, like the Office of the Prosecutor.

The drafters of the Statute of the Special Tribunal for Lebanon made provision for this.

We moved from a court with three organs: Chambers, the Registry and the Office of the Prosecutor to a Tribunal with four organs: Chambers, the Registry, the Office of the Prosecutor and Defence Office, with all four heads of those organs being appointed by the United Nations Secretary-General. In other words, a beast with four legs rather than three, which is safer!

We currently have ten staff in the Defence Office whilst we wait for our new liaison officer in Beirut to be appointed. Many have come from the ICTR: my deputy Heleyn Unac, who was assistant to President of the Bar, Maroufa Diabira, and myself in the Bagilishema case; the head of the Immediate Office, Laurent Wastelain, who is also responsible for Legal Aid; Johann Soufi, acting Chief of the Legal Advisory Section; and Marie Pier Barbeau, a legal officer. We also have Roula Derbas from the Tripoli bar, who is the voice of Lebanon in our office; Paula Lynch, the case manager; Ashkan, who along with Laurent is in charge of legal aid; and two administrative assistants, Malika and Atefeh.

A whole team devotes itself to the job performed by this new pillar of the Tribunal and I want to pay a heartfelt tribute to them.

The Defence Office does not speak on behalf of the Defence teams but it is the voice of the Defence both within and outside the institution.

Within the institution, by being involved in the joint management of the Tribunal, in particular as part of the Senior Management board and by taking part in all the joint events of the Tribunal, for example at our meeting with the Security Council last August, which the four of us always attend together.

Outside we can sign cooperation agreements with States directly whenever necessary for investigations involving the Defence teams. We did this with Lebanon for example.

We appoint counsel and their teams, after selecting them by interviews. As the main trial is in absentia it fell to us to choose Counsel and we were keen to appoint experienced and skilled counsel from a variety of geographical, cultural and linguistic backgrounds, who had a track record in international criminal law but also a few new faces, from Lebanon in particular, because fresh blood is good. I would like to point out that several of them come from the ICTR, and I would like to specifically mention one of those who has worked the longest at the ICTR, Mohammed Aouini from the Tunisian bar, who skilfully led the guilty plea in the Ruggiu case, along with our colleague Jean Louis Gilissen.

The Defence Office is not involved in the strategy of the defence teams or with the case file. We are there to provide legal, financial and logistic support to those teams. We offer regular training and monitoring if required. We provide them with suitable offices and the necessary equipment: PCs, mobile telephones, laptops, etc. We strive for equal resources with the Office of the Prosecutor.

We act as their shore-support team but they are the skippers in the round-the-world yachting race.

The Defence Office can also intervene *proprio motu* at hearings whenever the interests of justice dictate. We have done so several times.

The Office is also the voice of the Defence as far as national and international institutions are concerned, such as lawyers' associations and bars.

In this regard, in December 2013 the Defence Office initiated the first international meeting of Defence Offices and Sections which was held at the Paris Bar with the active support of that organisation. It was based on the model of international Prosecutors' meetings.

This year our meeting will take place in The Hague on December 15 and 16 at the Peace Palace, which is a symbolic location.

This is an opportunity for us to share our experience so that we can strive to improve the way we serve the interests of an effective and high quality defence.

Of course progress can and should still be made. This will be on the agenda for us in 2015, to make our work even more effective and to seek recognition for the role of the Defence within the landscape of international criminal justice.

We sincerely hope that one of our greatest victories will be to enable the ICC, on the basis of our experience only better, to establish a Defence Office as an Organ of the Court, on an equal footing with the Office of the Prosecutor.

We are already delighted that the Extraordinary African Chambers have decided to establish a Defence Office as an Organ, based on the STL model.

To conclude, I will hand over to a victim, as I firmly believe that victims have a necessary place in criminal trials.

When I was first appointed to the post of Head of Defence Office, I travelled to Lebanon to meet the Bars and the political authorities at the highest level, as I have continued to do several times a year.

I met the Prime Minister, who at the time was the son of Prime Minister Rafik Hariri, whose assassination is the reason our tribunal was established.

I explained the role of the new Organ to Prime Minister Saad Hariri and the work which the Defence would be doing, namely the investigations in Lebanon, which is a new development for a country which has a civil law system with investigating judges.

After listening to me he told me: "Mr Roux, as a victim I appreciate the work of the Defence Office because it lends credibility to this Tribunal, and that is important for the victims and for the Lebanese people as a whole."

Is there a better definition of the role of the Defence Office and, through it, of the Defence?

Thus, paradoxically, the legacy of the ICTR so far as the Defence is concerned will have been to demonstrate that it was necessary to remedy as a matter of urgency the major shortcomings of the international criminal tribunals in their early days in this regard.

Thank you for your attention.