



*Forum sur la justice internationale (Forum on International Justice)*¹

Who defends the Defence? Interview with François Roux Head of the Defence Office of the Special Tribunal for Lebanon

This, with the Special Tribunal for Lebanon and the creation of a Defence Office, is the first time in international justice that the voice of the Defence hasn't been directly attached to the case and interests of a defendant. That makes it more audible and gives it another dimension, which is essential to avoid the tribunal's even-handedness being called into question. However, listening to the grievances of counsel during the opening statements of the first case, all the criticisms – which are no doubt relevant but which are quite habitual – of the international criminal tribunals (ICT) are there: the imbalance in resources, the lack of consideration, poor communication with the Office of the Prosecutor, short time, etc. So what more has – and can – a Defence Office achieved?

François Roux: The early criticisms essentially concerned the situation of the last defence team, which was under pressure. For procedural reasons, the Chamber did indeed want to begin the trial of the first four suspects to have been indicted and impose very tight deadlines on the fifth defence team which had only just arrived. As the indictment of the fifth accused was confirmed only very late, the Chamber required the counsels I appointed to “catch up”. That did cause problems, and the team complained of having insufficient time.

It is, however, true that the other teams also complained of the time the Prosecutor took to provide them with the file – 18 months – and a more general disparity of resources between a Prosecutor who had spent 7 years investigating before the opening of the trial and who had considerable resources, and a defence team who had minimal time to prepare and investigate and incomparably little resources.

¹ La traduction en anglais de cet entretien a bénéficié du soutien des services de traduction du Ministère français des affaires étrangères et du développement international et du Pôle droits, transparence et redevabilité de la Mission de la gouvernance démocratique.

But I do believe that the defence teams will say that, when they arrived at the Special Tribunal for Lebanon, they truly arrived in a whole new world. In terms of material and intellectual conditions, they got things like offices, computers and mobile telephones, and scientific and academic research into various subjects. Moreover, at the Defence Office, we have a “case manager” dedicated to training in the use of IT tools, which are very important here as we are an e-court. Every time a counsel or legal assistant arrives, they receive this training. This support doesn’t exist in the other tribunals. We are building a database incorporating all our tribunal’s jurisprudence, which also doesn’t exist anywhere else. At the International Criminal Tribunal for Rwanda (ICTR), the Prosecutor had a database but the Defence had no access: that was quite prehistoric!

The Defence Office is, as you have said, the “voice of the Defence” within the Tribunal. We have been there from the very outset and at every stage, even when there weren’t yet any accused. The judges often say that it is their responsibility to respect all parties, but who can ensure the rights of the Defence better than the Defence itself?

Every time a tribunal is created, its Rules of Procedure and Evidence have to be written. For the first time, the Special Tribunal for Lebanon had a dedicated office capable of defending the Defence’s interests in talks to draft the Rules. At the end of the first plenary, the judges invited not only the Prosecutor to the closing dinner, but also the Defence! So is the Defence now considered a full-fledged component, like the Prosecutor? How times change! However, we have also seen strong resistance, particularly within the Registry, which fully understood that it was losing some of its power. For, as an Office, even if our role is more than just a Registry, we are *also* a Registry. We handle all issues linked to legal aid and to the recruitment of defence teams, which, in other international criminal tribunals, are within the Registry’s remit alone.

What do you do that the Registry didn’t?

François Roux: We handle all administrative matters concerning the defence teams that were previously up to the Registry, but we deal with them with a specific Defence focus that the Registry – which had to stay neutral – lacked.

The aim is to liberate counsel as much as possible from administrative tasks and constraints that are many in such institutions, allowing them to dedicate themselves essentially to their defence work.

Moreover, during the first three years, we incorporated into the Tribunal’s texts points on the need to consult the Defence at various stages, and we drew up a number of guidelines for counsel (legal aid, ethics, etc.). My Office’s team has also prepared, with the assistance of academics and law schools with whom we have concluded agreements, some 100 memorandums on the major themes that were likely to be

discussed during trials in absentia, such as the definition of terrorism. All these new issues could thus be prepared for in advance.

I also visited Lebanon to explain to the Lebanese bar association that the counsel I would appoint would have to carry out field investigations as it had – unfortunately² – been decided that there would be no investigating judge at the Special Tribunal for Lebanon and the counsels would carry out their investigations themselves, only to be informed by the Lebanese counsel that this practice is prohibited under Lebanese law (a civil law system). It was therefore out of the question for counsel to go and hear witnesses. Yet, if the counsel I appointed didn't carry out their own defence investigations, there was nobody to do it for them! It took several months of talks with the Lebanese authorities to find common ground. We agreed, with the Minister of Justice, on a Memorandum of understanding recalling the supremacy of international law and, on this basis, authorizing counsels to seek witnesses. The bar association did, however, remain very concerned. The situation gradually grew easier and all counsel appointed by the Defence Office, including those of Lebanese nationality, can carry out investigations in Lebanon without falling foul of Lebanese procedural rules.

If we hadn't dealt with this issue at the time, Chambers would have had to draw up the Memorandum of understanding as the trial was opening, which couldn't have failed to considerably slow down proceedings. The Memorandum also includes everything required to enable cooperation with the Lebanese authorities. That was no simple matter. We had to ask the government, which had requested the creation of the Tribunal to put an end to impunity, to authorize the defence to carry out its counter-investigations. Prime Minister Hariri, the son of the former Prime Minister killed in the attack, approved our approach as he understood that it would give the Tribunal the credibility needed to help establish higher standards for justice in the Arab world.

That was only a small aspect of the work accomplished during the three years where we worked alone. There were no accused, so no Defence counsel. I did a lot of outreach work in Lebanese bar associations and universities, etc., to explain what the work of the Defence would be. It was a very tense period with, equally, on the one hand, those supporting the Tribunal in the name of combating impunity and thus suspicious of the Defence, and on the other, those who did not want to hear of it and rejected the Defence along with all the rest of the Tribunal. Some universities refused to allow my visit on the grounds of a risk of riots. Real outreach work was thus needed to help relax the climate and relieve misunderstandings and reservations. Progress was made little by little and I think the Defence is now acknowledged and accepted in Lebanon. It is considered to do its work as part of what has to be a fair

² See the op-ed "*Pour des juges d'instruction internationaux*" (For international investigating judges) co-signed with judge Marcel Lemonde and legal officer Jérôme de Hemptinne (http://www.liberation.fr/planete/2009/04/16/pour-des-juges-d-instruction-internationaux_552997).

trial. The Office has thus enabled better understanding not only of the Defence, but also of what a Tribunal could be.



Ph. : M. Roux at the bar association of Tripoli (North Lebanon) with M. Bassam DAYE, Bâtonnier of the Bar.

At the same time, recruiting counsel in a different form was an unprecedented mission. In all international courts, they are recruited on the basis of applications, which has, at certain courts, resulted in a number of unfortunate surprises – and even disasters. We decided to audition counsel who volunteered to be included on the list, using a similar method to that used to enter the United Nations. This involved an hour-long interview before a panel made up of a Lebanese lawyer, a Canadian lawyer and myself. Some candidates – and even experienced, practiced lawyers – were rejected because they came to the interview without bothering to study the Statute and the Rules of Procedure and Evidence (RPE) and all their innovations, such as proceedings in absentia, terrorism, the independent pre-trial judge, and the Defence Office.

Once counsel were admitted to the list, intensive training had to be organized. They spent three days in role-playing exercises involving false trials. They had to forget everything they had learned in both national and international law, as the Special Tribunal for Lebanon had a very different Statute and RPE from the other international courts. Counsels from common law countries in particular had to forget the adversarial system. There was an extraordinary scene when President Cassese

explains to them the great difference in the system, whereby the judge leads the debate and can question the accused. The “common lawyers” were stupefied and refused it outright. In the end, it has to be said that Antonio Cassese and I had underestimated the strength of our common law friends, who eventually imposed their culture quite overwhelmingly. Indeed, we have returned to adversarial procedure for the last two and a half years.

In short, the Office has given the Defence a voice inside and outside the institutions, particularly in Lebanon, as well as recruiting experienced counsels in advance and preparing for the work that awaited them. Next, legal assistants, co-counsels and case managers had to be recruited, just as the Prosecutor recruits qualified legal specialists for the prosecution.

In terms of resources, has the number of staff changed? Are they sufficient for your mission and goals?

François Roux: During the first phase, before there were any accused, one or two more people would have been welcome – in the beginning, we had to justify our existence. In theory, the creation of the Office was well looked upon, but in reality we were suspiciously asked to justify everything we needed and everything we did, which obviously wasn’t asked as insistently of the Prosecutor, who is sovereign in our international courts and jealously defends his independence. At the time, there were about 130 people in the Office of the Prosecutor, who already had the benefits of their four years of investigations at the International Commission of Inquiry (2005-2009), whereas our team had only ten people. Yet although we were not directly involved in cases, very complicated legal questions had to be dealt with, which requires a solid team from the beginning. When we had to visit Lebanon every three or four months to negotiate with the authorities and institutions, it would have been good to have a few more people.

But the most important – and difficult – thing was to be acknowledged day-to-day, including in the drafting of texts, such as during judges’ plenaries. The Rules of Procedure and Evidence are amended practically every year. It is understandable that amendments are needed when the trial begins and concrete difficulties arise that demonstrate that certain points were ill thought out. We worked to ensure the amendments did not undermine the Defence and sought to change certain rules when that appeared necessary. We failed in a number of cases. For example, judges can impose sanctions on counsel without consulting us. They can also consider that a motion filed by a counsel is frivolous and ask me – without consulting me in advance – to cut the counsel’s fees. We did not manage to have it agreed that the Defence Office should function as a bar association.

Similarly, it is interesting to note that the grade of the Head of the Defence Office is the same as that of the Deputy Registrar and Deputy Prosecutor. Basically, the Head of the Defence Office, despite being the head of an organ in the same way as the President, the Prosecutor and the Registrar, and appointed, like them, by the United

Nations Secretary-General, is considered as a mere deputy. But whose deputy? There is still a long way to go before Defence is truly acknowledged as a full-fledged component.

Lastly, now that the trial is underway, the Prosecutor continues to have a budget and staff twice the size of those of the Defence's Office and teams put together.

However, we make do with our resources, and another positive aspect of the Defence Office is that it has allowed us to put in place the same system as international prosecutors have done for years: they meet regularly to pool their experiences and draw lessons from them (so-called "best practices"). We have borrowed that idea. Three years ago, we organized our first International Meeting of Defence Offices in Paris. Two years ago, they were held at the Peace Palace in The Hague, while in 2015 they were in Geneva, in partnership with the bar association and the University of Geneva. In 2016, we will be in London, and in 2017 it will be held at the Nuremberg Palace of Justice. The session begins with a round table of representatives from almost all active international tribunals: the Extraordinary Chambers in the Courts of Cambodia (ECCC), the International Residual Mechanism for Criminal Tribunals (IRMCT), the International Criminal Court (ICC), the Special Tribunal for Lebanon (STL) and, this year, the Extraordinary African Chambers (EAC) in Dakar, with the aim of discussing the year's judicial developments with, of course, a focus on the Defence. That had never happened before. No registrar ever thought it would be a good idea to gather together counsel from all the tribunals to share experiences. But I can tell you, it is extremely useful.³

The Office has a branch in Beirut. How does it work? Has it helped strengthen ties with those working locally? Has it facilitated contacts with local media?

François Roux: It is very important for the Tribunal to have a branch in Beirut. The Tribunal's field office is in a secure green zone known as Monteverde. It is a long way from the city centre and quite difficult to get to. It includes staff from the Registry, the Prosecutor and the Deputy Prosecutor, while the Defence Office is present through its liaison officer, who is responsible with issues concerning cooperation for the Defence.

The Special Tribunal for Lebanon's field office in Beirut has a public relations service representing the Tribunal as a whole and handling the media. When I visit Lebanon – several times each year – I give regular interviews to the press and speak on behalf of the Defence Office. Our liaison officer is not authorized to speak in public but does take part in conferences, representing the Defence on these occasions. The situation is very different from that of the International Criminal Tribunal for Rwanda, which had a field office in Kigali which essentially represented the Prosecutor. So there has

³ The Summary Reports of the Annual International Meetings are available on the website of the Special Tribunal for Lebanon (www.stl-tsl.org) in the Defence Office section. http://www.stl-tsl.org/en/about-the-stl/structure-of-the-stl/defence/defence-office/statements/download/7981_a787afb41bfd883999d4548be700a98b

been great progress, for everyone in Lebanon knows the field office doesn't only represent the Prosecutor, and has heard of the Defence Office.

There is still, however, a degree of distance with public opinion and criticism has been very fierce in the media, from two outlets in particular – Al Akhbar and Al Safir – and in the early years in particular. Relations with journalists go more smoothly now. Sadly this improvement is not down to a better understanding of the Tribunal's role. It is also down to the current regional situation we are all aware of, with the war in Syria, which means the Tribunal has fallen down the list of news priorities, whereas at one point, not a day went by when the Tribunal was not in the newspapers!

Has the Special Tribunal's mixed composition facilitated its legitimacy and interest?

François Roux: No, as the judges were heavily criticized by those who opposed the Tribunal. Moreover, for a long time, the names of the judges were not made public, apart from that of the pre-trial judge who worked on the initial phase of the proceedings. The hearing in which we were solemnly sworn in was never published.

However, the mixed composition of the Tribunal has helped in another way. It was for the Lebanese judges that I published a piece in the *Libération* newspaper in October 2013, explaining that genuine, effective, speedy and fair international criminal law was still to be invented (http://www.liberation.fr/planete/2013/10/22/la-crise-d-adolescence-de-la-justice-penale-internationale_941510). International law as it is practiced before ad-hoc international criminal tribunals and the ICC is in a crisis: it is too slow, bureaucratic and expensive. This is largely down to the fact that the procedures used are essentially built on the common law model – but practiced badly. Yet Lebanese law – and continental law in general – has worked well, and has a lot to offer international courts in terms of efficiency. Lebanese judges and legal experts can assert their experience in Lebanese law which grew, of course, out of civil law. As President Cassese wanted, judges, including from Lebanon, thus promote the combination of the two law systems, as it was decided in the beginning. Mixed composition and respect of diversity are enriching. That is a struggle that has to be fought every day, for the future of international law hinges upon it.

I foster and seek this mixedness whenever I can. As I have said, I am responsible under the Rules for establishing a list of Defence counsel, from which the accused can choose a defender under legal aid. When there are no accused in the dock, as is the case in the current trial which is being held *in absentia*, it is I who appoints Defence counsel on behalf of each person accused. I have tried to compose teams in a similar way to the United Nations, with a North-South, East-West, English-French-Arabic speaking, etc. balance. That has helped group less experienced counsel with more experienced colleagues (but the latter mostly knew adversarial procedure). In the Legal Advisory Section, we now have a Lebanese lawyer, two Canadian lawyers and a French lawyer. For now, however, this mixed composition has not shown through in the Tribunal's rulings. I asked interns to carry out a study similar to that

carried out by a lawyer investigating the Lubanga case at the ICC, in order to determine the percentage of references to common law and to civil law respectively: the answer is about 80%:20%. From time to time, there are a few references to Lebanese law.

Are relations between appointed counsel and the Defence Office constructive, or do difficulties arise?

François Roux: They are good. Some distance themselves from us more than others, but we are always very careful not to undermine their autonomy and their independence as regards the defence “strategy”. That is the term used both for the prosecution and the defence in adversarial proceedings. To avoid any ambiguities, I always remind journalists that I am not the spokesperson of the accused’s counsel. I defend the Defence.

Its place had to be found. The parallel drawn between the Defence Office and a bar association is quite accurate. Our role, like a bar association’s, is to defend counsel, to ensure they work ethically, and to represent the profession both inside and outside the court. We add a fourth aspect that a bar association doesn’t have: logistical, legal and economic support for lawyers. Logistical, because when they investigate, we provide all the material support they need. Legal, because we have a Legal Advisory Section in the Defence Office, which is responsible for providing advice on legal issues. This allows counsel to focus on the case itself, although they do also have legal assistants in their staff. This Legal Advisory Section, which is mostly made up of lawyers, does remarkable work which is very useful for the counsel. Lastly, economic, as we manage the whole legal aid budget which is used to pay staff.

But the counsel also know that, under the Rules, I also have to ensure the efficiency of the work of the Defence. If I notice problems, I have to discuss them with the lawyer in question and, if they are not resolved, I may put in place “monitoring”. In principle, I do not have to be informed of an issue by the judge, as there are always one or two members of my staff at the hearing keeping track of the trial. That allows my staff to assess the day-to-day work of the Defence. The scandals seen at the International Criminal Tribunals for Rwanda (ITCR) and former Yugoslavia (ICTY), with kickbacks between clients and counsel, could never happen here.

We therefore have very good relations with the counsel of the accused, but there is something in return, as with a bar association.



Ph. : Special Tribunal for Lebanon

There is a very special aspect to this international Tribunal: the possibility of holding trials *in absentia*, in the absence of the accused. Do you feel this procedure is legitimate and useful for the Tribunal, while other tribunals, like the ICTY, had to wait 10-15 years for certain suspects to be arrested before they could be judged? Does it not make the work of the Defence too complicated?

François Roux: I disagree with some of my counterparts who are resolutely against trials *in absentia*. As I have often said, I consider being able to use it in certain circumstances an advance for international criminal justice. Moreover, the Lebanese are accustomed to such proceedings.

In absentia trials do, however, give rise to certain questions. Firstly, ethical ones: to preserve the right of the accused to request another trial if they decide to appear or are arrested, I forbid appointed counsel from attempting to contact the accused or their friends and family. Otherwise, the trial would no longer truly be *in absentia*, under which the counsel would receive no information from the accused. This gives rise to a question: can counsel propose an alternative theory to that of the Prosecutor, even if he feels that that alternative theory does not necessarily go in the direction the persons whose rights and interests he represents would want? The answer is not simple.

Paradoxically, trials *in absentia* in an adversarial format could be simpler in this respect than those in an inquisitorial procedure. Indeed, adversarial procedure takes place in several phases. In the first phase, the prosecutor calls their witnesses to the hearing to build the prosecution case, while they do not yet have one themselves: there is no investigating judge and therefore the parties have no common case. The

witnesses called by the prosecutor are cross-examined by the defence with the goal of undermining both their credibility and the substance of their testimony. The truth is supposed to emerge through this sometimes long and painstaking exercise of examination by the prosecutor and cross-examination by the defence. Once the prosecutor has finished presenting his evidence, the counsel can submit conclusions asking judges to observe that the prosecutor has not yet supplied sufficient evidence to necessitate the presentation of defensive arguments and that the accused should be acquitted on the grounds of there being “no case to answer”, as is the procedure practiced in England and in international criminal tribunals. General acquittal may also take place at this stage. In that case, counsel do not have to present an alternative theory.

However, some counsel have begun presenting alternative theories even during this phase, during the cross-examination of certain, particularly political, witnesses. Here too, our role is to listen to and identify any ethical questions that might arise. To consider this issue, I created a sort of committee of eminent persons, made up of former bar association leaders from Lebanon, France, Canada and England, which I can consult. Last year, I also recruited an external consultant, an experienced colleague trusted by the counsel, whom I asked to speak with all teams to identify any improvements that could be made to the work of the defence. This consultant had a confidentiality agreement with the counsel, except in the event of major difficulties in which case he was authorized to speak to me about them. This way, I can be sure there is no efficiency problem with the Defence.

The trial began in January 2014 and the Prosecution has still not finished presenting evidence. Is this not taking too long? Are arrangements for testimony ill-suited?

François Roux: I pointed out to the director of the Nuremberg Academy not long ago that the 1946 trials lasted only a few months. At the Special Tribunal for Lebanon, it is true that proceedings have already lasted 30 months and the Prosecution has only just begun entering into what the Defence considers to be the heart of their evidence.

Witnesses are sometimes heard for days or even weeks, whereas if a judge had led the debates – as authorized by Article 145 A of the Rules of Procedure and Evidence – they would be over and done with in a morning, with the same result. Similarly, even under the adversarial procedure, Article 127 of the Rules could have been applied, which provides that the judge may limit the duration of debates and the number of witnesses. That was what was done in Arusha, when I was a counsel before the ICTR. The Special Tribunal’s judges have not used this Article. However, the prosecution has reviewed its list: there were more than 500 witnesses initially, and there are now less than 400! It’s a start, but this late adjustment withdrew testimonies that the Defence had been working on for two years...

It is interesting to note that the “Contempt Judge” dealing with the second case of contempt, concerning the Al Akhbar newspaper, was seized of a request by the

Lebanese defence counsel for application of the procedure under Article 145 A of the Rules of Procedure and Evidence – the article providing for debates led by the judge, unlike the procedure under Article 145 B, where the parties conduct the debates, as applied in the main case by the Australian Trial Chamber President. Unfortunately, the judge did not agree to this request and Article 145 A has not, to date, been used in our Tribunal.

In order to speed up proceedings, the Chamber does accept written declarations, but requires a summary to be read at the hearing, which takes a lot of time.

There are also far too many protected witnesses at the international tribunals in my opinion, and the Special Tribunal for Lebanon is no exception. That is a real issue for the public nature of the debates, and it was disastrous for the Lubanga case before the ICC. Hearings were constantly held behind closed doors, which was condemned by counsel.

It was also a major difficulties at the International Criminal Tribunal for Rwanda. Certain witnesses who spoke in public before the Gacaca courts (a form of traditional justice reactivated in Rwanda to judge some genocide cases outside of ordinary judicial institutions) requested closed-door hearings and protection when they testified before the ICTR.

Another weakness inherited from adversarial procedure is that witnesses are hindered in expressing what they want to say and guided in accordance with a pre-determined strategy for which each party has prepared them. The term “strategy” is problematic in itself. You will rarely here a French lawyer talking about their “strategy”. A “line” of defence, perhaps, but not a defence strategy. This is not a game! Moreover, preparing witnesses and only questioning them on what supports one’s own strategy are notions that are very foreign to practitioners of continental law.

Similarly, I have a lot of reservations, like most lawyers, about the use of videoconferencing. If it is a question of saving money, then it would be better to simply reduce the number of witnesses. Instead of hearing 400 of them, select only 30. And instead of examining them for two weeks, take just one day. That way, costs would be cut considerably !



Ph. : M. Roux with M. Ban Ki-moon, UN Secretary-General

What will the Special Tribunal's international legacy be? Will it contribute to better suppression of terrorism by international criminal justice? Could the procedural improvements you call for not be more effectively trialled and implemented by creating new hybrid ad hoc tribunals than at the ICC, where nobody currently wishes to open the Pandora's Box of revising the Rome Statute?

François Roux: Perhaps the President of the International Criminal Court (ICC), who is Argentinian and of civil law culture, could get to grips with these procedural challenges using what already exists in the statutes; for at the ICC – and at the STL – the statutes are very well developed as regards rules enabling mixed systems. Above all, this is a question of implementation and interpretation. We do, of course, have to avoid making the same mistakes twice. The aim is not to totally transpose our continental system to the ICC or the STL, but rather to rebalance things and move away from a purely accusatory procedure which is poorly suited to international criminal justice. Remember the interview given by judge Claude Jorda⁴ [President of Pre-Trial Chamber I between 2004 and 2007] at the opening of the ICC's work. The stated objective was then to achieve the completion of a trial in 18 months: one year in the Pre-Trial Chamber, after which a report (a sort of indictment) would be sent to the Trial Chamber, which would complete the trial in 6 months. And he did so: he

⁴ The interview was given to the *Le Monde* newspaper. See also a retrospective assessment by the judge Jorda of what could or could not have been done in the interview at the following address: http://droits-fondamentaux.u-paris2.fr/sites/default/files/publication/entretien_regard_sur_la_cour_penale_internationale.pdf

referred the case with his report to the First Instance Chamber, presided at the time by the English judge Fulford. The latter, who was otherwise excellent, started from scratch using accusatory procedure. The result? The Lubanga trial went on forever: the six months stretched out to 10 years!

A judge more familiar with a more continental interpretation of the Statute and the Rules of Procedure and Evidence would, even now, be able to go faster, even with the Court's current Statutes, and judge Bruno Cotte has contributed considerably to improving the system.⁵ At the Special Tribunal for Lebanon, judge Cassese also tried to change things. There is room for manoeuvre, and nothing is lost. This is my call for francophone – and also Arab – lawyers: “Come and work in these courts. Not to impose one system over another in international law, but rather to contribute what you can. By taking the best from both systems, everyone can build the 22nd century's international criminal law together.” That is a wonderful undertaking.

President Cassese had already imagined a statute for a permanent tribunal for terrorist crimes. Although we agreed on many points, that was one of our few differences. Indeed, perhaps it would be better to entrust such crimes to a specialized chamber of the ICC. I also dream of a specialized chamber for environmental crimes, and another for public health crimes, with classifications to be created even if, in certain cases, these are not far from being crimes against humanity – including public health crimes. If the ICC reviewed its procedures and divided its budget by two, these projects could be envisaged; as things stand, they cannot.

And what legacy will the Special Tribunal leave in Lebanon, as regards law as well as public debate and pacification?

François Roux: This is a major challenge. I notice today that there is still too little academic comment in law schools of the decisions handed down by the Tribunal. There was, however, a very interesting conference organized by the Lebanese University, where the issues of procedural systems were set out clearly. Some came to say that the Special Tribunal for Lebanon should not be taken as a model, whereas others said the opposite. The slowness of the STL is not shocking for everyone in Lebanon, compared for example to how criminal trials are carried out there.

One day, the Prosecution called what it called “political witnesses” to the STL, as I said earlier. It was not entirely clear what the point was, but it has to be said that their testimony and the cross-examination, about which I was reserved – and even critical – may have been useful, if not for the trial itself then to fuel public debate in Lebanon. One must have the honesty to include that in considerations. If such witnesses had been able to come to former Chadian President Hisssein Habré's trial, they would no doubt have been useful too. But instead of taking six months like at the STL, that

⁵ See the interview with judge Leurent carried out during the Forum, on the subject of judge Cotte's experience at the ICC: http://forumdelajustice.fr/ihej_wp/wp-content/uploads/2015/02/Proces_Katanga_Simbikangwa_Entretien_Cotte_Leurent_fevrier_2015.pdf

would have taken a week before the Extraordinary African Chambers within the Senegalese courts, which apply civil law procedures.

Above all, when a tribunal is in the spotlight, it has to ensure it is not instrumentalized for partisan purposes and that it helps avoid stigmatizing whole communities. This is a point I find particularly important.

This is where the issue of guilty pleas comes in. A memorable example is when I asked the co-investigating judges at the Extraordinary Chambers in the Courts of Cambodia (ECCC) for a reconstruction, with the agreement of Duch, former director of the sinister S-21 prison, the latter asked to be allowed to address the victims. The judges agreed, although they wanted to avoid getting into pathos. He had prepared a beautiful statement, and was allowed to read it after some negotiating with the judges. He asked for forgiveness from the three survivors present at the reconstruction, and broke down in tears on the shoulder of one of the police officers who surrounded him. You have to remember that, in the days of the Khmers Rouges, submission was such that subordinates could not even make eye contact with their superiors. Yet here, Duch, former “supreme” commander of the S-21 prison, broke down in tears. That was an incredible scene for the Cambodians. He ended his statement saying: “I do not ask for forgiveness. I ask you to leave me the door open.” Two of the three victims stood up and asked to be allowed to tell the investigating judges that they had heard the words they had been waiting thirty years for, and were now in peace. They emphasized that “[they] were in peace now. Justice will do what it will, but we, we are in peace.” It is fantastic that international justice, even 30 years on, was able to allow such a moment to occur. It was a great moment for justice, which sadly didn’t receive much attention at the trial and did not reoccur at the hearing, which actually ended with rather a *coup de théâtre* [Duch’s U-turn whereby he complied with the strategy of his Cambodian counsel, who was pleading for acquittal]. But it did happen. From my point of view, it was as important as achieving the acquittal of an accused who had not taken part in atrocities in Rwanda. For example, I think it important to say that a Hutu, even a member of the Rwandan administration, was not necessarily guilty of homicide. I defended an accused before the International Criminal Tribunal for Rwanda, Ignace Bagilishema, whom I – like my whole team – was convinced he had done all he could to protect Tutsis. He had provided them with ID cards with modified ethnicity. Since many Tutsis could testify in his favour, the Prosecution, seriously envisaged prosecuting him for forgery and use of forged documents! What sort of a world do we live in? It must be said over and over again that not all Hutus are responsible for this horrific genocide. The same goes in Lebanon: not all Shia are responsible for the death of Prime Minister Rafik Hariri. People suffer a great deal from these sweeping generalizations and

stigmatizations. I think it is also the role of justice to establish the facts – and thus the truth.⁶

I think it is too soon to draw conclusions, and to know what this Tribunal has achieved in society. Greater hindsight is needed to draw more general lessons as to what the Tribunal could and should have done to avoid further outrages. It does seem to me, though, that political killings have fallen very markedly in Lebanon since the Tribunal came into being. Is that thanks to the Tribunal, or has the frame of mind changed? It is not impossible that we are partly responsible, and I hope so.

Lastly, it is clear that, for many years, political crimes were not brought before courts in Lebanon or did not lead to trials and judgements. The STL, although it has taken its time, is a means to break that cycle.

The interviewee spoke to Joël Hubrecht and Sophie-Victoire Trouiller in October 2015. Interview edited in spring 2016.

Published at www.ihej.org, on 29 June 2016
Corrections and formatting: Joël Hubrecht
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⁶ The TPIR produced an excellent film on this subject in 2005: “*Towards reconciliation*” by Thierry Leclercq and Bocar Sy, *Trials* series. It can easily be found online (YouTube).