



المحكمة الخاصة بلبنان
SPECIAL TRIBUNAL FOR LEBANON
TRIBUNAL SPÉCIAL POUR LE LIBAN

4th INTERNATIONAL MEETING OF DEFENCE OFFICES

25 & 26 November 2016
London, United Kingdom



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the legal profession®

SUMMARY REPORT

INTRODUCTION

1. The Fourth International Meeting of Defence Offices at the international criminal courts (the “Meeting”) took place on 25 and 26 November 2016 in London, United Kingdom. The Meeting was organised by the Defence Office of the Special Tribunal for Lebanon (STL) in cooperation with the International Bar Association (IBA).
2. The working sessions on Friday 25 November were held at Middle Temple, while those on Saturday 26 November were held at the Law Society.
3. This event brought together representatives from the Defence Offices and Sections of the International Criminal Court (ICC), the International Criminal Tribunal for the former Yugoslavia (ICTY), the Mechanism for International Criminal Tribunals (MICT) and the Special Tribunal for Lebanon (STL); lawyers before the international and national criminal courts; representatives of national bar associations (Criminal Bar of England and Wales, Geneva Bar, Paris Bar and the Beirut Bar, as well as the French National Bar Council) and international lawyers’ professional bodies (International Bar Association, International Criminal Court Bar Association, International Criminal Bar and the International Association of Lawyers) and also other international criminal justice actors and observers, in particular university professors working in this field (hereinafter “the participants”).



FORMAT OF THE MEETING

4. The Meeting opened with welcome addresses from Dr Mark Ellis, Executive Director of the International Bar Association (IBA), and from Mr François Roux, Head of Defence Office at the Special Tribunal for Lebanon, with an introductory speech by Judge Michael Topolski QC.
5. The Meeting began with an overview of the issues which have affected the Defence before the international tribunals over the past year, a session which was chaired by Mr Mark Fenhalls QC, Chairman *ex officio* of the Criminal Bar Association of England and Wales.
6. The Meeting continued with working sessions in small groups focussing on two specific projects: the establishment of a Joint Code of Ethics for all lawyers practising before the international criminal tribunals, and the publication of a Practical Guide to Investigations designed specifically for Defence Counsel and the members of their teams.
7. The results of the work of the working group on the Joint Code of Ethics and of the working group on the Practical Guide to Defence Investigations were presented respectively by Ms Roula El Derbas, Chef de Cabinet *a.i.* of the Defence Office of the STL, and by Mr Johann Soufi, Chief of the Legal Advisory Section of the Defence Office of the STL. These presentations were followed by a discussion with all the participants on those two projects.
9. The Meeting was closed by Mr David Hooper QC, President of the International Criminal Court Bar Association, and Mr François Roux, in the presence of Mr Klaus Rackwitz, Director of the International Nuremberg Principles Academy.



International Criminal Court (ICC)

10. **Mr Xavier-Jean Keïta** (Principal Counsel of the Office of Public Counsel for the Defence) spoke on the procedure for entering the guilty plea in the Al Madhi case, the first of its kind in the history of the ICC. He then evoked all the procedural issues, for the Defence, arising out of the reparations stage in the Lubanga, Katanga, Bemba and Al Madhi cases. Lastly, he shared his concerns regarding the monitoring of communications between two accused and their relatives.

11. **Caroline Buisman** (Lawyer at the Bars of Amsterdam and New York, and Counsel for the Defence at the ICC) regretted that the role of the Defence is still not sufficiently understood within the ICC or by the States Parties to the Rome Statute. She noted that this lack of comprehension is demonstrated from a budgetary perspective by a considerable difference in resources between those available to the Office of the Prosecutor and those allocated to the Defence. She stated she hoped that the new Bar Association at the ICC will alter that perception. Ms Buisman also emphasized several procedural difficulties encountered by the Defence, particularly the length and cost of the reparations proceedings or the lack of willingness on the part of the Prosecutor to genuinely conduct exculpatory investigations even though required to by his mandate.



International Criminal Tribunal for the former Yugoslavia/ Mechanism for ICTs

12. **Fiana Reinhardt** (Head of the Office of Legal Aid and Defence Matters at the ICTY/MICT) recalled that the Office of Legal Aid and Defence Matters is part of the Registry at the ICTY/MICT and has an essentially administrative role. She pointed out that despite the closure of the ICTR in 2015, and that to come of the ICTY in December 2017, her section continues to ensure administrative and financial support to 50 members of the Defence before the ICTY and 100 members of the Defence before the MICT.



Extraordinary African Chambers

13. **Mr Alain Werner** (Lawyer at the Geneva Bar, representing the Civil Parties before the Extraordinary African Chambers and prior to that before the Extraordinary Chambers in the Courts of Cambodia) recalled all the action undertaken to ensure the prosecution of Mr Hissène Habré for the crimes committed in Chad when he was in power. He emphasized the success of the Extraordinary African Chambers and insisted on the importance of regional mechanisms in relation to the prosecution of international crimes.

14. **Mr François Serres** (Lawyer at the Paris Bar and lawyer for Mr Hissène Habré) expressed his disagreement with the words of Mr Werner and insisted on the political and illegal nature of the Extraordinary African Chambers. He evoked the challenges of his role as lawyer chosen by Mr Habré and the strategy they have adopted together. Mr Serres considered that, contrary to Mr Werner's assertions, regional tribunals were not a satisfactory solution for prosecuting international crimes and pleaded for recourse to courts with universal jurisdiction such as the ICC.



Special Tribunal for Lebanon (STL)

15. **Héléyn Uñac** (Deputy Head of Defence Office of the STL) gave a brief outline of the main case and the contempt cases before the STL in 2016. She in particular noted that in May 2016, a major event occurred in the Ayyash et al. case: the death of Mr Badreddine, one of the key accused. She then illustrated what a Defence Office functioning as an independent Organ represents for the Defence, by way of two specific examples: the access Defence Counsel have to the Management Committee of the STL and the role of the Head of Defence Office with respect to the ethical issues related to the late Mr Badreddine.

16. **David Young** (Lawyer at the Bar of England and Wales, Counsel for the Defence at the STL), reported on the procedural difficulties arising from the death of the Accused Mr Badreddine in the context of the Ayyash et al. case. Mr Young also analysed the ethical and practical difficulties, for Defence Counsel of the STL, in presenting exculpatory material and possibly an alternative case to that of the Prosecution in the context of traditional adversarial proceedings. For that reason, he was grateful for the opportunity provided by the Trial Chamber which allowed his team to set out its case during the presentation of the Prosecution evidence in order to assist the judges in understanding the various arguments of the Defence with respect to this particularly technical and complex case.

JOINT CODE OF ETHICS

PROJECT

17. The idea of a Joint Code of Ethics for all lawyers practising before the international criminal tribunals (“Joint Code”) is the result of a joint observation: that of the lack of ethical norms common to all the international criminal tribunals and that of the wide variety of ethical norms and professional practices throughout the world.

18. The participants in the previous Meeting called for the establishment of a coherent set of ethical rules, respectful of cultural diversity and legal traditions, which would be applicable to all Defence Counsel practising before the international criminal courts.

WORK METHODOLOGY

19. A working group comprising lawyers and members of the Defence Offices (Ms Roula El Derbas, Mr Iain Edwards, Mr Xavier-Jean Keita, Ms Aurélie Roche-Mair, Ms Colleen Rohan and Mr François Roux) was tasked with drafting a Joint Code for all the lawyers practising before the international criminal courts, according to a two-stage work plan:

- ✚ Validation of the preamble, oath, fundamental principles of the profession and structure of the Code during the Fourth Meeting in London (November 2016),
- ✚ Finalisation and adoption of the Code during the Fifth Meeting in Nuremberg (November 2017).

20. With the assistance of interns and members of the Defence Office of the STL, the members of the group compiled and analysed beforehand a large number of national and international codes of ethics. To do so they created a database, accessible on line, which compiled together all of those documents.

21. The working group then met several times over the course of 2016 in order to draft (i) a preamble, (ii) an oath and fundamental principles of the profession and (iii) a structure adapted to the practice of the profession. This work was used to underpin the discussions in three workshops during the Fourth Meeting in London.



WORKSHOPS

Workshop 1: Philosophy and Preamble of the Joint Code

22. The participants in the first workshop discussed (i) the relevance and legal status of the documents which were used as a basis to draft the Preamble and (ii) the scope of application of the Joint Code proposed by the working group.

23. They proposed a number of amendments and agreed to continue their discussions throughout 2017 and to finalise their amendments before the Fifth Meeting in Nuremberg.

Workshop 2: Oath and Fundamental Principles of the Profession

24. Regarding the oath, the participants noted that the working group took the following points into consideration: (i) personal commitment; (ii) moral value; (iii) profession (iv) ethical attributes.

25. Regarding the fundamental principles of the profession, the participants noted that the working group took the following documents into consideration: (i) the Charter of Core Principles of the European Legal Profession, because of what it represents and its multidimensional nature and (ii) the Codes in force before the international criminal courts, given the legal language which is similar in several respects to the language envisaged for the Joint Code.

Workshop 3: Structure of the Joint Code

26. The participants in the third workshop noted that the structure of the Code was determined by the need to adopt an architecture which respects as far as possible the various legal systems that exist in the world.

27. The participants thus found that the structure adopted by the working group is adapted to the needs of lawyers’ professional practice but modified the order of some chapters.

CONTINUING THE WORK

28. Drawing on the results of the discussions and comments of the participants, the members of the working group will continue their work, will hold meetings in Nuremberg, Paris and Beirut and will consult a large number of professional bodies and international organisations (including the UN) in order to be able to deliver a finalised draft of the Joint Code, ready to be adopted at the end of 2017 during the 5th Meeting in Nuremberg (Germany).

PRACTICAL GUIDE TO DEFENCE INVESTIGATIONS

PROJECT

29. The idea of a Practical Guide designed to assist the members of the Defence teams in their investigations is the result of collective reflection which began at the First Meeting and intensified during the Third Meeting which was held in Geneva in 2015.

30. While successful investigations often play a crucial role in the outcome of a trial, it must be noted that Defence lawyers, however competent, are not always sufficiently equipped to respond to the numerous challenges posed by the investigations in the context of an international trial. Unlike the Office of the Prosecutor, they often do not have institutional memory, human resources and investigative means available which would allow them to meet those challenges.

31. Drawing on that observation, a working group comprising lawyers and members of the Defence Offices (Ms Caroline Buteau, Ms Caroline Buisman, Mr Vincent Courcelle-Labrousse, Mr Thomas Hannis, Ms Catherine Mabile, Ms Marie O'Leary and Mr Johann Soufi) met on several occasions between the 3rd and the 4th Meetings to determine the form and the key points of this Guide.

32. The approach retained by the working group is that of a guide for and by Defence practitioners, for each of the subject matters treated, illustrated with specific examples drawn from lawyers' experiences during their investigations. Those experiences have been gathered through an on-line questionnaire sent to all the participants.



WORK METHODOLOGY

33. The working group drew up a detailed plan comprising 13 chapters which was transmitted to all the participants in the Meeting. The participants were divided into 4 sub-groups charged with discussing and debating any practical issues relating to specific chapters of the Guide.

34. Thus the first group discussed the **legal and ethical norms** surrounding Defence investigations and the preliminary examination of the case. The second group discussed the drafting of the **investigation plan** and the **safeguarding of the confidentiality of the investigation**, in particular with respect to the protection of witnesses questioned and information gathered. The third group discussed the best conditions for **interviewing witnesses** and for ensuring that the information gathered is credible. Finally, the last group discussed the questions related to the **follow-up of investigative missions** and **cooperation issues**.

35. At the end of this work in sub-groups, the participants discussed together what their reflections had achieved, which will serve as a basis for the Guide to Investigations.

36. This work allowed a number of new difficulties to be identified related to the work of the Defence before the international tribunals and to provide responses drawn from the experience of practitioners. Thus the participants insisted on the importance of assistance from local resource persons or intermediaries, who have perfect knowledge of the field in order to properly conduct the Defence investigations. They nevertheless drew the attention of the working group to all the risks for the data and persons that investigations in the field represent, and they evoked a number of measures which might reduce those risks.

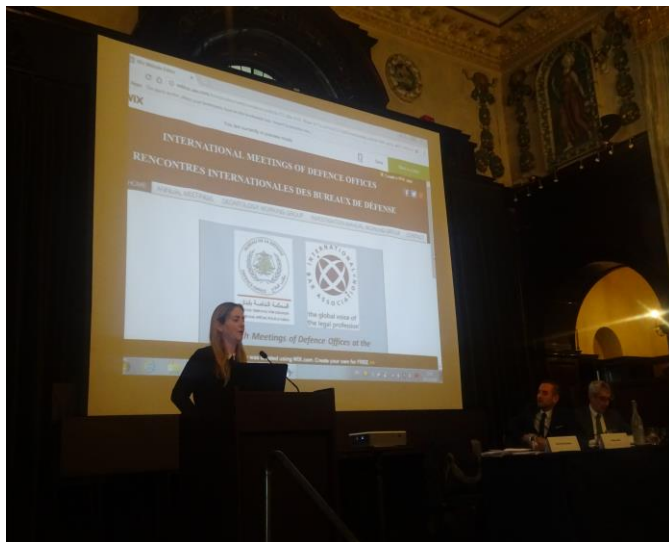
37. At the end of the Fourth Meeting, the members of the working group, and the participants in the Meeting who volunteered to assist them, will continue the work of drafting the Guide, inspired by all the discussions held during the Meetings and by the responses to the questionnaires transmitted to the participants. The Guide to Investigations will be ready for publication and distribution during our next Meeting in Nuremberg at the end of 2017.

INSTITUTIONALISING THE MEETINGS

CHANGE OF NAME FOR THE “MEETINGS”

38. Noting the enthusiasm of Defence professionals for these annual Meetings, extending beyond the Defence Offices and Sections, and the participation, now essential, of lawyers’ professional bodies such as the International Bar Association (IBA) or the International Criminal Court Bar Association (ICCBA), the participants proposed, and unanimously adopted, a change of name for the Meetings.

39. From 26 November 2016, and for all future events, the Meetings will now be called “**The International Meetings of the Defence at the International Criminal Courts**” in order to represent the variety of participants at this annual event, which has become a major occasion for the organisation of the Defence before the international criminal courts.



LAUNCH OF A WEBSITE FOR THE INTERNATIONAL MEETINGS

40. Ms Paula Lynch, case manager at the Defence Office of the STL, presented the website project, currently being finalised, which will include all the work of the Meetings and will serve in the future as the institutional showcase for this important annual event.

41. The website for the Meetings will include, in addition to the final statements and reports of the previous Meetings, all the databases and working documents of each of the working groups presented above, the working group on the Joint Code of Ethics and that on the Practical Guide to Defence Investigations.



Information about the Annual International Meetings of Defence Offices.



Information about organizers and partners.



The purpose of this annual event is to reflect on the best way to uphold and promote an effective defence within the international criminal justice system.

CONCLUSION

42. The Fourth Meeting was an immense success thanks to the invaluable cooperation of the International Bar Association (IBA) and to the constructive spirit of all the participants working all for a strong Defence within the international criminal tribunals.

43. The Fourth Meeting was concluded by the adoption of a Final Statement in which the participants lamented that the voice of the Defence has not been sufficiently heard both outside and within the first international criminal courts. They noted that in order to remedy that situation, the profession must stand united and speak with one voice and in that respect they welcomed the founding of the International Criminal Court Bar Association alongside the Office of Public Counsel for the Defence, an independent body, as well as the existence of a Defence Office as an Organ at the Special Tribunal for Lebanon.

44. In that perspective, the two specific projects – the establishment of a Joint Code of Ethics and the drafting of a Practical Guide to Defence Investigations – made significant headway during the Fourth Meeting, and the work will continue within the working groups so that the Joint Code and the Guide to Investigations may be adopted at the Fifth Meeting.

45. The Meeting was closed by **Mr David Hooper QC**, President of the International Criminal Court Bar Association (ICC-BA) who, after stating the significance of an event like that of the International Meetings of the Defence, insisted on how important it was for this event to continue after the end of the mandate of the STL. In that respect, he insisted that the International Criminal Court Bar Association should take up the torch of the organisation for the Meetings after the Defence Office of the STL ceases to exist.

46. **Mr Klaus Rackwitz**, Director of the International Nuremberg Principles Academy, was impressed by the quality of these Meetings and welcomed the initiative of such an event, which is necessary for the credibility and development of international criminal justice. With the aim of contributing to this initiative, he extended an invitation, on behalf of the Academy, for the Fifth Meeting to be held in Nuremberg, in the historic Tribunal's Courtroom 600.

47. **Mr François Roux**, accepted this invitation and warmly thanked all the participants for their contribution to the success of these Meetings and for their unflinching support in developing a united, independent and recognised Defence within the international criminal courts. He closed the Fourth Meeting saying he was looking forward to seeing the participants in Nuremberg in the autumn of 2017.

48. The Fifth International Meeting of the Defence will take place from **9 to 11 November 2017** in Courtroom 600 of the Nuremberg Tribunal (Germany).

Participants: Antonios Abou Kasm; Emile Aoun; Marie-Pier Barbeau; Alex Batesmith; Jean-Marie Biju Duval; Renaldo Bourgeois; Caroline Buisman; Vincent Courcelle-Labrousse; Philippe Currat; Christine Dahl; Mark Ellis; Olivier de Frouville; Saskia Ditisheim; Iain Edwards; Roula El Derbas; Natasha Fauveau Ivanovic; Mark Fenhalls; Julie Goffin; Nicolas Guillou; Thomas Hannis; Yasser Hassan; David Hooper; Irina Hrdličková; Dov Jacobs; Xavier-Jean Keïta; David Lévy; Vincent Lurquin; Paula Lynch; Catherine Mabile; Kate Mackintosh; Françoise Mathe; Marie O'Leary; David St John O'Mahony; Michiel Pestman; Marie-Pierre Poulain; Alex Prezanti; Klaus Rackwitz; Fiana Reinhardt; Aurélie Roche-Mair; François Roux; Sylvain Savolainen; François Serres; Olivier Schaub; Johann Soufi; Danae van der Straten; Michael Topolski; Héleyn Uñac; Alain Werner; David Young; Michael Duck.

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