

STL: Making Life Impossible for the Defense



Judge Robert Roth of the U.N. Special Tribunal for Lebanon (STL) is seen at the opening of the public hearing at the court in Leidschendam, near The Hague 13 June 2012. (Photo: Reuters - Robert Vos/Pool)

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“You asked us to be frank. There are some things that cannot be hidden regarding the evidence and witnesses on which the prosecutor has based the indictment. The situation is disastrous.”

On 27 November 2012, Defense Counsel Eugene O’Sullivan spoke these words to Pre-Trial Judge Daniel Fransen at the third Status Conference held by the Special Tribunal for Lebanon (STL), the body that deals with the assassination of former premier Rafiq al-Hariri.

The status conference is supposed to keep an eye on proceedings toward the trial to ensure it is not unduly delayed. In June 2012, the trial was provisionally scheduled to begin on 25 March 2013.

O’Sullivan, who was appointed to defend indictee Salim Ayyash, made clear the defense team’s suspicion that the prosecution has been abusing the tribunal’s procedures. Typical of these abuses is unjustifiably avoiding disclosure of evidence to the defense so as to deny it ample time to verify its credibility. He noted that the number of prosecution witnesses, which stood at 66 in October, has shot up to 500, while a decision had been made to delay submitting to the defense a report by ten experts.

For his part Guenael Mettraux – co-counsel to David Young, the lead counsel defending Assad Sabra – protested that “the logistical position of the defense is catastrophic.”

He later told the judge, “We are unable to do our work because of the prosecutor’s foot-dragging and procrastination. The time for excuses has passed, and you must make a decision to correct the situation.”

He added that the pre-trial brief presented by the prosecution was vague, declaring: “We don’t know what the allegations directed against our clients are...I think the prosecutor himself doesn’t know what the main case is, while the evidence he says supports his allegations is unconnected to those allegations. We want to understand the charges made against our clients. We were given lists of hundreds of witnesses and thousands of exhibits so as to inundate the defense team with evidence and then withdraw it later.”

The four lead defense counsels and their co-counsel all agree that the prosecution has been “inundating” them with massive amounts of supposed evidence – including more than 13,000 “exhibits” and the testimony of hundreds of witnesses – with the aim of preventing them from thoroughly checking it.

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Fransen chaired Tuesday's conference at the STL's headquarters in Leidschendam, a suburb of The Hague. Also present were defense lawyers Antine Korkmaz (for Mustafa Badreddin), O'Sullivan, Young, and Vincent Courcelle-Labrousse (defending Hussein Onneisi), and the lead legal representative for the victims Peter Haynes. Prosecutor Norman Farrell was supposed to attend the conference, but was absent for reasons unknown, and three members of the prosecution team deputized for him.

The head of the Defense Office, Francois Roux, earlier convened a meeting between the defense lawyers in The Hague to coordinate their positions and apprise them of some new developments.

Fransen appeared relaxed at the start of the gathering, opening the proceedings with an affable smile. But the defense lawyers seated to the right of the podium, joined by Roux, were visibly unhappy. They have much to be frustrated about. They suffer an acute shortage of staff and resources: while a large chunk of the STL's annual budget of over \$60 million goes to the prosecutor's office, the defense office's allocation is meager. They also suffer from a shortage of time: international and local investigators spent more than six years gathering evidence and identifying witnesses, but the defense lawyers haven't had enough time even to read the hundreds of witness testimonies or examine the details of the thousands of exhibits and expert reports. And the Lebanese authorities have not helped: defense lawyers complained to Judge Fransen that they had not been supplied with information they had requested from the Lebanese judiciary, thus holding up the preparation of their cases.

There was considerable tension at the status conference when these and other grievances were raised, especially when the prosecution team failed to give clear answers to questions posed by defense lawyers or the judge.

Korkmaz pointed to numerous flaws in the pre-trial brief, including that it was missing 20 supporting documents, noted that "there are 120-gigabytes worth of documents stored on discs", and warned that "because of this massive amount of information we are facing a serious problem." He added that in the specific case of his client, the prosecution had provided the defense with only five out of 16 reports, and had failed to pass on information about Badreddine's.

"Some of the replies I received from the prosecution to questions about the evidence seemed like they were from outer space," was Courcelle-Labrousse's observation on the cooperativeness of the defense office with regard to preparing for the trial.

O'Sullivan, for his part, wondered "we were told the prosecution has 13,000 exhibits, but under clause 91 there are 12,000 exhibits, so what's the reason for this difference?" He went on to affirm: "The prosecutor has refused to provide us with information, you honor. That is not satisfactory, and it is not good for justice. We will not be able to do our work if you do not take decisions on this matter."

Replying for the office the prosecution, lawyer Daryl Mundis said that although it had provided the defense lawyers with the pre-trial brief, it was experiencing some difficulty reviewing all the materials in its possession. But he maintained that all the evidence and witness statements would be revealed, that steps would be taken that same week, and that if there were any shortcomings they would be remedied.

Regarding the large number of witnesses, he explained that the prosecution did not intend to invite over 560 witnesses to The Hague, but some would provide written testimony or testify by video-link.

His colleague, Gregory Townsend, noted that prosecution had requested on November 14, to defer submitting some materials to the defense.

This article is an edited translation from the Arabic Edition. The quotes are based on the Arabic interpretation as official transcripts of the proceedings are yet to be released.