



The Pre-Trial Judge

Le Juge de la mise en état

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

BEFORE THE PRE-TRIAL JUDGE

Case No.: STL-11-01/I
The Pre-Trial Judge: Mr Daniel Fransen
The Registrar: Mr Herman von Hebel
Date: 28 June 2011
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**DECISION RELATING TO THE EXAMINATION OF THE INDICTMENT OF
10 JUNE 2011 ISSUED AGAINST MR SALIM JAMIL AYYASH, MR MUSTAFA
AMINE BADREDDINE, MR HUSSEIN HASSAN ONEISSI &
MR ASSAD HASSAN SABRA**

Office of the Prosecutor:
Mr Daniel A. Bellemare, QC



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I. Preamble

1. By way of this decision, the Pre-Trial Judge of the Special Tribunal for Lebanon (the “Pre-Trial Judge” and the “Tribunal” respectively) will rule on the merits of the indictment of 10 June 2011 (the “Indictment”), relating to the case concerning the attack against Mr Rafiq Hariri¹ (the “Hariri Case”), issued by the Prosecutor of the Tribunal (the “Prosecutor”) against Mr Salim Jamil Ayyash (“Mr Ayyash”), Mr Mustafa Amine Badreddine (“Mr Badreddine”), Mr Hussein Hassan Oneissi (“Mr Oneissi”) and Mr Assad Hassan Sabra (“Mr Sabra”). He will likewise rule on the Prosecutor’s request for non-disclosure of the Indictment to the public.

2. After having recalled the provisions that establish his jurisdiction (II), the principle stages of the procedure (III) and the counts selected by the Prosecutor (IV), the Pre-Trial Judge will define the criteria used for the examination of the Indictment (V) and will specify the legal elements to be applied to the case at hand (VI). Subsequently he will determine whether the offences referred to in the Indictment fall within the jurisdiction of the Tribunal (VII) and whether, in light of the material and the information provided by the Prosecutor, there is reason to confirm each count with regard to the suspects concerned. At that point, the Pre-Trial Judge will rule on the question of whether the Indictment meets the requirements with regard to the specific facts and grounds as required by the law in force and whether the cumulative charges contained in the Indictment are in accordance with this law (VIII). Lastly, the Pre-Trial Judge will rule on the request for non-disclosure of the Indictment (IX).

¹ The term “attack” comes from Article 1 of the Statute. It has no legal bearing with regard to the present decision.

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II. Jurisdiction of the Pre-Trial Judge

3. In accordance with Article 18 of the Statute of the Tribunal (the “Statute”) and Rule 68 of the Rules of Procedure and Evidence of the Tribunal (the “Rules”), the Pre-Trial Judge shall review the indictment submitted to him by the Prosecutor in order to confirm it, as appropriate. Furthermore, in accordance with Rule 74 of the Rules, upon request of the Prosecutor, the Pre-Trial Judge may, in the interests of justice and in exceptional circumstances, order the non-disclosure to the public of an indictment.
4. Consequently, the Pre-Trial Judge has jurisdiction to rule on the Prosecutor’s submissions.

III. Procedural background

5. By way of the submission of 17 January 2011, in accordance with Rule 68 of the Rules, the Prosecutor submitted to the Pre-Trial Judge for confirmation an indictment relating to the Hariri Case² together with supporting material. This indictment was issued against Mr Ayyash. In the order of 19 January 2011 (the “Order of 19 January 2011”), the Pre-Trial Judge recalled that, in accordance with Rule 96, paragraph (B) of the Rules, this indictment and this material should remain confidential for as long as is necessary.³
6. By way of the submission of 11 March 2011, in accordance with Rule 71, paragraph (A), point (i) of the Rules, the Prosecutor submitted for confirmation a

² Case No. STL-11-01/I, Submission of an Indictment for Confirmation (Rule 68); (1) Motion for an Arrest Warrant and Order for Transfer (Rule 79); (2) Urgent Motion for Non-Disclosure of the Indictment (Rule 74); and (3) Urgent Motion for an Order for *Interim* Non-Disclosure of the Identities of Witnesses Pending the Implementation of Appropriate Witness Protection Measures (Rules 77 and 115) (confidential and *ex parte*), 17 January 2011.

³ Case No. STL-11-01/I, Order on the Prosecutor’s Urgent Motions for Non-disclosure, 19 January 2011.

first amended version of this indictment which mentioned two further suspects: Mr Oneissi and Mr Sabra.⁴

7. By way of the motion of 6 May 2011, the Prosecutor filed a second amended version of the indictment, charging not only the three above-mentioned suspects, but also Mr Badreddine. In addition to the confirmation of this indictment, the Prosecutor requested that the application of the Order of 19 January 2011 be continued and that arrest warrants and orders for transfer and detention be issued (the "Motion").⁵
8. By way of letters dated 19 and 20 May 2011, in accordance with Rule 68, paragraph (I) of the Rules, read in the light of paragraph (F) of this same provision, the Pre-Trial Judge requested from the Prosecutor specific telephone data which forms the basis of the material submitted in support of the second amended indictment. On 20 May 2011, in response to this request, the Prosecutor forwarded this data to him.⁶
9. By way of the order of 9 June 2011, the Pre-Trial Judge requested the Prosecutor to amend the second amended version of the indictment in order to divide the sixth and seventh counts, containing respectively two offences, into separate counts.⁷ On 10 June 2011, in response to this order, the Prosecutor submitted a new version of the indictment, replacing the previous ones, which reflected the changes requested by the Pre-Trial Judge and included some minor

⁴ Case No. STL-11-01/I, Submission of an Amended Indictment for Confirmation (Rule 68 and 71) and Motion for Arrest Warrants and Orders for Transfer (Rule 79) (confidential and *ex parte*), 11 March 2011.

⁵ Case No. STL-11-01/I, Combined Motion of the Prosecutor; (1) Submission of an Indictment for Confirmation (Rule 68), (2) Motion for Continuation of Pre-Trial Judge's Order Dated 19 January 2011 Pursuant to Rule 96 (B), and (3) Motions in the Event of Confirmation of the Indictment Pursuant to Rules 74, 77 and 79 (confidential and *ex parte*), 6 May 2011.

⁶ Case No. STL-11-01/I, Submission of Additional Indictment Supporting Material as Requested by the Pre-Trial Judge under Rule 68(I) (i) (confidential and *ex parte*) », 20 May 2011.

⁷ Case No. STL-11-01/I, Order for Clarification of the Indictment (confidential and *ex parte*), 9 June 2011.

modifications.⁸ In this decision, reference will be made exclusively to this third amended version, using the term “Indictment”.

10. In accordance with Rule 68, paragraph (B) of the Rules, the Prosecutor filed each indictment with supporting material. Furthermore, in the Motion of 6 May 2011, he stated that he wished to withdraw all the material forwarded to the Registry of the Tribunal in support of the previous versions of the Indictment and file all the material anew at the time of the submission of the second amended version of the Indictment.⁹ It is only this material that henceforth forms part of the file.
11. At the time of submitting the Indictment on 10 June 2011, the Prosecutor attached additional supporting material. By way of the Order of 14 June 2011, the Pre-Trial Judge rejected this material on the ground that its filing had not been authorised pursuant to Rule 68, paragraph (I) of the Rules.¹⁰ He invited the Prosecutor, if he so wished, to submit them according to the authorised procedure. To date, the Prosecutor has not deemed it necessary to do so.
12. By virtue of the authority deriving from the above-mentioned provisions, and most specifically from Rule 68, paragraphs (E) and (F) of the Rules, the Pre-Trial Judge held meetings with representatives from the Office of the Prosecutor on 7 March, 7 April, 28 April, 7 June and 15 June 2011, in order to put forward observations and obtain clarification as well as information with regard to the different versions of the indictment and the evidentiary material which was submitted in support of them.

⁸ Case No. STL-11-01/I, Submission of Amended Indictment for Confirmation under Rule 71 and in Response to the Order of the Pre-Trial Judge Dated 9 June 2011 (confidential and *ex parte*), 10 June 2011.

⁹ Motion, paras 9-10.

¹⁰ Case No. STL-11-01/I, Order for Dismissal of the Additional Material Filed by the Prosecutor on 10 June 2011 (confidential and *ex parte*), 14 June 2011.

IV. The Counts

13. Pursuant to Articles 2, 3 and 11 of the Statute together with the relevant provisions of the Lebanese Criminal Code¹¹ and the Lebanese Law of 11 January 1958 on “Increasing the penalties for sedition, civil war and interfaith struggle” (the “Law of 11 January 1958”),¹² the Prosecutor has charged:

- i. Mr Ayyash, Mr Badreddine, Mr Oneissi and Mr Sabra, individually and collectively, as co-perpetrators, of conspiracy aimed at committing a terrorist act (Count 1);
- ii. Mr Ayyash and Mr Badreddine, individually and collectively, as co-perpetrators, of committing a terrorist act by means of an explosive device (Count 2);
- iii. Mr Ayyash and Mr Badreddine, individually and collectively, as co-perpetrators, of intentional homicide of Rafiq Hariri with premeditation by using explosive materials (Count 3);
- iv. Mr Ayyash and Mr Badreddine, individually and collectively, as co-perpetrators, of intentional homicide with premeditation, by using explosive materials, of 21 persons listed in Annex A of the Indictment (Count 4);
- v. Mr Ayyash and Mr Badreddine, individually and collectively, as co-perpetrators, of attempted intentional homicide with premeditation, by using explosive materials, of 231 persons listed in Annex B of the Indictment (Count 5);

¹¹ Arts 188, 189, 200, 212, 213, 219 (4) and (5), 270, 314, 547 and 549 (1) and (7) of the Lebanese Criminal Code.

¹² Arts 1, 6 and 7 of the Lebanese Law of 11 January 1958.

- vi. Mr Oneissi and Mr Sabra, individually and collectively, as being accomplices to committing a terrorist act by means of an explosive device, against Rafiq Hariri (Count 6);
- vii. Mr Oneissi and Mr Sabra, individually and collectively, as being accomplices to intentional homicide with premeditation, by using explosive materials, against Rafiq Hariri (Count 7);
- viii. Mr Oneissi and Mr Sabra, individually and collectively, as being accomplices to intentional homicide with premeditation, by using explosive materials, of the 21 persons listed in Annex A of the Indictment (Count 8);
and
- ix. Mr Oneissi and Mr Sabra, individually and collectively, as being accomplices to attempted intentional homicide with premeditation, by using explosive materials, of 231 persons listed in Annex B of the Indictment (Count 9).

V. Criteria for reviewing the indictment

14. In the context of reviewing an indictment, the Pre-Trial Judge must in the first instance verify whether the offences referred to therein fall within the jurisdiction of the Tribunal.¹³ He must then determine whether, on the basis of the material provided in support of the indictment, a prima facie case exists against the suspects.¹⁴
15. In this respect, the Statute and the Rules lay down, in a general manner, the criteria that the Pre-Trial Judge must take into account in order to conduct this

¹³ Cf. in particular, ICTY, *The Prosecutor v. Kordić et al.*, Case No. IT-95-14-I, Decision on the Review of the Indictment, 10 November 1995, p. 4 (*Kordić Decision*).

¹⁴ Rule 68 (F) of the Rules.

review and decide whether or not the counts contained in the Indictment shall be confirmed. Article 18, paragraph 1 of the Statute is worded as follows:

If satisfied that a *prima facie case* has been established by the Prosecutor, [the Pre-Trial Judge] shall confirm the indictment. If [the Pre-Trial Judge] is not so satisfied, the indictment shall be dismissed. (Italics added)

16. Rule 68, paragraph (F) of the Rules mentions that:

The Pre-Trial Judge shall examine each of the counts in the indictment and any supporting materials provided by the Prosecutor to determine whether a *prima facie case* exists against the suspect. (Italics added)

17. Rule 68, paragraph (B) of the Rules specifies that, in order to issue an indictment, the duties of the Prosecutor are as follows:

The Prosecutor shall, if satisfied in the course of an investigation that there is sufficient evidence that a suspect has committed a crime that may fall within the jurisdiction of the Tribunal, file an indictment for confirmation by the Pre-Trial Judge, together with supporting material.

18. The Statute and the Rules thus employ the expression “*prima facie case*”, (in French respectively either *au vu des présomptions* or *de prime abord*) to set forth the criteria to be adopted by the Pre-Trial Judge at the time of reviewing the indictment. They do not, however, offer any clarity with regard to the meaning to be attributed to this term. In this context, the meaning must be determined in the light of the general principles of interpretation of the texts of the Statute and the Rules.

19. For this reason, in order to interpret the provisions of the Statute, consideration should be given, in addition to the customary principles established by Articles 31 to 33 of the Vienna Convention on the Law of Treaties (the “Vienna Convention”),¹⁵ to statements made by representatives of the Member States of the Security Council of the United Nations (“Security Council” and “UN” respectively) at the time of the adoption of Security Council resolution 1757

¹⁵ The Vienna Convention on the Law of Treaties done at Vienna on 23 May 1969 and which entered into force on 27 January 1980 (United Nations Treaty Collection, vol. 1155, p. 331).

(2007).¹⁶ It is also important to take into account other resolutions on the same issue as well as the subsequent practice of the UN and of States affected by those given resolutions.¹⁷

20. With regard to the interpretation of the provisions of the Rules, Rule 3 sets forth that:

- A) The Rules shall be interpreted in a manner consonant with the spirit of the Statute and, in order of precedence, (i) the principles of interpretation laid down in customary international law as codified in Articles 31, 32 and 33 of the Vienna Convention on the Law of Treaties (1969), (ii) international standards on human rights (iii) the general principles of international criminal law and procedure, and, as appropriate, (iv) the Lebanese Code of Criminal Procedure.
- B) Any ambiguity that has not been resolved in the manner provided for in paragraph (A) shall be resolved by the adoption of such interpretation as is considered to be the most favourable to any relevant suspect or accused in the circumstances then under consideration.

21. It follows that the meaning of the above-mentioned expression “prima facie case” should be determined from the perspective of the principles set out in the Vienna Convention and, more specifically, by taking into account the ordinary meaning of this term interpreted in the context of the provisions of the Statute and the Rules, its object and its purpose.¹⁸ The case law of other international criminal courts is, in this respect, particularly informative insofar as these tribunals were also established by Security Council resolutions.

¹⁶ Resolution 1757 (2007) of the Security Council to which is attached in the Annexes the Agreement between the United Nations and the Lebanese Republic on the establishment of a Special Tribunal for Lebanon and the Statute, 30 May 2007.

¹⁷ The International Court of Justice (the “ICJ”), Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo, Advisory Opinion, 22 July 2010, para. 94.

¹⁸ Art 31 of the Vienna Convention on the Law of Treaties.

1. Ordinary meaning

22. The French version of the provisions of the Statute and the Rules refers indiscriminately to either the term *au vu des présomptions* or the term *de prime abord* when setting forth the criteria to be adopted for the review of an indictment. The English version instead uses the Latin expression “prima facie”. According to conventional legal dictionaries, these expressions all have one and the same meaning, namely “at first sight”.¹⁹

2. Context

23. Article 18 of the Statute is worded similarly to Article 18 of the Statute of the International Criminal Tribunal for Rwanda (“ICTR”) and Article 19 of the Statute of the International Criminal Tribunal for the former Yugoslavia (“ICTY”) whose procedures, in particular those prior to trial, have influenced those in force at the Tribunal.²⁰ In this context, the interpretation given by the ICTR and the ICTY to the texts of the statutes governing their jurisdiction and operation can be used as a reference point to determine the exact meaning of the expression “prima facie case” and to define the criteria to be applied by the Pre-Trial Judge for the review of the indictment, at this stage of the proceedings. As such, according to prevailing case law of the ICTY, after having verified whether the acts of which the suspect is accused can be considered offences that fall within the jurisdiction of the Tribunal, the judge must determine whether the

¹⁹ Cf. “prima facie” in B. Garner (ed.), *Black’s Law Dictionary*, 9th ed., St. Paul, United States, 2009, p. 1310: “at first sight” or “on first appearance but subject to further evidence or information”. Cf. also “prima facie” in L. Beaudoin (ed.), *Les mots du droit*, 2nd ed., Cowansville, Canada, 2004, p. 166: “*de prime abord*” or “*à première vue*”.

²⁰ Neither the confirmation procedure followed by the International Criminal Court (the “ICC”) (cf. Arts 53, 58 and 61 of the Statute and Rules 121-130 of the Rules of Procedure and Evidence of that court) nor that followed by the Extraordinary Chambers in the Courts of Cambodia (cf. Arts 16 and 23 of the law of 10 August 2001 establishing these Chambers) is similar to that of the Tribunal. Indeed, the first relies on an adversarial debate between the Prosecutor and defence attorneys, which does not exist with regard to the Tribunal’s procedure. As for the second, this is based on the Cambodian procedural system, which is fundamentally different from that in force at the Tribunal.

evidence submitted by the Prosecutor in support of the counts is sufficient to prosecute this suspect. In this respect, the ICTY specifies that:

It is sufficient that from an overall view of the evidence which he has collected and which covers all the ingredients of the offence, including the necessary legal implications which he seeks can be drawn therefrom, a clear suspicion of the accused being guilty of the crime arises. The evidence, therefore, need not be overly convincing or conclusive; it should be adequate or satisfactory to warrant the belief that the suspect has committed the crime.²¹

24. Similarly, the ICTR points out that:

[...] the reviewing judge must be satisfied that the material facts pleaded in the indictment establish a prima facie case and that there is evidence available which supports these material facts.²²

3. Object and purpose

25. It would be helpful to look briefly at the basis of the procedure for confirmation of the indictment. The procedure sets out to guarantee, first of all, that no person can be prosecuted or tried unless an impartial and independent judge has first been able to ensure that the indictment relating to them is based on credible and sufficient evidence in order to bring criminal proceedings against him. As the ICTY noted:

[...] the Judge is then discharging a function akin to that of an examining magistrate (*juge d'instruction*) or of a grand jury helping to ensure that the prosecution will not be frivolous or wilful.²³

26. From this viewpoint, the powers of the Pre-Trial Judge are limited. He cannot under any circumstance act as a substitute for the trial and appeal court judges, who alone bear the responsibility of determining whether, at the end of the adversarial proceedings, the evidence against the accused has been established and whether he is guilty beyond reasonable doubt of the offences of which he is

²¹ ICTY, *The Prosecutor v. Rajić*, Case No. IT-95-12-I, Review of the Indictment, 29 August 1995, p. 7.

²² ICTR, *The Prosecutor v. Bikindi*, Case No. ICTR-2001-72-I, Confirmation of the Indictment, 5 July 2001, p. 2.

²³ ICTY, *Kordić* Decision, p. 4.

charged.²⁴ At this initial stage of the proceedings, the Pre-Trial Judge's only task is to review the indictment from the perspective of the evidence gathered and submitted by the Prosecutor in order to determine whether a prima facie case exists against the suspect.

27. The procedure for confirmation of an indictment is also intended to best protect the fundamental rights of any accused, guaranteed under Article 16, paragraph 4 point (a) of the Statute, "to be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge against him or her".²⁵ This right rests on the notion that a person, at the time of being charged, must be in full possession of the necessary facts to allow him to understand the charges laid against him in order to prepare his defence and, if need be, challenge the legality of his detention. In this perspective, when reviewing the Indictment within the context of the confirmation procedure, the Pre-Trial Judge must ascertain that the Indictment effectively meets the requirements that it be specific and contain precise grounds.

4. Conclusion

28. It follows from the above that, in accordance with the ordinary meaning of the terms of Article 18 of the Statute and Rule 68 of the Rules, the context within which the provisions fall and their object and their purpose, the Pre-Trial Judge should, for the purposes of reviewing the Indictment, determine whether:
- i. the offences referred to in the Indictment fall within the jurisdiction of the Tribunal, as defined by Articles 1 to 3 of the Statute;

²⁴ Art. 16, para. 3 (c) of the Statute and Rule 148 (A) of the Rules.

²⁵ This provision is modelled on Art. 14 (3) of the International Covenant on Civil and Political Rights and on Art. 5 (2) of the European Convention on Human Rights ("ECHR"). As is specified by the European Court of Human Rights with regard to this provision, any person must be told "in simple non-technical language that he can understand, the essential legal and factual grounds for his arrest, so as to be able if he sees fit, to apply to a court to challenge its lawfulness in accordance with paragraph 4 [of Art. 5]". (ECHR, *Fox, Campbell and Hartley v. The United Kingdom*, Judgment, 30 August 1990, Series A no.182, para. 40).

- ii. on reviewing the material included in support of the Indictment, a prima facie case based on sufficient and credible evidence exists to institute proceedings against the suspects; and
- iii. the Indictment is sufficiently specific and contains grounds which allow each suspect to understand the charges laid against him.

VI. Applicable law

29. On reading the counts in the indictment of 17 January 2011, the Pre-Trial Judge considered that, in the interests of justice, several questions with regard to the interpretation of the applicable law would have to be determined *in limine litis* by the Appeals Chamber of the Tribunal (the “Appeals Chamber”), pursuant to Rule 68, paragraph (G) of the Rules.²⁶ These questions related to the offences, modes of responsibility, and cumulative charging and plurality of offences. Indeed, the provisions of the Statute relating to these questions were open to differing interpretations. Should all or part of the Indictment have been confirmed without having clarified these provisions at this stage of the proceedings, the proceedings might have commenced on incorrect legal bases which would not have been rectified until the end of the proceedings, when the ruling was issued by the Appeals Chamber. This method of proceeding, in addition to being time-consuming and costly, would not have assisted the proceedings in terms of coherency and transparency, nor would it have been in the interest of the suspects. Indeed, a specific definition of the applicable law prior to instituting proceedings would have allowed the suspects to gain a better understanding of the scope of the counts against them and prepare their defence accordingly.²⁷

²⁶ Case No. STL-11-01/I/AC/R176bis, Order on Preliminary Questions addressed to the Judges of the Appeals Chamber pursuant to Rule 68, paragraph (G) of the Rules of Procedure and Evidence, 21 January 2011, para. 1.

²⁷ *Ibid.*, para. 2.

30. In this context, on 21 January 2011, the Pre-Trial Judge asked the Appeals Chamber a number of preliminary questions relating to the offences and modes of responsibility referred to in the indictment of 17 January 2011 with a view to issuing, in full knowledge of the facts, a decision relating to its confirmation. He did not deem it necessary to ask further questions when the amended versions of the Indictment were filed.
31. On 16 February 2011, in light of the written and oral observations submitted by the Prosecutor and by the members of the Defence Office, by way of an interlocutory decision, the Appeals Chamber replied to the questions referred to above (the “Interlocutory Decision”).²⁸ For the purposes of the present decision, it should be recalled that the Appeals Chamber concluded as follows:
- i. With regard to the notion of terrorist act:
- Article 314 of the Lebanese Criminal Code and Article 6 of the Law of 1958, interpreted in the light of international rules binding upon Lebanon, provided such interpretation does not run counter to the principle of legality, require the following elements for the crime of terrorism [...]:
- a. the volitional commission of an act or the credible threat of an act;
 - b. through means that are likely to pose a public danger;²⁹ and
 - c. with the special intent to cause a state of terror.

²⁸ The Pre-Trial Judge recalls that the Appeals Chamber made “legal findings *in abstracto* (in the abstract), without any reference to facts” (case no. STL-11-01/I/AC/R176bis, Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, 16 February 2011, para. 8).

²⁹ The Appeals Chamber “notes that whether certain means are liable to create a public danger within the meaning of Article 314 should always be assessed on a case-by-case basis, having regard to the non-exhaustive list in Article 314 as well as to the context and the circumstances in which the conduct occurs. This way, Article 314 is more likely to be interpreted in consonance with international obligations binding upon Lebanon.” (*Ibid.* Disposition, para. 3).

If the perpetrator of a terrorist act uses for example explosives intending to kill a particular person but in the process kills or injures persons not directly targeted, then that perpetrator may be liable for terrorism *and* intentional homicide (or attempted homicide) if he had foreseen the possibility of those additional deaths and injuries but nonetheless willingly took the risk of their occurrence (*dolus eventualis*, namely advertent recklessness or constructive intent) [...].³⁰

ii. With regard to the notion of conspiracy:

Article 270 of the Lebanese Criminal Code and Article 7 of the Law of 11 January 1958 provide the following elements for the crime of conspiracy [...]:

- a. two or more individuals;
- b. who conclude or join an agreement of the type described in paragraph 196 [of the Interlocutory Decision];
- c. aiming at committing crimes against State security (for purposes of this Tribunal, the aim of the conspiracy must be a terrorist act);
- d. with an agreement on the means to be used to commit the crime (which for conspiracy to commit terrorism must satisfy the “means” element of Article 314) [of the Lebanese Criminal Code]; and
- e. criminal intent relating to the object of the conspiracy.³¹

iii. With regard to intentional homicide:

Articles 547-549 of the Lebanese Criminal Code require the following elements for the crime of intentional homicide [...]:

- a. an act or culpable omission aimed at impairing the life of a person;
- b. the result of the death of a person;
- c. a causal connection between the act and the result of death;
- d. knowledge of the circumstances of the offence (including that the act is aimed at a living person and conducted through means that may cause death); and
- e. Intent to cause death, whether direct or *dolus eventualis*.³²

³⁰ *Ibid.*, paras 3-4.

³¹ *Ibid.*, para. 8.

³² *Ibid.*, para. 11.

iv. With regard to attempted homicide:

Articles 200-203 of the Lebanese Criminal Code require the following elements for the crime of attempted homicide [...]:

- a. a preliminary action aimed at committing the crime (beginning the execution of the crime);
- b. the subjective intent required to commit the crime, and
- c. the absence of a voluntary abandonment of the offence before it is committed.³³

v. With regard to modes of responsibility:

An evaluation is to be made between international criminal law and domestic Lebanese law when the Tribunal applies modes of criminal responsibility. Should no conflicts arise, Lebanese law should be applied. However, if conflicts do arise, then, taking account of the circumstances of the case, the legal regime that most favours the accused shall be applied [...].³⁴

vi. With regard to cumulative charging:

Cumulative charging should only be allowed when separate elements of the charged offences make those offences truly distinct and where the rules envisaging each offence relate to substantially different values. The Tribunal should prefer alternative charging where a conduct would not permit multiple convictions. Modes of liability for the same offence should always be charged in the alternative [...].³⁵

vii. With regard to aggravating circumstances:

Taking into account that the intended result in the crime of terrorism is to spread terror, and not necessarily to cause death or injury, deaths caused by terrorism become aggravating circumstances, pursuant to Article 6 of the Law of 11 January 1958.³⁶

[...] under Lebanese law the results of terrorist acts such as deaths, destruction of property and other impacts designated in Article 6 of the Law of 11 January 1958 constitute an aggravating circumstance of the terrorist act (not a material element) [...].³⁷

³³ *Idem.*

³⁴ *Ibid.*, para. 13.

³⁵ *Ibid.*, para. 15.

³⁶ Interlocutory Decision, para. 59.

³⁷ *Ibid.*, para. 145.

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This reasoning stems from the fact that premeditation, provided for in Article 549 of the Lebanese Criminal Code, is not an element of the crime but an aggravating circumstance of the sentence. Therefore it does not enter in the evaluation of the crime but becomes relevant at a later stage, in the determination of the sentence.³⁸

To sum up, intentional homicide based on a direct intent leading to the death of the targeted victim falls under Articles 547 and 188 of the Lebanese Criminal Code. Intentional homicide based on *dolus eventualis* leading to the death of unintended victims falls under Articles 547 and 189 of the Code. Premeditation as an aggravating circumstance is applicable to both forms of the crime (with direct intent or *dolus eventualis*) and to all perpetrators and accomplices who share the premeditation.³⁹

VII. Evaluating the jurisdiction of the Tribunal

32. The Indictment concerns the facts surrounding the attack carried out against Rafiq Hariri on 14 February 2005 which, pursuant to Article 1 of the Statute, fall under the jurisdiction of the Tribunal. In addition, as mentioned in section IV above, this Indictment charges the suspects with conspiracy aimed at committing a terrorist act, as co-perpetrators (Count 1), of committing a terrorist act, as co-perpetrators (Count 2), of intentional homicide, as co-perpetrators (Counts 3 and 4), of attempted intentional homicide, as co-perpetrators (Count 5), of being an accomplice in committing a terrorist act (Count 6), being an accomplice in intentional homicide (Counts 7 and 8) and of being an accomplice in attempted intentional homicide (Count 9). These offences are all referred to in Article 2, paragraph (a) of the Statute and Article 3, paragraph (3), point 1 of the Statute, in Articles 188, 189, 200, 212, 213, 219, paragraphs (4) and (5), 270, 314, 547, 549, paragraphs (1) and (7) of the Lebanese Criminal Code and in Articles 1, 6 and 7 of the Law of 11 January 1958.
33. As a consequence, the Pre-Trial Judge considers that the facts mentioned in the Indictment together with the charges and modes of responsibility laid against the suspects do indeed fall within the jurisdiction of the Tribunal.

³⁸ *Ibid.*, para. 170.

³⁹ *Ibid.*, para. 175.

VIII. Evaluation of the counts

1. Preliminary observations

34. The evidentiary material provided in support of the Indictment amounts to more than 20,000 pages. It comprises a report relating to telephone communications made by the persons implicated in the attack carried out against Rafiq Hariri (the “Communications Report” or the “Report”), lists of these communications, official records of witness interviews, forensic police reports, video recordings, photographs, death certificates and other documents. Of this supporting material, the Report is essential in that it puts into perspective all the evidence gathered by the Prosecutor. It is itself based on a large number of documents and, in particular, on lists of telephone communications and witness statements.
35. In this regard, the Pre-Trial Judge notes that, during the meetings of 7 March and 7 April 2011, which were held pursuant to Article 68, paragraphs (E) and (F) of the Rules, in reply to the question put to him on this subject, the Prosecutor stated that the Communications Report was an expert report. The Pre-Trial Judge took account of this when he first evaluated the evidentiary material submitted in support of the Indictment. He nevertheless does not deem it necessary, at this stage in the proceedings, to examine whether this Report fulfils the requirements set by international case law to be regarded as an Expert Report. The Pre-Trial Judge notes, however, that this Report was drawn up by an employee from the Office of the Prosecutor and that, as stated in this Report, it contains information which goes beyond the scope of analysis and interpretation of telephone data which is relevant to the skills of that person.⁴⁰

⁴⁰ Communications Report, para. 4.

2. Relevant facts

36. In this section, the Pre-Trial Judge will refer, among the facts set out in the Prosecutor's file, to those he considered to be the most relevant, in order to decide upon the counts. These facts relate to the manner in which the attack took place and how responsibility for it was claimed, the analysis of the telephone data and the identification of the suspects, their identities and their roles.
37. To begin with, the Pre-Trial Judge notes that, as the Prosecutor himself has emphasised, the file relies to a large extent on circumstantial evidence "which works logically by inference and deduction".⁴¹ It is only by having a comprehensive view of this evidence that it is possible to understand the attack of 14 February 2005, the events which preceded it and those which followed, as well as the manner in which the suspects were allegedly implicated in them. In light of his verifications, the Pre-Trial Judge deems that this evidence is sufficiently credible and relevant to review the Indictment initially. In order to lead to a conviction, it will nevertheless, if applicable, have to be shown to be established beyond reasonable doubt by the Trial Chamber.⁴²
38. Finally, the Pre-Trial Judge emphasises that the alleged responsibility of the suspects, as co-perpetrators or accomplices, has been examined by taking account solely of the criteria established by the Appeals Chamber. As such, he has deemed that he should not decide on their "position in the hierarchy" as described by the Prosecutor in paragraph 5 of the Indictment.

⁴¹ Indictment, para. 3.

⁴² Art. 16, paragraph 3 (c) of the Statute.

a) The attack and how responsibility for it was claimed

39. On 14 February 2005 at 12:55, Mr Hariri, the former Prime Minister of Lebanon, died as a result of the detonation of a large quantity of explosives – approximately equivalent to 2500 kg of TNT – which had been concealed in a Mitsubishi Canter van, in the centre of Beirut, Lebanon. This suicide attack also caused the death of 21 other persons and injured at least 231 persons, in addition to partially destroying several buildings. Shortly after the attack, a video cassette accompanied by a letter claiming responsibility was received by the Al-Jazeera press agency in Beirut. This video cassette, broadcast on television during the day by that press agency, shows an unknown member of the public, called Mr Abu Adass, claiming responsibility for the attack in the name of a supposedly fictional fundamentalist group called “Victory and Jihad in Greater Syria” and announcing that further similar attacks would follow. However, without identifying the suicide bomber, the investigation was able to demonstrate that the suicide bomber was not Mr Abu Adass.

b) Analysis of the telephone data and the identification of the suspects

40. The records and analysis of the telephone data of 14 February 2005 appear to have enabled the Prosecutor to identify [REDACTED] mobile telephones which appear to have been communicating at key times and locations in relation to the attack. These [REDACTED] telephones, the users of which were apparently registered under false names, were reportedly used solely to communicate among themselves for the whole time they were active. For purposes of comprehension, the Prosecutor has referred to the covert network consisting of these telephones as the “Red Network”.

41. Later, using the technique of “co-location”,⁴³ the Prosecutor identified other mobile telephones which were apparently also used by the “Red Network” phone users. These telephones were also registered under false names and some were connected solely, or to a large extent, with each other, enabling them to be used in covert fashion. The Prosecutor appears to have identified four other telephone networks in this way that he has referred to as “Green”, “Blue”, “Yellow” and “Purple”.
42. In order to determine the identity of the users of the telephones for all these networks, by continuing to make use of the “co-location” technique, the Prosecutor identified the personal phones of a number of these users. These phones were used for day-to-day matters, to call people whose identity is more easily traced as they did not behave in a covert manner. The Prosecutor has referred to these personal mobile phones as “PMP”.
43. The identity of these “PMP” users was searched for based on the contacts called the most frequently, the content of text messages, whether the phone was active or ceased being used and the use of the mobile phones near locations where these persons were allegedly often to be found, as well as documentary evidence, statements or other types of evidence. Once a personal phone had been attributed to a particular person, the other phones belonging to one or more network(s) that were in “co-location” with this phone could be attributed to this same person.
44. At the end of his investigations, the Prosecutor concluded that, given all of this information and reasoning:

⁴³ The technique of “co-location” consists of deducing from the fact that, when mobile telephones are used within the same geographical areas, recorded by cell-towers, at the same date and in the same period of time as other telephones and they do not communicate with each other, one and the same person is the user of these phones.

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- i. Mr Ayyash was the user of personal mobile phones “PMP [REDACTED]”, “PMP [REDACTED]”, “PMP [REDACTED]” and “PMP [REDACTED]”, and consequently therefore of phones “Red [REDACTED]”, “Green [REDACTED]”, “Blue [REDACTED]” and “Yellow [REDACTED]”;
- ii. Mr Badreddine was the user of personal mobile phones “PMP [REDACTED]”, “PMP [REDACTED]”, “PMP [REDACTED]”, “PMP [REDACTED]”, “PMP [REDACTED]”, “PMP [REDACTED]” and “PMP [REDACTED]” (some of which were used one after the other), and consequently therefore of phone “Green [REDACTED]”;
- iii. Mr Oneissi was the user of phone “Purple [REDACTED]”; and
- iv. Mr Sabra was the user of phone “Purple [REDACTED]”.

c) The identity of the suspects

45. Based on his investigations, the Prosecutor has identified four suspects:

- i. Mr Ayyash, Lebanese citizen, born on 10 November 1963 in Harouf, Nabatiyeh (Lebanon). He appears to reside in two locations: one in Hadath, in South Beirut and the other in Harouf, Nabatiyeh, in South Lebanon.
- ii. Mr Badreddine (also known as “Mustafa Youssef Badreddine”, “Sami Issa” and “Elias Fouad Saab”), Lebanese citizen born on 6 April 1961 in Al-Ghobeiry (Beirut). His exact address is unknown. He appears in particular to reside in two locations: one in Al-Ghobeiry in South Beirut and the other in Haret Hreik in Beirut. Under the alias “Elias Fouad Saab”, he appears to have been convicted in Kuwait for a series of terrorist acts carried out in particular against the French and United States embassies on 12 December 1983.
- iii. Mr Ayyash and Mr Badreddine appear to be related to each other by marriage as well as with the person known as Imad Mughniyah.

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- iv. Mr Oneissi (also known as “Hussein Hassan Issa”), Lebanese citizen, born on 11 February 1974 in Beirut. He reportedly resided in Hadath, in South Beirut. In 2004, he and other members of his family changed their family name from “Issa” to “Oneissi”.
- v. Mr Sabra, Lebanese citizen, born on 15 October 1976 in Beirut. He reportedly resided in Hadath, in South Beirut.

d) The roles of the suspects

- 46. The Prosecutor has determined the role of the suspects in the events that are referred to in the preceding paragraphs mainly on the basis of the analysis of the telephone communications as well as the use and the location of the phones comprising the different phone networks.⁴⁴
- 47. According to the Prosecutor, the users of the “Red” network are at first sight implicated in carrying out the attack on the basis in particular of the following:
 - i. The “Red” phones all first became active, in a coordinated manner, on 4 January 2005 between 14:15 and 14:43 in Tripoli. They were then supplied with credit in this same town on 2 February 2005 within a very short space of time: less than 45 minutes. These phones were, however, never used in Tripoli;

⁴⁴ Cf. *supra* paras 36-38.

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- ii. The “Red” phones were no longer used after the last call on 14 February 2005 at 12:53, two minutes before the attack;
 - iii. the “Red” phones were used solely to transmit and receive telephone communications with each other and did not have any contact with phones outside this network, nor did they transmit any text messages [SMS];⁴⁵
 - iv. the “Red” phones were apparently used near to locations where Mr Hariri was and during his movements in the days before the attack (particularly on 14, 20, 28 and 31 January 2005 and 3, 8, 9, 10, 11 and 12 February 2005) and the actual day of the attack; and
 - v. on 14 February 2005, the last 33 calls between “Red” phones made between 11:00 and 12:53 were, in the main, made around the locations where Mr Hariri was present. In particular, a few minutes before the attack, the user of a “Red” phone, near a location where Mr Hariri and his convoy were, called another “Red” phone user who was near the location of the attack, at the exact time Mr Hariri’s convoy left. In the minutes that followed, the driver of the Mitsubishi Canter van containing the explosives apparently positioned the vehicle where the detonation took place as the convoy passed by.
48. According to the Prosecutor, the users of the “Green” phone network are at first sight implicated in coordinating the attack on the basis particularly of the following:

⁴⁵ In French, *Service de messages succincts*.

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- i. the [REDACTED] “Green” phones communicated solely with each other and did not transmit any text messages between 13 October 2004 and 14 February 2005;
 - ii. Mr Badreddine was the only person who was in communication with the [REDACTED] other users of the “Green” phones, including Mr Ayyash;
 - iii. Mr Badreddine was apparently in contact with Mr Ayyash on 59 occasions between 1 January and 14 February 2005, particularly when the users of the “Red Network” and/or the “Blue” phones, including Mr Ayyash, followed Mr Hariri’s movements (particularly on 20, 28, 31 January, 3, 7, 8, 9, 11, 12 and 14 February 2005). Mr Badreddine was apparently himself present on occasion around the key locations connected to the surveillance of Mr Hariri (particularly on 18 and 31 January and on 3 February 2005);
 - iv. Mr Ayyash and Mr Badreddine were in contact, through their “Green” phones, on 11 January 2005 while Mr Ayyash was in Tripoli, near the showroom where the Mitsubishi Canter van was that was used in the attack was located. Mr Ayyash was also in contact with Mr Badreddine on the day when the van was purchased, 25 January 2005; and
 - v. the last call between the “Green” phones of Mr Ayyash and Mr Badreddine was made at 11:58 on 14 February 2005, at the time when Mr Hariri left Parliament, less than one hour before the attack.
49. According to the Prosecutor, the users of the “Blue” phones, including Mr Ayyash, are at first sight implicated in the surveillance of Mr Hariri and preparation of the attack on the basis in particular of the following:

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- i. the “Blue [REDACTED]” phone, the user of which is unknown, was active in Tripoli on 4 January 2005 at the time when the “Red” phones were activated there;
 - ii. the movements of the “Blue” and “Red” phones coincided with the movements of Mr Hariri or with the locations where he was (particularly on 11 November 2004, 1, 7, 14, 28 and 31 January 2005 and on 3, 4, 7, 8, 9, 10, 11 and 12 February 2005), which corresponds with surveillance operations against the subject; and
 - iii. on 25 January 2005, the day the Mitsubishi Canter van was purchased, while he was in Tripoli near the showroom where the van was on sale, the unknown user of phone “Blue [REDACTED]” contacted Mr Ayyash on his “Blue [REDACTED]” phone. Mr Ayyash, who was in Beirut, contacted Mr Badreddine shortly afterwards, using their respective “Green” phones.
50. According to the Prosecutor, the users of the “Purple” phones, including Mr Oneissi and Mr Sabra, are at first sight implicated in falsely claiming responsibility for the attack on the basis in particular of the following:
- i. the “Purple” phones attributed to Mr Oneissi and Mr Sabra were active for 10 days in December 2004 and January 2005 around the Arab University Mosque of Beirut apparently frequented by Mr Abu Adass and around his home. Mr Oneissi, falsely calling himself “Mohammed”, approached Mr Abu Adass and then remained in contact with him before he disappeared on 16 January 2005. Mr Abu Adass then claimed responsibility for the attack in a video recording that was broadcast on television by Al-Jazeera after the attack;

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- ii. By means of their “Purple” phones, Mr Oneissi and Mr Sabra were in frequent contact with each other and with a [REDACTED] unknown user of a “Purple” phone (“Purple [REDACTED]”), who himself was in contact with Mr Ayyash on his personal mobile phones;
- iii. on 14 February 2005 before, between and after the four calls that either Mr Oneissi or Mr Sabra made to Al-Jazeera and Reuters using the same phone card from different public payphones in Beirut, Mr Sabra, using the “Purple [REDACTED]” phone, was in contact seven times with the user of the “Purple [REDACTED]” phone;
- iv. on 14 February 2005, Mr Sabra was in the vicinity of the four public payphones from which the four calls were made;
- v. on 14 February 2005, Mr Oneissi was in the vicinity of the tree in which the video cassette containing the recording claiming responsibility was placed; and
- vi. on 15 February 2005, use of the “Purple [REDACTED]” phone ceased and on 16 February 2005, use of the “Purple [REDACTED]” phone attributed to Mr Oneissi and the “Purple [REDACTED]” phone attributed to Mr Sabra also completely ceased.

3. Review of the counts

51. For the sake of consistency, the Pre-Trial Judge will start by examining Count 2 relating to “committing a terrorist act” before ruling on Counts 3, 4, 5, 6, 7, 8 and 9. He will conclude by examining Count 1 relating to “conspiracy aimed at committing a terrorist act”. Indeed, unlike the other counts, Count 1 concerns all the suspects and, in order for it to be examined, a comprehensive view of all the factors mentioned in the other counts, and in particular those relating to “committing a terrorist act”, is first necessary.

52. The Pre-Trial Judge will review each count as set out in the Indictment. By first making a distinction between the constituent elements of the offences and those of responsibility, he will then examine whether the legal characterisations contained in the count conform to the definitions of the offences as given by the Appeals Chamber. Lastly, the Pre-Trial Judge will determine whether there is reason to prosecute the suspects in question on the basis of each count, and in the light of the evidence provided by the Prosecutor in support of the count.

a) Count 2: committing a terrorist act, as co-perpetrators

53. The Pre-Trial Judge notes that Count 2 contains the constituent elements of the offence of committing a terrorist act as defined by the Appeals Chamber, namely: the volitional commission of an act through means that are likely to pose a public danger, with the special intent to cause a state of terror.⁴⁶ He also notes that this count is in accordance with the Interlocutory Decision⁴⁷ when it specifies as aggravating circumstances “the death of Rafiq Hariri and 21 other persons” and “the partial destruction of the St. Georges Hotel and nearby buildings”.⁴⁸ Admittedly, according to the Appeals Chamber, these circumstances do not strictly speaking constitute elements of the offence of terrorism, but aggravating factors to be taken into consideration at the time of determining the sentence.⁴⁹ However, the Pre-Trial Judge considers that it is appropriate to refer to these circumstances in the Indictment in such a way that the suspects are fully informed

⁴⁶ Interlocutory Decision, Disposition, para. 3.

⁴⁷ Interlocutory Decision, para. 148.

⁴⁸ Indictment, para. 70, g.

⁴⁹ Interlocutory Decision, paras 59 and 145.

of the nature and scope of the charges laid against them.⁵⁰ He will then examine whether these circumstances are well-founded at first sight. On the other hand, the Pre-Trial Judge considers that the attempt “to kill 231 other persons” mentioned in paragraph h of this count should not be included in the constituent elements of the terrorist act but in those of attempted intentional homicide. It is moreover mentioned as such in Count 5.⁵¹

54. With regard to the responsibility of the suspects in committing a terrorist act, the Pre-Trial Judge notes that, according to Count 2, they are “co-perpetrators with shared intent”.⁵² According to the Appeals Chamber, the co-perpetrators must contribute to bringing into being the objective and subjective elements of the crime of committing a terrorist act mentioned in the previous paragraph.⁵³
55. In light of reviewing the evidence accompanying the Indictment and, in particular, the relevant facts referred to in section VIII, part 2, the Pre-Trial Judge finds that sufficient prima facie evidence exists that:⁵⁴
- i. on 14 February 2005, at 12:55, an extremely powerful explosive device, concealed in a Mitsubishi Canter van, exploded on a public street, on Rue Minet el Hos'n in Beirut, Lebanon, as the convoy escorting Mr Hariri, the former Prime Minister and a prominent political figure in Lebanon, was passing;

⁵⁰ Cf. The case law of the European Court of Human Rights (“ECHR”) confirms this interpretation. Indeed, according to the Court, “for the purpose of preparing his or her defence, a person charged with a criminal offence is entitled to be informed not only of the material facts on which the accusation is based but also of the precise legal classification given to these facts. Since the finding of an aggravating circumstance led to a heavier sentence being imposed, the applicant should have been formally notified that such a finding was possible in his case.” (ECHR, *De Salvador Torres v. Spain*, Judgment, 24 October 1996, Collection 1996-V, para. 28).

⁵¹ Indictment, paras 75-76.

⁵² *Ibid.*, para. 70, c

⁵³ Interlocutory Decision, paras 213-217.

⁵⁴ These presumptions will have to be, if there are reasons, confirmed and the evidence substantiated by the Trial Chamber.

- ii. the attack resulted in the death of Mr Hariri and 21 other persons and damaged several nearby buildings;⁵⁵
- iii. due to the size of the explosion, this act created a state of terror which was aggravated by a public claim of responsibility and a threat that further similar attacks would follow. This claim of responsibility was also intended to create a false trail so as to shield the perpetrators from justice;⁵⁶
- iv. Mr Ayyash and Mr Badreddine participated, as co-perpetrators, in the attack as, at key moments in the attack, they were in contact with each other as well as with other persons, both in proximity to the location of the attack and the places Mr Hariri was at before the attack;⁵⁷
- v. Mr Ayyash and Mr Badreddine were implicated in the operations to locate and monitor the whereabouts of Mr Hariri, in particular, by way of their covert mobile phones; the last call between them took place less than one hour before the attack;⁵⁸
- vi. Mr Ayyash and Mr Badreddine were also in contact with each other during the location and purchase of the Mitsubishi Canter van in Tripoli which was used to conceal the explosive device and carry out the attack;⁵⁹ and
- vii. Mr Ayyash was indirectly in contact with Mr Oneissi and Mr Sabra who, in the months prior to the attack, were involved in the recruitment of Mr Abu Adass, who claimed responsibility for the attack in a video recording which was broadcast shortly afterwards.⁶⁰

⁵⁵ *Cf. supra*, para. 39.

⁵⁶ *Idem.*

⁵⁷ *Cf. supra*, paras 48, iii and v.

⁵⁸ *Idem.*

⁵⁹ *Cf. supra*, paras 48, iv and 49, iii.

⁶⁰ *Cf. supra*, para. 50, ii.

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56. That being the case, in light of these presumptions, there is reason to prosecute Mr Ayyash and Mr Badreddine as co-perpetrators in a terrorist act. As a consequence, Count 2 should be confirmed against Mr Ayyash and Mr Badreddine subject to paragraph 70, point h of the Indictment, which refers to the attempt “to kill 231 other persons”.

b) Count 3: intentional homicide (of Mr Hariri), as co-perpetrators

57. The Pre-Trial Judge notes that Count 3 does not list the constituent elements of intentional homicide as they were defined by the Appeals Chamber, whereas the Prosecutor has listed them, and rightly so, for the offences mentioned in the other counts. The Pre-Trial Judge considers, however, that the concise statement of the facts in the Indictment contains facts on which the Prosecutor founded the legal characterisation of intentional homicide, namely the attack of 14 February 2005 which resulted in the death of Mr Hariri, committed with intent and with means likely to cause death.⁶¹ The Pre-Trial Judge considers that both this statement of facts and their legal characterisation, together with the reference to the relevant provisions of the Statute and Lebanese law mentioned in Count 3, ensure that the accused are sufficiently informed of the charges laid against them.

58. The Pre-Trial Judge likewise notes that paragraph 72, point e of Count 3 is compatible with the Interlocutory Decision⁶² and, in particular, with paragraphs 1 and 7 of Article 549 of the Lebanese Criminal Code, when it indicates “premeditation” and “the detonation at 12:55 at Rue Minet el Hos’n, Beirut, Lebanon, of explosive materials of approximately 2500 kilograms of TNT equivalent” as aggravating circumstances. Admittedly, according to the Appeals Chamber, these circumstances are not strictly speaking elements of the offence of

⁶¹ Indictment, paras 7 *et seq.*

⁶² Interlocutory Decision, paras 167-175. Although the Appeals Chamber solely mentions premeditation, Article 549, paragraph 7 of the Lebanese Criminal Code, as amended by Article 33 of Legislative Decree No. 112 of 16 September, also specifies the use of explosive materials as an aggravating circumstance.

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intentional homicide, but aggravating factors to be taken into consideration at the time of determining the sentence.⁶³ However, the Pre-Trial Judge considers that it is appropriate to refer to these circumstances in the Indictment so as to ensure the accused are fully informed of the nature and scope of the charges laid against them.⁶⁴ He will therefore examine whether these circumstances are well-founded at first sight.

59. With regard to the responsibility of the suspects in the commission of intentional homicide, the Pre-Trial Judge notes that, according to Count 3, they are “co-perpetrators with shared intent”.⁶⁵ According to the Appeals Chamber, the co-perpetrators must contribute to bringing into being the objective and subjective elements of the crime of intentional homicide.⁶⁶

60. On examining the material accompanying the Indictment and, in particular, the relevant facts referred to in section VIII, part 2, the Pre-Trial Judge finds that a sufficient *prima facie* case exists, in that:⁶⁷

- i. the attack, whose intended target was Mr Hariri, resulted in his death;⁶⁸
- ii. Mr Ayyash and Mr Badreddine at first sight each participated in carrying out this act, notably on account of the fact that they were implicated in the surveillance operations against Mr Hariri on the day of the attack and in the days prior to

⁶³ *Ibid.*, paras 167-175.

⁶⁴ *Cf. supra* para. 53.

⁶⁵ Indictment, para. 72, c.

⁶⁶ Interlocutory Decision, paras 213-217.

⁶⁷ *Cf. supra*, footnote 54.

⁶⁸ *Cf. supra*, para. 39.

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it and in the purchase of the Mitsubishi Canter van which was used to conceal the explosive device and carry out the attack;⁶⁹ and

iii. Mr Ayyash and Mr Badreddine, with others, planned and carried out the attack in such a way that they necessarily intended to cause the death of Mr Hariri, as is shown, in particular, by the large quantity of explosives that was employed.

61. Therefore, in light of these presumptions, there is reason to prosecute Mr Ayyash and Mr Badreddine as co-perpetrators in the intentional homicide of Mr Hariri. As a consequence, Count 3 should be confirmed against Mr Ayyash and Mr Badreddine.

c) Count 4: intentional homicide (of 21 persons in addition to Mr. Hariri), as co-perpetrators

62. The Pre-Trial Judge notes that the observations made in the context of examining Count 3 relating to the constituent elements of intentional homicide, aggravating circumstances and the responsibility of the suspects may be applied *mutatis mutandis* to the review of Count 4.⁷⁰ He recalls moreover that, in accordance with the Interlocutory Decision of the Appeals Chamber, an individual “can be prosecuted by the Tribunal for intentional homicide for an act perpetrated against persons not directly targeted if that individual had foreseen the possibility of those deaths but nonetheless took the risk of their occurrence (*dolus eventualis*)”.⁷¹ Lastly, the Pre-Trial Judge takes note of the fact that, according to the Interlocutory Decision:

[...] if the base offence was premeditated – if the accused plotted his murder of a particular person – and the fact of premeditation led to additional deaths that were reasonably foreseeable, then under Article 549 of the Lebanese Criminal Code, the premeditation of the base offence is an aggravating factor both of the

⁶⁹ *Cf. supra*, paras. 48, iii-v.

⁷⁰ *Cf. supra*, paras 57-59.

⁷¹ Interlocutory Decision, Disposition, para. 12.

targeted homicide and of the additional homicides. The accused should thus receive a more severe penalty when the homicides for which he is convicted on the basis of *dolus eventualis* resulted from a base offence that was premeditated.⁷²

63. On examining the material accompanying the Indictment and, in particular, the relevant facts mentioned in section VIII, part 2, the Pre-Trial Judge finds that a sufficient prima facie case exists, in that:⁷³

- i. in addition to the death of Mr Hariri, the attack of 14 February 2005 killed 21 persons who were in the vicinity of the explosion.⁷⁴ Noting in particular the large quantity of explosive material that was employed, the specific facts and the *modus operandi* of this attack, the perpetrators acted with intent to cause these deaths or, at the very least, foresaw and accepted this possibility; and
- ii. for the same reasons as those mentioned with regard to Count 3, Mr Ayyash and Mr Badreddine are each implicated in this act;⁷⁵

64. Therefore, in light of these presumptions, there is reason to prosecute Mr Ayyash and Mr Badreddine as co-perpetrators of intentional homicide of the 21 persons listed in Annex A of the Indictment. As a consequence, Count 4 should be confirmed against Mr Ayyash and Mr Badreddine.

⁷² *Ibid.*, para. 172.

⁷³ *Cf. supra*, footnote 54.

⁷⁴ *Cf. supra*, para. 39.

⁷⁵ *Cf. supra*, para. 60, ii and iii.

d) Count 5: attempted intentional homicide (of 231 persons), as co-perpetrators

65. The Pre-Trial Judge notes that the observations made in the context of examining Count 3 relating to the constituent elements of intentional homicide, aggravating circumstances and modes of responsibility may be applied *mutatis mutandis* to the review of Count 5.⁷⁶

66. The Pre-Trial Judge takes note of the fact that, according to the Interlocutory Decision:

With regard to unintended victims who were injured, the perpetrator is responsible for an aborted intentional homicide, because although the perpetrator has executed all the elements of the crime of intentional homicide with *dolus eventualis*, he did not achieve the expected result for reasons beyond his control.⁷⁷

67. On examining the material accompanying the Indictment and, in particular, the relevant facts mentioned in section VIII, part 2, the Pre-Trial Judge finds that a sufficient *prima facie* case exists, in that:⁷⁸

- i. the attack of 14 February 2005 injured 231 persons;⁷⁹
- ii. noting in particular the large quantity of explosive material employed, the specific facts and the *modus operandi* of this attack, the perpetrators foresaw or accepted the risk that this attack would kill persons in the vicinity of the explosion; the fact that there were no deaths amongst these persons was not of their concern;⁸⁰ and

⁷⁶ *Cf. supra*, paras 57-59.

⁷⁷ Interlocutory Decision, para. 183.

⁷⁸ *Cf. supra*, footnote 54.

⁷⁹ *Cf. supra*, para. 39.

⁸⁰ *Ibid.*

iii. for the same reasons as those mentioned previously in Count 3, Mr Ayyash and Mr Badreddine are each implicated in these acts.⁸¹

68. Therefore, in light of these presumptions, there is reason to prosecute Mr Ayyash and Mr Badreddine as co-perpetrators of attempted intentional homicide of the 231 persons listed in Annex B of the Indictment. As a consequence, Count 5 should be confirmed against Mr Ayyash and Mr Badreddine.

e) Count 6: committing a terrorist act, as accomplices

69. The Pre-Trial Judge notes that Count 6 sets forth the constituent elements of the offence of committing a terrorist act as defined by the Appeals Chamber.

70. With regard to the responsibility of the suspects in committing a terrorist act, the Pre-Trial Judge notes that, according to the Indictment, they “each bear individual criminal responsibility [...] as an accomplice”.⁸² According to the Appeals Chamber,⁸³ accomplices are those who must have acted in a form specified by Article 219 of the Lebanese Criminal Code⁸⁴ and be motivated by the knowledge of the intent of the primary perpetrators to commit a crime and the intention to assist these perpetrators in carrying out the crime.

⁸¹ *Cf. supra*, para. 60, ii and iii.

⁸² Indictment, para. 78, f.

⁸³ Interlocutory Decision, paras 218-228.

⁸⁴ As amended by Article 11 of Legislative Decree No. 112 of 16 September 1983.

71. On examining the material accompanying the Indictment and, in particular the relevant facts referred to in section VIII, part 2, the Pre-Trial Judge finds that a sufficient prima facie case exists, in that;⁸⁵

- i. Mr Oneissi and Mr Sabra were indirectly in contact with Mr Ayyash and were involved in the months prior to the attack in the recruitment of Mr Abu Adass, who claimed responsibility for the attack in a video recording which was broadcast shortly afterwards;⁸⁶
- ii. Mr Oneissi and Mr Sabra participated in transmitting the video cassette to the Al-Jazeera press agency, in particular by telephoning the agency and monitoring that the video cassette was discovered;⁸⁷
- iii. Mr Oneissi and Mr Sabra are therefore implicated in the claim of responsibility for the attack of 14 February 2005, the shared aim of which was to create a false trail so as to shield the perpetrators from justice and add to the state of terror;⁸⁸
- iv. by preparing the claim of responsibility for the attack mentioned in Count 2 before its execution, Mr Oneissi and Mr Sabra were aware of the intention of Mr Ayyash and Mr Badreddine to commit this attack and were personally willing to contribute to these preparatory acts; and
- v. in so doing, Mr Oneissi and Mr Sabra lent their support to the preparation and commission of the terrorist act referred to in Count 2.⁸⁹

72. Therefore, in light of these presumptions, there is reason to prosecute Mr Oneissi and Mr Sabra as being accomplices to a terrorist act. As a consequence, Count 6 should be confirmed against Mr Oneissi and Mr Sabra.

⁸⁵ *Cf. supra*, footnote 54.

⁸⁶ *Cf. supra*, para. 50, i and ii.

⁸⁷ *Cf. supra*, para. 50, iii-v.

⁸⁸ *Cf. supra*, paras 39 and 55, iii.

⁸⁹ *Cf. supra*, paras 55-56.

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f) Count 7: intentional homicide (of Mr Hariri), as accomplices

73. The Pre-Trial Judge notes that the observations made in the context of the review of Count 3 relating to the constituent elements of intentional homicide may also be applied to the review of Count 7.
74. With regard to the responsibility of the suspects in the intentional homicide, the Pre-Trial Judge notes that the observations made in the context of the review of Count 6 may also be applied to the review of Count 7.⁹⁰
75. On examining the material accompanying the Indictment and, in particular the relevant facts referred to in section VIII, part 2, the Pre-Trial Judge finds that a sufficient prima facie case exists, in that:⁹¹
- i. for the same reasons as those mentioned in Count 6,⁹² Mr Oneissi and Mr Sabra lent their support to the preparation and commission of the intentional homicide of Rafiq Hariri mentioned in Count 3; and

⁹⁰ *Cf. supra*, para. 70.

⁹¹ *Cf. supra*, footnote 54.

⁹² *Cf. supra*, para. 71.

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- ii. Mr Oneissi and Mr Sabra were aware of the intention of Mr Ayyash and Mr Badreddine to commit the intentional homicide of Mr Hariri and they were personally willing to contribute to that act by way of these preparatory acts.

76. Therefore, in light of these presumptions, there is reason to prosecute Mr Oneissi and Mr Sabra as being accomplices to the intentional homicide of Mr Hariri. As a consequence, Count 7 should be confirmed against Mr Oneissi and Mr Sabra.

g) *Count 8: intentional¹ homicide (of 21 persons in addition to Mr Hariri), as accomplices*

77. The Pre-Trial Judge notes that the observations made in the context of the review of Count 3 relating to the constituent elements of intentional homicide may be applied *mutatis mutandis* to the review of Count 8.⁹³

78. With regard to the responsibility of the suspects in the intentional homicide, the Pre-Trial Judge notes that the observations made in the context of the review of Count 6 may also be applied to the review of Count 8.⁹⁴

79. Having examined the material accompanying the Indictment and, in particular, the relevant facts referred to in section VIII, part 2, the Pre-Trial Judge finds that a sufficient *prima facie* case exists, in that:⁹⁵

- i. for the same reasons as those mentioned in relation to Count 6, Mr Oneissi and Mr Sabra lent their support to the preparation and commission of the intentional homicide of 21 persons in addition to Mr Hariri as mentioned in Count 4,⁹⁶ and

⁹³ *Cf. supra*, para. 57.

⁹⁴ *Cf. supra*, para. 70.

⁹⁵ *Cf. supra*, footnote 54.

⁹⁶ *Cf. supra*, paras 55-56.

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- ii. Mr Oneissi and Mr Sabra were aware of the intention of Mr Ayyash and of Mr Badreddine to commit the intentional homicide of the 21 other persons and they were personally willing to contribute to this act by way of these preparatory acts.
80. Therefore, in light of these presumptions, there is reason to prosecute Mr Oneissi and Mr Sabra as being accomplices to the intentional homicide of the 21 persons listed in Annex A of the Indictment. As a consequence, Count 8 should be confirmed against Mr Oneissi and Mr Sabra.

h) Count 9: attempted intentional homicide (of 231 persons), as accomplices

81. The Pre-Trial Judge notes that the observations made in the context of the review of Count 3 relating to the constituent elements of intentional homicide may be applied *mutatis mutandis* to the review of Count 9.
82. With regard to the responsibility of the suspects in the attempted intentional homicide, the Pre-Trial Judge notes that the observations made in the context of Count 6 may be also be applied to the review of Count 9.⁹⁷

⁹⁷ *Cf. supra*, para. 70.

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83. Having examined the material accompanying the Indictment and, in particular, the relevant facts referred to in section VIII, part 2, the Pre-Trial Judge finds that a sufficient prima facie case exists, in that:⁹⁸

- i. for the same reasons as those mentioned in relation to Count 6, Mr Oneissi and Mr Sabra lent their support to the preparation and commission of the attempted intentional homicide of 231 persons referred to in Count 5,⁹⁹ and
- ii. Mr Oneissi and Mr Sabra were aware of the intention of Mr Ayyash and of Mr Badreddine to attempt to commit the intentional homicide of the 231 other persons and they were personally willing to contribute to that act by way of those preparatory acts.

84. Therefore, in light of these presumptions, there is reason to prosecute Mr Oneissi and Mr Sabra as being accomplices to the attempted intentional homicide of the 231 persons listed in Annex B of the Indictment. As a consequence, Count 9 should be confirmed against Mr Oneissi and Mr Sabra.

i) Count 1: conspiracy aimed at committing a terrorist act, as co-perpetrators

85. The Pre-Trial Judge notes that Count 1¹⁰⁰ contains the constituent elements of the offence of conspiracy as defined by the Appeals Chamber, namely: the presence of two or more individuals; the conclusion or joining an agreement for the purpose of committing a crime against State security according to the means required by law to commit this crime; and criminal intent relating to the object of the conspiracy.¹⁰¹ He notes, however, that the agreement concerns not only the commission of an act against State security, but also two objectives that are an

⁹⁸ Cf. *supra*, footnote 54.

⁹⁹ Cf. *supra*, paras 55-56.

¹⁰⁰ Indictment, para. 68, d and e.

¹⁰¹ Interlocutory Decision, Disposition, para. 7.

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integral part of that act, namely: “to blame [the terrorist act] falsely on others in a fictional fundamentalist group so as to shield themselves from justice, and add to the state of terror, by raising in the mind of the population insecurity and fear of further indiscriminate public attack”.¹⁰²

86. With regard to the responsibility of the suspects in the conspiracy, the Pre-Trial Judge notes that, according to Count 1, they are “co-perpetrators with shared intent”.¹⁰³ According to the Appeals Chamber, co-perpetrators must contribute to bringing into being the objective and subjective constituent elements of the crime of conspiracy aimed at committing a terrorist act.¹⁰⁴

87. Having examined the material accompanying the Indictment and, in particular, the relevant facts referred to in the previous section, the Pre-Trial Judge finds that a sufficient *prima facie* case exists, in that:¹⁰⁵

- i. as emerges from the review of Counts 2 to 9 above, Mr Ayyash, Mr Badreddine, Mr Oneissi and Mr Sabra together with others unidentified were in contact, directly or indirectly, for a significant period of time prior to the attack of 14 February 2005, in particular at key moments linked to this act, its preparation and the way in which responsibility for the attack was claimed;
- ii. due to its size, the intended victim and the resulting state of terror, this terrorist act was an attack on Lebanese State security; and
- iii. the actions of the four suspects, and their direct or indirect contact with each other, suggest that they acted within the framework of a prior agreement aimed at committing the terrorist act of 14 February 2005.

¹⁰² Indictment, para. 68, i.

¹⁰³ *Ibid.*, para. 68, c.

¹⁰⁴ Interlocutory Decision, paras 213 -217.

¹⁰⁵ *Cf. supra*, footnote 54.

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88. Therefore, in light of these presumptions, there is reason to prosecute Mr Ayyash, Mr Badreddine, Mr Oneissi and Mr Sabra as co-perpetrators of conspiracy aimed at committing a terrorist act. As a consequence, Count 1 should be confirmed against Mr Ayyash, Mr Badreddine, Mr Oneissi and Mr Sabra.

4. Cumulative charging¹⁰⁶

89. The Pre-Trial Judge recalls that Mr Ayyash and Mr Badreddine are suspected, as *co-perpetrators*, of other offences: conspiracy aimed at committing a terrorist act, committing a terrorist act, intentional homicide of Mr Hariri, intentional homicide of 21 persons in addition to Mr Hariri and attempted intentional homicide of 231 persons. With the exception of the offence of conspiracy, all these offences rely on the same facts, namely: “the detonation at 12:55 on the fourteenth day of February 2005 at Rue Minet el Hos’n, Beirut, Lebanon, being a public street, of approximately 2500 kilogrammes of TNT equivalent”.¹⁰⁷ These offences therefore can be charged cumulatively. With regard to conspiracy, this is based on a separate action, namely: “an agreement, aimed at committing a terrorist act.”¹⁰⁸
90. The Pre-Trial Judge notes that Mr Oneissi and Mr Sabra are suspected, as co-perpetrators, of conspiracy aimed at committing a terrorist act. They are also suspected, as *accomplices*, of other offences: committing a terrorist act, intentional homicide of Mr Hariri, intentional homicide of 21 persons in addition to Mr Hariri and attempted intentional homicide of 231 persons. With the exception of the offence of conspiracy, all these offences are based on the same facts, namely: “acts preparatory to the offence,” and “acts to shield the co-

¹⁰⁶ With regard to cumulative charging, the Appeals Chamber notes that “The Pre-Trial Judge, in confirming the indictment, should be *particularly careful* to allow cumulative charging only when separate elements of the charged offences make these offences truly distinct.” (Italics added) (Interlocutory Decision, para. 298).

¹⁰⁷ Indictment, paras 70, f, 72, e, ii, 74, h and 76, g.

¹⁰⁸ *Ibid.*, para. 68, d.

perpetrators and themselves from justice”.¹⁰⁹ These offences therefore can be charged cumulatively.

91. In this respect, the Pre-Trial Judge recalls that, according to the Appeals Chamber,

[...] the crimes of terrorist conspiracy, terrorism, and intentional homicide can be charged cumulatively even if based on the same underlying conduct, because they do not entail incompatible legal characterisations, and because the purpose behind criminalising such conduct is the protection of substantially different values (preventing extremely dangerous but inchoate offences, widespread fear in the population, and death, respectively). Therefore, in most circumstances it would be more appropriate to charge those crimes cumulatively rather than alternatively.¹¹⁰

92. The Pre-Trial Judge finds that this jurisprudence may also be applied to the offence of attempted intentional homicide which, although it was not specifically mentioned in the paragraph cited from the Interlocutory Decision, is also intended to protect a “substantially different” value from the aforementioned offences, namely, ‘the personal integrity of the victims concerned’.¹¹¹ Consequently, charging this offence cumulatively with the other aforementioned crimes is in theory admissible.

93. It follows from the above that there is no objection to the Prosecutor charging concurrently the crimes of conspiracy aimed at committing a terrorist act, committing a terrorist act, intentional homicide and attempted intentional homicide in the Indictment even if, with the exception of the offence of conspiracy, these crimes are all based on the same facts. The Pre-Trial Judge notes furthermore that the intentional homicide of Mr Hariri and that of 21 other persons in addition to Mr Hariri constitutes, according to the terminology of the

¹⁰⁹ *Ibid.*, paras 78, f and 80, f.

¹¹⁰ Interlocutory Decision, para. 301.

¹¹¹ It should be pointed out that the victims of these crimes are different from those of other crimes.

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Appeals Chamber *un concours réel d'infractions*.¹¹² They can also be charged cumulatively insofar as the presumed victims are different.

94. Furthermore, the modes of responsibility do not pose a problem with regard to cumulative charging.¹¹³ Indeed, each count refers solely to one single mode of responsibility, as a co-perpetrator or as an accomplice.
95. The Pre-Trial Judge concludes that, at first sight, the offences and modes of responsibility referred to in the Indictment have been defined in accordance with the law in force.

5. Requirements of grounds and specific facts

96. The Pre-Trial Judge finds that the Indictment meets the requirements with regard to the specific facts and grounds as required under international case law, the Statute and the Rules. Indeed, the Indictment describes in sufficient detail and accuracy the offences with which the suspects are charged and the responsibilities that are incumbent upon them.¹¹⁴ However, without giving indications as to the motive(s) of the attack, it provides specific information as to the chronology of the attack,¹¹⁵ the sequence of events surrounding it,¹¹⁶ the conspiracy behind it,¹¹⁷ the identity of the suspects,¹¹⁸ the way in which they were identified by analysing the telephone data,¹¹⁹ their presumed role in the facts¹²⁰ and the identity of the victims.¹²¹

¹¹² According to the Appeals Chamber, "A person may instead breach the same rule against various persons: for instance, he murders the members of a whole family. In this case only one rule is breached, that prohibiting unlawful killing, but the offence is committed against several victims. In sum, "*concours réel d'infractions*" does not pose any major problem of charging: the accused will be charged with different crimes, in the first case, and with as many crimes in the form of murder as there are victims, in the second. The Judges will then be called upon to assess the evidence and decide what the prosecution has been able to prove for each charge (*Ibid.*, para. 275).

¹¹³ *Ibid.*, para. 298.

¹¹⁴ Indictment, paras 66-84.

¹¹⁵ *Ibid.*, paras 33-47.

¹¹⁶ *Ibid.*, paras 48-57.

¹¹⁷ *Ibid.*, paras 58-62.

¹¹⁸ *Ibid.*, para. 4 a-d.

¹¹⁹ *Ibid.*, paras 17-32.

¹²⁰ *Ibid.*, paras 58-65.

¹²¹ *Cf.* in particular Annexes A and B.

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97. On this basis, the Pre-Trial Judge considers that, at first sight, subject to a decision issued with regard to preliminary motions,¹²² the Indictment is sufficiently clear and accurate so as to ensure that the suspects understand the allegations made against them and, consequently, allow them in particular to prepare their defence and, if appropriate, challenge the legality of their detention.

IX. Requirements of confidentiality

98. In the Motion, the Prosecutor requests the non-disclosure to the public of the Indictment and the supporting material until a further order is issued on application from the Prosecutor.¹²³ He also requested the redaction of the Indictment with a view to its service specifically to each accused by only referring to the charges laid against him.¹²⁴
99. Within the context of this decision, the Pre-Trial Judge will only rule on the first issue. The second issue will be examined within the context of the arrest warrants and transfer and detention orders.
100. The Prosecutor puts forward several reasons in support of his request for non-disclosure that are principally linked to the need for all possible steps to be taken to ensure the arrest of the accused, safeguard the ongoing investigations and ensure the protection of witnesses.¹²⁵
101. The Pre-Trial Judge considers that, in accordance with Rule 74 of the Rules, there are grounds for the Indictment and the accompanying material to remain confidential due to the following exceptional circumstances. This measure should ensure the integrity of the judicial procedure and, in particular, ensure that the

¹²² Rule 90 of the Rules.

¹²³ Motion, para. 42.

¹²⁴ *Ibid.*, para. 43.

¹²⁵ *Ibid.*, paras 44-48.

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search and, where appropriate, apprehension of the accused are carried out effectively. It should likewise assist in ensuring the protection of the witnesses concerned by not revealing their identity and in safeguarding the ongoing investigations by not disclosing the techniques that have been employed and the information that has been gathered.

102. For the same reasons, the Pre-Trial Judge considers *proprio motu* that this decision should remain confidential.
103. With regard to the material submitted in support of the Indictment, this will be disclosed to the accused pursuant to the relevant Rules.
104. The Indictment and this decision may not be disclosed until after service of the Indictment on the accused is effective, or a new order has been rendered following a request from the Prosecutor or *proprio motu*. The Indictment may however be disclosed to the competent authorities of the Lebanese Republic and to those of other States to whom the Prosecutor might transmit the Indictment pursuant to Rule 74 of the Rules.

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X. Disposition

FOR THESE REASONS,

Pursuant to Article 18, paragraph I of the Statute, and Rules 68 and 74, paragraph (A) of the Rules,

THE PRE-TRIAL JUDGE,

CONFIRMS:

1. against Mr **Ayyash**, as co-perpetrator, the counts mentioned in the Indictment of:
 - i. conspiracy aimed at committing a terrorist act (Count 1);
 - ii. committing a terrorist act (Count 2, subject to paragraph 70, point h of the Indictment);
 - iii. intentional homicide (of Mr Hariri) (Count 3);
 - iv. intentional homicide (of 21 persons listed in Annex A of the Indictment) (Count 4); and
 - v. attempted intentional homicide (of 231 persons listed in Annex B of the Indictment) (Count 5);

2. against Mr **Badreddine**, as co-perpetrator, the counts mentioned in the Indictment of:
 - i. conspiracy aimed at committing a terrorist act (Count 1);
 - ii. committing a terrorist act (Count 2, subject to paragraph 70, point h of the Indictment);
 - iii. intentional homicide (of Mr Hariri) (Count 3);
 - iv. intentional homicide (of 21 persons listed in Annex A of the Indictment) (Count 4); and

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- v. attempted intentional homicide (of 231 persons listed in Annex B of the Indictment) (Count 5);
3. against Mr **Oneissi** the counts mentioned in the Indictment of:
- i. as a co-perpetrator, conspiracy aimed at committing a terrorist act (Count 1);
 - ii. as an accomplice:
 - a. committing a terrorist act (Count 6);
 - b. intentional homicide (of Mr Hariri) (Count 7);
 - c. intentional homicide (of 21 persons listed in Annex A of the Indictment (Count 8), and
 - d. attempted intentional homicide (of 231 persons listed in Annex B of the Indictment) (Count 9);
4. against Mr **Sabra** the counts mentioned in the Indictment of:
- i. as a co-perpetrator, conspiracy aimed at committing a terrorist act (Count 1);
 - ii. as an accomplice:
 - a. committing a terrorist act (Count 6);
 - b. intentional homicide (of Mr Hariri) (Count 7);
 - c. intentional homicide (of 21 persons listed in Annex A of the Indictment (Count 8), and
 - d. attempted intentional homicide (of 231 persons listed in Annex B of the Indictment) (Count 9); and

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DECLARES that the evidentiary material submitted in support of the Indictment be disclosed to the accused pursuant to the relevant provisions of the Rules; and

ORDERS that the Indictment and the present decision remain confidential, until the Indictment has effectively been served on the accused or until further notice, with the exception that the Indictment may be disclosed to the relevant authorities of the Lebanese Republic and to those of other States to whom the Prosecutor might transmit the Indictment pursuant to Rule 74 of the Rules.

Done in English, Arabic and French, the French version being authoritative.

Leidschendam, 28 June 2011.

[signature]

Daniel Fransen

Pre-Trial Judge

