

**MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE  
LEBANESE REPUBLIC AND THE DEFENCE OFFICE ON THE MODALITIES OF  
THEIR COOPERATION**

The Government of the Lebanese Republic, represented by the Minister of Justice, and the Defence Office of the Special Tribunal for Lebanon, represented by the Head of Defence Office;

**RECALLING** resolution 1757 (2007) adopted by the Security Council on 30 May 2007;

**RECALLING** the document annexed to Security Council resolution 1757 (2007) entitled “Agreement between the United Nations and the Lebanese Republic on the establishment of a Special Tribunal for Lebanon” and the Statute of the Special Tribunal for Lebanon attached thereto;

**WHEREAS** the Security Council, acting under Chapter VII of the Charter of the United Nations, decided that the provisions of the document annexed to resolution 1757 (2007), including its attachment, entered into force on 10 June 2007;

**NOTING** Article 15 of the document annexed to Security Council resolution 1757 (2007), according to which the Government shall cooperate with all organs of the Special Tribunal, in particular with the Prosecutor and Defence Counsel, at all stages of the proceedings, and shall comply without undue delay with any request for assistance by the Special Tribunal or any order issued by the Chambers;

**NOTING** the minutes of meeting No. 32 of the Council of Ministers of 24 April 2009, instructing the Minister of Justice to take the necessary measures related to cooperation with the Special Tribunal for Lebanon;

In order to govern the modalities of their cooperation, the Government of the Lebanese Republic, represented by its Minister of Justice, and the Defence Office of the Special Tribunal for Lebanon, represented by its Head, have agreed as follows:

**Article 1**  
**Definitions**

For the purposes of the present Memorandum of Understanding, the following terms shall mean:

- a. “Annex”: the document annexed to Security Council resolution 1757 (2007) entitled “Agreement between the United Nations and the Lebanese Republic on the establishment of a Special Tribunal for Lebanon”;
- b. “Office of the Tribunal”: the Office of the Special Tribunal for Lebanon set up in Lebanon pursuant to the Memorandum of Understanding that entered into force on 17 June 2009;

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28/07/2010

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28/07/2010

STL Official Translation

- c. “Head of Defence Office”: the Head of the Defence Office of the Special Tribunal for Lebanon, appointed by the Secretary General pursuant to Article 13 of the Statute;
- d. “Defence Counsel”: any person, whether Lebanese or foreign, representing or eligible to represent a suspect or accused pursuant to the Rules of Procedure and Evidence of the Special Tribunal for Lebanon;
- e. “The Defence”: the accused and/or a person representing or eligible to represent a suspect or accused pursuant to the Rules of Procedure and Evidence of the Special Tribunal for Lebanon;
- f. “Defence investigations”: “all activities undertaken by the Defence teams under the Statute and Rules for the collection of information and evidence in the context of their mission to represent a suspect or accused”;
- g. “Defence teams”: the teams comprising Defence Counsel and the persons assisting them pursuant to the Rules of Procedure and Evidence and recognized as such by the Defence Office;
- h. “Government”: the Government of the Lebanese Republic;
- i. “Pre-Trial Judge”: the Pre-Trial Judge of the Special Tribunal for Lebanon appointed pursuant to Article 2 of the Annex;
- j. “Parties”: the Government of the Lebanese Republic and the Head of Defence Office;
- k. “Memorandum of Understanding”: the present Memorandum of Understanding;
- l. “Memorandum of Understanding concerning the Office of the Tribunal”: the “Memorandum of Understanding between the Government of the Republic of Lebanon and the Special Tribunal for Lebanon concerning the Office of the Special Tribunal for Lebanon” which entered into force on 17 June 2009;
- m. “Rules”: the Rules of Procedure and Evidence of the Special Tribunal for Lebanon, adopted pursuant to Article 28 of the Statute;
- n. “Statute”: the document attached to Security Council resolution 1757 entitled “Statute of the Special Tribunal for Lebanon”;
- o. “Tribunal”: the Special Tribunal for Lebanon.

**Article 2**  
**Scope of the Memorandum of Understanding**

1. The activities of Defence Counsel, including their investigations within the territory of Lebanon, are governed by the Statute, Annex, Rules, Memorandum of Understanding concerning the Office of the Tribunal as well as the Code of Professional Conduct provided for in Rule 60 of the Rules.
2. On the basis of the documents mentioned above, the parties reiterate the need for Defence Counsel and their teams to conduct their investigations in Lebanon freely within the framework of their professional obligations under the Rules and according to the conditions specified in Articles 3, 4 and 5 of the Memorandum of Understanding.
3. These activities are specific to the Tribunal and do not fall within the scope of the Law Organizing the Profession of Lawyers, No. 8/70 of 11 March 1970, and its amendments, in particular Articles 4 and 81 thereof, or within the scope of the Lebanese Code of Criminal Procedure when this Code is inconsistent with the rules and obligations set out in the documents referred to in the preceding paragraph.
4. The Parties agree, whenever possible, to search for consistency between Lebanese law and the rules governing the Tribunal, on the understanding that the rules governing the Tribunal have primacy pursuant to Article 2 of the Lebanese Code of Civil Procedure.
5. The present memorandum shall not be interpreted so as to authorize foreign counsel practising before the Tribunal to practise any other professional activity as lawyer in Lebanon, as such activity continues to be governed by the Law Organizing the Profession of Lawyers in Lebanon.

**Article 3**  
**Freedom of Defence Teams to Conduct Investigations when coercive measures are not required**

1. Defence Counsel and their teams may carry out freely any investigation within the territory of Lebanon that does not require coercive measures.
2. The Government undertakes to ensure that Defence teams shall have the independence necessary to carry out their functions, in accordance with Article 18 of the Memorandum of Understanding concerning the Office of the Tribunal. For this purpose, the Government undertakes to:

- a. Guarantee the freedom of movement of members of the Defence teams, in accordance with Article 5 of the Memorandum of Understanding concerning the Office of the Tribunal;
- b. Take all the necessary measures to ensure the safety of Defence teams while they are in Lebanese territory;
- c. Guarantee freedom of access for Defence teams to the sites, persons and documents necessary for the conduct of their investigations and defence of the suspects and accused they represent, in accordance with Article 15 of the Annex;
- d. Allow the Defence directly to take the statements of witnesses and experts who have informed it of their willingness to testify.

#### **Article 4**

#### **Assistance to Defence Teams Who Request Assistance from the Lebanese Government**

1. Without prejudice to the provisions of Article 5 below concerning coercive measures, should the Defence consider that it requires the assistance of the Government to conduct its investigations, it may make a request to the Head of Defence Office pursuant to Rule 16 of the Rules. Unless the Head of Defence Office considers the request to be frivolous or vexatious, the Head of Defence Office shall submit this request to the Lebanese authorities, represented by the Director of the Litigation Division, requesting that they carry out these tasks and/or authorize the Defence team to carry them out itself.
2. Provided that the Defence teams seeking assistance from the Government have complied with the procedure set out in Rule 16(C) of the Rules, the Government undertakes to honour the request and to provide the assistance requested, including:
  - a. providing the Defence teams with all documents, testimony or other evidence in the possession of the Lebanese authorities;
  - b. facilitating access to places, sites and persons for purposes of the defence investigations and to documents related thereto; and,
  - c. taking any measures to ensure that the defence investigations are conducted in a safe, confidential and peaceful environment.

#### **Article 5**

#### **Assistance for Coercive Measures**

1. Pursuant to Rule 77(A) of the Rules, the Defence may seek an order for cooperation and coercive measures from the Pre-Trial Judge, in particular to:
  - a. summons and bring identified persons before it;
  - b. execute searches and seizures; and
  - c. carry out any other measure as may be necessary.

2. If the Pre-Trial Judge grants the request for an order for cooperation, he shall transmit the order to the Liaison Judge for enforcement.
3. The Government shall designate the President of the Court of Cassation as Liaison Judge to enforce orders for cooperation issued by the Pre-Trial Judge. To this end, and in accordance with the Statute and the Rules, the Liaison Judge shall, without delay:
  - a. maintain the confidentiality of the orders, unless the Pre-Trial Judge considers them to be public;
  - b. take any measures necessary to ensure enforcement of the orders issued by the Pre-Trial Judge;
  - c. enforce the aforementioned orders or transmit them directly to the competent authorities for enforcement, without delay.

**Article 6**  
**Supplementary Arrangements**

The Parties are free to make other agreements and arrangements for the purposes of implementing or supplementing this Memorandum of Understanding.

**Article 7**  
**Settlement of Disputes**

In case of a dispute regarding the interpretation or application of Articles 3 or 4 of this Memorandum of Understanding, the Defence teams may, without prejudice to their right to seize the Pre-Trial Judge or a Chamber pursuant to Rules 20 or 77 (B) of the Rules, request that the Defence Office enter into negotiations with the Minister of Justice, and vice-versa.

**Article 8**  
**Amendments**

1. This Memorandum of Understanding may be amended only by mutual consent of the Parties in writing.
2. Any amendment shall enter into force on the day the Parties have notified each other in writing of their consent to the amendment.

**Article 9**  
**Entry into Force**

This Memorandum of Understanding shall enter into force upon signature by the Parties and shall be legally binding upon them.

Signed in duplicate versions in Arabic and French, the French version being authoritative.

For the Government:  
Pr. Ibrahim Najjar  
Minister of Justice

[name and signature]  
28/07/2010

For the Defence Office:  
Mr François Roux  
Head of Defence Office

[name and signature]  
28/07/2010