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Letter dated 11 March 2010 from the Secretary-General addressed to the President of the Security Council

I have the honour to transmit herewith a letter dated 1 March 2010 from Mr. Antonio Cassese, President of the Special Tribunal for Lebanon (see annex), in which he submits the first annual report pursuant to article 10 (2) of the statute of the Special Tribunal.

The provisions of the Agreement between the United Nations and the Lebanese Republic on the Establishment of the Special Tribunal, and the statute of the Special Tribunal, took effect pursuant to Security Council resolution 1757 (2007). The Agreement and the statute were negotiated by the United Nations and the Government of Lebanon on the basis of the request set out in Security Council resolution 1644 (2005).

In view of the above, I should be grateful if you would bring the letter from President Cassese to the attention of the members of the Security Council.

(*Signed*) **BAN** Ki-moon

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Annex

Letter dated 1 March 2010 from the President of the Special Tribunal for Lebanon addressed to the Secretary-General of the United Nations

[Original: English]

Please find enclosed the first annual report of the Special Tribunal for Lebanon. I am submitting the report to you and to the Government of Lebanon pursuant to article 10 (2) of the statute of the Special Tribunal.

Unless otherwise indicated by you or by the Government of Lebanon, I shall make the report public on Friday, 5 March 2010, through the Tribunal's website.*

(*Signed*) Antonio **Cassese**
President

* The report contained in the present document (S/2010/159) has been edited and translated at United Nations Headquarters.

Annual report of the Special Tribunal for Lebanon (2009-2010)

Letter of transmittal

It is my privilege and pleasure to submit, pursuant to article 10 (2) of the statute of the Special Tribunal for Lebanon, the first annual report on the operations and activities of the Tribunal. It covers the period from 1 March 2009 to 28 February 2010.

The first year of the Tribunal's operations was pivotal in terms of establishing the basic structure of the institution, recruiting indispensable staff, adopting the legal tools necessary for forthcoming judicial activities, requesting the deferral of the main case from Lebanese authorities, continuing and intensifying the investigations, and starting outreach activities in Lebanon.

The report builds on the six-month report that I circulated in September 2009. It, too, is intended to provide an unvarnished overview of the activities of the Special Tribunal for Lebanon. It covers not only the Tribunal's accomplishments, but also the challenges that it is facing, in particular owing to the extreme complexity and novelty of dealing with terrorism at the international judicial level.

Although some sections of the first part of the report might at first glance appear to be theoretical, they are, in my view, indispensable to a full understanding of the ethos and the nature of the novel work that we are undertaking.

(*Signed*) Antonio **Cassese**
President

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Summary

The present annual report, after discussing the unique characteristics of the Special Tribunal for Lebanon and highlighting a number of general problems and challenges facing it, aims to illustrate the steps taken and the achievements accomplished, as well as the hurdles encountered, during its first year (March 2009 to February 2010).

Although the Special Tribunal for Lebanon shares some features with other international and hybrid tribunals, it has unique characteristics that set it apart from similar judicial institutions.

Part I of the present report deals with those characteristics. With regard to substantive law, unlike other international tribunals, which apply either international law or both international law and national law, the Special Tribunal for Lebanon applies Lebanese law to acts of terrorism considered a threat to international peace and security by the Security Council. Structurally, the Tribunal differs from other international and hybrid courts in that it is endowed with a statutory Defence Office as an organ independent of the Registry and with a mandate to protect the rights of the defence, to provide legal and administrative support to defence counsel, and to establish a list of such counsel. The Tribunal also exhibits several novelties from the point of view of procedure, including: (a) a Pre-Trial Judge with significant authority and responsibility; (b) a more proactive role for judges; (c) extensive victim participation in the proceedings; (d) measures alternative to detention, aimed at ensuring that freedom pending trial is the norm rather than the exception; (e) the protection of sensitive information, both to ensure the safety of witnesses and to accommodate the legitimate requests of States (including national security interests); and (f) trials in the absence of the accused under certain circumstances and with mechanisms designed to fully protect the rights of the accused. Part I concludes with a discussion of some of the difficulties inherent in the investigation and prosecution of terrorist cases.

Part II of the present report is devoted to the activities of each organ over the past year.

The Chambers devoted most of their efforts to: (a) building the legal and regulatory framework necessary to try cases, in particular by expeditiously adopting a set of important Rules of Procedure and Evidence, as well as Rules of Detention and three Practice Directions; (b) negotiating agreements with international entities (the International Committee of the Red Cross and the International Criminal Police Organization (INTERPOL)); and (c) collaborating with the Registry in order to set up the practical infrastructure required to carry out judicial activity. During the first months, the Pre-Trial Judge and the President also dealt swiftly with the requests from the Office of the Prosecutor and the Defence Office in relation to the four Lebanese generals detained in Beirut.

The Registry established the support services required to operate a judicial institution, including: (a) preparing internal administrative regulatory documents; (b) devising a court management system; and (c) signing a memorandum of understanding with Lebanon regarding the Beirut Field Office and other Tribunal operations in Lebanon. A state-of-the-art courtroom was built and other facilities renovated in order to ensure efficient judicial activities. Moreover, the Liaison Office

in New York and the Beirut Office were established and are now fully functioning. A Library specializing in legal issues relating to terrorism and international law was also created. In addition, the Registrar, the Deputy Registrar and their representatives engaged in outreach activities. A considerable effort by Human Resources made it possible to bring on board the necessary staff within the expected time frame.

The Office of the Prosecutor focused its efforts in three areas: (a) becoming a fully functional and operational office; (b) assuming jurisdiction over the investigation into the Hariri attack; and (c) intensifying investigations and exploring all investigative leads in order to establish the truth regarding the attacks falling within its mandate. The first two objectives have already been attained. As for the third, significant progress was made. Moreover, a memorandum of understanding between the Prosecutor and the Minister of Justice of Lebanon was signed. A Cooperation Agreement with INTERPOL enabled the Office of the Prosecutor to gain access to INTERPOL databases. After an evaluation of the required resources, an operational surge was approved by the Management Committee, and the additional staff recruited from mid- to late 2009 contributed greatly to the ability to carry out analysis and investigations and to process documents. More than 240 requests for assistance were sent to the Prosecutor General of Lebanon, and 53 missions to the field were undertaken. More than 60 requests for assistance were addressed to 24 other countries, while 62 missions were carried out on their territories. More than 280 witnesses were interviewed. In addition, the Office of the Prosecutor treated information and outreach as operational priorities.

The Defence Office had to define its organizational structure, as its establishment was unprecedented at the international level. Upon the deferral of jurisdiction by Lebanon to the Tribunal, the Head of the Defence Office requested that the President ensure that certain fundamental rights of the detainees would be protected. With part of its staff in place, the Office engaged in various outreach activities and began to prepare lists of counsel eligible to represent indigent accused, upon verification that counsel meet requirements set out in the Rules. The Office also provided input into all the legal instruments adopted by the Tribunal and concluded cooperation agreements with a number of universities.

The Special Tribunal for Lebanon currently has 276 staff representing 59 nationalities, in addition to 21 interns. The budget for 2009 amounted to $51.4 million, and that approved for 2010 amounts to $55.4 million.

Part III of the present report places into perspective the achievements accomplished by the Tribunal during its first year of operation. It highlights: (a) the rapid approval of the legal framework for the activities of the Tribunal; (b) the deferral of jurisdiction by Lebanon and the swift steps taken by the Prosecutor, the Pre-Trial Judge and the Head of the Defence Office regarding the detention of the four Lebanese generals; (c) the intense contacts made both between the Tribunal's principals and with various international institutions and bodies; (d) the acceleration by the Prosecutor of his investigations so as to expeditiously submit indictments to the Pre-Trial Judge; and (e) the Registry's efficient preparations for the establishment of all the necessary practical infrastructure. It also highlights the unreserved cooperation provided by the Government of Lebanon to the various organs of the Tribunal. However, the report notes that in the area of outreach, improvements are still required for the implementation of a comprehensive Tribunal-wide policy. Now that it has efficiently and rapidly put in place all the legal and practical

infrastructures required for a court of law, the Tribunal is bracing itself for the prompt, fair and expeditious administration of justice. It is confident that in the next 12 months it will efficiently move to judicial action.

Despite the challenges ahead, the Tribunal intends to dispense justice free from any political or ideological fetter and on the basis of full respect for the rights of both the defendants and the victims. If it is to do so effectively and to ensure that the investments made to date pay off, continued attention to funding is essential; as well as judicial assistance from States and other international entities.

Introduction

1. The present annual report is not intended to present a jejune account of the activities undertaken by the organs of the Tribunal over the past 12 months. In addition to illustrating the steps taken, achievements accomplished and setbacks encountered during the past year, it aims to discuss a number of general problems and challenges facing the Tribunal and to reflect on the implications of its establishment of that body. This will be done in an effort to ensure transparency and accountability vis-à-vis the United Nations, the Government of Lebanon, Lebanese civil society, Member States and the world community at large.

2. The Tribunal seeks to render expeditious and true justice and to accomplish the truth-seeking mission entrusted to it by its founding instruments. As the present annual report is the first, I shall, before setting out the activities undertaken over the past year, highlight the main features of the Tribunal, the major novelties of its statute and Rules of Procedure and Evidence and the steps taken by the various organs of the Tribunal to be innovative in carrying out the functions of this international criminal court. This should help the reader to view the Tribunal in its proper context.

3. It is necessary to understand the differences between the Special Tribunal for Lebanon, which deals exclusively with terrorism as a discrete crime, and the other international criminal courts and tribunals which adjudicate war crimes, crimes against humanity and genocide. Highlighting those differences will underscore the particularly difficult obstacles that the Tribunal must face in fulfilling its mission.

4. Given the purpose and the format of the present report, I shall endeavour to describe in detail not only the achievements of the past year, but also the hurdles that the Tribunal has had to face and a number of the missteps made. A challenging undertaking such as this, in which one navigates uncharted waters, is always bound to contain an element of trial and error. It would, however, be wrong to refrain from acting lest one commit blunders. In that respect, I should like to recall what the German philosopher Hegel wisely wrote: “The most harmful thing is that one should want to be safe from errors. The fear that in doing something one might make mistakes stems from love for comfort. This fear goes hand in hand with absolutely passive mistakes. The stone alone does not suffer from any active mistake.”[1]

[1] See W. Hegel, “Jena Aphorismen”, in *Georg Wilhelm Friedrich Hegels Leben — Supplement zu Hegels Werken*, Karl Rosenkranz (Berlin, Duncker und Humblot, 1844).

Certainly, we must not shy away from "active errors" as long as we can move forward and fulfil our mission in the most fair and expeditious way possible.

5. At the outset it is only fitting that I express my sincere gratitude to the Management Committee, the Chairperson of the Committee, the Government of Lebanon and the United Nations for their efforts and their commitment to the cause of justice and accountability. It is thanks to them, and to other supporting countries and the European Commission, which contributed a generous grant, as well as to the hard work of each and every person here at the Tribunal, that we have been able to make substantial progress in our work.

6. The Tribunal is a great opportunity for Lebanon and for the international community as a whole. Its aim is to render justice in a fair and transparent process and to provide truth to the victims and to Lebanese society. The Tribunal takes as its polar star Plato's maxim that justice is "a thing more precious than many pieces of gold".[2] In order to build upon and reap the benefits of the successful efforts made thus far, it is essential that the support of the United Nations and Lebanon be continued and strengthened.

Part I — Distinguishing features of the Tribunal

A. Main features of the Tribunal in a nutshell

7. The Special Tribunal for Lebanon has jurisdiction over persons responsible for the attack of 14 February 2005 resulting in the death of former Lebanese Prime Minister Rafiq Hariri and in the death or injury of other persons, as well as for related cases, on the basis of the criteria identified in article 1 of its Statute.

8. The Special Tribunal for Lebanon shares a few features with other international courts and tribunals: (a) it is international in nature; (b) it is constituted of judges and other principal organs (the Office of the Prosecutor, the Defence Office and the Registry) that are independent and impartial; (c) its staff is international; and (d) its proceedings are governed by international provisions and are conducted in more than one language.

9. However, the Tribunal exhibits a number of unique features that deserve to be emphasized because their exposition highlights some of the problems facing it:

(a) Like certain other tribunals (the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia), it is hybrid in nature, in that it is composed of both national and international judges. However, unlike those tribunals, it does not sit in the territory where the crimes have been committed, but in the Netherlands, for security reasons;

(b) Unlike some tribunals (the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda and the International Criminal Court), the Special Tribunal for Lebanon does not apply substantive international law. Nor does it apply a combination of national and international law, as do other tribunals (the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia). Instead, it applies Lebanese

[2] See Plato, *The Republic*.

substantive law to acts of terrorism considered threats to international peace and security by the Security Council;

(c) The Special Tribunal for Lebanon exercises its jurisdiction over a crime that thus far has not been within the province of an international tribunal: terrorism as a discrete crime;

(d) Unlike those of many international tribunals (for example, the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda), its procedure is not based primarily on the adversarial model. Nevertheless, unlike the procedure of the Extraordinary Chambers in the Courts of Cambodia, which is based on the civil law inquisitorial model, the procedure of the Special Tribunal for Lebanon tries boldly to blend the adversarial and the inquisitorial models;

(e) Unlike the statutes of the other tribunals, the statute of the Special Tribunal for Lebanon places the Defence Office on the same footing with the Office of the Prosecutor, thereby safeguarding the rights of the defence in a more effective manner;

(f) Unlike most international tribunals, the Special Tribunal for Lebanon allows for trials conducted in the absence of the accused. However, unlike the International Military Tribunal at Nuremberg, which allowed trials in absentia proper, article 22 of the Special Tribunal for Lebanon statute subjects to strict conditions the conduct of a trial in the absence of the accused, in order to ensure the protection of the fundamental rights of the accused guaranteed by international human rights law, in particular the right to obtain a retrial if he or she appears at a later stage. Furthermore, the Tribunal's Rules of Procedure and Evidence allow for the conduct of trials in the physical absence of the accused, in which the accused may, however, participate legally by not expressly waiving his or her right to participate, by appointing and instructing defence counsel and, if necessary, by participating in the proceedings through a videoconference;

(g) The statute of the Tribunal, in its article 10, codifies a practice followed by most international criminal courts and tribunals: it grants the Tribunal's President extensive powers by providing that he or she shall "be responsible for [the Tribunal's] effective functioning and the good administration of justice".

The novel features of the Special Tribunal for Lebanon will be further elaborated in the sections below.

B. Principal novelties of the Tribunal

1. Introduction

10. In several ways, the Special Tribunal for Lebanon marks a new phase in international criminal justice. This is true not only in relation to its subject-matter jurisdiction, which encompasses the mandate to prosecute terrorism, but also as regards its structure and its procedures. These are tailored to the specific mandate of the Tribunal and build upon the wealth of judicial experience accumulated by international and mixed tribunals over the past two decades. The present section highlights the principal novelties enshrined in the Tribunal's statute and Rules of

Procedure and Evidence in three areas: (a) novelties in terms of substantive law; (b) new aspects of the structure of the Tribunal; and (c) procedural novelties.

2. Novelties relating to substantive law

11. The statute contains several novel features regarding its substantive law that differentiate the Special Tribunal for Lebanon from other existing international and hybrid tribunals. Two of those features will be addressed.

12. First, the Special Tribunal for Lebanon is the first tribunal of its kind to deal with terrorism as a discrete crime, labelled by the Security Council as a threat to international peace and security. Indeed, while terror was addressed by the International Criminal Tribunal for the Former Yugoslavia and the Special Court for Sierra Leone as a war crime, this was in the context of massive attacks and other crimes against persons taking no active part in the hostilities. Terrorism perpetrated in peacetime bears little resemblance to terror carried out during an armed conflict, since, for instance, it does not require any link to an armed conflict or to an attack against civilians. The main consequences of these differences, in terms of investigation and prosecution, are explored below.

13. Secondly, the Special Tribunal for Lebanon possesses jurisdiction over crimes as defined in Lebanese domestic law. While other hybrid courts, such as the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia, are mandated to address both international crimes and domestic criminal offences, the Special Tribunal for Lebanon is the only such tribunal vested with jurisdiction over a crime — terrorism — as defined in domestic law. Article 2 of its statute, in particular, specifies that the Tribunal should apply "[t]he provisions of the Lebanese Criminal Code relating to the prosecution and punishment of acts of terrorism, crimes and offences against life and personal integrity, illicit associations and failure to report crimes and offences". Pre-eminent among those provisions is article 314 of the Lebanese Criminal Code, according to which "[t]errorist conduct means all conduct aimed at creating a state of panic and committed by such means as explosive devices, inflammable materials, toxic or corrosive products and infectious or microbial agents likely to create a public danger".

3. New aspects of the structure of the Tribunal

14. While each international and hybrid tribunal has a peculiar structure distinguishing it from the others, two features of the Special Tribunal for Lebanon set that institution apart from its predecessors: the Defence Office and victim participation.

15. The Special Tribunal for Lebanon is the first international tribunal to have a statutory Defence Office as an organ independent of the Registry, mandated to protect the rights of the defence, provide legal and administrative support to the defence, and establish a list of defence counsel who may appear before the Tribunal (article 13 of the statute). While other existing courts (in particular, the Special Court for Sierra Leone) also recognize the importance of an office dedicated to defence matters, this is the first time that that recognition has led to the establishment of an independent organ on a par with the Office of the Prosecutor.

16. The principal duty of the Defence Office is to promote the rights of suspects and accused, as embodied in articles 15 and 16 of the statute, respectively. It is

important to stress that the Defence Office is not intended to represent one or more accused, but rather will provide out-of-court assistance and ensure that the rights of suspects and accused are respected at all stages.

17. The Defence Office is endowed with the statutory and regulatory powers necessary to promote the rights of the suspects and accused so as to ensure the highest standards of fairness in the proceedings before the Special Tribunal. It should be emphasized that the Head of the Defence Office has already exercised his powers in that regard in relation to the conditions of detention of the four Lebanese Generals, by requesting that the President ensure that some of their fundamental rights be protected.

18. Another distinguishing structural feature of the Special Tribunal for Lebanon is the opportunity for victims to participate in the proceedings with a view to presenting their views and concerns (see article 17 of the statute, entitled "Rights of victims"). While victims can participate in the Extraordinary Chambers in the Courts of Cambodia as *parties civiles* — to support the prosecution, but also to "seek collective and moral reparations" (internal rule 23) — victims before the Special Tribunal for Lebanon are not private claimants and do not have the right to seek compensation for any prejudice suffered as a result of the crime. This, of course, does not prevent victims from eventually filing an action for damages before a national court on the basis of a judgement by the Tribunal.

19. Moreover, the Special Tribunal for Lebanon departs from the experience of the International Criminal Court in that victim participation will be allowed only following confirmation of an indictment, whereas the first pretrial decisions at the International Criminal Court made provision for quite an extensive set of rights for victims, even before the confirmation of an indictment.

20. Owing to the potential impact of victim participation on proceedings, victims who wish to take part in proceedings must be screened beforehand by the Pre-Trial Judge. He or she may: (a) exclude persons whose status as victims is doubtful; (b) limit the number of victims who may participate in proceedings; and (c) designate one legal representative to act on behalf of multiple victims. In any event, as stated above, victims can be granted the status of participants only following confirmation of the indictment, when the investigation phase is essentially over. These features are designed to ensure for victims an effective right to take part in proceedings, while at the same time attempting to avoid any negative impact of the presence of victims on the rights of the accused or the strategy of the Prosecutor.

4. Procedural novelties

21. The third set of innovations at the Special Tribunal for Lebanon relates to its procedures. The Tribunal's statute attempts to strike a new balance between rules typical of common-law (adversarial) systems and those inspired by civil-law (inquisitorial) jurisdictions. While the Extraordinary Chambers in the Courts of Cambodia and, to a certain extent, the International Criminal Court also incorporate important elements derived from legal systems based on the Romano-Germanic tradition, the drafters of the Tribunal's statute attempted to take stock of those experiences in order to ensure a more balanced, swift and fair procedure. The present section will briefly address the most important innovations contained in the statute and the Rules of Procedure and Evidence, in particular: (a) the position of the Pre-Trial Judge; (b) the proactive role of judges in the conduct of proceedings;

(c) measures alternative to detention; (d) the use of written evidence; (e) the protection of sensitive information; and (f) trials in the absence of the accused.

(a) The position of the Pre-Trial Judge

22. One of the novelties enshrined in the statute is the fact that the Pre-Trial Judge, who is entrusted with reviewing indictments and preparing cases for trial, is not a member of the trial bench, but rather a separate and autonomous judge who cannot serve in the Trial Chamber (see article 2 of the Agreement between the United Nations and the Lebanese Republic on the establishment of a Special Tribunal for Lebanon and articles 7 (a) and 18 of the statute). While the Pre-Trial Judge's counterparts at the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, for example, may become members of the Trial Chamber and therefore must take care not to be "contaminated" by contact with the evidence, the Pre-Trial Judge of the Special Tribunal for Lebanon is free to deal with evidentiary material submitted by the parties and may take a more active role during the initial stages of proceedings. Since the position is not akin to that of the Lebanese *juge d'instruction* (because the statute does not foresee this), he will not generally gather evidence *proprio motu*. He may, however, collect evidence in two situations: at the request of a party or a victim participating in the proceedings, when the requesting party or the victim demonstrates, on a balance of probabilities, that it is not in a position to collect the evidence itself, and the Pre-Trial Judge considers that doing so would be in the interests of justice (rule 92 (A)); and secondly, where a party or a victim participating in the proceedings is unable to collect "an important piece of evidence" that the Pre-Trial Judge deems indispensable to the fair administration of justice, the equality of arms and the search for truth (rule 92 (C)). In the latter case, the Pre-Trial Judge's intervention is contingent upon the parties or the victim being unable to gather the evidence. Evidence collected by the Pre-Trial Judge in this manner must still be introduced by a party or a victim participating in the proceedings, and the participants in the trial remain free not to do so.

23. The other powers of the Pre-Trial Judge include: (a) evaluating the charges brought by the Prosecutor in the indictment and, if need be, (b) requesting the Prosecutor to reduce or reclassify such charges; (c) facilitating communication between the parties; (d) issuing summonses, warrants and other orders at the request of either party; (e) questioning anonymous witnesses; (f) drawing up a complete file for the Trial Chamber listing the main differences between the parties on points of law and fact, and indicating his views regarding the main points of fact and law arising in the case. An important innovation introduced in October 2009 is the new provision set out in rule 88, which enables the Prosecutor to disclose to the Pre-Trial Judge, even before an indictment has been confirmed, any item that he considers necessary for the exercise of the latter's functions.

(b) The proactive role of judges

24. The statute envisages a proactive role for trial judges in the conduct of the proceedings by assuming that they will take the lead in examining witnesses. Judges are also granted the power to call witnesses and to order the production of additional evidence (article 20), and are required to take measures to prevent unreasonable delays (article 21 (1)). Moreover, article 20 (2) of the Statute envisages a mode of hearing witnesses akin to that of inquisitorial systems: witnesses are first questioned

by the Presiding Judge and the other judges, and then by the parties. This, however, presupposes that the Trial Chamber is provided with a complete file (*dossier de la cause*) enabling it to become familiar with the evidence collected and the legal and factual problems likely to arise. If the Pre-Trial Judge is unable to compile such an exhaustive file for the Trial Chamber, rule 145 (B) envisages a return to the adversarial mode of conducting proceedings. This allows judges to act as they deem appropriate in order to ensure fair and expeditious trials.

(c) Measures alternative to detention

25. The general rule applicable to suspects and accused brought before the Tribunal is that they should not be held in detention while awaiting trial. Freedom is the norm, dictated by the principle that every person accused of a crime must be presumed innocent until convicted upon judgement. Detention is the exception, which may be justified in the concrete circumstances of a case (a) to ensure a person's appearance at trial whenever there is a serious danger that he or she may abscond; (b) to prevent him or her from obstructing or endangering the investigation or the court proceedings; or (c) to prevent a repetition of the kind of conduct of which he or she is suspected. The notion that, as a rule, persons charged with a crime must stand trial while free is too often neglected by both international and national courts, particularly, in the latter case, in some countries based on the Romano-Germanic tradition, as testified by Voltaire's spirited protestations against the French penal system in 1764.[3]

26. In line with these principles, suspects or accused before the Special Tribunal for Lebanon, instead of being detained, may be summoned to appear, with the consequence that they will not be held in custody in the Tribunal's detention facility. If a suspect or an accused is detained, upon order of the Tribunal, in his or her State of residence or in the Tribunal's detention facilities, the Pre-Trial Judge (or a Chamber) may order that the person be provisionally released and sent back to his or her State of nationality or residence.

27. Moreover, provisions have been introduced to grant (with the consent of the host State) a safe-conduct, which affords to suspects or accused immunity from arrest and prosecution thus allowing them to be interviewed or to make the initial appearance before the Trial Chamber or the Pre-Trial Judge and then to return to their own countries. Alternatively, accused are allowed to participate in trial or appeal proceedings by videoconference. Thus, they do not need to come to the Netherlands, but, at the same time, are considered to be subject to the Tribunal's jurisdiction.

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[3] In a letter relating to the *Lally* case (the French general sent to protect French possessions in India, and then tried and unjustly sentenced to death in Paris for the alleged crimes of misappropriation of public funds and high treason), sent on 21 July 1764 to Cardinal Richelieu, Voltaire wrote: "[O]n commence toujours en France par mettre un homme trois ou quatre ans en prison, après quoi on le juge. En Angleterre, on n'aurait du moins été emprisonné qu'après avoir été condamné, et il en aurait été quitte pour donner caution". (In France, authorities always start by imprisoning a man for three or four years, and only after that does he stand trial. In Great Britain, one would have been put in jail only after being convicted by a court of law and would have previously got off by paying bail.) Reported in *L'affaire du chevalier de La Barre*, Voltaire (Paris, Gallimard, 2008).

28. The necessity of allowing various methods of "legal presence" before the Tribunal is all the more acute in the case of the Special Tribunal for Lebanon because of the unique difficulties that it might face in having the accused arrested and subsequently handed over. Presumably, third States will be less reluctant to cooperate with the Tribunal if they know that their nationals may stand trial without being held in detention and may participate in proceedings from their State of residence.

29. All of these measures permit the conduct of trials in which the accused is not necessarily present but nevertheless instructs his or her defence counsel after having initially appeared at trial.

(d) Use of written evidence

30. The Special Tribunal for Lebanon has the statutory authority to receive evidence in written form (article 21 (3) of the statute). While the Tribunal follows the oral tradition in many respects, it also takes into account the experience of criminal systems such as that of Lebanon, which tends to admit written evidence, subject to certain conditions, without calling the witness in person or cross-examining him or her. Since fundamental human rights require that an accused be able to examine the evidence against him or her (article 16 (4) (e) of the statute), a balance had to be found. The Rules of Procedure and Evidence thus include specific rules for various categories of written evidence. Rule 154 provides that documents such as letters, intercepts and minutes of meetings may be admitted into evidence, provided that their probative value is not substantially outweighed by the need to ensure a fair trial. Rule 155 allows written statements and transcripts from other proceedings to be admitted in lieu of oral testimony, provided that they do not relate to the acts or conduct of the accused as charged in the indictment. Rule 156 relates to written statements of witnesses who are present in court and are prepared to testify and to be cross-examined. Such statements may be admitted as a matter of course, even if they go to prove the acts or conduct of the accused, unless the other party objects because the witness is available for cross-examination. Statements or transcripts of the testimony of unavailable persons may also be admitted (rule 158). However, if the evidence goes to proof of acts or conduct of the accused, this may be a factor militating against the admission of such evidence in whole or in part.

31. Separate provisions concern anonymous witnesses, who are often crucial in trials relating to terrorism (either because they fear for their lives or because they are intelligence officials who are not prepared, or allowed, to disclose their identity). Rule 93 provides for a procedure whereby the anonymous witness testifies in camera before the Pre-Trial Judge alone, so that only that judge is in a position to know his or her identity. In addition, the Rules provide that the parties, as well as the representative of a victim participating in the proceedings, may put questions in writing to the witness through the Pre-Trial Judge. Rule 159 provides that the Trial Chamber may admit the evidence of an anonymous witness; however, a conviction may not be based solely or to a decisive extent on such evidence.

(e) Protection of sensitive information

32. The issue of anonymous witnesses brings us to the matter of the protection of sensitive information provided to the Tribunal by a State or by another international entity. Criminal proceedings relating to terrorism may indeed require that some

information provided to the parties on a confidential basis be protected. However, it is imperative that the measures taken to protect that information be fully compatible with the rights of the accused. In rules 117-119, an attempt has been made to strike a balance between the requirement not to disclose the source or the exact content of confidential information in the possession of the prosecution or the defence and the need to ensure a fair trial that is fully respectful of the rights of the other party. The task of ensuring that the use of that information will not affect the rights of the other party is entrusted to the Pre-Trial Judge or to a Special Counsel appointed by the Tribunal's President from a list of persons proposed by the provider of the information.

33. Rule 117 concerns information in the possession of a party, the disclosure of which may affect the security interests of a State or international entity. In such cases, the Prosecutor may apply *ex parte* to the Pre-Trial Judge, who, sitting in camera, will hold *ex parte* proceedings to determine whether the Prosecutor may be relieved of his obligation to disclose the information in whole or in part. When necessary, the Pre-Trial Judge will order "counterbalancing measures", that is, measures remedying the fact that material that should be disclosed cannot actually be disclosed, therefore ensuring that the rights of the other party are respected. Such measures can include providing the information in a summarized or redacted form, or stipulating the facts arising from the information.

34. Rules 118 and 119 concern the disclosure of information that is provided on a confidential basis and may affect the security interests of a State or an international entity. Such information may be disclosed only with the consent of the provider. Here, one need only clarify, without going into the nuances of the provision, that if the provider does not consent to the disclosure of the information, and the party is nevertheless under an obligation to disclose the material, the party must apply to the Pre-Trial Judge. The party can submit to the Pre-Trial Judge only an overview of the steps taken to obtain the provider's consent, a statement as to whether the information is exculpatory, the reasons why it is so, and a list of proposed counterbalancing measures. The Pre-Trial Judge must rule on the matter and order the necessary counterbalancing measures, which may include amending the indictment or withdrawing the charges. Alternatively, the President may appoint a Special Counsel (from a confidential list of persons approved by the provider of the confidential information), who may review the information and advise the Pre-Trial Judge on the most appropriate counterbalancing measures. Under both scenarios, the Pre-Trial Judge will notify the Trial Chamber of the situation and of his orders. The material itself will never be seen by the judges.

35. It is important to emphasize that the Prosecutor, in particular, has a vested interest in ensuring either that the material is disclosed or that the counterbalancing measures are sufficient to protect the rights of the accused. The Trial Chamber will receive a report from the Pre-Trial Judge detailing the procedure (although not describing the confidential material as such), and it will have to be satisfied that there is no prejudice to the accused and that non-disclosure itself does not create reasonable doubt as to his or her guilt.

36. Other, less intrusive measures of protection exist for information that may prejudice investigations, may cause grave risk to the security of a witness or his or her family, or is otherwise contrary to the public interest (rule 116). In such cases,

the Pre-Trial Judge may consider the material and rule on appropriate protective measures.

(f) Trials in the absence of the accused

37. According to article 22 of the statute, the Special Tribunal for Lebanon may conduct trials in the absence of the accused when the accused (a) has expressly waived his or her right to be present; (b) has not been handed over by the State in which he or she is residing; or (c) has absconded or otherwise cannot be located. The rationale behind this legal regulation is clear: international justice must not be thwarted, either by the will of the accused to evade justice or by the intent of a State to shelter such an accused by refusing to hand him or her over to the international tribunal.

38. Under the statute and the Rules of Procedure and Evidence, the absentee retains, however, some fundamental rights: (a) he or she may appoint defence counsel of his or her choosing; (b) he or she may terminate his or her absence and appear in court (rule 108); (c) if he or she has not appointed counsel of his or her choosing, once the trial is over, he or she may ask for a retrial (rule 109); (d) if he or she has appointed defence counsel of his or her choosing, he or she has the right to appeal against the judgement of the Trial Chamber. In addition to those rights, the legal regime of trials in the absence of the accused before the Special Tribunal for Lebanon includes two obligations incumbent upon the Tribunal: (a) the Tribunal must assign defence counsel to the accused; and (b) trial proceedings conducted in the absence of the accused must not differ from those conducted in the presence of the accused (rule 107).

39. Thus, the legal regime of trials in the absence of the accused provides for a bifurcation once the accused has, expressly and in writing, waived his or her right to attend the trial. Then he or she may either refrain from designating a defence counsel or appoint defence counsel of his or her choosing. In the latter case, it was thought necessary to prevent the accused first from influencing the trial proceedings through his or her defence counsel (through whom he or she would also become cognizant of the evidence led by the prosecution) and then from asking for the nullification of the trial. In order to avoid this, the Statute provides that the accused who has appointed defence counsel of his or her choosing is barred from requesting retrial.

40. It is crucial to emphasize that under the statute of the Special Tribunal for Lebanon, trials conducted in the absence of the accused are significantly and markedly different both from the traditional trials in absentia (termed *procès par contumace* in French-speaking countries) held in the past in countries based on the Romano-Germanic tradition and from the trials in absentia that at present may be held in some common-law jurisdictions. Those differences are very important and therefore deserve to be underlined.

41. Trials in absentia were formerly permitted in some civil-law countries. They were trials conducted in the absence of the accused (who had absconded or could not be found), but in which no legal counsel was appointed for the accused. In addition, the accused, if convicted, often forfeited his or her civil rights. Such a procedure existed in France (between 1808 and 2004)[4] and in other European

[4] According to the eminent Judge Guy Canivet, in France the *procès par contumace* existing

countries; however, following repeated critical decisions by the European Court of Human Rights,[5] it has been replaced by trials by default (*procès par défaut*), in which the rights of the accused are fully safeguarded.

42. In the United Kingdom of Great Britain and Northern Ireland and the United States of America, the trial in absentia — generally allowed when the defendant appears at least once at trial — is not an accommodation or an opportunity to hold a trial without taking custody of the accused, but a diminution of rights in response to the wrongdoing of the accused. In general, where the accused is not present at trial in the adversarial system, he or she may even forfeit the right of appeal.

43. In contrast, as stated above, the rules governing trials in the absence of the accused, as provided by the Tribunal's statute and Rules of Procedure and Evidence, in addition to making the procedure exceptional, confer a set of important rights on the absent accused, in particular, the right to retrial if he or she is apprised of the default proceedings or terminates his or her hiding, as well as (*a fortiori*) the right of appeal.

44. It should be added that the Rules of Procedure and Evidence have also reduced the scope of proceedings in the absence of the accused, on the assumption that the physical attendance of the accused is not necessarily required and that his or her "legal presence" may suffice under certain conditions. According to the Rules, therefore, the following two scenarios are not considered trials in the absence of the accused:

(a) The accused attends the initial appearance hearing (with or without a safe-conduct) and then does not return, so long as a defence counsel continues to act on his or her behalf and attends the hearings in person (rules 104 and 105);

(b) The accused appears before the Tribunal — even if it is only for the initial appearance hearing — by videoconference or through counsel appointed or accepted by him or her, and, in addition, refrains from waiving expressly and in writing his or her right to be present (rule 104). In such an instance, while the accused is not physically present before the Chamber, he or she is not considered "absent" from the proceedings in a legal sense and does not enjoy a right to retrial.

45. The rationale is that, since the accused enjoys the presumption of innocence and therefore need not necessarily be in custody while standing trial, he or she may be allowed to take part in the proceedings either in person, by videoconference or through defence counsel whom he or she has chosen and instructs. The physical presence of the accused in court is not required. Since he or she has decided not to waive (expressly and in writing) his or her right to participate, and has thereby shown that he or she intends to take an active part in the proceedings, the trial

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before the reform of 9 March 2004 exhibited the following characteristics: (a) the absentee was tried by professional judges and not by an Assize court comprising jurors as well as professional judges; (b) the proceedings were written, and witnesses and experts were not allowed to be heard; (c) the absentee was not allowed to be represented by defence counsel during the trial proceedings and was not entitled to lodge an appeal with the Court of Cassation against the judgement rendered in absentia. G. Canivet, *La Contumace (défaut criminel) en Europe*, online: www.courdecassation.fr/IMG/File/…/ouverture%20_guy_canivet.PDF.

[5] See the *Poitrimol v. France* case (judgement of 23 November 1993), para. 31. See also *Krombach v. France*, judgement of 13 February 2001, paras. 82-90 (on the imperative need for a defence counsel to act on behalf of the absent accused).

cannot be considered to be conducted by default. What is essential is the deliberate legal participation of the accused in the proceedings. This means that — either by videoconference or through defence counsel — he or she can make statements to the Chamber, examine and cross-examine witnesses or be asked specific questions by the judges. If the accused participates by videoconference, he or she may also exercise his or her right to testify in his or her own defence and be examined and cross-examined.

C. Imperative need for State cooperation

1. Introduction

46. The cooperation of States, which is crucial for the successful accomplishment of the mission of any international criminal tribunal or court, usually follows two models:[6]

(a) The horizontal model, based on the sovereign equality of States, whereby States are not bound to cooperate unless they have agreed to do so. This model is the one that often inspires bilateral or multilateral treaties on judicial cooperation or extradition between States. Under it, the State requested to perform investigative or judicial acts in order to assist criminal proceedings in the requesting State (for example, interviewing or summoning witnesses, conducting searches and executing arrest warrants) operates through its own prosecutorial or judicial authorities and then delivers the result of those acts to the requesting State;

(b) The vertical model, whereby States are legally bound to comply with orders issued by an international tribunal or court without prior specific agreement, on the basis of a binding decision by an international organ (with the consequence that any non-compliance may be sanctioned). Under the vertical model, States may not refuse to cooperate on any of the grounds usually applicable under inter-State legal assistance or extradition treaties (such as non-extradition of nationals, political offence exception, double criminality requirement or *ne bis in idem* condition).

47. The vertical model can be divided into two sub-models:

(a) A more sovereignty-oriented sub-model, whereby States, while legally bound to cooperate, implement investigative or judicial acts of assistance to the requesting international tribunal or court through their own prosecutorial or judicial authorities — if need be, in the presence of officials of the international tribunal or court;

(b) A more hierarchy-oriented sub-model, whereby States authorize once and for all an international tribunal or court to carry out investigative or judicial acts of assistance on their territory without the assistance of their own authorities — except for those acts that, by their nature, require the active cooperation or protection of local enforcement agents, such as searches, the execution of arrest warrants and the execution of subpoenas.

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[6] See International Criminal Tribunal for the Former Yugoslavia, Request of the Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997, *Blaškić* (IT-95-14-AR108bis), Appeals Chamber, 29 October 1997, para. 47.

48. The Special Tribunal for Lebanon system of cooperation is unique in four respects. First, it is based on both models of cooperation: while the vertical model governs the Tribunal's relationship with Lebanon, the horizontal model dictates its relationship with third States. Secondly, the relationship between the Tribunal and Lebanon is inspired by the more hierarchy-oriented vertical model, since article 11 (5) of the statute appears to allow the Tribunal to carry out investigative acts, if appropriate, without the assistance of the Lebanese prosecutorial or judicial authorities. Thirdly, the effectiveness of the horizontal model has been reinforced by envisaging the conclusion of agreements or arrangements with third States, not only by the President, acting on behalf of the whole Tribunal, but also by the Prosecutor, the Head of the Defence Office and the Registrar. Fourthly, innovative mechanisms designed to prevent major cooperation difficulties have been adopted in the context of the Rules of Procedure and Evidence.

2. Vertical cooperation with Lebanon

49. In the light of the Agreement between the United Nations and the Lebanese Republic on the establishment of a Special Tribunal for Lebanon, which entered into force pursuant to Security Council resolution 1757 (2007), adopted under Chapter VII of the Charter of the United Nations, the vertical model of cooperation applies to Lebanon. The Lebanese authorities are bound to cooperate with the Tribunal and must therefore comply, without undue delay, with any request for assistance or any order issued by the Tribunal. In line with this model, article 4 (1) of the statute provides that "[w]ithin its jurisdiction, the Tribunal shall [also] have primacy over the national courts of Lebanon".

50. In the event of non-compliance by Lebanon with any request or order issued by the Tribunal, rule 20 of the Rules of Procedure and Evidence establishes a three-tiered mechanism. The mechanism, while showing respect for the sovereignty of Lebanon, is grounded in the vertical nature of its relationship with the Tribunal and would, therefore, be compulsory. First, the President would consult with the relevant Lebanese authorities with a view to inducing them to cooperate. Secondly, in the event of a persistent refusal to cooperate, the Pre-Trial Judge or the Trial Chamber would make a judicial finding of non-cooperation. Thirdly, the President would report this judicial finding to the Security Council for appropriate action.

51. Furthermore, in order to ensure that the Special Tribunal for Lebanon can fulfil its mandate, its statute, expanding the trend initiated by the International Criminal Tribunal for the Former Yugoslavia, reinforces the vertical nature of the relationship between the Special Tribunal and Lebanon through the application of the more hierarchy-oriented vertical model referred to above. Indeed, article 11 (5) allows the Prosecutor to decide whether he requires the assistance of the Lebanese authorities when conducting his investigation, which may entail, "as appropriate", intrusive measures, such as conducting on-site investigations or interviewing witnesses or suspects. However, in order to guarantee that the interests of Lebanon are fully preserved and that its sovereignty is not unduly encroached upon, rule 77 (B) of the Rules of Procedure and Evidence provides that the decision of the Prosecutor is subject to judicial scrutiny: when necessary and appropriate, the Prosecutor must be authorized by the Pre-Trial Judge to carry out investigative acts without the involvement of national authorities.

52. While the Agreement, the statute and the Rules of Procedure and Evidence provide for the aforementioned mechanisms, I am pleased to report that to date, Lebanese cooperation has been most forthcoming and effective.

3. Horizontal cooperation with third States

53. Except when the Security Council requests third States to cooperate pursuant to a resolution adopted under Chapter VII of the Charter, the horizontal model of cooperation applies to third States: they shall provide assistance to the Special Tribunal for Lebanon only if they have agreed to do so, for instance, by entering into an agreement or arrangement with the Tribunal, as provided by rules 13 to 15 of the Rules of Procedure and Evidence.

54. In the event of non-compliance by third States with a request of the Tribunal, a distinction must be made between third States that have entered into such an arrangement or agreement and those that have not. According to rule 21 (A) of the Rules of Procedure and Evidence, the States in the former category are obliged to provide assistance to the Tribunal within the limits established under the arrangement or agreement. Any disagreement is settled solely by means of the dispute settlement mechanism provided for under the relevant arrangement or agreement. Accordingly, both the scope and the duty to cooperate, as well as the consequences of the non-compliance of such States, are to be negotiated on a case-by-case basis. As far as States in the latter category are concerned, they are not bound to cooperate with the Tribunal. If such a State fails to comply with a request for assistance by the Tribunal, according to rule 21 (B) of the Rules of Procedure and Evidence, the President of the Tribunal may engage in consultations with the competent authorities of the State with a view to obtaining the requested cooperation.

55. In that context, the signing of agreements or arrangements regulating the cooperation between the Special Tribunal for Lebanon and third States is of particular importance. The Rules of Procedure and Evidence facilitate the conclusion of such instruments by entrusting the Prosecutor (rule 14), the Head of the Defence Office (rule 15) and the Registrar, acting under the authority of the President of the Tribunal (rule 39), with the power to directly seek cooperation from any State in a manner consistent with the statute. In addition, it goes without saying that the President, who "shall represent the Tribunal in international relations with the United Nations, other intergovernmental organizations, States and non-governmental organizations", may also "invite a third State … to provide assistance on the basis of an arrangement or an agreement with such State … or on any other appropriate basis" (rule 13). Over the past year, on this basis a general cooperation agreement and agreements on the enforcement of sentences have been drafted by the Special Tribunal for Lebanon and submitted to States for their consideration.

56. Furthermore, in line with case law of the International Criminal Tribunal for the Former Yugoslavia — which imposes obligations on non-State entities[7] and international organizations[8] — agreements or arrangements may also be concluded

[7] See Binding Order to the Republika Srpska for the Production of Documents, *Krstić* (IT-98-33-PT), Trial Chamber I, 12 March 1999.

[8] See Order for the Production of Documents by the European Community Monitoring Mission and its Member States, *Kordić and Ćerkez* (IT-95-14/2-T), Trial Chamber III, 4 August 2000.

with such entities or international organizations (rules 13 and 14 of the Rules of Procedure and Evidence). This has prompted me, as President of the Tribunal, to conclude (a) an Agreement with the International Committee of the Red Cross on visits to persons deprived of liberty pursuant to the jurisdiction of the Tribunal (which entered into force on 12 June 2009) and (b) an agreement with INTERPOL (which entered into force on 17 December 2009).

57. Finally, in order to avoid any difficulties with cooperation resulting from the fact that, for instance, the constitutions or the legislation of some States within the region may contain provisions prohibiting the extradition of nationals, innovative mechanisms are included in the Rules of Procedure and Evidence, such as allowing the accused to participate in his or her trial by videoconference (rules 103 to 105), the taking of testimony through a videoconference link (rule 124) and the collection of evidence for the Tribunal by the judicial authorities of a third State (rule 125).

D. Principal problems likely to beset any international criminal court dealing with terrorism

58. Here, it may be judicious to try to explain the fundamental reasons for the protracted investigations conducted by the Tribunal Office of the Prosecutor into the terrorist crimes falling under the Tribunal's jurisdiction, and also to show how the Tribunal must face both the problems besetting any international criminal tribunal and those that such a tribunal must come to grips with when it addresses crimes of terrorism.

1. General problems plaguing any international criminal court or tribunal

(a) International environment

59. Let me begin by briefly discussing the problems that any international criminal tribunal must cope with.

60. For a judge used to sitting on a domestic court, being appointed as an international criminal judge may involve a novel and, in some respects, challenging experience. At home, he or she was part of and worked within a complex machinery, the judiciary. A ministry of justice was taking care of financial resources and other administrative matters. Law enforcement agencies at the disposal of the judiciary accomplished important coercive tasks: the execution of judicial orders for the collection of evidence, for the carrying out of searches and seizures, and for the summoning or arrest of suspects or indictees. In addition, the judge's colleagues had the same legal background as he or she, having been trained in the same country and generally brought up in the same cultural milieu. Furthermore, all activities were carried out in the same language — a language usually shared not only by counsel, prosecutors and judges, but also by witnesses and defendants.

61. As noted in the past by a witty judge of the International Criminal Tribunal for the Former Yugoslavia, some domestic judges, once catapulted into the international arena, feel like astronauts floating in a rarefied atmosphere with no oxygen. In the international arena, there is no general judiciary per se — only a number of distinct judicial institutions, each living its own life. Each international tribunal normally constitutes a monad, or self-contained unit, disjointed from other courts or tribunals of a similar nature. Each tribunal must look after its own financial resources and

ensure their judicious allocation, as well as set up its own structure and act in conformity with its own rules of procedure. Even more striking is the fact that international tribunals have no enforcement agencies at their immediate disposal. They have no sheriffs, no judicial police and no bailiffs capable of directly enforcing judicial orders. For those purposes, international courts must turn to State authorities and request that they take action — through their own organs — to assist the officers and investigators of the international courts. Without the assistance of national authorities, international courts cannot operate. Without the intermediary of such authorities, they are often not able to seize evidentiary material, compel witnesses to give testimony, search the scenes where crimes have allegedly been committed, or execute arrest warrants. International criminal courts are truly like giants possessing great moral and legal authority, but lacking strong arms and legs. In order to walk and carry out their work, they usually need artificial limbs: the organs of sovereign States. As long as States lend their support to international courts, those courts can effectively discharge their functions. Otherwise, they risk becoming impotent.

62. For international criminal tribunals, State cooperation is therefore crucial for the effectiveness of the judicial process. Often, it is only national authorities (or, under certain circumstances, international organizations) that can enforce decisions, orders and requests issued by international criminal tribunals. Admittedly, this need for State cooperation is generally felt by all international institutions, which always need the support of Governments in order to operate. International criminal courts, however, are much more in need of such support, and need it more urgently, because their action has a direct impact on the human rights of individuals residing on the territory of sovereign States and subject to their jurisdiction. Indeed, international courts have the authority to charge such individuals with international crimes, to bring them to trial and, if they are convicted, to order that they serve sentences of imprisonment. Therefore, if international tribunals are to be able to carry out functions that have such a great impact on fundamental human rights, it is imperative that States — which created such tribunals in the first place — lend them swift and effective assistance.

63. Another challenge arising from the specific nature of international courts is the need to amalgamate various judges in order to establish a new whole, made up of individuals with different cultural and legal backgrounds: some judges come from common-law countries, others from States with Romano-Germanic or other traditions; some judges are criminal lawyers, while others are familiar primarily with international law; some have previous judicial experience, while others do not.

(b) International investigative process

64. Conducting investigations into core international crimes and terrorism poses challenges that are different from those faced in domestic investigations. In many instances, international investigators are not on the scene until weeks, months or even years after the crimes in question have been committed. Time is the enemy of all investigations, since its passage often means that evidence is no longer available, memories have gone stale and witnesses have died or are no longer traceable. Moreover, there are often language barriers to be overcome, since quite often the investigator does not speak the same language as the victims or witnesses. Even when the investigator and the witnesses speak a common language, cultural barriers may hinder clear communication.

65. In that regard, I need to point out that the Tribunal began its work only in early March 2009. While the International Independent Investigation Commission was established on 7 April 2005, pursuant to Security Council resolution 1595 (2005), its mandate was to assist the Lebanese authorities in their investigation and to help identify the perpetrators, sponsors, organizers and accomplices. To that end, the Commission was, inter alia, given the authority "to collect any additional information and evidence" pertaining to the terrorist act. This task — carried out according to procedures that are not typical of an international judicial process — was therefore different from that carried out by the Tribunal's Prosecutor as an organ of the Tribunal and subject to the Rules of Procedures and Evidence adopted by the judges. While the material gathered by Lebanese authorities and by the Commission can be used as evidence before the Tribunal, "[i]ts admissibility shall be decided by the Chambers pursuant to international standards on collection of evidence. The weight to be given to any such evidence shall be determined by the Chambers" (article 19 of the statute).

66. It should be added that, whether or not the activity of an international criminal tribunal is preceded by the gathering of information and evidence by a commission of inquiry, the collection of evidence that meets the strict criteria of international criminal trials is usually a complex and time-consuming process. As a rule, at least two or three years elapse between the launch of criminal investigations by an international tribunal's prosecution and the initiation of trial proceedings. For example, while the Rome Statute entered into force in July 2002, the International Criminal Court held its first trial hearing only in January 2009. To cite another example, although the judges of the International Criminal Tribunal for the Former Yugoslavia met for the first time in November 1993, the first trial hearings of that Tribunal commenced on 7 May 1996. This had been preceded by the establishment of the Commission of Experts on 6 October 1992, pursuant to Security Council resolution 780 (1992), to investigate and examine evidence of breaches of international humanitarian law in the former Yugoslavia. Similarly, although investigations of suspects had already been conducted, the first trial before the Special Court for Sierra Leone began on 3 June 2004, almost two and a half years after the United Nations and the Government of Sierra Leone had signed the agreement establishing the Court.

(c) Length of international proceedings

67. Yet another serious problem is the length of international criminal proceedings. This results from various factors; I shall touch upon only some of them here.

68. The first is undoubtedly the complexity of international cases. Compared with an average case in national courts, international criminal proceedings deal with more complex legal and factual issues. True, there are also very complex proceedings at the national level (for example, mafia and other organized-crime cases); however, this level of complexity is the rule in international criminal proceedings. In addition, the complexity of international proceedings is due in part to the fact that international tribunals must rely on national authorities and must strive to overcome the reluctance of some States to cooperate fully.

69. Secondly, I would highlight some aspects of the dominant adversarial system, which, by requiring that all evidence be elicited orally through examination and

cross-examination, renders proceedings protracted — although, under certain circumstances, the system also appears better suited to protecting the fundamental rights of the accused. On the contrary, in many inquisitorial systems, the evidence is selected beforehand by the investigating judge, as an impartial judicial authority present during the investigation and pretrial phases of the proceedings. However, one should not generalize too much: the experience of the Extraordinary Chambers in the Courts of Cambodia, which is based on a system closely resembling the traditional French one, shows that the inquisitorial system may also result in lengthy proceedings. In the first case before the Extraordinary Chambers, after a lengthy and confidential investigation procedure, the trial has also taken a long time, mainly because of the perceived need to hear most of the evidence again in the public forum of a trial. The advantage of the civil-law system in terms of efficiency at trial is thus lost. The system at the Extraordinary Chambers appears to have combined the long pretrial phase typical of inquisitorial systems with the long trial phase often required in adversarial proceedings.

70. Thirdly, one should also mention language problems. At the national level, proceedings are usually conducted in only one language, whereas before international courts they are conducted in at least two and possibly three or more languages. As a result, documents, exhibits and pleadings need to be translated into all languages used. Moreover, interpretation is needed in the courtroom: even with simultaneous interpretation, the length of the proceedings is clearly affected, and the need for clarifications and corrections as a result of the precision required in criminal proceedings further aggravates the problem.

2. Problems specific to an international tribunal dealing with terrorism

(a) Problems relating to the investigation of crimes of terrorism

71. Perhaps the best way to illustrate the specific difficulties faced by an international criminal court in investigating crimes of terrorism is to briefly compare them with the difficulties faced by international courts in investigating other categories of international crime, namely, war crimes, crimes against humanity and genocide (so-called international core crimes). We can discern many differences between investigations concerning the three classes of crimes, on the one hand, and investigations concerning terrorism, on the other. Those differences relate to: (a) the target of the investigations; (b) the context of the crime; (c) the purpose of the crime; and (d) the territorial dimension of the crime. The following observations are based on discussions held with national prosecutors and investigating judges specializing in terrorism. They are general in nature, referring to various kinds of terrorism, without any specific reference to the subject-matter jurisdiction of the Special Tribunal for Lebanon.

72. First, with regard to the target of the investigations, international core crimes are often perpetrated by military units or paramilitary groups, or groups of individuals enjoying their support; they are often masterminded by political or military leaders. In other words, such crimes are physically committed by members of the armed forces, police or other State officials (including persons acting under colour of law, even in insurgent groups or in other quasi-State situations), or at least with their assistance, support or acquiescence. These units or groups can be identified fairly easily, for they are part of an apparatus and usually act in broad daylight, sometimes in uniform. Even paramilitary groups are often organized and

financed by “official” groups or institutions. The victims of their crimes (murder, rape, torture, the killing of civilians, inter alia) and witnesses are usually able to provide testimonial evidence regarding the events surrounding the crimes, thereby assisting in the identification of the alleged culprits. In addition, there is often documentary evidence in the form of the orders or directions under which the groups acted. Perpetrators, including both co-conspirators and lower-level soldiers or police, will often provide evidence concerning such orders and plans that were followed. These “insider witnesses” have good reasons for providing such evidence, as their cooperation often results in more lenient sentences. Moreover, after the end of the hostilities, many participants in such groups are less committed to the cause that motivated their involvement in the conflict and the crimes. In other cases, they are simply criminals who acted opportunistically in the first place and are willing to seize the opportunity to provide evidence in order to receive a more lenient sentence.

73. In contrast, the authors of terrorist crimes generally make up small and secretive cells, which sometimes act in a clandestine manner. Hence, it is extremely difficult to identify the perpetrators of a specific crime. Even when, by chance, the crime site has been under video surveillance, and therefore the images of the attackers can be obtained, this may prove to be of little help, because the perpetrators may have killed themselves in carrying out the attack. Therefore, the network responsible for a specific terrorist attack can be very difficult to identify.

74. It is also worth noting that, in war crimes cases, the basic structure of regular forces or paramilitary groups is often well known to experts in military and political affairs. In contrast, in terrorism cases, while the cell structure referred to above is frequently employed, the ways in which various organizations operate and work vary considerably. Hence, without access to one or more insider witnesses or highly specialized expert witnesses, the investigative process may well be much more difficult than that in a war crimes case.

75. Moreover, individuals engaging in terrorist activities, as well as their supporters, are generally bound by strong ideological or religious beliefs. Even if they can be identified and arrested, this makes it extremely difficult to obtain information — much less admissible evidence — from them. In addition, members of terrorist groups are often loath to disclose information about the terrorist network, lest they be immediately killed or subjected to other serious retaliatory measures by other members of the group. Thus, in cases involving crimes of terrorism, access to potential insider witnesses is much more limited than in war crimes cases. Without such insiders, it is much more difficult for an investigator not only to piece together the evidence, but also, and more important, to identify potential suspects or perpetrators. In the war crimes context, particularly in leadership cases, insider witnesses have proved to be critical in providing a road map as to how the crimes were committed and who committed them. While the evidence provided by insider witnesses is equally important in terrorist cases, they may be more difficult to cultivate in such cases, owing in part to the ideological commitment of the perpetrators and their network of supporters. One of the known characteristics of terrorist groups is that they are likely to kill prospective witnesses and defectors. This, naturally, causes potential insider witnesses to be reluctant to cooperate.

76. However, an important point should be stressed. Terrorist cases are often built on circumstantial evidence, which is often more powerful than direct evidence. The individual metal rings used in producing chain-mail armour are not strong. But when hundreds of such rings are linked together, the armour that they constitute can be impenetrable. Circumstantial cases are the same. By linking various evidentiary threads together, the prosecution can put forward a case that is much stronger than one based solely on direct evidence, such as eyewitness accounts.

77. Let me now turn to the context of international core crimes, as contrasted with the context of terrorism.

78. Core crimes are usually perpetrated in situations of armed conflict during periods of dramatic social unrest or when the authorities of a State have collapsed. While this exacerbates certain problems associated with the gathering of evidence (owing to a breakdown in the legal and social order), the role of the international tribunal is at least clear: to act because the State is unable (or unwilling) to take the matter into its own hands. In contrast, crimes of terrorism often occur in States with functioning social systems and institutional infrastructure. This may create difficulties in coordinating the functioning institutions of the State, on the one hand, with the international tribunal called upon to adjudicate the matter, on the other.

79. Furthermore, the context of terrorism cases, as opposed to that of cases, involving core crimes, creates serious security problems for investigators and other authorities dealing with the preparation and trial of such cases. Owing to the nature of terrorist crimes — generally fraught with political intentions and influences — and of the persons generally associated with terrorist groups, investigative steps must be pursued in an extremely delicate environment, amid real dangers for staff and their contacts. This might not be the case as often with other international tribunals, especially when the hostilities in question have subsided.

80. Let me now highlight the difference between the purposes of the various categories of international crime and the purpose of terrorism. War crimes are acts that flout international legal standards imposing restraints on combatants in terms of how they conduct warfare and against whom they may lawfully do so. Crimes against humanity (such as extermination, torture, rape, persecution and deportation), if committed in time of war, are often perpetrated with the goal of attacking persons not taking an active part in the hostilities, in addition to (both in time of war and in time of peace) the intent to humiliate, demean or inflict suffering on certain groups of persons (including ethnic or religious groups and women). Genocide is grounded in the intent to destroy a national, ethnic, racial or religious group in whole or in part.

81. In contrast, terrorism is generally aimed at disrupting the structures of a State (or of an international organization) or to force State (or international) authorities to undertake certain conduct. The killing of individuals is sometimes simply a means of coercing a State (or an international organization) to take some sort of action or to refrain from acting under specific circumstances. In substance, terrorism amounts to an attack against State (or international) authorities by means of violence against life or property, whereas in the case of international core crimes the target of the attack is one or more individuals or groups.

82. There are also important differences between international core crimes and terrorism in terms of their territorial dimensions. In the case of war crimes, crimes

against humanity and genocide, the offence is, as a rule, perpetrated in the territory of one State: for example, the murder, rape or deportation of civilians of the States of the former Yugoslavia, genocide in Rwanda and crimes against humanity in Sierra Leone. Even when crimes are committed in the context of an international armed conflict between two or more States, the locus of the offence is usually well defined. At most, there may be a dislocation between the defendants, who participated in a joint criminal enterprise to commit the crimes or who issued orders to engage in atrocities in an enemy State, and the actual perpetrators, who physically carried out the massacres there.

83. In contrast, crimes of terrorism very often involve transnational elements. A person may join a terrorist cell in one country, travel to another country in order to be trained in terrorist techniques, and then return to his or her country of residence to recruit other persons. Subsequently, he or she may travel to yet another country, where the attack is carried out.

84. In that context, the investigation of such crimes is more difficult and can be impeded because the criminals — and therefore the crimes — cross multiple international boundaries. The consequence is that, in addition to the complexities explored above, the information and the witnesses themselves are located in a variety of countries and are thus more difficult to trace. Furthermore, key acts critical to understanding, investigating or proving the relevant crimes are carried out in countries that may be unwilling to cooperate with an investigation or may simply be unable to provide assistance owing to lack of infrastructure or territorial control. While war crimes investigations face some of the same issues, the difficulty in obtaining information on such a global scale is of a magnitude not generally seen in the war crimes context.

85. It should be added that the financing of terrorism, which is a crime per se under international law and in many countries, covers two distinct aspects: the financing of terrorist attacks and the financing of terrorist networks, including the recruitment and promotion of terrorist causes. The fact that the perpetration of terrorist attacks may require only small sums of money means that it may never be possible to eliminate terrorist access to financing. In addition, the financing provided to terrorist groups or to facilitate a terrorist act is often fragmented and difficult to trace. Cash transactions, which can be difficult to track, are often the preferred method of financing terrorist acts. In addition, terrorist financing has transnational dimensions, which contribute to the difficulties encountered in conducting investigations. As the sources of financing and support might constitute an international network of ideological allies, located in various parts of the world, investigations are necessarily complex.

(b) Challenges of collecting evidence

86. The special characteristics of terrorist crimes, on the one hand, and of other international crimes, on the other, lead to differences in the types of evidence likely to be used in their prosecution and in the specific challenges associated with the gathering of such evidence.

87. In the investigation of war crimes, crimes against humanity or genocide, one crucial class of evidence — especially for establishing the crime base (that is, the crimes that actually took place on the ground) — is composed of direct eyewitness testimony. Survivors of mass killings, victims of torture or forcible expulsion from a

territory, eyewitnesses of indiscriminate attacks on the civilian population and victims of rape may report the crimes to investigators and provide witness statements. This enables investigators to identify and gather evidence against both the direct perpetrators of the crimes and the "perpetrators behind the perpetrators" — those senior political, military and paramilitary leaders who, although physically, geographically or temporally removed from the crimes, in fact bear the greatest responsibility.

88. In addition, as pointed out above, the role of insider witnesses should not be underestimated. Their evidence is often the key in establishing the link between the crimes and leaders higher up in the military chain of command or political hierarchy. Thus, Dražen Erdemović, Dragan Obrenović and Momir Nikolić, after having pleaded guilty to participating in the killing of hundreds of civilians at Srebrenica, testified in court, for the prosecution, in cases against other accused (see, for example, the cases of *Krstić* and *Blagojević and Jokić* at the International Criminal Tribunal for the Former Yugoslavia).

89. Moreover, documentary or physical evidence can also become available: international troops may have visited the site of a massacre a few hours after it had been committed and filmed all the destruction (as in *Kupreškić et al.*, International Criminal Tribunal for the Former Yugoslavia). In other cases, some of the perpetrators themselves have had the context of the crimes filmed by television crews (as in *Krstić*, International Criminal Tribunal for the Former Yugoslavia). Another significant source of documentary evidence in war crimes cases is military archives. For example, in the *Galić* and *Dragomir Milošević* cases, detailed military documents concerning the movements of armed forces and the orders given for the conduct of military activities proved crucial in establishing the pattern of shelling and sniping in Sarajevo. In *Mrkšić and Šljivančanin*, military documents were used against two senior military leaders for their failure to prevent the torture and killing of hundreds of prisoners of war evacuated from the Vukovar Hospital. Likewise, in the *Stakić*, *Brđanin* and *Krajišnik* cases, minutes of meetings of municipal, regional and State political bodies proved important in establishing the existence of joint criminal enterprises at leadership levels aimed at the ethnic cleansing of large parts of Bosnia.

90. Forensic evidence, such as that uncovered through the excavation of mass graves, can also be crucial, especially in establishing the crime base. Such evidence was essential in proving the mass killings that were committed during the genocide in Rwanda (see, for example, the *Rutaganda*, *Semanza* and *Ntakirutimana* cases at the International Criminal Tribunal for Rwanda).

91. Let us now turn to terrorist crimes. The nature of terrorist organizations, their clandestine existence and their covert operations make it difficult to gather direct eyewitness evidence: seldom are survivors of terrorist attacks able to identify the alleged perpetrators, who might have detonated bombs from afar or even blown themselves up. Nor is it easy, as a result of these characteristics, to obtain documents from military or Government archives proving their structure and chain of command. In addition, as emphasized above, investigators can rarely rely on insiders or turncoats: the extreme ideological leanings and motivations of the members of a terrorist group, and even the well-founded fear of murderous reprisals by other members of the group, constitute a potent disincentive to report to investigators on how the group operates.

92. The experience of national investigators shows that, in tracking down terrorist groups, they often rely on:

(a) Telephone records and the monitoring of telephones and mobile phones;

(b) The monitoring of conversations in, inter alia, public places, cars, private homes and prisons;

(c) The monitoring of computer activities to analyse Internet traffic and verify the possible downloading of messages, videos or other material;

(d) The monitoring of letters and other documents of detained terrorists;

(e) The detailed expert examination of the crime site.

93. Forensic evidence such as DNA can prove useful in those rare cases in which DNA traces left in the locus of a terrorist attack match the DNA of suspects, which either is in the hands of the investigators or (as occurred in Italy with regard to the 1992 assassination by mafia groups of Judge Giovanni Falcone, his wife and three of his bodyguards) is obtained years later when suspects are arrested.

94. The foregoing brief remarks should assist in placing into perspective some of the specific problems and challenges facing the Office of the Prosecutor of the Special Tribunal for Lebanon. The length of time required to investigate the cases falling within the jurisdiction of the Tribunal must be measured against those challenges.

Part II — Main activities of the Tribunal between March 2009 and February 2010

A. Chambers

1. Introduction

95. The Chambers of the Special Tribunal for Lebanon are entrusted with three kinds of essential tasks: judicial, regulatory and managerial. Over the past 12 months, the fulfilment of judicial tasks has been limited to the issue of the four Lebanese generals detained in Beirut in connection with the *Hariri* case. In contrast, the judges have intensively carried out their regulatory function by adopting various sets of rules and other normative instruments. During this period, they have held two plenary meetings and adopted the basic documents of the Tribunal, as well as agreements with the International Committee of the Red Cross (ICRC) and the International Criminal Police Organization (INTERPOL). They have also prepared two draft agreements: one on legal cooperation with States, and the other on the enforcement of sentences. Finally, the judges have frozen the recruitment of legal and support staff and transferred all financial resources thus saved to the prosecution, so as to enhance the investigative work of the Tribunal during the next year.

2. Judicial activities

96. Article 4 (2) of the statute provides that, no later than two months after the Prosecutor has taken office, the Tribunal shall request the Lebanese authorities to defer to its competence with regard to the case of the attack against Prime Minister

Hariri and others. Acting promptly, the Prosecutor made an application to the Pre-Trial Judge on 25 March 2009, requesting that the Lebanese authorities defer to the Tribunal's competence on the case. Two days later, the Pre-Trial Judge issued an order granting the Prosecutor's request. The Lebanese authorities complied and also notified the Tribunal that four persons were being held in detention in connection with the *Hariri* case. In addition, they transferred all relevant material to the Tribunal, pursuant to rule 17 of the Rules of Procedure and Evidence. On 15 April 2009, the Pre-Trial Judge issued an order to the Prosecutor setting a time limit for the latter's submissions concerning the detentions. In setting that time limit, the Pre-Trial Judge took into consideration the fundamental right of any detained individual to be brought promptly before a judge. He also noted that the *Hariri* case raised difficult issues and that the judicial record relating to it was particularly complex and voluminous.

97. On 29 April 2009, upon reviewing the Prosecutor's submissions to the effect that, after reviewing all the material in his possession, he did not have sufficient evidence to indict the four persons or to justify their continued detention, the Pre-Trial Judge issued an order releasing the four persons detained in Lebanon in connection with the *Hariri* case. He noted that, since the Prosecutor had requested the release of the detained persons, his role as Pre-Trial Judge was not to review all the material in the case file, but instead to review the exercise of the Prosecutor's discretion to ensure that it was not manifestly unreasonable. The Pre-Trial Judge found that the Prosecutor had not exercised his discretion in a manifestly unreasonable way. Accordingly, he concluded that, since the detained persons could be considered neither suspects nor accused persons before the Tribunal, they must be released.

98. On 20 April 2009, the Head of the Defence Office requested, on behalf of the four persons detained in Lebanon in connection with the *Hariri* case, a modification of their conditions of detention. He raised concerns about the fact that they were not able to hold meetings with their counsel in a setting in which their discussions would be privileged, in addition to the fact that they were segregated from one another. The following day, the President issued an order requesting the Lebanese authorities to: (a) ensure that the right of the detained to freely and privately communicate with their counsel was fully implemented; and (b) terminate the regime of segregation of the detained persons and ensure that they were allowed to communicate with one another upon request for a period of two hours per day. The Lebanese authorities complied with the order forthwith.

99. I would like to emphasize that the organs involved in the entire process concerning the four Lebanese generals should be commended for the rapidity and efficiency with which they acted. That rapidity and efficiency illustrate how they made a collegial effort to come up with a creative procedural solution, namely, not to transfer the generals to the Netherlands, but to keep them in detention in Lebanon, even though they were under the Tribunal's judicial authority. That solution — based on the strict application of international standards — also yielded great savings in terms of work and financial resources, spared the generals from being further subjected to media exposure and spared the authorities from having to consider issues arising from a complex transfer abroad.

3. Regulatory activities

(a) Adoption of the Rules of Procedure and Evidence, the Rules of Detention and the Directive on the Assignment of Counsel

100. From 9 to 20 March 2009, the 11 judges of the Special Tribunal for Lebanon held the Tribunal's first plenary session. After being sworn in, they elected the President, the Vice-President and the Presiding Judge of the Trial Chamber, in accordance with the relevant provisions of the Tribunal's statute. On that occasion, the judges also discussed and adopted the various fundamental legal documents relating to the organization and functioning of the Tribunal: (a) the Rules of Procedure and Evidence; (b) the Rules of Detention; and (c) the Directive on the Assignment of Counsel. Those documents lay the groundwork for future judicial action. In drafting those rules, the judges tried to take into account the unique features of crimes of terrorism, while respecting the highest standards for fair trial. The novelties of the rules are detailed in Section B (4) of part I of the present report.

101. Following the plenary, the President issued an "explanatory memorandum" setting out the highlights of the Rules of Procedure and Evidence as well as the rationale behind their main novelties. In addition, a compendious guidebook on the Tribunal, entitled "A snapshot of the STL procedure", was drafted by the legal officers of the Chambers; it concisely summarizes the main features of the procedure before the Tribunal, and serves as a clear and easily accessible explanatory tool for national judges, lawyers, practitioners, students and all those interested in the Tribunal.

102. On 5 June 2009, the judges unanimously adopted a number of amendments to the Rules of Procedure and Evidence by correspondence (under a special expedited procedure envisaged in rule 5 (F)). The amendments were proposed by the President following consultations with the Prosecutor, the Head of the Defence Office and the Registrar. The objectives of the amendments were manifold: (a) to streamline certain rules and ensure that they better translated the letter and spirit of the relevant provisions of the statute; (b) to ensure that the amended rules were consistent with other relevant rules; (c) to encourage, to the extent possible, cooperation with the Tribunal on the part of States and organizations, as well as the use of sources of sensitive information; (d) to meet the operational needs of the ongoing investigation; and (e) to protect the confidentiality of information during the investigative stage in order to ensure the effective conduct of the investigation and the protection of all relevant persons.

103. From 26 to 30 October 2009, the judges held a second plenary meeting. One of their tasks was to consider proposed amendments to the Rules of Procedure and Evidence and the Directive on the Assignment of Counsel submitted by the various organs of the Tribunal. The judges amended some 36 rules of the Rules of Procedure and Evidence in a substantive way and made editorial changes to an additional 14. Those amendments were made in the light of the experience gained to date by the Special Tribunal for Lebanon and were aimed at further enhancing the efficiency, effectiveness and integrity of the proceedings. The most significant amendments to the rules include the provision for increased consultation and coordination between the President and the Registrar on administrative and judicial support functions (rule 39) and for a mechanism enabling the Prosecutor to provide the Pre-Trial Judge with documents and information during the investigative stage that will assist him in carrying out his functions and in reviewing and confirming any indictment

that may be submitted to him (rule 88), as well as the inclusion of two new contempt provisions (rule 134).

(b) International instruments

104. Over the past 12 months, in addition to adopting the fundamental basic documents referred to above, the Chambers have drafted and adopted the following six instruments:

(a) The Agreement between the Special Tribunal for Lebanon and the International Committee of the Red Cross on Visits to Persons Deprived of Liberty pursuant to the Jurisdiction of the Special Tribunal for Lebanon, which entered into force on 12 June 2009;

(b) The agreement between the Tribunal and INTERPOL on cooperation and access to INTERPOL's databases and information systems, which entered into force on 17 December 2009;

(c) An interim agreement with INTERPOL, signed at the end of August 2009 in order to provide for cooperation until the General Assembly of INTERPOL could approve the aforementioned agreement in October 2009;

(d) A cooperation agreement with the Lebanese Minister of Justice, finalized through an exchange of letters on 5 February 2010, for the appointment of a Liaison Judicial Official in Lebanon. The Liaison Judicial Official will take all steps necessary to ensure the enforcement of orders issued by the Tribunal, as well as the implementation of requests forwarded to him or her by the Registry;

(e) A draft agreement on legal cooperation with States, submitted to some 20 States (in the Middle East and in other regions with large Lebanese communities) for discussion and negotiation with a view to ensuring that as many of them as possible sign and ratify it;

(f) A draft agreement on the enforcement of sentences, submitted to States for discussion and negotiation.

(c) Practice Directions

105. On 15 January 2010, the President issued three Practice Directions, on the filing of documents, on the taking of depositions and witness statements for use in court, and on videoconference links. In addition, one internal standard operating procedure for the registry, on holding proceedings away from the seat of the Tribunal, was adopted.

106. Those documents will facilitate the transition to the next stage (the submission of indictments by the Prosecutor and the initiation of activity by the Pre-Trial Judge, and possibly by the Appeals Chamber, in the event that interlocutory appeals are submitted). Furthermore, they will ensure greater legal certainty and uniformity in the work of the Tribunal as a whole.

4. Managerial and other tasks

(a) General

107. In carrying out his management functions within the Special Tribunal for Lebanon, the President has been able to ensure a coordinated approach among the

various organs through regular meetings of the Senior Management Board. Composed of the President, the Prosecutor, the Head of the Defence Office and the Registrar, the Board has met regularly over the past year to discuss and decide upon a number of issues concerning the management and the activities of the Tribunal.

108. Shortly after the Vice-President of the Tribunal, Judge Ralph Riachy, took office, the President delegated to him a set of functions, pursuant to rule 34 of the Rules of Procedure and Evidence. In particular, Judge Riachy has since been in charge of amendments to the Rules, victim participation (including liaison with the Registry on the establishment and development of the Unit envisaged in rules 50 and 51) and outreach in Lebanon, in coordination with the Tribunal's Public Information Office.

(b) Internal seminars

109. In addition, over the course of the past year, in order to prepare the necessary legal reflection on themes likely to be addressed by the Tribunal, the President organized a series of 12 seminars that were open to all Tribunal staff. Presentations were made on various legal, historical and political issues relevant to the Tribunal's work, followed by a discussion. The speakers included specialists from the various organs of the Tribunal as well as external experts such as professors and judges. It should be noted that all those attending the seminars spoke in their personal capacity. More seminars are already planned for the forthcoming months. The topics to be addressed include both general problems of international criminal law and specific issues relating to the prosecution of crimes of terrorism. In addition, the President is holding, only within the Chambers, a series of meetings for the discussion of legal issues pertaining to the Tribunal's activities. The outcome of those discussions will be the preparation of voluminous "dossiers" compiling the legal literature and the national or international case law relating to each issue.

(c) Documentation

110. The President has issued a document, entitled "Principles to guide the court", explaining to the Management Committee the basic philosophy behind the Tribunal's work as well as the principal goals that it intends to pursue.

111. In August 2009, the President prepared a document entitled "Six-month report: a bird's-eye view" and submitted it to the Management Committee, the United Nations Office of Legal Affairs and the Government of Lebanon. The report provided an overview of the activities carried out by the Special Tribunal for Lebanon since its establishment. As a complement to both the monthly reports that the Tribunal submits to the Management Committee and the present annual report, it had as its main goal to ensure transparency and accountability vis-à-vis the Management Committee, the Government of Lebanon and the other States supporting the work of the Tribunal.

112. Finally, the Chambers have produced two volumes compiling the basic documents of the Tribunal, thus making available its most important documents, in its three official languages.

(d) Recruitment of staff

113. With the support of the Management Committee, the plenary decided that Vice-President Judge Ralph Riachy should assume his functions as soon as possible, together with the President and the Pre-Trial Judge, who, in accordance with the Secretary-General's view, took office immediately after the commencement of the Tribunal's activities. This decision allowed the Tribunal to benefit from Vice-President Riachy's extensive and invaluable experience in Lebanese law, as well as his first-hand knowledge of the overall legal and cultural environment of Lebanon and other States in the region. As a result, only 3 out of the 11 judges are now stationed in Leidschendam, Netherlands.

114. During this first year, the judges have reduced the number of staff to a minimum: four legal officers are working for the three Judges, and one personal assistant serves all of the Chambers. In addition, from August to December 2009, four interns assisted the Chambers, in particular in the preparation of the "dossiers" on legal issues relevant to the Tribunal. They were replaced by three new interns on 10 January 2010.

115. The Chambers will recruit additional staff only when the Prosecutor considers that an indictment is forthcoming.

(e) Relations with States

116. Over the past 12 months, the President, the Vice-President and senior staff have met with ambassadors and other diplomatic representatives of countries most interested in and relevant to the Special Tribunal for Lebanon, beginning with the countries members of the Management Committee. They have also met with diplomats of countries in the region and in other regions with large Lebanese communities.

(f) Outreach activities

117. The Chambers have also been engaged in a number of outreach activities. On 23 April 2009, the President, the Vice-President and a number of staff of the Chambers held a briefing for the legal experts of the embassies in The Hague. More than 50 persons attended. The purpose of the briefing was to explain the major points of the Rules of Procedure and Evidence and the "explanatory memorandum" and also to answer queries and requests for clarification.

118. Staff of the Chambers have also travelled to Lebanon for outreach purposes. In April 2009, one legal officer participated in a workshop organized by the International Centre for Transitional Justice and the Beirut Bar Association, entitled "The Special Tribunal for Lebanon: the Rules of Procedure and Evidence". He, together with other representatives of the Tribunal, spoke about various aspects of the Rules. The meeting was attended by representatives of victims, non-governmental organizations and local bar associations.

119. In December 2009, another legal officer participated in an international colloquium at Antonine University in Beirut, entitled "Lebanon and the Security Council". She gave a presentation on the Special Tribunal for Lebanon and its relationship with the United Nations, as well as on some of the features and innovations of the Tribunal. On that occasion, 150 copies of the guidebook "A

snapshot of the STL procedure" were distributed to Lebanese students, professors and lawyers.

120. In early February 2010, the President and the Vice-President, together with a senior legal officer, travelled to Beirut to meet with senior Lebanese officials and give talks to the Beirut Bar Association and university professors and students on issues relating to the Tribunal.

121. Efforts have also been made to learn from the outreach experiences of other tribunals and to determine what might be useful for the Special Tribunal for Lebanon. On 19 November 2009, at the invitation of the President, the Acting Registrar of the Special Court for Sierra Leone and former head of the outreach programme of the Court, Ms. Binta Mansaray, gave a presentation to Tribunal staff on the challenges faced by the programme and lessons learned in that respect.

122. Late in November 2009, Vice-President Riachy travelled to Cambodia to attend the closing arguments in the Duch trial and to meet with the principals of the Extraordinary Chambers in the Courts of Cambodia. The main purpose of those meetings was to endeavour to see what experiences of the Extraordinary Chambers could be useful for the Special Tribunal for Lebanon.

123. On the whole, notwithstanding the aforementioned activities, the outreach efforts undertaken by the Chambers were not as adequate as we would have liked. Indeed, unlike other organs of the Tribunal, the Chambers did not devote sufficient energy and time to reaching out to the Lebanese public and to Lebanese civil society. I take full responsibility for that deficiency, although staff of the Chambers did prepare an important document (the "Snapshot" guidebook) on procedural law of the Tribunal. Nevertheless, I am pleased to report that, with the approval late in January 2010 of a comprehensive outreach strategy, that flaw should be successfully remedied as the Special Tribunal for Lebanon enters its second year of existence.

(g) Other activities

124. In coordination with the Registrar, Vice-President Riachy has set up a visiting-professionals programme aimed at encouraging Lebanese lawyers to work at the Special Tribunal for Lebanon for a period of two to three months. The programme will enable a number of senior Lebanese lawyers to become more familiar with the work of the Tribunal. The Tribunal will, in return, benefit from the experience of specialists in Lebanese law. Judges and legal officers of the Chambers are now in the process of selecting the best Lebanese candidates from among those who have applied to participate in the programme.

125. Over the past year, staff of the Chambers have also been involved in various other activities carried out with the other organs of the Tribunal, such as addressing court management issues, developing the internship programme, setting up the Library and preparing the 2010 budget.

5. The way forward

126. In the course of the next year, the President, in consultation with the other judges, plans to:

(a) Finalize the preparation of all the legal tools and infrastructures necessary for the transition to the second phase of the Tribunal's activities, namely, trial proceedings;

(b) Encourage as many States as possible to ratify the draft agreement on legal cooperation referred to above, and, to that end, contact the ambassadors of the relevant States in The Hague or in Brussels. Should cumbersome domestic legislative procedures make it difficult for States to ratify and implement the draft agreement, an attempt will be made to urge States to consider the draft agreement as a general legal framework on which to draw informally in order to entertain working relations with the Tribunal on an ad hoc basis;

(c) As soon as the Prosecutor considers that an indictment is forthcoming, recruit essential additional staff;

(d) Intensify the Chambers' outreach programme in the light of the new strategy approved by the Senior Management Board;

(e) Together with a number of senior staff, carry out further visits to Lebanon to meet with State officials, addressing cooperation and other matters; and, together with other judges of the Special Tribunal for Lebanon, take part in seminars and conferences at universities in Beirut, in addition to holding discussions with members of the Beirut Bar Association;

(f) Hold a third plenary meeting of the judges late in 2010.

B. Registry

1. Introduction

127. The Registry, under the direction of the Registrar, is responsible for providing support for the judicial functioning of all organs of the Tribunal. Specific responsibilities of the Registrar include the protection and support of witnesses, court management (including the custody of court records), the provision of support to victims participating in the process, and the management of the Detention Unit. The Registry also provides administrative support for the work of the Chambers, the prosecution and the defence in the areas of translation and interpretation, human resources, budget, finance, security, press and information, and procurement.

128. The Registry also has an important external diplomatic function. The Registrar maintains close liaison with the host State, the Tribunal's Management Committee, donors and non-governmental organizations. In addition, the Registrar has the responsibility of negotiating witness relocation agreements, and other cooperative arrangements with States.

129. The Registrar is designated by the Secretary-General. The first Registrar of the Special Tribunal for Lebanon, Mr. Robin Vincent, resigned as at 30 June 2009 and was replaced by Mr. David Tolbert. Following Mr. Tolbert's resignation, effective on 1 March 2010, the Secretary-General designated Mr. Herman von Hebel as Acting Registrar.

130. Prior to the official commencement of the Special Tribunal for Lebanon, on 1 March 2009, considerable administrative work was undertaken by the advance team, whose work allowed for a smooth start to the Registry's operations. Over the

past 12 months, the Registry has been successful in ensuring that support is provided for the Prosecutor's investigations and that administrative support is provided to the Chambers and the Defence Office. The Registry has also assisted in the recruitment of staff members, and in the conclusion of a memorandum of understanding with the Government of Lebanon establishing the Beirut Field Office, ensured the courtroom's completion, maintained liaison with States in order to secure cooperation in terms of funding and agreements for witness relocation, and developed a comprehensive outreach strategy.

2. Normative output

131. Prior to the official opening of the Tribunal, the Registry established a basic administrative framework by negotiating an Agreement between the United Nations and the Kingdom of the Netherlands concerning the Headquarters of the Special Tribunal for Lebanon, which was signed in December 2007 and formally approved by the Government of the Netherlands in December 2008; by putting in place the Tribunal's Staff Regulations and Rules and its Financial Regulations and Rules; and by implementing a health insurance plan and a pension scheme for staff.

132. Since 1 March 2009, various additional instruments have been finalized: (a) a memorandum of understanding between the Government of Lebanon and the Special Tribunal for Lebanon concerning the Office of the Special Tribunal in Lebanon, signed in June 2009; (b) a code of conduct for staff, which has been put into effect; and (c) a draft model agreement on witness relocation, which has been submitted to States for their consideration.

133. The Registry has also provided extensive comments and proposals to the plenary of judges regarding the Rules of Procedure and Evidence and the amendments thereto.

3. Practical measures

134. In the period prior to the opening of the Tribunal, a number of practical measures were put in place by the advance team:

(a) The lease of the Tribunal's building was signed with the Government of the Netherlands (rent-free occupancy agreement commenced on 1 June 2008), and certain essential services (General Service, information technology and security) were set up;

(b) The security requirements for the Tribunal's building were put in place;

(c) Arrangements were made to ensure a smooth transition from the International Independent Investigation Commission to the Office of the Prosecutor;

(d) The Tribunal's Liaison Office in New York was established to assist the Management Committee in its work and to ensure effective communication between the Tribunal and the Committee. The Liaison Officer has been effective in reaching out to the diplomatic community in New York, the United Nations and various non-governmental organizations.

135. Since 1 March 2009, the Registry has also engaged in the following activities:

(a) *Judicial activities*

The Registry supported the Chambers, the Office of the Prosecutor and the Defence Office through the filing of submissions and orders with the relevant organs and Lebanese authorities with regard to the status of the four generals;

(b) *Construction of the courtroom*

The construction of the courtroom has been finalized. As from April 2010, any judicial activity may be carried out in the courtroom;

(c) *Host State matters*

The Registry has established an excellent relationship with the host State. From the very beginning, the Special Tribunal for Lebanon has enjoyed the strong support of the Netherlands on matters pertaining to the Tribunal's building, external security, detention, the issuance of visa and residence permits, and other matters;

(d) *Beirut Office*

In Beirut, the Registry's main focus has been on the setting up of the Field Office. The Tribunal signed a lease agreement in April, and the Office is now fully functional. In November, the Registrar designated an Acting Head of Registry until such time as the Head of Registry has been officially appointed and has assumed his or her duties. The Acting Head of Registry represents the Registrar in Lebanon, ensures the implementation of the memorandum of understanding with the Government of Lebanon on the Beirut Office, maintains liaison with the relevant Lebanese authorities, establishes procedures and practices relating to the functioning of the Office and provides support to all organs in the Office;

(e) *Court management*

The Special Tribunal for Lebanon is seeking to implement an integrated information technology system to manage the information and processes of its judicial and non-judicial functions, which include court management, case filing, the disclosure of documents, the presentation of documents in court and the retention of judicial records. The likely benefits of the system include improved efficiency, better record-keeping and enhanced security. A working group, referred to as the e-tools (electronic tools) working group, was established in the summer of 2009 to develop the project and define the requirements of the system. It includes representatives from all organs of the Court. In October, an ad hoc judicial management committee was established. The purpose of the committee is to create a forum in which both judges and relevant Registry staff involved in providing court management and judicial services can discuss judicial management issues. The Tribunal is currently developing a records, archives and information policy. Additionally, an information management steering group has been established to help establish the strategic direction for information management and information security policy;

(f) *Library*

In September 2009, the Library of the Special Tribunal for Lebanon opened its doors. The Library's priority is to build a comprehensive collection of books, reference materials, journals, and case-law and electronic resources, mainly in the fields of terrorism and international law, as well as in Lebanese law, in order to serve the three parties of the judicial process — the Chambers, the Office of the Prosecutor and the Defence Office. It should also be noted that the President of the Tribunal has donated a significant number of books and other items to the Library;

(g) *Victims and Witnesses Unit*

The Victims and Witnesses Unit has been developing the operational framework necessary to facilitate witness movement for trial and the Tribunal's ability to protect witnesses, through the establishment of operational networks in relevant locations. Assistance from States, in the form of witness relocation agreements and the protection of witnesses, is of vital importance for the success of the Tribunal. To that end, the Unit has continued to pursue the cooperation and support of States in this respect, with nominal success. The demanding operational environment and resulting witness protection concerns, as well as the need to ensure adequate State cooperation, remain the main challenges for the Unit.

4. Outreach activities

136. Over the past year, the Special Tribunal for Lebanon has initiated a number of outreach activities, including the recruitment of outreach staff and the opening of an Office in Beirut, the launching of a multilingual website and the organization of several events. At the same time, an outreach consultant has been contracted with to assist the Tribunal in developing a comprehensive outreach strategy.

137. Following the recruitment of an Outreach Officer in September 2009, the Tribunal's Outreach Office began to develop a network of contacts in Lebanon to facilitate future activities. In December, an official presentation of the Office and its functions was held for a large audience of Lebanese media, resulting in wide coverage. The Outreach Office in Beirut will be the Tribunal's main focal point for numerous projects and activities planned for 2010 as part of the outreach strategy.

138. A website has been launched in all three working languages of the Tribunal in order to serve as its main information and outreach tool. The website is a source of information for the press and the public, and includes background documents, fact sheets, press releases and other basic information. It is envisaged that new content, including specialized articles on relevant issues as well as audio/video material, will be added in due course to reach out to wider audiences. In the future, the website will serve to provide Lebanese and international audiences with direct access to Tribunal proceedings by means of live streaming and relevant documents and transcripts.

139. In November 2009, the Special Tribunal for Lebanon began a series of focus group surveys targeting all sectors of the Lebanese population. The purpose of the initiative is to assess public opinion about the Tribunal and issues related to its work. The results of the survey will assist the Tribunal in further refining its outreach strategy.

5. External relations

140. A series of events, meetings and briefings were held throughout the year.

141. On 1 March 2009, an event was organized to mark the official opening of the Tribunal. In attendance were members of the diplomatic community, the Legal Counsel of the United Nations, host-State officials, local government officials, Lebanese and international media, representatives of international organizations in The Hague and non-governmental organizations.

142. A series of bilateral meetings with representatives of the diplomatic community were held by the Registrar in Leidschendam, The Hague, Beirut, New York and various other cities to appeal for funding and to negotiate agreements on witness relocation and enforcement.

143. In Leidschendam, two briefings were held for various representatives from the diplomatic community, in February and April 2009. In addition, the Registrar presented and/or attended a number of events and conferences in The Hague, including a conference on complementarity organized by the T.M.C. Asser Institute and held at Academy Hall; a conference entitled "Fighting impunity in peacebuilding contexts", held at the Netherlands Ministry of Foreign Affairs; and the Fifth Sir Richard May Seminar on International Law and International Courts.

144. In New York, the Registrar briefed the Group of Interested States for the Special Tribunal; the meeting was attended by representatives of missions to the United Nations. The Registrar also briefed the secretariat of the Council of the European Union.

145. In Beirut, a briefing was held in June 2009 for the representatives of Lebanese media and non-governmental organizations. The Registrar also made an appearance, by means of a pre-taped meeting, at an event held in the Lebanese capital entitled "The Special Tribunal for Lebanon: overview and implications".

146. In Brussels, the Registrar addressed the European Union Council Working Group on Public International Law in December 2009.

147. The Acting Registrar attended a registrars' colloquium held in Venice, Italy, which was attended by the registrars of all the international tribunals.

148. The Registrar also hosted a number of officials and organizations at the Tribunal. Visits were made by representatives of Antonine University, in Baabda, Lebanon; by a group of judges from Iraq; and by a group of judges and prosecutors from the War Crimes Chamber of the Court of Bosnia and Herzegovina.

6. Inter-Tribunal cooperation

149. The Special Tribunal for Lebanon is grateful to the International Criminal Tribunal for the Former Yugoslavia for the support that it has provided to the Special Tribunal, particularly in its preparatory phase. The International Criminal Tribunal for the Former Yugoslavia has assisted by providing staff on loan to the Special Tribunal, offering procurement services, and housing staff members for a brief period before the advance team was able to move into its current premises.

150. In December 2009, the Special Tribunal for Lebanon signed a memorandum of understanding with the Special Court for Sierra Leone regarding the co-location of

The Hague sub-office of the Court on the premises of the Tribunal, and it is now hosting the Court.

7. Budget and funding

151. The Registrar is responsible for preparing the Tribunal's budget and presenting it to the Management Committee for its approval.

152. For the Tribunal's first year of operations, the 2009 approved budget amounted to $51.4 million. In June 2009, the Prosecutor of the Special Tribunal requested a redeployment of funds provided for in the budget in order to intensify the pace of his investigations for a period of 12 months. On 12 June 2009, the Management Committee accepted the Prosecutor's request and authorized the redeployment of existing resources provided for in the approved budget towards an increase in the level of the investigations.

153. On 9 December 2009, the Committee approved the 2010 budget, which amounted to $55.4 million.

154. The Registrar has been actively seeking State contributions to fund the core operations of the Special Tribunal for Lebanon. According to article 5 of the Agreement between the United Nations and the Government of Lebanon, Lebanon will contribute 49 per cent of the budget, with the remaining 51 per cent provided through voluntary contributions by States. A total of 25 countries have contributed to the Tribunal since its inception, through either voluntary contributions or in-kind support. The countries that have contributed, in addition to Lebanon, include: Austria, Belgium, Canada, Croatia, the Czech Republic, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Kuwait, Luxembourg, the Netherlands, the Russian Federation, Sweden, the former Yugoslav Republic of Macedonia, Turkey, the United Kingdom of Great Britain and Northern Ireland, the United States of America and Uruguay, as well as regional States.

155. The Special Tribunal for Lebanon is grateful to the European Commission for having provided a generous grant in the amount of €1.5 million. The grant is being used to support outreach activities, the internship programme, the victim participation section of the Tribunal, language support services and the Library.

156. Furthermore, the National Audit Office of the United Kingdom has been appointed as external auditor of the Special Tribunal for Lebanon.

8. Recruitment of staff

157. In 2009, efforts were focused on the recruitment of staff members for the institution as a whole. A total of 276 staff were on board as at 28 February 2010. Fifty-nine nationalities are currently represented at the Special Tribunal for Lebanon, the gender distribution being 36 per cent female and 64 per cent male.

158. In May 2009, the Tribunal launched its internship programme, and a total of 21 interns were recruited. Efforts are being made to increase the number of Lebanese nationals participating in the programme.

9. The way forward

159. Over the next year, the Registry plans to:

(a) Intensify outreach activities in Lebanon and ensure the implementation of the outreach strategy;

(b) Negotiate and conclude witness relocation and enforcement agreements with States;

(c) Ensure adequate funding for the Tribunal's operations;

(d) Ensure that the Beirut Office is equipped with all the resources necessary to permit the smooth conduct of the investigations by the Prosecutor;

(e) Develop an archiving and information policy for the Tribunal;

(f) Ensure that all necessary measures are in place for the protection and security of witnesses;

(g) Launch the ad hoc judicial management committee once judicial activities have commenced;

(h) Ensure the establishment of an integrated information technology system to manage the information and the processes related to its judicial and non-judicial functions;

(i) Develop the victim participation section of the Tribunal;

(j) Develop projects that enhance the legacy of the Tribunal.

C. Office of the Prosecutor

1. Introduction

160. The mandate of the Office of the Prosecutor, as set out in articles 1 and 11 of the statute of the Tribunal, is twofold: to investigate and to prosecute those persons responsible for the crimes falling within the jurisdiction of the Special Tribunal, namely, the attack of 14 February 2005 resulting in the death of former Lebanese Prime Minister Rafiq Hariri and in the death or injury of other persons, as well as persons responsible for connected attacks carried out in Lebanon.

161. Accordingly, those who established the Tribunal in 2007 contemplated that, upon the creation of the Tribunal, the Prosecutor would assume leadership over the investigation that had been conducted by the Lebanese authorities with the assistance of the International Independent Investigation Commission. They also envisaged that the prosecution would begin only after the Office of the Prosecutor had developed a case that could withstand judicial scrutiny. Until the various elements of evidence required to support an indictment have been established, the imposition of any timelines for the commencement of the prosecution phase would be arbitrary.

162. Therefore, during the reporting period, the Office of the Prosecutor focused its efforts on three main objectives: first, to become a fully functional and operational office; secondly, to take jurisdiction over the investigation, led by the Lebanese judicial authorities, into the Hariri attack; and thirdly, to continue to investigate and explore all leads in order to establish the truth regarding the crimes falling within its mandate.

163. The first objective required that all the structural and staffing challenges associated with the transition from a United Nations investigative body based in Lebanon to a full-fledged tribunal of an international character seated in the Netherlands be overcome. That objective was attained.

164. The second objective was attained when the Pre-Trial Judge ordered the Lebanese authorities to transfer the *Hariri* case file to the Tribunal. That order resulted from a request by the Prosecutor for deferral to the competence of the Tribunal with regard to the case, in accordance with article 4 (2) of the statute of the Tribunal.

165. The third objective is being actively pursued. As clearly indicated in the last report of the International Independent Investigation Commission to the Security Council, the launch of the Tribunal did not mean that the investigation had been completed.[9] On the contrary, as stated in the report, the Office of the Prosecutor, once it had begun to operate, would focus on the investigative component of its mandate and continue to gather evidence that would support an indictment.

166. All the activities of the Office of the Prosecutor, as highlighted below, have been guided by its mission statement, which is drawn from its mandated tasks: (a) to bring terrorists to justice; (b) to bring justice to victims; and (c) to help end impunity in Lebanon.

2. Establishment of the Office

167. The Office of the Prosecutor began its operations when the Prosecutor[10] assumed his functions, on 1 March 2009, upon the official launch of the Special Tribunal for Lebanon, and the day after the mandate of the International Independent Investigation Commission had come to an end.

168. At the outset of the start-up phase, the main challenge was to act swiftly on a number of competing priorities that had to be simultaneously addressed to ensure that the Office of the Prosecutor would be equipped without delay so that it could become fully operational as an organ of a judicial body.

(a) Deferral

169. The first priority of the Prosecutor was to expedite the work involved in seeking the deferral of jurisdiction over the *Hariri* file, within the short time frame mandated by the statute of the Tribunal.

170. On 25 March 2009, the day after the publication of the Rules of Procedure and Evidence, the Prosecutor filed his application pursuant to article 4 (2) of the Statute, requesting the issuance of an order to the Lebanese authorities for the deferral of their jurisdiction over the *Hariri* file to the Tribunal. The Pre-Trial Judge issued the requested order.

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[9] See S/2008/752, paras. 5, 7 and 62. That the Office of the Prosecutor would continued the investigation on all cases within the Commission's mandate was also recognized by the Security Council in its resolution 1852 (2008).

[10] The Prosecutor, Daniel A. Bellemare of Canada, was appointed by the Secretary-General after consultation with the Government of Lebanon and upon the recommendation of a selection panel, in accordance with article 3 of the Agreement annexed to Security Council resolution 1757 (2007).

171. On 8 April 2009, the Lebanese authorities formally deferred their jurisdiction over the case of the investigation into the killing of Rafiq Hariri and others to the Tribunal. As a result of the deferral of jurisdiction and the transfer of the *Hariri* case, the Tribunal took primacy over the Lebanese courts with regard to the case. On the basis of the Prosecutor's reasoned submissions, the Pre-Trial Judge ordered the release of the individuals detained in Lebanon in connection with the investigation on 29 April 2009.

(b) Resources

172. The second priority was to complete the recruitment process and finalize the team structures for the new Office, as well as to ensure appropriate logistical support.

173. Through a highly competitive and transparent process, the Office of the Prosecutor ensured that it assembled the most qualified and experienced international team possible for its Investigation Division, its Prosecution Division and its Legal Advisory Section and for the Immediate Office of the Prosecutor. Staff members from Lebanon and more than 30 other countries were combined in a cohesive and efficient team. While some staff had had experience working with the International Independent Investigation Commission, new staff brought valuable new expertise and experience to the investigative effort.

174. The deferral of jurisdiction concerning the *Hariri* case provided the Prosecutor with sole authority over the investigation. In exercising that authority, the Prosecutor reviewed strategies and approaches and concluded that new resources were required to increase the pace of the investigation. This took the form of a one-year operational surge, which was approved by the Management Committee in June 2009 and became effective in September.

175. At the same time, the Prosecutor identified the need for an increased operational presence in Beirut. Originally envisaged as a liaison office providing support to visiting missions, the Beirut Field Office needed to become a fully operational adjunct of the Investigation Division in the Netherlands and to carve out a much broader role for itself. This had been accomplished by mid-2009.

176. The presence in the Beirut Field Office of the Deputy Prosecutor, Judge Joyce Tabet, who was appointed by the Government of Lebanon in consultation with the Secretary-General and the Prosecutor and joined the Tribunal on 1 November 2009, has proved to be invaluable in leading and strengthening the efforts of the Office of the Prosecutor in Lebanon, thanks to her knowledge of the file and of the Lebanese legal system.

(c) Operational framework

177. A third priority was the establishment of an operating framework, internal standard operating procedures and administrative instructions. The overarching goals of this exercise were: (a) to protect the integrity of the investigation through the establishment of a solid institutional framework to protect the confidentiality of the investigation; and (b) to ensure optimal efficiency in managing the work of the Office of the Prosecutor.

178. Simultaneously, the Office of the Prosecutor was involved in the drafting of the Rules of Procedure and Evidence. The Rules were considered and adopted

during the first plenary meeting of the Judges, which commenced on 9 March 2009. To that end, the Office commented on the drafts circulated by the Chambers or other organs of the Tribunal, in addition to proposing a number of draft rules or amendments. The Office continued to make a significant contribution to the process of amending the Rules that took place in June and October 2009.

179. Finally, a memorandum of understanding was signed by the Prosecutor and the Minister of Justice of Lebanon on 5 June 2009. It defined the modalities of the cooperation to be provided to the Office of the Prosecutor by the Lebanese authorities.

3. Investigation

180. Article 1 of the statute, which defines the jurisdiction of the Tribunal, lists three categories of offence: (a) the Hariri attack; (b) other attacks that occurred between 1 October 2004 and 12 December 2005, if found to be connected to the Hariri attack; and (c) other attacks that occurred after 12 December 2005, as decided by the United Nations and the Government of Lebanon and with the consent of the Security Council.

181. The Tribunal's jurisdiction over the attacks in the second and third categories is conditioned on the existence of a connection with the Hariri attack, in accordance with the provisions of article 1 of the statute. In order to establish a connection, the Prosecutor must continue to investigate the other attacks through close and regular follow-up of the progress made by the Lebanese judicial authorities. The investigation of the other attacks also helps to advance the Hariri investigation.

182. In order to achieve results in the most efficient way possible, the Office of the Prosecutor has organized its work using a teamwork- and project-based approach. This enables the Office to optimize the synergies resulting from the multi-disciplinary professional expertise of its staff. The personnel of the Office include analysts, investigators, forensics experts, legal advisers and trial counsel who work together on various components of the *Hariri* case to identify the perpetrators and bring them to justice. This team approach is also utilized with regard to the other attacks.

183. The additional staff recruited from mid- to late 2009 have contributed greatly to the ability of the Investigation Division to carry out analysis and investigations and to process the massive number of documents held as evidence. Trial counsel have provided advice on and assisted with ongoing investigative work. In addition, as announced in the last report of the International Independent Investigation Commission, financial investigators have been recruited. World-renowned experts on explosives, isotopic analysis and biometric analysis have been commissioned.

184. Evidence management and handling methods have been put in place to ensure that the integrity of evidence is preserved. Procedures and protocols reflecting international standards regarding forensic collection, processing, management and assessment have been adopted.

185. A multilingual optical character reader system has been introduced, in particular to allow electronic searches of documents in the Arabic language. Specialized software has been acquired and adapted to the specific needs of the Investigation Division. New electronic tools and techniques have been developed to optimize the use of existing databases.

186. With regard to potential sources, in order to widen the scope of available information, the Office of the Prosecutor has created and activated a secure webpage posted on the Tribunal website, through which persons who may have information that could assist the investigation can communicate confidentially with the Office.

187. Numerous procedures and protocols reflecting international standards in the area of forensics have been adopted. Progress has been made in a number of key areas, including biometric data, through the collection of fingerprints and DNA and the enhancement of the Office's capacity to compare unknown fingerprints and DNA with known samples held in a variety of international databases now accessible to it. In addition, the Office continues to improve its ability to manage more than 12,000 artifacts, 200,000 images and more than 200 forensic crime scene reports for use in the investigative and judicial processes.

188. The Cooperation Agreement between the Tribunal and INTERPOL has enabled the Office of the Prosecutor to gain access to INTERPOL databases.

189. The Lebanese authorities have been extending full cooperation to the Office of the Prosecutor since the inception of the Tribunal, and their assistance has been invaluable. More than 240 requests for assistance were sent to the Prosecutor General of Lebanon from 1 March 2009 to 15 February 2010, with 53 missions carried out to the field.

190. Since the cooperation of other States with the activities of the Office of the Prosecutor is also critical, the Office has not refrained from seeking their assistance. More than 60 requests for assistance have been addressed to 24 countries, and a total of 62 missions have been carried out on their territories.

191. During the reporting period, more than 280 interviews with witnesses were conducted by investigators on mission or by investigators stationed at the Beirut Field Office.

192. As a result of the infrastructure and the activities described above, the Office of the Prosecutor has made significant progress towards building a case that will bring perpetrators to justice. This has been achieved despite the obvious discipline and sophistication of those behind the attack. Within the necessary constraints of protecting the confidentiality of the investigation, the Office can report the following indicators of progress in the investigation:

(a) Certain leads and unreliable information have been discounted following an extensive review of the material gathered throughout the investigation;

(b) There is an increased level of confidence that individuals using the identified network committed the attack;

(c) Additional information has been obtained to support the idea that the perpetrators of the attack carried it out with the complicity of a wider group;

(d) Progress has been made towards identifying the suspected suicide bomber, by narrowing down the individual's geographic origin and partially reconstructing the individual's face;

(e) Existing leads relating to elements of linkage between the Hariri attack and other attacks have been further developed;

(f) New sources of information are being developed and exploited.

4. Public information and outreach

193. From the outset, the Office of the Prosecutor has identified public information and outreach as one of its priority areas of activity. That approach resulted from the high level of public interest in the Tribunal, particularly in the investigation, and the lack of knowledge, as well as the misunderstandings and misconceptions, about the work of the Office.

194. Accordingly, the Office of the Prosecutor designed a public information and outreach strategy aimed at achieving its overarching goal: to ensure an enabling environment for its work. The strategy was designed to ensure that the work of the Office, while observing the confidentiality requirements inherent to the investigation, was perceived as transparent, fair and as accessible as possible.

195. Transparent justice is an important element of fairness and accountability to stakeholders. Consequently, the Prosecutor has given several interviews to local and regional media and has consistently reiterated the key messages of the Office so as to correct misunderstandings, counter inaccurate reporting, address false speculation and manage unrealistic expectations. Press releases have been issued regarding specific developments to ensure the provision of timely information and to prevent or dampen possible press speculation. Moreover, the Office Spokesperson has addressed press queries on a regular basis.

196. The Office of the Prosecutor has identified surviving victims and families of the victims as a priority audience and directed outreach efforts towards them. For example, during his first official mission to Beirut, in December 2009, the Prosecutor met with the families of four victims who had lost their lives in terrorist attacks that had taken place in Lebanon.

197. The Office of the Prosecutor intends to maintain its public information strategy throughout the investigation stage and at later stages, as appropriate. The Office also intends to actively participate in the Tribunal's outreach activities aimed at explaining the mandate, functions and processes of its work, promoting its core messages, addressing misconceptions and managing expectations.

5. The way forward

198. The evidence and information gathered thus far have allowed the Office of the Prosecutor to develop a case theory. As trial counsel test and challenge it in the light of the evidence and material gathered to date, that case theory has been strengthened. The process is ongoing and is designed to ensure that all evidentiary gaps are filled and all leads followed, and that the case theory is grounded in facts that can be proved at trial.

199. Given the acknowledged complexities and challenges inherent in the investigation of terrorist crimes, as highlighted in earlier sections of the present report, these gaps must be filled before an indictment that can be proved beyond a reasonable doubt in a court of law can be filed. The Investigation and Prosecution divisions are currently working together to ensure that the fruits of these investigative efforts are admissible in court. Therefore, all possible steps are being taken to ensure that the transition from the investigative phase to the prosecutorial phase will be seamless and that the trial process will move forward as expeditiously as possible.

200. As indicated above, there has been significant progress that warrants optimism about the prospects of the investigation. However, much remains to be done, and the unwavering support and continued cooperation of Lebanon and all other States concerned, as well as donor countries and relevant organizations, are needed if the Office of the Prosecutor is to fulfil its mandate.

D. Defence Office

1. Introduction

201. As previously indicated, the establishment of an independent Defence Office as provided for in the statute is an important novelty. The specific duties of the Office, combined with its fully independent nature, constitute a unique evolution in the area of international criminal justice. As indicated earlier in the present report, the principal duties of the Defence Office are to "protect the rights of the defence, provide support and assistance to defence counsel and to the persons entitled to legal assistance, including, where appropriate, legal research, collection of evidence and advice, and appearing before the Pre-Trial Judge or a Chamber in respect of specific issues" (article 13 (2) of the Tribunal's statute).

202. The Defence Office, which is intended to perform its functions impartially, independently and without regard for political considerations, will not represent any suspects or accused, as it is responsible only for the assignment of independent counsel to such persons.

203. To a great extent, the Defence Office is exploring uncharted terrain, for example, by interviewing applicants before they are admitted to the list of counsel; by monitoring, as mandated under the Rules of Procedure and Evidence, the performance of defence counsel; by entering into cooperation agreements with States and organizations; and by appearing in court to address issues relating to the rights of the defence. More traditionally, the Defence Office is also responsible for the assignment of counsel, the administration of legal aid and the provision of legal advice to counsel.

2. Organizational structure of the Office

204. Since the Defence Office combines features that either have not existed before in international courts or have existed in other organs, defining the organizational structure of the Office was one of the priorities for 2009. As the Rules of Procedure and Evidence and the Directive on the Assignment of Defence Counsel dictate the need to preserve the full independence and neutrality of both the Defence Office and its staff, specific attention was accorded to the organizational set-up and the internal separation of specific functions. In order to ensure effectiveness and its ability to facilitate the work of all future defence counsel, the Defence Office has been divided into four separate units: the Immediate Office of the Head of the Defence Office, the Legal Advisory Section, the Legal Aid Unit and the Operational Support Unit.

(a) Immediate Office of the Head of the Defence Office

205. The Head of the Defence Office has the overall responsibility for the management of the Defence Office. Together with the other organs of the Tribunal,

he is also involved in the coordination of the Tribunal's overall activities. Moreover, the Head of the Defence Office ensures that the interest of the Defence is represented within the Tribunal, in both an institutional and a judicial sense. During the reporting period, this included participation in the Senior Management Board and the participation of his staff in a number of internal working groups, for example, those on outreach, e-tools, and the translation of the Lebanese Code of Criminal Procedure.

206. In addition, the Head of the Defence Office is responsible in particular for matters directly relating to counsel, including the maintenance of the list of counsel, the provision of continuing legal education, the assignment and appointment of counsel and the monitoring of counsel performance.

207. Furthermore, the Head of the Defence Office maintains contact with representatives of the Government of Lebanon, the Lebanese bar associations and the diplomatic community.

(b) Legal Advisory Section

208. The Legal Advisory Section is responsible for providing legal advice on specific issues to individual defence counsel and to the Head of the Defence Office. It is necessary to provide such services to defence counsel because, irrespective of their previous experience, they are likely to be unfamiliar with one or more of the following areas of law: international criminal procedure, applicable Lebanese substantive law, and international modes of liability as defined in the statute and other relevant laws on terrorism. It is therefore necessary that the Legal Advisory Section create an institutional legal repository to provide legal advice to counsel, in order to compensate for any unfamiliarity that counsel may have with a substantive or procedural area of applicable law and to place defence counsel on an equal footing with the Office of the Prosecutor.

209. The work of the Legal Advisory Section will not only enable counsel to better represent their clients before the Tribunal, but will also contribute to the efficiency of the proceedings by enabling counsel to focus their research and preparation on the issues relevant to the defence. This in turn will result in efficient trial preparation and timely and focused submissions. Therefore, investments in the preparatory phase will reap benefits in the future.

210. During the reporting period, the Legal Advisory Section was established and its precise mandate determined. Adequate administrative procedures were put in place to ensure that the Section is able to carry out its mandate. In addition, legal "dossiers" (similar to those prepared by the Chambers) in areas of law of foreseeable practical relevance to the defence were prepared.

(c) Legal Aid Unit

211. One of the duties of the Head of the Defence Office is to provide legal aid to indigent suspects and accused. For that purpose, the Head of the Defence Office has set up a specific unit, in line with previous practice in other international courts and tribunals. The goal of the Legal Aid Unit at the Special Tribunal for Lebanon is to ensure that defence counsel have adequate resources, thus ensuring full respect for the rights of the accused and the principle of equality of arms, bearing in mind the public provenance of the legal aid funds.

212. While legal aid is a burdensome duty in administrative terms, the Unit has not yet been staffed, given the absence of judicial activity before the Tribunal. Any legal aid policy devised must be adopted in consultation with the President and the Registrar. A draft legal aid policy, including relevant procedures, has been prepared and will be implemented in advance of judicial activity. The draft policy has been presented to the President and the Registrar for consultation. A model legal services contract for counsel has also been prepared. In addition to meeting staffing requirements, the Defence Office is capable of administering legal aid in the future.

(d) Operational Support Unit

213. The Operational Support Unit will be responsible for addressing any operational support issues that may arise for counsel. This may involve, for instance, assisting counsel with case or document management issues, facilitating defence investigations in Lebanon and elsewhere, recruiting defence team members or finding relevant forensic experts. The goal of the Unit is to ensure that counsel, who may be unfamiliar with practical or operational problems specific to the Special Tribunal for Lebanon, are adequately supported so that they can focus on the substantive issues related to their cases. The Operational Support Unit is currently not staffed.

3. Recruitment of staff

214. On 9 March 2009, following a competitive recruitment process, the Secretary-General appointed François Roux, a lawyer from France, to the position of Head of the Defence Office. Given his ongoing involvement in the first trial before the Extraordinary Chambers in the Courts of Cambodia, and in the light of the limited amount of activity before the Tribunal, it was decided that Mr. Roux would serve the Tribunal only on a part-time basis. However, as from 1 January 2010, Mr. Roux has served in his position on a full-time basis.

215. Three permanent staff were recruited in 2009, together with two legal officers serving on a temporary basis. At the close of the reporting period, the Defence Office was staffed with a total of five permanent personnel, including an office coordinator, two legal officers, a personal assistant and an administrative assistant.

4. Regulatory output

(a) Directive on the Assignment of Defence Counsel

216. One of the key documents for the defence is the Directive on the Assignment of Defence Counsel. This official document was promulgated by the Head of the Defence Office with the approval of the plenary of judges. It was adopted during the judges' plenary session held in March 2009.

217. At the judges' second plenary session, held in October 2009, the Head of the Defence Office proposed amendments to the Directive in order to streamline some of its provisions. Most notably, the language of article 18 was amended to clarify that the Head of the Defence Office can refuse to appoint counsel when he or she is already representing another accused or has other professional obligations that would lead to a scheduling conflict or conflict of interest. Another amendment was made, in relation to the assignment of duty counsel to suspects (article 23), who are granted the option of local counsel in addition to the person appointed by the Head of the Defence Office. Other technical modifications were made, such as the

suppression of the obligation that defence counsel take a language proficiency exam (article 8).

(b) Rules of Procedure and Evidence and Practice Directions

218. The Defence Office made significant comments regarding the proposed amendments to the Rules of Procedure and Evidence submitted by the Chambers and the other organs of the Tribunal, and presented its own proposed amendments to the Rules.

219. In addition, the Defence Office undertook an in-depth review of the draft Practice Directions and submitted its comments to the President.

5. Protecting the rights of detainees

220. Pursuant to the Rules of Procedure and Evidence, persons detained in the custody or under the authority of the Tribunal have the same rights to legal representation as suspects and accused.

221. Upon the deferral of jurisdiction to the Tribunal by Lebanon, the Head of the Defence Office met with counsel representing the four generals held as suspects in Beirut, as well as with three of the generals themselves. One general refused to meet with him. Following the meetings, the Head of the Defence Office issued decisions appointing counsel to the detainees. Moreover, having witnessed the conditions of their detention, the Defence Office requested that the President ensure that certain fundamental rights of the detainees would be protected. As a result, the President issued an order ameliorating the conditions of their detention.

222. During the Pre-Trial Judge's hearing, the Head of the Defence Office, in the light of the Prosecutor's submissions and the decision of the Pre-Trial Judge, requested the immediate release of the four generals. A representative of the Defence Office joined the Tribunal's Chief of Detention on a mission to Lebanon to facilitate contact with the generals and their counsel and to ensure that their rights would be adequately protected at the time of the Pre-Trial Judge's decision. On the day of the order, the four detainees were released safely from custody in Lebanon. Overall, the role played by the Defence Office in these proceedings proved to be valuable.

6. Outreach/contact with Lebanese bar associations

223. A close working relationship with the Lebanese bar associations and their members is important for the work of the Tribunal. The Defence Office has travelled to Lebanon on three occasions to foster such a relationship. In April, the Head of the Defence Office met with the President of the Beirut Bar Association and some 60 lawyers to discuss the Tribunal and to explain the role and functions of the Defence Office. In July, the Head of the Defence Office returned to Beirut to host a two-day substantive seminar for some 70 members of the Beirut Bar Association. In November, the Office organized a one-day seminar on its role and functions for 45 members of the Tripoli Bar Association.

224. Moreover, a representative of the Defence Office participated in a workshop organized by the International Centre for Transitional Justice and the Beirut Bar Association, entitled "The Special Tribunal for Lebanon: the Rules of Procedure and Evidence". The representative of the Office, together with a representative of the Chambers, spoke about various aspects of the Rules. The meeting was attended by

defence counsel, representatives of victims and representatives of non-governmental organizations.

7. List of counsel

225. In February 2009, the Defence Office published a call for applications to the list of counsel. Special care was taken to ensure that the Lebanese bar associations would be informed as to the purpose and the background of the list, as well as the criteria and the procedure for admission to it. That information was provided through seminars organized in cooperation with the Beirut and Tripoli bar associations, as described above.

226. An essential task of the Defence Office is to ensure that an indigent defendant can freely choose a lawyer, subject to qualification and competency requirements. Those requirements are set out in rules 58 and 59 of the Rules of Procedure and Evidence. The Defence Office is committed to ensuring that the list of counsel reflects the different legal traditions and is composed of highly competent and experienced criminal advocates. That is achieved, in part, through an interview before an Admission Panel that all applicants must undergo before being admitted to the list. As a prerequisite for admission to the list of counsel, the interview process is a novelty in international tribunals. This admission process should be viewed as the result of lessons learned from the other international courts and tribunals. It was the opinion of the drafters of the Rules of Procedure and Evidence that an interview would help ensure the admission of persons able to deal with the complexity of international cases.

227. The Admission Panel is composed of three lawyers: the Head of the Defence Office, a lawyer appointed by the President in consultation with the Lebanese bar associations, and a lawyer appointed by the Head of the Defence Office. Accordingly, the Director of the Institute for Human Rights of the Beirut Bar Association and a lawyer from the United States of America with extensive experience before the International Criminal Tribunal for the Former Yugoslavia were appointed to the Panel.

228. The purpose of the Admission Panel is to verify whether applicants meet the requirements set out in rules 58 and 59 of the Rules of Procedure and Evidence, with a particular focus on the competence of the applicants in international criminal law and the required minimum number of years of relevant experience.

229. The Admission Panel holds that “relevant experience” should be interpreted as “experience relevant to the practice before the Tribunal”. For example, this may include experience in the following areas: the defence of those charged with serious and complex crimes at the domestic level, such as terrorism, homicide, manslaughter, trafficking and complex white-collar crimes; the defence of cases with international dimensions, such as those involving international judicial assistance, complex immigration issues or supranational crime; and the defence of those charged with war crimes, genocide and crimes against humanity.

230. During the reporting period, 125 applications were received, from a total of 24 countries. Twelve of the applicants are members of Lebanese bar associations. Thirty-five applicants have been interviewed, of whom 17 have been admitted as lead counsel and 10 as co-counsel. Two applications have been dismissed. The Admission Panel needs further information from six applicants before it can render

decisions in respect of their applications and has requested such information. The applicants admitted to the list of counsel represent 11 nations, including Lebanon, with 5 Lebanese counsel admitted. Since the number of applicants from Lebanon was low, efforts are under way to encourage more Lebanese counsel to apply to the list.

231. The decisions of the Admission Panel are subject to administrative review by the President. To date, there has been no request for a review of the Panel's decisions.

8. List of persons assisting counsel

232. The Defence Office also maintains a list of legal officers, case managers and investigators who may be asked by counsel to join a defence team. Admission to the list of persons assisting counsel is controlled by the Head of the Defence Office. The admission criteria reflect those for similar positions in the Office of the Prosecutor. Subject to the relevant legal aid policy, future counsel may select one or more persons from the list of persons assisting counsel. The list provides a service for counsel, facilitating the recruitment of competent staff. It does not prevent any person from being recruited directly by counsel, subject to a review of their qualifications and competencies by the Head of the Defence Office. In this way, the Head of the Defence Office can ensure that the individual members of a defence team for an indigent accused contribute to the effectiveness and quality of the defence, while allowing counsel to choose their own support staff.

9. Relationship and cooperation with States and organizations

233. Over the past 12 months, the Head of the Defence Office and senior staff have met with ambassadors and other diplomatic representatives of the States members of the Management Committee. Moreover, Mr. Roux has met with representatives of the Government of Lebanon, as well as with the Special Coordinator of the Secretary-General for Lebanon.

234. The Defence Office has also provided input into the model agreements on legal cooperation with States and on the enforcement of sentences and acquittals. In addition, the Defence Office was involved in the drafting of the agreements with INTERPOL and the Netherlands Forensic Institute.

235. Furthermore, the Defence Office has concluded cooperation agreements with a number of universities. Those agreements cover legal research to be conducted at the request of the Office. Such research will be of a general nature and will not involve the disclosure of any confidential details. It will serve to supplement the work of the Legal Advisory Section, which can benefit from multiple legal opinions as well as from research focused on domestic law and procedure.

10. The way forward

236. Over the next year the Defence Office plans to:

(a) Continue its efforts to attract experienced and competent counsel for the list of counsel. This will include a specific focus on Lebanon and the bar associations of other Middle Eastern countries;

(b) Provide continuing legal education for the counsel admitted to the list of counsel. This training will focus on specific issues related to the Special Tribunal for Lebanon, such as the role of the Pre-Trial Judge and the possibility of proceedings in the absence of the accused, and will address lacunae in counsel's knowledge and experience. For example, counsel from civil-law jurisdictions will be asked to pay specific attention to the defence investigations and the examination and cross-examination of witnesses; non-Lebanese counsel will be asked to focus on relevant aspects of Lebanese law; and counsel from common-law jurisdictions will be asked to review, for example, the participation of victims in proceedings and the examination of witnesses by judges. The training sessions will be funded largely through a grant from the European Commission;

(c) Initiate special measures to facilitate defence investigations and State cooperation with defence counsel;

(d) Conclude relevant cooperation agreements with States and/or organizations to address the particular needs of the defence. In particular, the Office plans to conclude a memorandum of understanding with the Lebanese Minister of Justice parallel to that already entered into between the Prosecutor and the Minister, so as to facilitate the task of investigators acting for the defence;

(e) Engage in further outreach to stakeholders in Lebanon and other relevant States to explain the role and functions of the Defence Office;

(f) Propose the adoption of a code of conduct for counsel appearing before the Tribunal, pursuant to rule 60 of the Rules of Procedure and Evidence;

(g) Finalize the legal dossiers on areas of law likely to arise before the Tribunal;

(h) Adopt specific policies governing the monitoring of counsel performance.

Part III — Tentative stock-taking and concluding observations

A. What has been accomplished in 12 months

237. All those who work for the Special Tribunal for Lebanon can take pride in a number of achievements accomplished over the past 12 months:

(a) The rapid adoption of: (i) the Rules of Procedure and Evidence, a set of legal provisions that are carefully tailored to the special features of the Tribunal and constitute a full-fledged "code of criminal procedure", exhibiting many novelties compared with other international "codes"; (ii) the Rules of Detention, the Directive on the Assignment of Counsel and three Practice Directions; and (iii) two international agreements, with ICRC and INTERPOL;

(b) The deferral of jurisdiction by Lebanon and the swift filing of a motion by the Prosecutor concerning the detention in Lebanon of four Lebanese generals, as well as the similarly rapid issuance by the Pre-Trial Judge of various orders on the matter;

(c) The intense contacts engaged in by the Head of the Defence Office with the Lebanese bar associations and Lebanese lawyers at large; his insistence on

meeting both with the four generals in prison and with their counsel; and his filing with the Tribunal's President of a motion seeking a better safeguard of the rights of those detainees;

(d) The stepping-up by the Prosecutor of his investigations so as to expeditiously submit indictments to the Pre-Trial Judge;

(e) The Registry's efficient preparations for the establishment of all the necessary practical infrastructure, including the setting-up of a courtroom (finalized by February 2010, with the necessary courtroom information technology systems being installed), and the recruitment of relatively few but highly competent and experienced staff, affirming a commitment to both cost-effectiveness and efficiency;

(f) The opening of the Beirut Field Office of the Tribunal;

(g) The unreserved cooperation extended by the Government of Lebanon to the various organs of the Tribunal.

B. What has not been accomplished

238. An area in which the Special Tribunal for Lebanon has perhaps been less effective thus far is that of outreach. To be sure, the Office of the Prosecutor, the Defence Office and the Registry have been active in Lebanon, promoting discussions, meetings with the relevant members of the legal profession and encounters with Lebanese media (only the Chambers have been slow or deficient in promoting their outreach programme, for a number of practical reasons, for which the President takes full responsibility).

239. Nevertheless, what has been needed is the formulation of an overall strategy for the Tribunal in the area of outreach, a task difficult to pursue during its start-up phase. With the help of a specialist in this area appointed by the Registrar, a new, comprehensive and well-thought-out approach to outreach has been proposed and discussed within the Tribunal, and was approved in February 2010. It is aimed at ensuring improved performance on the part of the various organs during the Tribunal's second year of activity.

C. A blueprint for the second year of the Tribunal activities

240. Over the next 12 months, the Special Tribunal for Lebanon is determined to:

(a) Bring to completion all legal and practical infrastructure, so as to ready the Tribunal for the prompt and proper administration of justice;

(b) Bolster and put into practice the new outreach programme, with a view to increasingly greater impact on the Lebanese legal profession and Lebanese public opinion;

(c) Encourage as many States as possible to ratify the comprehensive draft agreement on legal cooperation with the Tribunal, which has already been circulated to Governments, or at least to consider the draft agreement as the general legal framework guiding the relations of States with the Tribunal on a case-by-case basis;

(d) Ensure that the Tribunal, as an institution based on voluntary contributions, has sufficient financial resources by broadening the support that it

enjoys, and possibly increasing the level of support provided by States and other international entities;

(e) Support the efforts of the Prosecutor to take all reasonable measures to increase the pace of his investigations and collection of evidence;

(f) Initiate pretrial proceedings as soon as any indictment is submitted by the Prosecutor and confirmed by the Pre-Trial Judge, with a view to expeditiously initiating trial proceedings;

(g) Continue to exercise its judicial powers before the confirmation of any indictment. In particular, as the investigation progresses and when he deems it timely, the Prosecutor shall forward to the Pre-Trial Judge information that the Prosecutor considers necessary for, inter alia, the confirmation of any indictment (rule 88 of the Rules of Procedure and Evidence). This will enable the Pre-Trial Judge to begin to assemble his dossier and to accelerate the process of determining whether the indictment can be confirmed. Moreover, the Pre-Trial Judge may be called to consider issues of jurisdiction over connected cases (rule 11). The Pre-Trial Judge may also be requested by the Prosecutor to issue orders for investigative measures, including for instance summonses, warrants, transfer orders, authorizations to conduct on-site investigations and questionings of witnesses (see articles 11 (5) and 18 (2) of the statute and rules 77, 92 and 93 of the Rules of Procedure and Evidence);

(h) Upon confirmation of any indictment, the Pre-Trial Judge and the Trial Chamber will be requested to issue decisions regarding jurisdiction and other preliminary matters (rule 90 of the Rules of Procedure and Evidence) and to prepare the case for a fair and expeditious trial (rule 89).

D. Final observations

241. We are keenly aware of the challenges that we face and will continue to face. An international criminal tribunal dealing with terrorism, in addition to being beset by all the difficulties typically experienced by international criminal courts, faces special problems with regard to the investigation and the gathering of evidence. Thus, the Tribunal will have to continue to address the complexities and challenges inherent in the investigation and prosecution of terrorist crimes.

242. In addition, the Special Tribunal for Lebanon must meet another formidable challenge. The Tribunal is the first international judicial institution to adjudicate responsibility for terrorism as a distinct crime. Terrorism is a protean notion difficult to address, in part because there are only a few international treaties and limited case law on which to draw. However, through reliance on Lebanese law and relevant international standards, the Tribunal should prove to be able to apply a sound and generally acceptable notion of terrorism in a well-balanced manner. For that reason and others discussed above, the Tribunal must show that it can adjudicate cases in a way that is impartial, fair and immune from political or ideological bias.

243. Naturally, we intend to dispense justice on the basis of full respect for the rights of both the defendants and the victims. By doing so, we might also set the stage for future and broader resort to international criminal institutions to fend off terrorism.

244. In his work *De Legibus* (On the laws), Cicero wrote, "*vereque dici potest, magistratum esse legem loquentem, legem autem mutum magistratum*" (it can rightly be said that a judge is the speaking law, whereas the law is a mute judge). Thus far, owing to the absence of an indictment, the Trial Chamber and the Appeals Chamber of the Special Tribunal for Lebanon have exercised their statutory judicial functions only to a limited extent. Therefore, the statute and the Rules of Procedure and Evidence of the Tribunal have hitherto remained a silent judge for the most part. However, the actions undertaken by the Prosecutor, the Head of the Defence Office and the Pre-Trial Judge with regard to the four Lebanese generals who had been detained in Lebanon constitute an important exception. It cannot be denied that those actions must be commended for their rapidity, fairness and legal rigour, which redounded greatly to the benefit of the human rights of the detained persons. Nevertheless, the judges sitting on the bench look forward to exercising their judicial functions on a full-time basis as soon as possible. At that stage, they will become the "speaking law" in order to translate the provisions of the statute and the Rules of Procedure and Evidence into living and operational law, and thereby dispense justice in an absolutely impartial manner.

245. The aims of the Tribunal as a whole — the Chambers, the Registry, the Office of the Prosecutor and the Defence Office — are to render justice through a fair and transparent process and to provide truth and peace of mind for the victims as well as reconciliation for Lebanese society. The Tribunal's work is also aimed at strengthening the culture of accountability in Lebanese society. Rendering expeditious and true justice and accomplishing our truth-seeking mission will create a real opportunity for the region to effect a reconciliation process that, although already in motion, undoubtedly requires broader support from the international community. We are setting about the task of assisting that process through the instruments in our hands, confident that the backing of the States and institutions that have accompanied us thus far will only increase.

246. The organs of the Special Tribunal for Lebanon are not unmindful of the host of hurdles that they must face, both at present and when they begin to carry out their judicial mandate in full. However, they are prepared to surmount those hurdles with intrepidity. After all, the endeavours of anyone struggling for the realization of human rights — and, in this case, for the vindication of the rights of the victims and the punishment of the authors of very serious misdeeds — are labours of Sisyphus. The great champion of human rights, Nelson Mandela, wisely wrote: "I have discovered the secret that after climbing a great hill, one only finds that there are many more hills to climb ... But I can rest only for a moment, for with freedom come responsibilities, and I dare not linger, for my long walk is not yet ended."[11]

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[11] See *Long Walk to Freedom: The Autobiography of Nelson Mandela* (London, Abacus, 1996).