



The Pre-Trial Judge

Le Juge de la mise en état

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

**THE PRE-TRIAL JUDGE**

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**ORDER ON PRELIMINARY QUESTIONS ADDRESSED TO THE JUDGES OF  
THE APPEALS CHAMBER PURSUANT TO RULE 68, PARAGRAPH (G) OF THE  
RULES OF PROCEDURE AND EVIDENCE**

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*STL Official Translation*



1. Pursuant to Rule 68, paragraph (G) of the Rules of Procedure and Evidence of the Special Tribunal for Lebanon ("Rules" and "Tribunal" respectively), the Pre-Trial Judge of the Tribunal ("Pre-Trial Judge") hereby has the honour to submit respectfully to the Appeals Chamber of the Tribunal ("Appeals Chamber") some preliminary questions relating to the interpretation of the Statute. These questions are intended to clarify the applicable law in order to examine the indictment submitted by the Prosecutor of the Tribunal ("Prosecutor") on 17 January 2011 and issue, with full knowledge of the facts, a decision on whether or not to confirm the indictment.

### **Preliminary observations**

2. On reading the counts in the indictment, the Pre-Trial Judge considers that, in the interest of justice, several questions with regard to the interpretation of the applicable law should be determined *in limine litis* by the Appeals Chamber. These questions relate to the offences, modes of responsibility and cumulative charging and plurality of offences covered in the indictment. Indeed, as will be examined subsequently in detail, the provisions of the Statute relating to these questions are open to differing interpretations. Should all or part of the indictment be confirmed without having clarified these provisions at this stage of the proceedings, the proceedings might commence on incorrect legal bases which would not be rectified until the end of the proceedings when the appeals ruling is issued. This method of proceeding, in addition to being time-consuming and costly, would not assist the proceedings in terms of coherency and transparency, nor would it be in the interest of the accused. A specific definition of the applicable law from the outset would allow the accused to gain a better understanding of the scope of the counts against them and prepare their defence accordingly. Likewise, to invalidate all or part of the indictment without having clarified *ab initio* the aforementioned provisions of the Statute might unjustifiably compromise the future proceedings.

#### **1. – The offences**

3. Amongst the offences covered in the indictment are terrorist acts, conspiracy with a view to committing a terrorist act ("conspiracy"), intentional homicide with premeditation and attempted

intentional homicide with premeditation. In the interests of clarity, the Pre-Trial Judge will examine the aforementioned questions individually using the definition of each of these offences.

4. It should be noted that the counts mentioned in the indictment are founded on both Articles 1 and 3 of the Statute, Articles 188, 200, 212, 213, 270, 314, 547, 549 (1) and (7) of the Lebanese Criminal Code and Articles 6 and 7 of the Lebanese Law enacted on 11 January 1958.

#### **A. – Terrorist acts**

5. Although it does not give a specific definition of the notion of terrorist acts, Article 2 of the Statute refers to Article 314 of the Lebanese Criminal Code relating to the prosecution and punishment of these acts. The Pre-Trial Judge questions whether it is necessary for the Tribunal to take into account conventional and customary international law in order to understand fully this notion. If it should be taken into account, he likewise questions the way in which any conflict which might arise between the definition given by the Lebanese Criminal Code and that given by international law can be resolved.
6. The first question raised by the definition of the notion of terrorist acts could therefore be set out as follows: taking into account the fact that Article 2 of the Statute refers exclusively to the relevant provisions of the Lebanese Criminal Code to define the notion of terrorism, should the Tribunal likewise take into account applicable international law in this regard? In particular, should it rely on the general definition of terrorism as set out in Article 1, paragraph 2 of the Arab Convention on the Suppression of Terrorism,<sup>1</sup> or indeed those definitions mentioned in other international conventions or, if appropriate, those which could be drawn from customary international law?

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<sup>1</sup> Article 1, paragraph 2 of the Arab Convention on the Suppression of Terrorism (which entered into force 22 April 1998 and was ratified by Lebanon on 31 March 1999) defines terrorism as follows: “Any act or threat of violence, whatever its motives or purposes, that occurs in the advancement of an individual or collective criminal agenda and seeking to sow panic among people, causing fear by harming them, or placing their lives, liberty or security in danger, or seeking to cause damage to the environment or to public or private installations or property or to occupying or seizing them, or seeking to jeopardize a national resource[s]” [unofficial translation].

7. In order to support these questions, the Pre-Trial Judge submits the following considerations to the Appeals Chamber:
- a. *The text of Article 2 of the Statute.* As mentioned above, Article 2 of the Statute does not provide a definition of terrorist acts but refers in this respect to the Lebanese criminal provisions in force. As such, Article 314 of the Lebanese Criminal Code defines this notion in the following manner: "Terrorist acts are all acts intended to cause a state of terror and committed by means liable to create a public danger such as explosive devices, inflammable materials, toxic or corrosive products and infectious or microbial agents".<sup>2</sup> Article 2 of the Statute appears consequently to refer solely to national Lebanese law with the exception of conventional and customary international law.
  - b. *The international character of the Tribunal.* Although clearly influenced by Lebanese law, the Tribunal has an international character which results principally from the way in which it was established, its composition and the rules relating to the way in which it functions. It is therefore legitimate to question whether it is necessary for the Tribunal to refer to conventional and customary international law, in order to specify – indeed supplement – the provisions of substantive law that the Tribunal should apply. It is appropriate to note in this respect that the other *ad hoc* international criminal tribunals were quite prepared to go beyond the rigid frameworks of their Statutes and to refer to international conventions and customary principles in force in order to specify the offences which were mentioned therein.<sup>3</sup>
  - c. *The evolution of the notion of terrorism.* As mentioned above, Article 2 of the Statute refers to the Lebanese Criminal Code which was adopted on 1 March 1943. Since that date, numerous conventions have entered into force worldwide (internationally and regionally) in

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<sup>2</sup> It should be noted that the term corresponding to "état d'alarme" in the Arabic version of the Lebanese Criminal Code is "حالة" and that in the Tribunal official Arabic to English translation, this term is translated by "state of terror".

<sup>3</sup> International Criminal Tribunal for the former Yugoslavia (ICTY), Case No. 94-1-AR72, *The Prosecutor v. Tadić*, IT-94-1-AR72, Decision of 2 October 1995, paras 94-95.

order to create specific terrorist offences – some of which have been ratified by Lebanon<sup>4</sup> – or to combat the crime of terrorism generally as envisaged by the aforementioned Arab Convention. In extending these conventions, the United Nations General Assembly, the Security Council and the Commission on Human Rights have also adopted several resolutions on this issue.<sup>5</sup> Furthermore, faced with the upsurge in terrorist acts during the last four decades, numerous States, in order to respond to the specific characteristics of this offence, have created a specific legislative arsenal which itself has been influenced by the case law of their courts and tribunals.<sup>6</sup> Taken together, these texts – conventions, resolutions, laws and case law – could provide information as to the evolution, at international level, of

<sup>4</sup> Conventions relating to this issue which have been ratified by Lebanon include: the Convention on Offences and Certain Other Acts Committed On Board Aircraft (date of ratification: 11 June 1974); the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (date of ratification: 23 December 1977); the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (date of accession: 16 December 1994); the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (date of ratification: 27 May 1996); the International Convention against the Taking of Hostages (date of accession: 4 December 1997); and the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (date of accession: 3 June 1997). These conventions recognise as offences certain specific acts or provide for specific legal rules to be applied to these offences without necessarily referring to the concept of “terrorism”.

<sup>5</sup> Cf. Security Council resolutions 1269 (1999), preamble para. 1; 1373 (2001), para. 4; 1377 (2001), para. 6; 1456 (2002), preamble paras 3 and 6; 1540 (2004), preamble para. 8 and 1566 (2004). Paragraph 3 of this last resolution is particularly informative as – without providing in the strictest sense a definition of terrorism – it recalls that “criminal acts, *including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature*” (italics added). Cf. Likewise, General Assembly resolutions 3034 (XXVII) (1972), para. 1; 31/102 (1976), para. 1; 32/147 (1977), para. 1; 34/145 (1979), para. 1; 36/109 (1981), para. 1; 48/122 (1993), preamble para. 7; 49/185 (1994), preamble para. 9; 50/186 (1995), preamble para. 12; 52/133 (1998), preamble para. 11; 54/164 (2000), preamble para. 13; 56/160 (2002), preamble para. 18; 58/136 (2003), preamble para. 8; 58/174 (2004), preamble para. 12; 59/153 (2004), preamble para. 10; and 59/194 (2004), preamble para. 3 and paras 2, 4 and 14. Cf. The Commission on Human Rights, resolutions 2001/37, preamble para. 16 and para. 2; and 2004/44, preamble para. 7.

<sup>6</sup> Cf. Article 83.01(1) of the Criminal Code of Canada which defines terrorist activity as follows: “an act or omission that is committed in or outside Canada [...] committed both: (A) in whole or in part for a political, religious or ideological purpose, objective or cause; (B) in whole or in part with the intention of intimidating the public, or a segment of the public, with regard to its security, including its economic security, or compelling a person, a government or a domestic or an international organization to do or to refrain from doing any act, whether the public or the person, government or organization is inside or outside Canada [...]”. The Supreme Court of Canada also recognised that the definition of terrorism set out in Article 2 (1) (b) of the International Convention for the Suppression of the Financing of Terrorism “... catches the essence of what the world understands as ‘terrorism’”. (*Suresh v. Canada* (Minister of Citizenship and Immigration), [2002] 1 R.C.S. 3, 2002 SCC 1, para. 98). This Convention, which entered into force on 10 April 2002, defines terrorism in the following manner: “Any [other] act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act”. Cf. Also the United Kingdom legislation on this matter (UK Terrorism Act 2000, Section 1) drawn up as follows: “Terrorism means the use or threat of action where [...] (b) the use or threat is designed to influence the government or to intimidate the public or a section of the public, and (c) the use or threat is made for the purpose of advancing a political, religious or ideological cause”.

the notion of terrorism and its constituent elements. In this context, the question arises of whether the Tribunal, given its specific character, should interpret Article 314 of the Lebanese Criminal Code and relevant Lebanese case law by taking into account this evolution in so far as: firstly, this would be effectively established by one or more international conventions ratified by Lebanon or would reflect a customary law resulting from a practice of States which is accepted by law; and secondly, this or these conventions or this customary law would be applicable in the national Lebanese criminal justice system.

- d. *The rule of criminal law.* If it should be supplemented in the light of international law, the notion of terrorism should be applied in accordance with the fundamental rule of criminal law.<sup>7</sup> In this respect, it is worth recalling that Article 15 of the International Covenant on Civil and Political Rights, which was ratified by Lebanon on 3 November 1972 and entered into force on 23 March 1976, provides that a person can be held guilty of an act or omission which constituted a criminal offence at the time it was committed, not only under the relevant national law, but also under the international law in force.<sup>8</sup>
- e. *The clarification of the constituent elements of terrorism.* Article 314 of the Lebanese Criminal Code and relevant case law place the emphasis on the means by way of which the terrorist offence is committed (explosive devices, inflammable materials, toxic or corrosive products and infectious or microbial agents).<sup>9</sup> On the other hand, they are less forthcoming with regard to the special intent<sup>10</sup> as a requisite on the part of the perpetrator of the offence,

<sup>7</sup> The principle of *nullum crimen sine lege* is established by most national legal systems – including Lebanese law (cf. Article 1 of the Lebanese Criminal Code) – as well as by numerous instruments for the protection of human rights, in particular by Article 11, paragraph 2 of the Universal Declaration of Human Rights of 1948, Article 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, Article 15 of the International Covenant on Civil and Political Rights of 1966, Article 9 of the American Convention on Human Rights of 1969 and Article 7, paragraph (2) of the African Charter on Human and Peoples' Rights of 1981.

<sup>8</sup> Article 15, paragraph 2 of the International Covenant on Civil and Political Rights is drawn up as follows: "Nothing in this article shall prejudice the trial and punishment of any person for any act of omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations".

<sup>9</sup> The Judicial Council of Lebanon, *Case Nizar Al-Halabi*, 17 January 1997 and *Case Michel Al-Murr*, cited in Nidal Nabil Jurdi, "The Subject Matter Jurisdiction of the Special Tribunal for Lebanon", *Journal of International Criminal Justice*, 5 (2007), 1125-1138, p.1134, nos 49-50.

<sup>10</sup> The intentional element of a terrorist offence is often deduced from the means used to commit the offence (cf. The Judicial Council of Lebanon, *Case Michel Al-Murr*).

except for a reference to "state of terror".<sup>11</sup> Yet the aforementioned international conventions, resolutions, laws and case law generally refer to special intent as the distinguishing feature of an act of terrorism in comparison to common law offences and define it in reference to two principle factors: the intention to exert pressure on a State or an international organisation and the intimidation of all or part of the public. Consequently, should the Tribunal rely on international law in order to specify the constituent elements of this offence and, in particular, the intent, in order notably to ensure better certainty of the law and strengthen the rights of the accused?

- f. *Harmonisation of Articles 2 and 3 of the Statute.* For a definition of the modes of responsibility falling within the jurisdiction of the Tribunal, Article 3 of the Statute relies directly on international law by drawing up this Article in a similar fashion to Articles 25 and 28 of the International Criminal Court ("ICC"). In the interests of aligning the provisions of the Statute relating to the offences and to the modes of responsibility, this reference to international law would justify the judge making use of these articles as a basis for clarifying the definition of the offence.
8. Should there be a positive response to the questions raised in paragraph 6, it would be appropriate to consider, and in accordance with which principles, how to reconcile the notion of terrorism as set out in Article 2 of the Statute (which places the emphasis above all on the material element of the offence) with that drawn from international law (which gives predominance to the intentional aspect). After considering this, it would be appropriate to determine the constituent elements, material and intentional, of this notion to be applied by the Tribunal. In this respect, the Pre-Trial Judge notes that Article 2 of the Statute must indeed be interpreted in the light of the customary principles established by Articles 31 to 33 of the Vienna Convention on the Law of Treaties which entered into force on 27 January 1980, the statements made by representatives of Member States of the Security Council at the time of the adoption of Council resolution 1757 (2007) or of other resolutions dealing with the same issue in addition to

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<sup>11</sup> Cf. footnote 2.

recent practices of the United Nations and States that affect the resolutions in question.<sup>12</sup> However, with regard to a criminal offence, the principle according to which the interpretation of the Statute texts cannot be made to the detriment of the rights of the accused must be fully respected.

9. Should there be a negative response to the questions raised in paragraph 6, it would be advisable to determine precisely the constituent elements, material and intentional, of the terrorist acts that should be taken into consideration by the Tribunal in light of Lebanese law and case law pertaining thereto.
10. Furthermore, in addition to the questions of a general nature relating to the definition of the notion of terrorism, in light of the charges contained in the indictment, the Pre-Trial Judge respectfully submits to the Appeals Chamber the following question. If the perpetrator of acts of terrorism aimed at creating a state of terror<sup>13</sup> through the use of explosive devices intended to commit this act by killing a specific individual, how can his or her criminal responsibility be defined in the case where death and injury are caused to persons who might be considered not to have been the personal or direct object of such acts?

#### **B. –Conspiracy**

11. As for the notion of terrorist acts, Article 2 of the Statute refers to the Lebanese Criminal Code with regard to conspiracy. Article 270 of this Code defines it in the following terms: “Any agreement concluded between two or more persons to commit a felony by specific means shall be qualified as a conspiracy.” In this regard, the application of Article 315 of this Code, which specifically recognises “a conspiracy aimed at the commission of one or more acts of terrorism”, was suspended by Article 1 of the Law enacted on 11 January 1958. Article 7 of this same law states, without specifying further, that “[e]very person who enters into a conspiracy with a view to the commission of any of the offences contemplated in the preceding articles shall be liable to the death penalty”, which includes acts of terrorism.

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<sup>12</sup> International Court of Justice, *Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo*, 22 July 2010, para. 94.

<sup>13</sup> *Cf.* footnote 2.



12. In the light of considerations similar to those mentioned in paragraph 7 of this Order, the Pre-Trial Judge questions whether the Tribunal must rely, not only on Lebanese law, but also on conventional and customary international law, in order to interpret the constituent elements of the notion of conspiracy. For this reason, the Pre-Trial Judge notes that, in international law, conspiracy is recognised as a specific offence where genocide<sup>14</sup> is concerned and, in national law, sometimes as a specific offence,<sup>15</sup> sometimes as a mode of responsibility.<sup>16</sup>
13. Should there be a positive response to the question raised in the preceding paragraph, it would be appropriate to examine whether there is any conflict between the definition of conspiracy as recognised in Lebanese law (mentioned in Article 7 of the Law enacted on 11 January 1958 and substantiated by the relevant applicable case law) and that arising out of international law and, where necessary, how to resolve it in accordance with the relevant applicable international norms, in the interests of certainty of the law and respect for the rights of the accused.
14. Should there be a negative response to this question, it would be advisable to precisely determine the constituent elements of this notion that must be taken into consideration by the Tribunal from the point of view of Lebanese law and the case law pertaining thereto.
15. In addition, in so far as the notion of conspiracy and that of joint criminal enterprise – referred to in paragraph b) of Article 3 of the Statute and constituting a mode of responsibility in international law – share points in common initially, it would be advisable to specify their respective distinguishing features.

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<sup>14</sup> International Criminal Tribunal for Rwanda (ICTR), Case No. ICTR-96-13-T, *The Prosecutor v. Musema*, Judgement of 27 January 2000, paras 185-191; ICTR, Case No. ICTR-99-52-T, *The Prosecutor v. Nahimana*, Judgement of 3 December 2003, para. 1043.

<sup>15</sup> Cf. concerning conspiracy as a specific offence: G. Werle, *Principles of International Criminal Law*, T.M.C. Asser Press, The Hague, 2005, p.166, para. 489; G. Fletcher, *Rethinking Criminal Law*, Oxford University Press, Berlin, 2000, pp. 646 *et seq.*; Article 465 of the Criminal Code of Canada; Section 120-A, Indian Penal Code (1860); Case *R. v. Lam*, [2005] ABQB 849.

<sup>16</sup> Cf. G. Boas, J. L. Bischoff and N. L. Reid, *International Criminal Law Practitioner Library: Forms of Responsibility in International Criminal Law*, Vol. I, p. 283, n.13 referring to A. M. Danner and J. S. Martinez, "Guilty Associations: Joint Criminal Enterprise, Command Responsibility, and the Development of International Criminal Law", *California Law Review* 93 (2005), 75-169, p.119.

**C. – Intentional homicide with premeditation and attempted intentional homicide with premeditation**

16. Homicide counts among the “crimes and offences against life and personal integrity” referred to in Article 2 of the Statute. It is made an offence under Article 547 of the Lebanese Criminal Code in the following terms: “[a]nyone who intentionally kills another person shall be punishable by hard labour for a term of between 15 and 20 years.” Premeditation is referred to in Article 549 of the Lebanese Criminal Code and the element of intent specifically set out in Articles 188 and 189 of this same Code. Article 188 provides that “[i]ntent consists of the will to commit an offence as defined by law” and Article 189 that “[a]n offence shall be deemed to be intentional, even if the criminal consequence of the act or omission exceeds the intent of the perpetrator, if he had foreseen its occurrence and thus accepted the risk.” As regards the attempt to commit a criminal offence, this is made an offence under Article 200 of the Lebanese Criminal Code, which specifies that: “[a]ny attempt to commit a felony that began with acts aimed directly at its commission shall be deemed to constitute the felony itself if its completion was prevented solely by circumstances beyond the control of the perpetrator.”
17. In the light of similar considerations to those mentioned in paragraph 7 of this Order, the Pre-Trial Judge questions whether the Tribunal must rely, not only on Lebanese law, but also on conventional and customary international law, in order to interpret the constituent elements of the notions of intentional homicide with premeditation and attempted intentional homicide with premeditation.
18. Should there be a positive response to the question raised in the preceding paragraph, it should be examined whether there is any conflict between the definitions of the notions of intentional homicide with premeditation and attempted intentional homicide with premeditation as recognised by Lebanese law and those that arise out of international law and, where necessary, how to resolve them in accordance with the relevant applicable international norms, in the interests of certainty of the law and respect for the rights of the accused.

19. Should there be a negative response to this question, it would be advisable to determine precisely the constituent elements of these notions that must be taken into consideration by the Tribunal in the light of Lebanese law and the case law pertaining thereto.
20. In addition, it would be appropriate if the Appeals Chamber were to indicate whether an individual may be prosecuted for intentional homicide with premeditation for offences committed against persons who were not specifically targeted in the alleged criminal act.

## **2. – Modes of responsibility**

21. From a general viewpoint, the Pre-Trial Judge notes that the Statute says nothing about the issue of whether the provisions relating to modes of responsibility are to be interpreted in the light of Lebanese criminal law or international law. Indeed, with regard to complicity in a criminal offence, Article 2, paragraph a) of the Statute refers to the Lebanese Criminal Code. However, Article 3 of this same Statute entitled “Individual criminal responsibility” draws heavily on international law as shown in particular by paragraph 2, which relates to responsibility of the superior and draws on Articles 25 and 28 of the Statute of the ICC. However, the Statute provides no information on how to resolve any conflict that this situation might bring about.
22. In this context, the Pre-Trial Judge respectfully requests the Appeals Chamber to reply to the following questions. In order to apply criminal modes of responsibility before the Tribunal, should reference be made to Lebanese law, international law or both Lebanese and international law? In this last case, how, and on the basis of which principles, should any conflict between these laws, with specific reference to commission and co-perpetration, be resolved?

## **3. – Cumulative charging and plurality of offences**

23. The Statute is silent on the issue of cumulative charging and plurality of offences. The question that then arises is whether cumulative charging and plurality of offences should be regulated by Lebanese criminal law, by international law or by both Lebanese criminal law and international law. In this last case, how, and on the basis of which principles, should these two laws be reconciled in the event of conflict between them?

24. It should be noted in this regard that the international criminal tribunals have, generally, allowed cumulative charging and plurality of offences in indictments in so far as the charges laid against the accused are only confirmed at the end of the proceedings, if appropriate.<sup>17</sup> However, the ICC, like some national jurisdictions, has dismissed, under some circumstances, such charging, in that it can be detrimental to the rights of the accused<sup>18</sup> and lead to lengthy and weighty proceedings.<sup>19</sup> Additionally, according to the ICC, the responsibility for legally defining the allegations made against the accused falls to the judges.<sup>20</sup>

25. In the light of the responses provided to these questions, it would be appropriate to determine whether – and under what conditions – the Prosecutor may define one and the same act in several different ways, namely, for example, at the same time as terrorist conspiracy, terrorist acts and intentional homicide with premeditation or attempted intentional homicide with premeditation. If this is indeed possible, may he use these classifications cumulatively or as alternatives? Where applicable, under what conditions?

**FOR THESE REASONS,**

**PURSUANT TO** Rule 68, paragraph (G) of the Rules,

**THE PRE-TRIAL JUDGE** has the honour to respectfully submit to the Appeals Chamber the following preliminary questions:

**With regard to the notion of terrorist acts:**

- i) Taking into account the fact that Article 2 of the Statute refers exclusively to the relevant provisions of the Lebanese Criminal Code in order to define the notion of terrorist acts, should the Tribunal also take into account the relevant applicable international law?

<sup>17</sup> ICTY, Case No. IT-95-16-A, *The Prosecutor v. Kupreškić*, Appeal Judgement of 23 October 2001, para. 385 recalling Case No. IT-96-21-A, *The Prosecutor v. Delalić et al. [Čelebići]*, Appeal Judgement of 20 February 2001, para. 400.

<sup>18</sup> ICC, Case No. ICC-01/05-01/08-14 ENG, *The Prosecutor v. Jean-Pierre Bemba Gombo*, “Decision on the Prosecutor’s Application for a Warrant of Arrest Against Jean-Pierre Bemba Gombo” of 8 June 2008, para. 25.

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

- ii) Should the question raised in paragraph i) receive a positive response, how, and according to which principles, may the definition of the notion of terrorist acts set out in Article 2 of the Statute be reconciled with international law? In this case, what are the constituent elements, intentional and material, of this offence?
- iii) Should the question raised in paragraph i) receive a negative response, what are the constituent elements, material and intentional, of the terrorist acts that must be taken into consideration by the Tribunal, in the light of Lebanese law and case law pertaining thereto?
- iv) If the perpetrator of terrorist acts aimed at creating a state of terror<sup>21</sup> by the use of explosives intended to commit those acts to kill a particular person, how is his criminal responsibility to be defined in the event of death of or injury caused to persons who may be considered not to have been personally or directly targeted by such acts?

**With regard to the notion of conspiracy:**

- v) In order to interpret the constituent elements of the notion of conspiracy, should the Tribunal take into account, not only Lebanese law, but also conventional or customary international law?
- vi) Should the question raised in paragraph v) receive a positive response, is there any conflict between the definition of the notion of conspiracy as recognised by Lebanese law and that arising out of international law and, if so, how should it be resolved?

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<sup>21</sup> Cf. note 2.

- vii) Should the question raised in paragraph v) receive a negative response, what are the constituent elements of the conspiracy that must be taken into consideration by the Tribunal, from the point of view of Lebanese law and case law pertaining thereto?
- viii) As the notions of conspiracy and joint criminal enterprise might, at first sight, share some common elements, what are their respective distinguishing features?

**With regard to intentional homicide with premeditation and attempted intentional homicide with premeditation:**

- ix) In order to interpret the constituent elements of the notions of intentional homicide with premeditation and attempted intentional homicide with premeditation, should the Tribunal take into account not only Lebanese law, but also conventional or customary international law?
- x) Should the question raised in paragraph ix) receive a positive response, is there any conflict between the definitions of the notions of intentional homicide with premeditation and attempted intentional homicide with premeditation as recognised by Lebanese law and those arising out of international law and, if so, how should it be resolved?
- xi) Should the question raised in paragraph ix) receive a negative response, what are the constituent elements of these notions in Lebanese law in the light of case law pertaining thereto?
- xii) Can an individual be prosecuted before the Tribunal for intentional homicide with premeditation for an act which he is alleged to have perpetrated against victims who might be considered not to have been personally or directly targeted by the alleged criminal act?

**With regard to modes of responsibility:**

- xiii) In order to apply modes of criminal responsibility before the Tribunal, should reference be made to Lebanese law, to international law or to both Lebanese and international law? In this last case, how, and on the basis of which principles, should any conflict between these laws be resolved, with specific reference to commission and co-perpetration?

**With regard to cumulative charging and plurality of offences:**

- xiv) Should cumulative charging and plurality of offences applicable before the Tribunal be regulated by Lebanese criminal law, by international law or by both Lebanese criminal law and international law? In this last case, how, and on the basis of which principles, are these two laws to be reconciled in the event of conflict between them?
- xv) Can one and the same act be defined in several different ways, namely, for example, at the same time as terrorist conspiracy, terrorist acts and intentional homicide with premeditation or attempted intentional homicide with premeditation. If so, can these classifications be used cumulatively or as alternatives? Under what conditions?

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

Leidschendam, 21 January 2011.

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Daniel Fransen  
Pre-Trial Judge

