



The Pre-Trial Judge

Le Juge de la mise en état

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

BEFORE THE PRE-TRIAL JUDGE

Case No.: STL-11-01/I
The Pre-Trial Judge: Mr Daniel Fransen
The Registrar: Mr Herman von Hebel
Date: 9 June 2011
Original: French
Type of document: *Ex parte* and confidential

**ORDER FOR CLARIFICATION
OF THE INDICTMENT**

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



NOTING the *ex parte* and confidential Motion filed on 6 May 2011 by the Prosecutor of the Special Tribunal for Lebanon (the “Prosecutor” and the “Tribunal”, respectively) for the purpose in particular of confirming the Indictment included in the Annex to that Motion (the Indictment);

NOTING the *ex parte* and confidential hearing held on 7 June 2011 pursuant to paragraph (E) of Rule 68 of the Rules of Procedure and Evidence (the “Rules”);

NOTING the Interlocutory Decision of the Appeals Chamber of the Tribunal of 16 February 2011 (the “Interlocutory Decision”) in accordance with which the Pre-Trial Judge may request the Prosecutor to “reconsider the submission of formally distinct offences which nonetheless do not in practical terms further the achievement of truth and justice through the criminal process”;¹

CONSIDERING that the Interlocutory Decision also recalls that, according to Lebanese law, both the investigating Judge and the trial court may on their own authority reclassify facts originally charged by the Prosecutor;²

CONSIDERING that Counts nos 6 and 7 included in the Indictment accuse the persons referred to, individually, of two distinct offences, which are: for Count no. 6, being an accomplice to committing a terrorist act by means of an explosive device and being an accomplice to intentional homicide (of Rafiq Hariri) with premeditation by using explosive materials; and for Count no. 7, being an accomplice to intentional homicide (of 21 persons, in addition to the intentional homicide of Rafiq Hariri) and attempted intentional homicide (of 231 persons in addition to the intentional homicide of Rafiq Hariri) with premeditation by using explosive materials;

¹ See, Tribunal, Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, 16 February 2011, STL-11-01/I, para. 299.

² *Ibid.*, para. 261. See, in this regard, Article 370 of the Lebanese Code of Civil Procedure and Articles 176 and 233 of the Lebanese Code of Criminal Procedure. It should also be noted that, according to Article 61, paragraph 7, c) of the Statute of the International Criminal Court, the Pre-Trial Chamber may “[a]journ the hearing and request the Prosecutor to consider: [...] [a]mending a charge because the evidence submitted appears to establish a different crime within the jurisdiction of the Court”.

CONSIDERING that Counts nos 1 to 5 included in the Indictment are not worded in the same manner as Counts nos 6 and 7, insofar as each of them only mentions a single offence;

CONSIDERING that if Counts nos 6 and 7 were confirmed and the accused concerned by these counts transferred to the Tribunal, in accordance with Rule 98, paragraph (A), point (iii) of the Rules, the accused would be called upon when they first appear before the Tribunal to enter a plea of guilty or not guilty “on each count”;

CONSIDERING that to ensure compliance with the right of the accused to enter a plea of guilty or not guilty on counts that are clearly formulated and to avoid any confusion which might be prejudicial to them, each count should be worded in such a manner as to include only a single offence;

CONSIDERING that by clarifying the Indictment, this new formulation should also facilitate the manner in which the discussions during the hearing take place and reinforce the rights of the accused;

CONSIDERING that, as a consequence, Counts nos 6 and 7 should respectively be split up in order to include only a single offence; that four separate counts should thus be created: first, that of being an accomplice to a terrorist act against Rafiq Hariri; second, that of being an accomplice to intentional homicide of Rafiq Hariri; third, that of being an accomplice to intentional homicide of 21 persons; and fourth, that of being an accomplice to attempted intentional homicide of 231 persons.

FOR THESE REASONS,

In application of Rule 68 of the Rules,

THE PRE-TRIAL JUDGE,

ORDERS the Prosecutor to submit to him, by 10 June 2011 at the latest, a new version of the Indictment in which Counts nos 6 and 7 will have been reworded in conformity with the present decision and to retract the previous version of this Indictment.

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

Leidschendam, 9 June 2011.

[signature]

Daniel Fransen

Pre-Trial Judge

