

**BEFORE THE TRIAL CHAMBER**

Case No.: STL-11-01/I/TC

Before: Judge Robert Roth, Presiding
Judge Micheline Braidy
Judge David Re
Judge Janet Nosworthy, Alternate Judge
Judge Walid Akoum, Alternate Judge

Registrar: Mr Herman von Hebel

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THE PROSECUTOR

v.

**SALIM JAMIL AYYASH
MUSTAFA AMINE BADREDDINE
HUSSEIN HASSAN ONEISSI &
ASSAD HASSAN SABRA**

DECISION TO HOLD TRIAL *IN ABSENTIA*

Office of the Prosecutor:
Mr Daniel A. Bellemare, MSM, Q.C.

Accused:
Mr Salim Jamil Ayyash
Mr Mustafa Amine Badreddine
Mr Hussein Hassan Oneissi
Mr Assad Hassan Sabra

Head of the Defence Office:
Mr François Roux





INTRODUCTION

1. The Trial Chamber is seised with an order of the Pre-Trial Judge under Rule 105 *bis* (A) of the Tribunal's Rules of Procedure and Evidence to determine whether to try Salim Jamil Ayyash, Mustafa Amine Badreddine, Hussein Hassan Oneissi and Assad Hassan Sabra *in absentia*. The Trial Chamber has decided, for the reasons that follow, to proceed to try the four Accused *in absentia*.
2. The Trial Chamber also has an outstanding request from the Prosecutor to invite the Government of Lebanon to appear before the Trial Chamber, before determining whether to proceed to a trial *in absentia*. The Trial Chamber has decided against the request.
3. The Trial Chamber, in this decision, has analysed separately the measures taken by Lebanese authorities to personally notify the four Accused of the charges and those taken to secure their appearance at the Tribunal, either by apprehending them or notifying them of the various possible methods of participating in a trial. It has also considered whether widespread publicity in the Lebanese media has served to inform them of the charges and the different ways of participating in a trial. The Trial Chamber has concluded that each of the four Accused has absconded, and determined that the combination of these measures has satisfied the legal requirements necessary to try the four Accused *in absentia*.

PROCEDURAL BACKGROUND

4. On 14 February 2005, a large explosion occurred near the St George Hotel in downtown Beirut. A number of people, including the former Lebanese Prime Minister, Rafik Hariri, were killed and many others were injured. The following day, the United Nations Security Council condemned the act. Shortly thereafter the Secretary-General sent a fact-finding mission to Lebanon. Security Council Resolution 1595 (2005) established the United Nations Independent Investigation Commission in April 2005, and in December 2005, the Government of Lebanon



requested the United Nations to create a tribunal of “an international character”. The Special Tribunal for Lebanon was established by Security Council Resolution 1757 (2007) on 30 May 2007, and the Tribunal opened on 1 March 2009.

5. On 10 June 2011, the Prosecutor filed an amended indictment in the case of *The Prosecutor v. Salim Jamil Ayyash, Mustafa Amine Badreddine, Hussein Hassan Oneissi, and Assad Hassan Sabra* in respect of the events of 14 February 2005.¹ The indictment charges each of the four named Accused with nine counts, namely, conspiracy to commit a terrorist act, committing a terrorist act by using explosive materials, the premeditated intentional homicide of Rafik Hariri and 21 others, the premeditated intentional attempted homicide of 231 people by using explosives, and as accomplices to the latter four of these charges.² The Pre-Trial Judge confirmed the indictment,³ and, on 28 June 2011, issued arrest warrants for the apprehension of the four Accused.⁴ On 30 June 2011, the indictment and arrest warrants were transmitted to the Government of Lebanon for service and execution. On 8 July 2011, the Pre-Trial Judge issued four international arrest warrants and authorised the Prosecutor to request Interpol to transmit “red notices”.⁵ On 28 July 2011, the Pre-Trial Judge ordered the partial lifting of the confidentiality of the indictment, permitting the names, biographical information, photographs and the charges against the four Accused to be published.⁶
6. On 9 August 2011, the Public Prosecutor of the Lebanese Court of Cassation⁷ submitted a report to the President of the Tribunal under Rule 76 (C), detailing the

¹ Having initially submitted an indictment and supporting materials to the Pre-Trial Judge on 17 January 2011.

² Case No. STL-11-01/I/PTJ, Public Redacted Version, Indictment, 10 June 2011.

³ STL-11-01/I/PTJ, Decision relating to the Examination of the Indictment of 10 June 2011 issued Against Mr Salim Jamil Ayyash, Mr Mustafa Amine Badreddine, Mr Hussein Hassan Oneissi, & Mr Assad Hassan Sabra, 28 June 2011.

⁴ STL-11-01/I, Warrant to Arrest Mr Salim Jamil Ayyash Including Transfer and Detention Order, 28 June 2011; Warrant to Arrest Mr Mustafa Amine Badreddine Including Transfer and Detention Order, 28 June 2011; Warrant to Arrest Mr Hussein Hassan Oneissi Including Transfer and Detention Order, 28 June 2011; Warrant to Arrest Mr Assad Hassan Sabra Including Transfer and Detention Order, 28 June 2011.

⁵ STL-11-01/I, International Warrant to Arrest Mr Mustafa Amine Badreddine including Transfer and Detention Request, 8 July 2011; International Warrant to Arrest Mr Salim Jamil Ayyash including Transfer and Detention Request, 8 July 2011; International Warrant to Arrest Mr Hussein Hassan Oneissi including Transfer and Detention Request, 8 July 2011; International Warrant to Arrest Mr Assad Hassan Sabra including Transfer and Detention Request, 8 July 2011.

⁶ STL-11-01/I, Order on the Prosecutor’s Motion for Variation of the Order for Non-Disclosure of the Indictment, 28 July 2011.

⁷ The “Lebanese Prosecutor-General”.



measures taken by the Lebanese authorities to execute the arrest warrants.⁸ Subsequently, the President requested some clarification by the Lebanese Prosecutor-General by 19 September 2011.⁹

7. On 11 August 2011, the President of the Tribunal issued a public statement saying that the Lebanese authorities had notified him of their inability to personally serve the indictment on the four Accused and to effect any arrests. This public statement, termed “an open letter to the four men accused”, informed them, “their families and their close associates, as well as the Lebanese public”, in general terms of the ambit of Rules 104 and 105. The President urged the four to submit themselves to the jurisdiction of the Tribunal, even by video-conference, or by instructing counsel of their choice.¹⁰
8. The Pre-Trial Judge, on 16 August 2011, lifted the confidentiality of the indictment and its annexes, his decision confirming the indictment, and the arrest warrants.¹¹
9. On 18 August 2011 the President of the Tribunal issued an order under Rule 76. He described the efforts by the Lebanese authorities to apprehend the four Accused as “reasonable, especially given the high level of confidentiality originally imposed by the Tribunal on the indictment and arrest warrants, as well as the circumstances on the ground” but still “not sufficient”.¹² Accordingly, he ordered alternative methods of service of the indictment, requested the Registrar to transmit an advertisement to the Lebanese authorities, and ordered them to take all reasonable steps to publicly notify the four Accused of the indictment, and to call upon them to surrender to the jurisdiction of the Tribunal.

⁸ STL-11-01/I/PRES, Order pursuant to Rule 76 (E), 18 August 2011 (“Rule 76 Order”), para. 8, which refers to the Report of the Lebanese Prosecutor-General to the President of the Tribunal of 9 August 2011 (“Lebanese Prosecutor-General’s August 2011 report”).

⁹ Correspondence from the President of the Tribunal to the Lebanese Prosecutor-General, 18 August 2011.

¹⁰ “Statement of Judge Antonio Cassese, President of the Special Tribunal for Lebanon”, 11 August 2011, published on the Tribunal’s website.

¹¹ STL-11-01/I, Order on Lifting the Confidentiality of the Indictment against Messrs. Ayyash, Badreddine, Oneissi and Sabra and Other Documents, 16 August 2011. Redacted versions of the Indictment and its Annexes, and the Decision on Confirmation, were made public on 17 August 2011, while the arrest warrants were made public in their entirety.

¹² Rule 76 Order, paras 18-19.



10. On 29 August 2011, the Pre-Trial Judge lifted the confidentiality of the international arrest warrants.¹³ Two days afterwards, on 31 August 2011, the Registrar provided the Lebanese Prosecutor-General with a proposed advertisement of the indictment intended for publication in the Lebanese media. The following week, on 7 September 2011, the Lebanese Prosecutor-General informed the President of the Tribunal of the steps taken to serve the arrest warrants and the indictment.¹⁴ The next day, 8 September 2011, the Registrar suggested to the Lebanese Prosecutor-General that the indictment be advertised as a “poster” in five Lebanese newspapers - three Arabic, one francophone and one Anglophone - and be posted in public places, in compliance with Lebanese law on serving an indictment. He also suggested establishing a 24-hour telephone “hotline”.¹⁵ On 12 September 2011, the Tribunal issued a public service announcement in which the President reminded Mr Ayyash, Mr Badreddine, Mr Oneissi and Mr Sabra of their right to participate in the proceedings.¹⁶ On 15 September 2011, the poster identifying the four Accused and listing the charges against each was advertised, as the Registrar had proposed, in five Lebanese newspapers.

11. On 19 September 2011, the Lebanese Prosecutor-General reported to the President on the measures taken, under Rules 76 (A) and (B), to serve the indictment and to arrest the four Accused.¹⁷ Four days later, on 23 September 2011, the Pre-Trial Judge, acting under Rule 76 *bis*, asked the Registrar for proof of the public advertisement in Lebanon of the indictment and the President’s statement of 11 August 2011 and his Rule 76 Order, and that the President’s statement and order had been publicised on the Tribunal’s website and in international media.¹⁸ The

¹³ STL-11-01/I, Order Relating to the Lifting of the Confidentiality of the International Arrest Warrants of 8 July 2011 against Messrs. Ayyash, Badreddine, Oneissi and Sabra, 29 August 2011. The international arrest warrants were made public that day.

¹⁴ Correspondence from the Lebanese Prosecutor-General to the President of the Tribunal, 7 September 2011.

¹⁵ Correspondence from the Registrar to the Lebanese Prosecutor-General, 8 September 2011.

¹⁶ “A Public Service Announcement by the Special Tribunal for Lebanon”, 12 September 2011, published on the Tribunal’s website.

¹⁷ Report of the Lebanese Prosecutor-General to the President of the Tribunal, 19 September 2011 (“Lebanese Prosecutor-General’s September 2011 report”).

¹⁸ Correspondence from the Pre-Trial Judge to the Registrar, 23 September 2011.



Registrar, on 28 September 2011, provided the Pre-Trial Judge with proof of the public advertisement of the indictment in the Lebanese media.¹⁹

12. On 7 October 2011, the Prosecutor sent a request for assistance to the Lebanese Prosecutor-General offering suggestions on possible further investigative measures to locate and arrest the four Accused, requesting a response by 6 November 2011.²⁰

13. On 17 October 2011, pursuant to Rule 105 *bis* (A) of the Rules, the Pre-Trial Judge issued an order seising the Trial Chamber with determining whether to initiate proceedings *in absentia* against the four Accused, and reporting that none of the four Accused had then been arrested, or voluntarily appeared before the Tribunal, or had otherwise submitted themselves to its jurisdiction.²¹ On 19 October 2011, the Lebanese Prosecutor-General reported to the President on the measures taken to serve the indictment and to apprehend the four Accused.²²

I. Rule 106 public hearing

14. On 20 October 2011, the Trial Chamber scheduled a hearing on its Rule 106 determination for 11 November 2011, and requested the Prosecution and Mr Ayyash, Mr Badreddine, Mr Oneissi and Mr Sabra, and invited the Defence Office, to file written submissions.²³ After receiving written submissions from the Prosecution and the Defence Office,²⁴ the Trial Chamber conducted a hearing on 11 November 2011, during which the Prosecution orally supplemented its written submissions, and the Defence Office verbally made its substantive submissions under Rule 106. The Head of the Victims' Participation Unit also appeared at the

¹⁹ Correspondence from the Registrar to the Pre-Trial Judge, 28 September 2011.

²⁰ STL-11-01/I/TC, Prosecution's Preliminary Submission on Rule 106, 25 October 2011, para. 6.

²¹ And requesting in the Order that the Registrar provide the Trial Chamber with relevant documentation, STL-11-01/I, Order to Seize the Trial Chamber Pursuant to Rule 105 *bis* (A) of the Rules of Procedure and Evidence in Order to Determine Whether to Initiate Proceedings *in Absentia*, 17 October 2011.

²² Report of the Lebanese Prosecutor-General to the President of the Tribunal, 19 October 2011 ("Lebanese Prosecutor-General's October 2011 report").

²³ STL-11-01/I/TC, Scheduling Order in Respect of Rule 106 of the Rules of Procedure and Evidence, 20 October 2011.

²⁴ STL-11-01/I/TC, Prosecution's Preliminary Submission on Rule 106, 25 October 2011; Defence Office Response to the Prosecution's Preliminary Submission on Rule 106, 31 October 2011; Prosecution's Submission in Respect of Rule 106, 2 November 2011; Observations du Bureau de la Défense relatives à l'application de l'Article 106 A) du règlement de procédure et de preuve, 2 novembre 2011; and Prosecution's Supplementary Submissions in Respect of Rule 106, 10 November 2011.



hearing making a statement relating to the rights of the victims as defined in Rule 2.²⁵

15. The Prosecution also asked the Trial Chamber to adjourn its consideration under Rule 106 pending its receipt of answers to ten requests for assistance that it had sent to the Lebanese Prosecutor-General on 11 November 2011.²⁶ Additionally, it requested the Trial Chamber to invite a representative of the Government of Lebanon to make submissions, and appear at a future hearing, to explain the measures taken to apprehend the four Accused.²⁷

16. On 23 November 2011 the Trial Chamber issued a decision adjourning its determination of whether the requirements of Rule 106 had been met to try the four Accused *in absentia*, pending its receiving responses from the Lebanese Prosecutor-General to the Prosecutor's ten requests for assistance and further written submissions, if any, from the Prosecution, the four Accused and the Defence Office. The Trial Chamber also deferred its decision on the Prosecution's request to invite the Government of Lebanon to appear before the Tribunal, pending receipt of this information.²⁸ At the suggestion of the Defence Office, the Trial Chamber requested that Mr Ayyash, Mr Badreddine, Mr Oneissi and Mr Sabra be notified of the President's statement of 11 August 2011, and of the content of Rules 104 and 105.

A. Prosecution's submissions regarding Rule 106

17. The Prosecution submitted that it was premature to initiate a trial *in absentia*, arguing that the Lebanese authorities had had insufficient time to effect the arrests of the four Accused and that all reasonable steps to apprehend the four Accused had yet to be exhausted. More broadly, the Prosecution submitted that trials *in absentia* are lawful under international law provided that they adhere to international

²⁵ The Chief of the Victims' Participation Unit noted the length of time victims have been "awaiting justice", reaffirmed the importance of their rights, and conveyed a statement to the Trial Chamber on their behalf, "Please don't start without us", Transcript of hearing, 11 November 2011, pp. 90-93.

²⁶ On 17 June 2009, the Prosecutor and the Government of Lebanon (through its Minister for Justice) signed a "Memorandum of understanding between the Government of the Republic of Lebanon and the Office of the Prosecutor of the Special Tribunal for Lebanon regarding the modalities of co-operation between them".

²⁷ Transcript of hearing, 11 November 2011, pp. 39-42, 44-47; STL-1-01/I/TC, Prosecution's Supplementary Submissions in Respect of Rule 106, 10 November 2011, paras 14 (i), 17.

²⁸ STL-1-01/I/TC, Interim Decision under Rule 106 (Proceedings *in absentia*), 23 November 2011, paras 11-12.



standards on human rights, but should only be used as a “last resort”. Accordingly, the Prosecution requested the Trial Chamber to decide that a trial *in absentia* was premature, as the requirements of Rule 106 had not yet been met.²⁹ In the intervening three months since the Prosecution’s written submissions, the Trial Chamber has received evidence of the Lebanese Prosecutor-General taking numerous further measures to apprehend the four Accused, some of these at the Prosecution’s suggestion.

B. Defence Office submissions regarding Rule 106

18. The Defence Office made no substantive submissions as to whether the requirements had been met under Rule 106 to hold a trial *in absentia*,³⁰ but rather argued in the hearing that issuing arrest warrants in an *ex abrupto* manner prevented the four Accused from exercising their opportunity to appear before the Tribunal via video-conference or through counsel. At the hearing on 11 November 2011, the Defence Office submitted that the Trial Chamber should satisfy itself that the four Accused had been notified of the relevant provisions of the Rules of Procedure and Evidence allowing them “to appear freely, including over video-link” in a trial before making any decision about a trial *in absentia*.³¹ The Defence Office flagged the question of the general fairness to accused persons of *in absentia* proceedings, but reserved any argument on the issue to assigned or appointed defence counsel, at the appropriate time in the future.³²

C. Submissions for the four Accused regarding Rule 106

19. No submissions were filed by or for Mr Ayyash, Mr Badreddine, Mr Oneissi or Mr Sabra, and no counsel appeared for any of them at the hearing on 11 November 2011. On 25 October 2011, the Head of Defence Office had purported – acting under Rules 57 (D) (ii) and (iii) - to assign a counsel and co-counsel to each of Salim Jamil Ayyash, Mustafa Amine Badreddine, Hussein Hassan Oneissi and

²⁹ STL-1-01/I/TC, Prosecution’s Submission in Respect of Rule 106, 2 November 2011, para. 25.

³⁰ STL-1-01/I/TC, Observations du Bureau de la Défense relatives à l’application de l’Article 106 A) du règlement de procédure et de preuve, 2 novembre 2011.

³¹ Transcript of hearing, 11 November 2011, pp. 75-76.

³² Transcript of hearing, 11 November 2011, p. 58.



Assad Hassan Sabra.³³ The Trial Chamber ruled however on 2 November 2011³⁴ that although those Rules did not permit the appointment of counsel in the manner attempted by the Head of Defence Office, it would nevertheless allow the eight named defence counsel the right of audience, as designates of the Head of Defence Office under Rule 57 (F), thus permitting their participation in the proceedings under Rule 106, including in an oral hearing scheduled for on 11 November 2011.³⁵ Subsequently, however, the Head of Defence Office declined to make a designation under Rule 57 (F), and, as a result, no submissions were made for any of the four Accused.³⁶

DISCUSSION

20. The Trial Chamber acknowledges as a starting point that a trial in an accused's presence is preferable, even in the particular circumstances of this case, and agrees with the President's statement in his Rule 76 Order that "it is in the best interests not only of the accused, but also of the Tribunal - with its purpose of achieving a fair and efficient trial to establish truth and promote reconciliation within Lebanon - for each accused to be present and to fully participate in his own defence."³⁷

21. Article 22 of the Statute of the Special Tribunal authorises a Trial Chamber to conduct trials *in absentia*,

1. The Special Tribunal shall conduct trial proceedings in the absence of the accused, if he or she:

- (a) Has expressly and in writing waived his or her right to be present;
- (b) Has not been handed over to the Tribunal by the State authorities concerned;

³³ STL-1-01/I/TC, Nomination des conseils de permanence en vertu de l'Article 57 (d) (i) et (iii) du règlement de procédure et de preuve, 25 octobre 2011.

³⁴ After first seeking clarification in STL-1-01/I/TC, Order for Clarification from the Defence Office, 27 October 2011, and obtaining it in Réponse à l'ordonnance de la Chambre de première instance de 27 octobre 2011, 28 octobre 2011.

³⁵ STL-1-01/I/TC, Decision relative à la Nomination de «Conseils de Permanence» par le Chef du Bureau de la Défense, 2 novembre 2011, pp. 3-4.

³⁶ STL-1-01/I/TC, Observations du Bureau de la Défense relatives à l'application de l'Article 106 A) du règlement de procédure et de preuve, 2 novembre 2011, para. 7.

³⁷ Rule 76 Order, para. 15.



(c) Has absconded or otherwise cannot be found and all reasonable steps have been taken to secure his or her appearance before the Tribunal and to inform him or her of the charges confirmed by the Pre-Trial Judge.

22. Before initiating proceedings *in absentia*, the Trial Chamber must determine whether the requirements of Rule 106 have been met, namely,³⁸

- (A) Where the accused:
- (i) has expressly and in writing waived his right to be present at proceedings before the Tribunal;
 - (ii) has not been handed over to the Tribunal by the State authorities concerned within a reasonable time; or
 - (iii) has absconded or otherwise cannot be found and all reasonable steps have been taken to secure his appearance before the Tribunal and to inform him of the charges by the Pre-Trial Judge;

the Trial Chamber shall conduct proceedings *in absentia*.

- (B) Where the accused is not present on account of the failure or refusal of the relevant State to hand him over, before deciding to conduct proceedings *in absentia*, the Trial Chamber shall:
- (i) consult with the President and ensure that all necessary steps have been taken with a view to ensuring that the accused may, in the most appropriate way, participate in the proceedings;
 - and (ii) ensure that the requirements of Article 22 (2) of the Statute have been met.

23. The Trial Chamber has received no material suggesting that any of the four Accused has “expressly and in writing waived his or her right to be present”, under Rule 106 (A) (i), nor that any one “has not been handed over to the Tribunal by the State authorities concerned”, under Rule 106 (A) (ii). The Trial Chamber likewise has no information to the effect that any of the four “accused is not present on account of

³⁸ A difference exists between the English and French versions of Rule 106. The English version uses the words “shall conduct proceedings in absentia” whereas the French provides “peut décider d’engager une procédure par défaut”. The English version of Rule 106 follows the wording of Article 22 of the Statute in English, French (“le Tribunal conduit le procès en l’absence de l’accusé”) and in Arabic. The English and Arabic versions of Rule 106 are thus more consistent with Article 22, as written in the Tribunal’s three official languages. Applying the rules of statutory interpretation relating to texts in different languages “the meaning which best reconciles the texts, having regard to object and purpose [of the treaty]” in Article 33 (4) of the 1969 Vienna Convention on the Law of Treaties, the Trial Chamber accordingly defers to the English and Arabic versions in preference to the French version of Rule 106 (see also the discussion in the decision of the Appeals Chamber, STL-1-01/1, Interlocutory decision on the applicable law: terrorism, conspiracy, homicide, perpetration, cumulative charging, 16 February 2011, para. 26, footnotes 40-41, referring to the ICTY and ICTR’s use of the Convention in interpreting the Statutes and Rules of those Tribunals).



the failure or refusal of the relevant State to hand him over”, according to Rule 106 (B).

24. The Trial Chamber was seised of the case on 17 October 2011, and since then, has actively sought and has been regularly updated on all available information on the measures taken to inform the four Accused persons of the indictment, and to secure their attendance before the Tribunal. The Lebanese Prosecutor-General sent progress reports to the President of the Tribunal on 9 August, 19 September, 19 October, 18 November, 19 December 2011 (English translations were received on 23 January 2012) and 18 January 2012 (a French translation was received on 31 January 2012) on the measures taken under Rule 76 (A) and (B) of the Rules to serve the indictment and to apprehend the four Accused.³⁹ The Prosecution also filed progress reports on 8 December and 16 December 2011 and, on 13 January 2012, filed English translations of the Lebanese Prosecutor-General’s responses, dated 5 December 2011, to the requests for assistance sent on 11 November 2011.⁴⁰

25. The Trial Chamber has no confirmation as to the whereabouts of any of the four Accused, but the information available does not suggest that any of them has left Lebanon since the indictments were transmitted to the representatives of the Government of Lebanon on 30 June 2011. The Trial Chamber is therefore proceeding on the basis that it should confine its analysis under Rule 106 to sub-rule (A) (iii), namely that an accused “has absconded or otherwise cannot be found” and hence examine whether “all reasonable steps have been taken to secure his appearance before the Tribunal and to inform him of the charges by the Pre-Trial Judge”. As the information available to the Trial Chamber suggests that each of the four Accused remain on Lebanese territory, the Trial Chamber has confined its analysis to the measures taken in Lebanon.

³⁹ Lebanese Prosecutor-General’s August 2011 report; Lebanese Prosecutor-General’s September 2011 report; Lebanese Prosecutor-General’s October 2011 report; Lebanese Prosecutor-General’s report to the President of the Tribunal dated 18 November 2011; (“Lebanese Prosecutor General’s November 2011 Report”); Lebanese Prosecutor-General’s report to the President of the Tribunal dated 19 December 2011 (“Lebanese Prosecutor-General’s December 2011 report”); Lebanese Prosecutor-General to the President of the Tribunal dated 18 January 2012.

⁴⁰ STL-1-01/I/TC, Prosecution Report Regarding Rule 106 Proceedings, 8 December 2011; Second Prosecution Report Regarding Rule 106 Proceedings, 15 December 2011; Submission of the English Translation of the RFA Responses Contained in the Second Prosecution Report Regarding Rule 106 Proceedings, 13 January 2012.



26. These measures include surveillance, repeated visits to Mr Ayyash, Mr Badreddine, Mr Oneissi and Mr Sabra's last known places of residence and employment, and the residences of close family members, inquiries of public registers, and the publication in the Lebanese media of a poster containing biographical information and photographs of each, and describing the charges. Additionally, in determining both whether the four Accused are aware of the indictment and that they may participate in a trial without being physically present, the Trial Chamber has examined the Lebanese media's coverage connecting the four with the indictment and its coverage given to the practical effect of Rules 104 and 105.

27. Rule 106 (A) (iii) contains several overlapping considerations. The first is that the Trial Chamber must be satisfied that an accused has absconded or cannot be found. The second is that all reasonable steps have been taken to secure the appearance of the accused before the Tribunal. The third, concurrent with the second, is that all reasonable steps have been taken to inform the accused of the charges in the indictment.⁴¹

I. "All reasonable steps" under Rule 106 (A) (iii)

28. The words "all reasonable steps" are undefined in the Statute and Rules; the formulation is incapable of precise definition, and the Trial Chamber will not attempt one. A definition of "all reasonable steps" cannot exist in customary international law; it must be determined according to the circumstances particular to each individual situation, meaning that the question can be determined, not in the abstract, but rather by examining the totality of the prevailing circumstances.

29. The Trial Chamber also need not attempt to define the terms used in Rule 106 (A) (iii), namely, of securing "the appearance before the Tribunal" of an accused, or informing the person of the charges. Both necessarily involve those steps required to notify an accused that he or she has been indicted. Securing an appearance,

⁴¹ The Trial Chamber resolves the ambiguity in the wording of the English version of the Rules which may appear to require *the Pre-Trial Judge* to take all reasonable steps to secure an appearance and to inform the accused of the charges, by giving the Rule its natural meaning, namely, that the charges have been confirmed by the Pre-Trial Judge, as is clear from the French and Arabic version of the Rules.



however, may mean “apprehending” an accused (presumably through an arrest) or alternatively, obtaining their appearance at the Tribunal to participate in a trial other than by being physically present in the court room. The latter requires such notification as to allow an accused person to make an informed choice of whether or not to participate in the trial.

30. The “all reasonable steps” necessary to secure the appearance of an accused before a court are necessarily of a higher standard than those required merely to inform the accused person of the charges. Securing an appearance, depending upon the circumstances, may require the use of force, whereas the mere notification of a charge, of itself, will not. But notification allowing an accused person to make an informed choice as to participation (in the circumstances relevant to Rules 104 and 105) will normally require more than the mere formal service of an indictment.
31. In making its determination, the Trial Chamber has examined the requirements of the Tribunal’s Statute and Rules, international human rights law, and Lebanese criminal procedural law. It has also examined the practices of other international courts and tribunals in relation to notifying accused persons of charges before commencing certain procedures *in absentia*.
32. International human rights instruments⁴² require that an accused person is properly notified of the charges and invited to appear before the court (at least by summons) and is notified of the consequences of non-appearance - that is of the possibility of the court holding a trial *in absentia* - before the court can proceed to try the person in his or her absence. The accused must have waived the right to attend the trial by exercising their own free will or through their conduct.⁴³ The objective is to ensure that the accused can properly exercise the right to appear, or conversely, not to appear at the trial.⁴⁴ The State authorities have a wide discretion as to the method used to properly inform the accused; what counts is the effectiveness of that

⁴² For example, International Convention on Civil and Political Rights, 16 December 1966, 999 U.N.T.S. 171, art. 14 (3) (a), (b), (d), (e); Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, ETS 5, art. 6 (1), 6(3).

⁴³ ECHR, *Sejdović v Italy*, 1 March 2006, Reports 2006-II, para. 86.

⁴⁴ For example, ECHR, *Colozza v. Italy*, Series A, No. 89, paras 27-30, 12 February 1985; *Sejdović*, paras 88-90; HRC, *Mbenge v Zaire*, Communication No. 16/1977, 25 March 1983, para. 14.2.



communication.⁴⁵ International human rights law, however, imposes no obligations on State authorities, beyond taking these necessary notification steps, before a court may proceed to a trial *in absentia*. The Trial Chamber has accordingly examined the sum of events that could have notified Mr Ayyash, Mr Badreddine, Mr Oneissi and Mr Sabra that they have been indicted, and of the possibility of their participating in a trial.

33. Turning to Lebanese law, the Trial Chamber stresses that the Tribunal relies upon the co-operation of States to execute its warrants and orders. As the four Accused are believed to reside in Lebanon, the Trial Chamber has therefore first looked to Lebanese criminal procedural law, to determine what measures could and have been taken to notify the four of the indictment and to secure their appearance before the Tribunal.

34. The Trial Chamber emphasises, however, that a difference may exist between whether the four Accused have been properly notified in accordance with Lebanese criminal procedural law and whether “all reasonable steps” have been taken under Rule 106 (A). The Lebanese Code of Criminal Procedure lists the steps that must be taken to notify an accused person before a Lebanese court may proceed to a trial *in absentia* in Lebanon. The Lebanese Code, however, does not stipulate that the specified measures must be either “reasonable steps” or (importantly) “all reasonable steps”. Instead, under Lebanese law a formal notification suffices to inform an accused person that the trial will proceed in his or her absence. In the Trial Chamber’s view, the words “all reasonable steps” in Rule 106 (A) necessarily import a higher standard of attempting to secure the appearance of an accused or notify them of an indictment (before it can proceed to a trial *in absentia*) than those steps of notification specified in Articles 147 and 148 of the Lebanese Code.⁴⁶ The Trial Chamber has hence looked to steps beyond just those specified in the Lebanese Code in determining whether what has occurred could be considered as “all reasonable steps”.

⁴⁵ ECHR, *Somogyi v Italy*, 18 May 2004, para. 67, Reports 2004-IV.

⁴⁶ Set out in full in paras 47-48.



35. As for international criminal law, the Special Tribunal's Rules are largely derived from this developing body of law. This has led the Trial Chamber, in determining what may amount to "all reasonable steps" in international criminal procedural law, to examine the case-law of the other international courts and tribunals. The International Criminal Court and the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda each have Rules of Procedure and Evidence requiring "all reasonable steps" or "all reasonable measures" (seemingly interchangeable formulations) to be taken in relation to the apprehension of accused, for certain proceedings (but not trials) held *in absentia*.⁴⁷
36. The Trial Chamber has thus been partially guided by the practice of the International Criminal Tribunal for the Former Yugoslavia in its application of Rule 61 of its Rules of Procedure and Evidence. That Rule allows a judge to review an already confirmed indictment, in a public hearing within "a reasonable time" but after "all reasonable steps" have (unsuccessfully) been taken to apprehend an accused.⁴⁸
37. The ICTY and ICTR's Rule 61 *in absentia* procedure, however, differs substantially from that in the Special Tribunal's Statute and Rules, most significantly because the ICTY and ICTR process is designed for holding a public review hearing of an already confirmed indictment, but in the absence of a fugitive accused.⁴⁹ It is a procedure *in absentia* but not a trial *in absentia*. The outcome of the Rule 61 hearing, moreover, was in effect a declaration of the sufficiency or otherwise of the Prosecution's evidence at a *prima facie* level, as opposed to an adjudication of

⁴⁷ The Statutes and Rules of the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia contain no similar procedures.

⁴⁸ And the equivalent Rule 61 of the Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda, which appears never to have been utilised. Rule 61, "Procedure in Case of a Failure to Execute a Warrant", provides (A) If, within a reasonable time, a warrant of arrest has not been executed, and personal service of the indictment has consequently not been effected, the Judge who confirmed the indictment shall invite the Prosecutor to report on the measures taken. When the Judge is satisfied that [*italics added*] (i) the Registrar and the Prosecutor have *taken all reasonable steps* to secure the arrest of the accused, including recourse to the appropriate authorities of the State in whose territory or under whose jurisdiction and control the person to be served resides or was last known to them to be; and (ii) if the whereabouts of the accused are unknown, the Prosecutor and the Registrar have *taken all reasonable steps* to ascertain those whereabouts, including by seeking publication of advertisements pursuant to Rule 60, the Judge shall order that the indictment be submitted by the Prosecutor to the Trial Chamber of which the Judge is a member.

⁴⁹ Which served a practical purpose in the ICTY's early years when the Tribunal had issued indictments but lacked apprehended accused and could not proceed to try them *in absentia*.



criminal responsibility, and allowed the President of that Tribunal to report to the Security Council on the issue of State co-operation with the Tribunal.⁵⁰ The “reasonable steps” required before proceeding to conduct an *in absentia* indictment review hearing are necessarily of a lesser standard than those required before holding a trial *in absentia*.

38. Despite these procedural differences, the ICTY’s approach in determining the threshold issue of “reasonable steps” does assist and,⁵¹ as an example, the Trial Chamber agrees with Rule 61 decisions holding that “reasonable time must be evaluated in respect of the circumstances specific to each case”.⁵² The ICTY held four hearings under Rule 61 after determining that “all reasonable steps” had failed to arrest an accused. Measures found sufficient to constitute “all reasonable steps” included: in *Martić*, that the Croatian authorities had stated that the accused was not on Croatian territory, the Registrar had sent a newspaper advertisement for publication, and the accused had acknowledged his indictment in an interview on CNN; in *Rajić*, that arrest warrants had been transmitted to Bosnia and Herzegovina and Croatia, the indictment advertised on radio, television and in newspapers in Bosnia and Herzegovina, and, as well, the accused had granted a lawyer a power of attorney to act for him;⁵³ and in *Karadžić and Mladić*, publication of the indictment in three Bosnian newspapers and transmission of arrest warrants and indictment to the authorities sufficed.⁵⁴

⁵⁰ ICTY Trial Chambers, after the Rule 61 hearings in *Nikolić* and *Karadžić and Mladić*, certified no-cooperation by certain Governments. The President of the ICTY subsequently reported this to the Security Council; S/1996/665, A/51/292 (1996) paras 50, 61.

⁵¹ Although the Trial Chamber notes that the ICTY Chambers seem not to have examined in depth the measures taken by State authorities to execute the arrest warrants.

⁵² *Prosecutor v Milan Martić*, IT-94-11-I, Order for review in open court of the indictment by the Trial Chamber I, Rule 61 of the Rules of Procedure and Evidence, 13 February 1996, p.1; *Prosecutor v Mile Mrksić, Miroslav Radić and Veselin Šljivančanin*, IT-95-13-R61, Order for review in open court of the indictment by the Trial Chamber I, Rule 61 of the Rules of Procedure and Evidence, 6 March 1996, p. 2.

⁵³ *Prosecutor v Ivan Rajić aka Viktor Andrić*, IT-95-12-I, Order for review of the indictment under Rule 61 and order for temporary non-disclosure, 6 March 1996.

⁵⁴ *Prosecutor v Radovan Karadžić and Radko Mladić*, IT-95-5-R61, Order for review in open court of the indictment by the Trial Chamber I, Rule 61 of the Rules of Procedure and Evidence, 16 June 1996. By contrast, in the first Rule 61 proceeding, a hearing was ordered without describing what measures had satisfied the court; *Dragan Nikolić also known as “Jenki” Nikolić*, IT-94-2R61, Order submitting indictment to Trial Chamber for hearing, 16 May 1995.



39. Under Rule 125 of the International Criminal Court's Rules of Procedure and Evidence, the Pre-Trial Chamber may hold a confirmation hearing in the absence of an accused person, after holding consultations under Rule 123 "Measures to ensure the presence of the person concerned at the confirmation hearing" and Rule 124 "Waiver of the right to be present at the confirmation hearing".⁵⁵ The Court however has not thus far used Rule 123; in the only confirmation hearing held in the absence of the accused, the Court was satisfied that the two accused had expressly waived their rights to attend and had appointed counsel to represent them.⁵⁶

II. Securing the appearance of an accused person before the Tribunal

A. *By apprehension*

40. Rule 106 (A) requires the Trial Chamber to scrutinize the steps taken, but with the aim of *securing the appearance* of the four Accused at the Tribunal. This does not confine the analysis to measures specific to their apprehension, such as an arrest - normally the most efficient means of securing the appearance of a suspect or an accused. Notwithstanding the obvious link between an arrest and a subsequent (secured) appearance in court, the Tribunal's Statute and Rules aim to ensure that every indicted accused has the possibility of appearing in person rather than being tried *in absentia*.

41. A trial *in absentia* obviously cannot await the arrest of an accused, as this would defeat the rationale of the Tribunal's Statute and Rules. Commencing a trial *in absentia* logically presupposes that an accused has not been arrested or otherwise appeared before a court. The Trial Chamber is of the view that the interests of justice require a court to be satisfied that an accused person will probably not be arrested in the near future, meaning in the context of this case, shortly after the commencement of proceedings *in absentia*. Although the Trial Chamber is confident that the Lebanese authorities will continue their efforts to apprehend the

⁵⁵ Rule 123 (3) provides, The Pre-Trial Chamber shall ensure that a warrant of arrest for the person concerned has been issued and, if the warrant of arrest has not been executed within a reasonable period of time after the issuance of the warrant, that *all reasonable measures* have been taken to locate and arrest the person [*italics added*].

⁵⁶ *Situation in Darfur, Sudan in the case of The Prosecutor v Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus* No.: ICC-02/05-03/09, Decision on issues related to the hearing on the confirmation of charges, 17 November 2010.



four Accused, it has no reason to believe - from the evidence of their apparent disappearance when their identities were publicly revealed (officially, at least) and the inability to find them in the following seven months - that their apprehension is imminent. And, even if the proceedings commence *in absentia*, as in any case of serious crime, investigatory steps aimed at arresting the four Accused will continue.

B. By participating in a trial

42. The Special Tribunal's Rules of Procedure and Evidence, in contrast to the procedures of the *ad hoc* United Nations Tribunals and the International Criminal Court contain several mechanisms allowing accused persons to participate in a trial but without requiring their physical presence in the courtroom. Rule 104, Waiver of the right to attend hearings, provides that proceedings shall not be deemed to be *in absentia* "once an accused has appeared before the Tribunal in person, by video-conference, or by Counsel appointed or accepted by him" (or her) but without having expressly and in writing waived his or her right to be present. Under Rule 105 the Trial Chamber (or Pre-Trial Judge) may authorise an accused to participate in hearings via video-conference, but only if his or her counsel attends the hearings in person.⁵⁷ Rules 108 and 109 detail the applicable procedures if an accused appears during proceedings *in absentia* or after they have concluded. The Trial Chamber must therefore determine whether the four Accused have been notified of their rights under Rules 104 and 105.
43. At the hearing on 11 November 2011, the Defence Office submitted that the Trial Chamber had to satisfy itself that all reasonable measures had been taken to ensure that the four Accused had been notified of the charges in order to allow them to appear as free individuals in the courtroom.⁵⁸ "Novel measures", therefore, such as participation via video-conference, should have been entertained *before* arrest warrants were issued,⁵⁹ because the very "issuance of arrest warrants has led to the

⁵⁷ The "Explanatory memorandum by the Tribunal's President", 25 November 2010, clarifies how Rule 105 envisages that an accused person, for example, could "be released on bail in their national State" (para. 25) explaining as a rationale that 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" (para. 27). This is presently irrelevant to the Trial Chamber's determination.

⁵⁸ Transcript of hearing, 11 November 2011, pp. 55-56, 70-71.

⁵⁹ Transcript of hearing, 11 November 2011, pp. 73-74.



accused being unable or unwilling to appear freely [...] in accordance with the provisions of the Rules”.⁶⁰ The notification of the arrest warrants would comply with the Rules only if the four Accused were aware that they could appear as “free men”.⁶¹ The withdrawal of the arrest warrants, argued the Defence Office, is thus the appropriate remedy to restore the rights of the four Accused, as it would allow each the option of participating in the proceeding via video-conference,⁶² and “[i]ndeed, should the accused hear of the arrest warrants, their only option would be to hide and avoid arrest”.⁶³

44. The Trial Chamber, however, for the reasons below in paragraphs 84, 90, 98, and 104, is satisfied that Mr Ayyash, Mr Badreddine, Mr Oneissi and Mr Sabra have each been notified under Lebanese criminal procedural law of the content of Rules 104 and 105, the President’s “open letter” to them of 11 August 2011, the order scheduling the hearing for 11 November 2011, and its Interim decision of 23 November 2011. The indictment has also been served at their last known places of residence, and, as required by Article 148 of the Lebanese Code of Criminal Procedure, second copies have been communicated to the relevant *mukhtars*.⁶⁴ But despite this effective service of those documents the Trial Chamber has received no information suggesting that either Mr Ayyash or Mr Badreddine or Mr Oneissi or Mr Sabra intend to appear via video-conference or to appoint counsel to appear at trial. The Defence Office has not supported (with evidence) the argument that withdrawing the arrest warrants could result in the four Accused emerging, appointing counsel and seeking to appear at trial via video-conference. Moreover, although the Rules do not explicitly authorise the withdrawal of a warrant of arrest, it would appear that any authority to do so must lie with the judge explicitly

⁶⁰ Transcript of hearing, 11 November 2011, p. 76.

⁶¹ Transcript of hearing, 11 November 2011, p. 80.

⁶² Transcript of hearing, 11 November 2011, pp. 76-78, 84. In regard to the potential withdrawal of the arrest warrants, the Prosecution submitted that such a matter could only be proposed to the Appeals Chamber, as the Trial Chamber does not have competence in this regard (Transcript of hearing, 11 November 2011, pp. 85-86).

⁶³ Transcript of hearing, 11 November 2011, p. 76.

⁶⁴ Lebanese municipal mayors. For the reasons in para. 50 below the Trial Chamber does not consider *effective* service to be defective, under Lebanese law, by not posting every Tribunal document inside the entrance of its Beirut field office, and has waived this requirement.



authorised by Rule 79 to issue a warrant of arrest, namely the Pre-Trial Judge. And, so far as the Trial Chamber is aware, no such application has been filed.

III. Informing the four Accused of the charges - under Rule 76 and under Lebanese law

45. The Trial Chamber must consider the steps taken to inform the four Accused of the charges as confirmed by the Pre-Trial Judge in the indictment. The formal requirements for notifying an accused person of the charges are specified in the Rules of Procedure and Evidence. Rule 76 (B) provides, “Personal service of an indictment on the accused is effected by giving the accused a copy of the indictment, together with the summons to appear or the arrest warrant”.

46. The information available to the Trial Chamber is that Mr Ayyash, Mr Badreddine, Mr Oneissi and Mr Sabra are Lebanese citizens and that their last known places of residence, employment and the location of their family all lie in Lebanon. Acting on this information the Registrar sent the indictments and warrants of arrest to the Government of Lebanon for notification and execution. The Lebanese Prosecutor-General then attempted personal service of the indictment on each of the four Accused according to Articles 147 and 148 of the Lebanese Code of Criminal Procedure. The measures taken are detailed in relation to each of the four Accused, below in paragraphs 83, 89, 97 and 103, and are documented in the various reports to the President of the Tribunal, the Pre-Trial Judge, the Trial Chamber, the Registrar and the responses to the Prosecutor’s requests for assistance of the Lebanese authorities. The Lebanese Prosecutor-General utilized the Lebanese Code of Criminal Procedure, and the assistance of the Central Criminal Investigation Section (CCIS), in implementing the procedures necessary to comply with Rule 76 by effecting personal service.

47. Article 147 (6) Lebanese Code identifies the procedure for ordinary notification under Lebanese Law as that the person “serving the document shall [...] do his utmost to notify the addressee himself”. Under Article 147 (7),



If the person to be served with a document is not present at his elected place of residence or domicile, the document shall be served through a member of his family, a domestic employee or any other person living in the same dwelling provided that it may be inferred from his appearance that he is an adult. A further condition is that his interest does not conflict with that of the addressee of the document. If he refuses to state his name and relationship with the addressee or to acknowledge receipt of a copy of the document, the process server shall record his refusal and shall leave a copy of the document with him.

48. Article 148 provides for exceptional notification in Lebanese law,

If the person to be served with a document has no known place of residence or domicile, or if the process server does not find anyone who can be served with the document at his place of residence or domicile, he shall be notified through the posting of a copy of the document at the entrance to his last known place of residence; a second copy thereof shall be communicated to the local mayor [the *mukhtar*], and a third copy shall be posted at the entrance to the judicial authority that ordered the notification. These measures shall be recorded by the process server on the original copy of the document, which shall be returned to the relevant authority. If the person to be served with a document has no known last place of residence, it shall suffice for the process server to post a copy of the document at the entrance to the judicial authority that ordered the notification.

49. In applying Article 148, the Lebanese courts look to the most *effective* form of service and recognize that service at a last known place of residence or domicile may be effected, in some circumstances, such as in the case of an unmarried person, by posting a copy of a document at their parents' residence. The Trial Chamber has thus considered the practices of the Lebanese judiciary in determining whether notification has occurred under Lebanese criminal procedural law.

50. Another consideration is the meaning of "judicial authority" in Article 148. Normally, this would refer to the Lebanese court issuing the order requiring service. Here, because the Special Tribunal has issued all relevant documents, the Lebanese Prosecutor-General has taken the view that the Tribunal, based in The Hague, The Netherlands, is the "judicial authority" and has sought to have some Tribunal orders and documents (including the indictment) affixed to the entrance of the Tribunal's field office in Beirut. In the Trial Chamber's view this additional step – albeit one strictly necessary to legally formally notify an accused under Lebanese procedural law before a trial *in absentia* can commence – would not assist to inform an accused person of the charges in an indictment issued by the Tribunal. The Trial Chamber does not believe that posting documents in the Beirut field office constitutes an *effective* means of informing an accused person of the existence of an indictment or



of his or her rights to participate in the trial, and will accordingly not consider this requirement under Lebanese law in determining whether “all reasonable steps” have been taken.

51. On 9 August 2011, the Lebanese Prosecutor-General notified the President of the Tribunal of his inability to personally serve the indictment on any of the four Accused and to make any arrests.⁶⁵ The Lebanese authorities did not find any of the four Accused or a suitable person mentioned in Article 147 (7) to whom they could serve the documents at the known places of residence or domicile of any of the four Accused, and consequently continued on to the exceptional measures of notification under Article 148.⁶⁶ The measures taken by the Lebanese Prosecutor-General to secure the appearance of Mr Ayyash, Mr Badreddine, Mr Oneissi and Mr Sabra before the Tribunal and to personally inform each of the charges are separately assessed, below in paragraphs 78-104 in relation to each Accused.

A. Advertisement of poster in the Lebanese media on 15 September 2011

52. Envisaging a situation in which reasonable attempts to personally serve an accused person with an indictment have failed, Rule 76 (E) authorises its service in an alternate manner including by “procedures of public advertisement”.⁶⁷ On 18 August 2011, the President of the Tribunal comprehensively reviewed the attempts by the Lebanese authorities to apprehend each of the four Accused, concluding that they had been “reasonable” (at least until 9 August 2011).⁶⁸

53. The President noted the unsuccessful attempts to personally serve Mr Ayyash, Mr Badreddine, Mr Oneissi and Mr Sabra with the indictment and issued an order, under Rule 76, directing the indictment to be served by alternative means. He requested the Registrar to send the Lebanese authorities an advertisement – to be

⁶⁵ Rule 76 Order, para. 8.

⁶⁶ Referred to in the Lebanese Prosecutor-General’s October 2011 report.

⁶⁷ Rule 76 *bis* details what should be included in a “form of advertisement” as “providing notification to the public of the existence of an indictment and calling upon the accused to surrender to the Tribunal or in any case to submit to its jurisdiction. The advertisement shall invite any person with information as to the whereabouts of the accused to communicate that information to the Tribunal”.

⁶⁸ Rule 76 Order, para. 18.



“broadcast via radio, television and other media, including the internet” - and ordered the Lebanese authorities to take all reasonable steps to publicly notify the four Accused of the existence of the indictment and to call upon them to surrender to the jurisdiction of the Tribunal.⁶⁹ The Press Office publicised the Rule 76 Order in a media release issued the same day.⁷⁰

54. On 15 September 2011, at the instigation of the Lebanese Prosecutor-General, a poster - in effect, an advertisement of the indictment – but one connecting Mr Ayyash, Mr Badreddine, Mr Oneissi and Mr Sabra with the charges in the indictment, was published in full in five Lebanese newspapers, An Nahar, Assafir, and Al-Mustaqbal (Arabic), L’Orient Le Jour (French), and The Daily Star (English).

55. The poster advertisements were prominently headed “WARRANTS OF ARREST ISSUED BY THE SPECIAL TRIBUNAL FOR LEBANON”. They contained eight photographs, two of each Accused, with their names written above each set of photographs, and listed their dates and places of birth and their mothers’ and fathers’ names, and summarised the charges in the indictment against each of the four. At the bottom was written “IF YOU HAVE ANY INFORMATION CONCERNING THOSE INDIVIDUALS, PLEASE CONTACT” followed underneath by three boxes containing dedicated telephone number for the Tribunal in The Hague, its field office in Beirut, and a “hotline” number established by the Lebanese Prosecutor-General. The Trial Chamber is likewise satisfied that the advertisement of the posters has served as an alternate manner of personal service of the indictment on Mr Ayyash, Mr Badreddine, Mr Oneissi and Mr Sabra. Publication of a poster detailing the charges in the indictment and containing information unequivocally informing a person that he or she is indicted may, in the Trial Chamber’s view, properly assist in informing an accused of the charges.

⁶⁹ Rule 76 Order, paras 23, 25.

⁷⁰ Special Tribunal for Lebanon media release, “STL President orders public advertisement of the indictment and calls for intensification of efforts to detain those accused”, 18 August 2011.



56. The Trial Chamber is also satisfied that the notification of an indictment in such an alternative manner may satisfy the guarantees provided to an accused in international human rights law to be properly informed of the charges before a court may proceed to a trial *in absentia*. The European Court of Human Rights, for example, has held that it could not rule out “the possibility that certain established facts might provide an unequivocal indication that the accused is aware of the existence of the criminal proceedings against him and of the nature and the cause of the accusation and does not intend to take part in the trial or wishes to escape prosecution” such as “when materials are brought to the attention of the authorities which unequivocally show that he is aware of the proceedings pending against him and of the charges he faces”.⁷¹

B. Publicity in Lebanon has informed the four Accused of the charges

57. The three requirements specified in Rule 106 (A) (iii), namely that an accused has absconded or cannot be found, that all reasonable steps have been taken to secure his (or her) appearance before the Tribunal, and that all reasonable steps have been taken to inform him (or her) of the charges, overlap.

58. The Trial Chamber - in determining whether the four Accused have been informed of the charges and their right to participate in a trial (as part of securing their appearance before the Tribunal), and are informed of the charges - has looked to “non-official” ways in which they could have been so informed. These “non-official” means of notification are also relevant to the Trial Chamber’s determination of whether any of the four Accused has absconded.

59. The Trial Chamber has reviewed a wealth of material, published in the Lebanese and international print, broadcast and electronic media, connecting the indictment with the names and faces of Mr Ayyash, Mr Badreddine, Mr Oneissi and Mr Sabra. In assessing whether this information would have independently informed the four

⁷¹ ECHR, *Sejdović*, para. 99.



Accused that they had been indicted, the Trial Chamber has taken into account the media concentration and hence the likely penetration of such information in a geographically compact country of the size and population of Lebanon.⁷² The “Lebanese media” includes approximately thirty-two magazines and fourteen daily newspapers, eight widely watched domestic television stations, and sixteen domestic radio stations.⁷³ Many have their own web sites, also carrying news. Lebanese households, moreover, have access to numerous satellite and cable news stations.

60. The events of 14 February 2005 have been the subject of enormous media coverage in Lebanon, and most relevantly here, in 2011, firstly through the Prosecutor submitting an indictment in January 2011, and thereafter through its confirmation, its unsealing and the publication of information revealing the identities of the four Accused in connection with the indictment. These events attracted vast media attention throughout Lebanon, much of it on the front pages of newspapers and as the lead items in television and radio news coverage. From the Trial Chamber’s examination of this media coverage it can be safely concluded that, in a country of Lebanon’s size and scale of urbanization, almost every adult by now would have some knowledge of (a) the events of 14 February 2005 (b), the fact of the indictment of 30 June 2011, and (c) the connection of the identities of the four Accused with the indictment.

61. The Trial Chamber has also examined this issue in the wider context of the publicity given to the indictment *before* it was transmitted to the Lebanese authorities. The Prosecutor submitted an indictment and supporting material to the Pre-Trial Judge on 17 January 2011 and publicised this through a media release the same day,⁷⁴ followed by a video statement, issued through his Office the next day. Both the media release and the Prosecutor’s statement were widely publicised in Lebanese

⁷² 10,452 square kilometres, over 80% urbanized, with around half of a population of approximately 4 million living in the capital, Beirut.

⁷³ Information available from the Lebanese Ministry of Information’s website.

⁷⁴ Special Tribunal for Lebanon media release, “STL Prosecutor submits an indictment to Pre-Trial Judge”, 17 January 2011.



and international media. On 11 March 2011, the Prosecutor amended the indictment, expanding its scope. A media release accompanied the amendment, explaining it as “a result of the gathering and analysis of further evidence”. Two months later, on 17 May 2011, the Prosecutor submitted a second amended indictment to the Pre-Trial Judge. Again he issued a media release, this time entitled “Guidance to the media following the amendment of the indictment” saying that the amended indictment included “substantive new elements”. The Trial Chamber is satisfied that the issuing of an indictment in connection with the events of 14 February 2005 was a very live issue in the Lebanese media between 17 January and 30 June 2011.

62. Each of the four Accused was then named as a possible accused. Sections of the Lebanese media, on 30 June and 1 July 2011, published the names of all four, naming them as accused persons in the case. For example, their names were published in NOW Lebanon,⁷⁵ YaLibnan,⁷⁶ the Daily Star,⁷⁷ and Al Arabiya News.⁷⁸ This occurred on the day of the transmission of the indictment to the Lebanese authorities, but a full month before the Pre-Trial Judge officially authorized the publication of their names.

63. The Lebanese public has thus known since at least 17 January 2011 of the existence of an indictment related to the events of 14 February 2005, and, unofficially (but nonetheless accurately) since 30 June 2011 of the names of those suspected to be accused. And officially, since 29 July 2011, of the precise identities of those actually indicted. Each step in this process has been extensively covered by the Lebanese media. Each of the four Accused must have known, from the extent of the

⁷⁵ NOW Lebanon, “Interior minister confirms names of indicted Hezbollah suspects”, 1 July 2011; “Finally: STL submits indictment in Hariri case”, 1 July 2011.

⁷⁶ YaLibnan, “Mustafa Badreddine is main Hezbollah suspect in Hariri’s murder case”, 30 June 2011.

⁷⁷ The Daily Star, “Profiles of Suspects in STL indictment”, 30 June 2011; “All eyes on Lebanese response to accusations in Hariri case”, 1 July 2011; “Wanted: 4 Hezbollah members”, 1 July 2011.

⁷⁸ Al Arabiya News, “OPED: Hezbollah’s Legitimacy, significantly diminished”, 1 July 2011; “Hariri indictments doom Lebanon if it does, and doom if it doesn’t”, 1 July 2011. “Salim al-Ayyash” was named as a person indicted. On 1 July 2011, three major international English language news organisations, CNN, the Guardian and the New York Times published in their print and on-line editions the names of Mr Ayyash, Mr Badreddine, Mr Oneissi and Mr Sabra, suggesting that Lebanese official sources had confirmed that they had been indicted.



media coverage – at least unofficially from 30 June 2011 - that he was a possible accused.

1. Publicising and publishing the identities of the four Accused in connection with the indictment – official unsealing of the indictment on 29 July 2011

64. The Tribunal's Press Office issues its media releases in Arabic, English and French to many media organisations throughout the world, including most of those licensed in Lebanon. On 29 July 2011, the Press Office issued a media release stating that the Pre-Trial Judge had lifted the confidentiality concerning the identities of the four Accused.⁷⁹

65. On 30 July and 1 August 2011, the Lebanese media devoted much space to publishing and broadcasting this information. It was on the front page of various Lebanese Arabic language newspapers, including AnNahar,⁸⁰ Addiyar, and Al-liwaa, and prominently published in others, including, as examples, Al-Akhbar, Al-Manar, and Assafir. The information in the media release was quoted in many Lebanese media reports, and in particular the allegation in the indictment that Mr Ayyash, Mr Badreddine, Mr Oneissi and Mr Sabra “were involved in the 14 February 2005 attack that killed the former Lebanese Prime Minister Rafiq Hariri and others”. The full names and aliases of the four were reported, and most media outlets published or broadcast their photographs.

66. The same information was also published on 29 and 30 July 2011 in the Lebanese English language media including NOW Lebanon, Naharnet Newsdesk and the Daily Star. In its 2-9 August 2011 edition, the Lebanese French language news publication La Revue du Liban also reported on the lifting of the confidentiality of the identities of the four Accused and published their names and aliases.

⁷⁹ Special Tribunal for Lebanon media release, “Pre-Trial Judge lifts confidentiality from parts of the indictment”, 29 July 2011, referring to STL-11-01/I, Decision to Lift Confidentiality of the Identity of the four Accused, 29 July 2011.

⁸⁰ For example, the AnNahar front page coverage of 30 July 2011 was headed, “The Tribunal publishes pictures of the suspects who are to be handed over on August 11” and included photographs of each Accused.



67. The Trial Chamber is satisfied that the near saturation media coverage in Lebanon connecting Mr Ayyash, Mr Badreddine, Mr Oneissi and Mr Sabra with the indictment (over those days in July/August 2011) would have notified each of them that they had been indicted by the Tribunal. The broadcasting of the indictment connecting the names of Mr Ayyash, Mr Badreddine, Mr Oneissi and Mr Sabra, their photographs and identifying information, has been so frequent and extensive in Lebanon that the Trial Chamber is satisfied that, by 29 July 2011 at the very latest, each of the four Accused would have had to have been aware that they were indicted in respect of the events of 14 February 2005. The evidence of the widespread publication of the indictment and the identifying information is overwhelming. No other conclusion is reasonably available to the Trial Chamber.

2. Publicising the public statement of the President of the Tribunal of 11 August 2011

68. After this initial official publication of information connecting Mr Ayyash, Mr Badreddine, Mr Oneissi and Mr Sabra with the indictment, the President of the Tribunal, on 11 August 2011, issued “an open letter” to them. It was published by the Tribunal’s Press Office in a media release on the same day. In the letter the President explained the rights of an accused person under Rules 104 and 105 to participate in a trial without being physically present in the court room,⁸¹

Although in the absence of the accused the Tribunal’s Head of Defence Office will appoint the best professionals to represent them in court, a major safeguard of a fair and just trial is the active participation of the accused. I therefore urge all the indictees to come before the Tribunal. If you do not wish to come to the Tribunal in person, the option might be available – following the procedures in our Rules – of appearing by video-link, thus participating in the proceedings without physically coming to The Hague. At the very least, it is extremely important for you to appoint legal counsel and to instruct them: without instructions from the accused it may prove harder for counsel appointed by the Head of the Tribunal’s Defence Office to make a convincing case for those charged by the Prosecution. Our Rules go even further, because they foresee the possibility of you choosing and instructing your counsel without ever having to appear before the Tribunal, not even by video-link. It will be sufficient for you to raise all your arguments through your legal counsel. If you believe this Tribunal is illegal or illegitimate, argue this point through legal counsel chosen by you – you will thus have your voice heard on this issue. Use your counsel to make your case and zealously protect your rights.

⁸¹ Statement of Judge Antonio Cassese, President of the Special Tribunal for Lebanon, 11 August 2011.



69. The details of this public statement were then widely published, on 11 and 12 August 2011, by the Lebanese Arabic language media including Al-Hayat, Al-Akhbar, Al-Manar, Addiyar, Assafir and Al-Joumhouria,⁸² Many publications and broadcasts directly quoted from the President's statement and his appeal to the four Accused to attend the trial, even by video-conference. Lebanese English language media including NOW Lebanon, Naharnet Newsdesk, and Daily Star⁸³ concurrently published similar information. Aljazeera broadcast this information in its Arabic language news and published it on its English language website. Numerous reports and articles, containing legal and political analysis of the President's statement, were published in Lebanon.

70. The Trial Chamber is satisfied that the President's statement was so widely published and broadcast in Lebanon that each of the four Accused would have had to have been aware at the time of its publication that they were entitled to participate in a trial in the manner specified in Rules 104 and 105.

3. Publicising the indictment after its unsealing

71. On 16 August 2011 the Pre-Trial Judge ordered the full indictment to be made public,⁸⁴ and, on 17 August 2011, the Tribunal's Press Office issued a media release announcing this.⁸⁵ Massive publicity then ensued in the Lebanese media. Between 17 and 19 August 2011, virtually all Lebanese Arabic language media published the indictment in print, in television and radio broadcasts and on news web sites.

72. The reporting varied between commentary supportive of, and reporting highly critical of the issuing of the indictment, with the middle ground occupied by neutral

⁸² For example, the Al-Joumhouria coverage of 12 August 2011 under the heading "Cassese informed the accused of their rights giving them the choice between personal attendance or video conference".

⁸³ The Daily Star's article of 12 August 2011 was headed "Cassese calls on 4 STL suspects to surrender or get lawyers".

⁸⁴ STL-11-01/I, Order on Lifting the Confidentiality of the Indictment against Messrs. Ayyash, Badreddine, Oneissi and Sabra and Other Documents, 16 August 2011. A redacted indictment was issued on 17 August 2011.

⁸⁵ Special Tribunal for Lebanon media release, "Indictment and its confirmation decision made public", 17 August 2011.



coverage; but in each case the publicity connected the four Accused with the indictment. Al-Manar, Assafir, Aljazeera TV, Al-Arabiya, Al-Liwaa, Al-Akhbar,⁸⁶ and Al-Joumhouriah⁸⁷ provide examples of this reporting. Some print media published the full indictment and some analysed the evidence referred to in it. The Lebanese Arabic media again widely publicised the photographs of Mr Ayyash, Mr Badreddine, Mr Oneissi and Mr Sabra and described their alleged roles in the events of 14 February 2005. Al Hayat, as an example, published the pictures of the four on its front page and devoted two inside pages to the details of the indictment. All Lebanese television stations prominently reported the indictment in their news editions,⁸⁸ and LBC and MTV read the entire 45 pages of the Arabic version of the indictment in their news bulletins. Most media also reported on the reaction of the Lebanese Prime Minister, Mr Najib Mikati. The coverage was very similar in the Lebanese English and French media.⁸⁹ On 18 August 2011, TIME magazine published an interview with someone, allegedly one of the four Accused, who acknowledged that he was indicted by the Special Tribunal in respect of the events of 14 February 2005.⁹⁰ Although this attracted much comment in the Lebanese media, the Trial Chamber has no information as to the authenticity of this claim other than assertions to this effect by representatives of TIME International to officials working for the Lebanese Prosecutor-General.⁹¹

73. Added to this publicity, on 12 September 2011, the Tribunal issued a public service voice and print announcement – in the Tribunal’s three official languages –

⁸⁶ For example on 18 August 2011 Al-Akhbar had four pages of coverage under the heading “The Indictment: Conclusions and Circumstantial evidence”, and, on 19 August 2011, a report headed “The indictment: unfounded violations and hypotheses”.

⁸⁷ On 18 August 2011 Al-Liwaa’s cover page was devoted to the indictment, with coloured graphic boxes, followed by four articles followed in different sections of the publication. Al-Joumhouriah covered the indictment in a special supplement with graphics and photographs.

⁸⁸ LBC, MTV, Al Jadeed, Al Manar TV, Tele Liban, Future TV, OTV and NBN.

⁸⁹ In NOW Lebanon, the Daily Star, and Ya Libnan. *L’Orient le Jour*, published opinion editorials on the topic on 18 and 19 August 2011 and La Revue du Liban in its 20-27 August 2011 edition published parts of the indictment and photographs of the four Accused.

⁹⁰ TIME Magazine, “Accused Hizballah Man Speaks”, 18 August 2011.

⁹¹ STL-11-01/TC, Second Prosecution Report Regarding Rule 106 Proceedings, 15 December 2011, Response to RFA 0215/F6.



primarily intended for radio broadcast, in which the four Accused were reminded of their right to participate in the proceedings.⁹²

74. The Trial Chamber is satisfied that the information connecting Mr Ayyash, Mr Badreddine, Mr Oneissi and Mr Sabra with the indictment, and the content of the indictment itself, was of such notoriety in Lebanon by 17 August 2011 that none could have been ignorant of the charges against them.

IV. Measures taken by the Lebanese authorities to secure the appearance of each Accused before the Tribunal and to inform each of the charges and other Tribunal documents

75. The Trial Chamber has analysed what may constitute “all reasonable steps” to secure an appearance and inform an accused of the charges by examining the documents filed by the Prosecutor, the Registrar and material received from the Lebanese Prosecutor-General showing (a) the steps taken by the Lebanese authorities to execute the Tribunal’s warrants of arrest (b) the steps taken by the Lebanese authorities to publish the poster specified in the Rule 76 Order of 18 August 2011, and (c) the steps taken to inform the four Accused of the President’s statement of 11 August 2011 and the content of Rules 104 and 105 in response to the Trial Chamber’s Interim decision of 23 November 2011.

76. The most relevant documents are the six reports of the Lebanese Prosecutor-General to the President of the Tribunal and the responses of the Lebanese Prosecutor-General to the Prosecutor’s requests for assistance of 7 October 2011 and 11 November 2011. The Prosecutor, in his requests, suggested certain additional measures that should be taken to assist in securing the appearance of the four Accused before the Tribunal. These suggestions were aimed more at finding and arresting the four Accused than in simply “securing their appearance before the Tribunal”. In its Interim decision of 23 November 2011, the Trial Chamber described the suggestions “as a matter of State practice” as “fairly standard

⁹² “A Public Service Announcement by the Special Tribunal for Lebanon”, 12 September 2011.



investigatory measures”.⁹³ The Trial Chamber notes that these measures do not necessarily cover the requirement to notify an accused of the effect of Rules 104 and 105. The Trial Chamber is satisfied that the Lebanese Prosecutor-General has undertaken numerous of the additional steps suggested, but without managing to secure the appearances of any of the four Accused before the Tribunal.

77. The Trial Chamber has examined the steps taken by the Lebanese authorities to secure the appearance of Mr Ayyash, Mr Badreddine, Mr Oneissi and Mr Sabra before the Tribunal and to notify them of the charges. The details follow individually in respect of each. The Trial Chamber, however, has also considered these individual measures in the context of the evidence of the publication of the indictment and the publicity given connecting it with each Accused, and additionally, the circumstances prevailing in Lebanon.⁹⁴ The Trial Chamber emphasises that the name of each Accused person was circulating in the Lebanese media as a possible accused *before* the Lebanese Prosecutor-General took any steps to secure their appearance and to notify them of the charges. And, simultaneously with virtually every step taken under Articles 147 and 148 of the Lebanese Code of Criminal Procedure Code, an enormous amount of information connecting each with the indictment was circulating in the Lebanese media.

A. *Salim Jamil Ayyash*

78. Salim Jamil Ayyash is a Lebanese citizen. According to official records and other information available to the Lebanese Prosecutor-General, Mr Ayyash’s last known place of residence or domicile was either in an apartment in Hadath, South Beirut, or in his family’s house in the village of Harouf, in Southern Lebanon. He is listed in the civil register of Harouf. Lebanese border control records⁹⁵ reveal that he has not been recorded as leaving Lebanon since his return from a visit to Saudi Arabia

⁹³ STL-1-01/I/TC, Interim Decision Under Rule 106 (Proceedings *in absentia*), 23 November 2011, para. 11.

⁹⁴ And, for the reasons in paras 112-118 below, the Trial Chamber has rejected the Prosecution’s request to invite the Lebanese authorities to appear before the Trial Chamber.

⁹⁵ That is, records held by the Lebanese General Security Directorate.



in January 2005. No information available to the Trial Chamber suggests that he has left Lebanon.

79. Between the beginning of July 2011 and mid-January 2012, officials working with the Lebanese Prosecutor-General unsuccessfully sought to secure the appearance of Mr Ayyash before the Tribunal. The Trial Chamber is satisfied that, during this period, Mr Ayyash has been notified of the charges in the indictment according to the notification requirements of the Lebanese Code of Criminal Procedure, and also according to the alternative manner of informing him, under Rule 76 (E) by advertising the poster of the indictment in the Lebanese media. Arabic copies of the indictment and other Tribunal documents have been officially served on Mr Ayyash.

80. The Registrar notified the Lebanese Prosecutor-General, on 30 June 2011, by sending him the indictment and the international arrest warrant against Mr Ayyash. That same day, media reports in Lebanon named him as an accused person. The Lebanese Prosecutor-General commenced the process of investigation and, on 1 July 2011, ordered the circulation of the arrest warrant. Surveillance commenced on Mr Ayyash's last known residence in Hadath, South Beirut.

81. Between 1 July 2011 and mid-January 2012 officers of the CCIS, under the instruction of the Lebanese Prosecutor-General, sought to apprehend Mr Ayyash at least 46 times at his last known residence in Hadath, South Beirut, at another possible address in Beirut, and at his family's house in Harouf, Southern Lebanon.⁹⁶ In September 2011, they were informed that he had not been seen for more than three months at his Hadath apartment. They unsuccessfully sought him in July, September, October, November and December 2011 and January 2012, in Harouf (where he is listed in the civil register). The initial information obtained was that he had not been seen in Harouf for several months.

82. CCIS officials also sought to apprehend Mr Ayyash at his last known place of employment, a Civil Defence Centre in Haret Hreik, South Beirut, at least five times

⁹⁶ At his Hadath, South Beirut apartment 25 times, at his family's Harouf house 16 times and five times at the second Beirut address.



- in July, October, November and December 2011, and in January 2012. (The Minister of Interior dismissed Mr Ayyash from his employment there on 15 July 2011). The officials were informed that Mr Ayyash had not been to work since the issuing of the arrest warrants. CCIS officials also interviewed a close family member and the *mukhtars* of Hadath and Harouf but were informed that he had not been seen in either place “for a long time”.

Notification of indictment and other Tribunal documents

83. On 11 October 2011, after receiving no response to knocking on the door, CCIS officials posted an Arabic copy of the indictment at the entrance to Mr Ayyash’s family residence in Harouf. The indictment was also posted in the office of the Harouf *mukhtar*. The next day, after officials had again unsuccessfully sought Mr Ayyash in Hadath, and in the presence of the *mukhtar* of Haret Hreik, officials posted the indictment at the entrance to the apartment building in Hadath.⁹⁷
84. On 1 November 2011, Arabic copies of the Trial Chamber’s order scheduling the hearing for 11 November 2011 were posted on the entrance doors of Mr Ayyash’s family house in Harouf - again in the presence of the *mukhtar* - and at his apartment in Hadath. On 24 and 25 November 2011, Arabic copies of the Head of Defence Office’s decision assigning counsel (dated 2 November 2011) were posted at the same addresses. Copies were also communicated to the *mukhtars* of Haret Hreik and Harouf. On 2 December 2011, Mr Ayyash was served in the same manner with the Trial Chamber’s Interim decision of 23 November 2011, the President’s Statement of 11 August 2011, and copies of Rules 104 and 105 of the Tribunal’s Rules of Procedure and Evidence.⁹⁸

B. Mustafa Amine Badreddine

85. Mustafa Amine Badreddine is a Lebanese citizen. The information available to the Lebanese Prosecutor-General suggested that Mr Badreddine’s last known residence was in an apartment building in Haret Hreik, South Beirut. The last known

⁹⁷ Detailed in the Lebanese Prosecutor-General’s October 2011 report.

⁹⁸ As detailed in reports of the Lebanese Prosecutor-General dated 2 November, 29 November, and 5 December 2011.



residence of his mother is about a kilometre away in Al-Ghobeiry, South Beirut. The Lebanese authorities have obtained border control records but found no entries showing that Mr Badreddine has left the country.

86. Between 1 July 2011 and mid-January 2012, CCIS officials working with the Lebanese Prosecutor-General made numerous attempts to find Mr Badreddine and to secure his appearance before the Tribunal. The Trial Chamber is satisfied that, during this period, Mr Badreddine has been notified of the charges in the indictment according to the notification requirements of the Lebanese Code of Criminal Procedure, and also according to the alternative manner of informing him, under Rule 76 (E) by advertising the poster of the indictment in the Lebanese media. Arabic copies of the indictment and other Tribunal documents have been officially served on Mr Badreddine.

87. As in the case of Mr Ayyash, the Registrar notified the Lebanese Prosecutor-General, on 30 June 2011, by sending him the indictment and international arrest warrant against Mr Badreddine. And that same day, as with Mr Ayyash, media reports in Lebanon also named him as an accused person. The Lebanese Prosecutor-General thereafter, on 1 July 2011, commenced the process of investigation and ordered the circulation of the arrest warrant. From early July 2011 onwards, with the aim of apprehending or serving Mr Badreddine with Tribunal documents, CCIS officials visited his mother's residence in Al-Ghobeiry, Beirut (where he is also registered on the municipal electoral roll) and his last known address in Haret Hreik, South Beirut where he was believed to be residing, collectively at least 42 times.⁹⁹ Copies of these documents were also provided to the *muhktars* of Al-Ghobeiry and Haret Hreik. Inquiries however revealed that his mother had lived in the Al-Ghobeiry apartment but that Mr Badreddine no longer came there.

88. Thirteen times between July 2011 and January 2012 the officials made inquiries at and conducted surveillance at Mr Badreddine's last known place of employment, a jewellery store in Beirut. The manager, however, claimed never to have met or worked with anyone having the name Mustafa Amine Badreddine. Inquiries were

⁹⁹ At his Haret Hreik apartment 15 times and 27 times at his mother's Al-Ghobeiry apartment.



also made of the *mukhtar* of Al-Ghobeiry, but like the manager of Mr Badreddine's former place of employment, the *mukhtar* denied having knowledge of Mr Badreddine.

Notification of indictment and other Tribunal documents

89. On 13 October 2011, Arabic copies of the indictment were posted in three places: at the door of his mother's locked apartment in Al-Ghobeiry; at the office of the *mukhtar* of Al-Ghobeiry; and, in the presence of the *mukhtar* of Haret Hreik at the entrance to his apartment residence in Haret Hreik.¹⁰⁰

90. On 1 November 2011, copies in English and Arabic of the Trial Chamber's order scheduling the hearing for 11 November 2011 were posted on the entrance doors of the Haret Hreik apartment, again in the presence of the *mukhtar* of Haret Hreik, and at his mother's residence in Al-Ghobeiry. A copy was also communicated to the *mukhtar* of Al-Ghobeiry. On 25 November 2011, Arabic copies of the Head of Defence Office's decision of 2 November 2011 assigning counsel were posted at the same addresses and copies were also provided to the *mukhtars* of Al-Ghobeiry and Haret Hreik. On 2 December 2011, Mr Badreddine was served in the same manner, with the Trial Chamber's Interim Decision of 23 November 2011, the President's Statement of 11 August 2011, and copies of Rules 104 and 105 of the Tribunal's Rules of Procedure and Evidence. Copies were also provided to the *mukhtars* of Al-Ghobeiry and Haret Hreik.¹⁰¹

C. Hussein Hassan Oneissi

91. Hussein Hassan Oneissi is a Lebanese citizen. The information available to the Lebanese Prosecutor-General suggested that his last known residence was in an apartment in Hadath, South Beirut and that his home village is Shahour, near Tyr, Southern Lebanon, where he is registered in the civil register. Lebanese border control records show that he has not exited Lebanon since his return from a visit to

¹⁰⁰ Detailed in the Lebanese Prosecutor-General's October 2011 report.

¹⁰¹ As detailed in reports of the Lebanese Prosecutor-General dated 2 November, 29 November, and 5 December 2011.



Iran and Syria in July 2009. The Trial Chamber has received no information suggesting that he has left Lebanon.

92. The information available to the Trial Chamber establishes that the Lebanese authorities have searched for him, in numerous locations, between 1 July 2011 and mid-January 2012. The Trial Chamber is also satisfied that Mr Oneissi has been notified of the charges in the indictment according to the requirements in the Lebanese Code of Criminal Procedure and also according to the alternative manner of informing him, under Rule 76 (E) by advertising the poster of the indictment in the Lebanese media. Arabic copies of the indictment and other Tribunal documents have been officially served on Mr Oneissi.

93. As in the cases of Mr Ayyash and Mr Badreddine, the Registrar of the Tribunal provided the Lebanese Prosecutor-General, on 30 June 2011, with a copy of the indictment and an international arrest warrant against Mr Oneissi. And, in the cases of Mr Ayyash and Mr Badreddine, media reports in Lebanon that day named Mr Oneissi as an accused person. The Prosecutor-General thereafter, on 1 July 2011, commenced the process of investigation and ordered the circulation of the arrest warrant.

94. From early July 2011 to mid-January 2012 Lebanese officials unsuccessfully sought to find Mr Oneissi at least 37 times at five possible addresses of residence in Beirut.¹⁰² They were informed that he had disappeared immediately after the publication of his name in the media in connection with the indictment. Inquiries of the *mukhtars* of the two localities where the residences are, drew blank, with the *mukhtar* of one, Hadath, claiming no knowledge of either Mr Oneissi nor of having made any administrative formalities in respect of him and the second *mukhtar* (of Haret Hreik) declaring that Mr Oneissi was neither listed in his civil register nor known to him.

95. Attempts were also made, in July 2011, to locate Mr Oneissi in Shahour where Mr Oneissi's mother has a house. The *mukhtar* informed the officials that Mr Oneissi

¹⁰² At his Beirut apartment at Hadath 13 times, and 24 times at the other four addresses.



did not own a house there and had not been there for ten years and that his family lived in Beirut. Further investigations in September, October, and November 2011 in the south of Lebanon also failed to reveal further positive information as to his whereabouts.

96. In mid-July 2011, investigators visited Mr Oneissi's last known place of employment, a family carpet business in Tyr. The manager stated that he had not seen Mr Oneissi since 2006. Further follow-up investigations (a total of eleven visits) between September 2011 and January 2012 did not succeed in finding Mr Oneissi there.

Notification of indictment and other Tribunal documents

97. While these investigative steps were ongoing, on 1 October 2011, an Arabic copy of the indictment was posted in the office of the *mukhtar* of Shahour. Another copy was posted on the same day at the entrance of the carpet store in Tyr. On 4 October 2011, in the presence of the *mukhtar* of Haret Hreik, the indictment was affixed to the entrance of the apartment building in Hadath, where Mr Oneissi was believed to live. On 9 October 2011, CCIS officials posted the indictment at the office of the *mukhtar* of Bourj-El-Barajneh, South Beirut.¹⁰³

98. The following documents (in Arabic) were posted at the entrance to the Hadath apartment: on 1 November 2011, the Trial Chamber's order scheduling the hearing for 11 November 2011 (copies were also provided to the *mukhtars* of Shahour and Bourj-El-Barajneh), on 25 November 2011, the Head of Defence Office's decision assigning counsel (copies having been provided to the *mukhtars* of Haret Hreik and Shahour the day before) and copies were communicated to the *mukhtar* of Bourj-El-Barajneh, and, on 2 December 2011, the Trial Chamber's Interim decision of 23 November 2011; the President's Statement of 11 August 2011, and copies of Rules 104 and 105 of the Tribunal's Rules of Procedure and Evidence. Copies of these

¹⁰³ Detailed in the Lebanese Prosecutor-General's October 2011 report.



documents were also communicated to the *mukhtars* of Haret Hreik, Shahour and Bourj-El-Barajneh.¹⁰⁴

D. Assad Hassan Sabra

99. Assad Hassan Sabra is a citizen of Lebanon. Information available to the Lebanese Prosecutor-General suggested that his last known place of residence was in an apartment in Hadath, South Beirut. He is, however, registered on the electoral role in nearby Zqaq-El-Blat, also in South Beirut. The Lebanese officials also had information suggesting that he may have resided at an apartment in Bourj-El-Barajneh, South Beirut. His parents live nearby in Haret Hreik, also in South Beirut.

100. The information available to the Trial Chamber establishes that the Lebanese authorities have searched for him, in numerous locations, between 1 July 2011 and mid-January 2012. Lebanese border control records do not reveal Mr Sabra ever entering or leaving Lebanon. The Trial Chamber has information stating that Mr Sabra has been notified of the charges in the indictment according to the formal requirements in the Lebanese Code of Criminal Procedure and also under the alternative manner of informing him, pursuant to Rule 76 (E) by advertising the poster of the indictment in the Lebanese media. Arabic copies of some other Tribunal documents have been officially served on him.

101. As in the cases of the other three Accused, on 30 June 2011 the Tribunal's Registrar provided the Lebanese Prosecutor-General with a copy of the indictment and an international arrest warrant against Mr Sabra. Mr Sabra's name was also mentioned in media reports in Lebanon at that time as an accused person. The Lebanese Prosecutor-General then initiated the process of investigation and, on 1 July 2011, ordered the circulation of the arrest warrant.

102. From early July 2011 onwards, officials unsuccessfully sought Mr Sabra in South Beirut at his last known residence in Hadath, Beirut, and at his parents

¹⁰⁴ As detailed in reports of the Lebanese Prosecutor-General dated 2 November, 29 November, and 5 December 2011.



residence in Haret Hreik, Beirut collectively 32 times between July 2011 and January 2012.¹⁰⁵ They were informed that he had disappeared after his name was mentioned in the media in connection with the indictment. An unsuccessful attempt was made to find him at another family address in South Beirut, and officials sought him some twelve times at another apartment in Bourj-El-Barajneh, South Beirut where he may have been living. The inquiries at family residences revealed that Mr Sabra had not been there in some time, but more specifically in December 2011, inquiries revealed that he had lived at his father's residence at Haret Hreik "until a few months previously".¹⁰⁶ Interviews were conducted with the *mukhtars* of Hadath, Bachoura, Haret Hreik, Al-Ghobeiry, Zqaq-El-Blat, and Bourj-El-Barajneh, but none claimed any knowledge of Mr Sabra.

Notification of indictment and other Tribunal documents

103. On 6 October 2011, while the attempts to secure Mr Sabra's appearance before the Tribunal were ongoing, an Arabic copy of the indictment was posted in the office of the *mukhtar* of Zqaq-El-Blat. On 9 October 2011, after previously failing five times to find him at the apartment in Bourj-El-Barajneh, South Beirut, officials posted the indictment in the office of the Bourj-El-Barajneh *mukhtar*. On 10 October 2011, in the presence of the *mukhtar* of Haret Hreik, an Arabic copy of the indictment was affixed to the entrance door of his parents residence in Haret Hreik.¹⁰⁷

104. On 1 November 2011, the Trial Chamber's scheduling order was posted at his parents' residence in Haret Hreik (in the presence of the *mukhtar* of Haret Hreik), and, on 25 November 2011 the Head of Defence Office's decision assigning counsel was also posted there. On 2 December 2011, officials affixed to the entrance door of his parents' residence, the Trial Chamber's Interim Decision of 23 November 2011, the President's Statement of 11 August 2011, and copies of Rules 104 and 105 of the

¹⁰⁵ At his Hadath apartment 7 times and at his parents' Haret Hreik apartment 25 times.

¹⁰⁶ Detailed in the Lebanese Prosecutor-General's December 2011 report.

¹⁰⁷ Detailed in the Lebanese Prosecutor-General's October 2011 report.



Tribunal's Rules of Procedure and Evidence. Copies were also provided to the *mukhtars* of Haret Hreik, the Zqaq-El-Blat, and Bourj-El-Barajneh.¹⁰⁸

CONCLUSION

105. Article 22 of the Statute of the Tribunal and Rule 106 (A) mandate the Trial Chamber commencing proceedings *in absentia* after “all reasonable steps” have been taken to secure the appearance of an accused before the Tribunal. All the evidence available to the Trial Chamber suggests that the four Accused have not left Lebanon. All attempts by the Lebanese authorities to date to apprehend them have failed. The information available to the Trial Chamber suggests that neither Mr Ayyash, Mr Badreddine, Mr Oneissi nor Mr Sabra have been seen at their last known places of residence since at least June 2011 when their names were publicised in connection with the indictment. Lebanon is geographically compact and has a very active and independent media. The indictment of the four in connection with the events of 14 February 2005 and their biographical details and photographs – in both extensive news reporting and in the form of an advertising poster - were widely publicised in the Lebanese media in July, August and September 2011.
106. The evidence establishes that massive if not blanket coverage was given in the Lebanese media both to the indictment itself and to connecting Mr Ayyash, Mr Badreddine, Mr Oneissi and Mr Sabra with the indictment. In the totality of these circumstances it is inconceivable that they could be unaware that they have been indicted. Mr Ayyash, Mr Badreddine, Mr Oneissi and Mr Sabra have also each been notified according to Lebanese criminal procedural law of the indictment and of various Tribunal documents informing them of their rights to participate in the trial without being physically present in the court room.
107. In respect of **Salim Jamil Ayyash**, the Trial Chamber has evidence of at least 46 unsuccessful attempts between early July 2011 and mid-January 2012 to find him at his apartment, and at his family's house in his family village. The evidence

¹⁰⁸ As detailed in reports of the Lebanese Prosecutor-General dated 2 November, 29 November, and 5 December 2011.



suggests that he left his apartment sometime in 2011. He has not been to his former place of employment, at a Civil Defence Centre in Beirut since at least July 2011. His name and photograph and the fact that he has been indicted have been widely publicised in Lebanon. The Trial Chamber can therefore only conclude that he has absconded. The Trial Chamber is satisfied that all reasonable steps have been taken to inform him of the charges and to secure his appearance before the Tribunal. A trial *in absentia* may proceed.

108. Lebanese justice officials unsuccessfully sought **Mustafa Amine Badreddine** between early July 2011 and mid-January 2012 at least 42 times at his apartment in Haret Hreik in Beirut and at his mother's residence in Al-Ghobeiry, Beirut, but the information received was that he had disappeared immediately after the publication of his name in the media in connection with the indictment. Mr Badreddine was also sought unsuccessfully at his work address in Beirut. His name and photograph and the fact that he has been indicted have been widely publicised in Lebanon. The Trial Chamber can therefore only conclude that he has absconded. The Trial Chamber is satisfied that all reasonable steps have been taken to inform him of the charges and to secure his appearance before the Tribunal. Accordingly a trial *in absentia* may proceed.

109. **Hussein Hassan Oneissi** was sought by Lebanese officials from early July 2011 to mid-January 2012 at least 37 times at five possible addresses of residence in Beirut, but they were informed that he had disappeared immediately after the publication of his name in the media in connection with the indictment. Attempts to locate him at his mother's house in Shahour failed and eleven visits to his last known workplace in Tyr did not find him. His name and photograph and the fact that he has been indicted have been so widely publicised in Lebanon that the Trial Chamber can only conclude that he has absconded. The Trial Chamber is satisfied that all reasonable steps have been taken to inform him of the charges and to secure his appearance before the Tribunal. Accordingly, the conditions to hold a trial *in absentia* have been met.



110. From early July 2011 to January 2012 Lebanese officials unsuccessfully sought **Assad Hassan Sabra** at his last known residence and at his parents residence in South Beirut at least 32 times. They were informed that he had disappeared after his name was mentioned in the media in connection with the indictment. Inquiries at family residences in December 2011 revealed that he had lived at his father's residence until recently. His name and photograph and the fact that he has been indicted have been widely publicised in Lebanon. The Trial Chamber can therefore only conclude that he has absconded. The Trial Chamber is satisfied that all reasonable steps have been taken to inform him of the charges and to secure his appearance before the Tribunal. Accordingly a trial *in absentia* may proceed.

111. The evidence establishes that none of the four Accused has been seen at his last known place of residence since the indictment and arrest warrants were transmitted to the Lebanese authorities on 30 June 2011 and their names were published in the Lebanese media as possible accused persons in the case. The Trial Chamber is therefore satisfied that Mr Ayyash, Mr Badreddine, Mr Oneissi and Mr Sabra cannot be found and that each has absconded and does not wish to participate in a trial despite being informed of the charges and the possible ways of participating in the trial. The combination of these circumstances has allowed the Trial Chamber to conclude that the requirements under Rule 106 (A) (iii) to hold proceedings *in absentia* have been met.



The Prosecution's request that the "Lebanese authorities" appear before the Trial Chamber

112. The Trial Chamber turns to the Prosecution's request to the Trial Chamber to invite the Government of Lebanon¹⁰⁹ to make submissions to the Trial Chamber as to the steps taken to apprehend the four Accused in Lebanon, and to adjourn its determination under Rule 106 pending receipt of answers to ten request for assistance sent to the Lebanese Prosecutor-General on 11 November 2011.¹¹⁰ Noting that Article 15 (2) of the Agreement between the United Nations and Lebanon obliges Lebanon to locate, serve process on, and to arrest the four Accused in Lebanon, the Prosecution argued that the Lebanese authorities should have been requested to participate in the hearing, held on 11 November 2011, to assist the Trial Chamber factually in determining the application of Rule 106, and to respond to any outstanding issues regarding the Prosecution's requests for assistance.¹¹¹

113. The Lebanese authorities, argued the Prosecution, could inform the Trial Chamber as to what further steps could be "reasonable". And, the Trial Chamber could inform the Lebanese authorities that the notification (under Lebanese law) to the four Accused of the indictments and arrest warrants was insufficient to fulfil their international obligation to apprehend them.¹¹²

114. During the hearing, the Prosecution added that the Lebanese authorities could outline the steps taken to locate and arrest the four Accused, and could expand upon what the Lebanese Prosecutor-General had described as the nature of the "delicate

¹⁰⁹ Described by the Prosecution as "the Lebanese authorities".

¹¹⁰ Transcript of hearing, 11 November 2011, pp. 39-42, 44-47; STL-1-01/I/TC, Prosecution's Preliminary Submission on Rule 106, 25 October 2011, paras 17, 19 (iii); Prosecution's Supplementary Submissions in Respect of Rule 106, 10 November 2011, paras 14, 17.

¹¹¹ STL-1-01/I/TC, Prosecution's Preliminary Submission on Rule 106, 25 October 2011, para. 17.

¹¹² STL-1-01/I/TC, Prosecution's Supplementary Submissions in Respect of Rule 106, 10 November 2011.



and sensitive political and security situation in Lebanon”¹¹³ and hence explain how this affected apprehending the four Accused.¹¹⁴ The Defence Office made no submissions. In its Interim decision of 23 November 2011, the Trial Chamber deferred a decision pending its receiving and examining any answers from the Lebanese Prosecutor-General to the Prosecutor’s further requests for assistance of 11 November 2011.¹¹⁵

115. The Trial Chamber has considered whether it would be assisted by submissions from the Lebanese Government on the issues raised by the Prosecution. However, it is of the view that the information necessary to make a reasoned decision under Rule 106 is contained in the material filed by the Prosecution, or submitted by the Lebanese Prosecutor-General and the Tribunal’s Registrar. Additionally, to provide context, it has supplemented these documents with material publicly available from the United Nations. The combination of this information obviates the need to seek further information directly from the Government of Lebanon.

116. The steps taken by the Lebanese Prosecutor-General to notify the four Accused of the indictment and the numerous steps taken attempting to secure their appearance before the Tribunal are carefully detailed in his six reports to the President of the Tribunal and in his responses to the Prosecutor’s requests for assistance. These must, however, be viewed within the totality of the political and security circumstances prevailing in Lebanon. The Lebanese Prosecutor-General drew the attention of the Prosecutor to what he described as the “delicate and sensitive political and security situation in Lebanon”¹¹⁶ and informed the President

¹¹³ STL-1-01/I/TC, Prosecution Submission of the Government of Lebanon’s Response to the Request for Assistance of 7 October 2011, Confidential Annex A, 8 November 2011, para. 6 (referring to the Lebanese Prosecutor-General’s response of 25 October 2011).

¹¹⁴ Transcript of hearing, 11 November 2011, pp. 20-24, 40-48.

¹¹⁵ STL-1-01/I/TC, Interim Decision under Rule 106 (proceedings *in absentia*), 23 November 2011, paras 11-12 – and further submissions, if any, from the Prosecutor, the Defence Office, and the four Accused.

¹¹⁶ STL-1-01/I/TC, Prosecution Submission of the Government of Lebanon’s Response to the Request for Assistance of 7 October 2011, Confidential Annex A, 8 November 2011, para. 6 (referring to the Lebanese Prosecutor-General’s



of the Tribunal of the situation confronting him, “I would like to draw your attention to the delicate and sensitive security situation in Lebanon, and to the difficulties faced by the Lebanese authorities in executing thousands of arrest warrants *in absentia* decades ago against persons who have committed different crimes and who have been secretly moving from one region to another. It is most likely that they are receiving help from their relatives and others who share common political views or religious or regional affiliations”.¹¹⁷

117. In forming its conclusion that direct submissions from the Lebanese Government would not assist its determination as to whether reasonable steps under Rule 106 have been taken, the Trial Chamber has also been assisted by the fourteen semi-annual reports of the Secretary-General of the United Nations issued since 2004 on the implementation of Security Council Resolution 1559 (2004).¹¹⁸ These reports provide some additional context needed to assist the Trial Chamber in understanding the difficulties facing the Lebanese Prosecutor-General. In his reports the Secretary-General has described the continuing tense political, territorial and

response of 25 October 2011). The Prosecution submitted in the hearing of 11 November 2011, that the Trial Chamber should hear evidence on the point (Transcript p.35) and before it made a finding on what was meant by this (Transcript p. 41).

¹¹⁷ Letter from Lebanese Prosecutor-General to the President of the Tribunal, 7 September 2011, responding to the President’s letter of 18 August 2011.

¹¹⁸ First semi-annual report of the Secretary-General to the Security Council on the implementation of resolution 1559 (2004), S/2005/272, 26 April 2005; Second semi-annual report of the Secretary-General to the Security Council on the implementation of resolution 1559 (2004), S/2005/673, 26 October 2005; Third semi-annual report of the Secretary-General to the Security Council on the implementation of Security Council resolution 1559 (2004), S/2006/248, 19 April 2006; Fourth semi-annual report of the Secretary-General to the Security Council on the implementation of Security Council resolution 1559 (2004), S/2006/832, 19 October 2006; Fifth semi-annual report of the Secretary-General on the implementation of Security Council resolution 1559 (2004), S/2007/262, 7 May 2007; Sixth semi-annual Report of the Secretary-General on the implementation of Security Council resolution 1559 (2004), S/2007/629, 24 October 2007; Seventh semi-annual report of the Secretary-General on the implementation of Security Council resolution 1559 (2004), S/2008/264, 21 April 2008; Eighth semi-annual report of the Secretary-General on the implementation of Security Council resolution 1559 (2004), S/2008/654, 16 October 2008; Ninth semi-annual report of the Secretary-General on the implementation of Security Council resolution 1559 (2004), S/2009/218, 24 April 2009; Tenth semi-annual report of the Secretary-General on the implementation of Security Council resolution 1559 (2004), S/2009/542, 21 October 2009; Eleventh semi-annual report of the Secretary-General on the implementation of Security Council resolution 1559 (2004), S/2010/193, 19 April 2010; Twelfth semi-annual report of the Secretary-General on the implementation of Security Council resolution 1559 (2004), S/2010/538, 18 October 2010; Thirteenth semi-annual report of the Secretary-General on the implementation of Security Council resolution 1559 (2004), 19 April 2011, S/2011/258; Fourteenth semi-annual report of the Secretary-General on the implementation of Security Council resolution 1559 (2004), S/2011/648, 19 October 2011.



security situation prevailing in Lebanon.¹¹⁹ These reports have thus helped the Trial Chamber in gaining an insight into the limitations inherent in what the Government of Lebanon could add. Combining the information in the Secretary-General's and Lebanese Prosecutor-General's reports compels the Trial Chamber to conclude that it would not be assisted by direct submissions by the Government of Lebanon as to whether "all reasonable steps" had been taken to secure the appearance of the four Accused before the Tribunal.

Finding and conclusion on the Prosecution's request to invite the Lebanese Government

118. The Trial Chamber acknowledges the steps taken to date by the Lebanese authorities and recognizes the challenges confronting the authorities in attempting to apprehend the Mr Ayyash, Mr Badreddine, Mr Oneissi and Mr Sabra. In the framework of the circumstances described in the reports and responses of the Prosecutor-General, but additionally supplemented by the context provided by the Secretary-General's reports, the Trial Chamber is therefore not of the view that direct submissions by the Lebanese Government would add anything needed to make its decision under Rule 106. It therefore rejects the Prosecutor's request.

¹¹⁹ For example, Fourteenth semi-annual report of the Secretary-General on the application of Resolution 1559 (2004), 19 October 2011, S/2011/648, para. 18.



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان


TRIBUNAL SPÉCIAL POUR LE LIBAN


DISPOSITION**FOR THESE REASONS** the Trial Chamber:

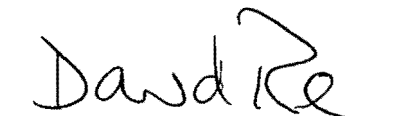
- (i) **DECIDES**, pursuant to Article 22 of the Statute of the Tribunal and Rule 106 of its Rules of Procedure and Evidence, to proceed to try **Salim Jamil Ayyash, Mustafa Amine Badreddine, Hussein Hassan Oneissi and Assad Hassan Sabra** *in absentia*, and
- (ii) **REJECTS** the Prosecution's request to invite the Government of Lebanon to appear before the Trial Chamber.

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

1 February 2012
Leidschendam
The Netherlands



Judge Robert Roth, Presiding

Judge Micheline Braidy

Judge David Re