

SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

THE PRE-TRIAL JUDGE

Case No.: **STL-11-01/PT/PTJ**

The Pre-Trial Judge: **Mr Daniel Fransen**

The Registrar: **Mr Daryl Mundis**

Date: **9 August 2013**

Original language: **French**

Classification: **Public**

THE PROSECUTOR

v.

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

WARRANT TO ARREST MR SALIM JAMIL AYYASH AND ORDER FOR TRANSFER AND DETENTION

Office of the Prosecutor:
Mr Norman Farrell

Counsel for Mr Salim Jamil Ayyash:
Mr Eugene O'Sullivan

Legal Representative of Victims:
Mr Peter Haynes

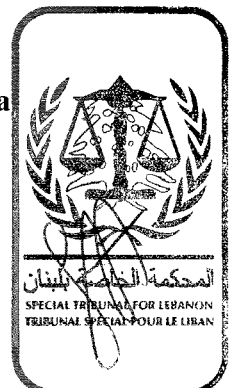
Counsel for Mr Mustafa Amine Badreddine:
Mr Antoine Korkmaz

The Authorities of the Lebanese Republic

Counsel for Mr Hussein Hassan Oneissi:
Mr Vincent Courcelle-Labrousse

The Authorities of the Kingdom of the Netherlands

Counsel for Mr Assad Hassan Sabra:
Mr David Young



1. **NOTING** the Pre-Trial Judge's decision of 28 June 2011 confirming the counts contained in the Indictment of 10 June 2011 (the "Indictment of 10 June 2011") and authorising the indictment in particular of Mr Salim Jamil Ayyash (the "Accused" or "Mr Ayyash");¹
2. **NOTING** the arrest warrant issued against the Accused on 28 June 2011;²
3. **NOTING** the decision of 12 April 2013 of the Pre-Trial Judge³ authorising the amendment of the Indictment of 10 June 2011 and replacing it with the indictment of 6 February 2013⁴ (the "Indictment of 6 February 2013");
4. **NOTING** the arrest warrant of 27 May 2013, based on the Indictment of 6 February 2013, issued against the Accused and its Annexes addressed to the competent authorities of the Lebanese Republic;⁵
5. **NOTING** the Pre-Trial Judge's decision of 31 July 2013 which authorised the amendment of the Indictment of 6 February 2013 and replaced it with the indictment of 21 June 2013 (the "Indictment of 21 June 2013");⁶
6. **NOTING** the Prosecution Request of 2 August 2013 seeking the issuance of: (i) a new arrest warrant and order for transfer to and detention at the Tribunal of Mr Ayyash; and (ii) a new order for his detention at the detention facility of the Tribunal in the Kingdom of the Netherlands, pursuant to Article 18 (2) of the Statute, Rules 14, 20, 61 (iii) and (iv), 68 (J) (i), 71 (D), 76, 77 (A), 79, 82, 83 and 101 (G) of the Rules of Procedure and Evidence (the "Rules") and Article 15 (2) of the Agreement between the United Nations and the Lebanese Republic,

¹ STL, *The Prosecutor v. Ayyash et al.*, Case No. 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, confidential, 28 June 2011. A public redacted version dated the same day was filed on 16 August 2011. This decision confirms the counts contained in the Indictment of 10 June 2011 with the exception of attempting to cause the death of 231 other persons which is not included in the constituent elements of the terrorist act but in those of attempted intentional homicide.

² STL, *The Prosecutor v. Ayyash et al.*, Case No. STL-11-01/I/PTJ, Warrant to Arrest Mr Salim Jamil Ayyash including Transfer and Detention Order, 28 June 2011.

³ STL, *The Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Decision Relating to the Prosecution Requests of 8 November 2012 and 6 February 2013 for the Filing of an Amended Indictment, 12 April 2013.

⁴ STL, *The Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Prosecution's Filing of the Signed Version of the Amended Indictment in Compliance with the Pre-Trial Judge's Decision of 12 April 2013 & Request for Amended Arrest Warrants and Orders/Requests for Transfer and Detention, 17 April 2013.

⁵ STL, *The Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Warrant to Arrest Mr Salim Jamil Ayyash and Order for Transfer and Detention, 27 May 2013.

⁶ STL, *The Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Corrected version, Decision Relating to the Prosecution Request of 21 June 2013 for Leave to Amend the Indictment of 6 February 2013, confidential, 31 July 2013. A public redacted version of that decision was filed on 2 August 2013.

which entered into force on 10 June 2007 following the adoption of resolution 1757 (2007)⁷ (the “Agreement between the United Nations and the Lebanese Republic”);⁸

7. **CONSIDERING** that the Accused has not surrendered voluntarily to the jurisdiction of the Tribunal despite the appeals made to him and that neither has it been possible to arrest and transfer him to the Tribunal;

8. **CONSIDERING** that the Trial Chamber decided, on 1 February 2012, to begin *in absentia* proceedings against the Accused, pursuant to Article 22 of the Statute and Rule 106 of the Rules;⁹

9. **CONSIDERING** that Mr Ayyash is accused of:

- a) conspiracy aimed at committing a terrorist act, as a co-perpetrator;
- b) committing a terrorist act, by means of an explosive device, as a co-perpetrator;
- c) intentional homicide of Rafic Hariri with premeditation by using explosive materials, as a co-perpetrator;
- d) intentional homicide of 21 persons in addition to Rafic Hariri with premeditation by using explosive materials, as a co-perpetrator; and
- e) attempted intentional homicide of 226 persons with premeditation by using explosive materials, as a co-perpetrator;

10. **NOTING** Article 18 (2) of the Statute and Rules 68 (J) (i), 77 (A) and 79 (A) of the Rules, according to which the Pre-Trial Judge may, upon request of the Prosecutor, issue a warrant of arrest against the Accused and request his transfer to the Tribunal in order to: (i) ensure his appearance at the proceedings; (ii) ensure that he does not obstruct or endanger the investigation or the court proceedings, for instance by posing a danger to, or intimidating, any victim or witness; and (iii) prevent criminal conduct of a kind of which he stands accused;

⁷ Agreement between the United Nations and the Lebanese Republic on the establishment of a Special Tribunal for Lebanon, 10 June 2007; resolution 1757 (2007) adopted by the Security Council at its 5685th meeting, 30 May 2007.

⁸ STL, *The Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Prosecution’s Filing of the Signed Version of the Amended Indictment in Compliance with the Pre-Trial Judge’s Decision of 31 July 2013 & Request for Amended Arrest Warrants and Orders/Requests for Transfer and Detention, 2 August 2013 (“Prosecution Request of 2 August 2013”), para. 9 (a).

⁹ STL, *The Prosecutor v. Ayyash et al.*, Case No. STL-11-01/I/TC, Decision To Hold Trial *In Absentia*, 1 February 2012.

11. **CONSIDERING** that, assuming the allegations made against the Accused are substantiated, on the basis of the information provided by the Prosecutor, the detention of the Accused is necessary, in particular for the following reasons:

- a) Mr Ayyash is accused of serious offences, in particular, of conspiracy aimed at committing a terrorist act, of committing a terrorist act by means of an explosive device and of intentional homicide with premeditation, by using explosive materials, in connection with the attack of 14 February 2005 in Beirut (Lebanon) which resulted in the death of former Lebanese Prime Minister Rafic Hariri and other persons and injured others, as set forth in detail in the Indictment of 21 June 2013;
- b) the risk that Mr Ayyash might commit further offences of the same kind is substantiated given that he might be implicated in other acts of a similar nature in Lebanon;
- c) the risk that Mr Ayyash might escape justice is proven insofar as he has been the subject of an arrest warrant since 28 June 2011 and of an international arrest warrant since 8 July 2011 and has escaped justice since then which led, on 1 February 2012, to the institution of *in absentia* proceedings against him that are currently still pending before the Tribunal and in which he is being prosecuted, in particular, for having participated in a conspiracy one of whose objectives was specifically that of escaping justice;
- d) the risk that Mr Ayyash might obstruct the smooth running of the investigation, in particular, by endangering or intimidating potential witnesses, in person or by way of others, is proven insofar as acts of this kind are purported to have already occurred during the investigations conducted by the Prosecutor; and
- e) the risk that Mr Ayyash might collude with other persons possibly implicated in the acts imputed to him exists given that all the alleged perpetrators or accomplices of these acts have not yet been identified or, *a fortiori*, arrested;

12. **CONSIDERING** that in light of the above, the risks of collusion, escaping justice, committing further offences, endangering the ongoing investigation and intimidating witnesses and victims or tampering with evidence exist and justify that an arrest warrant and order for transfer and detention be issued by the Tribunal against the Accused;

13. **NOTING** Rule 76 (A) of the Rules, according to which the Indictment shall be formally provided to the authorities of the State in whose territory the Accused was last known to be residing, or in whose territory or under whose jurisdiction he is believed likely to be found, in order for him to be served with the Indictment without delay;

14. **CONSIDERING** that, according to the Prosecutor, the Accused was last known to be residing in the territory of the Lebanese Republic;¹⁰

15. **NOTING** Article 15 (2) of the Agreement between the United Nations and the Lebanese Republic, and Rule 82 (A) of the Rules, according to which the competent authorities of the Lebanese Republic shall act promptly and with all due diligence to ensure the proper execution of a warrant of arrest or of a transfer order;

16. **NOTING** Article 39 of the Agreement between the United Nations and the Kingdom of the Netherlands concerning the Headquarters of the Special Tribunal for Lebanon of 21 December 2007 (the “Agreement between the United Nations and the Kingdom of the Netherlands”), according to which the transfer of a detained person “from the point of arrival in the host State to the premises shall, at the request of the Tribunal, be carried out by the competent authorities in consultation with the Tribunal”;¹¹

17. **NOTING** Rules 83 and 101 (G) of the Rules, according to which, after his arrest, “the accused shall be detained by the State concerned, which shall promptly notify the Registrar” and “the transfer [...] of the accused to a detention facility of the Tribunal shall be arranged between the State authorities concerned, the Registrar and, if necessary, the authorities of the Host State”;¹²

FOR THESE REASONS,

Pursuant to Article 18 of the Statute, Article 15 of the Agreement between the United Nations and the Lebanese Republic, Article 39 of the Agreement between the United Nations and the Kingdom of the Netherlands and Rules 68, 76, 77, 79, 82, 83 and 101 of the Rules,

¹⁰ Prosecution Request of 2 August 2013, para. 8.

¹¹ Agreement between the United Nations and the Kingdom of the Netherlands, Art. 39, para. 1.

¹² Rule 83 of the Rules.

THE PRE-TRIAL JUDGE,

REQUESTS the competent authorities of the Lebanese Republic to search for and to arrest, in any place where he might be found in the territory of the Lebanese Republic, to detain and transfer to the Headquarters of the Tribunal:

SALIM JAMIL AYYASH, born on 10 November 1963 in Harouf, Nabatiyeh (Lebanon), son of Jamil Dakhil AYYASH (father) and of Mahasen Issa SALAMEH (mother), having notably resided at Al-Jamous Street, Tabajah building, Hadath, 3rd floor in South Beirut, and at the AYYASH family compound in Harouf, Nabatiyeh, in South Lebanon, a citizen of Lebanon, Lebanese civil registration number 197/Harouf, holder of Hajj passport number 059386 and social security number 63/690790.

ORDERS the Registrar of the Tribunal to transmit to the competent authorities of the Lebanese Republic, in accordance with Rule 82 of the Rules: (1) the present arrest warrant; (2) a certified copy, bearing the official seal of the Tribunal, of the redacted Indictment of 21 June 2013; (3) the additional materials filed by the Prosecutor which enable the Accused to be identified; and (4) a copy of the statutory provisions and rules that are relevant to the execution of this arrest warrant;

REQUESTS the competent authorities of the Lebanese Republic to execute the present arrest warrant and order for transfer and detention at the earliest opportunity;

REQUESTS the competent authorities of the Lebanese Republic to inform the Accused in person, in a language that he understands, of: (1) the present arrest warrant including transfer and detention order; (2) the redacted Indictment of 21 June 2013 issued against him; (3) a copy of the statutory provisions and rules that are relevant to the rights afforded to him and, in particular, Article 16 of the Statute and Rules 65, 66, 67 and 68 of the Rules included herewith, concerning the right to remain silent and the right to be cautioned that any statement he makes shall be recorded and may be used in evidence against him;

REQUESTS the competent authorities of the Lebanese Republic to immediately inform the Registrar of the Tribunal of the arrest of the Accused and to take the necessary measures for his detention and his transfer to the Headquarters of the Tribunal;

ORDERS the Registrar of the Tribunal to take the necessary steps, in consultation with the competent authorities of the Lebanese Republic and of the Kingdom of the Netherlands, to arrange the transfer of the Accused to the Headquarters of the Tribunal; and

REQUESTS the competent authorities of the Kingdom of the Netherlands to take responsibility for the Accused upon his arrival on their territory and to escort him to the detention facility of the Tribunal, in accordance with the measures mutually agreed upon with the Registrar of the Tribunal.

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

Leidschendam, 9 August 2013

[stamp]

[signature]

Daniel Fransen
Pre-Trial Judge

