



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

THE TRIAL CHAMBER

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

Before: Judge David Re, Presiding
Judge Janet Nosworthy
Judge Micheline Braidy
Judge Walid Akoum, Alternate Judge
Judge Nicola Lettieri, Alternate Judge

Registrar: Mr. Daryl Mundis

Date: 31 March 2014

Original language: English

Classification: Public with Confidential and *Ex Parte* Annexes

THE PROSECUTOR

v.

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

**FURTHER DECISION ON MOTIONS UNDER RULE 20 (A) BY COUNSEL
FOR ASSAD HASSAN SABRA AND FOUR ORDERS TO LEBANON TO
COOPERATE WITH THE TRIBUNAL**

Office of the Prosecutor:

Mr. Norman Farrell, Mr. Graeme Cameron
& Mr. Alexander Milne

Defence Office:

Mr. François Roux

Victims' Legal Representatives:

Mr. Peter Haynes, Mr. Mohammad F.
Mattar & Ms. Nada Abdelsater-Abusamra

The Government of the Lebanese Republic**Counsel for Mr. Salim Jamil Ayyash:**

Mr. Eugene O'Sullivan, Mr. Emile Aoun
& Mr. Thomas Hannis

Counsel for Mr. Mustafa Amine Badreddine:

Mr. Antoine Korkmaz, Mr. John Jones
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Counsel for Mr. Hassan Habib Merhi:

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Counsel for Mr. Hussein Hassan Oneissi:

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Counsel for Mr. Assad Hassan Sabra:

Mr. David Young, Mr. Guénaél Mettra
Geoffrey Roberts



INTRODUCTION

1. The Trial Chamber has received several motions filed by counsel for Mr. Assad Hassan Sabra, seeking orders to Lebanon under Rule 20 (A) of the Special Tribunal's Rules of Procedure and Evidence to 'search, identify and provide material' considered relevant to their trial preparations. These motions derive from some 119 original requests by counsel to Mr. Sabra for the assistance of the Lebanese authorities, sent to Lebanon through the Head of the Defence Office pursuant to the 'Memorandum of Understanding between the Government of the Lebanese Republic and the Defence Office on the modalities of their cooperation', signed on 28 July 2010, between the Head of the Defence Office and the Lebanese Minister of Justice.

2. This decision addresses 36 requests submitted to the Trial Chamber in the second relevant motion filed by counsel for Mr. Sabra,¹ and deferred for further consideration by the Trial Chamber's decision of 31 January 2014 in which it issued orders to Lebanon.² It also addresses 53 updated requests submitted to the Trial Chamber in January 2014 by counsel for Mr. Sabra.³

BACKGROUND

3. In November 2013, after a long history of communications between the Pre-Trial Judge and the Lebanese authorities concerning Defence requests for assistance, the Trial Chamber attempted to ascertain what information counsel for Mr. Sabra were seeking from Lebanon. Despite receiving various written submissions, and issuing orders seeking further specificity,⁴ it was not until 3 December 2013 that the Trial Chamber received a table—of 246 pages—that attempted to detail the requests that counsel for Mr. Sabra considered outstanding.⁵

4. In a decision of 16 December 2013, the Trial Chamber determined that 75 of the original requests for assistance *could* be included in an order to Lebanon to cooperate with the Special Tribunal. The Trial Chamber ordered the Prosecution to disclose to the Defence any relevant

¹ *Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra*, STL-11-01/PT/PTJ, Second Motion Seeking the Cooperation of Lebanon – Telecommunication Information, 4 February 2013, made confidential by the Pre-Trial Judge's Decision of 15 March 2013.

² STL-11-01/T/TC, Decision on Second and Fifth Motions by Counsel for Assad Hassan Sabra and Two Orders to Lebanon to Cooperate with the Tribunal, 31 January 2014.

³ STL-11-01/T/TC, Motion for Order for Cooperation Addressed to the Lebanese Authorities and Withdrawal of Request for Reconsideration, 17 January 2014, Confidential; Further Motion for Order for Cooperation Addressed to the Lebanese Authorities, 30 January 2014; Addendum to 'Motion for Order for Cooperation Addressed to the Lebanese Authorities and for Withdrawal of Request for Reconsideration', 30 January 2014.

⁴ STL-11-01/PT/TC, Order Requesting Further Clarifications, 20 November 2013; STL-11-01/PT/TC, Further Order to Counsel for Assad Hassan Sabra in Relation to Request for State Cooperation, 29 November 2013.

⁵ STL-11-01/PT/TC, Reply to 'Prosecution Response to Sabra Defence 'Further Clarifications Regarding Sabra Defence Motion for Stay of Proceedings'', 3 December 2013, Annex D, Confidential and *Ex Parte*.

material in its possession, and ordered counsel for Mr. Sabra to file in draft form the orders they sought.⁶ On 13 January 2014, counsel for Mr. Sabra filed draft orders for 47 requests for assistance the subject of their second and fifth motions.⁷ On 17 January 2014, counsel filed 11 updated requests for assistance and associated draft orders.⁸ On 30 January 2014, they filed a further 42 updated requests for assistance and draft orders.⁹ The Prosecution responded to these filings.¹⁰

5. On 13 January 2014, addressing a motion filed by counsel for Mr. Mustafa Amine Badreddine, the Trial Chamber identified some apparent deficiencies in the Memorandum of Understanding between the Defence Office and the Government of Lebanon.¹¹

6. On 31 January 2014, the Trial Chamber issued two orders to Lebanon in respect of 11 of the 47 requests for assistance sought by counsel for Mr. Sabra in their motion of 13 January 2014.¹² It deferred its decision regarding the 36 other requests for assistance as it was not yet convinced that an order under Rule 20 (A), directed to the Lebanese authorities, was necessarily the most effective way of obtaining the information.¹³ The information sought in these 36 requests for assistance is technical—relating to telecommunications systems in Lebanon run by private companies—and may not be possessed or easily recoverable by the Lebanese authorities.

7. In the decision accompanying the orders, the Trial Chamber invited counsel for Mr. Sabra and the Head of the Defence Office to make further submissions on the most effective way to request and obtain this material, and invited the Head of the Defence Office to update the Trial Chamber on any steps he had taken to address the identified shortcomings in his Memorandum of Understanding.¹⁴

⁶ STL-11-01/PT/TC, Orders Relating to Five Defence Motions for Orders to Lebanon on State Cooperation, 16 December 2013. A corrigendum and corrected version were filed on 24 December 2013; the Prosecution responded, Prosecution Notice Pursuant to the Trial Chamber's 16 December 2013 'Orders Relating to Five Defence Motions for Orders to Lebanon on State Cooperation', 19 December 2013.

⁷ STL-11-01/PT/TC, Sabra Defence Proposed Draft Orders for Cooperation, 13 January 2014. The Prosecution responded in Prosecution Observations on Sabra Defence Proposed Draft Orders for Cooperation, 16 January 2014 (arguing that the standard for issuing an order under Rule 20 (A) includes (i) an assessment of whether the documents sought are both relevant and required for the investigation, (ii) the need for specificity, and (iii) a requirement that the order is not 'unduly onerous on Lebanon').

⁸ Motion for Order for Cooperation Addressed to the Lebanese Authorities and Withdrawal of Request for Reconsideration, 17 January 2014; Addendum to 'Motion for Order for Cooperation Addressed to the Lebanese Authorities and for Withdrawal of Request for Reconsideration', 30 January 2014.

⁹ Further Motion for Order for Cooperation Addressed to the Lebanese Authorities, 30 January 2014.

¹⁰ TL-11-01/T/TC, Prosecution Response to Sabra Defence Motion of 17 January 2014 for Order for Cooperation Addressed to the Lebanese Authorities, 5 February 2014, Confidential; STL-11-01/T/TC, Prosecution Response to Sabra Defence 30 January 2014 Further Motion for Order for Cooperation Addressed to the Lebanese Authorities, 17 February 2014, Confidential and *Ex Parte*.

¹¹ STL-11-01/PT/TC, Decision on Motion Filed by Counsel for Mr. Badreddine and Order to Lebanon to Cooperate with the Special Tribunal, 13 January 2014, paras 19-22.

¹² Decision of 31 January 2014, para. 9, Disposition.

¹³ Decision of 31 January 2014, para. 12, Disposition.

¹⁴ Decision of 31 January 2014, paras 15, 16.

The Trial Chamber also stated its willingness to facilitate finding more effective ways for Defence counsel to request and obtain information, including by Defence experts working with the relevant Lebanese authorities or telecommunication companies.¹⁵ The Trial Chamber subsequently convened a meeting with counsel for Mr. Sabra and the Prosecution to refine the text of any proposed orders.¹⁶ On 5 February 2014, counsel for Mr. Sabra filed a further written submission, stating that they still required orders from the Trial Chamber under Rule 20 (A).¹⁷

8. On 19 February 2014, the Head of the Defence Office submitted that he did not intend to take steps to amend the Memorandum of Understanding of 28 July 2010.¹⁸

9. On 4 March 2014, the Trial Chamber held a status conference. It heard submissions on the issue of Lebanon's cooperation with the Special Tribunal from counsel for Mr. Sabra, counsel for Mr. Badreddine and the Head of the Defence Office. Counsel for Mr. Sabra stated that they had received material from 'the Lebanese', some of which was within the terms of their requests for assistance relevant to this decision.¹⁹

10. On 14 March 2014, counsel for Mr. Sabra informed the Trial Chamber of further material provided to them by 'the Lebanese authorities'.²⁰

DISCUSSION

11. Having now received these additional submissions, and on the basis of the principles and law relating to Rule 20 (A) set out in its previous decisions,²¹ the Trial Chamber has now decided to issue four further orders to Lebanon in respect of (a) the outstanding deferred requests for assistance to which two Lebanese telecommunication companies have not responded; (b) the outstanding updated requests for assistance to which two Lebanese telecommunication companies have not responded; and (c) the outstanding requests for assistance to which the Lebanese Government has not responded.

12. Counsel for Mr. Sabra and the Prosecution have agreed on the Trial Chamber's proposed wording of the three orders annexed to this decision, and the editing of their requests to make clear

¹⁵ Decision of 31 January 2014, para. 15.

¹⁶ STL-11-01, Minutes of Proceedings (Rule 53 of the Rules of Procedure and Evidence), 3 February 2014, Confidential.

¹⁷ STL-11-01/T/TC, Further Submissions to 'Decision on Second and Fifth Motions by Counsel for Assad Hassan Sabra and Two Orders to Lebanon to Cooperate with the Tribunal', 5 February 2014, paras 5, 10, 12.

¹⁸ STL-11-01/T/TC, Conclusions of the Defence Office on the Cooperation of Lebanon, 19 February 2014, *especially* paras 4-5.

¹⁹ Transcript of 4 March 2014, pp. 45-46.

²⁰ E-mail from counsel for Mr. Sabra to the Trial Chamber, 14 March 2014.

²¹ Decision of 31 January 2014, para. 8 (citing STL-11-01/PT/TC, Order Relating to Five Defence Motions for Orders to Lebanon on State Cooperation, 16 December 2013, paras 6-17; STL-11-01/PT/TC, Decision on Motion Filed by Counsel for Mr. Badreddine and Order to Lebanon to Cooperate with the Special Tribunal, 13 January 2014, paras 10-15).

who is believed to hold the information sought (such as a telecommunications company, or the Lebanese Government).²² Counsel for Mr. Sabra have also agreed on the Trial Chamber's proposed wording of the fourth order, which is *ex-parte* the Prosecution.²³

13. The Trial Chamber strongly encourages the Parties to frame any future requests for assistance and draft orders in similar plain terms.

14. Counsel for Mr. Sabra have informed the Trial Chamber that the two Lebanese telecommunication companies appear to have fully complied with 51 of their original requests for assistance, and endeavoured to comply with a further 55, thus reducing the scope of any orders from the Trial Chamber. The Trial Chamber will therefore defer making further orders in respect of these.²⁴ Orders under Rule 20 (A) can be made, however, in respect of ten requests for assistance that one telecommunication company has not adequately responded to, and three requests for assistance that the other telecommunication company has not adequately responded to. They will also be made in respect of 19 requests for assistance to which the Lebanese Government has not responded at all.

15. In making these orders, the Trial Chamber is satisfied that:

- the requests for assistance were properly made through the Head of the Defence Office, under Rule 16 (C), in circumstances where counsel considered it necessary to undertake 'Defence investigations' within the meaning of Article 1 of the Memorandum of Understanding, and in which the Head of the Defence Office therefore implicitly determined that the requests for assistance were not frivolous or vexatious;
- the requests for assistance seek information which appears to be relevant for Defence investigations, and the requests for assistance appear to be required for Defence investigations;
- neither the Lebanese Government, nor any other relevant Lebanese body, has thus far complied with the requests for assistance, despite these being sent by the Head of the Defence Office and the Pre-Trial Judge;

²² E-mails between counsel for Mr. Sabra and the Prosecution, and Legal Officers of the Trial Chamber, 7 February 2014, 27 March 2014.

²³ E-mail between counsel for Mr. Sabra and Legal Officers of the Trial Chamber, 27 March 2014.

²⁴ E-mail between counsel for Mr. Sabra and the Prosecution, and Legal Officers of the Trial Chamber, 10 March 2014, 14 March 2014, 27 March 2014.

- the requests for assistance, as formulated in the annexed orders, now identify the requested information with sufficient specificity;
- reasonable efforts have been made by counsel for Mr. Sabra, through the Defence Office and by making relevant enquiries of the Prosecution, to explore alternative methods of obtaining the requested information;
- reasonable efforts have been made by counsel for Mr. Sabra, through the Defence Office, to obtain the requested information from the Lebanese authorities, as shown by requests for assistance including the following:
 - S06/12-087, dated 13 August 2012, followed up by S09/12-099, dated 18 September 2012;
 - S09/12-100, dated 27 September 2012;
 - S09/12-101, dated 27 September 2012;
 - S10/12-114, dated 19 October 2012;
 - S10/12-115, dated 2 November 2012
 - S11/12-129, dated 16 November 2012, followed up by S12/12-122, dated 6 December 2012;
 - S11/12-126, dated 20 November 2012, followed up by S12/12-169, dated 9 January 2013;
 - S12/12-122, dated 6 December 2012; and
 - S04/13-199, dated 10 April 2013;
- the requests for assistance appear not to be unduly onerous on the Lebanese Government; and
- the requested information is or should be held by the Lebanese Government, and does not appear to require substantial work to obtain and provide to counsel for Mr. Sabra.²⁵

16. The Lebanese Government has had sufficient time to make any necessary submissions concerning the requests for assistance by counsel for Mr. Sabra but none have yet been received.²⁶

²⁵ Decision of 31 January 2014, para. 8.

17. To preserve the confidentiality of defence investigations, counsel for Mr. Sabra have requested that any order for cooperation be confidential and *ex parte* the Legal Representatives of the Victims.²⁷ The Trial Chamber will make this order. However, the orders must be made public at an appropriate later stage in the proceedings. At counsel's request, and on the same basis, the Trial Chamber further makes one of its orders *ex parte* the Prosecution, in order to preserve the confidentiality of certain Defence investigations.

**THE DEFENCE OFFICE'S MEMORANDUM OF UNDERSTANDING WITH THE
LEBANESE GOVERNMENT**

18. Counsel for the Accused must be able to prepare their case and to conduct their investigations in the manner guaranteed by the Special Tribunal's Statute and the Rules, and to secure the cooperation of the Lebanese Government necessary for those purposes, as set out in Article 15 of the Agreement between the United Nations and Lebanon:²⁸

The Government [of the Lebanese Republic] shall cooperate with all organs of the Special Tribunal, in particular with the Prosecutor and defence counsel, at all stages of the proceedings. It shall facilitate access of the Prosecutor and defence counsel to sites, persons and relevant documents required for the investigation.

19. The Trial Chamber has already expressed its concerns that the present regime for cooperation between Defence counsel and the Lebanese authorities does not achieve the intended result of obtaining the judicial assistance necessary to prepare their cases.

20. Rule 16 (C) of the Special Tribunal's Rules, 'Request to Lebanon for Information and Cooperation', provides that:

Requests [for cooperation] can be made *mutatis mutandis* by the Head of the Defence Office, at the request of the Defence, unless the Head of the Defence Office considers the request by the Defence to be frivolous or vexatious.

21. On 28 July 2010, the Government of the Lebanese Republic and the Defence Office of the Special Tribunal entered into a Memorandum of Understanding 'to govern the modalities' of this

²⁶ Decision of 31 January 2014, para. 5.

²⁷ See, e.g., STL-11-01/T/TC, Further Motion for Order for Cooperation Addressed to the Lebanese Authorities, 30 January 2014, para. 28.

²⁸ Agreement between the United Nations and the Lebanese Republic on the establishment of a Special Tribunal for Lebanon, annexed to UN SC Resolution 1757 (2007), 30 May 2007.

cooperation²⁹ and to regulate the ‘activities of Defence Counsel, including their investigations within [...] Lebanon’,³⁰ signed by the Head of the Defence Office and the Lebanese Minister of Justice. It also states that the ‘Parties’ may make further agreements and arrangements to implement or to supplement it.³¹

22. This Memorandum of Understanding with Lebanon, however, does not fully work in the manner intended for Defence requests for assistance directed to Lebanon. This is self-evident because, if it were functioning properly, Defence counsel would not need to seek orders under Rule 20 (A) against Lebanon.

23. In its decision of 13 January 2014, the Trial Chamber observed that it was not convinced that the Memorandum was ‘the most effective or expeditious way to convey a request for assistance to a State’.³² It stated that it believed that the Head of the Defence Office should consider negotiating alternative arrangements with the Lebanese Government to produce an agreement containing an effective internal judicial enforcement provision. And, in its decision of 31 January 2014, the Trial Chamber invited the Head of the Defence Office to update the Trial Chamber in relation to any steps undertaken to address the apparent shortcomings in this memorandum.³³

24. The Head of the Defence Office responded by submitting that he did not intend to take any steps to amend the Memorandum because it ‘fully satisfies the signatories’, namely, him and the former Lebanese Minister of Justice, Mr. Ibrahim Najjar. He was, however, otherwise willing for ‘the Chamber to take the necessary measures’.³⁴ During the status conference on 4 March 2014 he added that he does not ‘envisage in any shape or form to request any modification at all’ to his Memorandum.³⁵

25. But whether the text of the Memorandum ‘fully satisfies’ the signatories—the Head of the Defence Office and the former Lebanese Minister for Justice—is not the test; the issue is whether it

²⁹ Memorandum of Understanding, Preamble.

³⁰ Memorandum of Understanding, Art. 1 (1).

³¹ Memorandum of Understanding, Art. 6.

³² STL-11-01/PT/TC, Decision on Motion Filed by Counsel for Mr. Badreddine and Order to Lebanon to Cooperate with the Special Tribunal, 13 January 2014, para. 22.

³³ Decision of 31 January 2014, para. 16.

³⁴ STL-11-01/T/TC, Conclusions of the Defence Office on the Cooperation of Lebanon, 19 February 2014, *especially* para. 5.

³⁵ Transcript of 4 March 2014, p. 54.

is producing the required results for the Defence counsel who need assistance in preparing their cases for trial.³⁶

26. Article 4 of the Memorandum specifies that, when Defence counsel consider that they need the assistance of the Lebanese Government to conduct their investigations, they can address—through the Defence Office—the Lebanese authorities, through the Director of the Litigation Division of the Lebanese Ministry of Justice, with requests to receive the necessary assistance. The Director is competent to address requests to the appropriate authorities and private companies but not to issue binding orders to compel cooperation. In other words, Article 4 contains no enforcement mechanism.

27. Article 5 of the Memorandum, ‘Assistance for coercive measures’, instead, refers to orders for cooperation and coercive measures to be taken under Rule 77 (A).³⁷ These are orders made by the Pre-Trial Judge at the request of Defence counsel and are transmitted to the Lebanese Liaison Judge for enforcement. The Liaison Judge—the First President of the Lebanese Court of Cassation, Judge Jean Daoud Fahd—is required, ‘in accordance with the Statute and the Rules’ of the Special Tribunal, to (relevantly):

- take any measures necessary to ensure enforcement of the orders; and
- enforce the orders or transmit them directly to the competent authorities for enforcement, without delay.

28. Defence counsel may invoke Article 5 either when the requests for assistance under Article 4 are not successful—that is, to compel the authorities to comply with requests—or where coercive measures are required as a first measure, for example, in the search and seizure of documents. Judicial intervention by the Special Tribunal’s Chambers, under Rule 77 (A), is required to trigger Lebanese judicial enforcement under Article 5 of the Memorandum.

29. Judge Fahd, however, has informed the Special Tribunal’s President that he himself has no enforcement powers and can only transmit the requests for assistance to ‘the relevant authorities for execution, including the Public Prosecutor [Prosecutor-General] of the Court of Cassation’.³⁸

³⁶ That argument is like defending a national constitution that guarantees full human rights to its citizens but contains no enforcement mechanism; in other words ‘a toothless tiger’.

³⁷ ‘At the request of a Party, the Pre-Trial Judge may issue such orders, summonses, subpoenas, warrants and transfer orders or requests as may be necessary for the purposes of an investigation or for the preparation or conduct of the proceedings’.

³⁸ STL-11-01/PT/TC, Decision on Motion Filed by Counsel for Mr. Badreddine and Order to Lebanon to Cooperate with the Special Tribunal, 13 January 2014, paras 20-21.

30. Rule 20 (A), ‘Non-compliance by Lebanon with a Tribunal Request or Order’, provides that:

Whenever the Lebanese authorities receive a request for information, cooperation or deferral under Rules 16 and 17, they shall provide such assistance without delay and in accordance with the timeframe specified in the request. Where, within thirty days of notification of the request to the Lebanese authorities, or such longer delay as is provided in the request, such authorities fail to comply with the request, the Parties may seek an order from the Pre-Trial Judge or a Chamber, as appropriate, to the Lebanese authorities to compel the requested assistance.

31. Defence counsel have chosen to seek the Trial Chamber’s intervention under Rule 20 (A) to make orders to Lebanon, rather than first obtaining an order from the Pre-Trial Judge under Rule 77 as set out in Article 5 of the Memorandum. Specifically, here, counsel for Mr. Sabra have requested orders from the Trial Chamber under Rule 20 (A).³⁹

32. Article 5 of the Memorandum does not apply to Rule 20 (A) orders made by the Trial Chamber,⁴⁰ and it is irrelevant to Rule 20 (A) applications. The Memorandum does not even refer to Rule 20 (A), which is the specific enforcement mechanism in cases of non-compliance by Lebanon with a request for assistance—such as one sent by the Head of the Defence Office pursuant to his Memorandum.

33. Unfortunately, nothing in the submissions made by the Head of the Defence Office on 4 March 2014 has addressed the concerns of the Trial Chamber relating to whether the Memorandum in its present form can ensure effective and timely cooperation by the Lebanese authorities with Defence counsel. The Head of the Defence Office submitted that ‘it’s not the MOU that is where the problem lies’ but ‘rather whether the Lebanese government is going to respond to your coercive orders’.⁴¹ The Trial Chamber disagrees. It would be more effective and efficient to have a mechanism that ensured the effective compliance of Lebanon’s obligations than forcing Defence counsel, by default, to make applications under Rule 20 (A) to enforce Defence requests for assistance.

³⁹ Second Motion Seeking the Cooperation of Lebanon – Telecommunication Information, 4 February 2013, made confidential by the Pre-Trial Judge’s Decision of 15 March 2013, paras 1, 21, 25, 44.

⁴⁰ The Trial Chamber is further confirmed in this view by the following factors. (1) The express reference in Article 7 of the Memorandum of Understanding to Rule 20, but not in Article 5. (2) The fact that Article 5 of the Memorandum of Understanding only formally provides for Lebanon, with respect to requests originating through the Defence Office, to enforce orders issued by the Pre-Trial Judge—and not the Trial Chamber or Appeals Chamber. Since this is plainly inconsistent with Rules 20, 130 (B), and 176 (B) of the Special Tribunal’s Rules, the Memorandum of Understanding cannot have been intended to regulate *all* cooperation matters between Lebanon and Chambers of the Special Tribunal. (3) The repeated assertions by the Head of the Defence Office that he is satisfied with the Memorandum of Understanding in its present form. (4) The concerns reported by the current Liaison Judge, Judge Fahd, described in the Trial Chamber’s decision of 13 January 2014.

⁴¹ Transcript of 4 March 2014, pp 57 and 60 (inviting the Trial Chamber to seek submissions from the *former* Minister of Justice of Lebanon).

34. So what therefore is the solution to the enforcement impasse in the Memorandum?

35. The Trial Chamber's view is that the Head of the Defence Office should renegotiate or amend the Memorandum of Understanding to ensure that it contains the necessary additional enforcement mechanisms for Defence requests for assistance. One possibility could be for the Head of the Defence Office to approach the Lebanese authorities to have designated an official with the necessary judicial enforcement powers to act in relation to Defence requests for assistance made under the Memorandum of Understanding. There could be other possibilities.

36. As the present Defence motions are under Rule 20 (A), they are outside the scope of the Memorandum of Understanding. The Trial Chamber will therefore consult with the Registrar as to the most appropriate and expeditious means to transmit its orders to Lebanon under Rule 20 (A), while preserving the confidential nature of certain Defence investigations. Three of the four annexed orders, it is emphasised, are not made *ex parte* the Prosecution. Moreover, Prosecution counsel attended meetings with the Trial Chamber and Defence counsel to finalise the wording of these orders. In these circumstances, it is difficult to see how using the offices of the Lebanese Prosecutor General, who does have judicial compulsive powers to enforce these orders, could compromise the integrity of Defence investigations. With respect to the fourth order, which is *ex parte* the Prosecution, the Trial Chamber expects all those concerned with implementing to take the necessary measures to ensure its confidential status.

DISPOSITION

FOR THESE REASONS, pursuant to Article 15 (1) of the Annex to United Nations Security Council Resolution 1757 (2007), and Rule 20 (A) of the Special Tribunal's Rules of Procedure and Evidence, the Trial Chamber:

ORDERS (a) the Government of the Lebanese Republic to cooperate with the Special Tribunal for Lebanon, within the deadlines and in the manner specified in the annexed orders and their schedules, by providing the information sought to counsel for Mr. Assad Hassan Sabra, through the Head of the Defence Office, (b) that the orders annexed as Annexes A-C remain confidential and *ex parte* the Legal Representatives for Victims until otherwise ordered; (c) that the order annexed as Annex D remains confidential and *ex parte* the Prosecution and the Legal Representatives for Victims until otherwise ordered; and

INSTRUCTS the Registrar to immediately notify the Government of the Lebanese Republic of this decision.

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

Dated 31 March 2014,
Leidschendam,
The Netherlands

David Re

Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy

