

**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

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**THE PROSECUTOR**

v.

**SALIM JAMIL AYYASH  
HASSAN HABIB MERHI  
HUSSEIN HASSAN ONEISSI  
ASSAD HASSAN SABRA**

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**DECISION ON SABRA DEFENCE MOTION SEEKING JUDICIAL NOTICE  
OF UNITED NATIONS FACT-FINDING MISSION AND UNHCR REPORTS**

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& Mr Alexander Milne

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## INTRODUCTION

1. The former Lebanese Prime Minister, Mr Rafik Hariri, and others were killed by a blast in Beirut, Lebanon on 14 February 2005. Eleven days later, a fact-finding mission established by the Secretary-General of the United Nations, and headed by Mr Peter FitzGerald, arrived in Lebanon. Mr FitzGerald reported to the Security Council on 24 March 2005.<sup>1</sup> On 7 April 2005, Security Council Resolution 1595 (2005)<sup>2</sup> established the United Nations International Independent Investigation Commission (UNIIC) as a fact-finding mission into the attack.<sup>3</sup> The UNIIC, between October 2005 and December 2008—before the establishment of the Special Tribunal—submitted eleven reports to the Security Council.<sup>4</sup>

2. Counsel for the Accused Mr Assad Hassan Sabra request the Trial Chamber to take judicial notice, under Rule 160 (A) of the Special Tribunal's Rules of Procedure and Evidence—of the

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<sup>1</sup> *Report of the Fact-finding Mission to Lebanon inquiring into the causes, circumstances and consequences of the assassination of former Prime Minister Rafik Hariri*, S/2005/203, 24 March 2005, prepared pursuant to the statement by the President of the United Nations Security Council (S/PRST/2005/4) of 15 February 2005.

<sup>2</sup> With the consent of the Government of the Lebanese Republic: 'the Lebanese Government approves the decision of the Security Council concerning the establishment of an international commission of inquiry into the assassination of former Prime Minister Rafik Al-Hariri, and that it is ready to cooperate with the commission within the framework of Lebanese sovereignty and of its legal system.' See Letter dated 29 March 2005 from the Chargé d'affaires a.i. of the Permanent Mission of Lebanon to the United Nations addressed to the Secretary-General, A/59/757, S/2005/208, 29 March 2005.

<sup>3</sup> 'Decides, consistent with the above-mentioned letter from the Chargé d'affaires a.i. of Lebanon, to establish an international independent investigation Commission ("the Commission") based in Lebanon to assist the Lebanese authorities in their investigation of all aspects of this terrorist act, including to help identify its perpetrators, sponsors, organizers and accomplices', S/RES/1595 (2005), p. 2 (1).

<sup>4</sup> *Report of the International Independent Investigation Commission established pursuant to Security Council resolution 1595 (2005)*, 20 October 2005, S/2005/662; *Second report of the International Independent Investigation Commission established pursuant to Security Council resolutions 1595 (2005) and 1636 (2005)*, 12 December 2005, S/2005/775; *Third report of the International Independent Investigation Commission established pursuant to Security Council resolutions 1595 (2005), 1636 (2005) and 1644 (2005)*, 14 March 2006, S/2006/161; *Fourth report of the International Independent Investigation Commission established pursuant to Security Council resolutions 1595 (2005), 1636 (2005) and 1644 (2005)*, 10 June 2006, S/2006/375; *Fifth report of the International Independent Investigation Commission established pursuant to Security Council resolutions 1595 (2005), 1636 (2005) and 1644 (2005)*, 25 September 2006, S/2006/760; *Sixth report of the International Independent Investigation Commission established pursuant to Security Council resolutions 1595 (2005), 1636 (2005) and 1644 (2005)*, 12 December 2006, S/2006/962; *Seventh report of the International Independent Investigation Commission established pursuant to Security Council resolutions 1595 (2005), 1636 (2005), 1644 (2005) and 1686 (2006)*, 15 March 2007, S/2007/150; *Eighth report of the International Independent Investigation Commission established pursuant to Security Council resolutions 1595 (2005), 1636 (2005), 1644 (2005), 1686 (2006) and 1748 (2007)*, 12 July 2007, S/2007/424; *Ninth report of the International Independent Investigation Commission established pursuant to Security Council resolutions 1595 (2005), 1636 (2005), 1644 (2005), 1686 (2006) and 1748 (2007)*, 28 November 2007, S/2007/684; *Tenth report of the International Independent Investigation Commission established pursuant to Security Council resolutions 1595 (2005), 1636 (2005), 1644 (2005), 1686 (2006) and 1748 (2007)*, 28 March 2008, S/2008/210; *Eleventh report of the International Independent Investigation Commission established pursuant to Security Council resolutions 1595 (2005), 1636 (2005), 1644 (2005), 1686 (2006), 1748 (2007) and 1815 (2008)*, 2 December 2008, S/2008/752.

content of all twelve reports, or alternatively, to take judicial notice of ‘facts of common knowledge’—of 155 selected paragraphs and 11 excerpts from summaries extracted from these twelve reports.<sup>5</sup> The Prosecution opposes the motion in its totality.<sup>6</sup>

### **SUBMISSIONS**

#### *Defence submissions*

3. Counsel for Mr Sabra ask the Trial Chamber to take judicial notice of the entirety of the twelve reports. Eleven are the UNIIC’s reports to the UN Security Council; the other is Mr FitzGerald’s report to the Secretary-General of his own fact-finding mission, which preceded the UNIIC’s creation.<sup>7</sup>

4. Defence counsel argue that the reports provide general information about the overall context at the time of the assassination; the initial investigation carried out by the Lebanese authorities into the crime; investigative leads; suspects; motives; the aftermath of the assassination; a chronology of events; and what they term ‘contacts’ of interest, in particular telephone contacts.<sup>8</sup> They submit that these facts, as recorded by the first fact-finding mission and the UNIIC, are relevant to understanding both the context of the assassination and the process of investigation. They also argue that the probative value of the reports is apparent from ‘the general circumstances in which these were prepared and from the identity of those persons responsible for preparing them.’<sup>9</sup>

5. An annex to the motion identifies the sections of each report said to be relevant. Counsel state that this list is illustrative rather than exhaustive, and that for the Trial Chamber to best appreciate the content of the reports, it should take judicial notice of them in their entirety rather than of excerpts.<sup>10</sup>

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<sup>5</sup> STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, F2364, Motion Seeking Judicial Notice of Reports of the United Nations International Independent Investigation Committee and the Fact Finding Mission to Lebanon, 8 December 2015.

<sup>6</sup> F2390, Prosecution Response to Sabra Defence’s “Motion Seeking Judicial Notice of Reports by the United Nations International Independent Investigation Committee and the Fact Finding Mission to Lebanon”, 21 December 2015.

<sup>7</sup> Sabra motion, paras 9, 11 and Annex B.

<sup>8</sup> Sabra motion, para. 12.

<sup>9</sup> Sabra motion, para. 15.

<sup>10</sup> Sabra motion, para. 14 and Annex A.

*Prosecution submissions*

6. The Prosecution opposes the motion. It argues that the purpose of the reports was to inform the UN Security Council and the public about the progress of the investigations. Although the existence of the reports may be common knowledge, their contents cannot be qualified as facts of common knowledge. Rather, the reports contain preliminary and subjective observations, and factual allegations subject to further investigation.<sup>11</sup>

7. The Prosecution further argues that Rule 160 (A) was not envisioned as a vehicle for speculation or case theories compiled in the course of an investigation to be elevated to the status of proven facts, let alone facts of common knowledge that are not subject to challenge at trial.<sup>12</sup> Moreover, the Sabra Defence does not define the specific facts it wants the Trial Chamber to judicially notice, nor does it establish their relevance to the proceedings.<sup>13</sup> It points out that it has, to date, presented material from the UNIIC and fact-finding reports in the form of witness testimony, witness statements and documents under Rule 154,<sup>14</sup> and (by inference) there is no reason why the Sabra Defence could not present relevant contents of the reports in the same manner.<sup>15</sup>

**APPLICABLE LAW**

8. The wording of Rule 160 (A) on judicial notice has a long history in international criminal law proceedings, deriving directly from Article 21 of the 1945 Charter of the International Military Tribunal of Nuremberg. The corresponding provisions in the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), and the Special Court for Sierra Leone (SCSL) are identical.<sup>16</sup> In accordance with Rule 3, the case-law of these

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<sup>11</sup> Prosecution response, paras 2-3, 8-9.

<sup>12</sup> Prosecution response, para. 10.

<sup>13</sup> Prosecution response, paras 12-13.

<sup>14</sup> Rule 154 permits the Trial Chamber to receive documents into evidence, subject to their relevance and probative value under Rules 149 (C) and (D).

<sup>15</sup> Prosecution response, para. 15.

<sup>16</sup> See Rules 94 (A) of the ICTY, ICTR and SCSL and Residual Special Court for Sierra Leone Rules of Procedure and Evidence and Rule 115 (A) of the Rules of Procedure and Evidence of the Mechanism for International Criminal Tribunals. These are identical to the first line of Article 21 of the *Charter of the International Military Tribunal - Annex to the Agreement for the prosecution and punishment of the major war criminals of the European Axis*, 8 August 1945.

international criminal courts and tribunals provides guidance in interpreting the ambit of the term ‘facts of common knowledge’.<sup>17</sup>

9. Under Rule 160 (A), the Special Tribunal is obliged to take judicial notice of all facts of common knowledge. The Trial Chamber has examined the case-law of other international criminal courts and tribunals, including the International Criminal Court (ICC), and has extracted the following relevant legal principles:

‘Common knowledge’

- encompasses facts which are common or universally known, and generally known within the territorial jurisdiction of a court or tribunal, which are not subject to reasonable dispute;<sup>18</sup>
- includes facts capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be called in question;<sup>19</sup>
- may take judicial notice of facts that amount to legal findings, or comprise elements of offences;<sup>20</sup> and

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<sup>17</sup> Rule 3 (A) requires the Trial Chamber to interpret the Rules (relevantly) consonant with ‘(iii) the general principles of international criminal law and procedure’.

<sup>18</sup> See *Prosecutor v. M. Nikolić*, IT-02-60/1-A, Decision on Appellant’s Motion for Judicial Notice, 1 April 2005 (*Nikolić* Decision). At para. 10 of that decision, the ICTY Appeals Chamber held that: ‘Facts of common knowledge under Rule 94 (A) of the Rules have been considered to encompass common or universally known facts, such as general facts of history, generally known geographical facts and the laws of nature, as well as those facts that are generally within a tribunal’s territorial jurisdiction.’ See also *Prosecutor v. Milutinović et al.*, IT-05-87-T, Decision on Prosecution Motion to Admit Documentary Evidence, 10 October 2006, para. 12 (*Milutinović* Decision); *Prosecutor v. B. Simić*, IT-95-9-A, Decision on Blagoje Simić’s Motion for Admission of Additional Evidence, Alternatively for Taking of Judicial Notice, 1 June 2006, para. 25 (*Simić* Appeal Decision); *Prosecutor v. Karemera et al.*, ICTR-98-44-AR73(C), Decision on Prosecutor’s Interlocutory Appeal of Decision on Judicial Notice, 16 June 2006, paras 22, 29 (*Karemera* Appeal Decision); *The Prosecutor v. Semanza*, ICTR-97-20-A, Judgement, 20 May 2005, para. 194 (*Semanza* Appeal Judgement); *The Prosecutor v. Rwamakuba*, ICTR-98-44C-T, Decision on Admission of Exhibits, 5 April 2006, para. 6 (*Rwamakuba* Decision); *Prosecutor v. Marijačić and Rebić*, IT-95-14-R77.2, Decision on Prosecution Motion for Judicial Notice and Admission of Evidence, 13 January 2006, p. 3 (*Marijačić and Rebić* Decision); *Prosecutor v. Norman et al.*, SCSL-2004-14-AR73, Fofana - Decision on Appeal against “Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence”, 16 May 2005, para. 36 (*Norman* Decision); *The Prosecutor v. Bagosora et al.*, ICTR-98-41-T, Decision on the Prosecutor’s Motion for Judicial Notice Pursuant to Rules 73, 89, and 94, 11 April 2003, para. 44 (*Bagosora* Decision).

<sup>19</sup> *Prosecutor v. Bemba et al.*, ICC-01/05-01/13-1249, Decision on Prosecution Motion for Clarification of Rule 68(3) Direction in Conduct of Proceedings Decision, 15 September 2015, para. 5 (*Bemba* Decision of 15 September 2015) holding that “‘facts of common knowledge’ include facts which are capable of ready determination by resort to sources whose accuracy cannot reasonably be questioned”; *The Prosecutor v. Semanza*, ICTR-97-20-I, Decision on the Prosecutor’s Motion for Judicial Notice and Presumptions of Facts Pursuant to Rules 94 and 54, 3 November 2000, para. 24 (*Semanza* Trial Decision); *Norman* Decision, para. 36.

<sup>20</sup> Some chambers have taken judicial notice of facts of common knowledge that may amount to a legal finding: see *Karemera* Appeal Decision, paras 25-26, 29, 31, 35 (judicial notice of the existence of widespread or systematic attacks against a civilian population based on Tutsi ethnic identification, the existence of a non-international armed conflict, the

- do not attest to the criminal responsibility of an accused.<sup>21</sup>

*In relation to United Nations and other public documents*

- judicial notice of the existence and authenticity of United Nations documents can be taken without taking judicial notice of the contents of the documents;<sup>22</sup>
- the contents of a document do not become a generally known or notorious fact just because of their generation by a non-judicial body of the United Nations;<sup>23</sup> and
- a chamber may only take judicial notice of facts in the documents, not of the documents themselves.<sup>24</sup>

*Generally*

- whether a fact qualifies as a ‘fact of common knowledge’ is a legal question;<sup>25</sup>
- the moving party must clearly specify which facts should be considered for judicial notice and that they are indeed facts of common knowledge;<sup>26</sup>
- a fact which the requesting party requests to be judicially noticed must be relevant to the case against an accused;<sup>27</sup> and

existence of named groups protected by the Genocide Convention, and the occurrence of genocide in Rwanda in 1994); *Norman* Decision, para 36 (that the existence of an armed conflict in Sierra Leone was ‘a notorious fact of history’ and to contest this was ‘frivolous’) and, at para. 39, acknowledging this did not draw any conclusion about the individual criminal responsibility of the Accused; *Semanza* Appeal Judgement, para. 198 and *Semanza* Trial Decision, Annex A (taking judicial notice of the internal nature of the conflict in Rwanda); *Bagosora* Decision, Annex 1 (taking judicial notice of the existence of widespread or systematic attacks against a civilian population). Other chambers have taken a different approach: see *Prosecutor v. B. Simić et al.*, IT-95-9-PT, Decision on the Pre-Trial Motion by the Prosecution requesting the Trial Chamber to take judicial notice of the international character of the conflict in Bosnia-Herzegovina, 25 March 1999, p. 5 (*Simić* Trial Decision) holding that ‘Rule 94 is intended to cover facts and not legal consequences inferred from them’ and declining to take judicial notice that the armed conflict was international, and *Prosecutor v. M. Stanisić*, IT-04-79-PT, Decision on Judicial Notice, 14 December 2007, paras 20, 27 (*Stanisić* Decision) (declining to take judicial notice of the existence of an armed conflict across the entire territory of Bosnia and Herzegovina in 1992 and that there existed a widespread and systematic attack across the entirety of the Republika Srpska in that country).

<sup>21</sup> *Norman* Decision, para. 28 (d).

<sup>22</sup> *Semanza* Trial Decision, para. 38; *Bagosora* Decision, para. 57.

<sup>23</sup> *Prosecutor v. Prlić et al.*, IT-04-74-PT, Decision on Prosecution Motion for Judicial Notice of Facts of Common Knowledge and Admission of Documentary Evidence Pursuant to Rules 94 (A) and 89 (C), 3 February 2006, p. 6 (*Prlić* Decision).

<sup>24</sup> *Milutinović* Decision, para. 20; *The Prosecutor v. Bizimungu*, ICTR-99-50-I, Decision on Prosecution’s motion for judicial notice pursuant to Rules 73, 89 and 94, 2 December 2003, para. 26 (*Bizimungu* Decision).

<sup>25</sup> *Karemera* Appeal Decision, para. 23.

<sup>26</sup> *Milutinović* Decision, para. 13.

<sup>27</sup> *Karemera* Appeal Decision, para. 36; *Semanza* Appeal Judgement, para. 189; *Nikolić* Decision, para. 17; *Prosecutor v. Popović*, IT-05-88-T, Decision on Prosecution Motion for Judicial Notice of Facts of Common Knowledge pursuant to Rule 94 (A), 26 September 2006, para. 11 (*Popović* Decision).

- once a chamber has taken judicial notice of a fact of common knowledge, Rule 160 (A)<sup>28</sup> ‘normally implies that such facts *cannot* be challenged during trial’.<sup>29</sup>

10. The Trial Chamber has been guided by these principles in deciding the motion filed by counsel for Mr Sabra.

*Examples in international case-law of judicial notice*

11. The Trial Chamber has examined the numerous examples of ‘facts of common knowledge’ of which judicial notice has been taken in relevant international criminal law decisions and judgments. The categories include: public documents—national and international—such as legislation and treaties; court records; facts leading to legal qualifications, such as the existence of an armed conflict and of genocide; and relevant historical facts.

12. The public documents include UN Security Council and General Assembly Resolutions, UN fact-finding reports, reports of the UN Secretary-General, and declarations and statements from the European Community and the Conference on Security and Cooperation in Europe.<sup>30</sup> Specific examples at the ICTR include: reports by the UN Secretary-General, the UN High Commissioner for Human Rights, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, and the UN Independent Commission of Experts; the Arusha Peace Accords; Rwanda’s laws including its constitution; the Genocide Convention; and the Additional Protocols to the Geneva Conventions.<sup>31</sup>

13. As examples of historical facts, the *Karamera* Appeal decision cited ‘notorious historical events and phenomena, such as, for instance the Nazi Holocaust, the South African system of

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<sup>28</sup> Or the equivalent Rule at other international criminal courts and tribunals.

<sup>29</sup> *Nikolić* Decision, para. 10.

<sup>30</sup> *Prosecutor v. Delalić et al.*, IT-96-21-T, Judgement, 16 November 1998, para. 90, stating that it had ‘taken notice of many public documents which bear substantial authority - in particular, resolutions of the United Nations Security Council and General Assembly, the Final Report of the United Nations Commission of Experts, reports of the United Nations Secretary-General, and declarations and statements from the European Community and the Conference on Security and Cooperation in Europe (CSCE)’, e.g. *Final Report of the Commission of Experts Established Pursuant to Security Council Resolution 780 (1992)*, S/1994/674, 27 May 1994. However, it appears that the documents were admitted through witnesses rather than under Rule 94 (A) of the ICTY Rules of Procedure and Evidence.

<sup>31</sup> See *The Prosecutor v. Karemera et al.*, ICTR-98-44-T Decision on the Prosecutor’s Motion for Judicial Notice, 30 April 2004, paras 40-41 and Annex I (*Karemera* Trial Decision); *Bagosora* Decision, para. 57 and Annex 2; *Semanza* Trial Decision, para. 38 and Annex B.

apartheid, wars, and the rise of terrorism'.<sup>32</sup> To place an accused's acts and omissions in the context of Rwanda in 1994, the ICTR, in one case, took judicial notice of socio-political and historical background facts relating to the widespread and systematic attacks against the Tutsi civilian population.<sup>33</sup> In another, it took judicial notice of a number of wide-ranging facts including the 1959 abolition of the monarchy, the 1973 *coup d'état*, the foundation of political movements and establishment of political youth wings, the ethnic identification of Rwandan citizens, the death of the Rwandan President on 6 April 1994, and the appointment of a Prime Minister of the Rwandan Interim Government in April 1994.<sup>34</sup> The ICTR has also taken judicial notice that Rwanda was a party to the 1948 Genocide Convention and the Geneva Conventions of 1949,<sup>35</sup> the Rwandan administrative structures, the office of the prefect and bourgmestre, and the ethnic identification of Rwandan citizens.<sup>36</sup>

14. At the ICTY, a Trial Chamber *proprio motu* took judicial notice of Bosnia and Herzegovina proclaiming its independence and its subsequent recognition by the European Community and the United States of America.<sup>37</sup>

15. In a contempt trial, an ICC Trial Chamber took judicial notice of the 'existence and authenticity' of relevant ICC court records, of the audio-visual recording and transcripts of court hearings.<sup>38</sup>

16. Mixed legal and factual findings have also qualified for judicial notice, although some chambers have refused to do this. For example, at the SCSL, judicial notice was taken of the fact that an armed conflict occurred in Sierra Leone between 1991 and 2002, and the involvement of three named armed groups in the conflict.<sup>39</sup> The ICTR Appeals Chamber also allowed judicial notice to be taken of the internal nature of the conflict in Rwanda as a fact of common knowledge that is beyond

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<sup>32</sup> *Karamera* Appeal Decision, para. 30.

<sup>33</sup> *Semanza* Trial Decision, para. 29 and Annex A.

<sup>34</sup> *Bagosora* Decision, para. 45 and Annex 1.

<sup>35</sup> *The Prosecutor v. Karemera*, ICTR-98-44-R94, Decision on the Prosecution Motion for Judicial Notice, 9 November 2005; *The Prosecutor v. Kajelijeli* ICTR-98-44A-T, Decision on the Prosecutor's Motion for Judicial Notice pursuant to Rule 94 of the Rules, 16 April 2002, Annex A (*Kajelijeli* Decision); *The Prosecutor v. Nzabonimana*, ICTR-98-44D, Decision on Prosecutor's motion for judicial notice, 29 April 2009, para. 6 (*Nzabonimana* Decision).

<sup>36</sup> *Kajelijeli* Decision.

<sup>37</sup> *Simić* Trial Decision, p. 5.

<sup>38</sup> *Bemba* Decision of 15 September 2015, paras 5-6; *Prosecutor v. Bemba et al.*, ICC-01/05-01/13-1473, Decision on Request for Judicial Notice, 9 November 2015, paras 4-5.

<sup>39</sup> *Norman* Decision, paras 34-40.

reasonable dispute.<sup>40</sup> An ICTR Trial Chamber took judicial notice of the existence of ‘widespread or systematic attacks [...] directed against a civilian population’ in 1994,<sup>41</sup> but another refused to take judicial notice of ‘legal conclusions’.<sup>42</sup>

17. In *Karemera*, the ICTR Appeals Chamber also allowed judicial notice of the fact that genocide occurred in Rwanda in 1994—although partly in the context of accepting facts already judicially adjudicated in other trials. Similarly, judicial notice was allowed of the existence of named groups protected by the Genocide Convention, the widespread and systematic attacks against a civilian population based on Tutsi ethnic identification, and that the conflict was non-international in nature. The Appeals Chamber held that there was no reasonable basis for disputing that, during the 1994 attacks, some Rwandan citizens killed or caused serious bodily or mental harm to persons perceived to be Tutsi. It found that these facts were consistent with the universal consensus of historic accounts included in sources such as encyclopaedias and history books.<sup>43</sup>

18. International criminal courts and tribunals have also declined to take judicial notice of proposed facts, for example, at the ICTR, of whether specified people have been accused of committing crimes, or the date of a particular massacre.<sup>44</sup> The ICTR also refused to take judicial notice of the interpretation of laws; the contents of entries in *Encyclopedia Britannica*, certain non-governmental organisation reports,<sup>45</sup> and of UN and Rwandan official documents;<sup>46</sup> that there was a non-international armed conflict in Rwanda in 1994;<sup>47</sup> and that only Tutsis were attacked during the conflict.<sup>48</sup>

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<sup>40</sup> *Semanza* Appeal Judgement, para. 198; *Semanza* Trial Decision, Annex A.

<sup>41</sup> *Bagosora* Decision, Annex 1.

<sup>42</sup> See *Bagosora* Decision, paras 19, 64-67, such as that Rwandan citizens committed genocide against the Tutsis, and engaged in crimes against humanity or violations of common article 3 of the Geneva Conventions.

<sup>43</sup> *Karemera* Appeal Decision, paras 25, 29, 31, 35; see also *Nzabonimana* Decision, para. 6.

<sup>44</sup> *Rwamakuba* Decision, paras 5-7, holding (i) that two persons ‘have not been accused of crimes in Butare in any other document before the Tribunal, and, up until the testimony of Witness XV in the instant trial, have never been associated with the Accused’; and (ii) that ‘the Kabakobwa massacre was on 22 April 1994 and that the Witness HF could not have been a victim of it as this witness testified during the trial’. The Trial Chamber held that these facts do not fall under Rule 94 of the ICTR Rules as facts of indisputable notoriety or facts that had been finally determined in the proceedings before the Tribunal.

<sup>45</sup> *Karemera* Trial Decision, paras 33-35.

<sup>46</sup> *Bizimungu* Decision, paras 25-26.

<sup>47</sup> See *Kajelijeli* Decision, para. 17, holding that the ‘proposition is reasonably disputable’ on the sources cited; *Karemera* Trial Decision, para. 11. The *Semanza* Appeal Judgement (para. 198) and the *Karemera* Appeal Decision (para. 29) subsequently decided otherwise.

<sup>48</sup> *Kajelijeli* Decision, para. 19.

19. The SCSL Appeals Chamber held that judicial notice could not be taken that all the warring participants were required to comply with international humanitarian law (as this was a proposition of law not of fact), of particular positions held within a warring party, and the launching of a specific military action by that party.<sup>49</sup>

20. At the ICTY, judicial notice was declined of the fact that a report relating to the Srebrenica massacre was released before an accused person testified at trial, of the provisions of Yugoslav military manuals, of the location of mass graves,<sup>50</sup> of the contents of medical and forensic psychiatric reports,<sup>51</sup> and of maps and aerial photographs,<sup>52</sup> ‘public documents’ such as letters from political leaders and some international agreements.<sup>53</sup> The ICTY also declined to take judicial notice of UN General Assembly resolutions, reports and letters of the Security Council, General Assembly and Secretary-General and Special Rapporteur reports.<sup>54</sup> And, in a contempt trial, an ICTY Trial Chamber refused to take judicial notice of newspaper articles, ICTY documents and Croatian laws.<sup>55</sup> ICTY Trial Chambers have refused to take judicial notice that a conflict was of an international character,<sup>56</sup> that a state of armed conflict existed in the entire territory of Bosnia and Herzegovina, and that a widespread and systematic attack existed in the entirety of the Republika Srpska.<sup>57</sup> The ICTY also declined to take judicial notice of a proposed Prosecution fact that Bosnian Serb political and military leaders had implemented a plan in 1992 and 1993 of forcible population removal commonly described as ‘ethnic cleansing’.<sup>58</sup>

21. It is evident that the nature of the facts for which judicial notice has been taken varies between cases. Notwithstanding some apparent inconsistencies—such as some chambers taking judicial notice of facts that prove legal findings such as the nature of a conflict, while others have

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<sup>49</sup> *Norman* Decision, paras 41, 43, 45.

<sup>50</sup> *Nikolić* Decision, paras 23, 31, 32, 35, 40, holding at para. 34 that ‘military rules or regulations, in particular when classified as a “military secret” and/or “strictly confidential,” are not facts of common knowledge’ within the Rule.

<sup>51</sup> *Simić* Appeal Decision, para. 25.

<sup>52</sup> *Milutinović* Decision, paras 20-21.

<sup>53</sup> *Milutinović* Decision, paras 27-28, 52, e.g. the Rambouillet Agreement, NATO documents, the Constitution of the Socialist Federal Republic of Yugoslavia (SFRY), and ‘Rules of the SFRY Presidency’. These, and numerous similar documents, were admitted into evidence under the general provisions for admitting evidence.

<sup>54</sup> *Prlić* Decision, pp 3, 7.

<sup>55</sup> But admitted them into evidence under the general provisions in Rule 89 (C); *Marijačić and Rebić* Decision, pp 2-4 and disposition.

<sup>56</sup> *Simić* Trial Decision, p. 5.

<sup>57</sup> *Stanišić* Decision, paras 20, 27.

<sup>58</sup> *Popović* Decision, paras 16-19.

refused to take this approach—these examples assist in determining the boundaries of what may be accepted as ‘facts of common knowledge’.

### DISCUSSION

22. Three types of facts emerge from the Defence motion, namely (i) contested facts of matters in dispute in the trial of which judicial notice cannot be taken, (ii) uncontested and incontrovertible facts that provide background or context, of which the Trial Chamber may take judicial notice as ‘facts of common knowledge’, and (iii) facts that are not ‘facts of common knowledge’, are listed in Annex A to the motion, but are not necessarily in dispute and may thus be subject to agreement between the Parties as to evidence (agreed facts) under Rule 122. A fourth category is of miscellaneous facts in the reports that are not listed in Annex A to the motion but on which agreement could nevertheless be reached.

*(i) Contested facts regarding matters in dispute*

23. Many of the ‘facts’ proposed by the motion relate to matters highly contested between the Parties that are central to the Trial Chamber’s determination of the charges against the individual Accused. These include the cause of the blast on 14 February 2005, the alleged role of Mr Ahmad Abu Adass in the attack, the content of UNIIC interviews with witnesses, the role of Syrian intelligence in Lebanon at the time and, possibly in Mr Hariri’s death, the role of others the UNIIC suspected may have been involved in planning and carrying out the attack, and the general conclusions—between 2005 and 2008—of the two commissions as to the progress of their investigations, and responsibility for the explosion. The reports even reached conclusions as to culpability.

24. Taking judicial notice of such contested facts—or the entirety of the reports of these two fact-finding missions—would be absurd. The Trial Chamber is holding a trial to determine whether Accused persons are guilty as charged in the consolidated indictment; it is not reviewing fact-finding reports or conducting a general inquiry. The trial features numerous disputed issues, upon some of which the UNIIC reached its own conclusions. The conclusions of these fact-finding reports cannot usurp the Trial Chamber’s own judicial fact-finding function, which necessarily precedes its verdict of guilt or an acquittal. These sorts of matters are, indisputably, not capable of being ‘facts of common knowledge’.

25. The Trial Chamber agrees with the assessment of the SCSL Appeals Chamber in *Norman*, that:

Whether or not the source of a document is a political body, and more particularly whether that body was party to the establishment of the Special Court, is of no relevance. There is no legal reason for any difference in applying the same test to all documents. It must be up to the Trial Chamber to determine whether the content satisfies the test of “beyond reasonable dispute”. It therefore might be possible that some factual assertions in a UN Security Council Resolution can be judicially noticed and others cannot. The question of whether a fact stated in a Security Council resolution is to be judicially noticed will ultimately depend on whether it is capable of reasonable dispute. It follows that there is no point in judicially noticing the contents of a document as such. Facts asserted within Security Council Resolutions, Secretary General Reports and other reports by reputable organizations may be the subject of judicial notice. However, this cannot be achieved by noticing the contents of the whole resolution or report, which may contain hundreds of factual assertions, mostly irrelevant. The proper procedure would be to extract from the resolutions or reports the factual propositions which a party wants the Court to notice. It will then be for the Trial Chamber, after considering any defence material, to decide whether the extracted proposition really is incontrovertible.<sup>59</sup>

26. This aspect of the motion is accordingly dismissed.

(ii) *Table A - judicial notice of facts of common knowledge in the fact-finding reports under Rule 160 (A)*

27. As was recognised at the other international criminal courts and tribunals, what is common knowledge varies between countries, regions, cultures, religions and languages. Facts of common knowledge in one country may be mysterious to citizens of neighbouring countries. The Trial Chamber has therefore attempted to glean what may be common knowledge in Lebanon, and internationally, for the specific purposes of these proceedings.

28. Some of the facts proposed are obviously ‘facts of common knowledge’, such as those relating to the existence of the UNIIC and its mandate, the historical relationship between Lebanon and Syria, the fact of Mr Hariri’s death, and some of the political events that occurred at the time that are well-known to the Lebanese public. These facts provide background or context to the material facts pleaded in the consolidated indictment. The general political situation in Lebanon in late 2004 and early 2005, for example, would also have been of common knowledge in Lebanon. The Trial

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<sup>59</sup> *Norman* Decision, para. 49.

Chamber will take judicial notice of these general and specific facts. These are facts of which it could be satisfied beyond reasonable dispute. These are listed in Table A below.

*(iii) Table B - possible agreements as to evidence under Rule 122*

29. Alternatively, there are other facts in the FitzGerald and UNIIIC reports that are listed in Annex A to the Defence motion, that could not be considered to be ‘facts of common knowledge’ but may be subject to agreement between the Parties under Rule 122.<sup>60</sup> These include some findings or observations from the UNIIIC reports that have featured in evidence in the proceedings, but may not now be contested between the Parties. For example, the investigatory work of the two fact-finding commissions, their relationship with the Syrian Government, some non-contested facts relating to Mr Abu Adass such as his background and whether he was under surveillance by the Lebanese authorities, the role of Lebanese personnel in the investigation, and some challenges faced by the UNIIIC in its work. These are listed in Table B below.

30. The Trial Chamber could accept agreements as to evidence between individual Accused and the Prosecution; they need not be between all Accused persons and the Prosecution.

31. The Trial Chamber therefore orders the Parties—within seven days of the filing of this decision—to meet to decide whether they can agree to accept these facts, and to inform the Trial Chamber of the outcome of their discussion.

*(iv) Other miscellaneous facts in the reports that are not listed in Annex A to the motion*

The Trial Chamber will not accept any other facts from the fact-finding reports as ‘facts of common knowledge’. However, in an attempt to narrow the issues in dispute between the Prosecution and Defence, the Trial Chamber invites the Parties to re-examine the reports and to propose agreements on facts under Rule 122 in relation to any facts that were not listed in the annex to the Defence motion or included in Table B below.

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<sup>60</sup> Rule 122 provides that ‘the Prosecutor and the Defence may agree that an alleged fact, which is contained in the charges, the contents of a document, the expected testimony of a witness or elsewhere is not contested, and, accordingly, a Chamber may consider such alleged fact as being proved, unless the Chamber is of the opinion that a more complete presentation of the alleged facts is required in the interests of justice, in particular the interests of the victims’

**DISPOSITION**

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

**TAKES JUDICIAL NOTICE UNDER RULE 160 (A)** of the facts listed in Table A;

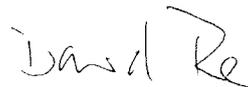
**ORDERS THE PARTIES** to meet to attempt to reach agreements as to evidence under Rule 122 in relation to the facts listed in Table B and to inform the Trial Chamber of the outcome of their discussions within seven days of the filing of this decision; and

**INVITES THE PARTIES** to re-examine the facts in the United Nations reports referred to in this decision and to propose agreements as to evidence, under Rule 122, in relation to any other relevant facts.

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

Leidschendam,  
The Netherlands

26 July 2016



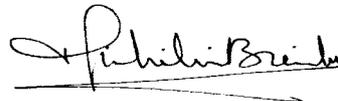
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Judge David Re, Presiding



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Judge Janet Nosworthy



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Judge Micheline Braidy

**Table A**  
**Facts for judicial notice under Rule 160 (A)**

**Note:** Table A references paragraphs in the official reports of United Nations Fact-finding Mission and the United Nations International Independent Investigation Commission. The versions of these reports on the Special Tribunal’s website—referenced in the annex to the motion—have some minor stylistic differences with the official reports.

<b>Fact Finding Mission Report<sup>61</sup> - 24 March 2005</b>		
	<b>Page/Paragraph Number</b>	<b>Text Content</b>
1.	Page 2, Executive Summary	On 14 February 2005, an explosion in downtown Beirut killed [20] <sup>62</sup> persons among them the former Prime Minister Rafik Hariri. The United Nations Secretary-General dispatched a Fact-finding Mission to Beirut to inquire into the causes, the circumstances and the consequences of this assassination. Following its arrival in Beirut on 25 February, the Mission met with a large number of Lebanese officials and representatives of different political groups, performed a thorough review of the Lebanese investigation and legal proceedings, examined the crime scene and the evidence collected by the local police, collected and analysed samples from the crime scene, and interviewed some witnesses in relation to the crime.
2.	Page 5, paragraph 6	The Syrian Arab Republic had maintained a military presence in Lebanon since May 1976 with the consent of the Lebanese Government. It also exerted political influence in Lebanese affairs, an influence that has significantly increased since 1990 and was sanctioned in 1991 by a treaty of “Brotherhood, Cooperation and Coordination”.
3.	Page 5, paragraph 8	Mr. Lahoud’s term in office should have ended in 2004, with no possibility of renewal according to the Constitution. <sup>63</sup>
4.	Page 6, paragraph 11	On 2 September 2004, the Security Council had adopted its resolution 1559 (2004), which, among other provisions, called

<sup>61</sup> *Report of the Fact-Finding Mission to Lebanon inquiring into the causes, circumstances and consequences of the assassination of the former Prime Minister Rafik Hariri*, 24 March 2005, S/2005/203.

<sup>62</sup> The consolidated indictment alleges that 22 people, including Mr Hariri, were killed in the attack. The Trial Chamber does not take judicial notice of the precise number of people killed in the explosion.

<sup>63</sup> Former Lebanese President Emile Lahoud.

		upon “all remaining foreign forces to withdraw from Lebanon” and declared “its support for a free and fair electoral process in Lebanon’s upcoming presidential elections conducted according to Lebanese constitutional rules devised without foreign interference or influence”.
<b>First UNIIC Report<sup>64</sup> - 20 October 2005</b>		
5.	Page 5, Summary	<p>The Security Council, by its resolution 1595 (2005) of 7 April 2005, decided to establish an International Independent Investigation Commission based in Lebanon to assist the Lebanese authorities in their investigation of all aspects of the terrorist attack which took place on 14 February 2005 in Beirut that killed former Lebanese Prime Minister Rafik Hariri and others, including to help identify its perpetrators, sponsors, organizers and accomplices.</p> <p>The Secretary-General notified the Council that the Commission began its full operations with effect from 16 June 2005. The Commission was granted an extension to the initial period of investigation mandated by the Council, until 26 October 2005.</p> <p>During the course of its investigation, the Commission received extensive support from the Government of Lebanon and benefited from expert inputs from a number of national and international entities.</p>
6.	Page 14, paragraph 23	The Syrian Arab Republic has long had a powerful influence in Lebanon. During the Ottoman Empire, the area that became Lebanon was part of an overall administrative territory governed from Damascus. When the countries were established in the aftermath of the First World War, Lebanon was created from what many Arab nationalists considered to be rightfully part of Syria. Indeed, since the countries became independent, they have never had formal diplomatic relations. <sup>65</sup>
7.	Pages 14-15, paragraph 24	Syrian troops were invited into Lebanon by Lebanese President Suleiman Franjeh in May 1976 in the early stages of the latter’s civil war. In the Taif Agreement, reached among members of the Lebanese Parliament, that ended the civil war in 1989, inter alia,

<sup>64</sup> *Report of the International Independent Investigation Commission established pursuant to Security Council resolution 1595 (2005)*, 20 October 2005, S/2005/662.

<sup>65</sup> This sentence is accurate as of the date of the report.

		Lebanon thanked the Syrian Arab Republic for its assistance in deploying its forces in Lebanon. A provision of the agreement called for Lebanon and the Syrian Arab Republic to determine jointly the future redeployment of those forces. A later agreement reached between the two countries in May 1991 regarding cooperation restated that provision. Syrian forces withdrew in May 2005 in compliance with Security Council resolution 1559 (2004).
8.	Page 24, paragraph 51	On 14 February 2005, General Ali Al-Hajj was the Head of the Internal Security Forces (ISF). He was promoted to the post in November 2004[.]
<b>Seventh UNIIC Report<sup>66</sup> - 15 March 2007</b>		
9.	Page 12, paragraph 58	Negotiations unfolded during that period <sup>67</sup> between Hariri and other individuals, including potential candidates, and intense interest was focused upon the draft electoral law, including the drawing of electoral district boundaries in Lebanon and, in particular, in Beirut.

**Table B**  
**Suggested possible agreements as to evidence under Rule 122**

<b>Fact Finding Mission Report – 24 March 2005</b>	
<b>Page/Paragraph Number</b>	<b>Text Content</b>
Page 2, Executive Summary	After gathering the available facts, the Mission concluded that the Lebanese security services and the Syrian Military Intelligence bear the primary responsibility for the lack of security, protection, and law and order in Lebanon.
Page 5, paragraph 7	The Syrian presence in Lebanon remained generally unchallenged until Israel withdrew its forces from South Lebanon in 2000. Political figures started to voice their opposition to the continued Syrian influence and called for the implementation of the remaining provisions of the Taif Agreement (of 1989), which, if implemented, would have substantially reduced the Syrian presence in Lebanon to a possible complete pull-out.

<sup>66</sup> *Seventh report of the International Independent Investigation Commission established pursuant to Security Council resolutions 1595 (2005), 1636 (2005), 1644 (2005) and 1686 (2006)*, 15 March 2007, S/2007/150.

<sup>67</sup> The period in question is 'the last months of [Mr] Hariri's life'. See p. 11, para. 57 of the *Seventh report of the UNIIC*.

Page 5, paragraph 8	However, during 2004, certain voices in Lebanon suggested amending the Constitution in order to extend the term of Mr. Lahoud.
Page 6, paragraph 13	On 2 October, <sup>68</sup> former Minister Marwan Hemadeh narrowly escaped death when a bomb exploded next to his car. His guard was killed in the explosion.
Page 13, paragraph 40	Mr. Abu Adas, a male of Palestinian origin, was born in Jeddah (Saudi Arabia) on 29 August 1982 and came to Lebanon with his family in 1991. He is the son of Taysir Abu Adas and Nehad Moussa Nafeh.
<b>First UNIIC Report – 20 October 2005</b>	
Page 5, Summary	The main lines of investigation of the Commission focused on the crime scene, technical aspects of the crime, analysis of telephone intercepts, the testimony of more than 500 witnesses and sources, as well as the institutional context in which the crime was committed.
Page 12, paragraph 7	Shortly after the signing of the memorandum of understanding, the Lebanese authorities transmitted to the Commission an 8,000-page case docket containing all the information and evidence collected since 14 February 2005.
Page 12, paragraph 8	The Commission established close links with the Lebanese security and judicial authorities. Regular discussions were held, particularly with the judicial authorities, to exchange updated information and files, share results and plan for the emerging phases of the investigation. Most of the witnesses interviewed by the Commission were summoned through the Lebanese judicial and security authorities.
Page 15, paragraph 25	The Commission's investigation has confirmed what many in Lebanon have long asserted, that senior Syrian intelligence officials had a powerful day-to-day and overall strategic influence

<sup>68</sup> 2 October 2004.

	on the governance of Lebanon.
Page 21, paragraph 46	The file was handed over to the new Investigative Judge, Judge Abou Arraj. Judge Abou Arraj was Investigative Judge for the investigation from 22 February to 23 March 2005. He was appointed by First Judge Tanios Khoury, at the Supreme Council, and the file was registered at Abou Arraj's office on 22 February 2005[.]
Page 24, paragraph 48	On 23 March 2005, Judge Abou Arraj stepped down from the post of Investigative Judge.
Page 30, paragraph 64	In March 2005, the present Head of ISF, General Ashraf Rifi, prepared a report on the initial measures taken by the competent Lebanese authorities at the scene of the crime, which was submitted to the United Nations Fact-finding Mission.
Page 35, paragraph 81	ISF visited Mr. Abu Adass's house, accompanied by a member of Al-Ahbash, and seized a computer, as well as a number of compact disks[.]
Page 37, paragraph 89	<p>The first month after the Secretary-General declared the Commission operational was focused on updating the investigators on the current status of the investigation, including an assessment of measures undertaken by the Lebanese authorities. Much time was spent on analysis of material handed over to the Commission by the Prosecutor General, followed by interviews for clarification with key witnesses, based on written materials on the following topics:</p> <ul style="list-style-type: none"> <li>• Reconstruction of actions and whereabouts of Mr. Hariri prior to the blast</li> <li>• Findings and results from activities of the Lebanese authorities undertaken at the crime scene and adjacent areas</li> <li>• Tampering with evidence</li> <li>• Roadworks at the scene prior to the blast</li> <li>• The Abu Adass track</li> <li>• The Mitsubishi Canter van</li> <li>• Collection and analysis of telephone lists</li> <li>• Collection and analysis of closed-circuit television (CCTV) material, videos and photos collected from a diverse set of possessors depicting the scene prior to and after the blast</li> <li>• Financial transactions</li> </ul>

Page 42, paragraph 119	One of the first measures General Al-Hajj undertook after being appointed to the post as the head of the Internal Security Forces was to reduce the number of State security personnel around Mr. Hariri from a level of 40 down to 8 in November 2004.
Page 55, paragraph 185	The Commission also submitted a request for details of any organization within Lebanon that may have had Mr. Abu Adass under observation between September 2004 and January 2005. The files obtained in response to this request confirmed that no department within Lebanon had had Mr. Abu Adass under any observation during the relevant time period.
Page 61, paragraph 217	It is also the Commission's view that the context of the assassination of Mr. Hariri was one of extreme political polarization and tension.
<b>Second UNIIC Report<sup>69</sup> - 12 December 2005</b>	
Page 7, paragraph 26	Pursuant to that agreement, between 5 and 7 December 2005 five Syrian officials were interviewed as suspects. Each interview was conducted in the presence of one Syrian and one international lawyer and a sworn international interpreter. After the interviews, the interviewees signed their statements and DNA samples were taken from them. The questioning of those individuals touched on a broad range of issues related to the evidence that the Commission had gathered in its investigation.
Page 11, paragraph 46	As in any criminal inquiry of this nature, the investigation has sought a comprehensive understanding of all possible perpetrators, modus operandi and motives. To that end, the Commission is in the process of reviewing a substantial volume of material from Government agencies regarding their surveillance operations; interviewing witnesses to examine more thoroughly the relationships between Mr. Hariri and various significant individuals; continuing the investigation into Mr. Abu Adass; enhancing telephone analysis; and pursuing any leads regarding potential motives or perpetrators.

<sup>69</sup> *Second report of the International Independent Investigation Commission established pursuant to Security Council resolutions 1595 (2005) and 1636 (2005), 12 December 2005, S/2005/775.*

Page 12, paragraph 50	In November 2005, the Commission submitted a request to the Lebanese military intelligence services for a complete and comprehensive index of the wiretapped telephone conversations of Mr. Hariri for the period October 2004-March 2005.
Page 13, paragraph 56	As noted in the previous report, the UNIIC investigation confirmed that, during the period prior to the assassination, there was growing tension between Mr. Hariri and senior Syrian officials, including Syrian President Bashar Al-Assad.
Page 17, paragraph 74	<p>In its previous report to the Council, the Commission reported on difficulties it was encountering with regard to the cooperation being extended by the Syrian authorities. Serious delays in the investigation had accrued to cooperation in form rather than in substance. The Council addressed that matter in its resolution 1636 (2005), in particular section III thereof. The Council endorsed the Commission's conclusion that it was incumbent upon the Syrian authorities to clarify a considerable part of the questions which remained unresolved. The Council decided, in this context, that:</p> <p>(a) The Syrian Arab Republic must detain those Syrian officials or individuals whom the Commission considers as suspected of involvement in the planning, sponsoring, organizing or perpetrating of this terrorist act, and make them fully available to the Commission;</p> <p>(b) The Commission shall have vis-à-vis the Syrian Arab Republic the same rights and authorities as mentioned in paragraph 3 of resolution 1595 (2005), and the Syrian Arab Republic must cooperate with the Commission fully and unconditionally on that basis;</p> <p>(c) The Commission shall have the authority to determine the location and modalities for interview of Syrian officials and individuals it deems relevant to the inquiry.</p>
<b>Third UNIIC Report<sup>70</sup> - 14 March 2006</b>	
Page 10, paragraph 44	Numerous coordination meetings were held in recent months and case-related information has been shared, including witnesses and

<sup>70</sup> *Third report of the International Independent Investigation Commission established pursuant to Security Council resolutions 1595 (2005) and 1636 (2005) and 1644 (2005), 14 March 2006, S/2006/161.*

	<p>suspect statements. For instance, on 2 March 2006, the Commission received from the Lebanese authorities statements taken by Lebanese Internal Security Forces investigators regarding an important aspect of the investigation. In turn, on 3 March 2006, the Commission transmitted to the competent investigating judge seven binders of documents, including witness/suspect statements.</p>
Page 19, paragraph 91	<p>In its previous reports, the Commission highlighted several instances of difficulty encountered when seeking cooperation from the Syrian authorities. In order to address the real and urgent need to make progress on this issue, in the interest of expediting the investigation, the Commissioner twice met with senior Syrian officials to discuss the practical modalities of their cooperation. On 23 February 2006, the Commissioner met with the Syrian Minister for Foreign Affairs, the Deputy Minister for Foreign Affairs, the Legal Adviser of the Ministry of Foreign Affairs, and the Chairman of the Syrian Special Judicial Commission in Damascus. On 7 March, the Commissioner met again with the Deputy Foreign Minister and the Legal Adviser, this time in Beirut. As a result, the Commission has now reached a common understanding with the Syrian Arab Republic of the legal framework for their cooperation and of certain practical modalities to facilitate the expeditious implementation of the Commission's requests for assistance. The understanding will be tested in the upcoming months.</p>
<b>Fourth UNIIC Report<sup>71</sup> - 10 June 2006</b>	
Page 5, paragraph 9	<p>Considerable progress has been made in building a solid organization capable of meeting the significant investigative, analytical, security, translation and interpretation, and other challenges associated with its mandate. Nonetheless, sustaining an undertaking of such complexity over an extended period of time remains a critical focus of the Commission's work. Certainty of mandate and predictability of financial, human and other resources are the backbone of any organizational growth. They constitute the underpinning of the systematic and methodological approach advocated in the Commission's previous report. The Commission thus welcomes the request of the Government of Lebanon to the Secretary-General dated 4 May 2006 to extend its mandate for a further period of up to one year. Such an extension would provide</p>

<sup>71</sup> *Fourth report of the International Independent Investigation Commission established pursuant to Security Council resolutions 1595 (2005), 1636 (2005) and 1644 (2005), 10 June 2006, S/2006/375.*

	a sense of continuity and stability, guarantee steady operations and planning, and offer assurances to staff.
Page 22, paragraph 104	In order to assist the investigation, the full and unconditional cooperation of the Syrian Arab Republic with the Commission remains crucial. On the basis of information received, further requests will be formulated and addressed to the Syrian Arab Republic. In all its meetings with Syrian officials, the Commission received assurances of the intention of the Syrian Arab Republic to comply fully with all its requests and to support the Commission's pursuit of those who killed former Prime Minister Hariri. Syrian officials have also offered to actively cooperate with and assist the Commission by making available information in their possession which may be relevant to the investigation. The Commission will continue to request full cooperation from Syrian authorities, including in collecting documents, seeking specific information and facilitating the interviews of Syrian citizens.
Page 23, paragraph 109	The internal working procedure sets out the standard operating procedures applicable to the different investigative and managerial aspects of the Commission's work. The investigative matters regulated include the modalities of interviews of witnesses and suspects; the treatment of sensitive sources; and the management of forensic exhibits and evidence. Managerial issues encompass a code of conduct and interpretation and translation standards. In addition, the internal procedure standardizes the relations of the Commission with Member States and their judicial authorities, in particular regarding requests for assistance.
<b>Sixth UNIIC Report<sup>72</sup> - 12 December 2006</b>	
Page 17, paragraph 96	The Commission regularly shares with the appropriate Lebanese authorities the substance of all relevant information that it obtains in a manner that does not compromise the interest of the source of this information, be it an individual, an organization or a State. This includes an analytical report on the credibility of a witness, recently transmitted to the Prosecutor General and the investigative judge assigned to the Hariri case. This process is of particular importance where the information is relevant to individuals who are detained, as it may assist the Lebanese

<sup>72</sup> Sixth report of the International Independent Investigation Commission established pursuant to Security Council resolutions 1595 (2005), 1636 (2005) and 1644 (2005), 12 December 2006, S/2006/962.

	authorities in taking any steps they deem appropriate or necessary in relation to detention.
Page 18, paragraph 98	Consistent with the Syrian Arab Republic's obligations under Security Council resolutions 1636 (2005) and 1644 (2005), and the common understanding reached between the Commission and the Syrian Arab Republic earlier in the year, the cooperation of the Republic with the Commission remains timely and efficient.
<b>Seventh UNIIC Report – 15 March 2007</b>	
Page 11, paragraph 53	The following issues shaped Hariri's environment in this period: the adoption of Security Council resolution 1559 (2004) and the political implications of its implementation; the extension of the term of Lebanese President Emile Lahoud; the personal and political dynamics that existed between Hariri and other political parties and leaders in Lebanon, the Syrian Arab Republic and other countries; the preparation and manoeuvring ahead of the parliamentary elections due to be held in May 2005, as well as other business matters in which he was involved.
Page 12, paragraph 59	It is of some note that Hariri was killed on the day that Parliament was scheduled to debate the electoral law to be applied in the forthcoming elections.
<b>Ninth UNIIC Report<sup>73</sup> - 28 November 2007</b>	
Pages 16-17, paragraph 83	The Commission also maintains a close working relationship with the Lebanese authorities which provide security to the Commission's staff and facilities. The Commission is grateful to the Lebanese Army and to the Internal Security Forces for their unfailing support.
Page 17, paragraph 85	A total of 11 requests for assistance have been addressed by the Commission to the Syrian Arab Republic in the past four months, bringing the total number of such requests addressed to the Syrian Arab Republic since January 2006 to 68. During the reporting

<sup>73</sup> *Ninth report of the International Independent Investigation Commission established pursuant to Security Council resolutions 1595 (2005), 1636 (2005), 1644 (2005), 1686 (2006) and 1748 (2007), 28 November 2007, S/2007/684.*

	<p>period, the Syrian Arab Republic has provided the Commission with assistance in response to its requests within the appropriate time frames. The Commission also acknowledges the support provided by the Syrian Arab Republic in the organization of the Commission's various investigative activities in that country, including nine missions during this reporting period.</p>
<b>Tenth UNIIC Report<sup>74</sup> - 28 March 2008</b>	
Page 2, Summary	<p>The Commission has continued to work closely with the Lebanese authorities. The Syrian Arab Republic has provided generally satisfactory cooperation. The Commission has implemented new working practices to foster additional assistance from Member States as well as to encourage cooperation by witnesses and other sources.</p>
Page 3, paragraph 3	<p>Terrorist investigations are by definition complex and difficult. The Commission faces additional challenges, including the magnitude of the attacks, their continuing nature and the fact that the investigations are conducted in an environment dominated by ongoing security concerns. Despite these difficulties, the Commission has continued its methodical approach in assisting the Lebanese authorities to solve the cases, being guided exclusively by the facts and the evidence and exploring all investigative leads.</p>
Pages 3-4, paragraph 8	<p>In the last four months, the Commission witnessed a deteriorating security environment. A number of attacks targeted members of the Lebanese security forces and the international community. The political and economic conditions in the country have also led to a number of street demonstrations that resulted in violent clashes and shootings.</p>
Page 4, paragraph 13	<p>The Commission has accelerated the pace of its operations. Since it last reported, it has more than doubled the number of requests for assistance sent to Lebanon and other States, from 123 to 256.</p>

<sup>74</sup> Tenth report of the International Independent Investigation Commission established pursuant to Security Council resolutions 1595 (2005), 1636 (2005), 1644 (2005), 1686 (2006) and 1748 (2007), 28 March 2008, S/2008/210.

**Eleventh UNIIC Report<sup>75</sup> - 2 December 2008**

<p>Page 5, paragraphs 22-23</p>	<p>First, the Commission has faced difficulties in obtaining potentially sensitive information for investigative purposes.</p> <p>The Commission also frequently sends formal requests for assistance for specific information to Member States. The Commission is mindful of the burden imposed on States in responding to such requests. While the vast majority of requests are responded to in a timely and comprehensive manner, the Commission notes that late or incomplete responses slow progress in the investigation.</p>
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<sup>75</sup> *Eleventh report of the International Independent Investigation Commission established pursuant to Security Council resolutions 1595 (2005), 1636 (2005), 1644 (2005), 1686 (2006), 1748 (2007) and 1815 (2008), 2 December 2008, S/2008/752.*

