



Special Tribunal for Lebanon المحكمة الخاصة بلبنان Tribunal spécial pour le Liban
Trial Chamber دائرة المحاكمة Chambre de première instance

INTERNAL MEMORANDUM / MÉMORANDUM INTERNE

TO / À: Ms Dorothée Le Fraper du Hellen, Head of Defence Office
FROM / DE: Judge David Re, Presiding Judge, Trial Chamber

THROUGH / VIA: Ms Judit Tatrai, Senior Legal Officer, Trial Chamber
COPY / COPIE: Ms Héleyn Uñac, Deputy Head of Defence Office
Mr Norman Farrell, Prosecutor
Mr Daryl Mundis, Registrar
Mr Emile Aoun, Mr Mohamed Aouini, Mr Vincent Courcelle-Labrousse, and Mr David Young, lead counsel for Mr Salim Jamil Ayyash, Mr Hassan Habib Merhi, Mr Hussein Hassan Oneissi and Mr Assad Hassan Sabra
Mr Peter Haynes, Legal Representative of Victims

DATE: 14 February 2019
SUBJECT / OBJET: Monitoring the effective legal representation of Mr Hassan Habib Merhi's defence

The Trial Chamber refers to the issue of who is to monitor the effectiveness of the legal representation of Mr Hassan Habib Merhi, for whom you were co-counsel between 30 December 2013 and 29 June 2018, in light of your acknowledged conflict of roles in carrying out this function as the Head of Defence Office. We note that you have agreed with us that you should not delegate this role to your deputy, Ms Héleyn Uñac.

On 1 October 2018, in response to a Trial Chamber order,¹ you informed the Trial Chamber that you would consider establishing an 'alternative mechanism' for this purpose.² The Trial Chamber then ordered you to inform it 'of the details and timeline for the envisaged alternative mechanism, including its legal basis'.³

You responded that you were intending to appoint an 'independent consultant' to monitor the effectiveness of Mr Merhi's legal representation, who would report to you under

¹ STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, Order for Written Submissions Addressing the Potential Conflict of Interest Between the Head of Defence Office's Previous and Present Roles, transcript of hearing of 21 September 2018, pp 72-74, seeking written submissions from the Parties, the Legal Representatives of Victims, the Head of Defence Office and the Deputy Head of Defence Office, by 1 October 2018, addressing the potential conflict of interest between the Head of Defence Office's previous and present roles, and specifically, whether judicial intervention was required.

² F3740, Observations from the Head of Defence Office further to the Order of the Trial Chamber of 21 September 2018, 1 October 2018.

³ F3745, Order in relation to Head of Defence Office's Observations of 1 October 2018, 5 October 2018.





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Rule 57 (G).⁴ Rule 57 (H) addresses procedures where the Head of Defence Office is not satisfied that the representation of an accused person meets ‘internationally recognised standards of practice’, with sanctions that include withholding fees, making representation to a judge or chamber to remove counsel or take other action, and initiating disciplinary proceedings.

Concerning the functioning of this independent consultant, you stated that ‘its modalities of implementation shall remain a confidential and internal matter of the Defence Office, without the possibility of intervention or monitoring by a Judge, a Chamber, or another organ of the Tribunal’.⁵

We acknowledge and appreciate your attempts to date to resolve the identified conflict. However, we are concerned that you intend to appoint an independent consultant yourself. Further, their function, in part, would be to monitor your own professional conduct, then report to you under Rule 57 (G), and you in turn would then consider whether to take action under Rule 57 (H), potentially against yourself.

You quite rightly acknowledged in your observations that the Trial Chamber ‘is the ultimate guardian of the rights of the Accused to a fair trial, which includes the right of the accused to effective representation’.⁶ Consequently, and consistent with our duties to guarantee a fair trial, we wish to bring to your attention that your intended arrangement or proposal will severely undermine the purported delegation of your function, and if anything, would only intensify any potential conflict of interest. We consider that you might inadvertently have overlooked this outcome when seeking to resolve the issue.

Hence, in the interests of justice and a fair trial we wish to work with you in addressing this shortcoming. We would therefore propose the following:

- (1) That you ask the Registrar to nominate an independent counsel who can act as *amicus curiae* from a list maintained by the Head of Defence Office for that purpose; and
- (2) That the *amicus curiae* reports directly to the Trial Chamber if and when necessary on any relevant issues relating to the effectiveness of Mr Merhi’s legal representation, and in particular those identified in Rules 57 (G) and (H).

We invite you to do this expeditiously as we would prefer to proceed by mutual consent rather than by judicial order. Finally, the issue of your continued monitoring of the effectiveness of the legal representation of the remaining three Accused in the *Ayyash* case remains a live issue and we invite you to delegate this to your deputy.

We look forward to your continuing cooperation in these matters.

⁴ F3749, Observations from the Head of Defence Office further to the Order of the Trial Chamber of 5 October 2018, 15 October 2018.

⁵ Observations of 15 October 2018, para. 4.

⁶ Observations of 1 October 2018, para. 4.

