

**The Pre-Trial Judge**

المحكمة الخاصة بلبنان  
SPECIAL TRIBUNAL FOR LEBANON  
TRIBUNAL SPÉCIAL POUR LE LIBAN

**Le Juge de la mise en état****THE PRE-TRIAL JUDGE**

Case No.: **STL-11-02/CCS/PTJ**  
Before: **Judge Daniel Fransen**  
Registrar: **Mr. Daryl Mundis**  
Date: **16 September 2019**  
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**PUBLIC REDACTED VERSION OF “DECISION ON THE PROSECUTOR’S  
CONNECTED CASE SUBMISSION  
OF 30 JUNE 2011” OF 5 AUGUST 2011**

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## **I. Introduction**

1. The Pre-Trial Judge of the Special Tribunal for Lebanon (the “Pre-Trial Judge” and the “Tribunal”, respectively) is in receipt of the “Prosecutor’s Connected Cases Submission” of 30 June 2011 (the “Submission”) together with its supporting material.
2. In the Submission, the Prosecutor requests the Pre-Trial Judge to rule that attacks against three separate individuals are connected to the attack committed against Rafiq Hariri on 14 February 2005 (the “Hariri attack”). The three attacks which the Prosecutor avers are connected to the Hariri attack are the following:
  - a. On 1 October 2004, Mr. Marwan Hamadeh and [REDACTED] were severely injured, and his security guard (Mr. Ghazi Bou Karroum) was killed, when a car parked in a street in Beirut, Lebanon, exploded next to the vehicle in which they were travelling.<sup>1</sup>
  - b. On 21 June 2005, Mr. George Hawi was killed and [REDACTED] was injured when a device attached to their vehicle exploded in Beirut.<sup>2</sup>
  - c. On 12 July 2005, Mr. Elias El-Murr, [REDACTED] and [REDACTED] and others were injured when a car they were travelling past in a street in Beirut exploded next to their vehicle. Mr. Khaled Moura, who was driving past in another vehicle, was killed.<sup>3</sup>
3. In the Submission, the Prosecutor also requests the Pre-Trial Judge to order that the Submission and the materials filed in support thereof remain confidential. The Prosecutor [REDACTED] requests the Pre-Trial Judge to authorise him [REDACTED].<sup>4</sup>

## **II. Competence**

4. Pursuant to Rule 11(A) of the Rules of Procedure and Evidence of the Tribunal (the “Rules”), the Prosecutor may file a connected case submission for a ruling by the Pre-Trial Judge that

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<sup>1</sup> Submission, para. 5(a).

<sup>2</sup> *Ibid.*, para. 5(b).

<sup>3</sup> *Ibid.*, para. 5(c).

<sup>4</sup> *Ibid.*, para. 7.

an attack that occurred in Lebanon between 1 October 2004 and 12 December 2005 is “connected” to the Hariri attack in the manner required by Article 1 of the Statute of the Tribunal (the “Statute”).<sup>5</sup>

5. Pursuant to Rule 11(B) of the Rules, the Pre-Trial Judge shall rule on whether there is *prima facie* evidence that a case is within the jurisdiction of the Tribunal.<sup>6</sup> The Pre-Trial Judge is therefore competent to consider the Submission.
6. In this Decision, the Pre-Trial Judge will briefly recall the historical background to the Tribunal’s creation (Section III), which is necessary for a better understanding of Article 1 of the Statute. Next, the Pre-Trial Judge will consider the applicable substantive law, its interpretation, and the legal standard required for a finding of connectedness (Section IV). The Pre-Trial Judge will then discuss the Submission (Section V) before deciding on the Prosecutor’s request for confidentiality (Section VI).

### **III. The Historical Background**

7. The inclusion within the Tribunal’s jurisdiction of attacks connected to the Hariri attack evolved from the work of the United Nations International Independent Investigation Commission established pursuant to United Nations Security Council resolution 1595 (2005) (the “UNIIC”) to investigate the Hariri attack.<sup>7</sup> In light of other attacks that were perpetrated in Lebanon against both prominent public figures and members of the general public, the Government of Lebanon requested the United Nations Security Council (the “U.N.” and the “Security Council”, respectively) either to expand the UNIIC’s mandate beyond the Hariri

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<sup>5</sup> Rule 11(A). The provisions of Art. 1 of the Statute are considered under the section on Applicable Law below. Rule 12 applies to the “Exercise of Jurisdiction over Attacks that Occurred after 12 December 2005”. In order for the Tribunal to exercise jurisdiction over these subsequent attacks, Art. 1 of the Statute provides that the “Parties” (i.e., the United Nations Organisation and the Lebanese Republic) must first so decide, and must do so with the consent of the United Nations Security Council.

<sup>6</sup> Rule 11(B).

<sup>7</sup> Security Council Resolution (“SC Res.”) 1595 (2005) of 7 April 2005, para. 1; [First] Report of the International Independent Investigation Commission established pursuant to Security Council resolution 1595 (2005), S/2005/662, 19 October 2005 (“First UNIIC Report”), para. I.

attack, or to create a new commission to provide technical assistance to the Lebanese authorities in their investigations into these other attacks.<sup>8</sup>

8. In response to those requests, the Security Council, noting that “terrorism [*sic.*] in all its forms and manifestations constitutes one of the most serious threats to peace and security”,<sup>9</sup> and reaffirming the need to hold accountable those responsible for those attacks, authorised the Commission to expand its mandate as required.<sup>10</sup> The UNIIC continued to provide technical assistance to the Lebanese authorities in investigating these other attacks.<sup>11</sup>
9. Meanwhile, the Government of Lebanon had proposed the creation of an international tribunal to try those responsible for the Hariri attack.<sup>12</sup> The Security Council subsequently endorsed this proposal and requested the assistance of the U.N. Secretary-General (the “Secretary-General”).<sup>13</sup> In a November 2006 report to the Security Council on the proposed establishment of an international tribunal, the Secretary-General referred to the inclusion in its jurisdiction “within a specified period, [of] other attacks that the tribunal might find to be connected to the Hariri assassination and similar to it in nature and gravity.”<sup>14</sup>
10. The UNIIC’s mandate expired upon the commencement of the Tribunal’s mandate on 1 March 2009.<sup>15</sup> By this time, the Lebanese Government and the U.N. had agreed that the

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<sup>8</sup> Annex to the letter dated 13 December 2005 from the *Chargé d'affaires a.i.* of the Permanent Mission of Lebanon to the United Nations addressed to the Secretary-General, S/2005/783, 13 December 2005, annexed to SC Res. 1644 (2005) of 15 December 2005 (“Letter from Lebanese Government of 13 December 2005”); Second report of the International Independent Investigation Commission established pursuant to Security Council resolutions 1595 (2005) and 1636 (2005), S/2005/775, 10 December 2005 (“Second UNIIC Report”), para. 72.

<sup>9</sup> See preambles of SC Res. 1636 (2005) of 31 October 2005, and 1644 (2005). With respect to the use of the term “terrorism” in this context, see para. 78 *infra*.

<sup>10</sup> SC Res. 1644 (2005), para. 7. In June 2006, the Security Council then decided to “extend further [the UNIIC’s] technical assistance to the Lebanese authorities with regard to their investigations into the other terrorist attacks [*sic.*] perpetrated in Lebanon since 1 October 2004” (SC Res. 1686 (2006) of 15 June 2006, para. 3).

<sup>11</sup> Third report of the International Independent Investigation Commission established pursuant to Security Council resolutions 1595 (2005), 1636 (2005) and 1644 (2005), S/2006/161, 14 March 2006 (“Third UNIIC Report”), paras. 8, 50; Fourth report of the International Independent Investigation Commission established pursuant to Security Council resolutions 1595 (2005), 1636 (2005) and 1644 (2005), S/2006/375, 10 June 2006 (“Fourth UNIIC Report”), para. 61.

<sup>12</sup> Letter from Lebanese Government of 13 December 2005.

<sup>13</sup> SC Res. 1644 (2005), para. 6.

<sup>14</sup> Report of the Secretary-General on the establishment of a special tribunal for Lebanon, S/2006/893, 15 November 2006 (“Secretary-General’s Report of 15 November 2006”), para. 11.

<sup>15</sup> Pursuant to the Agreement between the United Nations and the Lebanese Republic on the Establishment of a Special Tribunal for Lebanon of 10 June 2007 (the “Agreement”), Art. 19, and the Third report of the Secretary-General submitted pursuant to Security Council resolution 1757 (2007), S/2008/734, 26 November 2008, para. 21.

Tribunal would have jurisdiction over persons responsible for the Hariri attack, and also persons responsible for these other attacks, provided that the attacks satisfied the requirements set forth in Article 1 of the Statute.<sup>16</sup>

#### **IV. The Applicable Law**

11. The provisions applicable to connected case submissions are Article 1 of the Statute (which is cited in full in section (b) below) and Rule 11(A) and (B) of the Rules.<sup>17</sup> The Pre-Trial Judge will now consider the law applicable to “connected cases” enshrined in these provisions.

##### **a. The principles of interpretation**

12. The Pre-Trial Judge will interpret Article 1 of the Statute and Rule 11 of the Rules<sup>18</sup> in conformity with the rules on treaty interpretation as spelled out in the Vienna Convention on the Law of Treaties, taking into account the specific features of acts of the Security Council as opposed to treaties.<sup>19</sup> Those rules require that a provision be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context<sup>20</sup> and in the light of its object and purpose.<sup>21</sup>

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<sup>16</sup> Art. 1 of the Agreement, annexed to SC Res. 1757 (2007) of 30 May 2007. See also SC Res. 1852 (2008) of 17 December 2008, preamble: “... the continuation of the investigation into the death of former Prime Minister Rafiq Hariri and other cases which may be connected with the attack of 14 February 2005, in conformity with the Statute of the Tribunal.”

<sup>17</sup> There are no other Rules pertinent to the determination by the Pre-Trial Judge of whether or not a case is “connected” in accordance with the Statute. Several other Rules are applicable to the procedure regarding connected cases. *Cf.* Rules 12 (Exercise of Jurisdiction over Attacks that Occurred after 12 December 2005); 68 (Submission of Indictment by the Prosecutor), paras (C), (H)-(J); and 90(E) (with respect to preliminary motions to challenge the Tribunal’s jurisdiction over an alleged connected case).

<sup>18</sup> Concerning the interpretation of the Rules, Rule 3(A) provides that: “The Rules shall be interpreted in a manner consonant with the spirit of the Statute and, in order of precedence, (i) the principles of interpretation laid down in customary international law as codified in Articles 31, 32 and 33 of the Vienna Convention on the Law of Treaties (1969)”.

<sup>19</sup> Vienna Convention on the Law of Treaties, 1969, United Nations, *Treaty Series*, Vol. 1155, p. 331, entered into force on 27 January 1980 (“Vienna Convention”). The Prosecutor does not advance any submissions in this regard.

<sup>20</sup> The “context” of a text is comprised of the text itself, as well as its preamble and annexes; any related agreement which was made between all the parties in connection with the conclusion of the text; any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty. There shall be taken into account, together with the context: any subsequent agreement between the parties regarding the interpretation of the text or the application of its provisions, any subsequent practice in the application of the text which establishes the agreement of the parties regarding its

13. This approach is consistent with the one adopted by the Appeals Chamber in its Interlocutory Decision of 16 February 2011 (the “Interlocutory Decision”).<sup>22</sup> In the Interlocutory Decision, the Appeals Chamber recognised that, while the Statute entered into force on the basis of Security Council Resolution 1757 (2007)<sup>23</sup>, nevertheless, “the rules [on treaty interpretation] of the Vienna Convention [on the Law of Treaties] can be used to interpret acts of the Security Council.”<sup>24</sup> The Appeals Chamber added, however, that one should be mindful of the specific features of Security Council acts, and noted that:

in so far as the provisions of this Tribunal's Statute have entered into force on the basis of Security Council Resolution 1757 (2007), the Appeals Chamber will also take into account such statements made by members of the Security Council in relation to the adoption of the relevant resolutions, the *Report of the UN Secretary-General on the Establishment of the Tribunal* of 15 November 2006 (S/2006/893), and the object and purpose of those resolutions (in keeping with the *Kosovo* Opinion of the ICJ), as well as the practice of the Security Council.<sup>25</sup>

14. In this regard, the following elements are relevant to the Pre-Trial Judge’s determination of the context and of the object and purpose of Article 1 of the Statute: the applicable Resolutions of the Security Council; the Agreement between the U.N. and the Lebanese Republic on the Establishment of a Special Tribunal for Lebanon of 10 June 2007 (the “Agreement”); the pertinent reports of the Secretary-General; and the reports of the UNIIC.

#### **b. Article 1 of the Statute**

15. Article 1 of the Statute provides as follows:

The Special Tribunal shall have jurisdiction over persons responsible for the attack of 14 February 2005 resulting in the death of former Lebanese Prime Minister Rafiq Hariri and in the death or injury of other persons. If the Tribunal finds that other attacks that occurred in Lebanon between 1 October 2004 and 12 December 2005, or any later date decided by the Parties and with the consent of the Security Council, are connected in accordance with the principles of criminal justice and are of a nature and gravity similar to the attack of 14 February 2005, it shall also have jurisdiction over persons responsible for such attacks. This connection includes but is not limited to a combination

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interpretation; and any relevant rules of international law applicable in the relations between the parties. *cf.* Vienna Convention, Art. 31(2)-(3).

<sup>21</sup> Vienna Convention, Art. 31(1).

<sup>22</sup> Case No. STL-11-01/I/AC/R176*bis*, Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, Appeals Chamber, 16 February 2011, para. 27.

<sup>23</sup> SC Res. 1757 (2007) of 30 May 2007.

<sup>24</sup> Interlocutory Decision, para. 27. The Appeals Chamber in turn relied on the International Court of Justice (“ICJ”), *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, 22 July 2010, para. 94.

<sup>25</sup> Interlocutory Decision, para. 27 (internal citations omitted).



of the following elements: criminal intent (motive), the purpose behind the attacks, the nature of the victims targeted, the pattern of the attacks (*modus operandi*) and the perpetrators.

16. Pursuant to this Article, the Tribunal has jurisdiction not only over the Hariri attack, but also over attacks that are connected to it, provided that they meet certain specific requirements.

Those requirements are the following:

- a. the attacks occurred in Lebanon;
- b. the attacks occurred either:
  - i. between 1 October 2004 and 12 December 2005; or
  - ii. on any later date decided by the Parties and with the consent of the Security Council;
- c. the attacks are connected to the 14 February attack against Rafiq Hariri by virtue of elements that include — but are not limited to — the following indicators of connectedness:
  - i. criminal intent (motive);
  - ii. the purpose behind the attacks;
  - iii. the nature of the victims targeted;
  - iv. the pattern of the attacks (*modus operandi*);
  - v. the perpetrators; and
- d. the attacks are of a nature and gravity similar to the Hariri attack.<sup>26</sup>

17. The four requirements listed in (a) to (d) above — territorial jurisdiction, temporal jurisdiction, connectedness to the Hariri attack, and being of a nature and gravity similar thereto — are treated in the Statute as distinct requirements, all of which the Prosecutor must satisfy in his connected case submission.<sup>27</sup>

18. The Pre-Trial Judge will examine these requirements in more detail below after considering the standard of review.

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<sup>26</sup> Art. 1 of the Statute.

<sup>27</sup> Art. 1 of the Statute, Rule 68(C).

### c. The legal standard

19. Rule 11(B) provides that the Pre-Trial Judge shall rule on whether there is *prima facie* evidence that a case is within the jurisdiction of the Tribunal.
20. The Pre-Trial Judge must therefore be satisfied that there is sufficient *prima facie* evidence that an attack falls within the Tribunal's jurisdiction in a manner required by Article 1 of the Statute. This is a preliminary step to the eventual submission of an indictment against the suspect(s) by the Prosecutor.<sup>28</sup> By ruling that a case is connected, the Pre-Trial Judge recognises only that the jurisdiction of the Tribunal extends to a putative connected case in accordance with the Statute. In this regard, the Pre-Trial Judge emphasises that the legal standard for this preliminary determination on the Tribunal's jurisdiction is distinct from the one required for the confirmation of an eventual subsequent indictment, namely that a *prima facie* case exists against a suspect.<sup>29</sup>
21. This Decision therefore concerns only the scope of the Tribunal's jurisdiction and not the existence of a case against any particular suspect.

### d. The temporal and territorial requirements

22. Article 1 of the Statute provides that the Tribunal has jurisdiction over persons responsible for attacks other than the Hariri attack that occurred in Lebanon *inter alia* between 1 October 2004 and 12 December 2005, inclusive.<sup>30</sup> In this regard, the meaning of Article 1 is clear and

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<sup>28</sup> See Rule 11(C).

<sup>29</sup> According to Rule 68(F), the Pre-Trial Judge shall determine whether a *prima facie* case exists against a suspect before confirming the charges against him. This standard requires that there be sufficient credible evidence to justify bringing criminal proceedings against an accused, Case No. STL-11-01/1, *Décision relative à l'examen de l'acte d'accusation du 10 juin 2011 établi à l'encontre de M. Salim Jamil Ayyash, M. Mustafa Amine Badreddine, M. Hussein Hassan Oneissi & M. Assad Hassan Sabra*, 28 June 2011 ("Decision on Confirmation"), para. 28(iii).

<sup>30</sup> The intention of the parties when the Statute and the Rules were drafted was for these dates to be inclusive. The Tribunal's temporal jurisdiction over attacks other than the Hariri attack therefore runs from 1 October 2004 to include any attacks perpetrated on that day. Likewise, it includes 12 December 2005. A contrary interpretation would effectively exclude one of the attacks expressly considered by the UNIIIC in its investigations, and by the Government of Lebanon and the Security Council when deciding on the Tribunal's jurisdiction for other attacks (i.e. the attack against Mr. Marwan Hamadeh on 1 October 2004, itself being one of the attacks advanced by the Prosecutor in the Submission as being connected to the Hariri attack). See, *inter alia*, the Letter from the Lebanese Government of 13 December 2005, which requested assistance in the investigation of "the assassination attempts and assassinations and explosions that took place in Lebanon *starting with the attempt on the life of Minister Marwan Hamade [sic] on 1 October 2004*" (emphasis added). See also SC Res. 1644 (2005), preamble, and SC Res. 1686 (2006), para. 3, both of which refer to the Lebanese Government's request for assistance in the investigations

does not require further discussion, at least insofar as attacks between 1 October 2004 and 12 December 2005 are concerned.<sup>31</sup>

**e. The requirement of connectedness**

i. Preliminary remarks

23. The Pre-Trial Judge wishes to make two preliminary observations. The first highlights the distinction between a ruling on a connected case submission and the confirmation of an indictment, while the second illustrates the distinction between the concept of joinder and connectedness.

24. As recalled above, a ruling by the Pre-Trial Judge that there is *prima facie* evidence that an attack is connected to the Hariri attack, and is within the jurisdiction of the Tribunal, is not equivalent to the confirmation of an indictment (or of an amendment to an existing indictment) against the suspect(s).<sup>32</sup> The Pre-Trial Judge does not, therefore, pronounce on the individual criminal responsibility of the suspect(s). The threshold required for such a ruling is thus by definition lower than the standard used for the confirmation of charges.<sup>33</sup> Only once the Pre-Trial Judge has found that an attack is connected to the Hariri attack can the Prosecutor proceed to submit an indictment for confirmation, thereby ensuring respect for the rights of the suspect(s).<sup>34</sup>

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into the other attacks that have occurred in Lebanon “since 1 October 2004”. The Report of the Secretary-General pursuant to paragraph 6 of SC Res. 1644 (2005), S/2006/176, 21 March 2006, (“Secretary-General’s Report of 21 March 2006”) refers to the Lebanese Government’s request for assistance in the investigations into the other attacks that have occurred in Lebanon “since 1 October 2004” (para. 2). The First UNIIC Report (chronology of events), Third UNIIC Report (paras. 50, 55, 56, 71, 72), Fourth UNIIC Report (paras. 78, 81), and Sixth report of the International Independent Investigation Commission established pursuant to Security Council resolutions 1595 (2005), 1636 (2005) and 1644 (2005), S/2006/962, 12 December 2006 (“Sixth UNIIC Report”), paras. 68-70, 74, all refer expressly to the attack against Mr. Hamadeh.

<sup>31</sup> Art. 1 of the Statute also refers to the possibility of establishing jurisdiction over connected attacks “on any later date”, but requires in turn that such jurisdiction must “decided by the Parties and with the consent of the Security Council.”

<sup>32</sup> Pursuant to Rule 11(B).

<sup>33</sup> *Cf. S. IV.c, supra.*

<sup>34</sup> It is notable that where the Pre-Trial Judge rules that there is *prima facie* evidence that a case is connected and within the jurisdiction of the Tribunal, and that case results in an indictment, the Rules expressly provide the Defence with the right to challenge the connected case ruling through a preliminary motion on jurisdiction under Rule 90 (Rule 11(C)).

25. Furthermore, a distinction must be made between the concept of connectedness and the procedural mechanism of joinder, which also exists before the Tribunal.<sup>35</sup> Connectedness enjoys a unique status at the Tribunal; it concerns the extension of jurisdiction over certain attacks in addition — but nevertheless related — to the Hariri attack.<sup>36</sup> Joinder, on the other hand, is the uniting of parties or claims in a single proceeding<sup>37</sup> over which jurisdiction is already exercised.<sup>38</sup>
26. The question of joinder would only arise at a later stage pursuant to the applicable Rules,<sup>39</sup> once the Pre-Trial Judge has ruled that a case is *prima facie* within the Tribunal's jurisdiction, and the Prosecutor subsequently moves to indict those responsible for the additional charges. Only if and when such charges are confirmed by the Pre-Trial Judge may those charges be joined to the indictment related to the Hariri attack (or indeed any other connected attacks). A ruling that a case is connected does not imply that it will necessarily be

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<sup>35</sup> Before the Tribunal, joinder is regulated by Rule 70.

<sup>36</sup> The French version of Art. 1 of the Statute refers instead to “*un lien de connexité avec l’attentat du 14 février 2005...*”, a link of connectedness.

<sup>37</sup> Cf. e.g. B. Garner and Others (eds.), *Black’s Law Dictionary*, 9<sup>th</sup> Ed, St. Paul, United States, 2009, p. 913: “joinder of offences” is defined as “[t]he charging of an accused with two or more crimes as multiple counts in a single indictment or information.”

<sup>38</sup> The Pre-Trial Judge notes that the French version of Art. 1 of the Statute refers to attacks connected to the Hariri attack as “*attentats ... qui ont un lien de connexité avec l’attentat du 14 février 2005.*” The use of the word “*connexité*” may be confusing, in that in civil law countries “*connexité*” is a prerequisite for the joinder of cases (“*jonction*”), as defined above. “*Connexité*” is indeed defined in legal language as “*lien étroit entre deux demandes non identiques mais telles qu’il est de bonne justice de les instruire et juger en même temps afin d’éviter des solutions qui pourraient être inconciliables.*” Cf. G. Cornu (ed.), *Vocabulaire juridique*, 7<sup>th</sup> ed., Paris, 2007, p. 209. However, in the context of Art. 1 of the Statute, “*connexité*” has to be interpreted in a different way, as only indicating the existence of a link between an attack and the Hariri attack, which justifies the exercise of jurisdiction by the Tribunal (see the discussion *infra*, S. e.ii). Thus, the term “*connexité*” in Art. 1 of the Statute does not refer to, nor does it imply, the joinder (*jonction*) of a case to the Hariri case.

On the notion of joinder in international criminal proceedings see also, more generally, *Prosecutor v. Ante Gotovina; Prosecutor v. Ivan Čermak and Mladen Markač*, Decision on Interlocutory Appeal against the Trial Chamber’s Decision to Amend the Indictment and for Joinder, Gotovina, Čermak and Markač, IT-03-73-AR73.1, Appeals Chamber, 25 October 2006. In that decision, the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia (“ICTY”) discussed the provision applicable to joinder (Rule 48, ICTY Rules of Procedure and Evidence) and analysed how the joinder of cases of two or more persons requires a finding that the accused are “charged with having committed crimes, regardless of whether those crimes are alleged to be the same crimes, in the course of the same transaction”, where a transaction is defined as “[a] number of acts or omissions whether occurring as one event or a number of events, at the same or different locations and being part of a common scheme, strategy or plan” (para. 16).

<sup>39</sup> The applicable rule is Rule 70, which provides that “(A) Two or more crimes may be joined in one indictment if the conduct falls within Article 1 of the Statute and the alleged crimes were committed by the same accused; and (B) Persons accused of the same or different crimes falling within Article 1 of the Statute may be jointly charged and tried.”

joined to other cases pursuant to Rule 70 of the Rules. Further, such a joinder must be authorised by the Pre-Trial Judge or a Chamber on the basis of the applicable criteria, and upon application by the Prosecutor.

27. Turning to the requirement for connectedness itself, the Statute and the Rules do not provide a definition of the term “connected”. Article 1 of the Statute merely states that connectedness includes, but is not limited to, a combination of five non-exhaustive elements. Therefore, the Pre-Trial Judge considers that the principles of interpretation expressed in Section (a) above must be applied in order to determine the meaning of the connectedness requirement.

ii. The ordinary meaning of connectedness

28. The terms “connected” and “connectedness” are derived from the word “connect”, the ordinary meaning of which is to “be united physically, make contact, join on; be related or associated; form a logical sequence.”<sup>40</sup> The French version of the Statute uses the expression “*qui ont un lien de connexité avec l’attentat du 14 février 2005*”. “*Connexité*” in common language is the quality of that which is connected (“*qualité de ce qui est connexe*”).<sup>41</sup> The French word “*connexe*”, in turn, means having a direct link with something else (“*qui a des rapports étroits avec autre chose*”).<sup>42</sup>

29. Hence, attacks other than the Hariri attack must be linked, related or associated to the Hariri attack. From the discussion that follows, and as the Secretary-General recognised, they may be linked in a number of different ways and from varying perspectives.<sup>43</sup>

iii. The context of connectedness

30. The context in which the Statute and Rules were prepared elucidates the notion of connectedness. As the Appeals Chamber has pointed out, the Statute submits to the Tribunal’s jurisdiction a set of specific allegations: the killing of Rafiq Hariri and 22 other

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<sup>40</sup> *Shorter Oxford English Dictionary*, Vol. 1, 6<sup>th</sup> ed., Oxford, 2007, p. 492.

<sup>41</sup> J. Rey-Debove and A. Rey (eds.), *Le Nouveau Petit Robert. Dictionnaire de la Langue Française*, Paris, 2009, p. 510. The Pre-Trial Judge has already clarified that “*connexité*” in the context of Art. 1 of the Statute does not refer to the procedural mechanism of “*junction d’instances*.” Cf. S. IV.e.i, *supra*.

<sup>42</sup> J. Rey-Debove and A. Rey (eds.), *Le Nouveau Petit Robert. Dictionnaire de la Langue Française*, *supra*, note 41, p. 510..

<sup>43</sup> Secretary-General’s Report of 15 November 2006, para. 14.

persons in Beirut on 14 February 2005, “as well as additional attacks connected with that killing (if the Tribunal finds that the connection meets the standards enumerated in Article 1).”<sup>44</sup>

31. As has been shown in the historical review of the Tribunal’s creation, the indicators of connectedness detailed in Article 1 of the Statute recall the same elements which formed the basis for the investigative analysis of the UNIIC.<sup>45</sup> These factors were initially used by the UNIIC to link and categorise the additional attacks (other than the Hariri attack) that occurred in Lebanon.<sup>46</sup> Subsequently, as the UNIIC’s investigation progressed, it revealed potential links between those other attacks and the Hariri attack.<sup>47</sup>
32. For the purposes of its investigation, the UNIIC consistently established links between these other attacks on the basis of the following analytical elements: the nature of the attacks,<sup>48</sup> the motives for an attack,<sup>49</sup> the nature of the victims targeted,<sup>50</sup> the pattern and *modus operandi*

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<sup>44</sup> Interlocutory Decision, para. 13 (internal citation omitted).

<sup>45</sup> *Cf.* S. III, *supra*.

<sup>46</sup> Fifth report of the International Independent Investigation Commission established pursuant to Security Council resolutions 1595 (2005), 1636 (2005) and 1644 (2005), S/2006/760, 25 September 2006 (“Fifth UNIIC Report”), para. 67.

<sup>47</sup> Sixth UNIIC Report, para. 12. Regarding the period leading up to the finalisation of its fourth report, the UNIIC stated that “no clear linkages between the [other attacks] and the Hariri investigation ha[d] yet been identified”, Fourth UNIIC Report, para. 86.

<sup>48</sup> In this context, the UNIIC’s use of the term “nature of the attack” in its reports is not the same as that required by Art. 1 of the Statute. This is because, during its investigations, the UNIIC recognised that some of the attacks could be characterised as a deliberate attempt to assassinate a specific targeted victim or victims (e.g. see Sixth UNIIC Report, para. 64), whereas other attacks — while serious and of a specific nature — were intended to kill people indiscriminately and did not target specific victims (e.g. see Sixth UNIIC Report, para. 65). It is in this sense that the UNIIC referred to the “nature of the attacks”.

<sup>49</sup> These motives were linked to objectives and interests common to the targeted victims whom the perpetrators intended to kill (*Cf.* Sixth UNIIC Report, para. 66). Concerning the indiscriminate attacks that occurred in public locations and did not target specific victims, the UNIIC found that “the intent [*sic*] was to kill or wound individuals in order to spread fear, destabilise the security situation and cause damage to infrastructure.” *Ibid.*, para. 67. Motives could include political motives, personal vendettas, financial circumstances and extremist ideologies (Fourth UNIIC Report, para. 54).

<sup>50</sup> The victims of the targeted attacks were either prominent media figures or politicians, some of whom were linked to — or were known to share political views espoused by — a common political movement (Sixth UNIIC Report, paras. 68-69). Some of the targeted victims were also connected to each other or to Mr. Hariri by family ties, friendship or other personal associations (see Sixth UNIIC Report, para. 70). The victims of the indiscriminate attacks in public locations were all members of the general public (see Sixth UNIIC Report, para. 71).

of the attacks,<sup>51</sup> the identity of the alleged perpetrators,<sup>52</sup> and common links in the telephone contacts between the suspects.<sup>53</sup>

33. The context of Article 1 of the Statute therefore shows that the analysis of connectedness is not an abstract theoretical exercise, but rather a verification that certain factual elements linking an attack to the Hariri attack are present.

iv. The object and purpose of connectedness

34. As is apparent from the historical review of the Tribunal's creation, the object and purpose of the connectedness requirement detailed in Article 1 of the Statute is two-fold.<sup>54</sup>

35. On the one hand, the requirement was intended to grant the Tribunal jurisdiction over certain attacks, in order both to avoid selective justice and to counter further impunity for such crimes in Lebanon. Singling out the Hariri attack could have generated the perception — or effectively authorised the practice — of selective justice.<sup>55</sup> It would furthermore have undermined the Tribunal's intended contribution towards ending impunity for such attacks in Lebanon, returning the country to stability and reinforcing the conditions for a durable peace.<sup>56</sup> The Statute therefore does not single out the Hariri attack for prosecution. It was the Hariri attack, together with the attacks connected to it, which presented the Lebanese authorities with unique challenges, culminating in their request first for investigatory assistance by the UNIIC and subsequently for prosecutorial assistance by the Tribunal.<sup>57</sup>

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<sup>51</sup> The UNIIC identified a general pattern of using explosive devices for the attacks it was then investigating. The pattern of the preparations for the attacks included the surveillance of the target prior to the attack in order to determine the type and degree of personal security arrangements, such as routine and protective measures, and to identify the relevant location (vehicle generally, or seat specifically) for the placing of the relevant explosive device (see *inter alia* Fourth UNIIC Report, paras. 75, 78; Sixth UNIIC Report, para. 73).

<sup>52</sup> The alleged perpetrators were identified on the basis of the comparable *modus operandi*.

<sup>53</sup> Second UNIIC Report, para. 72.

<sup>54</sup> *Cf.* S. III, *supra*.

<sup>55</sup> Secretary-General's Report of 15 November 2006, paras. 12, 18.

<sup>56</sup> Letter dated 18 December 2008 from the Secretary-General to the President of the Security Council, S/2008/824, 30 December 2008 (holding that "The commencement of the Special Tribunal will mark an important step towards ending impunity in Lebanon and bringing to justice those responsible for the assassination of former Prime Minister Hariri and for related attacks"). See also Secretary-General's Report of 21 March 2006, para. 13.

<sup>57</sup> *Cf.*, e.g., Fourth UNIIC Report, para. 88, emphasising the Lebanese authorities' "lack of forensic capacity to collect and analyse evidence" from the crime scenes, and their "lack of horizontal linking and forensic analysis"; Letter dated 14 May 2007 from the Prime Minister of Lebanon to the Secretary-General, S/2007/281, 14 May 2007

36. On the other hand, the requirement of connectedness was also intended to ensure that the Tribunal's jurisdiction would extend far enough to avoid selective justice and counter impunity, but no further. Indeed, the drafters of the Statute were concerned to also limit the Tribunal's jurisdiction to a circumscribed category of attacks.
37. These combined objectives were met in part by the requirement that crimes falling within the Tribunal's jurisdiction be connected to the Hariri attack in some way. As shall be discussed below, these objectives were also achieved by limiting the category of attacks to those similar in nature and gravity to the Hariri attack.

#### **f. The elements of connectedness**

38. The Statute provides a non-exhaustive list of five elements as indicative of a particular attack's "connectedness" to the Hariri attack.<sup>58</sup> The Pre-Trial Judge notes that there is a slight discrepancy between the French and English versions of Article 1 of the Statute as to whether a plurality of factors is required.<sup>59</sup> Both versions of the Agreement are, however, clear that a plurality of elements is necessary.<sup>60</sup> The Pre-Trial Judge therefore finds that at least two or more indicators of connectedness must be established; a single element on its own would not suffice.
39. In his Submission, the Prosecutor avers that these three attacks are connected to the Hariri attack by virtue of the following four elements: the nature of the victims targeted,<sup>61</sup> the perpetrators,<sup>62</sup> the pattern of the attacks (*modus operandi*),<sup>63</sup> and the criminal intent

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(saying that "further delays in setting up the Tribunal would be most detrimental to Lebanon's stability, to the cause of justice, to the credibility of the United Nations itself and to peace and stability in the region").

<sup>58</sup> The English text of Art. 1 of the Statute "includes but is *not limited to*" the enumerated elements (emphasis added); the French text has the same meaning: "*Ce lien de connexité peut, sans s'y limiter, être constitué des éléments suivants...*" (emphasis added).

<sup>59</sup> The English text of Art. 1 of the Statute provides that "[t]his connection includes but is not limited to a *combination* of the following elements" (emphasis added). The French version simply provides that the link could be "*constitué des éléments suivants*", or "comprised of the following elements", and does not expressly require a combination thereof.

<sup>60</sup> In Art. 1 of the Agreement, the English text provides that "[t]his connection includes but is not limited to a *combination* of the following elements" (emphasis added) while the equivalent French version requires "*une combinaison des éléments suivants...*", or "a combination of the following elements".

<sup>61</sup> Submission, sect. II (A).

<sup>62</sup> *Ibid.*, sect. II (B).

<sup>63</sup> *Ibid.*, sect. II (C).



(motive).<sup>64</sup> The fifth element detailed in Article 1 of the Statute — the purpose behind the attacks — is not expressly addressed in the Submission.

i. Criminal intent (motive)

40. The Prosecutor submits that “criminal intent” in Article 1 of the Statute “relates to the direct or indirect will of a perpetrator to commit an offence.”<sup>65</sup> With respect to the parenthetical use of the term “motive” in Article 1, the Prosecutor argues that it can be read as “the reason or goal that causes a person to act”.<sup>66</sup>
41. The Pre-Trial Judge considers that the element of “criminal intent (motive)” is unclear and appears to conflate two separate and distinct legal concepts: motive on the one hand, and criminal intent on the other.
42. Criminal intent is the subjective element (or *mens rea*) of a crime that the Prosecutor is required to prove at trial beyond reasonable doubt.<sup>67</sup> To equate “criminal intent (motive)” with the *mens rea* at this stage of proceedings would be tantamount to pleading an element of the crime, and as such cannot be the meaning of the provision, as to do so would prejudice the rights of the suspect(s).<sup>68</sup>
43. The element of “criminal intent (motive)” can, however, be equated with motive. The Pre-Trial Judge agrees with the Prosecutor that motive is not an element of a crime; the Appeals Chamber held as much in the Interlocutory Decision.<sup>69</sup>

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<sup>64</sup> *Ibid.*, sect. II (D).

<sup>65</sup> *Ibid.*, para. 23. With respect to defining “criminal intent”, the Prosecutor derives some interpretative aid from the definition of this term under Article 30(2) of the Rome Statute of the International Criminal Court (“ICC”), whereby in relation to conduct, intent signifies that a person “means to engage in the conduct”, and in relation to a consequence - that a person “means to cause that consequence or is aware that it will occur in the ordinary course of events.” (*Ibid.*, para. 26, referring to Article 30(2)(a) and (b), respectively, of the Rome Statute.)

<sup>66</sup> *Ibid.*, para. 25.

<sup>67</sup> Art. 16(3)(c) of the Statute.

<sup>68</sup> This is what the Prosecutor has in fact done in submitting that the “criminal intent (motive)” was the intent “to cause a state of terror by using a means liable to create a public danger, namely explosive devices” (Submission, para. 81, see *supra*, note 117). This is a restatement of an element of the crime of terrorism as defined by the Appeals Chamber; *cf.* Interlocutory Decision, para. 146.

<sup>69</sup> *Cf.* Interlocutory Decision, para. 166, discussing *mens rea* as distinct from motive for the crime of intentional homicide in Lebanese law.

44. The legal definition for motive is “something, esp[ecially] wilful desire, that leads one to act.”<sup>70</sup> Thus, motive concerns the personal reasons which prompt a perpetrator to commit a particular crime. The Pre-Trial Judge considers that construing the term “criminal intent (motive)” to refer simply to motive ensures that Article 1 the Statute is not misread to the detriment of the suspect(s). Indeed, a judicial analysis at this stage of proceedings into the existence of the *mens rea* required for the crime would prejudice the rights of the suspect(s).
45. The foregoing interpretation is also warranted in light of the context of Article 1 of the Statute, and particularly of the reports of the UNIIC.<sup>71</sup> The Pre-Trial Judge notes that it was a characteristic feature of some UNIIC reports to confuse intent and motive.<sup>72</sup> Despite this confusion, it is nevertheless clear that the UNIIC’s aim was to establish links between the attacks falling within its mandate, and between these attacks and the Hariri attack, on the basis of motive, and not criminal intent.<sup>73</sup> As has already been mentioned, the UNIIC considered as possible motives for the attacks: personal vendettas, political motives, financial circumstances and extremist ideologies.<sup>74</sup> It also suggested that the objectives and interests common to the targeted victims were possible motives for several attacks.<sup>75</sup>
46. Finally, the Pre-Trial Judge notes that the Prosecutor’s submission inaccurately equates the reason for acting with the goal of the action.<sup>76</sup> These are distinct notions. The “purpose behind the attack” (or, as expressed by the Prosecutor, the “goal”) is a separate factor of connectedness, and is discussed below.

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<sup>70</sup> Cf. e.g. B. Garner (ed.), *Black’s Law Dictionary*, *supra*, note 37, p. 1110. The French notion of “*mobile*” is defined as “*motif qui détermine la volonté de l’auteur d’un acte et le décide à agir*”. Cf. J. Rey-Debove and A. Rey, *Le nouveau Petit Robert*, *supra*, note 41, p. 1611. That definition of motive is also consistent with the ordinary meaning of motive, as “a factor or circumstance inducing a person to act in a certain way; an emotion, reason, goal, etc., influencing or tending to influence a person’s volition”, cf. *Shorter Oxford English Dictionary* Vol. 1, *supra*, note 40, , pp. 1845-1846.

<sup>71</sup> Cf. S. III, *supra*.

<sup>72</sup> Cf., e.g., Fourth UNIIC Report, paras. 71, 73; Sixth UNIIC Report, paras. 66-67

<sup>73</sup> Indeed, the Commission consistently analysed “linkage [between the attacks] by motive”, or “the motives behind the attacks”. Cf. Fourth UNIIC Report, paras. 73-74; Sixth UNIIC Report, paras. 66-67. Likewise, it concluded that the attacks within its mandate were not “commissioned and executed by ... disparate and unconnected persons or groups with an equal number of separate motives.” Fourth UNIIC Report, para. 83; Fifth UNIIC Report, para. 67.

<sup>74</sup> See *supra*, note 49.

<sup>75</sup> Sixth UNIIC Report, para. 66.

<sup>76</sup> Submission, para. 25.

47. In sum, the Pre-Trial Judge concludes that the “criminal intent (motive)” element of connectedness has to be interpreted as meaning motive, or the personal reasons prompting a person to commit an attack.

ii. The purpose behind the attacks

48. Even though this element of connectedness is not expressly pleaded by the Prosecutor, it appears in the Statute and impacts the understanding of the other elements on which the Prosecutor relies. The Pre-Trial Judge will therefore discuss it. Furthermore, the Pre-Trial Judge notes that the Prosecutor has effectively made submissions on the purpose behind the attacks, albeit in his discussion of criminal intent (motive).<sup>77</sup>

49. The ordinary meaning of purpose is “the reason for which something is done or made, or for which it exists; the result or effect intended.”<sup>78</sup> Similarly, the French equivalent for “purpose”, “*but [recherché]*” in the French version of the Statute, means “*point visé, objectif*”.<sup>79</sup>

50. The Pre-Trial Judge thus considers that the “purpose behind the attacks” is the objective of the perpetrator, as opposed to his or her personal motive(s). The two notions are not necessarily the same. The objective of the perpetrator is related to the desired consequences of the attack and can be shared with other perpetrators, such as in the pursuit of a common goal. The motive — as discussed in the preceding section — is instead related to the personal reasons an individual has for committing the act. Motives can vary among several actors who may nevertheless share a common goal or purpose.<sup>80</sup>

51. According to the historical background regarding the creation of the Tribunal,<sup>81</sup> the overall purpose of those who perpetrated the Hariri attack was, in the words of the Secretary-General, the commission of an act against the security of Lebanon, thereby spreading insecurity and intimidation in Lebanese society, destabilising Lebanon, and undermining

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<sup>77</sup> *Ibid.*, para. 25: “[M]otive’ in Article 1 of the Statute means the reason *or goal* that causes a person to act”. See also Submission, para. 81.

<sup>78</sup> *Cf. Shorter Oxford English Dictionary, supra*, note 40, Vol. 2, p. 2410.

<sup>79</sup> *Cf. J. Rey-Debove and A. Rey, Le nouveau Petit Robert, supra*, note 41, p. 315.

<sup>80</sup> For example, in attacking the leaders of a rival group, two co-perpetrators may share the purpose of undermining or weakening that group, but one may be motivated by revenge while the other is motivated by ideology.

<sup>81</sup> *Cf. S. III, supra*.

efforts towards a durable peace.<sup>82</sup> As such, the attack affected Lebanese society as a whole and not the victim(s) alone.<sup>83</sup>

52. The Pre-Trial Judge therefore concludes that attacks sharing objectives such as these can be said to be connected to the Hariri attack by virtue of their purpose.

iii. The nature of the victims targeted

53. The Prosecutor submits that the nature of the victims targeted “relates to the features the targeted victims have in common.”<sup>84</sup>

54. The element of the nature of the victims targeted is not defined in the Statute. The Pre-Trial Judge makes two observations in this regard.

55. First, he considers that the meaning of “victims targeted” refers to the persons who were the intended objective of the attack. Article 1 of the Statute makes this clear by using the word “targeted” in relation to “victims” and by not including those who were killed or wounded incidentally.

56. Second, regarding the “nature” of the victims targeted, the Pre-Trial Judge finds it instructive to read together the English and the French versions of Article 1 of the Statute. The English version refers to “the nature of the victims targeted”, whereas the French one provides for “*la qualité des personnes visées*”. Reading the two together suggests that the “nature of the victims targeted” refers to characteristics which the targeted victims possessed independently, and not necessarily those which they had in common with Mr. Hariri personally. For instance, a victim and Mr. Hariri would be connected by their nature if they

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<sup>82</sup> Secretary-General’s Report of 21 March 2006, para. 13. See also *supra*, S. III, Historical Background.

<sup>83</sup> This language is borrowed from the Fourth UNIIIC Report, para. 130.

<sup>84</sup> Submission, para. 13. In so doing, the Prosecutor relies on Lebanese jurisprudence and the practice of international criminal tribunals as authority to aver that gender, ethnicity, religion, political affiliation, race, nationality or culture may be important indices to be taken into account when conceptualising the “nature” of the victims, insofar as such indices can point either to the perpetrator’s individual intent (Submission, para. 14, making reference to the *Case of The Homicide of Sheikh Nizar al-Halabi*, Case No. 1/1996, Judgment, 17 January 1997, pp. 55-56 discussing the perpetrators’ intent to create a state of terror as demonstrated by the social or religious status of the principal target), or to the overall purpose behind the attacks (Submission, para. 15, making reference to the jurisprudence of the ICTY and the International Criminal Tribunal for Rwanda (“ICTR”)) (see e.g. *Prosecutor v. Akayesu*, Case No. ICTY-96-4-T, Judgment, 2 September 1998, para. 73 discussing the victim’s ethnic association).

were both politicians or public figures; it is not necessary that they be from the same political party.

57. Having due regard to the foregoing understanding of “the nature of the victims”, together with the context of Article 1 of the Statute,<sup>85</sup> the Pre-Trial Judge draws the following conclusion. An attack may be connected to the Hariri attack by virtue of the nature of the victim(s) if it was liable to further the purpose behind the attack owing to characteristics specific to the victim(s). Examples of such characteristics may include (but are not limited to) occupation of a prominent or influential position within Lebanese society, professional association, political affiliation and shared political views.<sup>86</sup>

iv. The perpetrators

58. The Prosecutor submits that the term “perpetrators” refers to “those persons that accomplished the elements of the crime or directly cooperated in the execution of those elements.”<sup>87</sup>

59. At the outset, the Pre-Trial Judge observes that a perpetrator is normally considered to be the individual who bears individual criminal responsibility for a criminal act.<sup>88</sup> For the purposes of Article 1 of the Statute, however, the term “perpetrator” has a broader meaning. It does not refer only to direct perpetrators in the legal sense, but also to other participants in an attack.

60. Furthermore, the element of connectedness based on the perpetrator(s) requires only a link between the perpetrators of two attacks, regardless of whether their individual identities are known. One such link could be that the particular individuals allegedly implicated in the Hariri attack (or some of them) were also allegedly involved in the connected attack(s).<sup>89</sup>

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<sup>85</sup> Cf. S. III, Historical Background, *supra*.

<sup>86</sup> In its Sixth Report, the UNIIC identified specific commonalities between certain attacks, namely that the victims were all prominent media figures or politicians, some/many linked to a common political movement (paras. 68-69), some to each other, to Mr. Hariri himself, or both, by friendship, family ties or other personal associations (para. 70). See also *supra*, note 50.

<sup>87</sup> Submission, para. 16.

<sup>88</sup> The ordinary meaning of “perpetrator” in legal language is “a person who commits a crime or offense” (*Black’s Law Dictionary, supra*, note 37, p. 1256).

<sup>89</sup> Any such finding would naturally be without prejudice to the rights of the accused to be presumed innocent.

Likewise, an indirect perpetrator of one attack could also be a direct perpetrator in another.<sup>90</sup> It is also not required that each and every perpetrator participates in both attacks. Different perpetrators may have participated in different attacks and played different roles. All that is required is that there be a link between at least some perpetrators (in the broad sense) involved in both attacks. This broader interpretation of “perpetrators” is warranted in light of Article 1 of the Statute, which only mentions the perpetrators in general terms.

61. Therefore, this element means that where at least some of the alleged perpetrators of an attack were linked to or involved in the Hariri attack, the attacks can be said to be connected by virtue of the perpetrators.

v. The pattern of the attacks (*modus operandi*)

62. Relying on previous international criminal jurisprudence, the Prosecutor submits that the terms “pattern of attacks” and “*modus operandi*” can be interpreted as “non-accidental repetition of similar criminal acts.”<sup>91</sup> Referring to the notion under U.S. domestic law, the Prosecutor submits that the term “*modus operandi*” in particular can denote the similar “handiwork” of the alleged perpetrator(s).<sup>92</sup>

63. This factor’s reference to the Latin term *modus operandi* is instructive. The Latin term means “a manner of operating” and has been defined as “a method of operating or a manner of procedure; [especially] a pattern of criminal behaviour so distinctive that investigators attribute it to the work of the same person.”<sup>93</sup>

64. The Pre-Trial Judge notes that the standard for ruling on whether an attack falls within the jurisdiction of the Tribunal pursuant to Article 1 need not be so stringent as to require that an attack would be attributed to the same person(s) by virtue of a manner of operating. Rather, a pattern of behaviour similar enough so that it could be attributed to linked person(s) suffices.

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<sup>90</sup> In SC Res. 1644 (2005), preamble, the Security Council used the term “perpetrator” to refer to “all those involved in these attacks” (SC Res. 1644 (2005), preamble, reaffirmed in SC Res. 1748 (2007) of 27 March 2007).

<sup>91</sup> Submission, paras. 19-21, making reference to *Prosecutor v. Kunarac*, ICTY Case No. IT-96-23T, Trial Judgment, 22 February 2001, para. 429, *Kayeshima & Ruzindana*, Case No. ICTR-96-1-T, Trial Judgment, 21 May 1999, para. 93.

<sup>92</sup> Submission, para. 22.

<sup>93</sup> B. Garner (ed.), *Black’s Law Dictionary*, *supra*, note 37, p. 1095.

65. This factor therefore does not require that the manner of operating be replicated identically in multiple attacks in order for them to be connected. For instance, a general pattern of the use of explosive devices in several attacks may be established, notwithstanding the use of different types of devices or explosive materials. It suffices that the pattern be distinctive enough so as to suggest that it could be attributed to a single person or group of people acting together.
66. Furthermore, the Pre-Trial Judge considers that Article 1 of the Statute is not intended to limit the Tribunal's jurisdiction to attacks sharing a pattern of using explosive devices only.<sup>94</sup>
67. Several attacks may of course be linked by a pattern unrelated to the means of attack used. For instance, similarities in methods of surveillance, location(s) of explosive devices, and location and timing of the attacks could also be considered as indicia of a similar pattern or *modus operandi*.
68. It should also be noted that a similar pattern or *modus operandi* may be established despite the existence of certain key differences between allegedly connected attacks. For instance, there may be a sufficiently common pattern or *modus operandi* for the purposes of connectedness where a perpetrator or group of perpetrators undertakes the same surveillance techniques or makes the same preparations for two attacks, even if they choose (for example) a different location, weapon or means of transport to carry out the subsequent attack.
69. The Pre-Trial Judge concludes that for an attack to be connected to the Hariri attack on the basis of a common pattern or *modus operandi*, that attack must have shared a method of operating, a manner of procedure, or a pattern of behaviour similar enough that it could be attributed to the work of a person or persons linked to each other.

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<sup>94</sup> The Pre-Trial Judge notes that the President of the U.N. Security Council, in his letter of 22 November 2006, specifically requested the U.N. Secretary-General to extend the mandate of the UNIIIC so as to empower it to provide technical assistance to the investigation by Lebanese authorities into the killing of Mr. Pierre Gemayel, who had been shot to death. *Cf.* Letter dated 22 November 2006 from the President of the Security Council to the Secretary-General, S/2006/915, 22 November 2006. Such technical assistance was provided (Seventh report of the International Independent Investigation Commission established pursuant to Security Council resolutions 1595 (2005), 1636 (2005), 1644 (2005) and 1686 (2006), S/2007/150, March 2007, paras. 80 *et seq.*).

**g. The requirement of similar nature and gravity**

70. Article 1 of the Statute requires that in order for the Tribunal to have jurisdiction over other attacks that are connected to the Hariri attack; those other attacks must *inter alia* be “of a nature and gravity similar to the [Hariri] attack.”
71. The Prosecutor, averring that the Statute does not provide a meaning for “nature and gravity” of an attack, refers in his submission to Lebanese jurisprudence, the Lebanese Criminal Code, and “the jurisprudence of other international criminal tribunals” in order to determine what the term means.<sup>95</sup> As a result, the Prosecutor argues that the “impact of the attacks”, together with the severity of the penalty ordinarily applicable to the associated crime, are two important considerations.<sup>96</sup> The nature of a crime is thus, according to the Prosecutor, assessed by reference to the penalty prescribed for its commission. The gravity of the crime is determined under Lebanese jurisprudence “on a case-by-case basis by reference to the facts.”<sup>97</sup>
72. The Statute and the Rules do not provide a clear definition of the terms “a nature and gravity similar to the [Hariri] attack”. The Pre-Trial Judge will therefore proceed to interpret the meaning of these terms in a manner consistent with the approach outlined in Section IV(a) above.<sup>98</sup>

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<sup>95</sup> Submission, para. 27. The jurisprudence of other international criminal tribunals to which the Prosecutor refers is: ICC, *Prosecutor v. Abu Garda*, Decision of the Confirmation of Charges, Case No. ICC-02/05-02/09, 8 February 2010, dealing with the gravity requirement for the admissibility of a case before that jurisdiction; and International Criminal Tribunal for the Former Yugoslavia (“ICTY”), *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Trial Judgement, 10 June 2010 dealing with the impact of the gravity of crimes on sentencing. The Prosecutor concedes that, in respect of the *Abu Garda* Decision, this is “not the same as assessing the gravity of an attack under Article 1 of the Tribunal’s Statute” (Submission, para. 29). The same might be said of decisions on sentencing.

<sup>96</sup> Submission, para. 27.

<sup>97</sup> *Ibid.*, para. 28.

<sup>98</sup> *Cf. supra*, section IV (a) on The principles of interpretation.



i. The ordinary meaning of “similar nature and gravity”

73. “Nature” has been defined as “the inherent or essential quality or constitution of a thing”,<sup>99</sup> or “a fundamental quality that distinguishes one thing from another; the essence of something”.<sup>100</sup>

74. The ordinary meaning of “gravity” is the “grave or serious character or nature; importance; seriousness”.<sup>101</sup> In legal language, gravity denotes the “seriousness of harm, an offense, etc., as judged from an objective, legal standpoint”.<sup>102</sup>

75. In light of the distinct ordinary meanings of “nature” and “gravity”, the Pre-Trial Judge considers that they are separate notions and must be applied as such.

76. The Pre-Trial Judge will thus examine the term “similar nature and gravity” in Article 1 of the Statute within that provision’s context, and in light of its object and purpose, starting with the relevant reports of the UNIIC discussed in the historical background (Section III) above.

ii. The context of “similar nature and gravity”

77. From the history of the Tribunal’s creation, certain conclusions can be drawn with regard to the meaning of the terms “nature” and “gravity” of an attack.

78. As far as the similar nature of the attack is concerned, the attack must be violent, planned and executed in such a manner so as to contribute to a climate of insecurity and intimidation in Lebanese society.<sup>103</sup> Indeed, the Lebanese Government and the U.N. agreed that other

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<sup>99</sup> *Shorter Oxford English Dictionary, supra*, note 40, Vol. 2, p. 1895.

<sup>100</sup> B.A. Garner and Others (eds.), *Black’s Law Dictionary, supra*, note 37, p. 1127. In French, the ordinary meaning of “nature” is “ensemble des caractères, des propriétés qui définissent un être, une chose concrète ou abstraite, généralement considérés comme constituant un genre”. Cf. J. Rey-Debove and A. Rey (eds.), *Le Nouveau Petit Robert. Dictionnaire de la Langue Française, supra*, note 41, p. 1673.

<sup>101</sup> *Shorter Oxford English Dictionary, supra*, note 40, Vol. 1, p. 1152. Likewise, the ordinary meaning of the French term “gravité” is “caractère de ce qui a de l’importance (surtout en mal); caractère de ce qui peut entraîner de graves conséquences” (J. Rey-Debove and A. Rey (eds.), *Le Nouveau Petit Robert. Dictionnaire de la Langue Française, supra*, note 41, p. 1183).

<sup>102</sup> B.A. Garner and Others (eds.), *Black’s Law Dictionary, supra* note 37, p. 770.

<sup>103</sup> Cf., e.g., Secretary General’s Report of 21 March 2006, para. 13. The nature of an attack is not necessarily determined with reference to the nature of the victims targeted, as this is a separate indicator of connection (see also S. iii *supra*).

“terrorist attacks” would fall within the jurisdiction of the Tribunal.<sup>104</sup> Likewise, the relevant Security Council resolutions<sup>105</sup> and the reports of the UNIIC<sup>106</sup> and of the Secretary-General<sup>107</sup> consistently use the term “terrorist attacks” to refer to additional attacks falling within the UNIIC’s mandate and possibly within the Tribunal’s jurisdiction thereafter. The term “terrorist attacks” in this context was not intended to be used in its technical, legal sense denoting the crime of terrorism. Instead it illustrates that the shared intention of the Lebanese Government and the U.N. was to employ the term for descriptive purposes, denoting violent attacks, planned and executed in such a manner that they contributed to the creation of a climate of insecurity and intimidation in Lebanon.<sup>108</sup>

79. As far as the gravity of an attack is concerned, it must be noted that the Security Council, in passing the relevant resolutions, was acting pursuant to Chapter VII of the U.N. Charter out of concern for the existence of a threat to peace and security.<sup>109</sup> Indeed, the Security Council specifically concluded that the Hariri attack “and its implications constitute a threat to international peace and security.”<sup>110</sup> It follows that an attack of similar gravity to the Hariri attack would constitute a threat to peace and security. The occurrence of multiple attacks would also reinforce the gravity of the attacks.

80. From the historical background in Section III *supra*, the Pre-Trial Judge notes that the Security Council authorised the UNIIC to extend its mandate without regard to the number of victims injured or killed in each attack. Neither was this a factor which the Security Council and the Government of Lebanon took into consideration when determining the Tribunal’s jurisdiction. Therefore, the Pre-Trial Judge considers that assessing the similarity of the gravity between attacks does not entail a quantitative calculation of the number of

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<sup>104</sup> Art. 1 of the Agreement (French version) provides that: “*S’il estime que d’autres attentats terroristes survenus au Liban ... ont ... un lien avec l’attentat du 14 février 2005.*” The English version of Art. 1 of the Agreement simply provides that “[i]f the tribunal finds that other attacks that occurred in Lebanon ...”.

<sup>105</sup> SC Res. 1636 (2005), preamble; 1644 (2005), preamble and para. 7; 1686 (2006), para. 3; 1748 (2007), preamble; 1757 (2007), preamble; 1852 (2008), preamble.

<sup>106</sup> Cf. Third UNIIC Report, paras. 50, 112.

<sup>107</sup> Cf., e.g. Secretary-General’s Report of 21 March 2006, paras. 2, 7.

<sup>108</sup> *Ibid.*, para. 13.

<sup>109</sup> Cf. the preambles of SC Res. 1636 (2006), SC. Res. 1644 (2005), and SC. Res. 1757 (2007).

<sup>110</sup> SC Res. 1644 (2005) and 1757 (2007). See also SC Res. 1636 (2005), preamble, referring simply to “a threat to international peace and security”.

victims or amount of damage. Rather, it is a qualitative exercise which assesses the broader interests and values of society that are affected by the attacks. One attack can be of a similar gravity to the Hariri attack regardless of the number of victims killed or injured, if any at all, or the scale of the physical destruction caused.

iii. The object and purpose of “similar nature and gravity”

81. This Decision has already discussed how the drafters of Article 1 of the Statute intended to extend the jurisdiction of the Tribunal to a circumscribed category of crimes.<sup>111</sup> This was achieved in part by the requirement that the relevant crimes be of a particular nature and gravity, similar to the Hariri attack.<sup>112</sup> In this way, the Tribunal is likewise provided with sufficient jurisdiction to contribute towards ending impunity for such attacks in Lebanon, and to returning Lebanon to stability and reinforcing the conditions for a durable peace.<sup>113</sup>
82. Limiting the Tribunal’s jurisdiction to certain, narrowly defined crimes of a particular nature and gravity is also consistent with the Tribunal’s role as a partly international criminal tribunal. Whereas any state retains the power to repress criminal conduct within its jurisdiction, international criminal tribunals, by nature, only address the most serious crimes of concern to the international community as a whole, committed by the individuals who are the most responsible.<sup>114</sup> The Tribunal therefore cannot be seised of each and every crime that occurred in Lebanon within the Tribunal’s temporal jurisdiction. Crimes falling outside the Tribunal’s competence, and which it cannot investigate and prosecute, remain within the jurisdiction of the Lebanese courts.<sup>115</sup>

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<sup>111</sup> See paras. 35-36, *supra*.

<sup>112</sup> As seen above in S. IV.d.iv *supra*, this result was also achieved by requiring that the crimes be connected to the Hariri attack.

<sup>113</sup> *Cf. supra*, note 56.

<sup>114</sup> *Cf.* Rome Statute for an International Criminal Court, preamble; SC Res. 1503 (2003) of 28 August 2003, preamble, and SC Res. 1534 (2004) of 26 March 2004, para. 5 (referring to the ICTY’s and ICTR’s completion strategy, and the need for both *ad hoc* Tribunals to focus on “the most senior leaders suspected of being most responsible for crimes within the jurisdiction of the relevant Tribunal”); Assessment and report of Judge Patrick Robinson, President of the International Criminal Tribunal for the Former Yugoslavia, provided to the Security Council pursuant to paragraph 6 of Security Council resolution 1534 (2004), p. 14.

<sup>115</sup> The Lebanese Government requested assistance with investigating certain specific attacks only.

iv. Conclusion

83. In sum, the Pre-Trial Judge finds that an attack has a similar nature to the Hariri attack if it contributed in a like manner to the creation of a climate of insecurity and intimidation in Lebanon. An attack has a similar gravity to the Hariri attack if its effects were serious enough to constitute a threat to peace and security, without necessarily having regard to the number of victims or the scale of destruction caused. Moreover, the occurrence of a series of attacks would reinforce the gravity of each attack.

**V. Discussion of the Submission**

84. The Pre-Trial Judge will now consider how the law stated above applies to the facts averred in the Submission, and whether or not there is *prima facie* evidence that the three attacks referred to therein are within the Tribunal's jurisdiction.

85. The facts are summarised by the Prosecutor in the Submission. They are supported by the materials submitted in Annex B to the Submission, which the Pre-Trial Judge has reviewed and considered, according to the applicable legal standard, in arriving at a determination. This review of the supporting materials was limited to verifying that there is *prima facie* evidence that an attack falls within the jurisdiction of the Tribunal. The review is without prejudice to the rights of the suspects, and it does not constitute a finding in respect to the individual criminal responsibility of any person. It is also without prejudice to the consideration of any request which the Prosecutor might submit in the future for the confirmation of an indictment related to these facts.

86. In this section, the Pre-Trial Judge will first examine the temporal and territorial requirements of the Statute, and then the elements of connectedness, with respect to each of the three attacks. Lastly, the Pre-Trial Judge will assess together the similarity — if any — of the nature and gravity of these other attacks to the Hariri attack.

**a. The attack on Marwan Hamadeh**

87. The attack on Mr. Hamadeh occurred in Beirut on 1 October 2004.<sup>116</sup> The temporal and territorial requirements of Article 1 of the Statute have therefore been met. The Pre-Trial Judge will now examine the elements of connectedness in respect to this attack.

i. Criminal intent (motive)

88. The Prosecutor avers that the perpetrators in the cases of concern *in casu* displayed “a similar criminal intent”.<sup>117</sup> As the Pre-Trial Judge has already noted, this submission is not consistent with the element of “criminal intent (motive)” as defined in this Decision.<sup>118</sup> Neither does the Submission refer to any evidence which would support a finding by the Pre-Trial Judge that the attack is connected to the Hariri attack by virtue of the “criminal intent (motive)” of its perpetrators.

89. The Pre-Trial Judge therefore declines to consider this element further, and rules that it has not been established.

ii. The purpose behind the attack

90. The Pre-Trial Judge notes that the Prosecutor implicitly submits that the purpose of the perpetrators of the attacks against Mr. Hariri and Mr. Hamadeh was to cause a state of terror.<sup>119</sup>

91. Having considered the arguments of the Prosecutor and the materials provided in support thereof, the Pre-Trial Judge determines that — on the basis of the evidence provided — a link may be established between these two attacks by virtue of the alleged purpose identified by the Prosecutor. This conclusion can be inferred from a number of factors, including the political status and common affiliation of Messrs Hamadeh and Hariri, their close personal relationship, the regularity with which attacks of a similar nature occurred in Lebanon, and

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<sup>116</sup> Submission, para. 5(a).

<sup>117</sup> *Ibid.*, para. 81. The shared intent was “to cause a state of terror by using a means liable to create a public danger, namely explosive devices, to kill their targets” and the perpetrators “foresaw and accepted the risk that other deaths would occur in the vicinity of the explosions” and nevertheless proceeded with the attacks, from which similar criminal intent can be once again inferred.

<sup>118</sup> *Cf.* para. 48, *supra*.

<sup>119</sup> Submission, para. 81.

the modalities of the attacks. Messrs Hamadeh and Hariri were indeed notable political figures, subjected to violent daytime attacks in public, in which others were also killed or wounded.

92. The Pre-Trial Judge is thus satisfied, *prima facie*, that the attacks against Mr. Hariri and Mr. Hamadeh were carried out pursuant to a similar purpose. This element of connectedness is therefore established.

iii. The nature of the victim

93. The Prosecutor avers that Mr. Hamadeh, as was Mr. Hariri,<sup>120</sup> “is a prominent Lebanese political figure”, a former MP who held senior posts in several Lebanese governments, including multiple posts as Minister.<sup>121</sup> Mr. Hamadeh served as Minister of Economy and Trade in Mr. Hariri’s government from 2003 to 2004, and as Minister of Communications from 2005 to 2008.<sup>122</sup> In addition to the foregoing, Messrs Hamadeh and Hariri had a close personal connection; [REDACTED].<sup>123</sup> In addition, by virtue of their prominence as political figures and their history of political cooperation and collaboration, Messrs Hariri and Hamadeh shared several notable characteristics.

94. Having considered the arguments of the Prosecutor and the materials submitted in support thereof, the Pre-Trial Judge is satisfied *prima facie* that Mr. Hamadeh was the intended victim of the attack carried out on 1 October 2004. On the basis of the evidence provided, the Pre-Trial Judge also determines that a link may be established between this attack and the Hariri attack by virtue of the nature of the victim, as identified by the Prosecutor.

95. The Pre-Trial Judge is thus satisfied, *prima facie*, that Mr. Hariri and Mr. Hamadeh were victims of a similar nature. This element of connectedness is therefore established.

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<sup>120</sup> Mr. Hariri himself had served as Prime Minister in five governments between October 1992 and the time of his death, at which time he was still a Member of Parliament (“MP”) (Submission, para. 35). Mr. Hariri was also the founder and leader of a Lebanese political movement known since his death as the *Tayyar Mustaqbal* (*Ibid.*, para. 35).

<sup>121</sup> *Ibid.*, para. 36.

<sup>122</sup> *Ibid.*, para. 36.

<sup>123</sup> *Ibid.*, para. 37.

iv. The perpetrators

96. The Prosecutor submits that Messrs Ayyash and Badreddine, who together with others are suspected of the Hariri attack, allegedly perpetrated the attack against Mr. Hamadeh.<sup>124</sup> Call data records suggest that the same mobile telephones were used in the final preparations for the attacks against both Mr. Hariri and Mr. Hamadeh.<sup>125</sup> In particular, telephones attributed to Mr. Ayyash were active in or around the vicinity of the scene of the attack against Mr. Hamadeh before the attack took place.<sup>126</sup> Moreover, Messrs Ayyash and Badreddine communicated four times with each other the day of the attack (1 October 2004),<sup>127</sup> the last being five minutes after the attack itself.<sup>128</sup> Lastly, the pattern of telephonic contact between Messrs Ayyash and Badreddine at the time of the attacks on both Mr. Hariri and Mr. Hamadeh is very similar.<sup>129</sup>
97. Having considered the arguments of the Prosecutor and the materials submitted in support thereof, the Pre-Trial Judge determines that — on the basis of the evidence provided — a link may be established between these two attacks by virtue of the alleged involvement of Messrs Ayyash and Badreddine, together with others, in the attack against Mr. Hamadeh.
98. The Pre-Trial Judge is therefore satisfied that, *prima facie*, there are at least some links between the perpetrators of the attacks against Mr. Hariri and Mr. Hamadeh. This element of connectedness is thus established.

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<sup>124</sup> *Ibid.*, para. 43.

<sup>125</sup> *Ibid.*, para. 44. The Pre-Trial Judge notes that the attribution of these telephones to these two individuals is based on submissions that have been considered elsewhere (*see* Decision on Confirmation, S. VIII.2.b). The Pre-Trial Judge recalls, however, that the attribution has been established *prima facie* only.

<sup>126</sup> Submission, para. 45.

<sup>127</sup> *Ibid.*, para. 46.

<sup>128</sup> *Ibid.*, para. 46(d). The Pre-Trial Judge notes in this regard that these allegations are supported by less material than is submitted in respect of the perpetrators' involvement in the attacks against Messrs Hawi and El-Murr. Nevertheless, the Pre-Trial Judge is satisfied that this material suffices, at this specific stage of proceedings, for a *prima facie* finding that there is a connection between the Hariri attack and the attack on Mr. Hamadeh by virtue of the perpetrators.

<sup>129</sup> *Ibid.*, para. 47.

v. The pattern of the attacks (*modus operandi*)

99. Regarding the pattern of the attacks (*modus operandi*), the Prosecutor argues that the perpetrators employed a similar *modus operandi* to attack Messrs Hamadeh and Hariri.<sup>130</sup> That *modus operandi* included the organised and disciplined use of a number of interconnected mobile phone networks for surveillance of the targeted persons, as well as for the control, coordination, and perpetration of the attacks.<sup>131</sup> The mobile telephones were usually registered under false names and had a high frequency of contact between each other.<sup>132</sup>

100. Furthermore, the attacks were carried out using explosive devices concealed in vehicles located in public streets, and in broad daylight.<sup>133</sup> The vehicles of both victims had to drive past the location of the explosive device. With this *modus operandi*, the perpetrators succeeded in overcoming the security protocols in operation.<sup>134</sup> In addition, the size, design, placement and timing of the explosive device in each attack were carefully considered in order to overcome the applicable security protocols employed by the victims.<sup>135</sup>

101. Having considered the arguments of the Prosecutor and the materials submitted in support thereof, the Pre-Trial Judge determines that — on the basis of the evidence provided — a link may be established between these two attacks by virtue of a similar *modus operandi* having been used to attack Messrs Hamadeh and Hariri, as alleged by the Prosecutor.

102. The Pre-Trial Judge is thus satisfied, *prima facie*, that the attacks against Mr. Hariri and Mr. Hamadeh were carried out with a similar *modus operandi*. This element of connectedness is therefore established.

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<sup>130</sup> *Ibid.*, para. 69.

<sup>131</sup> *Cf.*, *ibid.*, paras. 70, 75.

<sup>132</sup> *Ibid.*, para. 70.

<sup>133</sup> *Ibid.*, paras. 71, 76.

<sup>134</sup> *Ibid.*, para. 72. The Prosecutor refers to this as a Vehicle Borne Improvised Explosive Device (“VBIED”), *Ibid.*, para. 73.

<sup>135</sup> *Ibid.*, para. 78. Mr. Hariri travelled by convoy with an extensive security presence. Mr. Hamadeh had [REDACTED] during business hours, including when travelling by vehicle.



## b. The attack on George Hawi

103. The attack on Mr. Hawi occurred in Beirut on 21 June 2005.<sup>136</sup> The temporal and territorial requirements of Article 1 of the Statute have therefore been met. The Pre-Trial Judge will now examine the elements of connectedness in respect to this attack.

### i. The criminal intent (motive)

104. The Pre-Trial Judge recalls the discussion about the element of “criminal intent (motive)” in respect to Mr. Hamadeh above.<sup>137</sup> The same finding applies, *mutatis mutandis*, to the analysis of the attack against Mr. Hawi. The Pre-Trial Judge therefore rules that this element of connectedness has not been established with respect to Mr. Hawi.

### ii. The purpose behind the attack

105. The Prosecutor submits that the purpose of the perpetrators of the attacks against Mr. Hariri and Mr. Hawi was to cause a state of terror.<sup>138</sup>

106. The findings of the Pre-Trial Judge regarding the purpose of the attack on Mr. Hamadeh apply *mutatis mutandis* to the attack on Mr. Hawi and its ostensibly shared purpose with the Hariri attack.<sup>139</sup> The Pre-Trial Judge determines that — on the basis of the evidence provided — a link may be established between these two attacks by virtue of the alleged purpose identified by the Prosecutor. In the case of the attack on Mr. Hawi, this conclusion can be inferred from a number of factors, including the political status and common affiliation of the Messrs Hariri and Hawi, the regularity with which attacks of a similar nature occurred in Lebanon, and the modalities of the attacks. Messrs Hawi and Hariri were prominent political figures, subjected to violent daytime attacks in public, in which others were also killed or wounded.

107. The Pre-Trial Judge thus is satisfied, *prima facie*, that the attacks against Mr. Hariri and Mr. Hawi were carried out pursuant to this similar purpose. This element of connectedness is therefore established.

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<sup>136</sup> *Ibid.*, para. 5(b).

<sup>137</sup> *Cf.* paras. 88-89, *supra*.

<sup>138</sup> Submission, para. 81.

<sup>139</sup> *Cf. supra*, paras. 90-92.

iii. The nature of the victim

108. The Prosecutor submits that, like Mr. Hariri,<sup>140</sup> Mr. Hawi was “a prominent Lebanese political figure” who held senior posts in the Communist Party, including that of Secretary-General.<sup>141</sup> His continued political activity included his intention to establish his own political party, and he was furthermore prominent in the Arab world.<sup>142</sup>

109. Having considered the arguments of the Prosecutor and the materials submitted in support thereof, the Pre-Trial Judge is satisfied *prima facie* that Mr. Hawi was the intended victim of the attack carried out on 21 June 2005. On the basis of the evidence provided, the Pre-Trial Judge also determines that a link may be established between this attack and the Hariri attack by virtue of the nature of the victim, as identified by the Prosecutor.

110. The Pre-Trial Judge is therefore satisfied, *prima facie*, that Messrs Hariri and Hawi were victims of a similar nature. This element of connectedness is therefore established.

iv. The perpetrators

111. The Prosecutor avers that, based on call data records, Messrs Ayyash and Badreddine, together with others, participated in the attack against Mr. Hawi.<sup>143</sup> Mr. Ayyash in particular allegedly used the same two handsets in planning and carrying out the attacks against Mr. Hariri and Mr. Hawi. Between 26 May and 20 June 2005, Mr. Ayyash and seven other mobile telephone users were active both in the vicinity of Mr. Hawi’s residence and at the location of what would later become the scene of the crime.<sup>144</sup> This is consistent with surveillance being conducted on Mr. Hawi in preparation for an attack.<sup>145</sup>

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<sup>140</sup> Cf. note 120, *supra*.

<sup>141</sup> Submission, para. 38. Mr. Hawi’s posts included Deputy Secretary-General of the Communist party (1976-1979) and Secretary-General (1979-1992).

<sup>142</sup> *Ibid.*, para. 39.

<sup>143</sup> *Ibid.*, para. 48.

<sup>144</sup> *Ibid.*, paras. 53, 55. The seven other mobile telephone users were “Blue phone users”; Cf. Decision on Confirmation, paras. 41, 44, 48(iii) and 49 for the use of so-called Blue phones in the Hariri attack.

<sup>145</sup> Submission, para. 53.

112. Messrs Ayyash and Badreddine were in frequent contact during this time, often when Mr. Ayyash was in the vicinity of Mr. Hawi's residence.<sup>146</sup> This contact was only suspended on 21 June 2005, one hour before the attack against Mr. Hawi, and it was only resumed "with the beginning of observations of El-Murr."<sup>147</sup>

113. Having considered the arguments of the Prosecutor and the materials submitted in support thereof, the Pre-Trial Judge determines that — on the basis of the evidence provided — a link may be established between these two attacks by virtue of the alleged involvement of Messrs Ayyash and Badreddine, together with others, in the attack against Mr. Hawi as alleged by the Prosecutor.

114. The Pre-Trial Judge is thus satisfied, *prima facie*, that there are at least some links between the perpetrators of the attacks against Mr. Hariri and Mr. Hawi. This element of connectedness is therefore established.

v. The pattern of the attacks (*modus operandi*)

115. The Prosecutor pleads that the *modus operandi* in the attack against Mr. Hawi was largely similar to that employed for the attacks against Messrs Hamadeh and Hariri but is nevertheless distinct in at least one respect.<sup>148</sup> Whereas Mr. Hariri was attacked using an explosive device located in a separate vehicle located adjacent to the path that his own vehicle was to take, Mr. Hawi was the victim of an explosive device placed externally on the undercarriage of his own vehicle, under the passenger seat.<sup>149</sup>

116. The Prosecutor explains this distinction by noting that — unlike Mr. Hariri — Mr. Hawi lacked any security arrangement [REDACTED].<sup>150</sup> Indeed, he left his vehicle parked on a public street and only deviated from his usual commute when traffic warranted it.<sup>151</sup>

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<sup>146</sup> *Ibid.*, para. 54. Mr. Ayyash (using personal mobile phone 170) and Mr. Badreddine (using sequential mobile phone 683) were in contact on 36 occasions.

<sup>147</sup> *Ibid.*, para. 54.

<sup>148</sup> *Cf. supra*, paras. 99-100.

<sup>149</sup> Submission, para. 77.

<sup>150</sup> *Ibid.*, para. 77.

<sup>151</sup> *Ibid.*, para. 77.

117. Having considered the arguments of the Prosecutor and the materials submitted in support thereof, the Pre-Trial Judge determines that — on the basis of the evidence provided — a link may be established between these two attacks by virtue of a similar *modus operandi* having been used to attack Messrs Hariri and Hawi as alleged by the Prosecutor.

118. The Pre-Trial Judge is thus satisfied, *prima facie*, that the attacks against Mr. Hariri and Mr. Hawi were carried out with a similar *modus operandi*. This element of connectedness is therefore established.

**c. The attack on Elias El-Murr**

119. The attack on Mr. El-Murr occurred in Beirut on 12 July 2005.<sup>152</sup> The temporal and territorial requirements of Article 1 of the Statute have therefore been met. The Pre-Trial Judge will now turn to examine the elements of connectedness in respect to this attack.

i. The criminal intent (motive)

120. The Pre-Trial Judge recalls the discussion about the element of “criminal intent (motive)” in respect to Mr. Hamadeh above.<sup>153</sup> The same finding applies, *mutatis mutandis*, to the analysis of the attack against Mr. El-Murr. The Pre-Trial Judge therefore rules that this element of connectedness has not been established.

ii. The purpose behind the attack

121. The Prosecutor submits that the purpose of the perpetrators of the attacks against Mr. Hariri and Mr. El-Murr was to cause a state of terror.<sup>154</sup>

122. The findings of the Pre-Trial Judge regarding the purpose of the attack on Mr. Hamadeh apply *mutatis mutandis* to the attack on Mr. El-Murr and its ostensibly shared purpose with the Hariri attack.<sup>155</sup> The Pre-Trial Judge determines that — on the basis of the evidence provided — a link may be established between these two attacks by virtue of the alleged purpose identified by the Prosecutor. In the case of the attack on Mr. El-Murr, this

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<sup>152</sup> *Ibid.*, para. 5(c).

<sup>153</sup> *Cf.* paras. 88-89, *supra*.

<sup>154</sup> Submission, para. 81.

<sup>155</sup> *Cf. supra*, paras. 90-92.

conclusion can be inferred from a number of factors, including the political status and common affiliation of Messrs Hariri and El-Murr, their close personal relationship, the regularity with which attacks of a similar nature occurred in Lebanon, and the modalities of the attacks. Messrs Hawi and Hariri were prominent political figures and were subjected to violent daytime attacks in public, in which others were also killed or wounded.

123. The Pre-Trial Judge is thus satisfied that, *prima facie*, the attacks against Mr. Hariri and Mr. Hawi were carried out pursuant to this similar purpose. This element of connectedness is therefore established.

iii. The nature of the victim

124. The Prosecutor avers that, like Mr. Hariri,<sup>156</sup> Mr. El-Murr was “a prominent Lebanese political figure” at the time of his attack, and he remains so today.<sup>157</sup> He has occupied several senior positions in Lebanese politics, including several Ministerial posts, one as Minister of Interior in Mr. Hariri’s government from 2000 to 2004.<sup>158</sup> Mr. El Murr and Mr. Hariri were friends.<sup>159</sup>

125. Having considered the arguments of the Prosecutor and the materials submitted in support thereof, the Pre-Trial Judge is satisfied *prima facie* that Mr. El-Murr was the intended victim of the attack carried out on 12 July 2005. On the basis of the evidence provided, the Pre-Trial Judge also determines that a link may be established between this attack and the Hariri attack by virtue of the nature of the victim, as identified by the Prosecutor.

126. The Pre-Trial Judge is thus satisfied that, *prima facie*, Messrs Hariri and El-Murr were victims of a similar nature. This element of connectedness is therefore established.

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<sup>156</sup> *Cf.* note 120, *supra*.

<sup>157</sup> Submission, para. 40.

<sup>158</sup> *Ibid.*, para. 40. Mr. El-Murr thereafter served as interim Minister of Defence, interim Deputy Prime Minister (in Najib Mikati’s Government from 19 April 2005) and Minister of Defence and Deputy Prime Minister (in Fouad Siniora’s Government from 19 July 2005).

<sup>159</sup> *Ibid.*, para. 41.

iv. The perpetrators

127. The Prosecutor submits that, based on call data records, Messrs Ayyash and Badreddine, together with others, participated in the attack against Mr. El-Murr.<sup>160</sup> In particular, the unidentified user of mobile phone referred to by the Prosecutor as “Blue 610” was the focal point for the surveillance of Mr. El-Murr.<sup>161</sup> Mr. Ayyash and the user of “Blue 610” were in contact at key times during the surveillance of Mr. El-Murr.<sup>162</sup> Furthermore, perpetrators using “Blue” phones were present in the vicinity of the scene of the attack on several occasions between the end of June and the first week of July 2005 at times consistent with Mr. El-Murr’s commute.<sup>163</sup> They were not present in that area over two weekends [REDACTED]; neither were they present after the attack on 12 July 2005.<sup>164</sup> Mr. Ayyash was in contact with the users of “Blue” phones during this period.<sup>165</sup>

128. After the attack on Mr. Hawi on 21 June 2005, Messrs Ayyash and Badreddine resumed contact for the first time on 25 June 2005.<sup>166</sup> They communicated by telephone at least 14 times until 12 July 2005, the day of the attack against Mr. El-Murr.<sup>167</sup>

129. Having considered the arguments of the Prosecutor and the materials submitted in support thereof, the Pre-Trial Judge determines that — on the basis of the evidence provided — a link may be established between these two attacks by virtue of the alleged involvement of Messrs Ayyash and Badreddine, together with others, in the attack against Mr. El-Murr as alleged by the Prosecutor.

130. The Pre-Trial Judge is thus satisfied, *prima facie*, that there are at least some links between the perpetrators of the attacks against Mr. Hariri and Mr. El-Murr. This element of connectedness is thus established.

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<sup>160</sup> *Ibid.*, para. 58.

<sup>161</sup> *Ibid.*, paras. 61, 64. *See* note 144, *supra*.

<sup>162</sup> Submission, paras. 61, 64.

<sup>163</sup> *Ibid.*, para. 62.

<sup>164</sup> *Ibid.*, para. 62.

<sup>165</sup> *Ibid.*, para. 63.

<sup>166</sup> *Ibid.*, para. 65.

<sup>167</sup> *Ibid.*, para. 65.

v. The pattern of the attacks (*modus operandi*)

131. Regarding the pattern of the attacks (*modus operandi*), the Prosecutor submits that the perpetrators employed a similar *modus operandi* to attack Messrs Hariri and El-Murr.<sup>168</sup> This *modus operandi* was similar to the one used for the attack against Mr. Hamadeh.<sup>169</sup>
132. Having considered the arguments of the Prosecutor and the materials submitted in support thereof, the Pre-Trial Judge determines that — on the basis of the evidence provided — a link may be established between these two attacks by virtue of a similar *modus operandi* having been used to attack Messrs Hariri and Hawi as alleged by the Prosecutor.
133. The Pre-Trial Judge is thus satisfied, *prima facie*, that the attacks against Mr. Hariri and Mr. El-Murr were carried out with a similar *modus operandi*. This element of connectedness is thus established.

**d. The nature and gravity of the attacks**

134. Having examined the elements of connectedness in respect to each attack, the Pre-Trial Judge will now assess whether or not the attacks pleaded in the Submission are of a similar nature and gravity to the Hariri attack. In so doing, the Pre-Trial Judge will consider the attacks against Messrs Hamadeh, Hawi and El-Murr together. This is because the same considerations apply to all of the attacks, and the required analysis is a general one, not specific to each attack.
135. The Prosecutor submits that the attacks against Messrs Hamadeh, Hariri, Hawi and El-Murr are similar in nature and gravity.<sup>170</sup> Although the Hariri attack resulted in a greater number of fatalities, all of the attacks are “comparable in gravity ... due to the harm they caused and as constituting the same substantive criminal offences.”<sup>171</sup>
136. Concerning the nature of the attacks, the attacks against Messrs Hamadeh, Hawi and El-Murr all share specific characteristics which illustrate the similarity of their nature to the

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<sup>168</sup> *Ibid.*, para. 69.

<sup>169</sup> *Cf. supra*, paras. 99-100. Mr. El-Murr [REDACTED] when travelling in his own vehicle.

<sup>170</sup> Submission, para. 86.

<sup>171</sup> *Ibid.*, para. 86.

Hariri attack. All of the attacks were committed in broad daylight,<sup>172</sup> in public areas, using explosive devices,<sup>173</sup> and resulted in damage to property and the injury or death of persons other than the intended victims.<sup>174</sup>

137. Thus, these three attacks were violent in nature and were carried out in such a way as to attract the attention of the public, thereby contributing to the creation of a climate of insecurity and intimidation in Lebanon. As such, the Pre-Trial Judge is satisfied *prima facie* that each of these attacks was similar in nature to the Hariri attack.

138. Concerning the gravity of the attacks, the Pre-Trial Judge notes that the Security Council, acting under Chapter VII of the U.N. Charter, has consistently held that the Hariri attack itself, as well as its implications, constituted a threat to international peace and security.<sup>175</sup> The U.N. Security Council has also equated other attacks in Lebanon since October 2004 to the Hariri attack when adopting the relevant Resolutions.<sup>176</sup> The Pre-Trial Judge further recalls that the UNIIC was concerned with the attacks against Messrs Hamadeh, Hawi and El-Murr in particular, among others.<sup>177</sup>

139. The implications of each of these attacks were similar to those of the Hariri attack, which the Security Council resolved was a threat to peace and security. Therefore, the Pre-Trial Judge is satisfied *prima facie* that these other attacks also constituted a threat to peace and security.

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<sup>172</sup> The attacks against Messrs Hamadeh, Hariri, Hawi and El-Murr were committed at 09:14, 12:55, 09:48, and approximately 10:15, respectively (Submission, paras. 1, n. 1; 5(a)-(c)).

<sup>173</sup> The VBIED that exploded adjacent to Mr. Hamadeh's vehicle was parked in Henry Ford Street in Beirut (Submission, para. 5(a)); the VBIED that exploded adjacent to Mr. Hariri's vehicle was parked in Minet el Hos'n Street in Beirut (*ibid.*, para. 1, n. 1); Mr. Hawi's vehicle was located in Rue 49 (also known as Boustany Street) when the VBIED attached to it exploded (*ibid.*, para. 5(b)); and the VBIED that exploded adjacent to Mr. El-Murr's vehicle was parked on Al-Naqqash Rabis Main Road – Khalil Farah Street in Beirut (*ibid.*, para. 5(c)).

<sup>174</sup> *Cf.* paras 2(a)-(c), *supra*. In respect of the damage caused to others in the Hariri attack, *cf.* Decision on Confirmation, para. 39.

<sup>175</sup> SC Res. 1636 (2005), preamble, and SC Res. 1644 (2005), preamble.

<sup>176</sup> SC Res. 1686 (2006), preamble and para. 3; SC Res. 1748 (2007), preamble; SC Res. 1757 (2007), preamble; SC Res. 1852 (2008), preamble.

<sup>177</sup> Third UNIIC Report, paras 55-69, which contains a list of 14 specific attacks perpetrated in Lebanon since 1 October 2004. The Report includes references to the attacks against Mr. Hamadeh (para. 56), Mr. Hawi (para. 63) and Mr. El-Murr (para. 64).



140. The Pre-Trial Judge therefore concludes that the attacks against Messrs Hamadeh, Hawi and El-Murr were of *prima facie* a similar nature and gravity to the Hariri attack.

**e. Conclusion**

141. The Pre-Trial Judge is satisfied *prima facie* that the temporal and territorial requirements for Article 1 of the Statute have been met in respect of each other attack. He is further satisfied *prima facie* that a link may be established between the other attacks against Messrs Hamadeh, Hawi and El-Murr and the Hariri attack on the basis of the purpose behind the attacks, the nature of the victims targeted, the pattern of the attacks (*modus operandi*), and the perpetrators. In addition, the Pre-Trial Judge finds *prima facie* that the attacks against Messrs Hamadeh, Hawi and El-Murr were of a similar nature and gravity to the Hariri attack.

142. In light of these findings, the Pre-Trial Judge is convinced *prima facie* that the requirements of Article 1 of the Statute have been met and concludes that the Tribunal has jurisdiction over the attacks against Messrs Hamadeh, Hawi and El-Murr.

**VI. Confidentiality**

143. The Pre-Trial Judge recalls that in the Prosecutor's Connected Cases Submission, the Prosecutor also requests the Pre-Trial Judge to order that the Submission and the materials filed in support thereof remain confidential [REDACTED].<sup>178</sup>

144. The Prosecutor grounds his request on the basis, *inter alia*, that premature public disclosure of the Submission at this stage of proceedings could adversely affect the safety and security of victims and witnesses, jeopardise the investigations and lead to the destruction of evidence.<sup>179</sup>

145. Notwithstanding the confidentiality requested, the Prosecutor [REDACTED].<sup>180</sup>

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<sup>178</sup> Submission, para. 7.

<sup>179</sup> *Ibid.*, para. 93.

<sup>180</sup> *Ibid.*, para. 94.

146. The Pre-Trial Judge notes that pursuant to Rule 97 of the Rules, Rule 133 of the Rules applies *mutatis mutandis* in proceedings before him. Rule 133(A) of the Rules provides as follows:

The [Pre-Trial Judge] may, *proprio motu* or at the request of a Party, the victim or witness concerned, or the Victims and Witnesses Unit, order appropriate measures for the privacy and protection of victims and witnesses, provided that the measures are consistent with the rights of the accused.

147. In light of this provision, the Pre-Trial Judge considers that he is competent to entertain this request pursuant to Rule 133 of the Rules, as it concerns the safety and security of victims and witnesses.

148. On the basis of the arguments and reasoning of the Prosecutor, the Pre-Trial Judge is satisfied that the measure requested is justified in order to ensure the protection of the persons concerned and the interests of the investigations.

149. This Decision and the Submission will remain confidential until a further order. [REDACTED].

## **VII. Disposition**

### **FOR THESE REASONS, THE PRE-TRIAL JUDGE,**

**PURSUANT** to Article 1 of the Statute, and Rules 11(A) and (B) of the Rules and Procedure and Evidence,

**RULES** that there is sufficient *prima facie* evidence that the attack against **Mr. Marwan Hamadeh** on 1 October 2004 is within the jurisdiction of the Tribunal in a manner consistent with Article 1 of the Statute;

**RULES** that there is sufficient *prima facie* evidence that the attack against **Mr. George Hawi** on 21 June 2005 is within the jurisdiction of the Tribunal in a manner consistent with Article 1 of the Statute;

**RULES** that there is sufficient *prima facie* evidence that the attack against **Mr. Elias El-Murr** on 12 July 2005 is within the jurisdiction of the Tribunal in a manner consistent with Article 1 of the Statute;

**ORDERS** that this Decision and the Submission (including its Annexes) shall remain confidential until a further order; and

**ORDERS** [REDACTED].

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

Leidschendam, 16 September 2019.



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Daniel Fransen  
Pre-Trial Judge

