

Council of Europe
Committee of Legal Advisers
of Public International Law (CAHDI)
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Judge Ivana Hrdličková
President of the Special Tribunal for Lebanon

Monsieur le Président,

Mesdames et Messieurs du Comité des conseillers juridiques sur le droit international public,

Mesdames et Messieurs,

Je vous remercie de me recevoir parmi vous à Strasbourg pour vous présenter le Tribunal Spécial pour le Liban en ma qualité de Présidente du Tribunal. J'ai été nommée juge de la chambre d'appel en 2012 et j'ai été élue Présidente du tribunal en 2015.

Je vais commencer ma présentation en français mais ensuite je continuerai en anglais, si vous me le permettez. Je souhaite tout d'abord vous présenter l'histoire du Tribunal Spécial pour le Liban, notamment dans quel contexte il a été créé. Je voudrais ensuite évoquer avec vous les dernières actualités du tribunal, notamment par rapport à l'affaire principale relative à l'attentat contre Rafic Hariri. Enfin, je souhaiterais aborder avec vous les défis actuels de la justice pénale internationale, et répondre à vos questions à ce sujet.

Au préalable, je voudrais vous exprimer toute ma gratitude. Sans votre soutien, nous ne pourrions pas continuer notre travail et accomplir notre mission. Nous vous en sommes vraiment reconnaissants.

Maintenant je vais revenir sur les conditions de création du Tribunal Spécial pour le Liban. Le Tribunal a été créé en 2007 par le Conseil de sécurité des Nations Unies. Le tribunal a été mis en place pour juger les auteurs de l'attentat du 14 février 2005 à Beyrouth qui a coûté la vie à 22 personnes, dont l'ancien Premier-Ministre libanais Rafic Hariri. Le procès a débuté en 2014, et s'est achevé en octobre 2018. Les juges sont actuellement en train de délibérer et de rédiger le jugement, qui est attendu dans les prochains mois, je vais expliquer cela plus tard.

Le Tribunal Spécial pour le Liban aussi innove dans le paysage de la justice pénale internationale – et je voudrais mentionner 5 caractéristiques spécifiques du Tribunal :

- Nous sommes le premier tribunal international compétent pour le Moyen-Orient et en matière de terrorisme ;
- Nous avons un bureau de la défense indépendant des autres organes, nous accordons une place importante aux victimes ; et nous avons le procès in absentia,
- Nous avons une procédure pénale hybride, caractérisée par un juge de la mise en état avec des pouvoirs renforcés.
- Nous sommes attachés au pluralisme juridique. Notre Statut prévoit la combinaison du droit pénal international et du droit pénal libanais.
- Nous sommes aussi attachés au pluralisme linguistique. Les langues officielles du Tribunal sont l'anglais, le français et l'arabe.

Autre point important : je souhaite que notre tribunal soit aussi pionnier en matière de gouvernance :

- Avec plus de transparence, vis-à-vis des Etats, des organisations internationales, et du public, en améliorant la prévisibilité du déroulement des procès ;
- Avec plus d'efficacité, en identifiant les règles procédurales qui permettent d'aller plus vite sans remettre en cause les droits de la défense ;
- Avec plus de responsabilité, pour les juges et pour l'institution, qui doit être à la hauteur de la mission qui lui a été confiée.

Je vais continuer en Anglais, si vous me le permettez.

Mr. Chair,

Members of the Committee of the Legal Advisers on Public International law,

The Secretary General of the United Nations extended the mandate of the Special Tribunal for Lebanon for a further three years from 1 March 2018, or until the earlier completion of its judicial work. Today, I hope to leave you with an understanding of the nature of our mission, the work we have completed so far and the tasks that lie ahead of us.

As I mentioned, the Special Tribunal for Lebanon was created by the UN Security Council Resolution 1757 in 2007, as an immediate reaction of the assassination of former Lebanese Prime-minister Rafiq Hariri, and became operational in 2009. This new Tribunal was to absorb the investigatory functions of the UN International Independent Investigative Commission and conduct criminal trials of those believed to be responsible for the 14 February 2005 terrorist attack in downtown Beirut, which killed 22 persons, including the

former Lebanese Prime Minister and injured more than 200 others. The Special Tribunal also has jurisdiction over other legally connected high profile attacks perpetrated in Lebanon between 1 October 2004 and 12 December 2005 and potentially over other related attacks if there is an additional agreement between Lebanon and the UN.

The Special Tribunal has a number of notable features, many of which are unique in the international criminal justice system. We are a hybrid tribunal, applying law and procedural rules inspired by both the Lebanese and international legal systems. While many other tribunals apply substantive international criminal law, the STL applies the provisions of the Lebanese Criminal Code to the crimes within its jurisdiction, while applying international rules of procedure and evidence that reflect both civil and common law traditions. In fact, ours is a Tribunal of many firsts: we are the first international tribunal dealing with crimes committed in the Middle East, and the only international tribunal to date to address the crime of terrorism in times of peace. As explained by the Tribunal's Appeals Chamber in its 2011 interlocutory decision on the applicable law, the Tribunal's judges consider first the Lebanese domestic definition of the crime of terrorism, but interpret it in light of international law binding upon Lebanon – resulting in a unique legal process to address one of the world's most urgent international crimes.

The Tribunal's structure is also unique: it features an autonomous Pre-Trial Judge, an independent Defence Office, and provides for the extensive participation of victims – permitting them to make submissions and to present their views and concerns during trial. The Tribunal maintains its headquarters in the Netherlands as well as a local Beirut office, and operates in three official languages, enabling it to maintain impartiality in its proceedings, but readily connect with the Lebanese people.

We are also the first international tribunal since Nuremberg to utilize in absentia trials, that is, trials conducted in the absence of an Accused person. The challenges inherent in implementing such procedures were highlighted by the death of Mr Badreddine, one of the accused in our main case, in May 2016. This was not the first time at an international tribunal that an accused died during proceedings – you will all be familiar with the case of Slobodan Milošević, who died in detention in The Hague while on trial before the ICTY. While in that case verification of Mr Milošević's death was a straightforward matter for a medical examiner to confirm, Mr Badreddine's death, in the midst of in absentia proceedings, raised complications – as none of the usual methods used by international courts were available to confirm his death. This in turn required the Trial and then Appeals Chamber to consider, for the first time, the legal framework applicable to such cases.

Despite such challenges, there is an important rationale and a huge benefit underlying our in absentia proceedings, which are derived from the Lebanese legal system. That is, that the Accused should not be permitted to hinder the administration of justice through their voluntary absence. In this sense, we recognize that the international criminal justice system is not only a mechanism for punishing individuals that have committed serious crimes. It is also concerned with contributing to the historical record, bringing justice to society and, above all,

promoting reconciliation in victim communities. What the Special Tribunal seeks to prove through its work is that all of these aims can be achieved in the absence of an accused, so long as proceedings are conducted fairly and in accordance with the accused's rights. It is extremely important both for the victims and the broader international community, to see that justice can be done even if the accused are not immediately present. The message that there is no impunity for a crime such as terrorism, is highly significant, and may serve as both a deterrent to would-be perpetrators and a source of hope for victims of other international crimes.

The Special Tribunal therefore provides a one-of-a-kind opportunity for the international community to explore the potential of in absentia proceedings as a tool for supporting justice initiatives. In that context, it is vital that the Special Tribunal address various issues in the context of its in absentia proceedings so as to foster a continuing dialogue on their potential future role at the international level.

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Once the Tribunal became operational in March 2009, the Prosecution's investigation resulted in the filing of an indictment, and arrest warrants were issued in mid-2011 in a bid to locate and arrest the four Accused. The Trial Chamber then found that the Accused were deliberately absconding, paving the way for in absentia proceedings. After pre-trial proceedings and an adjournment to permit the Prosecution to join a fifth accused to the main case and give his counsel adequate time to prepare, the trial began in earnest in mid-2014.

The Prosecution case has proceeded in three main stages, as the Prosecution has presented: (1) forensic evidence on the cause of the explosion on 14 February 2005 and evidence related to the death and injury of the victims; (2) evidence regarding the preparatory acts allegedly undertaken by the Accused and their co-conspirators in 2004-2005 to prepare for the assassination of Rafik Hariri and in coordinating an alleged false claim of responsibility for the attack; and (3) evidence relating to the identity of the Accused and their respective roles in the attack.

The second and third phases in particular have been characterized by highly technical telecommunications evidence of the kind that has never before been received by an international tribunal and to a scale that is rarely seen on the domestic level. While such technical evidence can at times seem removed from the immediacy and pain of the crimes committed, the Tribunal is setting important precedent in the presentation of telecommunications evidence, which is likely to be critical to the resolution of future international crimes.

The telecommunications data presented by the Prosecution includes so-called "call sequence tables" or "CSTs", extracted from voluminous raw call data records collected by communication service providers in Lebanon. It also includes technical information regarding the physical location of cell tower sites, their functionality and the direction and nature of

their coverage. To give you an idea of the scope of the evidence presented in the proceedings: the testimony of some 323 witnesses was received into evidence; nearly 3,132 exhibits had been admitted into evidence; court hearings had generated over 93,933 pages of transcript. Much of the evidence presented has also been based on call data records, or “CDRs”, which reflect metadata routinely collected from phone calls by Lebanese communication service providers. The Prosecution is using these call data records to aid in attributing certain phone numbers to specific individuals, to demonstrate their movements and attempt to link them to the crimes alleged in the indictment.

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The reality of the scale and complexity of our judicial proceedings does not detract us from our responsibility to ensure the fair and timely administration of justice. This requires balancing an independent judiciary with accountability to stakeholders - both those in Lebanon, and in the broader international community. This is no easy feat, and it is a challenge common to all international criminal tribunals, particularly in the absence of guidance from any central auditing or oversight body.

Throughout my Presidency, I’ve have taken steps to improve the transparency, efficiency, and accountability of Chambers, including: promoting regular reporting on projected timelines for the main case to foster better understanding between all stakeholders of the work achieved and yet to be completed; standardizing the administration of Judges’ professional obligations; facilitating discussion surrounding possible Rule amendments to increase the efficacy of the Special Tribunal’s procedural rules; consulting independent experts on methods for improving the efficiency of future proceedings; the adoption of a Code of Professional Conduct; the facilitation of a Judicial Accountability Mechanism and the introduction of targeted, professional training for Judges. To ensure a proper gender balance, we established a Gender focal point within the Tribunal and all the Principals have joined the International Gender Champions network.

Any judgement may be potentially followed by an appeal. Should that situation arise, we know that a number of key legal issues will not have to be addressed for the first time on appeal. The Tribunal is unique in providing for an interlocutory procedure whereby the Pre-Trial Chamber can refer questions of applicable law to the Appeals Chamber before confirming an indictment. The Pre-Trial Judge used this procedure in relation to the indictment in the main case in 2011, and, in rendering its decision, the Appeals Chamber defined a number of the crimes charged in the indictment, including the crime of terrorism. The procedure was again used in relation to the Connected Cases in 2017.

Now, the Special Tribunal must begin the process of discussing, considering and making decisions about its intended legacy. This process will begin internally and be expanded to include external actors – principally Lebanese stakeholders – whose feedback will be central to furthering local ownership over the Tribunal’s work.

Our legacy will encompass normative aspects – the various legal, regulatory and administrative documents and judicial decisions; institutional and operational aspects – that is, the “lessons learned” from our unique features; the transfer of expertise to Lebanon and the wider international community; and the historical record established through the proceedings and evidence collected. We have already facilitated the creation of the International and Transitional Justice Resource Center, a non-governmental organization whose task will be the continuation of the Inter-University Program on International Criminal Law and Procedure that has been run in conjunction with various Lebanese Universities since 2011. It is one of our top priorities that the Lebanese people feel a direct benefit from the Tribunal’s work, and that they be able to access and derive meaning from the impartial and independent judicial decisions it has rendered. However, the “lessons learned” should have wider benefits: to identify areas for improvement in operations of the international criminal tribunals and also to assist the member states for the future, should a new international tribunal be established.

We will also leave a legacy of innovation in developing best-practices for judicial governance at international criminal tribunals. Within our mandate, we have worked hand-in-hand with other international tribunals to strengthen international criminal justice. We’ve developed universal key performance indicators for use at international criminal justice institutions to facilitate independent auditing and have identified best practices for improving the efficiency of international courts. In October 2017, together with other representatives of International courts and tribunals, we adopted the “Paris Declaration on the Effectiveness of International Criminal justice” – 31 principles to strengthen international criminal justice and we are committed to continue this process.

Mr. Chair, Members of the Committee of Legal Advisers on Public International Law, it was a privilege to address the issue of the Special Tribunal for Lebanon and challenges of the International Criminal Justice to you today. Let me conclude with an expression of my sincere gratitude for this opportunity and for your continued support, both financial and diplomatic, without which we would not be able to fulfil our mandate and without which no international tribunal could operate.