

Northwestern Journal of International Human Rights

Volume 11 | Issue 3

Article 12

Summer 2013

STL in the Year 2011: Atrocity Crime Litigation Review for the Year 2011

Kelsey Green

Michael Novak

Follow this and additional works at: <http://scholarlycommons.law.northwestern.edu/njihr>

 Part of the [Human Rights Law Commons](#), and the [International Law Commons](#)

Recommended Citation

Kelsey Green and Michael Novak, *STL in the Year 2011: Atrocity Crime Litigation Review for the Year 2011*, 11 NW. J. INT'L HUM. RTS. 271 (2013).

<http://scholarlycommons.law.northwestern.edu/njihr/vol11/iss3/12>

This Article is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Northwestern Journal of International Human Rights by an authorized administrator of Northwestern University School of Law Scholarly Commons.

STL in the Year 2011: Atrocity Crime Litigation Review in the Year 2011

Kelsey Green

Michael Novak

Atrocity Crimes Litigation Conference
Memorandum Regarding 2011 Activity of the
SPECIAL TRIBUNAL FOR LEBANON

INTRODUCTION

¶1 A terrorist attack on February 14, 2005 killed 21 people including former Prime Minister of Lebanon Rafik Hariri and injured 231 others. This memo discusses the 2011 activities, presented chronologically, of the Special Tribunal for Lebanon (“Tribunal”), which was created in 2009 in order to prosecute the actors involved in this terrorist attack.

COURT PROCEDURES

A. *Applicable Law*

¶2 On January 21, 2011, Pre-Trial Judge, Daniel Fransen, filed a request for clarification of applicable law to the Appeals Chamber of the Tribunal. Four days earlier, on January 17, 2011, the Prosecutor submitted an indictment to the Pre-Trial Judge. In order to properly examine the indictment, the Pre-Trial Judge sought clarification of several questions of applicable law relating to (1) the offenses, (2) modes of responsibility and cumulative charging, and (3) plurality of offenses covered in the indictment before ruling. The Pre-Trial Judge’s questions and the Appeals Chamber’s response are discussed in order below.

¶3 The Appeals Chamber (“Chamber”) handed down their decisions on February 16, 2011. The Chamber sought to interpret the Statute of the Special Tribunal, where possible, by the established guidelines set forth in article 31(1) of the Vienna Convention. Alternatively, where that standard was unclear, the Chamber utilized the general criminal law principle of *favor rei* (in favor of the accused) as the standard of construction. Unlike most international courts, the Statute requires the Tribunal to primarily apply domestic Lebanese law in the exercise of its primary jurisdiction. Generally speaking, the Tribunal will apply Lebanese law as interpreted and applied by Lebanese courts except where that interpretation or application is unreasonable or might result in injustice or appears inconsistent with international principles and rules that are binding upon Lebanon.

¶4 The Tribunal’s jurisdiction differs from that of other international criminal tribunals. Whereas other international criminal courts and tribunals do not confine their subject-matter jurisdiction except by reference to one or more categories of crimes, the Lebanon Tribunal’s Statute explicitly limits jurisdiction of the Tribunal to a set of specific allegations. The Tribunal’s

task is to determine whether those allegations can be characterized, under Lebanese law, as “acts of terrorism,” “crimes and offenses against life and personal integrity,” the crime of “illicit association,” a crime of “conspiracy,” or of “failure to report crimes and offenses.” Thus, the Tribunal takes a reverse approach to jurisdiction compared to other international criminal courts and tribunals. Rather than beginning with categories of criminalities to be prosecuted, the Tribunal starts with allegations of facts to be investigated and is tasked with prosecuting those responsible under one or more specific heads of criminality. Therefore, the Tribunal’s Prosecutor cannot “choose” the facts to prosecute or include additional facts, and the Tribunal’s only province is to legally characterize those facts.

¶5 The Statute confers upon the Tribunal jurisdiction that is confined to certain particularly serious offenses under the Lebanese criminal law. Therefore, any allegations in an indictment must be aligned to one of the crimes identified in the Statute. The purpose of this judgment by the Chamber is to add some precision to both what the law of Lebanon requires and to what extent the Statute modifies its application.

¶6 The Tribunal must apply the substantive criminal law of Lebanon, yet it is international in provenance, composition, and regulation. It must abide by “the highest international standards of criminal justice,” and the Statute provides that it incorporates particular aspects of international criminal law. This tension, created primarily between articles 2 and 3 of the Statute, creates the most basic question of choice of law: when and whether international law should inform the Tribunal’s application of Lebanese criminal law, based on the Tribunal’s international nature and mandate.

¶7 In the application of law, there are three lawmakers whose intent must be harmonized and effectuated: the Parliament of Lebanon, with respect to the substantive criminal law referenced in article 2 of the Statute; the United Nations, and the Government of Lebanon, which created the Statute including the incorporation of some norms of international criminal law in article 3; and the Judges of the Tribunal and authors of the Lebanon Code of Criminal Procedure who created the rules of procedure and evidence.

¶8 The Defense Office has indicated that they believe the Tribunal may only apply Lebanese law strictly and without regard to the international nature of the Tribunal. However, the Chamber rejects this view for three reasons. First, Lebanon is bound by certain international laws, and these laws are part of the legal context in which Lebanon’s legislation is construed. Second, the application of domestic law by an international court is subject to limitations by international law. Third, the Tribunal may interpret different or conflicting views of Lebanese courts in the manner in which it deems most consistent with international legal standards. Further, Lebanon does not have a formal doctrine of binding precedent.

¶9 As is made clear by article 2 of the Statute, the starting point of construction is the criminal law of Lebanon. The interpretation and application of Lebanese law must meet certain conditions: first, it must be consistent with the offense as defined by Lebanese law, second, it must have been accessible to the accused at the time of the act, and third, it must have been reasonably foreseeable by the accused.

B. Offenses

¶10 The Prosecutor’s indictment submission included offenses of terrorist acts, conspiracy with a view to committing a terrorist act (“conspiracy”), intentional homicide with premeditation, and attempted intentional homicide with premeditation. The Pre-Trial Judge submitted questions for each of these offenses individually.

1. Terrorist Acts

¶11 Generally, the question regarding terrorist acts is whether the Tribunal should take into account conventional and customary international law in order to understand fully this notion, or whether it should rely exclusively on the Lebanese Criminal Code. Further, if it is decided that other laws should be considered, the Pre-Trial Judge needs to seek clarification on how to resolve conflicts that arise between Lebanese law and other law.

¶12 The Tribunal will apply the Lebanese domestic crime of terrorism, interpreted in consonance with binding international conventional and customary law. The objective elements of terrorism under Lebanese law are: (1) an act whether constituting an offense under other provisions of the Criminal Code or not; and (2) the use of a means “liable to create a public danger.” Particular means have been specifically enumerated, including explosive devices, inflammable materials, poisonous or incendiary products, or infectious or microbial agents. Lebanese case law has held these means do not include guns, machine-guns, revolvers, letter bombs or knives. Under Lebanese law, the subjective element of terrorism is the special intent to cause a state of terror.

¶13 However, the Tribunal will not rely solely on the definition of terrorism provided by Lebanese domestic law. The allegations under the Tribunal’s jurisdiction have been identified by the U.N. Security Council (“Security Council”) as a “threat to international peace and security.” The Council’s response, establishing an International Tribunal to prosecute the allegations, patently proves that the Security Council considers those terrorist attacks to be particularly grave acts of terrorism with international implications. As such, the Tribunal must take into account the unique gravity and transnational dimension of the allegations. Therefore, while respecting Lebanese jurisprudence, the court is justified in interpreting and applying Lebanese law through the lens of international legal standards on terrorism that specifically address transnational terrorism and are binding on Lebanon.

¶14 Beyond Lebanese domestic law, the Chamber will consider the Arab Convention against Terrorism (“Convention”), and customary international law on terrorism in times of peace. The Arab Convention and other international treaties relied on by the Chamber in its decision were ratified by Lebanon in the Official Gazette prior to the acts in the allegations. The Convention defines terrorism for the purpose of enjoining the States Parties to prevent and suppress terrorism, but simultaneously allows each party the freedom to define terrorism on the basis of its own national legislation. Lebanese law and the Convention have two elements in common: (1) they both embrace acts, and (2) they require the intent of spreading terror or fear. However, the Convention does not specifically require that the underlying act be carried out by specific instrumentalities or devices. The Convention requires the underlying act to be violent, and it excludes acts performed in the course of a war of national liberation as long as such war is not conducted against an Arab country.

¶15 Based on treaties, U.N. resolutions and legislative and judicial practices of States, a customary rule of international law has evolved on terrorism in times of peace. This definition requires four elements: (1) the intent of the underlying crime, (2) the special intent to spread fear or coerce authority, and (3) the commission of a criminal act (4) that is transnational. Again, this definition is broader than that of Lebanese domestic law in that it does not require specific means of carrying out the act, but it is narrower in other aspects. First, it is limited to terrorist acts in times of peace, second, it requires both an underlying criminal act and an intent to commit that act, and, finally, it includes a transnational requirement.

¶16 In an effort to more closely align Lebanese law with relevant, binding international law, the Chamber will expand the domestic definition of terrorism, as detailed in the Chamber's interlocutory decision on February 16, 2011. Rather than strictly adhering to the enumerated list of implements, the Chamber interprets that list to be illustrative but not exhaustive. Instead, the Tribunal relies only on the firm requirement that the means used to carry out the terrorist attack be liable to create a common danger, either by exposing bystanders or onlookers to harm or by instigating further violence in the form of retaliation or political instability.

¶17 As such, the notion of terrorism that will be applied by the Tribunal consists of three elements. There must be (1) a volitional commission of an act, (2) through means that are liable to create a public danger, and (3) the intent to cause a state of terror. A public danger may occur when a prominent political or military leader is killed or wounded. In such an instance, it is irrelevant if the act occurs within a private location.

¶18 These elements do not require an underlying crime. Therefore, the perpetrator of an act of terrorism that results in deaths would be liable for terrorism, with the deaths being an aggravating circumstance, and may also be independently liable for the underlying crime.

2. Conspiracy

¶19 Article 2 of the Statute refers to the Lebanese Criminal Code with regards to conspiracy. Article 270 of the Lebanese Criminal Code defines conspiracy as "any agreement concluded between two or more persons to commit a felony by specific means." Article 315 of the Code specifically recognizes conspiracies aimed at the commission of terrorist acts. However, this article was suspended by article 1 of the law enacted on January 11, 1958. Article 7 of the law states that "[e]very person who enters into a conspiracy with a view to the commission of any of the offenses with a view to the commission of any of the offenses contemplated in the preceding Articles shall be liable to the death penalty," including acts of terrorism.

¶20 As with the definition of terrorist acts, the Pre-Trial Judge again sought clarification regarding inclusion of international law in order to interpret the constituent elements of the notion of conspiracy. Whereas in conventional and customary international law, conspiracy is recognized as a specific offense, in national law it is sometimes a specific offense and sometimes a mode of responsibility.

¶21 Conspiracy is primarily a domestic crime without equivalents under international criminal law. Therefore, the Tribunal will apply Lebanese law. The elements of conspiracy under Lebanese law are (1) two or more individuals, (2) who conclude or join an agreement, (3) aimed at committing crimes against State security, and (4) with an agreement on the means to be used to commit the crime with (5) criminal intent. For the Tribunal's purpose, the aim of the conspiracy must be a terrorist act.

3. Intentional homicide with premeditation and attempted intentional homicide with premeditation

¶22 Article 547 of the Lebanese Criminal Code makes homicide an offense, stating that "[a]nyone who intentionally kills another person shall be punishable by hard labour for a term of between 15 and 20 years." Intent is described in article 188 as "consist[ing] of the will to commit an offense as defined by law" and article 189 deems an offense intentional if the perpetrator had "foreseen its occurrence and thus accepted the risk" even if the criminal consequence of the act or omission exceeded the perpetrator's intent. Attempt is made a criminal offense under article

200 which provides that “[a]ny attempt to commit a felony that began with acts aimed directly at its commission shall be deemed to constitute the felony itself if its completion was prevented solely by circumstances beyond the control of the perpetrator.”

¶23 Two primary requests were posed to the Chamber. First, the Pre-Trial Judge requested the Chamber to draw on both Lebanese law and customary international law to identify which constituent elements of the notions of homicide with premeditation and attempted intentional homicide with premeditation should be considered. Second, the Chamber was asked to indicate whether an individual may be prosecuted for intentional homicide with premeditation for offenses committed against persons who were not specifically targeted.

¶24 Like conspiracy, intentional homicide and attempted homicide are primarily domestic crimes without international criminal law equivalents. Therefore, the Tribunal will apply Lebanese law.

¶25 The elements of intentional homicide in Lebanese law, which will be followed by the Tribunal, are as follows: (1) an act or omission aimed at impairing the life of a person, (2) resulting in the death of a person, (3) a causal connection between the act and the death, (4) knowledge, and (5) intent.

¶26 Lebanese law defines the elements of attempted homicide as (1) preliminary action aimed at committing the crime, (2) the subjective intent required to commit the crime; and (3) absence of a voluntary abandonment of the offense. The Tribunal will apply these elements.

C. Modes of Responsibility

¶27 The Tribunal’s Statute provides no general guidance regarding whether provisions relating to modes of responsibility are to be interpreted in the light of Lebanese criminal law or international law. With regards to complicity in a criminal offense, article 2 of the Statute refers to the Lebanese Criminal Code. However, article 3, entitled “Individual criminal responsibility” draws heavily on international law and on the Statute of the International Criminal Court (“ICC”).

¶28 The Pre-Trial Judge asked the Appeals Chamber to decide, both generally and with specific reference to commission and co-perpetration, which criminal mode of responsibility the Tribunal should apply.

¶29 The Chamber determined either Lebanese law or international criminal law definitions of modes of responsibility could be used by the Tribunal. Article 2 of the Statute requires the Tribunal to apply Lebanese law regarding “criminal participation” as a mode of responsibility. Article 3 specifies various modes of criminal liability utilized in international criminal law, including commission, complicity, organizing or directing others to commit a crime, contribution to crimes by a multitude of persons or an organized group, superior responsibility, and criminal liability for the execution of superior orders. For this matter, the discretion was left to that of the Pre-Trial Judge and the Trial Chamber. The Pre-Trial Judge and the Trial Chamber will evaluate on a case-by-case basis. If they find that there is a conflict between the application of Lebanese law and international criminal law, the body of law that is more favorable to the accused will be used. Otherwise, if there is no conflict in application, Lebanese law will apply.

D. Cumulative Charging and Plurality of Offenses

¶30 The Statute does not address the issue of cumulative charging and plurality of offenses. Therefore, the Pre-Trial Judge requested that the Chamber decide how to address the issue.

International criminal tribunals have generally allowed cumulative charging and plurality of offenses in indictments as long as the charges were only confirmed at the end of the proceedings. On the other hand, the ICC has dismissed such charging under certain circumstances, concluding that it can be detrimental to the rights of the accused and lead to lengthy proceedings. Moreover, the ICC leaves the responsibility of legally defining the allegations made against the accused to the judges.

¶31 In this light, the Pre-Trial Judge asked the Chamber specifically to determine under what circumstances, if any, the Prosecutor could define the same act in several different ways. Specifically, this question was raised in relation to the offenses of terrorist conspiracy, terrorist acts, and intentional homicide with premeditation or attempted intentional homicide with premeditation. Further, if the Prosecutor may define the same act in several ways, the Chamber was asked to determine whether the classifications may be used cumulatively or as alternatives.

¶32 Both Lebanese law and international criminal law provide for multiple offenses and allow multiple charging. Therefore, without the presentation of any particular facts, there is no reason to reconcile any conflict between the two bodies of law. Neither body provides a clear general rule as to whether cumulative or alternative charging is preferred. However, the Pre-Trial Judge should allow cumulative charging only when separate elements of the charged offenses make these offenses truly distinct. When one offense encompasses another, the Judge should always choose the former and reject pleading of the latter. If the offenses are provided for under a general provision and a special provision, the Judge should favor the special provision, and modes of liability for the same offense should be charged in the alternative.

¶33 The goal of the Pre-Trial Judge should be to provide clarity to the Defense. Therefore, the Chamber has determined that additional charges should be discouraged unless the offenses are aimed at protecting substantially different values. This approach should enable more efficient proceedings while avoiding unnecessary burdens on the Defense. Specifically under Lebanese law, the crimes of terrorist conspiracy, terrorism, and intentional homicide can be charged cumulatively. These crimes do not entail incompatible legal characterizations, and the purpose behind criminalizing such conducts is the protection of substantially different values. Therefore, in most circumstances, it is appropriate to charge those crimes cumulatively rather than alternatively.

2011 COURT DECISIONS

E. Release of Information to El Sayed¹

¶34 Jamil El Sayed was detained by the Lebanese government and briefly by the STL in connection with the Hariri assassination. El Sayed requested disclosure of confidential evidence and court documents held by the STL Prosecutor, claiming that the documents were necessary for his pending civil suit against the Lebanese government for wrongful detention and libel.

¶35 The Prosecutor appealed the initial finding of jurisdiction, arguing both that release of the documents would prejudice the prosecution by revealing highly sensitive information, and also that the Tribunal had no jurisdiction to hear El Sayed's case as El Sayed was not a party to the trial and therefore did not have standing to appear before the Court. The Appeals Chamber upheld the Pre-Trial Chamber's finding of implicit jurisdiction. Implicit jurisdiction is necessary

¹ STL, In the Matter of El Sayed, OTP/PTJ/2012/10, <http://www.stl-tsl.org/en/the-cases/in-the-matter-of-el-sayed>.

to “remedy possible gaps in the legal regulation of the proceedings.” Further, the decision enabled El Sayed to obtain some documents held by the Prosecution.

¶36 The Pre-Trial Chamber then held on May 12, 2011 that certain redacted documents must be released to El Sayed. The Pre-Trial judge found a “general right of an accused to have access to documents in his criminal file, based on a broader right of defense and the general principle of equality of arms, as well as on the practice of national and international courts.”

¶37 The Pre-Trial Judge issued another decision on September 2, 2011, requiring the Prosecutor to disclose the statements of certain people who had been interviewed during U.N. investigations. The Prosecutor appealed further, arguing that such disclosure would either put the author of a document or another person at risk or impede the due conduct of the litigation.

¶38 The Appeals Chamber found on October 7, 2011 that some of the statements of interviewees must be provided to El Sayed in accordance with the Pre-Trial Judge’s order, redacted according to proposals by the Prosecutor as long as the final product was not inconsistent or incomplete. The Prosecutor worked in conjunction with the Victims and Witnesses Unit (VWU) to assess any necessary protection of persons who provided the statements being released, including the aforementioned redactions.

¶39 The Appeals Chamber also found that others of the ordered statements should not yet be released because the implications of their release had not been previously assessed by the VWU. During the appeal, the Prosecutor demonstrated cause for concern of risk relating to people who had made statements; this risk had not been presented in the initial trial. While this may be considered a failure of the Prosecutor, the Appeals Chamber nonetheless remanded the analysis to the Pre-Trial Judge for a new decision using the VWU analysis of the remaining statements. The Appeals Chamber maintained that El Sayed is entitled to the disclosure of these documents, but that the ultimate goal is to balance this disclosure with the protection of individuals.

F. Indictments

¶40 An attack on February 14, 2005 killed former Prime Minister of Lebanon Rafik Hariri and 21 others and resulted in injury to 231 others. An indictment naming four suspects was filed on June 10, 2011.² All four accused allegedly played important roles in the attack and therefore all bear criminal responsibility for the results of the attack.

¶41 Charges were brought under the Lebanese Criminal Code and the Lebanese Law of 11 January 1958 on “Increasing the penalties for sedition, civil war, and interfaith struggle;” nine counts as follows:

¶42 Mustafa Amine Badreddine, Salim Jamil Ayyash, Hussein Hassan Oneissi, and Assad Hassan Sabra- (1) Conspiracy aimed at committing a Terrorist Act.

¶43 Mustafa Amine Badreddine and Salim Jamil Ayyash- by means of explosive materials: (2) Committing a Terrorist Act, (3) Intentional Homicide of Rafik Hariri with premeditation, (4) Intentional Homicide of 21 additional homicides with premeditation, (5) Attempted Intentional Homicide of 231 additional people with premeditation.

¶44 Hussein Hassan Oneissi and Assad Hassan Sabra- by means of explosive materials: (6) Being an Accomplice to the felony of committing a terrorist act, (7) being an accomplice to the felony of Intentional Homicide of Rafik Hariri with premeditation, (8) being an accomplice to the felony of Intentional Homicide of 21 additional homicides with premeditation, (9) being an

² STL, Prosecutor v. Salim Jamil Ayyash, Mustafa Amine Badreddine, Hussein Hassan Oneissi and Assad Hassan Sabra, STL-11-01, <http://www.stl-tsl.org/en/the-cases/stl-11-01>.

accomplice to the felony of Attempted Intentional Homicide of 231 additional people with premeditation.

¶45 The case was built on circumstantial evidence, which is recognized by the Court to have similar weight and probative value as direct evidence and to be, in some cases, stronger than direct evidence. The Prosecutor has stated that circumstantial evidence, meaning many facts that seem unimportant individually but create an irrefutable story when combined, can be conclusive. Additionally, because of the nature of crimes of terrorism, where “small and secretive cells, which sometimes act in a clandestine fashion,” the network behind such crimes can be difficult to identify. Further, because members of terrorist organizations tend to be bound by strong ideological or religious beliefs, even once apprehended, they often refuse to release any specific information to be used as direct evidence.

1. The Accused

¶46 Mustafa Amine Badreddine is a citizen of Lebanon. Badreddine was convicted in Kuwait for a series of terrorist acts (including suicide bombings of the French and U.S. embassies) in 1983. He was sentenced to death, but escaped when Iraq invaded Kuwait in 1990. He is considered to be the overall controller of the operation of the conspiracy to assassinate Hariri. Salim Jamil Ayyash is also a citizen of Lebanon. He is believed to have coordinated the assassination team’s physical perpetration of the attack. Hussein Hassan Oneissi, also a citizen of Lebanon, allegedly prepared and distributed a false claim of responsibility for the attack with Assad Hassan Sabra, also a citizen of Lebanon.

2. Facts of the case per the Indictment

¶47 On February 14, 2005, Hariri was assassinated when a suicide bomber detonated a large quantity of high explosives concealed in a van. The explosion also killed 21 other people and injured 231. Shortly following the attack, Al-Jazeera News Network received a video of a man falsely claiming to be the suicide bomber on behalf of a fictional fundamentalist group.

¶48 Identification of the suspects was made through evidence including witness statements, documentary evidence, and Call Data Records (CDR) for mobile phones in Lebanon. CDRs contain information such as incoming and outgoing phone numbers, dates, times, and durations of calls, and approximate locations of mobile phones.

¶49 CDR analysis identified five networks involved in the assassination. Networks are described as either covert (members only call each other) or open (members sometimes call others outside the group). Co-location was used to determine approximate locations of network phone use, and also to connect those locations with use of personal mobile phones (PMPs used for communication with family, friends, and legitimate business associates who are easier to trace than covert network users). By tracing PMP usage and contacts, network members could be identified. Networks are color-coded as follows:

¶50 Red network (covert): used by the assassination team until two minutes before the attack. Red network users also used one blue phone. Ayyash led the assassination team (conducting surveillance and physically carrying out the attack), and other members are unidentified as yet. All red network phones were activated near Tripoli on the same date. Co-location shows that red network phones were used for 33 calls within the two hours before the attack for surveillance of Hariri. The phones were last used two minutes before the attack, by which time the van had reached its final position. Based on this information, the prosecution believes that it is reasonable

to conclude that the red network phone use is inconsistent with innocent or coincidental communication.

¶51 Green network (covert): used for control and coordination of the attack until one hour before the attack.

¶52 Blue network (open): used by the assassination team for preparation of the attack and for surveillance of Hariri over the four months preceding the attack.

¶53 Yellow network (open): activated between 1999 and 2003 and operation until January 2005, when they were mostly replaced by blue phones.

¶54 Purple network (open): used to coordinate the false claim of responsibility until February 15 or 16, 2005.

¶55 It appears that some network members used multiple phones on different networks. Ayyash used at least eight phones: one red, one green, one blue, one yellow, and four PMPs. He allegedly coordinated the assassination team through red and blue phones and communicated through PMPs with phones in the purple network, likely to monitor false claim preparations. Badreddine used at least eight phones: one green and seven PMPs. Some of the PMPs were attributed to Badreddine's alias Sami Issa. Badreddine only communicated with Ayyash, likely to control preparation and execution of the attack. Oneissi used at least one purple phone and communicated with an unidentified person, likely to report on progress of the false claim of responsibility. Sabra used at least one purple phone.

¶56 In addition to the coordinated surveillance of Hariri that was shown through these calls, the phones were also linked to the purchase of the van used in the attack and to communications with Abu Adass, the person who filmed the false confession and has been missing since the day he went to meet Oneissi to create the video. The remains of the suicide bomber were examined, but the remains were of a male who was not Abu Adass.

¶57 Starting about seventy-five minutes after the attack, Oneissi and Sabra made calls from public payphones to Reuters and Al-Jazeera News claiming responsibility from a fictional jihadist group, "Victory and Jihad in Greater Syria." They also told Al-Jazeera News that the video was left in a tree near their offices, and Oneissi watched the location to confirm receipt by Al-Jazeera News. The video was broadcast after menacing threats were made to Al-Jazeera News by Oneissi or Sabra. With the video was a letter stating (falsely) that Abu Adass was the suicide bomber.

3. The Conspiracy

¶58 The Prosecutor alleges that, beginning between November 11, 2004 and January 16, 2005, conspirators carried out surveillance, the phone networks were established, and Abu Adass went missing. All four named members of the conspiracy were supporters of Hezbollah (a political and military organization in Lebanon). The military wing of Hezbollah has been implicated in past terrorist acts, and people trained by this military wing are known to have the capability to carry out terrorist attacks.

¶59 Badreddine and Ayyash are related to each other and to Imad Mughniyah as brothers-in-law. Mughniyah was a founding member of Hezbollah in charge of its military wing from 1983 to 2008. Based on their experience, training, and affiliation with Hezbollah, the Prosecutor believed that it was reasonable to conclude that Badreddine and Ayyash had the capability to plan and execute this attack, and that all of the conspirators agreed to the goal of committing this terrorist act, as well as to create the false claim of responsibility in order to identify the wrong

people to investigate, shield the conspirators from justice, and add to the state of terror in the population.

G. Arrest Warrants

¶60 On June 30, 2011, arrest warrants for the four named suspects were issued to Lebanese authorities, which have the responsibility of locating and arresting the suspects. Much doubt exists as to whether the Hezbollah-controlled Lebanese government will even attempt to carry out the arrests. The arrest warrants stated that the identities of the indicted people would be made public if the arrests were not made within thirty days of the issuance of the arrest warrants. As no arrests were made, the names and photos of indictees were released on July 29, 2011, when the President urged the indictees to come voluntarily before the tribunal. The debate about Lebanon's continued support of the STL continues (further discussed below).

PERSONNEL CHANGES IN THE COURT

H. Resignation of President and Prosecutor

¶61 On October 10, 2011, Judge Sir David Baragwanath from New Zealand was elected as the new President of the STL. Judge Baragwanath, who had been appointed by the STL since 2009, succeeds Judge Antonio Cassese as the President of the STL. Around the time of the Judge Cassese's resignation, there was much debate regarding the conduct of the Prosecutor Daniel Bellemare, and apparently a number of judges and other members of the STL were also considering resigning in protest of Bellemare's conduct, mainly relating to his tactics used in the matter of the release of witness statements to El Sayed (above). However, Judge Cassese resigned from the post due to health reasons, and on October 22, 2011, he passed away at age seventy-four after a battle with cancer.

¶62 Less than two months later, Bellemare announced that he would not seek to renew his post as Prosecutor at the end of his term (February 2012) due to health reasons. No replacement has yet been named, and concerns regarding the efficacy and judgment of the prosecution and investigation persist.

¶63 B. Duty Counsel Assigned to Defense

¶64 On October 28, 2011, the Head of Defense Office selected eight people as members of the duty counsel for the four accused. They were selected based on their experiences with Lebanon, terrorism cases in general, and international tribunals. If the Trial Chamber decides to begin in absentia proceedings, the duty counsel assigned will represent the accused unless the defendants decide to voluntarily participate in the proceedings.

VICTIM INVOLVEMENT

¶65 The STL's mandate includes the means for victims of the attack to join court proceedings. It is not common for international tribunals to include victims in the proceedings, but they may be used in this case as witnesses. A victim is defined as anyone who sustained physical, material, or psychological harm from the attack. Victims will not be considered "parties" in the case, so no damages may be awarded to them; however, they will be entitled to present their views and concerns in the proceedings. Victim participation in the trials is based on an application submitted to the Pre-Trial Judge. If granted, a victim may ask to hear witnesses, see evidence

offered by any party, submit his or her own evidence, and question and cross-examine witnesses, all as administered through the Trial Chamber. Further, victims will be asked to speak during the sentencing process. Finally, victims are permitted to be involved in the appeals process, though they will not themselves be entitled to lodge appeals. Though victims may not recover damages through the STL, they may present rulings by the STL as evidence in national courts in order to recover. Applications to the Pre-Trial Judge were due in October 2011.

FUNDING ISSUES

¶66

As of November 30, 2011, Lebanon paid its \$33 million (USD) dues to cover forty-nine percent of the STL operating expenses per the STL's statute. The Hezbollah-backed president and majority of the cabinet were adamantly opposed to funding the STL, which they see as a corrupt instrument of U.S./Western interests. However, the Prime Minister, elected with the support of Hezbollah, kept a strong stance backing the STL and encouraging continued funding.