

SPECIAL TRIBUNAL FOR LEBANON

ANNUAL REPORT (2009-2010)

Dear Secretary-General Ban Ki-moon and Prime Minister Saad Hariri,

It is my privilege and pleasure to submit to you, pursuant to Article 10(2) of the Statute of the Special Tribunal for Lebanon, the First Annual Report on the operation and activities of the Tribunal. It covers the period from 1 March 2009 to 28 February 2010.

The first year of the Tribunal's operation was pivotal in establishing the basic structure of the institution, recruiting the indispensable staff, adopting the necessary legal tools for forthcoming judicial activities, requesting deferral of the main case from Lebanese authorities, continuing and intensifying the investigations, and starting outreach activities in Lebanon.

This Report builds on the Six Month Report I circulated in September 2009. It too is intended to offer an unvarnished overview of the activities of the STL. It covers not only the Tribunal's accomplishments, but also the challenges it is facing, in particular due to the extreme complexity and novelty of dealing with terrorism at the international judicial level.

Although some sections of the first Part of the Report might at first glance appear theoretical, they are in my view indispensable to fully understanding the ethos and the nature of the novel work we are undertaking.

Antonio Cassese

President

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EXECUTIVE SUMMARY

After discussing the unique characteristics of the Special Tribunal for Lebanon (STL or Tribunal) and pointing to some general problems and challenges facing it, the Annual Report aims to illustrate the steps taken, the achievements made as well as the hurdles encountered during its first year (March 2009-February 2010).

Although the STL shares some features with other international and hybrid tribunals, it has unique characteristics which set it apart from other similar judicial institutions.

Part I of the Annual Report deals with these characteristics. With regard to substantive law, unlike other international tribunals, which apply either international law or both international law and national law, the STL applies Lebanese law to acts of terrorism considered a threat to international peace and security by the United Nations (UN) Security Council. Structurally, the Tribunal differs from other international and hybrid courts in that it is endowed with a statutory Defence Office as an organ independent of the Registry and with the mandate to protect the rights of the defence, to provide legal and administrative support to defence counsel, and to establish a list of such counsel. The Tribunal also exhibits several novelties from the point of view of procedure, including (i) a Pre-Trial Judge with significant authority and responsibility; (ii) a more pro-active role for judges; (iii) extensive victim participation in the proceedings; (iv) alternative measures to detention, aimed at ensuring that freedom pending trial is the norm rather than the exception; (v) protection of sensitive information both in order to ensure the safety of witnesses and to accommodate legitimate requests of States (including national security interests); and (vi) trials in the absence of the accused under certain circumstances and with mechanisms designed fully to protect the rights of the accused. This part concludes with a discussion of some of the difficulties inherent in investigating and prosecuting terrorist cases.

Part II of the Annual Report is devoted to the activities of each organ over the past year.

The **Chambers** devoted most of their efforts to (i) building the legal and regulatory framework necessary to try cases, in particular expeditiously adopting a set of important Rules of Procedure and Evidence as well as Rules on Detentions and three Practice Directions; (ii) negotiating agreements with international entities (ICRC and INTERPOL); and (iii) collaborating with the Registry in order to set up the practical infrastructure required to conduct judicial activity. In the first months, the Pre-Trial Judge and the President also dealt swiftly with the requests from the Office of the Prosecutor and the Defence Office in relation to the four Lebanese generals detained in Beirut.

The **Registry** established the necessary support services required to operate a judicial institution, including (i) preparing internal administrative regulatory documents, (ii) devising a court management system, and (iii) signing a Memorandum of Understanding with Lebanon regarding the Beirut field office and other Tribunal operations in Lebanon. A (iv) state-of-the-art courtroom has been built and other facilities renovated in order to ensure efficient judicial activities. Moreover, (v) the liaison office in New York and the Beirut office were established and are now fully functioning. A (vi) library specializing in legal issues relating to terrorism and international law was also created. In addition, (vii) the Registrar, the Deputy Registrar and their representatives have engaged in outreach activities. A (viii) considerable effort by Human Resources made it possible to bring on board the necessary staff within the expected time frame.

The **Office of the Prosecutor** (OTP) has focused its efforts in three areas: (i) becoming a fully functional and operational Office; (ii) assuming jurisdiction over the investigation into the Hariri attack; and (iii) intensifying investigations and exploring all investigative leads in order to establish the truth on the attacks falling within its mandate. The first two objectives have already been achieved. As for the third objective, significant progress has been made. Moreover, a Memorandum of Understanding between the Prosecutor and the Minister of Justice of Lebanon was signed. A Cooperation Agreement with International Criminal Police Organization (INTERPOL) has allowed the OTP to have access to the INTERPOL databases. After an evaluation of the required resources, an operational surge was approved by the Management Committee and the additional staff recruited in mid-to-late 2009 contributed greatly to the ability to carry out analysis and investigations and to process documents. More than 240 requests for assistance were sent to the Prosecutor General of Lebanon and 53 missions to the field were undertaken. More than 60 requests for assistance were addressed to 24 other Countries, while 62 missions took place on their territories. Over 280 witnesses were interviewed. In addition, the OTP has treated information and outreach as an operational priority.

The **Defence Office** (DO), as its establishment was unprecedented at the international level, has had (i) to define its organizational structure. Upon the deferral of jurisdiction by Lebanon to the Tribunal, the Head of Defence Office (ii) requested that the President ensure that certain fundamental rights of the detainees be protected. With part of its staff in place, the DO (iii) has engaged in various outreach activities and (iv) started preparing lists of Counsel eligible to represent indigent accused, upon verification that counsel meet requirements laid down in the Rules. The DO has also (v) provided input into all the legal instruments adopted by the Tribunal and has (vi) concluded cooperation agreements with a number of universities.

The STL currently has 276 staff representing 59 nationalities, plus 21 interns. The budget for 2009 has been of 51,4 million USD, and that approved for 2010 is in the amount of 55,4 million USD.

Part III of the Annual Report puts the achievements of the Tribunal during its first year of operation in perspective. It highlights (i) the rapid approval of the legal framework for the activities of the STL, (ii) the deferral of jurisdiction by Lebanon and the swift steps taken by the Prosecutor, the Pre-Trial Judge and the Head of Defence Office regarding the detention of the four Lebanese Generals, (iii) the intense contacts both between the Tribunal's principals and with various international institutions and bodies, (iv) the acceleration by the Prosecutor of his investigations so as to expeditiously submit indictments to the Pre-Trial Judge, and (v) the Registry's efficient preparations for the establishment of all the necessary practical infrastructures. It highlights the unreserved cooperation provided by the Government of Lebanon to the various organs of the Tribunal. However, the Report also notes that in the area of outreach, improvements are still required to implement a comprehensive Tribunal-wide policy. Now that it has efficiently and rapidly put in place all the legal and practical infrastructures required of a court of law, the Tribunal is bracing itself for a prompt, fair and expeditious administration of justice. It is confident that in the next twelve months it will efficiently move to judicial action.

Despite the challenges ahead, the Tribunal intends to dispense justice *free from any political or ideological fetter and based on the full respect for the rights of both the defendants and the victims*. In order to do so effectively and to ensure that the investments made to date do pay off, continued attention to funding as well as judicial assistance from States and other international entities are essential.

INTRODUCTION

1. This Annual Report is not meant to present a jejune account of the activities undertaken by the organs of the Tribunal in the last twelve months. In addition to illustrating the steps taken, achievements made, and setbacks encountered in the past year, it aims to discuss some general problems and challenges facing the Tribunal and to reflect on the implications of its establishment. This will be done in an effort to ensure transparency and accountability vis-à-vis the United Nations, the Government of Lebanon, Lebanese civil society, the Member States, and the world community at large.
2. The Tribunal aims to render expeditious and true justice and to accomplish the truth-seeking mission entrusted upon it by its founding instruments. As this is the first Annual Report, before setting out the activities undertaken in the past year, I will highlight the main features of the Tribunal, the major novelties of its Statute and Rules of Procedure and Evidence (RPE or Rules), and the steps undertaken by the various organs of the Tribunal to be innovative in the functioning of this international criminal court. This should help the reader to view the Tribunal in its proper context.
3. It is necessary to understand the differences between this Tribunal, which deals exclusively with terrorism as a discrete crime and the other international criminal courts and tribunals which adjudicate war crimes, crimes against humanity and genocide. Highlighting these differences will underscore the particularly difficult obstacles this Tribunal must face in discharging its mission.
4. In light of the purpose and format of this Report, I will endeavour to articulate not only the achievements of the past year, but also the hurdles the Tribunal has had to face and some missteps made. A challenging undertaking such as this, where one navigates through uncharted waters, is always bound to contain an element of trial and error. It would, however, be wrong to refrain from acting lest one should succumb to blunders. I will recall in this respect what the German philosopher Hegel wisely wrote: “The most harmful thing is that one should want to be safe from errors. The fear that in doing something one might make mistakes stems from love for comfort. This fear goes hand in hand with absolutely passive mistakes. The stone alone does not suffer from any active mistake.”¹ Certainly we must not shy away from “active errors” as long as we can move forward and fulfil our mission in the most fair and expeditious way possible.
5. It is only fitting that I express my sincere gratitude at the outset to the Management Committee, to the Management Committee’s Chairperson, to the Government of Lebanon, and to the United Nations for their efforts and commitment to the cause of justice and accountability. It was thanks to them, as well as to other supporting Countries and the European Commission, which contributed a generous grant, and through the hard work of each and everyone here at the Tribunal that we have been able to make substantial progress in our work.
6. The Tribunal is a great opportunity for Lebanon and for the international community as a whole. Its aim is to render justice in a fair and transparent process and to provide truth to the victims and to Lebanese society. The Tribunal takes as its polar star Plato’s maxim that “justice is a thing more precious than many pieces of gold”². In order to build upon and reap the benefits of the successful efforts made thus far, it is essential that the support of the United Nations and Lebanon be continued and strengthened.

¹ W. Hegel, “Jena Aphorismen” (1801-06), in Karl Rosenkranz, *Georg Wilhelm Friedrich Hegel’s Leben – Supplement zu Hegel’s Werken*, Berlin, Duncker und Humblot, 1844, at 545.

² Plato, *Republic*, I, 3, 6.

PART I – THE DISTINGUISHING FEATURES OF THE TRIBUNAL

A. The Main Features of the STL in a Nutshell

7. The STL has 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, as well as for other cases connected on the basis of the criteria identified in Article 1 of its Statute.
8. The STL shares a few features with other international courts and tribunals: (i) it is international in nature; (ii) it is constituted of Judges and other principal organs (Prosecutor, Head of Defence Office and Registrar) who are independent and impartial; (iii) its staff is international; and (iv) its proceedings are governed by international provisions and are conducted in more than one language.
9. However, the STL exhibits some unique features that deserve to be emphasized because their exposition highlights some problems the Tribunal faces:
 - (i) like some other tribunals (the Special Court for Sierra Leone (SCSL), the Extraordinary Chambers in the Courts of Cambodia (ECCC)) it is a hybrid court in nature in that it is composed of both national and international Judges. However, unlike those tribunals, for security reasons, it does not sit in the territory where the crimes have been committed, but in the Netherlands;
 - (ii) unlike some tribunals (the International Criminal Tribunal for the Former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), the International Criminal Court (ICC)), the STL does not apply substantive international law. It does not apply a combination of national and international law either as other tribunals do (the SCSL and the ECCC). Instead, it applies Lebanese substantive law to acts of terrorism considered a threat to international peace and security by the UN Security Council;
 - (iii) the STL exercises its jurisdiction over a crime that so far has not yet been within the province of an international tribunal: terrorism as a discrete crime;
 - (iv) unlike many international tribunals (e.g., the ICTY and the ICTR), its procedure is not primarily based on the adversarial model. Nevertheless, unlike the ECCC, which is based on the civil law inquisitorial model, the STL procedure tries boldly to blend both the adversarial and the inquisitorial models;
 - (v) unlike the other Tribunals, the STL Statute places the Defence Office on the same footing as the Office of the Prosecutor, thereby safeguarding the rights of the defence in a more effective manner;
 - (vi) unlike most international tribunals, it allows for trials conducted in the absence of the accused. However, unlike the Nuremberg International Military Tribunal, which allowed trials *in absentia* proper, Article 22 of the STL Statute subjects the conduct of a trial in the absence of

the accused to strict conditions, in order to ensure that the fundamental rights of the accused guaranteed by international human rights law are protected, in particular the right to obtain a retrial in his presence if he appears at a later stage. Furthermore, the Tribunal's RPE allow for the conduct of trials in the physical absence of the accused, where, however, the accused may participate legally by not expressly waiving his right to participate, by appointing and instructing defence counsel and, if need be, by participating in the proceedings through a video-conference.

- (vii) the Statute of the Tribunal, at Article 10, codifies a practice followed by most international criminal courts and tribunals: it grants the Tribunal's President extensive powers by providing that he or she "shall be responsible for [the Tribunal's] effective functioning and the good administration of justice".

The novel features of the STL will be further elaborated in the sections below.

B. The Principal Novelties of the STL

1. Introduction

- 10. In several ways, the STL marks a new phase in international criminal justice. This is true not just in relation to its subject-matter jurisdiction, which encompasses the mandate of prosecuting terrorism, but also as regards its structure and procedures. These are tailored to the specific mandate of the STL and build upon the wealth of judicial experience accumulated by international and mixed tribunals over the past two decades. This section highlights the principal novelties enshrined in the STL Statute and RPE in three areas: (i) substantive law novelties; (ii) new aspects of the structure of the Tribunal; and (iii) procedural novelties.

2. Novelties Relating to Substantive Law

- 11. The Statute contains several novel features regarding its substantive law which differentiate the STL from other existing international and hybrid tribunals, two of which will be addressed.
- 12. First, the STL is the first Tribunal of its kind to deal with terrorism as a discrete crime, labelled by the Security Council as a "threat to international peace and security". Indeed, while terror was addressed by the ICTY and the SCSL as a war crime, this was in the context of massive attacks and other crimes against persons taking no active part in the hostilities. Terrorism perpetrated in peacetime bears little resemblance to the notion of terror during an armed conflict since, for instance, it does not require any link to an armed conflict or to an attack against civilians. The main consequences of these differences in terms of investigation and prosecution are explored below.
- 13. Second, the STL possesses jurisdiction over crimes as defined in Lebanese domestic law. While other "hybrid" courts, such as the SCSL and the ECCC, are mandated to handle both international crimes and domestic criminal offences, the STL is the only such tribunal vested with jurisdiction over a crime

– terrorism – as defined in domestic law. Article 2 of the Statute, in particular, specifies that the STL should apply “[t]he provisions of the Lebanese Criminal Code relating to the prosecution and punishment of acts of terrorism, crimes and offences against life and personal integrity, illicit associations and failure to report crimes and offences.” Pre-eminent among such provisions is Article 314 of the Lebanese Criminal Code, according to which “[t]errorist conduct means all conduct aimed at creating a state of panic and committed by such means as explosive devices, inflammable materials, toxic or corrosive products and infectious or microbial agents likely to create a public danger.”

3. New Aspects of the Structure of the Tribunal

14. While each international and hybrid tribunal has a peculiar structure distinguishing it from the others, two features of the STL set this institution apart from its predecessors: the Defence Office and victims’ participation.
15. The STL is the first international tribunal to have a statutory Defence Office as an organ independent of the Registry, with the mandate to protect the rights of the defence, provide legal and administrative support to the defence, and establish a list of defence counsel who may appear before the Tribunal (Article 13 of the Statute). While other existing courts (in particular, the SCSL) also recognize the importance of an office dedicated to defence matters, it is the first time that this recognition has led to the establishment of an independent organ on a par with the Office of the Prosecutor.
16. The principal duty of the Defence Office is to promote the rights of suspects and accused as embodied in Articles 15 and 16 of the Statute. It is important to stress that the Defence Office is not meant to represent one or more accused, but rather will provide out-of-court assistance and ensure that the rights of suspects and accused are respected at all stages.
17. The Defence Office is endowed with the necessary statutory and regulatory powers to promote the rights of the suspects and accused so as to ensure the highest standards of fairness in the proceedings before the Special Tribunal. It should be emphasised that the Head of Defence Office already exercised his powers in this regard in relation to the conditions of detention of the four Lebanese Generals by requesting that the President ensure that some of their fundamental rights be protected.
18. Another distinguishing structural feature of the STL is the possibility for victims to participate in the proceedings with a view to presenting their views and concerns (Article 17 of the Statute, entitled “Rights of Victims”). While at the ECCC, victims can participate as “*parties civiles*” – to support the prosecution, but also to “seek collective and moral reparations” (Internal Rule 23) – victims before the STL are not private claimants and do not have the right to seek compensation for any prejudice suffered as a result of the crime. This, of course, does not preclude the victims from eventually filing an action for damages before a national court on the basis of a judgment by the Tribunal.
19. Moreover, the STL departs from the ICC’s experience in that victims’ participation will only be allowed following confirmation of an indictment, whereas the first pre-trial decisions at the ICC made provision for a quite extensive set of rights for victims even before confirmation of an indictment.

20. Due to the potential impact of victims' participation on proceedings, victims who wish to take part in proceedings must be screened beforehand by the Pre-Trial Judge. He or she may (a) exclude persons whose status as a victim is doubtful; (b) limit the number of victims who may participate in proceedings; and (c) designate one legal representative to act on behalf of multiple victims. In any event, as stated above, victims can only be granted the status of participants following confirmation of the indictment when the investigation phase is essentially over. These features are designed to ensure an effective right for victims to take part in proceedings, while at the same time attempting to avoid any negative impact of the victims' presence on the rights of the accused or the strategy of the Prosecutor.

4. Procedural Novelties

21. The third set of innovations at the STL relates to its procedures. The STL Statute attempts to strike a new balance between rules typical of common law (adversarial) systems and those inspired by civil law (inquisitorial) jurisdictions. While the ECCC and, to a certain extent, the ICC also incorporate important elements deriving from legal systems based on the Romano-Germanic tradition, the drafters of the STL Statute attempted to take stock of these experiences to ensure a more balanced, swift, and fair procedure. This section will briefly address the most important innovations in the Statute and the RPE, in particular: (i) the position of the Pre-Trial Judge; (ii) the pro-active role of Judges in the conduct of the proceedings; (iii) measures alternative to detention; (iv) the use of written evidence; (v) the protection of sensitive information; and (vi) trials in the absence of the accused.

(i) *The position of the Pre-Trial Judge*

22. One of the novelties enshrined in the Statute is the fact that the Pre-Trial Judge, who is entrusted with reviewing indictments and preparing cases for trial, is not a member of the trial bench, but rather a separate and autonomous Judge, who cannot sit on the Trial Chamber (see Article 2 of the Agreement between the UN and Lebanon and Articles 7(a) and 18 of the Statute). While the Pre-Trial Judge's counterpart at, for example, the ICTY and the ICTR may become a member of the Trial Chamber and therefore must be cautious not to be "contaminated" by contact with the evidence, the STL Pre-Trial Judge is free to deal with evidentiary material submitted by the parties and may take a more active role during the initial stages of proceedings. Since the position is not akin to that of the Lebanese *juge d'instruction* (for the Statute does not foresee this), he will not generally gather evidence *proprio motu*. He may, however, collect evidence in two situations: at the request of a party or a victim participating in the proceedings, when the requesting party or the victim demonstrates, on a balance of probabilities, that it is not in a position to collect the evidence itself, and when the Pre-Trial Judge considers that this would be in the interests of justice (Rule 92 (A)); and secondly, where a party or a victim participating in the proceedings is unable to collect "an important piece of evidence" and the Pre-Trial Judge deems that it is indispensable to the fair administration of justice, the equality of arms and the search for truth (Rule 92 (C)). In the latter case, the Pre-Trial Judge's intervention is contingent upon the parties or the victim being unable to gather the evidence themselves. Evidence collected by the Pre-Trial Judge in this manner must still be introduced by a party or a victim participating in the proceedings, and the participants in the trial remain free not to do so.

23. The other powers of the Pre-Trial Judge include: (a) evaluating the charges brought by the Prosecutor in the indictment and, if need be, (b) requesting the Prosecutor to reduce or reclassify such charges; (c) facilitating communication between the parties; (d) issuing summonses, warrants and other orders at the request of either party; (e) questioning anonymous witnesses; (f) drawing up a complete file for the Trial Chamber which lists the main differences between the parties on points of law and fact, and indicates his view on the main points of fact and law that arise in the case. An important innovation introduced in October 2009 is the new provision in Rule 88, which enables the Prosecutor, even before an indictment is confirmed, to disclose to the Pre-Trial Judge any item that he considers necessary for the exercise of the latter's functions.

(ii) The pro-active role of judges

24. The Statute envisages a pro-active role for Trial Judges in the conduct of the proceedings by assuming that they will take the lead in examining witnesses. The Judges are also granted the power to call witnesses and to order the production of additional evidence (Article 20), and are required to take measures to prevent unreasonable delays (Article 21(1)). Moreover, Article 20(2) of the Statute envisages a mode of hearing witnesses akin to that of inquisitorial systems: witnesses are first questioned by the Presiding Judge and the other Judges, and then by the parties. This, however, presupposes that the Trial Chamber is provided with a complete file (*dossier de la cause*) enabling it to be familiar with the evidence collected and the legal and factual problems likely to arise. If the Pre-Trial Judge is unable to compile such an exhaustive file for the Trial Chamber, Rule 145 (B) envisages a return to the adversarial mode of conducting proceedings. This allows the Judges to act as they deem appropriate in order to ensure fair and expeditious trials.

(iii) Measures alternative to detention

25. The general rule applicable to suspects and accused brought before the Tribunal is that they should not be held in detention while awaiting trial. Freedom is the norm, dictated by the principle that every person accused of a crime must be presumed innocent until convicted upon judgment. Detention is the exception, which may be justified in the concrete circumstances of a case in order to ensure a person's appearance at trial whenever there is a serious danger that (i) he may abscond, (ii) to prevent him from obstructing or endangering the investigation or the court proceedings, or (iii) to deter a repetition of the kind of conduct of which he is suspected. The notion that as a rule persons charged with a crime must stand trial while free is too often neglected both by international and national courts particularly, in the latter case, in some Countries based on the Romano-Germanic tradition, as testified by Voltaire's spirited protestations against the French penal system back in 1764.³
26. In line with these principles, suspects or accused before the STL, instead of being detained, may be summonsed to appear, with the consequence that they will therefore *not* be held in custody in the

³ In a letter relating to the *Lally* case (the French General sent to protect French possessions in India, and then tried and unjustly sentenced to death in Paris for the alleged crimes of misappropriation of public funds and high treason), sent on 21 July 1764 to Cardinal Richelieu, Voltaire wrote "[O]n commence toujours en France par mettre un homme trois ou quatre ans en prison, après quoi on le juge. En Angleterre, on n'aurait du moins été emprisonné qu'après avoir été condamné, et il en aurait été quitte pour donner caution." (In France authorities always start by imprisoning a man for three or four years, and only after that does he stand trial. In Great Britain one would have been put in jail only after being convicted by a court of law and would have previously got off by paying bail) (reported in Voltaire, *L'affaire du Chevalier de La Barre*, Paris, Gallimard, 2008, at 14).

Tribunal's detention facility. If a suspect or an accused is detained upon order of the Tribunal, in his State of residence or in the Tribunal's detention facilities, the Pre-Trial Judge (or a Chamber) may order that he be provisionally released and sent back to his national State or his State of residence.

27. Moreover, provisions have been introduced to grant (with the consent of the Host State) a safe-conduct which affords immunity from arrest and prosecution to suspects or accused thus allowing them to be interviewed or to make the initial appearance before the Trial Chamber or the Pre-Trial Judge, and then return to their own Countries. Alternatively, the accused is allowed to participate in trial or appeal proceedings by video-conference, so as to avoid the need for him to come to the Netherlands while, at the same time, considering him subject to the Tribunal's jurisdiction.
28. The necessity to allow various methods of "legal presence" before the Tribunal is all the more acute in the case of the STL because of the unique difficulties it might face in having the accused arrested and subsequently handed over. Presumably third States will be less reluctant to cooperate with the Tribunal if they know that their nationals may stand trial without being held in detention and may participate in proceedings from their State of residence.
29. All of these measures enable trials to be conducted where the accused is not necessarily present but nevertheless instructs his defence counsel after initially appearing at trial.

(iv) Use of written evidence

30. The STL has the statutory authority to receive evidence in written form (Article 21(3) of the Statute). While in many respects the Tribunal follows the oral tradition, it also takes into account the experience of criminal systems such as that of Lebanon, which tends to admit, subject to certain conditions, written evidence without calling the witness in person or cross-examining him. Since fundamental human rights require that an accused be able to examine the evidence against him (Article 16(4)(e) of the Statute), a balance had to be found. The RPE thus contain specific rules for various categories of written evidence. For documents such as, for instance, letters, intercepts, minutes of meetings, Rule 154 provides that they may be admitted into evidence provided that their probative value is not substantially outweighed by the need to ensure a fair trial. Rule 155 allows written statements and transcripts from other proceedings to be admitted in lieu of oral testimony, provided that they do not relate to the acts or conduct of the accused as charged in the indictment. Rule 156 relates to written statements of witnesses who are present in court and are prepared to testify and be cross-examined – these statements may be admitted as a matter of course even if they go to prove the acts or conduct of the accused, unless the other party objects to it because the witness is available for cross-examination. Statements or transcripts of unavailable persons may also be admitted (Rule 158), but if the evidence goes to proof of acts or conduct of the accused, this may be a factor militating against the admission of such evidence in whole or in part.
31. Separate provisions deal with anonymous witnesses, who are often crucial in trials of terrorism (either because they fear for their lives or are intelligence officials not prepared, or allowed, to disclose their identity). Rule 93 provides for a procedure whereby the anonymous witness testifies *in camera* before the Pre-Trial Judge alone, so that only that judge is in a position to know his identity. In addition, the Rules provide that the parties, as well as the representative of a victim participating in the proceedings, may put questions in writing to the witness through the Pre-Trial Judge. Rule 159

provides that the Trial Chamber may admit the evidence of an anonymous witness; however, a conviction may not be based solely or to a decisive extent on such evidence.

(v) Protection of sensitive information

32. The issue of anonymous witnesses brings us to the matter of protection of sensitive information provided to the Tribunal by a State or another international entity. Criminal proceedings relating to terrorism may indeed require that some information provided to the parties on a confidential basis be protected. However, it is imperative that the measures taken to protect this information be fully compatible with the rights of the accused. In Rules 117-119, an attempt has been made to strike a balance between the requirement not to disclose the source or the exact content of confidential information in the possession of the Prosecution or the Defence and the need to ensure a fair trial fully respectful of the rights of the other party. The task of ensuring that the use of that information is not such as to affect the rights of the other party is entrusted to the Pre-Trial Judge or to a Special Counsel appointed by the Tribunal's President from a list of persons proposed by the provider of the information.
33. Rule 117 deals with information in the possession of a party, the disclosure of which may affect the security interests of a State or international entity. In such cases, the Prosecutor may apply *ex parte* to the Pre-Trial Judge who, sitting *in camera*, will hold *ex parte* proceedings to determine whether the Prosecutor may be relieved of his obligation to disclose the information in whole or in part. When necessary, the Pre-Trial Judge will order "counterbalancing measures", that is, measures which remedy the fact that material which should be disclosed cannot actually be disclosed, therefore ensuring that the rights of the other party are respected. These measures can include providing the information in a summarised or redacted form, or stipulating the facts arising from the information.
34. Rules 118 and 119 deal with disclosure of information provided on a confidential basis and which may affect the security interests of a State or international entity. Disclosure of such information may only be made with the consent of the provider. Without going into the nuances of the provision, if the provider does not give its consent to the disclosure of the information, and the party is nevertheless under an obligation to disclose the material, the party must apply to the Pre-Trial Judge. The party can *only* submit to the Pre-Trial Judge an overview of the steps taken to obtain the provider's consent, a statement of whether the information is exculpatory, the reason why it is so, and a list of proposed counterbalancing measures. The Pre-Trial Judge must rule on the matter and order the necessary counterbalancing measures, which may include, if need be, amending the indictment or withdrawing the charges. Alternatively a Special Counsel may be appointed by the President (from a confidential list of persons approved by the provider of the confidential information) who may review the information and advise the Pre-Trial Judge on the most appropriate counterbalancing measures. Under both scenarios, the Pre-Trial Judge will notify the Trial Chamber of the situation and of his orders. The material itself will never be seen by the Judges.
35. It is important to emphasize that the Prosecutor, in particular, has a vested interest in ensuring that the material is either disclosed, or that the counterbalancing measures are sufficient to protect the rights of the accused. The Trial Chamber will receive a report from the Pre-Trial Judge detailing the procedure (though not describing the confidential material as such), and it will have to be satisfied that there is no prejudice to the accused and that non-disclosure itself does not create reasonable doubt as to his guilt.

36. Other, less intrusive measures of protection exist for information that may prejudice investigations, may cause grave risk to the security of a witness or his family, or is otherwise contrary to the public interest (Rule 116). In such cases, the Pre-Trial Judge may consider the material and rule on appropriate protective measures.

(vi) Trials in the absence of the accused

37. According to Article 22 of the Statute, the STL may conduct trials in the absence of the accused when the accused (i) has expressly waived his right to be present, (ii) has not been handed over by the State in which he is residing or (iii) has absconded or otherwise cannot be located. The *rationale* behind this legal regulation is clear: international justice must not be thwarted, either by the will of the accused to evade justice, or by the intent of a State to shelter such an accused by refusing to hand him over to the international tribunal.
38. Under the Statute and the RPE, the absentee retains, however, some *fundamental rights*: (i) he may appoint defence counsel of his choosing; (ii) he may terminate his absence and appear in court (Rule 108); (iii) if he has not appointed counsel of his choosing, once the trial is over, he may ask for a retrial (Rule 109); (iv) if he has appointed defence counsel of his choosing, he has the right to appeal against the judgment of the Trial Chamber. In addition to these rights, the legal regime of trials in the absence of the accused before the STL includes certain obligations incumbent upon the Tribunal: (a) the Tribunal must assign defence counsel to the accused, and (b) trial proceedings conducted in the absence of the accused must not differ from those conducted in the presence of the accused (Rule 107).
39. Thus, the legal regime of the trial in the absence of the accused provides for a bifurcation once the accused has expressly, and in writing, waived his right to attend the trial. He then may either refrain from designating a defence counsel, or he may instead appoint defence counsel of his choosing. In the latter case, it was thought necessary to prevent the accused first from influencing the trial proceedings through his defence counsel (through whom he would also become cognizant of the evidence led by the prosecution) and then from asking for the nullification of the trial. To avoid this, the Statute provides that the accused who has appointed defence counsel of his choosing is barred from requesting retrial.
40. It is crucial to emphasise that under the STL Statute, the trials conducted in the absence of the accused are significantly and markedly different both from the traditional trials *in absentia* (*procès par contumace*) held in the past in Countries based on the Romano-Germanic tradition and from the trials *in absentia* that at present may be held in some common law jurisdictions. These differences are very important and therefore deserve to be underlined.
41. Trials *in absentia* (termed *procès par contumace* in French-speaking Countries) were permitted in some civil law Countries. They were trials conducted in the absence of the accused (who absconded or could not be found), but where no legal counsel was appointed for the accused. In addition, often the accused, if convicted, forfeited his civil rights. Such a procedure existed in France (between 1808

and 2004)⁴ and other European Countries, but following the repeated critical decisions of the European Court of Human Rights,⁵ has been replaced by trials by default (*procès par défaut*), where the rights of the accused are fully safeguarded.

42. In the United Kingdom and the United States, the trial *in absentia* – generally allowed when the defendant appeared at least once at trial – is not an accommodation or opportunity to hold a trial without taking custody of the accused, but a diminution of rights in response to the accused's wrongdoing. In general, where the accused is not present at trial in the adversarial system, he may even forfeit the right of appeal.
43. In contrast, as stated above, the rules governing trials in the absence of the accused, as provided by the STL Statute and RPE, in addition to making the procedure exceptional, confer a set of important rights on the absent accused, in particular, the right to retrial if he is apprised of the default proceedings or terminates his hiding, as well as (*a fortiori*) the right of appeal.
44. It should be added that the STL RPE have also reduced the scope of proceedings in the absence of the accused, on the assumption that the physical attendance of the accused is not necessarily required and that his "legal presence" may suffice under certain conditions. According to the RPE, therefore, the following two scenarios are *not* considered trials in the absence of the accused:
 - a. where the accused attends the initial appearance hearing (with or without a safe-conduct) and then does not come back, so long as a defence counsel continues to act on his behalf and attends the hearings in person (Rules 104 and 105);
 - b. where the accused appears before the Tribunal – even if it is only for the initial appearance hearing – by video-conference or by counsel appointed or accepted by him, and in addition refrains from waiving expressly and in writing his right to be present (Rule 104). In such instance, while the accused is not physically present before the Chamber, he is not considered "absent" from the proceedings in a legal sense and does not enjoy a right to retrial.
45. The rationale is that, since the accused enjoys the presumption of innocence and therefore need not necessarily be in custody while standing trial, he may be allowed to take part in the proceedings either in person, by video-conference, or through defence counsel he has chosen and whom he instructs. His physical presence in court is not required. Since he has decided not to waive (expressly and in writing) his right to participate, and has thereby shown that he intends to take an active part in the proceedings, the trial cannot be considered as conducted by default. What is essential is the *deliberate* legal participation of the accused in the proceedings. This entails that – either by video-

⁴ According to the eminent Judge Guy Canivet, in France the "*procès par contumace*" existing before the reform of 9 March 2004 exhibited the following characteristics: (i) the absentee was tried by professional judges and not by an Assize Court comprising jurors as well as professional judges; (ii) the proceedings were written, and witnesses and experts were not allowed to be heard; (iii) the absentee was not allowed to be represented by defence counsel during the trial proceedings and was not entitled to lodge an appeal with the Court of Cassation against the judgment rendered in absentia (G. Canivet, *La Contumace (défaut criminel) en Europe*), online: www.courdecassation.fr/IMG/File/.../ouverture%20guy_canivet.PDF, at p.3).

⁵ See for instance the *Poitrimol v. France* case (judgment of 23 November 1993), § 31. See also *Krombach v. France*, judgment of 13 February 2001, §§ 82-90 (on the imperative need that a defence counsel should act on behalf of the absent accused).

conference, or through his defence counsel – he can make statements to the Chamber, examine and cross-examine witnesses or be asked specific questions by the Judges. If he participates by video-conference, he may also exercise his right to testify in his own defence and be examined and cross-examined.

C. The Imperative Need for State Cooperation

1. Introduction

46. The cooperation of States, which is crucial to the successful accomplishment of the mission of any international criminal tribunal or court, normally follows two models.⁶
- a. The *horizontal model* based on the sovereign equality of States, whereby States are not bound to cooperate unless they have agreed to do so. This model is the one that normally inspires the bilateral or multilateral treaties on judicial cooperation or extradition between States. Under this model, the State requested to perform investigative or judicial acts to assist criminal proceedings in the requesting State (e.g. interviewing or summoning witnesses, conducting searches, executing arrest warrants etc.) operates through its own prosecutorial or judicial authorities and then delivers the result of these acts to the requesting State.
 - b. The *vertical model*, whereby States are legally bound to comply with orders issued by an international tribunal or court without prior specific agreement, but rather on the basis of a binding decision of an international organ (with the consequence that any non-compliance may be sanctioned). Under the vertical model, States may not refuse to cooperate on any of the grounds usually applicable in inter-State legal assistance or extradition treaties (such as non-extradition of nationals, political offence exception, double criminality requirement or *ne bis in idem* condition).
47. This vertical model can be further subdivided into *two sub-models*:
- i. A more sovereignty-oriented sub-model, whereby States, while legally bound to cooperate, implement investigative or judicial acts of assistance to the requesting international tribunal or court through their own prosecutorial or judicial authorities – if need be, in the presence of officials of the international tribunal or court.
 - ii. A more hierarchically-oriented sub-model, whereby States authorise once and for all an international tribunal or court to carry out investigative or judicial acts of assistance on their territory without the assistance of their own authorities – except for those acts which, by their nature, require the active cooperation or protection of local enforcement agents, such as searches, execution of arrest warrants and execution of *subpoenas*.

⁶ For these notions see ICTY, Request of the Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997, *Blaškić* (IT-95-14-AR108bis), Appeals Chamber, 29 October 1997, § 47.

48. The STL system of cooperation is unique in four respects. First, it is based on both models of cooperation: while the vertical model governs the relationship between the STL and Lebanon, the horizontal model dictates its relationship with third States. Second, the relationship between the STL and Lebanon is inspired by the more hierarchically-oriented vertical model, since Article 11(5) of the Statute appears to allow the STL to take investigative acts, if appropriate without the assistance of the Lebanese prosecutorial or judicial authorities. Third, the effectiveness of the horizontal model has been reinforced by envisaging the conclusion of agreements or arrangements with third States, not only by the President acting on behalf of the whole Tribunal, but also by the Prosecutor, the Head of Defence Office and the Registrar. Fourth, innovative mechanisms designed to avoid major cooperation difficulties have been adopted in the RPE.

2. Vertical Cooperation with Lebanon

49. In light of the Agreement between the United Nations and Lebanon, which entered into force pursuant to Security Council resolution 1757 (2007) adopted under Chapter VII of the UN Charter, the vertical model of cooperation applies to Lebanon. The Lebanese authorities are bound to cooperate with the STL and must therefore comply, without undue delay, with any request for assistance or any order issued by the STL. In line with this model, Article 4(1) of the Statute provides that “within its jurisdiction, the Tribunal shall [also] have primacy over the national courts of Lebanon”.
50. In case of non-compliance by Lebanon with any request or order issued by the STL, Rule 20 of the RPE establishes a three-tiered mechanism. This mechanism, while showing respect for the sovereignty of Lebanon, is also grounded in the vertical nature of its relationship with the STL and would, therefore, be compulsory. First, the President would consult with the relevant Lebanese authorities with a view to inducing them to cooperate. Second, in the event of a persistent refusal to cooperate, the Pre-Trial Judge or the Trial Chamber would make a judicial finding of non-cooperation. Third, the President would report this judicial finding to the Security Council for appropriate action.
51. Furthermore, in order for the STL to be able to fulfil its mandate, its Statute, expanding the trend initiated by the ICTY, reinforces the vertical nature of the relationship between the STL and Lebanon with the application of the more hierarchically-oriented vertical model referred to above. Indeed, Article 11(5) allows the Prosecutor to decide whether he requires the assistance of the Lebanese authorities when conducting his investigation, which may entail, “as appropriate”, taking intrusive measures, such as conducting on-site investigations or interviewing witnesses or suspects. However, to guarantee that the interests of Lebanon are fully preserved and that its sovereignty is not unduly encroached upon, under Rule 77(B) of the RPE the decision of the Prosecutor is subject to judicial scrutiny: when necessary and appropriate, the Prosecutor must be authorized by the Pre-Trial Judge to conduct investigative acts without the involvement of national authorities.
52. While the Agreement, the Statute and the RPE provide for the aforementioned mechanisms, I am pleased to report that to date, Lebanese cooperation has been most forthcoming and effective.

3. Horizontal Cooperation with Third States

53. Except when the Security Council requests third States to cooperate pursuant to a resolution adopted under Chapter VII of the UN Charter, the *horizontal model* of cooperation applies to third States: they shall provide assistance to the STL only if they have agreed to do so, for instance, by entering into an agreement or arrangement with the STL, as Rules 13 to 15 of the RPE provide.
54. In case of non-compliance by third States with a request of the STL, a distinction must be made between third States which have entered into such an arrangement or agreement and those which have not. According to Rule 21(A) of the RPE, the former category of States are obliged to provide assistance to the STL within the limits established in the arrangement or agreement. Any disagreement is settled solely by the dispute settlement mechanism provided for in the relevant arrangement or agreement. Accordingly, both the scope and the duty to cooperate, as well as the consequences of the non-compliance of such States are to be negotiated on a case-by-case basis. As to the latter category of States, they are not bound to cooperate with the STL. If such States fail to comply with a request for assistance by the Tribunal, according to Rule 21(B) of the RPE, the President of the Tribunal may engage in consultations with the competent authorities of the State with a view to obtaining the requested cooperation.
55. In this context, signing agreements or arrangements regulating the cooperation between the STL and third States is of particular importance. The RPE facilitate the conclusion of such instruments by entrusting the Prosecutor (Rule 14), the Head of Defence Office (Rule 15), and the Registrar acting under the authority of the President of the Tribunal (Rule 39) with the power to directly seek cooperation from any States in a manner consistent with the STL Statute. In addition, it goes without saying that the President, who “shall represent the Tribunal in international relations with the United Nations, other inter-governmental organizations, States and non-governmental organizations” may also “invite third States [...] to provide assistance on the basis of an arrangement or agreement with such States [...] or on any other appropriate basis” (Rule 13). On this basis, in the past year a general cooperation agreement and agreements on enforcement of sentences have been drafted by the STL and submitted to States for their consideration.
56. Also, in line with ICTY case law – which imposes obligations on non-State entities⁷ and international organizations⁸ – agreements or arrangements may also be concluded with such entities or international organizations (Rules 13 and 14 of the RPE). This has prompted me as President of the Tribunal to conclude (i) an Agreement with the International Committee of the Red Cross on Visits to Persons Deprived of Liberty pursuant to the Jurisdiction of the STL (entered into force on 12 June 2009), and (ii) an Agreement with INTERPOL (entered into force on 17 December 2009).
57. Finally, to avoid any difficulties with cooperation resulting, for instance, from the fact that the Constitution or the legislation of some States within the region may contain a provision prohibiting the extradition of nationals, innovative mechanisms are included in the RPE, such as allowing the accused to participate in his trial *via* video-conference (Rules 103 to 105), taking testimonies through

⁷ See Binding Order to the Republika Srpska for the Production of Documents, *Krstić* (IT-98-33-PT), Trial Chamber I, 12 March 1999.

⁸ See Order for the Production of Documents by the European Community Monitoring Mission and its Member States, *Kordić and Čerkez* (IT-95-14/2-T), Trial Chamber III, 4 August 2000.

a video-conference link (Rule 124) and collecting evidence for the STL by the judicial authorities of a third State (Rule 125).

D. Principal Problems Likely to Beset any International Criminal Court Dealing with Terrorism

58. It may now prove judicious to try to explain the fundamental reasons for the protracted investigations of the Tribunal's OTP into the terrorist crimes falling under the Tribunal's jurisdiction, and also to show how the STL must face both the problems besetting *any* international criminal tribunal, and those that such a tribunal must come to grips with when it deals with *crimes of terrorism*.

1. General Problems Plaguing any International Criminal Court or Tribunal

(i) International environment

59. Let me start by briefly discussing the problems that any international criminal tribunal must cope with.
60. For a Judge used to sitting on a domestic court, being appointed as an international criminal judge may involve a novel and, in some respects, challenging experience. At home he was part of and worked within a complex machinery, the Judiciary. A Ministry of Justice was taking care of financial resources and other administrative matters. Law enforcement agencies at the disposal of the Judiciary accomplished important coercive tasks: execution of judicial orders for the collection of evidence, for searches and seizures, and for summoning or arresting suspects or indictees. In addition, colleagues shared the same legal background, having been trained in the same country, and generally having been brought up in the same cultural milieu. Furthermore, all activities were done in the same language – a language usually shared not just by counsel, prosecutors, judges, but also by witnesses and defendants.
61. As was noted in the past by a witty ICTY judge, once projected onto the international arena some domestic judges feel like astronauts floating in a rarefied atmosphere, with no oxygen. There is no general judiciary proper in the international arena, but only a number of distinct judicial institutions, each living its own life. Each international tribunal normally constitutes a monad, a self-contained unit, disjointed from other courts or tribunals of a similar nature. Each tribunal must look after its own financial resources and their judicious allocation as well as set up its own structure and act in conformity with its own rules of procedure. What is even more striking, international tribunals have *no enforcement agencies* at their direct disposal. They have no sheriffs, no judicial police, no bailiffs capable of directly enforcing judicial orders. For these purposes, international courts must turn to State authorities and request that they take action – through their own organs – to assist the international courts' officers and investigators. Without the assistance of national authorities, international courts cannot operate. Without the intermediary of these authorities, they are often not able to seize evidentiary material, compel witnesses to give testimony, search the scenes where crimes have allegedly been committed, or execute arrest warrants. International criminal courts are truly like giants, with great moral and legal authority, but lacking strong arms and legs. To walk and to conduct their work, they normally need artificial limbs: the organs of sovereign States. As long as

States lend their support to international courts, these courts can effectively discharge their functions. Otherwise, they risk becoming impotent.

62. For international criminal tribunals *State co-operation* is therefore crucial to the effectiveness of the judicial process. Often, it is only national authorities (or, under certain circumstances, international organizations) which can enforce decisions, orders, and requests issued by international criminal tribunals. Admittedly, generally speaking this need for State cooperation holds true for all international institutions, which always need the support of governments to be able to operate. International criminal courts, however, are much more in need of this type of support, and need it more urgently, because their action has a direct impact on the human rights of individuals residing on the territory of sovereign States and subject to their jurisdiction. Indeed, international courts have the authority to charge those individuals with international crimes, to bring them to trial and, if such individuals are convicted, to order that they serve sentences of imprisonment. It is therefore imperative that, in order to allow international tribunals to carry out functions that impact so heavily on fundamental human rights, States – which have created such tribunals in the first place – lend them their swift and effective assistance.
63. Another challenge deriving from the specific nature of international courts is the need to *amalgamate* different judges in order to establish a new whole, made up of persons each with a varied cultural and legal background: some judges come from common law Countries, others from States with Romano-Germanic or other traditions; some judges are criminal lawyers, others are primarily familiar with international law; some have previous judicial experience, others do not.

(ii) The international investigative process

64. Conducting investigations into core international crimes and terrorism poses challenges that are different than those faced in domestic investigations. In many instances, international investigators are not on the scene until weeks, months or even years after the crimes have been committed. Time is the enemy of all investigations, since the passage of time often means that evidence is no longer available; memories have gone stale; witnesses have died or are no longer traceable. Moreover, there are often language barriers to be overcome, since quite often the investigator does not speak the same language as the victims or witnesses. Even when the investigator and witness speak a common language, cultural barriers may hinder clear communication.
65. In this regard, I need to point out that the Tribunal only started working in early March 2009. While the United Nations International Independent Investigative Commission (UNIIIC or Commission) was established on 7 April 2005 pursuant to Resolution 1595 (2005), the mandate of this Commission was to assist the Lebanese authorities in their investigation and to help identify the perpetrators, sponsors, organizers, and accomplices; to this end, the Commission was, among other things, requested “to collect any additional information and evidence” pertaining to the terrorist act. This task – carried out pursuant to procedures that are not those typical of an international judicial process – was therefore different from that of the STL Prosecutor as an organ of the Tribunal and therefore subjected to the RPE adopted by the Judges. While the material gathered by Lebanese authorities and by the UNIIIC can be used as evidence before the Tribunal, “its admissibility shall be decided by the Chambers pursuant to international standards on collection of evidence. The weight to be given to any such evidence shall be determined by the Chambers” (Article 19 of the STL Statute).

66. It should be added that, whether or not the activity of an international criminal tribunal is preceded by the gathering of information and evidence by a commission of inquiry, normally collection of evidence that stands up to the strict criteria proper for international criminal trials is a complex and time-consuming process. As a rule, at least two or three years elapse between the beginning of criminal investigations proper by an international Tribunal's Prosecution and the initiation of trial proceedings. The Rome Statute, for instance, entered into force in July 2002, but the ICC held its first trial hearing only in January 2009. To mention another example, the ICTY judges met for the first time in November 1993. The ICTY's first trial hearings, however, only commenced on 7 May 1996. This had been preceded by the establishment of the UN Commission of Experts on 6 October 1992 pursuant to Security Council Resolution 780 to investigate and examine evidence of breaches of international humanitarian law in the former Yugoslavia. Similarly, although investigations of suspects had already been conducted, the first trial before the SCSL started on 3 June 2004, almost two and a half years after the UN and the Government of Sierra Leone had signed the agreement establishing the Court.

(iii) Length of the international proceedings

67. Yet another serious problem is the *length* of international criminal proceedings. This results from various factors and I will only touch upon some of them here.
68. First is undoubtedly the complexity of international cases. Compared to an average case in national courts, international criminal proceedings deal with more complex legal and factual issues. True, there are also very complex proceedings at the national level (e.g. mafia and other organized crime cases); however, this level of complexity is the rule in international criminal proceedings. In addition, the complexity is also influenced by the fact that international tribunals must rely on national authorities and must strive to overcome the reluctance of some States to cooperate fully.
69. Second, I would point to some aspects of the dominant adversarial system which, by requiring that all the evidence be elicited orally through examination and cross-examination, renders proceedings protracted – although the system also appears under certain circumstances better suited to protect the fundamental rights of the accused. On the contrary, in many inquisitorial systems the evidence is selected beforehand by the investigating judge as an impartial judicial authority present during the investigation and pre-trial phases of the proceedings. However, one should not generalize too much: the experience of the ECCC, based on a system closely resembling the traditional French one, shows that the inquisitorial system may also result in lengthy proceedings. In the first case before the ECCC, after a lengthy and confidential investigation procedure, the trial has also taken a long time, mainly because of the perceived need to hear most of the evidence again in the public forum of a trial. The advantage of the civil law system regarding efficiency at trial was thus lost. The system at the ECCC appears to have combined the long pre-trial phase typical of inquisitorial systems with the long trial phase often needed in adversarial proceedings.
70. Third, one should also mention language problems. At the national level, proceedings are normally conducted in only one language, whereas before international courts this occurs in at least two, and possibly in three or more languages. This has the consequence that documents, exhibits and pleadings need to be translated into all these languages. Moreover, interpretation is needed in the courtroom: even with simultaneous interpretation, the length of the proceedings is clearly affected

and the need for clarifications and corrections – required due to the precision needed in criminal proceedings – further aggravates the problem.

2. Problems Specific to an International Tribunal Dealing with Terrorism

(i) *Problems relating to the investigation of crimes of terrorism*

71. The best way of illustrating the specific difficulties for an international criminal court to investigate crimes of terrorism resides perhaps in briefly comparing them with the difficulties faced by international courts when investigating *other categories* of international crimes, namely war crimes, crimes against humanity and genocide (so-called international “core crimes”). We can discern many differences between investigations concerning the three classes of crimes, on the one hand, and those concerning terrorism, on the other. Such differences relate to (i) the *target* of the investigations, (ii) the *context* of the crime, (iii) the *purpose* of the crime, and (iv) the *territorial dimension* of the crime. The observations that follow are based on discussions held with national prosecutors and investigating judges specializing in terrorism. They are general in nature, referring to various kinds of terrorism, without any specific reference to the subject-matter jurisdiction of the STL.
72. Turning first to the *target of the investigations*, international core crimes are often perpetrated by military units or paramilitary groups, or by groups of individuals enjoying their support; they are often masterminded by political or military leaders. In other words, those crimes are physically committed by members of the armed forces, the police, or other State officials (including persons acting under colour of law, even in insurgent groups or other quasi-State situations), or at least with their assistance, support or acquiescence. These units or groups can be fairly easily identified, for they are part of an apparatus and normally act in broad daylight, sometimes in uniform. Even in the case of paramilitary groups, they are often organized and financed by “official” groups or institutions. Victims of their crimes (murder, rape, torture, killing of civilians, etc.) and other witnesses are normally able to provide testimonial evidence on the events surrounding the crimes, thereby assisting in the identification of the alleged culprits. In addition, there is often documentary evidence in the form of orders or directions under which these groups acted. Perpetrators, including both co-conspirators and lower level soldiers or police, will often provide evidence as to such orders as well as plans that were followed. These “insider witnesses” have good reasons for providing such evidence, as their cooperation often results in lower sentences. Moreover, after the end of the hostilities, many participants in these groups are less committed to the cause that motivated their involvement in the conflict and the crimes. In other cases, they are simply criminals who acted opportunistically in the first place and are willing to seize the opportunity to provide evidence in consideration of a more lenient sentence.
73. In contrast, the authors of terrorist crimes generally make up small and secretive cells, which sometimes act in a clandestine fashion. Hence, it is extremely difficult to identify the perpetrators of a specific crime. Even when, by chance, the crime site was under video-camera surveillance, and therefore the images of the attackers can be obtained, this may prove of little help, because those perpetrators may have killed themselves in perpetrating the attack. The network behind a specific terrorist attack, therefore, can be very difficult to identify.

74. It is also worth noting that in war crimes cases, the basic structure of regular forces or paramilitary groups is often well known to experts in military and political affairs. In contrast, in terrorism cases, while the cell structure noted above is frequently employed, the way in which different organisations operate and work varies considerably. Hence, without access to one or more insider witnesses, or highly specialised expert witnesses, the investigative process may well be much more difficult than in a war crimes case.
75. Moreover, individuals engaging in terrorist activities and their supporters are generally bound by strong ideological or religious beliefs which, even if they can be identified and arrested, makes it extremely difficult to obtain information, much less admissible evidence, from them. In addition, members of terrorist groups are often loath to disclose information on the terrorist network lest they be immediately killed or subjected to other serious retaliatory measures by other members of the group. Thus, in the case of crimes of terrorism, access to potential “insider witnesses” is much more limited than in war crimes cases. Without such insiders, it is much more difficult for an investigator to piece together the evidence but also, more importantly, to identify potential suspects or perpetrators. In the war crimes context, particularly in leadership cases, “insider witnesses” have proven critical in providing a roadmap as to how the crimes were committed and who committed them. While the evidence of “insiders” is equally important in terrorist cases, they may be more difficult to cultivate due in part to the ideological commitment of the perpetrators and their network of supporters. One of the features of terrorist groups is that it is known that they are likely to kill prospective witnesses and defectors. This naturally leads potential “insiders” to be reluctant to cooperate.
76. However, an important point should be stressed. Terrorist cases are often built on circumstantial evidence, which is often more powerful than direct evidence. The individual rings of metal used in producing chain mail armour are not, in and of themselves, strong. But when hundreds of such rings are linked together, the armour can be impenetrable. Circumstantial cases are the same. By linking the various evidentiary threads together, the Prosecution can put forward a case that is much stronger than one based solely on direct evidence, such as eyewitness accounts.
77. Let me now turn to the *context* of the international core crimes, on the one hand, and terrorism, on the other.
78. Core crimes are normally perpetrated in situations of armed conflict, periods of dramatic social unrest, or when the authorities of a State have collapsed. While this exacerbates certain problems associated with the gathering of evidence (due to a breakdown in the legal and social order), the role of the international tribunal is at least clear: to act because the State is unable (or unwilling) to take the matter into its own hands. In contrast, crimes of terrorism often occur in States with functioning social systems and institutional infrastructure. This may create difficulties in coordinating the existing functioning institutions of the State, on the one hand, with the international tribunal called to adjudicate the matter, on the other.
79. The context of terrorism cases as opposed to “core crimes” cases, furthermore, creates serious security problems for investigators and other authorities dealing with the preparation and trial of the case. Due to the nature of terrorism crimes – generally fraught with political intentions and influences – and of the persons generally associated with terrorist groups, investigative steps must be pursued in an extremely delicate environment amidst real dangers for staff and their contacts.

This might not occur as often in other international tribunals, especially when the hostilities in question have subsided.

80. Let me now underscore the difference between the *purpose* of the various classes of international crimes and terrorism. War crimes are acts which flout international legal standards imposing restraints on combatants in how they conduct warfare and against whom they may lawfully do so. Crimes against humanity (such as extermination, torture, rape, persecution and deportation), if committed in time of war, are often perpetrated with the same goal of attacking persons not taking an active part in the hostilities, plus (both in time of war and peace) the intent to humiliate, demean or provoke suffering in certain groups of persons (ethnic or religious groups, women, etc.). Genocide is grounded in the intent to destroy a whole national, ethnic, racial or religious group, or at least a part thereof.
81. In contrast, terrorism generally aims to disrupt State structures (or those of an international organization) or to force State (or international) authorities to undertake certain conduct. The killing of individuals is sometimes simply a *means* of coercing a State (or an international organization) to take some sort of action or to refrain from acting under specific circumstances. In substance, terrorism amounts to an attack against State (or international) authorities, by means of violence against life or property, whereas in the case of international core crimes the target of the attack is one or more individuals or groups.
82. There are also important differences in terms of the *territorial dimension* of the core international crimes and terrorism. In the case of war crimes, crimes against humanity and genocide, as a rule the offence is perpetrated in the territory of one State: for example, murder, rape or deportation of civilians of the States of the former Yugoslavia, genocide in Rwanda, crimes against humanity in Sierra Leone, and so on. Even when crimes are committed within the context of an international armed conflict between two or more States, normally the *locus* of the offence is well defined. At most, there may be a dislocation between the defendants – who participated in a joint criminal enterprise to commit the crimes or who issued orders to engage in atrocities in an enemy State – and the actual perpetrators who physically carried out the massacres there.
83. In contrast, crimes of terrorism very often involve transnational elements. A person may join a terrorist cell in one country, travel to another country to be trained in terrorist techniques, and then return to his country of residence to recruit other persons. Subsequently, he may then travel to yet a different country, where the attack is then carried out.
84. In this context, the investigation of such crimes is more difficult and can be impeded because the criminals, and therefore the crimes, cross multiple international boundaries. The consequence is that, besides the complexities explored above, the information (and the witnesses themselves) are located in a variety of different Countries and are thus more difficult to trace. Moreover, key acts that are critical to understanding, investigating or proving the relevant crimes take place in Countries that may be unwilling to cooperate with an investigation or simply unable to provide assistance due to lack of infrastructure or territorial control. While war crimes investigations face some of the same issues, the difficulty in obtaining information on such a global scale is of a magnitude not generally seen in the war crimes context.
85. It should be added that the financing of terrorism, which is a crime *per se* under international law and in many Countries, covers two distinct aspects: the financing of terrorist *attacks* and the

financing of terrorist *networks*, including recruitment and promotion of terrorist causes. The small sums of money which may be needed to carry out terrorist attacks means that it may never be possible to dry up terrorist access to financing. In addition, financial aid to the terrorist groups or of a terrorist act is often fragmented and hard to be traced. Cash transactions, which can be difficult to track, are often the preferred method of financing terrorist acts. Terrorist financing also has transnational dimensions, contributing to the difficulties in conducting investigations. As the sources of financing and support might constitute an international network of ideological allies, located in different parts of the world, investigations are necessarily complex.

(ii) Challenges of collecting evidence

86. The special characteristics of terrorist crimes, on the one hand, and other international crimes, on the other, lead to differences in the type of evidence likely to be used in their prosecution and specific challenges associated with gathering such evidence.
87. When war crimes, crimes against humanity or genocide are investigated, one crucial class of evidence – especially for establishing the crime base (i.e. the crimes which actually took place “on the ground”) – comes from *direct eyewitness testimony*. Survivors of mass killings, torture or forcible expulsion from a territory, eyewitnesses of indiscriminate attacks on the civilian population, victims of rape may report crimes to investigators and provide witness statements. This enables investigators to identify and gather evidence against both the direct perpetrators of the crimes, as well as the “perpetrators behind the perpetrators” – i.e. those senior political, military and paramilitary leaders who – although physically, geographically or temporally removed from the crimes – in fact bear the greatest responsibility.
88. In addition, as pointed out above, the role of “insiders” should not be underestimated. This evidence is often key in establishing the “link” between the crimes and leaders higher up in the military chain of command or political hierarchy. Thus, Erdemović, Obrenović and Momir Nikolić, after having pleaded guilty to participating in the killing of hundreds of civilians at Srebrenica, testified in court, for the Prosecution, in cases against other accused (see, for example, the ICTY cases of *Krstić* and *Blagojević and Jokić*).
89. Moreover, *documentary* or *physical* evidence can also become available: international troops may have visited the site of a massacre a few hours later and filmed all the destructions (as in *Kupreškić et al.*, ICTY). In other cases some of the perpetrators themselves had the context of the crimes filmed by TV (as in *Krstić*, ICTY). Another significant source of documentary evidence in war crimes cases emanates from military archives. For example, in the *Galić* and *Dragomir Milošević* cases, detailed military documents as to the movements of armed forces and orders given to conduct military activities proved crucial to establishing the pattern of shelling and sniping in Sarajevo. In *Mrkšić and Sljivančanin*, military documents were used in the case against two senior military leaders for their failure to prevent the torture and killing of hundreds of prisoners of war evacuated from the Vukovar hospital. Likewise in the *Stakić*, *Brđanin* and *Krajišnik* cases, minutes of meetings of municipal, regional and State political bodies proved important in establishing the existence of joint criminal enterprises at leadership levels to ethnically cleanse large parts of Bosnia.
90. *Forensic* evidence, such as excavation of mass graves, can also be crucial, especially in establishing the crime base. This kind of evidence turned out to be essential in proving the mass killings that took

place during the genocide in Rwanda (see, for example, *Rutaganda*, *Semanza* and *Ntakirutamana* cases at the ICTR).

91. Let us now turn to terrorist crimes. The nature of terrorist organizations, their clandestine existence and covert operations, make it difficult to gather direct eyewitness evidence: seldom are survivors of terrorist attacks able to identify the alleged perpetrators, who might detonate bombs from afar or even blow themselves up in the process. Nor is it easy to obtain documents from military or government archives proving the structure and chain of command, because of the very characteristics of terrorist organizations discussed above. In addition, as emphasized above, investigators can rarely rely on insiders or turncoats: the high ideological leanings and motivations of members of terrorist groups and even the well-founded fear of murderous reprisals by other members of the group constitute a potent disincentive to report to investigators how the group operates.
92. The experience of national investigators shows that, in tracking down terrorist groups, they often rely on:
 - i. Call records and monitoring of telephones and mobile phones;
 - ii. Monitoring conversations in public places, cars, private homes, prisons, etc.;
 - iii. Monitoring computer activities to check internet traffic and possible downloading of messages, videos or other material;
 - iv. Monitoring letters and other documents of detained terrorists; and
 - v. Detailed expert examination of the crime site.
93. Forensic evidence such as DNA can prove useful in those rare cases where the DNA traces left in the locus of the terrorist attacks match the DNA of suspects, which is either in the hands of the investigators or (as occurred in Italy with regard to the assassination by mafia groups in 1992 of Judge Giovanni Falcone, his wife and three of his body guards) when years later suspects are arrested and a match can be established with the DNA of the perpetrators.
94. These brief remarks should assist in putting into perspective some of the specific problems and challenges facing the STL Office of the Prosecutor. The length of time required to investigate the cases falling within the jurisdiction of the Tribunal must be measured against these challenges.

PART II – MAIN ACTIVITIES OF THE TRIBUNAL BETWEEN MARCH 2009 AND FEBRUARY 2010

A. Chambers

1. Introduction

95. The Tribunal's Chambers are vested with three kinds of essential tasks: judicial, regulatory and managerial. In the past 12 months, the fulfilment of judicial tasks was limited to the issue of the four Lebanese Generals being detained in Beirut in connection with the *Hariri* case. In contrast, the Judges have intensively discharged their regulatory function by adopting various sets of Rules and other normative instruments. During this period, they held two plenary meetings and adopted the basic documents of the Tribunal as well as agreements with the International Committee of the Red Cross (ICRC) and INTERPOL. They also prepared two draft agreements, one on legal cooperation with States, and the other on enforcement of sentences. Finally, the Judges have frozen any recruitment of legal and support staff and transferred all the financial resources thus saved to the Prosecution so as to enhance the investigative work of the STL in the next year.

2. Judicial Activities

96. Article 4(2) of the Statute provides that within two months of the Prosecutor taking office, the Tribunal shall request the Lebanese authorities to defer to its competence the case of the attack against Prime Minister Hariri and others. Acting promptly, the Prosecutor made an application to the Pre-Trial Judge on 25 March 2009, requesting that the Lebanese authorities defer to the Tribunal's competence on this case. Two days later, the Pre-Trial Judge issued an order granting the Prosecutor's request. The Lebanese authorities complied and also notified the STL that four persons were being held in detention in connection with the *Hariri* case. They also transferred all the relevant material to the Tribunal pursuant to Rule 17 of the RPE. Following this, on 15 April 2009, the Pre-Trial Judge issued an order to the Prosecutor setting a time limit for the latter's submissions on the detentions. In setting this time limit, the Pre-Trial Judge took into consideration the fundamental right of any individual detained to be brought promptly before a judge. He also noted that the *Hariri* case raised difficult issues and that the judicial record relating to it was particularly complex and voluminous.
97. On 29 April 2009, upon reviewing the Prosecutor's submissions to the effect that after review of all the material in his possession, he did not have sufficient evidence to indict the four persons or to justify their continued detention, the Pre-Trial Judge issued an order releasing the four detained persons in Lebanon in connection with the *Hariri* case. He noted that since the Prosecutor had requested the release of the persons detained, his role as Pre-Trial Judge was not to review all the material in the case file but instead to review the exercise of the Prosecutor's discretion to ensure that it was not manifestly unreasonable. The Pre-Trial Judge found that the Prosecutor had not

exercised his discretion in a manifestly unreasonable way. He accordingly concluded that since the persons detained could neither be considered suspects nor accused persons before the Tribunal, they must be released.

98. On 20 April 2009, the Head of Defence Office requested, on behalf of the four persons detained in Lebanon in connection with the *Hariri* case, a modification of the conditions of detention. He raised concerns about the fact that the detained persons in Lebanon were not able to hold meetings with their counsel in a setting where their discussions would be privileged, and that in addition, they were segregated from each other. The following day the President issued an order requesting the Lebanese authorities to: (i) ensure that the right of the detained to freely and privately communicate with their counsel was fully implemented and (ii) terminate the regime of segregation of the detained persons and ensure that they be allowed to communicate with each other upon request for a period of two hours per day. The Lebanese authorities complied with this order forthwith.
99. I would like to underline that the organs involved in the whole process concerning the four Lebanese Generals should be commended for the rapidity and efficiency with which they acted. It illustrates how they worked collegially to come up with a creative procedural solution, namely that the Generals did not need to be transferred to the Netherlands but remained in detention in Lebanon, even though they were under the STL's judicial authority. This solution – based on a strict application of international standards – also saved a great deal of work and financial resources, spared the Generals from being further subjected to media exposure and saved the authorities from having to consider issues arising from a complex transfer abroad.

3. Regulatory Activities

(i) Adoption of the RPE, the Rules of Detention and the Directive on Assignment of Counsel

100. From 9 to 20 March 2009, the eleven Judges of the STL held the Tribunal's first plenary session. After being sworn in, they elected the President, Vice-President and Presiding Judge of the Trial Chamber, in accordance with the relevant provisions of the Tribunal's Statute. On this occasion, the Judges also discussed and adopted the various fundamental legal documents relating to the organisation and functioning of the STL: (i) the RPE, (ii) the Rules of Detention and (iii) the Directive on Assignment of Counsel. These documents lay the groundwork for future judicial action. In drafting these rules, the Judges tried to take into account the unique features of the crimes of terrorism, while respecting the highest standards for a fair trial. The novelties of these Rules are detailed in Section B, 4 of Part I of this Report.
101. Following the plenary, the President issued an "Explanatory Memorandum" which sets out the highlights of the RPE as well as the rationale behind their main novelties. In addition, a compendious guidebook on the Tribunal entitled "A Snapshot of the STL Procedure" was drafted by the legal officers of the Chambers; it concisely summarizes the main features of the procedure before the STL, and offers a plain and easily accessible explanatory tool to national judges, lawyers, practitioners, students and all those interested in the Tribunal.
102. On 5 June 2009, the Judges unanimously adopted a number of amendments to the RPE by correspondence (under a special expedited procedure envisaged in Rule 5(F)). The amendments were proposed by the President following consultations with the Prosecutor, the Head of Defence

Office and the Registrar. The objectives of these amendments were manifold: (i) to streamline some rules and ensure that they better translate the letter and spirit of the relevant provisions of the STL Statute; (ii) to ensure the consistency of the amended rules with other relevant rules; (iii) to encourage to the extent possible cooperation with the STL by States and organizations, as well as the use of sources of sensitive information; (iv) to meet the operational needs of the ongoing investigation; and (v) to protect the confidentiality of information during the investigative stage for the effective conduct of the investigation and the protection of any persons.

103. From 26 to 30 October 2009, the Judges held a second plenary meeting. One of the Judges' tasks was to consider the proposals of amendments of the RPE and the Directive on Assignment of Counsel made by the various organs of the Tribunal. The Judges amended some 36 Rules of the RPE in a substantive way and made editorial changes to an additional 14 Rules. These amendments were made in light of the experiences gained to date by the STL and were aimed at further enhancing the efficiency, effectiveness and integrity of the proceedings. The most significant RPE amendments include an increased consultation and coordination between the President and the Registrar on administrative and judicial support functions (Rule 39), a mechanism for the Prosecutor to provide the Pre-Trial Judge during the investigative stage with documents and information which will assist him to carry out his functions and to review and confirm any indictment that may be submitted to him (Rule 88), and the inclusion of two new contempt provisions (Rule 134).

(ii) International instruments

104. In the past twelve months, in addition to the adoption of these fundamental basic documents, Chambers has also drafted and adopted the five following instruments:
- a. The *Agreement between the STL and the ICRC* on visits to persons deprived of liberty pursuant to the jurisdiction of the STL. This Agreement entered into force on 12 June 2009.
 - b. The *Agreement between the STL and INTERPOL* on cooperation and access to INTERPOL's databases and information systems. This Agreement entered into force on 17 December 2009.
 - c. An *Interim Agreement with INTERPOL* was also signed at the end of August in order to initiate cooperation immediately until such time that the INTERPOL General Assembly could approve the Agreement in October 2009.
 - d. A *Cooperation Agreement* with the Lebanese Minister of Justice was finalized through an exchange of letters on 5 February 2010 for the appointment of a Liaison Judicial Official in Lebanon. The Liaison Judicial Official will take all necessary steps to ensure the enforcement of orders issued by the Tribunal, as well as the implementation of requests forwarded to him or her by the Registry.
 - e. A *Draft Agreement on Legal Cooperation with States* was prepared and has been submitted to some twenty States (in the Middle East and elsewhere where large Lebanese communities live) for discussions and negotiations aimed at prompting as many of them as possible to sign and ratify the Agreement.

- f. A *Draft Agreement on Enforcement of Sentences* has also been submitted to States for discussions and negotiations.

(iii) Practice Directions

- 105. On 15 January 2010, the President issued three *Practice Directions* on the Filing of Documents, on Depositions and Taking Witness Statements for use in Court, and on Video-Conference Links. In addition, one internal *Standard Operating Procedure for the Registry* on Holding Proceedings Away From the Seat of the Tribunal was adopted.
- 106. These documents will facilitate the passage to the next stage (submission of indictments by the Prosecutor, initiation of activity by the Pre-Trial Judge and possibly by the Appeals Chamber in the event of interlocutory appeals being submitted). Furthermore, they will ensure greater legal certainty and uniformity in the work of the Tribunal as a whole.

4. Managerial and Other Tasks

(i) General

- 107. In carrying out his management functions within the STL, the President has been able to ensure a coordinated approach among the various Organs through regular meetings of the Senior Management Board (SMB). Composed of the President, the Prosecutor, the Head of Defence Office and the Registrar, the SMB has met regularly in the past year to discuss and decide upon a number of issues concerning the STL's management and activities.
- 108. Shortly after the Vice-President, Judge Ralph Riachy, took office at the seat of the Tribunal, the President delegated to him a series of functions pursuant to Rule 34 of the RPE. In particular, since then Judge Riachy has been in charge of the RPE amendments, victims' participation (including liaising with the Registry on the establishment and development of the unit foreseen by Rules 50 and 51 of the RPE), and outreach in Lebanon, in coordination with the Tribunal's Public Information Office.

(ii) Internal seminars

- 109. In addition, in order to prepare the necessary legal reflection on themes that are likely to be tackled by the Tribunal, the President organised a set of 12 seminars in the course of the past year, which were open to all of the Tribunal's staff. Presentations on various legal, historical and political issues relevant to the Tribunal's work were made and followed by a discussion. The speakers were specialists from the various organs of the Tribunal as well as external experts such as professors and judges. It should be noted that all those attending these seminars spoke in their personal capacity and in a non-committal manner. More seminars are already planned for the forthcoming months. The topics to be addressed include both general problems of international criminal law and specific issues relating to the prosecution of crimes of terrorism. In addition, the President is running, but only within Chambers, a set of meetings designed to discuss legal issues pertaining to the Tribunal's

activities. The outcome of these discussions is the preparation of voluminous “*dossiers*” compiling the legal literature and the national or international case law relating to each issue.

(iii) Documentation

110. The President has issued a document explaining to the Management Committee the basic philosophy behind the Tribunal’s work as well as the principal goals that it intends to pursue: the “Principles to Guide the Court”.
111. In August 2009, the President prepared his “Six-month Report – a Bird’s Eye View” and submitted it to the Management Committee, the UN Legal Office and the Government of Lebanon. The report gave an overview of the activities of the STL since its establishment. As a complement to both the monthly reports that the STL makes to the Management Committee and the present Annual Report, its main goal was to ensure transparency and accountability *vis-à-vis* the Management Committee, the Government of Lebanon and the other States supporting the work of the STL.
112. Finally, Chambers has produced two volumes compiling the Basic Documents of the Tribunal, so as to make available the most important documents relating to the Tribunal in the three official languages of the Tribunal.

(iv) Recruitment of staff

113. With the support of the Management Committee, the Plenary decided that Vice-President Judge Ralph Riachy should assume his functions as soon as possible, in addition to the two Judges who, pursuant to the Secretary-General’s view, took office immediately after the commencement of the Tribunal’s activities (the President and the Pre-Trial Judge). This decision allowed the STL to benefit from Vice-President Riachy’s extensive and invaluable experience in Lebanese law, as well as his first-hand knowledge of the general legal and cultural environment of Lebanon and other States in the region. As a result, only 3 out of 11 Judges are now stationed in Leidschendam.
114. The Judges have reduced the staff in this first year to a minimum: four legal officers are working for the three Judges and one personal assistant serves the whole of Chambers. In addition, from August to December 2009 four interns assisted Chambers (replaced by three interns as from 10 January 2010), in particular in the preparation of the “*dossiers*” on legal issues relevant to the Tribunal.
115. Chambers will recruit additional staff only when the Prosecutor considers that an indictment is forthcoming.

(v) Relations with States

116. In the past twelve months the President, Vice-President and senior staff have met with Ambassadors and other diplomatic representatives of Countries most interested in and relevant to the STL, starting with the Countries that are members of the Management Committee. They have also met with diplomats of Countries of the region and those where large Lebanese communities live.

117. Chambers has also been engaged in a number of outreach activities. On 23 April 2009, the President, the Vice-President and some Chambers staff held a briefing for the legal experts of the embassies in The Hague. More than fifty persons attended. The purpose of the briefing was to explain the major points of the RPE and the Explanatory Memorandum and also to answer queries and requests for clarification.
118. Chambers staff have also travelled to Lebanon for outreach purposes. In April 2009, one legal officer participated in a workshop organised by the ICTJ and the Beirut Bar Association on “The Special Tribunal for Lebanon: The Rules of Procedure and Evidence”. He, along with other STL representatives, spoke on various aspects of the RPE. The meeting was attended by representatives of victims, NGOs and local bar associations.
119. In December 2009, another legal officer participated in an international colloquium at the *Université Antonine* in Beirut on “Lebanon and the Security Council”. She gave a presentation on the STL and its relationship with the United Nations as well as on some of the features and innovations of the Tribunal. On this occasion, 150 copies of the “Snapshot of the STL Procedure” were distributed to Lebanese students, professors and lawyers.
120. In early February 2010, the President and the Vice-President, together with a senior legal officer, travelled to Beirut, to meet with senior Lebanese officials as well as give talks to the Beirut Bar Association and university professors and students on issues relating to the STL.
121. Efforts have also been made to learn from the outreach experiences of other tribunals and determine what might be useful for the STL. On 19 November 2009, at the invitation of the President, Ms. Binta Mansaray, Acting Registrar of the SCSL and former Head of the Outreach Programme of the SCSL, gave a presentation to STL staff on the challenges faced by that Court’s Outreach Programme and on lessons learned in this respect.
122. Towards the end of November 2009, Vice-President Riachy travelled to Cambodia to attend the closing arguments in the *Duch* trial and to meet with the principals of the ECCC. The main purpose of these meetings was to endeavour to see what experiences in the ECCC could be useful for the STL.
123. Notwithstanding the above activities, on the whole, outreach activities by Chambers were not as adequate as we would have liked. Indeed, unlike other organs of the Tribunal, Chambers did not devote sufficient energy and time to reaching out to the Lebanese public and civil society. I take full responsibility for this deficiency, although Chambers’ staff did prepare an important document (‘Snapshot’) on STL procedural law. Regardless of these deficiencies, I am pleased to report that with the approval in late January 2010 of a global strategy on outreach, this flaw should be successfully remedied as the STL enters its second year of existence.

(vii) Other activities

124. In coordination with the Registrar, Vice-President Riachy has set up a visiting professionals programme aimed at encouraging Lebanese lawyers to come work at the STL for a period of two to three months. This will enable some senior Lebanese lawyers to become more familiar with the work of the Tribunal. The Tribunal will, in return, benefit from the experience of specialists in Lebanese law. Judges and legal officers of Chambers are now in the process of selecting the best Lebanese candidates who have applied for this position.
125. In the past year, Chambers staff have also been involved in various other activities with the other organs of the Tribunal, such as addressing court management issues, developing the STL internship programme, setting up the STL library and preparing the 2010 budget.

5. The Way Forward

126. In the next year, the President, in consultation with the other Judges, plans to:
 - a. Finalize the preparation of all the necessary legal tools and infrastructures necessary for the passage to the second phase of the Tribunal's activities, namely trial proceedings.
 - b. Encourage as many States as possible to ratify the Draft Agreement on Legal Cooperation referred to above, and to this end contact the Ambassadors of the relevant States in The Hague or in Brussels. Should the existence of cumbersome domestic legislative procedures make it difficult for States to ratify and implement the Draft Agreement, an attempt will be made to urge States to consider the Draft Agreement as a general legal framework from which to draw informally in order to entertain working relations with the Tribunal on an *ad hoc* basis.
 - c. As soon as the Prosecutor considers that an indictment is forthcoming, recruit essential additional staff.
 - d. Intensify Chambers' Outreach Programme in light of the new strategy approved by the SMB.
 - e. Together with some senior staff, pay further visits to Lebanon to meet with state officials there, addressing cooperation and other matters. Together with other Judges of the STL he will also take part in seminars and conferences at some Universities in Beirut and in addition, hold discussions with members of the Bar Association.
 - f. Hold a third plenary meeting of the Judges in late 2010.

B. Registry

1. Introduction

127. The Registry, under the direction of the Registrar, is responsible for providing support for the judicial functioning of all organs of the Tribunal. Specific responsibilities of the Registrar include the protection and support of witnesses, court management (including custody of the court records), support to victims who participate in the process, and the management of the Detention Unit. The Registry also provides administrative support to the work of Chambers, the Prosecution and the Defence in the areas of translation and interpretation, human resources, budget, finance, security, press and information, and procurement.
128. The Registry also has an important external diplomatic function. The Registrar liaises closely with the Host State, the Tribunal's Management Committee, donors and non-governmental organizations. The Registrar also has the responsibility of negotiating witness relocation agreements, as well as other cooperative arrangements with States.
129. The Registrar is designated by the Secretary-General of the United Nations. The first Registrar of the STL, Mr. Robin Vincent, resigned as of 30 June 2009 and was replaced by Mr. David Tolbert. Following Mr. Tolbert's resignation effective on 1 March 2010, the Secretary-General has designated Mr. Herman von Hebel as Acting Registrar.
130. Prior to the STL's official commencement on 1 March 2009, considerable administrative work was undertaken by the Advance Team, whose work allowed for a smooth start to the Registry's operations. In the past twelve months, the Registry has been successful in ensuring that support is provided to the Prosecutor's investigations as well as administrative support to Chambers and the Defence Office. It has also assisted in the recruitment of staff members, the conclusion of a Memorandum of Understanding with the Government of Lebanon establishing the Beirut Field Office, ensured the courtroom's completion, liaised with States in order to secure cooperation in terms of funding and agreements for witness relocation, and developed a comprehensive outreach strategy.

2. Normative Output

131. Prior to the official opening of the STL, the Registry established a basic administrative framework by negotiating an Agreement between the United Nations and the Kingdom of the Netherlands concerning the Headquarters of the Special Tribunal for Lebanon, which was signed in December 2007 and formally approved by the Dutch Government in December 2008, by putting in place the STL Staff Regulations and Rules and Financial Regulations and Rules, and thirdly, by implementing a health insurance plan and pension scheme for staff.
132. Since 1 March 2009, various additional instruments have been finalized: (i) a Memorandum of Understanding between the Government of the Republic of Lebanon and the Special Tribunal for Lebanon concerning the Office of the Special Tribunal in Lebanon was signed in June 2009; (ii) a Code

of Conduct for staff was developed and put into effect; and (iii) a draft model agreement on witness relocation was finalized and submitted to States for their consideration.

133. The Registry has also provided extensive comments and proposals to the Plenary of Judges on the RPE and its amendments.

3. Practical Measures

134. In the period prior to the Tribunal's opening, a number of practical measures were put in place by the Advance Team:

- a. The lease of the STL building was signed with the Government of the Netherlands (rent-free occupancy agreement commenced 1 June 2008) and certain essential services (GS, IT and Security) were set up.
- b. The necessary security requirements were put in place for the STL building.
- c. Arrangements were made to ensure the smooth transition of the United Nations International Independent Investigation Commission into the Office of the Prosecutor.
- d. The STL Liaison Office in New York was established to assist the Management Committee in its work, and to ensure effective communication between the STL and the Management Committee. The Liaison Officer has been effective in reaching out to the diplomatic community in New York, the United Nations, and various non-governmental organizations.

135. Since 1 March 2009, the Registry has further engaged in the following activities:

a. *Judicial Activities*

The Registry supported the Chambers, the OTP and the Defence Office with the filing of submissions and orders with regard to the status of the four Generals to the relevant organs and Lebanese authorities.

b. *Construction of the Courtroom*

The construction of the courtroom has been finalized. As from April 2010 any judicial activity may be handled in the courtroom.

c. *Host State Matters*

The Registry has established an excellent relationship with the Host State. From the very beginning, the STL has enjoyed the strong support of the Netherlands on matters pertaining to the Tribunal's building, external security, detention, the issuance of visa and residence permits, and other matters.

d. *Beirut Office*

In Beirut, the Registry's main focus has been on the setting up of the Field Office. The STL signed a lease agreement in April and the office is now fully functional. In November, the Registrar designated an Acting Head of Registry until such time as the Head of Registry has been officially appointed and has assumed his/her duties. The Acting Head of Registry

represents the Registrar in Lebanon, ensures the implementation of the Memorandum of Understanding with the Government of Lebanon on the Beirut Office, liaises with the relevant Lebanese authorities, establishes procedures and practices relating to the functioning of the Office and provides support to all organs in the Beirut Office.

e. Court Management

The STL is seeking to implement an integrated IT system to manage the information and processes of its judicial and non-judicial functions which include court management, case filing, disclosure of documents, presentation of documents in court, and retention of judicial records. Likely benefits of this system include improved efficiency, better recordkeeping and enhanced security. A working group was established in the summer of 2009, referred to as the E-tools (Electronic Tools) Working Group, and includes representatives from all organs of the Court, to develop the project and to define the system requirements.

In October, an Ad Hoc Judicial Management Committee was established. The purpose of the Committee is to create a forum for both judges and relevant Registry staff involved in providing court management and judicial services to discuss judicial management issues.

The STL is currently developing a Records, Archives and Information Policy. Additionally, an Information Management Steering Group was established to help set the strategic direction for information management and information security policy.

f. Library

In September 2009 the STL Library opened its doors. The Library's priority is to build a comprehensive collection of books, reference materials, journals, case law and electronic resources mainly in the fields of terrorism and international law, as well as in Lebanese law, in order to serve the three parties of the judicial process – Chambers, OTP and Defence. It should be noted that the President of the STL has also donated a significant number of books and other items to the library.

g. Victims and Witnesses Unit

The Victims and Witnesses Unit has been developing the operational framework necessary to facilitate witness movement for trial and the STL's ability to protect witnesses, achieving this through the establishment of operational networks in relevant locations. Assistance from States, in the form of witness relocation agreements and the protection of witnesses, is of vital importance for the success of the Tribunal. To this end, the Unit continues to pursue the cooperation and support of States in this respect, with nominal success. The demanding operational environment and subsequent witness protection concerns, as well as the adequacy of State cooperation, remain the main challenges for the Unit.

4. Outreach Activities

136. Over the past year, the STL has initiated a number of outreach activities, including recruitment of outreach staff and opening an office in Beirut, launching a multi-lingual website and organizing several events. At the same time, an outreach consultant was contracted to assist the Tribunal in developing a comprehensive outreach strategy.

137. Following the recruitment of an Outreach Officer in September 2009, the STL Outreach Office has started developing a network of contacts in Lebanon to facilitate future activities. In December, an official presentation of the office and its functions was held for a large audience of Lebanese media, resulting in wide coverage. The Outreach Office in Beirut will be the main STL focal point for numerous projects and activities planned for 2010 as part of the outreach strategy.
138. A website was launched in all three working languages of the Tribunal to serve as the main information and outreach tool for the STL. The website is a source of information for the press and the public, and includes background documents, fact sheets, press releases and other basic information. It is envisaged that new content, including specialized articles on relevant issues and audio-video material will be added in due course to reach out to wider audiences. In the future, the website will serve to provide Lebanese and international audiences with direct access to the STL's proceedings via live stream and relevant documents and transcripts.
139. In November 2009, the STL began a series of focus group surveys targeting all sectors of the Lebanese population. The purpose of this initiative is to assess public opinion about the STL and issues related to its work. The results of the survey will assist the STL in further refining its outreach strategy.

5. External Relations

140. A series of events, meetings and briefings were held throughout the year.
141. On 1 March 2009, an event was organized to mark the official opening of the Tribunal. In attendance were members of the diplomatic community, the Legal Counsel of the United Nations, host State officials, local government officials, Lebanese and international media, representatives of international organizations in The Hague and non-governmental organizations.
142. A series of bilateral meetings were held by the Registrar in Leidschendam, The Hague, Beirut, New York and various other capitals with representatives of the diplomatic community to appeal for funding and to negotiate agreements on witness relocation and enforcement.
143. In Leidschendam, two briefings were held with various representatives from the diplomatic community in February and April 2009. In addition, the Registrar presented and/or attended a number of events and conferences in The Hague including the Asser Institute, Conference on Complementarity at Academy Hall, a conference entitled Fighting Impunity in Peace Building Contexts at the Netherlands Ministry of Foreign Affairs, and the Fifth Sir Richard May Seminar.
144. In New York, the Registrar briefed the Group of Interested States; the meeting was attended by representatives of Missions to the United Nations. The Registrar also briefed the European Union Council Secretariat.
145. In Beirut, a briefing was held with the representatives of the Lebanese media and non-governmental organizations in June 2009. The Registrar also made an appearance via pre-taped meeting at an event held in the Lebanese capital entitled "The Special Tribunal for Lebanon: Overview and Implications."

146. In Brussels, the Registrar addressed the EU Council Working Group on Public International Law (COJUR) in December 2009.
147. The Acting Registrar attended the Registrars' Colloquium held in Venice, Italy, which was attended by the Registrars of all the international tribunals.
148. The Registrar also hosted a number of officials and organizations who visited the Tribunal. Visits were made by representatives of the Antonine University in Baabda, Lebanon, by a group of judges from Iraq, and by a group of judges and prosecutors from the War Crimes Chamber in Bosnia and Herzegovina.

6. Inter-Tribunal Cooperation

149. The STL is grateful to the ICTY for the support it has provided to the Tribunal, particularly in its advance period. The ICTY has assisted by providing staff on loan to the STL, offering procurement services, and housing staff members for a short period before the Advance Team was able to move into its current premises.
150. In December 2009, the STL signed a Memorandum of Understanding with the SCSL regarding the collocation of The Hague Sub-Office of the SCSL at the STL premises, and is now hosting the SCSL.

7. Budget and Funding

151. The Registrar is responsible for preparing the STL budget and presenting it to the Management Committee for its approval.
152. For the first year of operations, the 2009 approved budget was USD 51.4 million. In June 2009 the Prosecutor of the Special Tribunal requested a re-deployment of funds from within the budget in order to intensify the pace of his investigations for a period of 12 months. On 12 June 2009, the Management Committee for the STL accepted the Prosecutor's request and authorized the re-deployment of existing resources from within the approved budget towards an increase in the level of the investigations.
153. On 9 December 2009, the Management Committee approved the 2010 budget in the amount of USD 55.4 million.
154. The Registrar has been actively seeking State contributions to fund the core operations of the STL. According to Article 5 of the Agreement between the Government of Lebanon and the United Nations, Lebanon will contribute towards 49% of the budget while 51% will be provided by voluntary contributions from States. To date, 25 Countries have contributed to the STL since its inception, either through voluntary contributions or in-kind support. The Countries that have contributed, in addition to Lebanon, include: Austria, Belgium, Canada, Croatia, Czech Republic, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Kuwait, Luxembourg, the Netherlands, Regional States, Russian Federation, Sweden, the Former Yugoslav Republic of Macedonia, Turkey, United Kingdom, United States and Uruguay.

155. The STL is grateful to the European Commission for providing a generous grant in the amount of EUR 1.5 million. The grant is being used to support outreach activities, the internship program, the victims participation section of the STL, language support services, and the law library.
156. Furthermore, the National Audit Office of the United Kingdom has been appointed as the external auditor of the STL.

8. Recruitment of Staff

157. In 2009, efforts were concentrated on the recruitment of staff members for the whole of the institution. A total of 276 staff are on board as of 28 February 2010. 59 nationalities are currently represented at the STL (See Annex – Geographical Representation at the STL), the gender distribution being 36% female and 64% male.
158. In May 2009, the STL launched its internship program and a total of 21 interns were recruited. Efforts are being made to increase the number of Lebanese nationals in the internship program.

9. The Way Forward

159. In the next year, the Registry plans to:
 - a. Intensify outreach activities in Lebanon and ensure implementation of the outreach strategy.
 - b. Negotiate and conclude witness relocation and enforcement agreements with States.
 - c. Ensure adequate funding for the Tribunal's operations.
 - d. Ensure that the Beirut Office is optimally equipped with all the necessary resources to enable the smooth operations of the investigations carried out by the Prosecutor.
 - e. Develop an archiving and information policy for the Tribunal.
 - f. Ensure that all measures are in place for the protection and security of witnesses.
 - g. Launch the Ad-Hoc Judicial Management Committee once judicial activities have commenced.
 - h. Ensure the establishment of an integrated IT system to manage the information and processes of its judicial and non-judicial functions.
 - i. Develop the victims participation section of the Tribunal.
 - j. Develop projects that enhance the legacy of the Tribunal.

1. Introduction

160. The mandate of the OTP, as set out in Articles 1 and 11 of the Statute of the Tribunal, is twofold: to investigate and to prosecute those persons responsible for the crimes falling within the jurisdiction of the Special Tribunal, namely 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, as well as persons responsible for connected attacks having occurred in Lebanon.
161. Accordingly, those who established the Tribunal in 2007 contemplated all along that upon the creation of the Tribunal, the Prosecutor would assume the leadership of the investigation that had been conducted by the Lebanese authorities with the assistance of UNIIIC. They also envisaged that the prosecution would only begin after the OTP has developed a case that can withstand judicial scrutiny. Until the various elements of evidence required to support an indictment are established, the imposition of any timelines for the start of the prosecution phase would be arbitrary.
162. In light of the above, the OTP has focused its efforts during the reporting period on three main objectives: first, to become a fully functional and operational Office; second, to take jurisdiction over the investigation led by the Lebanese judicial authorities into the Hariri attack; and third, to continue to investigate and explore all investigative leads in order to establish the truth on the attacks falling within its mandate.
163. The first objective required overcoming all the structural and staffing challenges associated with the transition from a United Nations investigative body based in Lebanon to a fully-fledged tribunal of an international character seated in the Netherlands. This objective was achieved.
164. The second objective was achieved when the Pre-Trial Judge ordered the Lebanese authorities to transfer the Hariri case file to the Tribunal. This order resulted from a request by the Prosecutor for deferral of the case in accordance with Article 4 (2) of the Statute of the Tribunal.
165. The third objective is being actively pursued. As clearly indicated in the last report of the UNIIIC to the Security Council, the launch of the Tribunal did *not* mean that the investigation had been completed.⁹ On the contrary, as stated in that report, the OTP, once it began to operate, would focus on the investigative component of its mandate and continue to gather evidence that would support an indictment.
166. All of the activities of the OTP, highlighted below, have been guided by its Mission Statement, which is drawn from its mandate: (a) *Bringing terrorists to justice*; (b) *Bringing justice to victims*; and (c) *Helping to end impunity in Lebanon*.

⁹ See S/2008/752, §§ 5, 7 and 62. That the OTP would continue the investigation on all cases within the Commission's mandate was also recognized by the Security Council in resolution 1852 (2008) of 17 December 2008.

2. Establishment of the Office

167. The OTP began its operations when the Prosecutor¹⁰ assumed his functions, on 1 March 2009, upon the official launch of the Special Tribunal for Lebanon, and the day after UNIIIC's mandate came to an end.
168. At the outset of the start-up phase, the main challenge was to act swiftly on a number of competing priorities that had to be simultaneously addressed to ensure that the OTP is equipped without delay to be fully operational as an organ of a judicial body.

(i) Deferral

169. The first priority of the Prosecutor was to expedite the work entailed in seeking deferral of jurisdiction over the Hariri file, within the short time-frame mandated by the Statute of the Tribunal.
170. On 25 March 2009, the day after the publication of the RPE, the Prosecutor filed his application pursuant to Article 4 (2) of the Statute, requesting the issuance of an order to the Lebanese authorities for the deferral of their jurisdiction over the Hariri file to the Tribunal. The Pre-Trial Judge issued the requested order.
171. On 8 April 2009, the Lebanese authorities formally deferred the case of the investigation into the killing of Rafiq Hariri and others to the Tribunal. As a result of the deferral and transfer of the Hariri case, the Tribunal took primacy over the Lebanese courts in this case. On the basis of the Prosecutor's reasoned submissions, the Pre-Trial Judge ordered the release of the individuals detained in Lebanon in connection with the investigation on 29 April 2009.

(ii) Resources

172. The second priority was to complete the recruitment process and finalize the team structures for the new Office, as well as to ensure appropriate logistical support.
173. Through a highly competitive and transparent process, the OTP ensured that it gathered the most qualified and experienced international team for its Investigation Division, Prosecution Division, Legal Advisory Section, and Immediate Office of the Prosecutor. Staff members from Lebanon and over 30 other Countries have been blended into a cohesive and efficient team. While some staff had experience working with UNIIIC, new staff brought valuable new expertise and experience to the investigative effort.
174. The deferral of the Hariri case provided the Prosecutor with sole authority over the investigation. In exercising this authority, the Prosecutor reviewed strategies and approaches and concluded that new resources were required to increase the pace of the investigation. This took the form of a one-year

¹⁰ The Prosecutor, Daniel A. Bellemare (Canada), was appointed by the Secretary-General of the United Nations after consultation with the Government of Lebanon and upon the recommendation of a selection panel, in accordance with Article 3 of the Agreement annexed to Security Council resolution 1757 (2007).

operational surge approved by the Management Committee in June 2009, and effective in September.

175. At the same time, the Prosecutor identified the need for an increased operational presence in Beirut. Originally envisaged as a liaison office providing support to visiting missions, it had to become a fully operational adjunct of the Investigations Division in the Netherlands and carve out a much broader role for itself. This was accomplished by mid-2009.
176. The presence in the Beirut Field Office of the Deputy Prosecutor, Judge Joyce Tabet, who was appointed by the Government of Lebanon in consultation with the Secretary-General and the Prosecutor and joined the Tribunal on 1 November 2009, has proved to be invaluable in leading and strengthening OTP efforts in Lebanon, thanks to her knowledge of the file and the Lebanese system.

(iii) Operational framework

177. A third priority was to establish an operating framework, internal standard operating procedures and administrative instructions. The overarching goals of this exercise were to: a) protect the integrity of the investigation by setting up a solid institutional framework to protect the confidentiality of the investigation; and b) ensure optimal management efficiency of the work of the OTP.
178. Simultaneously, the OTP was involved in the drafting of the RPE which were considered and adopted during the first Plenary meeting of the Judges, which commenced on 9 March 2009. To this effect, the OTP commented on the drafts circulated by Chambers or by other organs of the Tribunal, and in addition proposed a number of draft rules or amendments. The Office continued to contribute in a significant manner to the amendments of the RPE which took place in June and October 2009.
179. Finally, a Memorandum of Understanding (MOU) was signed by the Prosecutor and the Minister of Justice of Lebanon on 5 June 2009, which defined the modalities of the cooperation to be provided by the Lebanese authorities to the OTP.

3. The Investigation

180. Article 1 (1) of the Statute, which sets out the jurisdiction of the Tribunal, lists three categories of offence: a) the Hariri attack; b) other attacks that occurred between 1 October 2004 and 12 December 2005 if they are connected to the Hariri attack; and c) other attacks that occurred after 12 December 2005, upon agreement of the United Nations and the Government of Lebanon, and with the consent of the Security Council.
181. The Tribunal's jurisdiction on attacks in the second and third categories is conditional upon the existence of a connection with the Hariri attack, in accordance with the provisions of Article 1 of the Statute. In order to establish a connection, the Prosecutor has to continue to investigate the other attacks through a close and regular follow-up of the progress made by the Lebanese judicial authorities. The investigation of other attacks also helps advance the Hariri investigation.
182. In order to achieve results in the most efficient way possible, the OTP has organized its work on the basis of a teamwork and project-based approach. This enables the OTP to optimize the synergy of its

multi-disciplinary professional expertise. The OTP is made up of a number of professional disciplines. Analysts, investigators, forensics experts, legal advisers and trial counsel work together on various components of the Hariri case to identify the perpetrators and to bring them to justice. This team approach also applies to the other attacks.

183. The additional staff recruited in mid-to-late 2009 contributed greatly to the ability of the Investigation Division to carry out analysis and investigations and to process the massive number of documents held as evidence. Trial Counsel advised and assisted with on-going investigative work. In addition, as announced in the last UNIIIC report, financial investigators were recruited. World-renowned experts in explosives, isotopic analysis and biometric analysis have been commissioned.
184. Evidence management and handling methods have been put in place to ensure that the integrity of evidence is preserved. Procedures and protocols reflecting international standards in regards to forensic collection, processing, management, and assessment have been adopted.
185. A multi-lingual optical character reader (OCR) system was introduced, in particular to allow electronic searches of documents in the Arabic language. Specialised software has been acquired and adapted to the specific needs of the Investigation Division. New electronic tools and techniques have been developed to optimize the use of existing databases.
186. Regarding potential sources, and in order to widen the scope of available information, the OTP has created and activated a secure webpage posted on the STL website through which persons who may have information that could assist the investigation could communicate with the OTP confidentially.
187. Numerous procedures and protocols reflecting international standards in regards to forensics have been adopted. Progress has been made in relation to a number of key areas as well as biometric data, through the collection of fingerprints and DNA and the enhancement of the OTP capability to compare unknown fingerprints and DNA with known samples held in a variety of international databases now accessible to the OTP. In addition, the OTP continues to improve its ability to manage and exploit over 12,000 artifacts, 200,000 images and more than 200 forensic crime scene reports for use in the investigative and judicial process.
188. The Cooperation Agreement between the Tribunal and INTERPOL has allowed the OTP to have access to the INTERPOL databases.
189. The Lebanese authorities have been extending full cooperation to the OTP since the start of the Tribunal and their assistance has been invaluable. More than 240 requests for assistance were sent to the Prosecutor General of Lebanon from 1 March 2009 to 15 February 2010, with 53 missions to the field.
190. Since cooperation from other States in the OTP's activities is also critical, the OTP has not refrained from seeking their assistance. More than 60 requests for assistance were addressed to 24 Countries while 62 missions took place on their territories.
191. During this reporting period, over 280 interviews with witnesses were conducted by investigators on mission or by investigators stationed at the Beirut Field Office.

192. As a result of the infrastructure and the activities described above, the OTP has made significant progress towards building a case which will bring perpetrators to justice. This was achieved despite the obvious discipline and sophistication of those behind the attack. Within the necessary constraints of protecting the confidentiality of the investigation, the OTP can report the following indicators of progress in the investigation:
- a. Discounting of certain leads and unreliable information following an extensive review of the material gathered throughout the investigation;
 - b. Increasing the level of confidence that individuals using the identified network committed the attack;
 - c. Obtaining additional information to support the fact that the perpetrators of the attack carried out the attack with the complicity of a wider group;
 - d. Getting closer to identifying the suspected suicide bomber by narrowing down the individual's geographic origin and partially reconstructing the individual's face ;
 - e. Further developing existing leads relating to elements of connectivity between the Hariri attack and other attacks; and
 - f. Developing and exploiting new sources of information.

4. Public Information and Outreach

193. The OTP identified public information and outreach as one of its priority areas of activity from the outset. This approach resulted from the high public interest in the Tribunal, particularly in the investigation, and the lack of knowledge, misunderstandings and misconceptions about the work of the OTP.
194. Accordingly, the OTP designed a public information and outreach strategy which aimed at achieving its overarching goal: to ensure an enabling environment for its work. The strategy was devised to ensure that the OTP work, while observing the confidentiality requirements inherent to the investigation, was perceived as transparent, fair and as accessible as possible.
195. Transparent justice is an important element of fairness and accountability to stakeholders. Consequently, the Prosecutor gave several interviews to the local and regional media and has consistently reiterated the OTP's key messages so as to correct misunderstandings, counter inaccurate reporting, address false speculations and manage unrealistic expectations. Press releases were issued regarding specific developments to ensure provision of timely information and to avoid or dampen possible press speculation. Moreover, the OTP Spokesperson addressed press queries on a regular basis.
196. The OTP identified surviving victims and families of the victims as a priority audience and directed outreach efforts towards them. For example, during his first official mission to Beirut in December 2009, the Prosecutor met with the families of four victims who lost their lives in terrorist attacks that took place in Lebanon.

197. The OTP intends to maintain its public information strategy throughout the investigation stage and at later stages, as appropriate. The OTP also intends to actively participate in the STL outreach activities aimed at explaining the mandate, functions and processes of the Tribunal's work, promoting the core messages of the Tribunal, addressing misconceptions and managing expectations.

5. The Way Forward

198. The evidence and information gathered thus far has allowed the OTP to develop a case theory. As Trial Counsel test and challenge it, in light of the evidence and material gathered to date, this case theory has been strengthened. This process is on-going and is designed to ensure that all evidentiary gaps are filled, all leads are followed and that the case theory is grounded on facts that can be proven at trial.
199. Given the acknowledged complexities and challenges inherent in the investigation of terrorist crimes as highlighted in earlier sections of this Report, these gaps must be filled before an indictment that can be proven beyond reasonable doubt in a court of law can be filed. The Investigation and Prosecution Divisions are currently working together to ensure that the fruits of these investigative efforts are admissible in court. Therefore, all steps are being taken to ensure that the transition from the investigative to the prosecutorial phase will be seamless and that the trial process will move as expeditiously as possible.
200. As indicated above, there has been significant progress that warrants optimism about the prospects of the investigation. However, much remains to be done, and the unwavering support and continued cooperation of Lebanon and all other States, as well as donor Countries and relevant organizations, are needed in order for the OTP to successfully fulfil its mandate.

D. Defence Office

1. Introduction

201. As previously mentioned, the establishment of an independent Defence Office in the Statute is an important novelty. The specific duties of the Defence Office combined with its fully independent nature constitute a unique evolution in international criminal justice. By way of reminder, the principle duties of the Defence Office are “to protect the rights of the defence, provide support and assistance to defence counsel and to the persons entitled to legal assistance, including, where appropriate, legal research, collection of evidence and advice, and appearing before the Pre-Trial Judge or a Chamber in respect of specific issues”(Article 13 (1) of the Tribunal’s Statute).
202. The Defence Office, which is meant to perform its functions impartially, independently and without having regard for political considerations, will not represent any suspects or accused as it is merely responsible for the assignment of independent counsel to such persons.
203. To a great extent, the Defence Office is exploring uncharted terrain, for example, by interviewing applicants before they are admitted to the List of Counsel; by monitoring, as mandated under the RPE, the performance of defence counsel; by entering into cooperation agreements with States and organisations; and by appearing in court to address issues relating to the rights of the Defence. More traditionally, the Defence Office is also responsible for the assignment of counsel, the administration of legal aid and the provision of legal advice to counsel.

2. Organizational Structure of the Office

204. Since the Defence Office combines features which have either not existed in other international courts before or existed in other organs, defining the organizational structure of the Defence Office was one of the priorities for 2009. As the RPE and Directive on the Assignment of Defence Counsel dictate the need to preserve the full independence and neutrality of both the Defence Office and its staff, specific attention was paid to the organizational setup and the internal separation of specific functions. In order to ensure effectiveness and the ability to facilitate the work of all future defence counsel, the Defence Office has been divided into four separate units: the Immediate Office of the Head of Defence Office, the Legal Advisory Section, the Legal Aid Unit and the Operational Support Unit.

(i) The Immediate Office of the Head of Defence Office

205. The Head of Defence Office has the overall responsibility for the management of the Defence Office. Together with the other organs of the Tribunal, he is also involved in the coordination of the Tribunal’s overall activities. Moreover, the Head of Defence Office ensures that the interest of the Defence is represented within the Tribunal, both in an institutional and a judicial sense. In the current reporting period, this included participation in the Senior Management Board and

participation of his staff in a number of internal working groups, for example on Outreach, the E-Tools Working Group, and the translation of the Lebanese Code of Criminal Procedure.

206. In addition, the Head of Defence Office is responsible in particular for matters directly relating to counsel, including the maintenance of the List of Counsel, the provision of continuing legal education, the assignment and appointment of counsel and the monitoring of counsel's performance
207. Furthermore, the Head of Defence Office also maintains contacts with representatives of the Government of Lebanon, the Lebanese Bar Associations and the diplomatic community.

(ii) The Legal Advisory Section

208. The Legal Advisory Section is responsible for providing legal advice on specific issues to individual defence counsel and to the Head of Defence Office. It is necessary to provide such services to defence counsel because, irrespective of their previous experience, they are likely to be unfamiliar with one or more of the following areas of law: international criminal procedure, applicable Lebanese substantive law, international modes of liability as defined in the Statute and other relevant laws on terrorism. It is therefore necessary for the Legal Advisory Section to create an institutional legal repository so as to provide legal advice to counsel in order to compensate for any unfamiliarity counsel may have with a substantive or procedural area of the applicable law and put defence counsel on an equal footing with the OTP.
209. The work of the Legal Advisory Section will not only allow counsel to better represent their client before the Tribunal, it will also contribute to the efficiency of the proceedings by enabling counsel to focus their research and preparation on the issues relevant to the Defence. This will in turn result in efficient trial preparation and timely and focused submissions. Therefore, investments in the preparatory phase will reap a benefit in the future.
210. In the reporting period, the Legal Advisory Section was established and its precise mandate determined. Adequate administrative procedures were put in place to ensure the Legal Advisory Section is able to discharge its mandate. In addition, legal "dossiers" (similar to those prepared by Chambers) in areas of law that are of foreseeable practical relevance to the Defence have been prepared.

(iii) The Legal Aid Unit

211. One of the duties of the Head of Defence Office is to provide legal aid to indigent suspects and accused. For this purpose, the Head of Defence Office has set up a specific unit, much in line with previous practices in other international courts and tribunals. The goal of the Legal Aid Unit at the STL is to ensure that Defence counsel have adequate resources, with full respect for rights of the accused and the principle of equality of arms, mindful of the public source of the legal aid funds.
212. While legal aid is an administratively burdensome duty, this Unit has not yet been staffed given the absence of judicial activity before the Tribunal. Any legal aid policy devised must be adopted in consultation with the President and the Registrar. A draft legal aid policy with associated procedures

has been prepared and will be implemented some time in advance of judicial activity. This draft legal aid policy has been presented to the President and the Registrar for consultation. In addition to the draft legal aid policy, a model legal services contract for counsel has been prepared. Aside from relevant staffing requirements, the Defence Office is capable of administering legal aid in the future.

(iv) The Operational Support Unit

213. The Operational Support Unit will be responsible for any number of operational support issues that may arise for counsel. This may involve, for instance, assisting counsel with case or document management issues, facilitating defence investigations in Lebanon and elsewhere, recruiting defence team members or finding relevant forensic experts. The goal of the Unit is to ensure that counsel, who may be unfamiliar with practical and operational problems that are specific to the STL, are adequately supported so as to enable them to focus on the substantive issues in their case. The Operational Support Unit is currently not staffed.

3. Recruitment of Staff

214. On 9 March 2009, following a competitive recruitment process, the Secretary-General of the UN appointed Francois Roux, a lawyer from France, to the position of Head of Defence Office. Given his ongoing involvement in the first trial before the ECCC and in light of the limited activity before the Tribunal, it was decided that Mr. Roux would only join the Tribunal on a part-time basis. However, as of 1 January 2010, Mr. Roux has been engaged in this position on a full-time basis.
215. Three permanent staff were recruited in 2009, along with two legal officers who were recruited on a temporary basis. At the close of the reporting period, the Defence Office is staffed with a total of five permanent staff, including an Office Coordinator, two legal officers, a personal assistant and an administrative assistant.

4. Regulatory Output

(i) Directive on the assignment of Defence Counsel

216. One of the key documents for the Defence is the Directive on the Assignment of Defence Counsel. This official document was promulgated by the Head of Defence Office with approval of the Plenary of Judges. It was adopted during the Judges' plenary session in March 2009.
217. At the second Plenary of Judges in October 2009, the Head of Defence Office proposed amendments to the Directive in order to streamline some of its provisions. Most notably, the language of Article 18 was amended so as to make it clear that the Head of Defence Office can refuse to appoint counsel when he/she is already representing another accused or when he/she has other professional obligations that would lead to a scheduling conflict or a conflict of interests. Another amendment was made in relation to the assignment of duty counsel to suspects (Article 23), who are granted the option of local counsel in addition to the one appointed by the Head of Defence Office. Other

technical modifications were made, such as the suppression of the obligation for defence counsel to take a language proficiency exam (Article 8).

(ii) RPE and Practice Directions

- 218. The Defence Office made significant comments on the proposed amendments to the RPE by Chambers and the other organs of the Tribunal and presented its own proposed amendments to the RPE.
- 219. In addition, the Defence Office undertook a significant review of the draft Practice Directions, and presented its comments to the President.

5. Protecting the Rights of Detainees

- 220. Pursuant to the RPE, persons who are detained in the custody or under the authority of the Tribunal, have the same rights to legal representation as a suspect or an accused.
- 221. Upon the deferral of jurisdiction by Lebanon to the Tribunal, the Head of Defence Office met with counsel representing the four Generals held as suspects in Beirut as well as three of the four Generals themselves. One General refused to meet the Head of Defence Office. Following these meetings, the Head of Defence Office issued decisions appointing counsel to these detainees. Moreover, having witnessed the conditions of detention, the Defence Office requested that the President ensure that certain fundamental rights of the detainees be protected. As a result, the President issued an order ameliorating the conditions of their detention.
- 222. During the Pre-Trial Judge's hearing, the Head of Defence Office, in light of the Prosecutor's submissions and the decision by the Pre-Trial Judge, requested the immediate release of the four Generals. A representative of the Defence Office joined the Tribunal's Chief of Detention on a mission to Lebanon to facilitate contact with the Generals and their counsel and to ensure that their rights be adequately protected at the time of the Pre-Trial Judge's decision. On the day of the order, the four detainees were released safely from custody in Lebanon. Overall, the Defence Office proved to have played a valuable role in these proceedings.

6. Outreach/Contact with Lebanese Bar Associations

- 223. A close working relationship with the Lebanese Bar Associations and their members is important for the work of the Tribunal. The Defence Office has travelled to Lebanon on three occasions to foster this relationship. In April, the Head of Defence Office met with the President of the Beirut Bar and about sixty lawyers to discuss the Tribunal and to explain the role and function of the Defence Office. In July, the Head of Defence Office returned to Beirut to host a two-day substantive seminar for about seventy members of the Beirut Bar Association. In November, the Defence Office organized a one-day seminar on the role and function of the Defence Office for forty-five members of Tripoli Bar Association.

224. Moreover, a representative of the Defence Office participated in a workshop organised by the ICTJ and the Beirut Bar Association, entitled “The Special Tribunal for Lebanon: The Rules of Procedure and Evidence”. The Defence Office representative, along with a representative from Chambers, spoke on various aspects of the RPE. The meeting was attended by defence counsel, representatives of victims and NGO representatives.

7. List of Counsel

225. In February 2009, the Defence Office published a call for applications to the List of Counsel. Special care was taken to ensure that the Lebanese Bar Associations be informed of the purpose and background of the List and the criteria and procedure for admission to it. This information was provided in seminars organized in cooperation with the Beirut and Tripoli Bar Associations, as described above.
226. An essential task of the Defence Office is to ensure that an indigent defendant can freely choose a lawyer, subject to qualification and competency requirements. These requirements have been laid down in Rules 58 and 59 of the RPE. The Defence Office is committed to a List of Counsel which reflects the different legal traditions and is composed of highly competent and experienced criminal advocates. This is ensured, in part, through an interview before an Admission Panel which all applicants must undergo before being admitted to the List of Counsel. As a prerequisite to admission to the List of Counsel, the interview process is a novelty in international tribunals. This admission process should be viewed as a lesson learned from the other international courts and tribunals. It was the opinion of drafters of the RPE that an interview would enhance the ability to admit those persons able to deal with the complexity of international cases.
227. The Admission Panel is composed of three lawyers: the Head of Defence Office, a lawyer appointed by the President in consultation with the Lebanese Bar Associations and a lawyer appointed by the Head of Defence Office. Accordingly, the Director of the Human Rights Institute of the Beirut Bar Association and an American lawyer with extensive experience before the ICTY were appointed.
228. The purpose of the Admission Panel is to verify whether applicants meet the requirements of Rules 58 and 59 of the RPE, with a particular focus on the competence of the applicants in (international) criminal law and a minimum number of years of relevant experience.
229. The Admission Panel holds that “relevant experience” should be read as “experience relevant to the practice before the Tribunal.” For example, this may encompass experience in: the defence of serious and complex crimes at the domestic level, such as terrorism, homicide, manslaughter, trafficking and complex white collar crime cases; experience in the defence of cases with international dimensions, such as international judicial assistance, complex immigration, supranational crime; or experience in the defence of war crimes, genocide and crimes against humanity.
230. In the reporting period, 125 applications were received from 24 different Countries. Of these applicants, twelve are members of Lebanese bar associations. Thirty-five applicants have been interviewed, of which seventeen have been admitted as lead counsel and ten as co-counsel. Two applications have been dismissed. The Admission Panel has requested more information from six applicants before rendering decisions in respect of their applications. The applicants admitted to the List of Counsel represent eleven different nationalities, including five Lebanese counsel. Since the

number of applicants from Lebanon was below par, efforts are underway to attract more Lebanese counsel to apply to the List.

231. The decisions of the Admission Panel are subject to administrative review by the President. To date, there has been no request for review of the Admission Panel's decisions.

8. List of Persons Assisting Counsel

232. The Defence Office also maintains a List of Legal Officers, Case Managers and Investigators who may be asked by counsel to join a Defence team. Admission to the List of Persons Assisting Counsel is controlled by the Head of Defence Office. The criteria reflect those of similar positions in the Office of the Prosecutor. Subject to the relevant legal aid policy, future counsel may select one or more persons from this List of Persons Assisting Counsel. The List is a service to counsel, facilitating the recruitment of competent staff. It does not prevent any person from being recruited directly by counsel, subject to a review of their qualifications and competencies by the Head of Defence Office. In this way, the Head of Defence Office can ensure that the individual members of a defence team for an indigent accused contribute to the effectiveness and quality of the defence, while allowing counsel to choose their support staff.

9. Relationship and Cooperation with States and Organizations

233. In the past twelve months, the Head of Defence Office and senior staff have met with ambassadors and other diplomatic representatives of the member States of the Management Committee. Moreover, Mr. Roux met with representatives of the Government of Lebanon as well as the UN Secretary-General's Special Coordinator for Lebanon.
234. The Defence Office has also provided input into the model agreements on Legal Cooperation with States and on the Enforcement of Sentences and Acquittals. In addition, the Defence Office was involved in the drafting of the agreements with Interpol and the Netherlands Forensic Institute.
235. Furthermore, the Defence Office has concluded cooperation agreements with a number of universities. These agreements cover legal research to be performed at the request of the Defence Office. Such research will be of a general nature and will not involve the disclosure of any confidential details. It serves to supplement the work of the Legal Advisory Section, which can benefit from multiple legal opinions as well as research that is focused on domestic law and procedure.

10. The Way Forward

236. In the next year the Defence Office plans to:
- Continue its efforts to attract experienced and competent counsel for the List of Counsel. This will include a specific focus on Lebanon and the Bar Associations of other Middle Eastern Countries.

- b. Undertake continuing legal education for the counsel admitted to List of Counsel. This training will focus on specific STL issues, such as the role of the Pre-Trial Judge and the possibility of proceedings in the absence of the accused, and will address lacunae in counsel's knowledge and experience. For example, counsel from civil law jurisdictions will be asked to pay specific attention to the defence investigations and the examination and cross-examination of witnesses; non-Lebanese counsel will be asked to focus on relevant aspects of Lebanese law; and counsel from common law jurisdictions will be asked to review, by way of example, victims' participation in proceedings and the examination of witnesses by Judges. These training sessions will be largely funded through a grant from the European Commission.
- c. Initiate special measures to facilitate defence investigations and State cooperation with defence counsel.
- d. Conclude relevant cooperation agreements with States and/or organizations to address the particular needs of the Defence. In particular, the Defence Office plans to conclude a Memorandum of Understanding with the Lebanese Minister of Justice parallel to that already entered into by the Prosecutor with the same Minister, so as to facilitate the task of investigators acting for the defence.
- e. Do further outreach to explain the role and function of the Defence Office with stakeholders in Lebanon and other relevant States.
- f. Propose the adoption of a Code of Conduct for Counsel appearing before the Tribunal, pursuant to Rule 60 of the RPE.
- g. Finalize the legal dossiers on areas of law that are likely to arise before the Tribunal.
- h. Adopt specific policies that govern the monitoring of the performance of counsel.

PART III – TENTATIVE STOCK-TAKING AND CONCLUDING OBSERVATIONS

A. What has been accomplished in twelve months

237. All those who work for the STL can take pride in a number of achievements attained over the past twelve months:
- a. The rapid adoption of: (i) the RPE, a set of legal provisions carefully tailored to the special features of the Tribunal, and which indeed constitute a fully-fledged “code of criminal procedure” exhibiting many novelties compared to other international “codes”; (ii) the Rules of Detention, the Directive on Assignment of Counsel and three Practice Directions; and (iii) two international agreements with the ICRC and INTERPOL.
 - b. The deferral of jurisdiction by Lebanon and the quick filing of a motion by the Prosecutor concerning the detention in Lebanon of four Lebanese Generals, and the similarly rapid issuance by the Pre-Trial Judge of various orders on the matter;
 - c. The intense contacts of the Head of Defence Office with the Lebanese Bar Associations and Lebanese lawyers at large, his insistence on meeting both the four Generals in gaol and their counsel, as well as his filing to the Tribunal’s President of a motion seeking a better safeguard of the rights of those detainees;
 - d. The stepping-up by the Prosecutor of his investigations so as to expeditiously submit indictments to the Pre-Trial Judge;
 - e. The Registry’s efficient preparations for the establishment of all the necessary practical infrastructures including the setting-up of a courtroom (finalised by February 2010, while the necessary courtroom IT systems are being installed), as well as the recruitment of relatively few but highly competent and experienced staff, thereby affirming a commitment to both cost-effectiveness and efficiency;
 - f. The opening of the Beirut Field Office of the STL; and
 - g. The unreserved cooperation lent by the Government of Lebanon to the various organs of the Tribunal.

B. What Has not Been Accomplished

238. Perhaps the area where the STL has been less effective so far is that of outreach. To be sure, the OTP, the Defence Office and the Registry have been active in Lebanon, by promoting discussions, meetings with the relevant members of the legal profession, and encounters with the Lebanese media (only Chambers has been slow or deficient in promoting its outreach programme, for a number of practical reasons, for which the President takes full responsibility).

239. Nevertheless, what was needed was the elaboration of an overall strategy for the whole Tribunal in the area of outreach, a task difficult to pursue in the start-up phase of the STL. With the help of a specialist in this matter appointed by the Registrar, a new, global and well thought-out approach to outreach has been proposed, discussed within the Tribunal and approved in February 2010. This is aimed at ensuring improved performance of the various organs in the second year of activity of the Tribunal.

C. A Blueprint for the Second Year of the STL Activities

240. In the next twelve months the STL is determined to:

- a. Bring to completion all legal and practical infrastructures, so as to make the Tribunal ready for prompt and proper administration of justice.
- b. Bolster and put into practice the new outreach programme, in order to have an increasingly great impact on the Lebanese legal profession and public opinion.
- c. Encourage as many States as possible to ratify the comprehensive *Draft Agreement on Legal Cooperation with the Tribunal*, already circulated to Governments, or at least to consider this Draft Agreement as the general legal framework guiding relations of States with the Tribunal on a case by case basis.
- d. As an institution based on voluntary contributions, ensure that the Tribunal has sufficient financial resources by broadening the backing it enjoys and possibly increasing the level of support from States and other international entities.
- e. Support the efforts of the Prosecutor to take all reasonable measures to increase the pace of his investigations and collection of evidence.
- f. Initiate pre-trial proceedings, as soon as any indictment is submitted by the Prosecutor and confirmed by the Pre-Trial Judge, with a view to expeditiously starting trial proceedings.
- g. Continue exercising its judicial powers before the confirmation of any indictment. In particular, as the investigation progresses and when he deems it timely, the Prosecutor shall forward to the Pre-Trial Judge information that the Prosecutor considers necessary for, *inter alia*, confirmation of any indictment (Rule 88 of the RPE). This will enable the Pre-Trial Judge to start forming his dossier and speed up the process of assessing whether the indictment can be confirmed. Moreover, the Pre-Trial Judge may be called to consider issues of jurisdiction over connected cases (Rule 11 of the RPE). The Pre-Trial Judge may also be asked by the Prosecutor to issue orders for investigative measures, including for instance summonses, warrants, transfer orders, authorizations to conduct on-site investigations and questioning of witnesses (see, for instance, Articles 11(5) and 18(2) of the Statute and Rules 77, 92 and 93 of the RPE).
- h. Upon confirmation of any indictment, the Pre-Trial Judge and the Trial Chamber will be requested to issue decisions on jurisdiction and other preliminary matters (Rule 90 of the RPE) and to prepare the case expeditiously for trial (Rule 89 of the RPE).

D. Final Observations

241. We are keenly aware of the challenges we are and will be facing. An international criminal tribunal dealing with terrorism, in addition to being beset by all the typical difficulties experienced by international criminal courts, also faces special problems with regard to the investigation and the gathering of evidence. The Tribunal will thus have to continue to address the complexities and challenges inherent in the investigation and prosecution of terrorist crimes.
242. In addition, the Tribunal must meet another formidable challenge. The STL is the first international judicial institution to adjudicate responsibility for terrorism as a distinct crime. Terrorism is a protean notion, difficult to handle, in part because there are only a few international treaties and limited case law from which to draw. However, through reliance on Lebanese law and any relevant international standards, the Tribunal should prove to be able to apply a sound and generally acceptable notion of terrorism in a well-balanced manner. For this and for the reasons discussed above, the Tribunal must show that it can adjudicate cases in a way that is impartial, fair and immune from any political or ideological bias.
243. We naturally intend to dispense justice based on the full respect for the rights of both the defendants and the victims. By doing so we might also set the stage for future and broader resort to international criminal institutions to fend off terrorism.
244. In his work *On the Laws* (“*De Legibus*”), Cicero wrote that “it can rightly be said that a judge is the speaking law, whereas the law is a mute judge” (*vereque dici potest, magistratum esse legem loquentem, legem autem mutum magistratum*).¹¹ So far, due to the absence of any indictment, the STL Trial Chamber and Appeals Chamber have exercised their statutory judicial functions only to a limited extent. Hitherto, the STL Statute and RPE have therefore mostly remained a silent judge. However, the actions undertaken respectively by the Prosecutor, the Head of Defence Office and the Pre-Trial Judge with regard to the four Lebanese Generals who had been detained in Lebanon constitute an important exception. It cannot be denied that their action must be commended for rapidity, fairness and legal rigour, much to the benefit of the human rights of the detained persons. Nevertheless, the Judges sitting on the Bench look forward to exercising their full-time judicial functions as soon as possible. At that stage they will become the “speaking law” so as to translate the provisions of the Statute and the RPE into living and operational law, and thereby dispense justice in an absolutely impartial manner.
245. The aims of the Tribunal as a whole – Chambers, Registry, Office of the Prosecutor, and Defence Office all together – are to render justice in a fair and transparent process, to provide truth and peace of mind for the victims as well as reconciliation to Lebanese society. The Tribunal’s work also intends to strengthen the culture of accountability in Lebanese society. Rendering expeditious and true justice and accomplishing our truth-seeking mission will create a real opportunity for the region to bring about a reconciliation process that – though already in motion – undoubtedly requires broader support from the international community. We set about the task of assisting such a process with the instruments in our hands, confident that the backing of the States and institutions that has accompanied us so far will only increase.

¹¹ *De Legibus*, III,1,2.

246. All the organs of the STL are not unmindful of the host of hurdles they will have to face, both at present and when they begin to discharge their judicial mandate fully. But they are prepared to surmount those hurdles with intrepidity. After all, the undertakings of anybody struggling for the realization of human rights, and in this case, for the vindication of the rights of the victims and the punishment of the authors of very serious misdeeds, is a labour of Sisyphus. The great champion of human rights, Nelson Mandela, wisely wrote: "I have discovered the secret that after climbing a great hill, one only finds that there are many more hills to climb. [...] But I can rest only for a moment, for with freedom comes responsibilities, and I dare not linger, for my long walk is not yet ended."¹²

¹² *Long Walk to Freedom - The Autobiography of Nelson Mandela*, Abacus, London, 1996, at 751.