

# **SPECIAL TRIBUNAL FOR LEBANON**

## **SECOND ANNUAL REPORT (2010-2011)**



Dear Secretary-General,

Dear Prime Minister,

It is my duty and privilege to submit to you, pursuant to Article 10(2) of the Statute of the Special Tribunal for Lebanon, the Second Annual Report on the operation and activities of the Tribunal. It covers the period from 1 March 2010 to 28 February 2011.

This Report, like that of last year, offers a brief overview of the activities undertaken within the relevant time frame, by each of the four main bodies of the Tribunal: Chambers, Office of the Prosecutor, Defence Office and Registry. Each Section has been prepared by the Head of the relevant body, who also takes responsibility for the content of the Section. My task has been limited to coordinating and editing the four Sections, besides adding the Introduction and the Conclusion, which instead reflect my own views and not necessarily the views of the other bodies.

The following Summary emphasises the highlights of this Second Annual Report, but does not capture all its content. In the Report proper we compendiously set out the activities carried out by the Tribunal. We consider such a comprehensive report necessary because of the novelty of our institution and the consequent need for detailed information about its challenges, activities and prospects.

In the Conclusion I endeavour briefly to sum up what I consider to be the major achievements but also the failures of our Tribunal in this past year. I further suggest the possible way forward for the next year (1 March 2011-29 February 2012).



Antonio Cassese

President

## **Table of Contents**

|   |    |
|---|----|
| Summary .....   | 7  |
| PART I – INTRODUCTION.....  | 9  |
| PART II – MAIN ACTIVITIES OF THE TRIBUNAL IN THE REPORTING PERIOD ..... | 11 |
| A. Chambers.....  | 11 |
| 1. Introduction.....  | 11 |
| 2. Judicial activities .....  | 11 |
| 3. Regulatory activities .....  | 12 |
| 4. Managerial and other tasks.....                                      | 13 |
| 5. The need for careful management of resources .....                   | 15 |
| 6. The Way Forward .....  | 15 |
| B. Registry .....   | 17 |
| 1. Introduction.....  | 17 |
| 2. Immediate Office of the Registrar .....                              | 17 |
| 3. Judicial support.....  | 19 |
| 4. Outreach and public affairs activities .....                         | 21 |
| 5. Administrative support.....  | 23 |
| 6. The Way Forward .....  | 24 |
| C. Office of the Prosecutor .....                                       | 25 |
| 1. Introduction.....  | 25 |
| 2. Investigation .....  | 25 |
| 3. Prosecution activities .....   | 26 |
| 4. Public information and outreach.....                                 | 27 |
| 5. The Way Forward .....  | 28 |
| D. Defence Office .....   | 29 |
| 1. Introduction.....  | 29 |
| 2. Organisation of the Office .....                                     | 29 |
| 3. Involvement in judicial activities .....                             | 29 |
| 4. Role of the Defence Office .....                                     | 30 |
| 5. Regulatory framework.....  | 30 |
| 6. List of counsel.....   | 31 |
| 7. List of persons assisting counsel.....                               | 31 |
| 8. Press, public affairs and outreach activities .....                  | 32 |

|  |    |
|--|----|
| 9. Legal advisory activities .....                                 | 32 |
| 10. The Way Forward .....  | 33 |
| PART III – TENTATIVE STOCK-TAKING AND CONCLUDING OBSERVATIONS..... | 35 |
| A. The main role of the STL.....                                   | 35 |
| B. What has not been accomplished in the last twelve months .....  | 36 |
| C. What has been accomplished.....                                 | 37 |
| D. A blueprint for the third year of STL activities .....          | 37 |
| E. Final observations.....   | 38 |



## Summary

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The Special Tribunal for Lebanon (STL or Tribunal) made significant progress in pursuit of the Tribunal's mandate throughout the 2010/2011 reporting period. The work of Chambers, Registry, Office of the Prosecutor (OTP) and Defence Office was guided by considerations of justice, efficiency and transparency.

The STL seeks to uphold the highest standards of international justice in all its activities. The reporting period was marked by the commencement of judicial work proper. In a significant development, on 17 January 2011 the Prosecutor submitted a confidential indictment (with a large volume of supporting material) to the Pre-Trial Judge for confirmation. The Pre-Trial Judge is now reviewing the indictment, to make a *prima facie* assessment of whether the charges are supported by the evidence presented. The activation of the Victims Participation Unit in October 2010 also evidences the STL's commitment to justice, as the Unit will assist victims to exercise their rights before the Tribunal.

The Tribunal is determined to move forward as efficiently and expeditiously as possible. The OTP, Defence Office and Registry assisted Chambers to deal quickly with all matters that were brought before it during the reporting period. Of particular note are not only the decisions by the Pre-Trial Judge and, upon appeal by the Prosecutor, of the Appeals Chamber, in the *El-Sayed* case, but also the Appeals Chamber's prompt issuance of a 150 page interlocutory decision on key questions of the law to be applied before the Tribunal, only weeks after a request from the Pre-Trial Judge and days after submissions from the OTP and Defence Office. The four organs also worked together to streamline the legal framework and tools necessary for the Tribunal's effective operations. The Tribunal's efficient functioning is testament to the hard work of its staff.

The STL attaches great importance to transparency. It has sought to make its operations accessible to the Lebanese legal community and the general public by way of comprehensive outreach and public affairs programmes. Throughout the reporting period representatives of the four organs visited Lebanon, hosted media forums, held seminars on topics relevant to the Tribunal's work and met with local and international interlocutors. The STL engaged visiting professionals from Lebanon in order to promote greater mutual understanding and cooperation. In addition, the Tribunal's website was continuously updated and key documents (including the Statute, Rules of Procedure and Evidence, Practice Directions and transcripts of hearings) were made available online in English, French and Arabic.

The work of the Tribunal has been made possible by the strong and continued support of the United Nations (UN), the Government of Lebanon and the international community. The Tribunal trusts that such support will continue throughout the third year of the STL's mandate.



## **PART I - INTRODUCTION**

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1. In this second year of activity our Tribunal has taken a great many important steps with a view to fulfilling its mission. However, it has not been in a position to discharge its primary task, as I had strongly hoped for and indeed auspicated in my First Annual Report: to initiate, following submission of one or more indictments by the Prosecutor, at least pre-trial proceedings against persons allegedly responsible for the crimes falling under the Tribunal's jurisdiction. At the end of the second year the Pre-Trial Judge is seized with an indictment filed by the Prosecutor on 17 January 2011, but has not yet been in a position to rule on its confirmation.
2. Nevertheless, the Tribunal has moved forward, completing its preparation for trial proceedings, recruiting the staff needed to discharge future trial related tasks (including the tasks of the Defence Office), and strengthening and intensifying its Outreach Programme.



## **PART II – MAIN ACTIVITIES OF THE TRIBUNAL IN THE REPORTING PERIOD**

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### **A. Chambers**

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#### **1. Introduction**

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When addressing the “Way Forward” for Chambers 12 months ago, I specified that I was planning to take steps to finalise the necessary legal tools and infrastructures required in order to render the Tribunal effective and ready to deal with forthcoming judicial activity.

As discussed in more detail below, Chambers – notwithstanding having incurred extremely limited staffing and contractual costs – was able to set in place the vast majority of legal instruments required for judicial activities proper. It also dealt expeditiously and fairly with all judicial matters submitted to its attention.

The Tribunal’s Chambers are vested with three classes of tasks: judicial, regulatory and managerial. In 2009, Chambers mainly dealt with establishing the legal framework necessary for the Tribunal to function – in particular, the Rules of Procedure and Evidence and the initial Cooperation Agreements. The past 12 months (2010-2011) were instead mainly dedicated to (i) fine-tuning all legal and practical instruments needed to begin legal proceedings and (ii) judicial work proper. Thus, Chambers has been dealing with the sensitive question of access to investigative material by Mr. Jamil El Sayed, one of the individuals released by the Tribunal at the onset of its mandate. The second major judicial development was the filing of an indictment for confirmation on 17 January 2011 and subsequent action taken thereto.

#### **2. Judicial activities**

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The main judicial activity over the past year has surrounded the application filed on 7 March 2010 by Mr. Jamil El Sayed – who had been detained in Lebanon in connection with the Hariri attack but was released on 29 April 2009 along with three other individuals pursuant to an order of the Tribunal’s Pre-Trial Judge, which cited a lack of a sufficient evidentiary basis for Mr. El Sayed’s continued detention. Mr. El Sayed (the Applicant) requested access to material related to his detention in Lebanon, allegedly in the possession of the Prosecutor, with the stated intention of using this material to sue individuals who had made statements implicating him in the matter before competent national courts.

In brief, on 15 April 2010 the Tribunal’s President issued a decision assigning the matter to the Pre-Trial Judge who, in turn, issued a Scheduling Order requesting the views of Mr. El Sayed and the Prosecutor on whether the Tribunal had jurisdiction over the issue and on whether the Applicant had standing to request access to documents.

After extensive written submissions, a hearing took place on 13 July 2010, with the participation of Mr. El Sayed and his lawyer, representatives of the Prosecutor and the Head of the Defence Office.

(Transcripts of the hearing can be found in all three official languages on the Tribunal’s website.) On 17 September 2010, the Pre-Trial Judge issued a decision, ruling that the Tribunal has inherent jurisdiction over this type of application and that Mr. El Sayed had standing to bring his application before the Tribunal. On 29 September 2010, the Prosecutor appealed both findings, and on 1 October 2010, the Tribunal’s President issued a Scheduling Order for the first time convening the Appeals Chamber. After dismissing Mr. El Sayed’s motions to disqualify the two Lebanese Judges of the Appeals Chamber, the Appeals Chamber proceeded to confirm the Pre-Trial Judge’s ruling on 10 November 2010, thus dismissing the appeal.

The issues of jurisdiction and standing having thus been settled, on 16 November 2010 the Pre-Trial Judge proceeded to request submissions on the merits, i.e., on whether the Applicant had a right to access those specific materials and, if so, under what restrictions. On 14 January 2011, a hearing on the merits was held. The Pre-Trial Judge is now awaiting submissions by the Prosecutor on the specific reasons for non-disclosure for each document or type of document.

As regards the Tribunal’s primary jurisdiction, over the past year the Pre-Trial Judge has had consultations with the Prosecutor pursuant to Rule 88 of the Rules of Procedure and Evidence. This Rule was adopted with the aim of enabling the Prosecutor to provide information and material to the Pre-Trial Judge in order to assist him in carrying out his function of confirming indictments.

On 17 January 2011, the Prosecutor filed with the Pre-Trial Judge a confidential indictment for confirmation. On 21 January 2011, the Pre-Trial Judge – in order to examine and rule on the indictment in an efficient manner – requested the Appeals Chamber to issue an interlocutory decision on the basis of Rules 68(G) and 176 *bis* of the Rules of Procedure and Evidence. The Pre-Trial Judge raised questions touching upon five areas necessary for him to confirm the indictment, i.e., the notions of terrorism, conspiracy, premeditated homicide, co-perpetration and cumulative charging to be applied by the Tribunal. On that same day, 21 January 2011, the Tribunal’s President issued a Scheduling Order allowing the Prosecutor and the Head of the Defence Office to be heard on the issues raised by the Pre-Trial Judge. Written submissions were thus received on 31 January 2011 and on 4 February 2011, and oral arguments were heard at a subsequent hearing on 7 February 2011. The Appeals Chamber delivered its decision on 16 February 2011.

### 3. Regulatory activities

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#### (i) *Rules of Procedure and Evidence*

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Most of the essential regulatory documents are now in place. Nonetheless, the Judges have proceeded to make certain amendments to the Rules of Procedure and Evidence and to other basic documents in order to streamline the procedures for pre-trial and trial activities and to enhance transparency in the Tribunal’s judicial activity to an extent not seen before in other international criminal tribunals (new Rule 5(l)). Moreover, the amended Rules clarify some aspects of *in absentia* proceedings so as to put all parties concerned on notice about the expected timeframe for this type of trial. Other amendments include the clarification that obstruction of justice may occur at any stage of the proceedings, the admissibility of written statements by witnesses unavailable to testify in person at the Tribunal for good reasons, and the possibility for victims to request certified copies of the Tribunal’s judgments in order to pursue compensation claims in national courts.

Following the implementation of the revised Rules of Procedure and Evidence in November 2010, the President issued his first report under the new Rule 5(I). This report summarised the accepted rule amendments, some key rejected rule amendment proposals, and the reasoning behind them. (The report is available in the Tribunal's three official languages on the STL's website.)

#### *(ii) International instruments and relations with States*

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Aware of the importance of cooperation with third States, the President has been keeping contacts with diplomats of some countries of the region as well as a few other countries, to promote judicial cooperation with the Tribunal. Over the past year the President and the Chef de Cabinet addressed formal communications to the authorities of UN member States regarding their cooperation with the Tribunal. Moreover, the President and the Vice-President had meetings with numerous interested States in The Hague (including seven from the region) and had contacts with the Syrian Ambassador to Brussels, discussing, *inter alia*, current challenges, simplified forms of judicial cooperation and the appointment of contact points. Four governments, including some from the region, have responded positively to this request and have thus signaled their willingness to provide legal assistance, including the appointment of their diplomatic representatives or legal officers in The Netherlands as their focal points for judicial cooperation. In addition, several other governments have reiterated their continued support of and cooperation with the Tribunal, and many have promised to promptly respond through formal letters accepting the offer of cooperation and designating their contact point.

#### *(iii) Code of Conduct for Counsel*

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After extensive discussions amongst all organs, on 28 February 2011 the President issued a comprehensive Code of Professional Conduct for Counsel Appearing before the Tribunal. This Code is unique among those in place at other international and internationalised tribunals, in that it will bind counsel for the Prosecution and the Defence, as well as the legal representatives of victims participating in the proceedings.

### 4. Managerial and other tasks

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#### *(i) General*

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The President has continued to attend regular meetings of the Senior Management Board, to discuss and decide upon various issues. This has helped ensure a coordinated approach among the various organs.

The Vice-President has been continuing to oversee the establishment of the Victims Participation Unit. In coordination with the Outreach Section, he has overseen the development and establishment of an Outreach Programme in Lebanon.

As a follow-up to the “Snapshot of Tribunal Procedure”, which summarised the main features of the procedure applicable at the Tribunal, legal officers in Chambers have produced an “Information Guide for Victim Participation in Proceedings before the Tribunal”. This booklet concisely sets out the main features of the Tribunal and, in particular, offers a simple explanatory tool to victims who wish to participate in the Tribunal’s proceedings and their representatives.

Chambers staff have also been active in dealing with appeals on internal disciplinary measures.

## *(ii) Documentation and seminars*

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In order to assist the necessary legal reflection on themes that are likely to be considered by the Tribunal, a series of seminars have been held covering a diverse range of topics relevant to the work of the Tribunal. These seminars, which were open to all Tribunal staff members, have covered topics such as modes of liability in Lebanese/international law and the Lebanese legal system. Chambers has also continued to hold internal meetings for Judges – the last one with Afghan Judges in January – staff and interns as a means of sharing research on a range of legal and procedural issues pertaining to the Tribunal.

In order to make the work of the Tribunal easily accessible to the public, reference documents such as translations of the Lebanese Codes and other background material are posted on the Tribunal’s website.

## *(iii) Outreach activities and visit to Lebanon*

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As stressed at the end of 2009, Chambers has made further visits to Lebanon, with the President and Vice-President making their second trip to Beirut. From 10 to 15 May 2010, the President, the Vice-President and the Pre-Trial Judge travelled to Beirut. During their visit they met the Minister of Justice and the Minister of the Interior of Lebanon, and discussed matters of cooperation and the negotiation of an agreement on the enforcement of sentences by Lebanon. They also held talks with representatives of Lebanese and international non-governmental organisations, the UN Secretary-General’s Representative in Lebanon and the Chief of the European Union delegation in Lebanon, as well as with the Ambassadors or advisors of the member States of the Management Committee.

While in Beirut the President, the Vice-President and the Pre-Trial Judge also participated in a two-day conference jointly organised by the Tribunal and Saint Joseph University, comparing the applicable law of the Tribunal with that of Lebanon. They focused on specific matters of common interest, including the status of victims participating in proceedings before the STL, trials *in absentia* and the rights of the accused as enshrined in the Statute and the Rules of Procedure and Evidence.

In the spring and summer of 2010, law professors from Lebanon were engaged as Visiting Professionals working and organising seminars on Lebanese law, in particular on modes of criminal liability and on the relationship between international customary and treaty law on the one hand, and the Lebanese domestic legal system on the other. These activities greatly improved the understanding of these topics of the Judges and Chambers legal staff and strengthened mutual understanding between the Tribunal and the Lebanese legal community.

Furthermore, during the past few months, Chambers staff participated in two media forums organised for Lebanese journalists, and provided essential input on the Electronic Tools project aimed at creating an electronic filing management system for the whole of the Tribunal and its legacy.

## 5. The need for careful management of resources

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Chambers has tried to be extremely cautious in managing resources. In this regard, three instances of such careful management may be mentioned, which although by themselves may be regarded as inconsequential, are nevertheless significant. First, for the whole of the past year Chambers has continued to have just one personal assistant available for the three Judges (as well as all the other eight Judges when they meet at Leidschendam for plenary meetings or for sessions of the Appeals Chamber). In addition, Chambers has benefited from only one legal officer (although the Pre-Trial Judge, in anticipation of the issuance of an indictment and the ensuing high volume of work, had rightly recruited three legal officers as from the end of 2010). Secondly, in the past two years the eight Judges who had not been requested to sit permanently at The Hague and exercise their functions full time, have not received any salary. When they have been requested by me to work at home or to be in Leidschendam to exercise their judicial functions or to attend plenary meetings of the Judges, they have only received a per diem (plus, in some instances, a 1/30th of their salary per working day). Thirdly, contrary to what happens in most international tribunals, I have decided that, should a Judge or any staff member very briefly engage in an activity connected with our profession and authorised by the President, any remuneration for such activity must be passed over to the Tribunal. As a consequence, we have been able to set up a small fund with the money coming from this source, and intend to spend this money for the recruitment of interns.

## 6. The Way Forward

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In the next reporting period, the President, in consultation with the other Judges, plans to:

- (i) concentrate on judicial activity, in particular matters within the Tribunal's primary jurisdiction, so as to enhance the pace of the proceedings and ensure that fair and expeditious justice – unfettered by political considerations – is served;
- (ii) to this end, consult with the Secretary-General on the appropriate date for the remaining Judges to take office;
- (iii) increase relations with third States to establish a stable cooperation network, helpful to continue the work of the Tribunal;
- (iv) intensify relations with Lebanese authorities;
- (v) continue the recruitment of the legal staff necessary to discharge the judicial tasks that Chambers will be called upon to undertake; and
- (vi) assist in the implementation of the Outreach Programme already put in place.



## B. Registry

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### 1. Introduction

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The Registry, under the direction of the Registrar, is responsible for providing support to the functioning of all organs of the Tribunal at its headquarters in The Netherlands, as well as in Beirut. The three main areas of responsibility of the Registry are the following:

External relations – The Registrar has an important external diplomatic function and is responsible for securing sufficient funding for the work of the Tribunal. In addition, the Registrar has the responsibility to negotiate witness relocation agreements, as well as other cooperative arrangements with States. The Registry Outreach and Public Affairs Sections play an important role in communicating with the public and providing information about the work of the Tribunal.

Judicial support – Registry services include court management, support to victims who participate in the proceedings, language services and support, the management of the Detention Unit, security and the protection and support of witnesses.

Administrative support – The Registry also provides support to the Tribunal in the areas of human resources, budget, finance, procurement, general services and information technology.

The Registrar is designated by the UN Secretary-General. On 1 March 2010, following Mr. Tolbert's resignation, the UN Secretary-General designated Mr. Herman von Hebel as Acting Registrar of the Tribunal. Mr. von Hebel was appointed Registrar on 10 December 2010.

In the past 12 months, the Registry successfully provided support to the Prosecutor's investigations as well as to Chambers and the Defence Office, including with regard to court activity and the organisation of hearings, as well as the Plenary of Judges. The Registry assisted in the recruitment of staff members, reorganised and strengthened the structure and functions of the Tribunal's Beirut Office, created separate Registry Sections for Outreach and Public Affairs in order to intensify outreach and public information efforts, liaised with States in order to secure cooperation and funding, and implemented a comprehensive press and outreach strategy.

### 2. Immediate Office of the Registrar

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The Immediate Office channeled comments and proposals to the Plenary of Judges on the Rules of Procedure and Evidence and its amendments, which included proposals by the Victims Participation Unit (VPU) that resulted in the alignment of the selection criteria of victims' legal counsel with those used by the Defence Office for its own list of counsel. Since March 2010, the Immediate Office of the Registrar also engaged in the following activities.

(i) *External relations*

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Throughout the reporting period, bilateral meetings were held by the Registrar with representatives of the diplomatic community in Leidschendam, The Hague, Beirut, New York and elsewhere to appeal for funding and to negotiate cooperation agreements.

In April 2010, the Registrar traveled to Beirut, Lebanon, to express his gratitude to the Lebanese Government for the valuable assistance that it has provided to the Tribunal and to further strengthen relations with Lebanese authorities in order to advance the work of the Registry and that of the Tribunal as a whole. During the visit, the Registrar also met with representatives of Lebanese civil society and experts in order to have an open dialogue about the work of the Tribunal.

In Leidschendam regular briefings were held with representatives of the diplomatic community. In addition, a number of Ambassadors and diplomatic representatives were invited to the Tribunal to visit its premises and meet with its staff.

The Registrar traveled to New York in July and October 2010 and February 2011 to hold bilateral meetings with Management Committee members, members of the Security Council, regional States and potential donors, as well as with UN Departments. In New York, briefings were also organised for the Group of Interested States and the legal advisors of the European Union.

The Registrar also traveled to various capitals to advocate for increased political and financial support to the Tribunal.

Negotiations were conducted with the French authorities and arrangements put in place with regard to the administrative and liability aspects of the enactment of a controlled explosive experiment requested by the Prosecutor in Captieux military base in France.

(ii) *STL premises outside The Netherlands*

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*Beirut Office:*

In the last year, the number of Tribunal staff in the Beirut Office increased, including the appointment of a permanent Head of Registry in June 2010. The day-to-day work of the Registry in Beirut continued unabated throughout the reporting period. In particular, a major effort has been made to support the work of resident and visiting OTP investigators, as well as fulfilling the administrative and substantive functions of the Registry itself, such as external relations, security, witness protection and outreach.

The total number of staff in the Beirut Office on a regular basis now exceeds 60, including staff from sections such as Security and Language Services, the Immediate Office of the Registrar, the Victims and Witnesses Unit (VWU), Outreach, General Services and Information Technology.

*The New York Liaison Office:*

The Tribunal's New York Office assisted the Management Committee in its work and ensured a reliable and effective channel of communication between the Tribunal and the Committee. The Liaison Office further strengthened its relationship with interested States, UN departments and non-governmental organisations by providing regular updates and information about the work of the Tribunal. Finally, the

Liaison Office organised and supported throughout the year visits of the representatives of the Registry, the OTP and the Defence Office to New York.

### *(iii) Host State matters*

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The Registry enjoyed the continued strong cooperation from the Government of the Kingdom of The Netherlands, including support in relation to the Tribunal's premises, external security, the issuance of visa and residency permits, and other matters.

On 10 December 2010, the Registry signed an agreement with the authorities of the Kingdom of The Netherlands on detention facilities and related services for the detention of persons awaiting trial or appeal before the Tribunal or otherwise detained on its authority.

On behalf of the Tribunal, the Registrar signed a Memorandum of Understanding with The Netherlands Forensic Institute (NFI). The purpose of the agreement is to establish a framework for the provision of forensic science services by the NFI to the OTP and the Defence Office.

### *(iv) Inter Tribunal cooperation*

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Following the co-location of The Hague Sub-Office of the Special Court for Sierra Leone (SCSL) at the Tribunal's premises in 2009, the Tribunal signed a Supplementary Memorandum of Understanding with the SCSL concerning the provision of courtroom and related services on 15 April 2010. The usage of the Tribunal's courtroom by the SCSL for the Taylor trial procedures has enabled the Tribunal to fine-tune its courtroom technology, related services and procedures in order to be fully prepared for its own judicial activities.

## 3. Judicial support

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### *(i) Judicial Support Services Committee*

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A Judicial Support Services (JSS) Committee was established under the direction of the Immediate Office of the Registrar to ensure proper coordination between Registry's judicial services sections and Chambers. The Registry sections that are represented in the JSS Committee are the Court Management and Services Section (CMSS), the Language Services Section, the VWU, the VPU and the Detention Unit.

### *(ii) Court management*

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The CMSS supported Chambers, the OTP and the Defence Office with the filing of submissions and orders, as well as the organisation of hearings, in the matters of Mr. El Sayed and the indictment, which was filed by the Prosecutor with the Registry on 17 January 2011.

The number of public filings processed by CMSS during the reporting period was 70, corresponding to 3,881 pages of public official court documents filed, many of which were translated into all three official languages: Arabic, English and French. The reporting period has seen four days of court hearings.

In order to be in a position to ensure the necessary organisational and logistical support for court proceedings with minimal staff, CMSS pursued a flexible combination of staff recruitment, cross-training of staff to cover multiple functions and outsourcing of courtroom support, such as court reporting.

A contract was awarded to provide an integrated IT system to manage the information and processes of the Tribunal's judicial and non-judicial functions (Electronic Tools), such as court management, case filing, disclosure of documents, presentation of documents in court and retention of judicial records. The implementation of Electronic Tools is expected in early 2011.

During the reporting period, the Tribunal's library consolidated a comprehensive collection in the fields of terrorism, international criminal law, Lebanese law and jurisprudence. The collection consists of approximately 3,400 items, including 1,200 publications donated by the Tribunal's President, in addition to a core selection of law journals and online databases. The library successfully implemented an integrated library management system and was established as an essential provider of legal information services to the Tribunal's organs.

### *(iii) Victims and Witnesses Unit*

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In the reporting period, the VWU developed the operational framework necessary to facilitate witnesses' movement for trial. Assistance from States, in the form of witness relocation agreements and other facilitation in protecting witnesses, is of vital importance for the success of the Tribunal. To this end, the VWU has continued to pursue the cooperation and support of States. The demanding operational environment remains one of the main challenges facing the VWU.

### *(iv) Victims Participation Unit*

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The VPU began its work on 1 October 2010 following the appointment of the Head of Unit. The Unit's main objective is to ensure that the rights afforded to it by the Tribunal's Rules of Procedure and Evidence and the Statute are in place as from the day, and in the event that, the indictment is confirmed by the Pre-Trial Judge.

With this objective in mind, the VPU has made every effort and continues to put in place the principal tools required for its mission. Firstly, the Unit has created an application form for victims seeking to participate in the proceedings. This form is presently being translated into all three official languages. It will be posted on the Tribunal's website, and publicised through a variety of other means upon confirmation of an indictment. Secondly, the Unit has issued a call for applications from members of the Lebanese and international legal communities who wish to be on the list of legal representatives for victims participating in the proceedings. Thirdly, the Unit is working to develop a policy on determining the conditions under which victims participating in the proceedings would be eligible for legal aid. Finally, the Unit has, with the help of ITSS, created a web page on the Tribunal's site informing victims

of their rights, the mechanisms through which the legal representation of victims can be exercised, and other relevant information regarding the VPU's work which would interest relevant actors and the public at large.

In order to implement this programme fully and to effectively explain its mandate to the victims, the Head of the VPU traveled to Beirut in February 2011. A meeting was held with the Minister of Justice in order to broach the topic of how victims will be able to obtain compensation from national courts following the issuance of a final judgment. In addition, the Head of Unit met with the Beirut Bar Association and Tripoli Bar Association in order to solicit their assistance in promoting the call for applications for victims' legal representatives amongst the Lebanese legal community. A concerted effort was also made in order to reach out to victims, first by meeting with lawyers who had made themselves known as representing victims from the 14 February 2005 attack; second by speaking out to victims through several interviews with Lebanese press outlets; and third by meeting with members of civil society and identifying possible non-governmental organisations that could facilitate the VPU's role on the ground.

#### 4. Outreach and public affairs activities

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In order to intensify its public information and outreach efforts, the Tribunal separated the Outreach and Legacy Section from its Public Affairs Section from 1 January 2010. Both sections were staffed with new Chiefs during the reporting period, who began their roles on 1 July 2010 (Outreach and Legacy) and 1 November 2010 (Public Affairs), respectively.

##### *(i) Outreach and Legacy Section*

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Over the past year, the Tribunal implemented an increasingly robust Outreach Programme. In coordination with all the Tribunal's organs, a number of activities were conducted in Lebanon and The Netherlands so as to reach out to different constituencies, including the legal and diplomatic communities, international and local non-governmental organisations and the media.

In addition to the conferences, seminars and other efforts mentioned elsewhere in this report, the following outreach activities are particularly worth noting.

In October and November 2010, in cooperation with the Foreign Press Association in The Netherlands, Outreach organised two media forums which brought over 40 Lebanese senior media editors and journalists to The Hague. The media representatives were able to familiarise themselves with the work of the Tribunal, through briefings by and discussions with Tribunal officials. The journalists also visited the International Criminal Tribunal for the former Yugoslavia and the International Criminal Court, and engaged in an interesting and frank exchange on the challenges of reporting on international judicial institutions with their colleagues from around the world.

In December 2010, Outreach also launched a new tab on the existing Tribunal website with a much stronger focus on audio-visual content. The new tab includes a number of tools intended to assist journalists, legal professionals and others in understanding the work of the STL. The materials which are available include frequently asked questions (both in audio-visual and textual formats); a glossary of legal terms in Arabic, French and English; a list of reference materials; and a virtual tour of the

Tribunal's courtroom. Outreach has also produced printed information materials for distribution in Lebanon, as well as at the seat of the Tribunal.

Throughout the reporting period, Outreach staff held numerous meetings with and provided briefings to local interlocutors about the work of the Tribunal.

(ii) *Public Affairs Section*

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The role of the Public Affairs Section (PAS) is to assist the public and the media in understanding the functions of the Tribunal and the judicial process. Throughout the year, the PAS has supported the Registry, Chambers and the Defence Office in their messaging towards the public and media, for example by providing support in interviews with Lebanese and international journalists. During the period leading up to the submission of the indictment by the Prosecutor to the Pre-Trial Judge, the PAS held telephone briefings with more than 60 of the most influential Lebanese and international reporters and editors to explain the next steps in the Tribunal's procedure. The Registrar also conducted interviews with the international wire agencies, which helped to explain often complex procedures to people around the world.

As a judicial body, the Tribunal is tightly constrained in what it can and should say publicly about its work. At the same time the focused criticism that the Tribunal has faced since its inception has evolved into a concerted campaign from some quarters against the Tribunal's very existence. However, the submission of an indictment by the Prosecutor to the Pre-Trial Judge marked a shift from the investigation-led phase, which by its very nature must remain confidential, to a stage led by Judges, whose work will be far more visible through rulings, opinions and public hearings.

The PAS continues to support other organs (particularly Chambers) in their public statements, and the media in their coverage of hearings (for example, the Appeals Chamber hearing during the review of the indictment by the Pre-Trial Judge). During those judicial events considerable work was put into comprehensive media advisories and press releases, which clearly explained the complex work of the Judges. Immediately after the submission of the indictment, the Registrar also carried out several interviews with the pan-Arab TV stations and newspapers, as well as several Lebanese publications.

Web-based communications are also critical for the PAS to effectively explain the work of the Tribunal. A web project manager joined the PAS at the beginning of 2011 to lead the re-launch of the Tribunal's website and to enable enhanced web-based communication about the work of the Tribunal with the Tribunal's various stakeholders in Arabic, French and English.

During the reporting period, the PAS also assisted in the hosting of numerous visits to the Tribunal by interested officials and organisations.

## 5. Administrative support

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### (i) *Budget and funding*

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The Registrar is responsible for preparing the Tribunal's budget and presenting it to the Management Committee for its approval.

The approved Tribunal budget for the period 1 January – 31 December 2010 amounted to USD 55.4 million. The approved budget for 1 January – 31 December 2011 amounts to USD 65.7 million. The rise in the 2011 budget compared to the 2010 amount will allow the Tribunal to accommodate an increase of judicial activities in 2011.

According to Article 5 of the Annex to UN Security Council Resolution 1757 (2007), 51 percent of the expenses of the Tribunal shall be borne by voluntary contributions from States, and 49 percent by the Government of Lebanon. Since the Tribunal's inception, 25 countries have contributed to the Tribunal, 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, Finland, Germany, Greece, Hungary, Ireland, Italy, Japan, Kuwait, Luxembourg, The Netherlands, Regional States, the Russian Federation, Sweden, the Former Yugoslav Republic of Macedonia, Turkey, the United Kingdom, the United States and Uruguay.

The External Auditor of the Tribunal, appointed by the Management Committee, conducted the first audit of the Tribunal and a report with an unqualified audit was issued in September 2010.

### (ii) *Recruitment of staff*

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A total of 334 staff are employed by the Tribunal as of 22 February 2011, of which 63 are located in the Beirut Office. Sixty-two nationalities are currently represented at the Tribunal, the gender distribution being 35 percent female and 65 percent male.

The internship programme continued successfully. Ninety-five interns have participated in the work of the Tribunal since the launch of the programme in May 2009. The Tribunal continues to encourage nationals of Lebanon to apply for the programme.

In 2010 a National Visiting Professional (NVP) Programme was also launched in order to provide young Lebanese lawyers at the early stages of their career the opportunity to contribute to the work of the Tribunal and enhance their professional development. To date four Lebanese lawyers have participated in the NVP Programme.

## 6. The Way Forward

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In the coming year, the Registrar will focus on ensuring that the Tribunal receives the financial support and cooperation required to fulfil its mandate. In particular, he will focus on:

- (i) implementing the Tribunal's fundraising strategy;
- (ii) continuing to pursue relocation and enforcement agreements;
- (iii) strengthening those sections directly involved in providing support to the proceedings, including CMSS, the VPU and the VWU;
- (iv) continuing to implement a robust press policy, as well as the Tribunal's outreach strategy to ensure that the role and activities of the Tribunal are understood by the citizens of Lebanon, the Middle East region and internationally. In order to reach the widest possible audience, more information material will be produced in print, electronic and audio-visual form, and a series of events on the work of the Tribunal will be organised both in Beirut and in The Hague;
- (v) continuing to provide support to Chambers, OTP and Defence Office; and
- (vi) strengthening information security software and policies within the Tribunal's offices in Leidschendam, Beirut and New York.

## C. Office of the Prosecutor

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### 1. Introduction

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In the period under review, the Investigation Division intensified its efforts to compile evidence that would support an indictment in the Hariri case. Despite obstacles and obstructions encountered during the investigation, the OTP filed an indictment on 17 January 2011 for confirmation by the Pre-Trial Judge. This marked the launch of the judicial phase of the Tribunal's work. For the first time, a legal case has been brought at the international level for a terrorist crime.

### 2. Investigation

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Throughout the reporting period, the Investigation Division worked in close cooperation with the Prosecution Division of the OTP to ensure that the evidence collected would provide a solid evidentiary basis for an indictment and an eventual trial.

This coordinated approach was essential to ensure that the case would rest only on credible and reliable evidence. Indeed, the quality of the evidence collected by the investigators was tested and challenged continuously by the Prosecution Division in order to ensure its reliability and probative value.

By its very nature, the investigation is very complex and extremely labour-intensive. Some idea of its scope may be gleaned from the OTP's operational activities. Complex forensics work was carried out, including a controlled explosion experiment conducted in France in October 2010, the results of which supported and strengthened the case theory.

More than 150 missions were conducted and 430 interviews were held, in Lebanon and other States, all requiring extensive preparation and follow-up. Almost 750 requests for assistance were sent to the Prosecutor General of Lebanon from 1 March 2010 to 18 February 2011. More than 60 requests for assistance were also sent to other States during this period. In addition, numerous meetings were held with the representatives of States and other international organisations on the practical arrangements for cooperation with the OTP investigations.

It is evident from this snapshot that, as reported previously, State cooperation is an essential element to enable the OTP to successfully fulfil its mandate. It is often a struggle to secure timely cooperation, and sometimes information, from States. International justice can be a very slow and arduous process.

Achievements were made by the OTP in spite of the hostile rhetoric against the Tribunal which escalated into clear intimidation and physical violence during the reporting period. There has been intimidation of witnesses in a number of ways: commencing in the last quarter of 2010, several calls have been made for a boycott of the Tribunal; public threats have been made to dissuade cooperation with the Tribunal; and unlawful broadcasts of audio recordings of witness interviews made in confidence to the UN International Independent Investigation Commission have been aired on some

Lebanese television channels. The latter action was clearly aimed at discrediting the Tribunal and undermining the trust that witnesses have in it. The OTP tried to prevent the broadcast of the confidential investigative material, stressing the illegality of such action. It also launched an investigation to determine how this material became public and how such unauthorised disclosure can be prevented in the future. In this regard, the assistance of the Prosecutor General of Lebanon has been sought.

In addition to the intimidation of witnesses, physical violence was committed against OTP investigators. On 27 October 2010, during the course of a legitimate interview in south Beirut which had been authorised by the Lebanese authorities and consented to by the witness, OTP investigators and a Tribunal interpreter were physically attacked. The OTP took immediate steps to ensure the safety and security of its staff and to avoid putting potential witnesses at risk, while making it clear publicly that the investigation would not be deterred. In addition, an investigation was launched both internally and by the Prosecutor General of Lebanon. The UN Security Council was informed about the incident. Aware of the situation, and upon the request of the OTP, the Plenary of Judges acted to amend the Rules to make it clear that obstruction of justice - whether it happens at the Tribunal, or elsewhere but in connection with proceedings that are unfolding before the Tribunal and relate to crimes within its jurisdiction - is an offence punishable by the STL.

While the filing of an indictment is an important step in the process, it is nonetheless only a first step. An indictment is only an allegation made by the Prosecutor on the basis of evidence gathered thus far according to the legal threshold established by the Statute. If confirmed, much more work will be required to ensure that the confirmed indictment meets the “beyond a reasonable doubt” threshold required at trial. The investigation will also continue in order to identify other persons responsible for the attack.

The investigation will continue, as well, to be able to establish the truth about other attacks falling within the jurisdiction of the Tribunal.

### 3. [Prosecution activities](#)

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The Prosecution Division engaged in a number of notable activities during the reporting period, with a view to beginning the process of prosecuting those responsible for the Hariri case and other attacks that may be found to be connected to it.

#### *(i) [Indictment-related activities](#)*

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As provided by Rule 88 of the Rules of Procedure and Evidence, a number of meetings were held with the Pre-Trial Judge to familiarise him with the evidence in anticipation of the filing of the indictment on 17 January 2011.

Detailed legal submissions and skeleton arguments were filed in anticipation of the public hearing held on 7 February 2011 to answer the questions posed by the Pre-Trial Judge so as to clarify the legal framework applicable to his review of the indictment.

*(ii) Trial readiness*

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Preparation for trial and coordination of the evidence required to meet the “beyond reasonable doubt” threshold continued to occupy the whole division.

More specifically, preparation to meet the Prosecutor’s disclosure obligations as well as victims’ participation required substantial amounts of time. In relation to disclosure of UN documents, extensive consultations were undertaken with the Office of Legal Affairs in New York.

A strategy on how to address victim participation, aiming at both meaningful participation of victims and ensuring the rights of the accused, has also been developed.

*(iii) Other litigation*

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On behalf of the Prosecutor, the Division has taken the lead in responding to and contesting litigation initiated by Mr. El Sayed, who has requested the disclosure of materials allegedly forming part of the Prosecutor’s evidentiary holdings. Two public hearings were held in 2010; the first decision issued by the Pre-Trial Judge was appealed, but the Appeals Chamber dismissed the appeal.

*(iv) Proposals to amend the Rules submitted to the Plenary of the Judges*

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The OTP drafted several proposals to amend the Tribunal’s Rules of Procedure and Evidence and submitted them to the Plenary of the Judges, which was held in November 2010. The Division also submitted extensive comments on the proposals filed by the Tribunal’s other organs.

**4. Public information and outreach**

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Public confidence is the basis upon which every tribunal operates. It is therefore not surprising that the opponents of the Tribunal have focused their attacks on the credibility of the investigation in an effort to undermine public confidence.

Maintaining and enhancing public confidence in its work has been a cornerstone of the OTP’s communications policy, and as such, the OTP has responded to these attacks in a factual and objective manner. The OTP’s strategy has been to explain the basis upon which it operates as an organ of the Tribunal. Some key themes have been repeated in different ways: independence of the Prosecutor, absence of interference or politicisation, and the objectivity and neutrality of the investigation based on the evidence.

The OTP has selectively issued key press releases to provide critical updates or when it was felt essential to respond to misinformation, disinformation or obstruction. In addition, the OTP has delivered video broadcasts, participated in Tribunal outreach events, distributed fact sheets and frequently asked questions, and communicated directly with the media to impart its core messages.

## 5. The Way Forward

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An impressive level of sustained and focused commitment was required to produce the indictment filed on 17 January 2011. This filing was the result of the concerted efforts of a dedicated team of experienced investigators, analysts and support staff, working together with trial attorneys, to ensure the sufficiency and admissibility of the evidence gathered.

In the third year of its activities (1 March 2011 – 29 February 2012), the OTP intends to:

- (i) ensure that the indictment in the Hariri case, if confirmed on the basis of *prima facie* evidence, meets the “beyond a reasonable doubt” threshold required at trial;
- (ii) continue with the intensified efforts to bring to justice others who may be responsible for the attack; and
- (iii) endeavour to bring to justice those responsible for other attacks found to be connected.

In order to achieve these objectives and to fulfil its mandate, the OTP must be able to protect its existing investigative and legal capacity, with the expertise that has been developed.

Should the Prosecutor need more time to meet these objectives, the issue will be brought to the attention of the UN Secretary-General.

Every effort is being and will continue to be made to use available resources wisely, efficiently, and in a fiscally responsible manner. The coordinated approach between the investigators and the trial attorneys is illustrative of that efficiency. Moreover, to the extent possible, the investigations referred to above are being pursued in parallel, not sequentially.

## D. Defence Office

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### 1. Introduction

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As explained in the first Annual Report, the establishment of a fully independent Defence Office, by virtue of the Statute, is a novelty in international criminal justice. The specific duties of the Defence Office, combined with its fully independent nature, make it unique. With its principle duties “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), the Defence Office constitutes an important evolution towards a Tribunal that delivers justice that is both fair and seen to be fair.

The Defence Office performs its functions autonomously and without regard for political considerations. It does not represent any suspects or accused, but is responsible for the assignment of independent counsel to such persons.

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 training counsel; by monitoring, as mandated under the Rules of Procedure and Evidence, the performance of Defence counsel; by entering into cooperation agreements with States and other entities; 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. Organisation of the Office

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During the reporting period, no changes were made to the organisational structure of the Defence Office as compared to the previous Annual Report. In terms of staffing, however, important changes have taken place. Foremost, Ms. Alia Aoun, a Lebanese national and lawyer at the Paris Bar, was recruited as Deputy Head of Office in September 2010. In addition, a Head of the Legal Advisory Section was recruited in April 2010. At the close of the reporting period, the Defence Office was composed of eight staff members.

The team of staff members was assisted by one visiting professional from Lebanon and a fluctuating number of interns supporting the functioning of the Office. These interns came to Leidschendam from a variety of countries, including Lebanon.

### 3. Involvement in judicial activities

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During the reporting period, the Defence Office played a role in the judicial activities of the Tribunal. First of all, legal advice and assistance was provided to counsel for Mr. El Sayed in his submissions before the court. As a former detainee, and since his request of access to documents pertained to his

detention, Mr. El Sayed was entitled to this assistance. Accordingly, the Defence Office also confirmed Mr. Azoury as the Applicant's counsel. Moreover, during the proceedings before the Pre-Trial Judge and the Appeals Chamber, the Defence Office intervened to protect the overall rights of the Defence.

In addition, the new Rule 176 *bis* stipulates that the Appeals Chamber shall hear the Prosecutor and the Head of the Defence Office on preliminary legal questions raised by the Pre-Trial Judge as part of the confirmation process. Within a short timespan after the Scheduling Order referenced above, the Defence Office made written and oral submissions before the Appeals Chamber.

#### 4. Role of the Defence Office

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The participation of the Office in the abovementioned proceedings prompted questions regarding the interpretation of the role of the Defence Office. Discussions between the President and the Head of the Defence Office resulted in an agreement about how the Defence Office may participate and intervene during proceedings. This concerns issues such as the presence and participation of the Defence Office in court proceedings, access to filings, and access to court documents. A Practice Direction will be issued by the President to codify this agreement.

In addition, the Defence Office has implemented internal procedures to govern the provision of legal support and assistance to Defence counsel.

#### 5. Regulatory framework

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One of the main projects for the Defence Office was the conclusion of a Memorandum of Understanding with the Government of the Republic of Lebanon on the modalities of their cooperation. This Memorandum, which was negotiated on the basis of Rule 15 of the Rules of Procedure and Evidence, governs Defence investigations in Lebanon. The Memorandum recognises the essential right of Defence counsel to perform independent investigations. As investigations for Tribunal proceedings are not conducted under the supervision of an investigating Judge, future Defence counsel had to be enabled to perform such investigations independently. This feature of adversarial proceedings is unknown in the Lebanese legal system. Several national legislative obstacles had to be overcome in order to facilitate such investigations. The Memorandum of Understanding was signed on 28 July 2010.

Another important legal document that was prepared is the Legal Aid Policy for Defence Counsel. The policy was provided to the President and the Registrar for consultations. The policy governs all aspects of the administration of legal aid and is also applicable to *in absentia* proceedings. Because of its budgetary implications, the financial aspects of the policy are currently under review by the Management Committee of the STL.

In the reporting period, the Directive on the Assignment of Defence Counsel was amended in order to ensure that the languages spoken and understood by lead and co-counsel are sufficient to provide effective representation for the accused. In practice, this may also mean that one of the team members may be required to speak Arabic.

The Defence Office proposed a series of amendments to the Rules of Procedure and Evidence as well as commented on the proposals made by other organs.

## 6. List of counsel

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The right of an accused to be represented by counsel of his own choosing is a fundamental right. There is, however, a distinction to be made between an accused who pays for his own defence and an accused who receives legal aid to pay for his defence.

Within the context of a legal aid system, the freedom of choice is to some extent restricted to ensure the quality of representation. In the Tribunal, a list of counsel (List) is maintained for purposes of legal aid assignments. However, having such a List also implies that all necessary steps must be taken to ensure that there is an actual choice among qualified and competent counsel.

As part of the admission process, applicants are interviewed by a panel of three lawyers, including the Head of the Defence Office. In the reporting period, 29 new applications were received and the panel held 90 interviews, including some backlog from the previous reporting period. As a result, 73 counsel were admitted to the List, of which 44 can be selected as lead counsel and 29 as co-counsel. In the reporting period, seven counsel withdrew from the List.

At the end of the reporting period, 93 counsel are on the List. They practice in 25 different national jurisdictions. The list includes four Lebanese counsel. This number is a cause for some concern. Efforts to attract more Lebanese counsel have not proven effective, mainly due to the external pressures placed on the Tribunal.

The List may also serve to aid the Head of the Defence Office in the assignment of counsel for *in absentia* proceedings.

As part of its efforts to ensure highly qualified and competent counsel, the Defence Office organised mandatory training for all counsel admitted to the List. Two sessions were held in September and October 2010, and a third session is scheduled to take place in March 2011. The training in 2010 was attended by 76 counsel, whereas some counsel received dispensation from attendance. The training, which was funded in large part by the European Commission, aimed to ensure that all counsel on the List are familiar with the Statute and the Rules of Procedure and Evidence, with a particular focus on the particularities of the Tribunal, such as victims participation and the crime of terrorism.

## 7. List of persons assisting counsel

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As reported before, the Defence Office also maintains a list of persons to potentially assist counsel (Second List), including legal officers, case managers and investigators. Throughout the reporting period, 117 persons applied for admission. Seventy-three were admitted, with 53 legal officers, six case managers and 11 investigators. Our experience shows that qualified investigators and case managers are the most difficult to recruit.

The Second List now contains 84 legal officers, eight case managers and 15 investigators.

## 8. Press, public affairs and outreach activities

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In the reporting period, the Defence Office issued a number of press releases on various subjects: process of indictment confirmation, summary of missions to Lebanon and meetings, the appointment of the Deputy Head of Defence Office, and training of counsel.

The Defence Office undertook four missions to Lebanon, during which the Head of the Defence Office and his representatives met with the President, Speaker of the Parliament, the Prime Minister and other Ministers (including the Ministers of Justice and the Interior), as well as with the Lebanese bar associations. The focus of the work in Lebanon was to continue dialogue with Lebanese stakeholders to explain the role of the Defence Office in the upcoming proceedings. The Defence Office underlined on many occasions that an indictment would only be the beginning of the proceedings and is not a pronouncement of guilt, as any accused will be presumed innocent unless proven guilty in a fair trial. It further explained how the Defence would function in the Tribunal system.

The Defence Office also engaged in outreach activities aimed at bar associations and law schools in Lebanon, the United States, the United Kingdom, France and Switzerland.

The Head of the Defence Office has maintained regular contact with diplomatic representatives in The Netherlands in order to provide updates on the work of the Defence Office.

## 9. Legal advisory activities

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As part of its efforts to obtain external assistance in order to provide timely and accurate legal advice, the Defence Office has concluded several additional agreements with universities. They include universities from Canada, the United States and France, as well as two Lebanese universities.

Aside from supporting the activities described under “Involvement in judicial activities,” the Legal Advisory Section continued its preparations to support counsel in judicial proceedings. The preparation of legal dossiers continues. Out of approximately 100 subjects that have been identified, approximately two-thirds have been completed at the close of the reporting period and a further quarter are in the process of being drafted. These legal dossiers will enable counsel to better represent their client(s), as well as assist the Judges in rendering fair and effective justice, as they will improve trial preparation and the quality of submissions.

Other activities of the Legal Advisory Section included work on the Code of Conduct for Counsel, and providing input with regard to the Tribunal’s translations of the Lebanese Criminal Code and the Lebanese Code of Criminal Procedure.

## 10. The Way Forward

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If the Pre-Trial Judge confirms the indictment, the Defence Office will turn to more operational aspects of its duties. Irrespective of whether the proceedings will be held *in absentia* or not, the Defence Office will assign or appoint counsel and provide operational support to that counsel from day one. In the case of *in absentia* proceedings, or one or more indigent accused, this will include the administration of legal aid and the assignment of persons assisting counsel.

Attention will also be given to ensure the confidentiality of information in the possession of counsel as well as to ensure the physical security of the Defence team. In addition, the Defence Office will liaise between the Defence team and governmental authorities, such as with forensic institutes or pursuant to the Memorandum of Understanding with the Government of Lebanon.

In terms of the Legal Advisory Section, activities will focus more on providing support in the background, whereas counsel will take a leading role in court. It is foreseen that the Section will mainly focus on requests it receives for legal advice on specific matters.

The role of the Defence Office will also develop towards oversight of counsel's performance.



## PART III – TENTATIVE STOCK-TAKING AND CONCLUDING OBSERVATIONS

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### A. The main role of the STL

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From the outset, in light of the contents of UN Security Council resolution 1757 (2007), and the documents annexed to it, the Tribunal has been pursuing three main aims.

The first aim is of course that of continuing the investigations and of ensuring that the alleged perpetrators of the terrorist crimes within the jurisdiction of the Tribunal be identified and tried according to the highest standards of justice, so as to uncover who committed the crimes, something that is critical for the victims and the people of Lebanon, as well as to set the stage for the payment of compensation to the victims.

The second aim, inherent in the first, is to help the Lebanese people in settling a serious national crisis resulting from the assassination of Rafiq Hariri and other persons. The resort to an international judicial mechanism, first requested by Lebanon itself, was intended both to allow complex and difficult investigations to take place and to ensure that international standards of justice be applied so as to satisfy the call for proper judicial accountability. This in turn was meant to affirm that political conflicts must be resolved not by resort to violence but by dialogue, discussion, and negotiation. Through credible, fair and unbiased action, the Tribunal thus aims at contributing to reconciliation in Lebanon. It is also intended to signal the strong need to move to a new method of political discourse, untainted by violence. To take up the reflections of a famous Roman Emperor and philosopher, Hadrian, as reported by a French writer, “the order in the streets is not sufficient”; it is necessary that “order should reign in the mind of all.”<sup>1</sup>

This second aim has appositely been articulated in a report issued by Chatham House:

[...]judicial accountability may contribute to establishing a lasting peace and ending political violence by creating an impartial historical record based on evidence which has been tested in a court of law, establishing individual responsibility for crimes (rather than collective group-based responsibility) and thus promoting unity rather than division along sectarian lines within a state, ending impunity for those crimes, removing those responsible from positions of influence within the country, and creating an environment in which reconciliation, both collective and individual, becomes a possibility.<sup>2</sup>

I strongly believe that a tribunal of an international character is essential also in order to shield the necessary judicial action from contingent political struggles and thus maintain a long-term view of the need for justice as a foundation of peace.

There is another purpose, on which I have personally insisted from the outset in light, and on the basis, of the existing international legal instruments establishing the Tribunal. It is the attempt to benefit from

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<sup>1</sup> M. Yourcenar, *Mémoires d'Hadrien* (Paris, Gallimard, 1989), at p. 110 (« Mais l'ordre dans les rues ne me suffisait qu'à moitié ; je voulais, s'il se pouvait, le restaurer dans les esprits, ou plutôt l'y faire régner pour la première fois. »)

<sup>2</sup> Chatham House, *The Special Tribunal for Lebanon and the Quest for Truth, Justice and Stability*, December 2010, at p. 4.

and fully utilise the potential of the numerous novelties of the Tribunal, as laid down in the Statute (chiefly the amalgamation of the adversarial and inquisitorial procedural system, the prominent role conferred on the Pre-Trial Judge, the existence of an important autonomous Defence Office, and the right of victims to participate in the proceedings). These novelties – I am firmly convinced – can make it possible to set an example in the world community of fair and expeditious justice, so as to debunk the current belief that international criminal tribunals cannot but be cumbersome, slow and exceedingly expensive.

I believe that it is against this background that we should engage in a candid and unvarnished assessment of both our achievements and our failures after two years of activity.

## B. What has not been accomplished in the last twelve months

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Contrary to our expectations and deep-felt hopes, we have not been able to initiate any trial. It was only on 17 January 2011, namely 22 months after the start of the Tribunal's activity, that an indictment was filed with the Pre-Trial Judge. As of the day of submission of this Report, the indictment has not yet been confirmed or dismissed by the Pre-Trial Judge, who is carefully perusing the legal issues raised by the indictment with the huge amount of supporting material presented by the Prosecutor. This is a considerable task, requiring a small team to carefully study the indictment and thousands of pages of supporting material. The Pre-Trial Chamber has also had to consider the recent ruling by the Appeals Chamber. In practice this means that the review of the indictment may take a little longer than we had originally hoped, but the Pre-Trial Judge and his staff are working as expeditiously as possible, whilst ensuring that this is a fair and just process.

In addition, the formalisation – through an international agreement on judicial cooperation – of our cooperation with the various States of the area, sought by the Tribunal's President, has not been forthcoming. Various States have explained their inability to enter into formal agreements by emphasising domestic difficulties with the rapid approval and implementation of any international treaty. They have offered instead to cooperate informally and on a case by case basis. In the absence of binding UN Security Council resolutions to enforce cooperation (due to the peculiar legal position of the Special Tribunal), no solid legal framework has therefore been established for cooperation with States other than Lebanon.

Furthermore, we have not been able to attain the objective that I had identified as one of the main goals of our Tribunal: to prove that international criminal tribunals may be relatively inexpensive. To my regret, our Tribunal has also turned out to be financially onerous. There are many specific reasons for that. First of all, most of the financial costs incurred thus far are due to the novel and peculiar nature of our Tribunal, entrusted with unprecedented investigations of terrorist crimes, which require not only a relatively high number of investigators and experts well versed in this particular criminal field, but also exceptional security measures (we have had to recruit 76 security officers to safeguard the premises and the staff in Leidschendam and in Beirut). Secondly, our commitment to enhancing transparency by producing all of our public documents, as well as ensuring simultaneous interpretation for judicial hearings, in all three official languages (Arabic, English, and French) comes at a cost. Thirdly, the start-up costs of an international tribunal with a short mandate are much higher, in proportion, than the expenses of a court that develops over a longer time period. If we factor in these considerations, it

appears that we have managed to remain a relatively small institution, husbanding our limited resources, especially in Chambers, with great care (see above, Section on Chambers).

### C. What has been accomplished

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In spite of the aforementioned difficulties, we take pride in stressing that we have accomplished much. One of our major achievements resides in the fact that, despite the obstacles encountered, the Prosecutor has been able to intensify his investigations and to bring one indictment for review to the Pre-Trial Judge. In this respect, the support of the UN and of the Government of Lebanon has been pivotal in ensuring our measure of success and in defending the important role that the Special Tribunal has to play.

Secondly, both the Pre-Trial Judge and the Appeals Chamber have been active in the *General El-Sayed* case, holding hearings and adopting decisions on the requests of Mr. Al-Sayed concerning his right of access to what he alleges is the unreliable evidence on the basis of which he was detained for almost four years by the Lebanese authorities.

Thirdly, thanks to a judicious amendment of the Rules of Procedure and Evidence approved by the Plenary of Judges, the Pre-Trial Judge has requested the Appeals Chamber to authoritatively clarify the law applicable to the confirmation of the indictment. The purpose of this measure is to expedite the procedure for examination of indictments and also to respect the rights of any potential defendant by setting out the proper legal standards applicable to the crimes and modes of liability charged in the indictment. On this basis, the Appeals Chamber has been in a position to issue swiftly an important Interlocutory Decision, where it has clarified not only the definition of terrorism, but also many other legal notions that the Pre-Trial Judge is likely to apply. In this enterprise the Appeals Chamber was greatly assisted by the written and oral submissions professionally and expeditiously offered by both the OTP and the Defence Office.

Fourthly, learning from the experience of other international criminal courts and tribunals, we decided to launch right away an Outreach Programme, with a view to bridging the physical distance between Lebanon and Leidschendam, so as to disseminate in Lebanon a sound and detailed knowledge of the scope, nature and unique features of the Tribunal and explain both to the relevant groups of legal professionals and to the population at large the functioning of the Tribunal.

### D. A blueprint for the third year of STL activities

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It is my view that, in its third year of activity (1 March 2011-29 February 2012), the Tribunal should endeavour to complete the submission (plus possible confirmation) of indictments. The end of investigations with a view to submitting indictments by 29 February 2012 would allow us to begin with maximum alacrity, already in this third year, at least pre-trial and some trial proceedings, thus being able to complete the core mandate of the Tribunal within a total of six years. Within this time frame the Tribunal would be able to close down after having professionally, fairly and efficiently discharged its judicial mission. However, should the Prosecutor consider that he requires more time for further investigations leading to further indictments, it would belong to him to set forth and pass on, through the President, to the relevant bodies and entities (the UN Secretary-General, the Security Council and

the Government of Lebanon) the reasons for such necessity and the consequent need to prolong the activity of the Tribunal beyond two three year mandates.

Be that as it may, I strongly believe that the investment made thus far by the international community and by Lebanon, both in terms of financial resources and of resolve, is beginning to show its results and cannot be abandoned in the face of undue pressures. Under careful and transparent management, the Tribunal will be able duly to complete its task and meet the demand for justice.

For the purpose of accomplishing its tasks in the light of the goals referred to above, the Tribunal should recruit only the staff considered strictly necessary, so as to avoid any expenses not warranted by the need to efficiently and speedily achieve its goals. In this context, I expect that all the Judges other than the three who have already taken office should be convened permanently as of mid-September 2011. Since this is a determination to be made by the UN Secretary-General in consultation with me, I will follow up with a specific request in this sense in due course.

In addition, the STL should intensify as much as possible its Outreach Programme, so as to disseminate accurate information about the role and functions of the Tribunal and by the same token dispel any misapprehension or misconception of the Tribunal's action. The Outreach Office should also intensify its contacts with the legal professions in Lebanon with a view to giving greater and first hand access to the legal mechanisms, legal approaches and daily working of the Tribunal.

## E. Final observations

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The whole of the Tribunal, including the President, is fully aware that the confirmation and eventual publication of indictments may have significant repercussions in Lebanon – this is to be expected when judicial process is applied to what the Security Council has termed “a threat to international peace and security.”

It is no secret that there still exists much debate in Lebanon and elsewhere about the usefulness of the Tribunal. However, as international civil servants working for an international judicial institution and, in particular, as independent Judges, we are under the obligation to refrain from taking political considerations into account. Those who still entertain so many doubts and misgivings about the Tribunal do not pay attention to the fact that so far the Tribunal has already furnished ample proof of its professionalism, impartiality, and independence. It may suffice to recall the independence with which the Tribunal (i) immediately ordered the release, owing to the lack of evidence against them, of four Lebanese generals being detained in a Lebanese prison, and (ii) upheld Mr. El Sayed's effort to seize the Tribunal of his request about the documents to which he seeks access.

We are determined to uphold the principle advocated by Hegel *fiat justitia ne pereat mundus* (let justice be done so that the world will not perish).<sup>3</sup> To this effect, we must act in such a manner as to indisputably show that we are immune from political or ideological bias, and at any moment respect

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<sup>3</sup> See G.W.F. Hegel, *Grundlinien der Philosophie des Rechts*, in G.W.F. Hegel, *Werke*, vol. 7 (Frankfurt am Main, 1979), at p. 243 (para. 130). Hegel writes that “Welfare without the law is not a good; similarly, the law without welfare is not the good” (*fiat justitia* should not be followed by *perereat mundus*) (“*das Wohl ist nicht ein Gutes ohne das Recht. Ebenso ist das Recht nicht das Gute ohne das Wohl (fiat iustitia soll nicht perereat mundus zur Folge haben)*”).

the fundamental rights of any potential defendant fully, and chiefly among such rights is the presumption of innocence. This is not because we are inherently blind to political sensitivities, but because the mission entrusted upon us by the founding instruments of the Special Tribunal requires us to consider the long haul, not contingent political games and considerations.

The critics of the Tribunal are also unmindful of the true nature of the impact that an international criminal institution may have on the Lebanese society at large. Dispensing justice is not only intended to punish those who have blatantly broken the rules of civilised society as well as to assuage the anguish of victims. Criminal justice is also directed to re-introduce a modicum of peaceful relations into a society endemically afflicted by violence. It powerfully contributes to solving societal problems in the long run. If, after the commission of violent crimes with society-wide consequences justice does not step in to show that an impartial public institution can punish the culprits and reintroduce respect for legal imperatives, problems are left festering. Sooner or later violence will resurface. Thus, the dichotomy often described of *peace vs. justice* is fallacious. It follows, among other things, that any outbreak of violence spawned by steps undertaken by the judicial process will not be brought about by individuals keen to pursue justice, but only by individuals who oppose both justice and peace.

Let us be mindful of what justice is really about. As a great philosopher of law, Hans Kelsen, taught, justice is intended to ensure “happiness” (*Glück*), that is, the satisfaction of certain essential needs recognised as such by the social authority, including the social order’s need for peace and security. “The wish for justice is so elemental, so deeply rooted in the heart of man, because it is merely the expression of his indestructible wish for his own subjective happiness” together with the “social happiness”, that is, the satisfaction of the needs of the whole society.<sup>4</sup> It is because justice is such a fundamental and indispensable requirement of all human beings and of the whole society that our Tribunal fulfils an indispensable task. This need for justice – I strongly contend – may not be suppressed. Lebanese society urgently needs the action of an international institution that is impartial and free from the fetters of any ideology or political agenda.

It was Lebanon, a proud founding member of the UN, which requested a tribunal of an international character set apart from its own institutions, to pursue two fundamental aims: to uphold and put into practice the principle of judicial accountability for those who grossly deviated from the rules of human decency; and to entrench the notion that democracy cannot survive without justice and respect for the fundamental human rights of everybody, including the right to life and security. In its request to establish an international tribunal, Lebanon took up a profoundly innovative notion first propounded by a great Lebanese philosopher and diplomat, Charles Malik, one of the four founders and draftspersons (together with E. Roosevelt, R. Cassin and P.C. Chang) of the Universal Declaration of Human Rights: the notion that there exists a close link between domestic societies and the international community.<sup>5</sup> This

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<sup>4</sup> H. Kelsen, *Was is Gerechtigkeit?* (Wien, F. Deuticke, 1953), at p. 47; I am citing here from the reprint edited by R. Walser (Philipp Reclam jun. Stuttgart, 2000) at pp. 13-14. English translation in H. Kelsen, *Essays in Legal and Moral Philosophy*, edited and introduced by O. Weinberger (Dordrecht-Holland, Boston, USA, D. Reidel Publishing Company, 1973), at pp. 3-4.

<sup>5</sup> See UN doc. E/CN.4.SR.67, at pp. 3-14 and E/CN.4/SR.78, at pp. 9-10. For a collection of Charles Malik’s writings, see Habib C. Malik (ed), *The Challenge of Human Rights – Charles Malik and the Universal Declaration* (Oxford: Charles Malik Foundation, 2000). See also C. Malik, “The Challenge of Human Rights,” Vol. IX, No.6, *Behind the Headlines* (December 1949), at p. 11: “Hitherto human rights have fallen exclusively within the domestic law of each state, but the conventions which we desire to work out will have the effect of lifting their subject matter from being the independent and exclusive concern of the separate sovereign states to being the common concern of all the covenanting states.”

concept, encapsulated in Article 28 of the Declaration, proclaims that “[e]veryone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realised.”

Article 28 requires, among other things, a close link between the various national legal orders and the international community, in that the international community must be shaped and articulated in such a manner as to enable fundamental human rights to be enjoyed at the domestic level. The Article postulates a two-way, reciprocal relationship between domestic legal systems and international society: Human rights can be enjoyed at the national level only if the international order is structured in such a way as to make this enjoyment possible; the postulates of human rights must therefore be projected onto the international society. By the same token, whenever human rights may not be exercised or fully enjoyed at the domestic level, it is the task of the international order to take all the measures necessary for the full realisation of human rights at the national level. The establishment of the STL to a large extent incarnates the seminal idea sowed by Charles Malik in Article 28: when it proved impossible within the Lebanese society to proclaim the principle of judicial accountability in reaction to those most callous and despicable crimes committed in 2004-2005, so as to reestablish peace and tranquility in a fractured society, recourse was made to the international community. The international community was asked to set in place the international mechanisms necessary both for restoring the order and security breached by those crimes and for ensuring renewed respect for fundamental human rights.

In so writing I am not unaware of the limits of the Tribunal on the one hand, and the immensity of the task facing Lebanese society, on the other. Nevertheless, any effort, however inconspicuous and modest, is worth making. Let me remember the wise words uttered by another distinguished philosopher of law when discussing the problem of war: “Sometime it has happened that a minute grain of sand, raised by the wind, has stopped a big engine. Even if there were a billionth of a billionth chance that the tiny grain, raised by the wind, ends up in the most delicate gear [of violence] to stop its movement” it is worth trying.<sup>6</sup> This is precisely what we should endeavour to do.

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<sup>6</sup> N. Bobbio, *Il Problema della Guerra e le Vie della Pace* (Bologna, Il Mulino, 1979), at pp. 94-95.