

**The Pre-Trial Judge****Le Juge de la mise en état**

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

THE PRE-TRIAL JUDGE

Case No.: **STL-11-02/D/PTJ**

The Pre-Trial Judge: **Mr Daniel Fransen**

The Registrar: **Mr Herman von Hebel**

Date: **19 August 2011**

Original: **French**

Type of document: **Public**

**ORDER DIRECTING THE LEBANESE JUDICIAL AUTHORITY SEIZED
WITH THE CASE CONCERNING THE ATTACK PERPETRATED
AGAINST MR MARWAN HAMADEH ON 1 OCTOBER 2004
TO DEFER TO THE SPECIAL TRIBUNAL FOR LEBANON**

Office of the Prosecutor:
Mr Daniel A. Bellemare, QC

Defence Office:
Mr François Roux

The competent authorities of the Lebanese Republic



NOTING the confidential decision of 5 August 2011 of the Pre-Trial Judge of the Tribunal (the “Pre-Trial Judge”), by virtue of which the Special Tribunal for Lebanon (the “Tribunal”) has jurisdiction over the attack perpetrated on 1 October 2004 against Mr Marwan Hamadeh (the “Hamadeh Case”), in accordance with Article 1 of the Statute of the Tribunal (the “Statute”) and Rule 11, paragraphs (A) and (B) of the Rules of Procedure and Evidence (the “Rules”) (the “Decision on the Connected Case Submission”);¹

NOTING the Prosecutor’s request of 8 August 2011, filed *ex parte* and confidentially, requesting the Pre-Trial Judge, in particular, to order the Lebanese judicial authority seized with the Hamadeh Case to defer to the Tribunal and forward to it the results of the investigation together with a certified copy of the court records relating to it (the “Request”);²

NOTING Article 4, paragraph (1) of the Statute, which provides that “the Special Tribunal for Lebanon and the national courts of Lebanon shall have concurrent jurisdiction. Within its jurisdiction, the Tribunal shall have primacy over the national courts of Lebanon”;

NOTING Article 15, paragraph (2) of the Agreement between the United Nations and the Lebanese Republic on the establishment of the Tribunal (the “Agreement”), which provides that the competent authorities of the Lebanese Republic shall comply without undue delay with any order issued by the Chambers of the Tribunal;

CONSIDERING that, insofar as it has jurisdiction relating to the Hamadeh Case, pursuant to the Decision on the Connected Case Submission,³ the Tribunal has primacy over the national courts of Lebanon with regard to that case;

¹ Case No. STL-11-02/CCS/PTJ, Decision on the Prosecutor’s Connected Case Submission of 30 June 2011, 5 August 2011. That decision and the Prosecutor’s submissions on the matter remain confidential, as requested by the latter, insofar as their premature disclosure could jeopardise the investigations, lead to the destruction of evidence and adversely affect the security and well-being of the victims and witnesses.

² Case No. STL-11-02/D/PTJ, Prosecutor’s Request for Deferral and Provision of Documentation in the Cases of Hamadeh, Hawi and El-Murr, 8 August 2011.

³ Case No. STL-11-02/CCS/PTJ, Decision on the Prosecutor’s Connected Case Submission of 30 June 2011, 5 August 2011, disposition.

CONSIDERING that, in accordance with Article 4, paragraph (3), point (b) of the Statute, the national authority in question, seized with any of the other crimes committed between 1 October 2004 and 12 December 2005, shall defer to the competence of the Tribunal and refer to it the results of the investigation and a copy of the court records, if any, and transfer to the custody of the Tribunal any persons detained in connection with any such case;

CONSIDERING that, pursuant to Rule 17, paragraphs (E) and (F) of the Rules, upon request of the Prosecutor, the Pre-Trial Judge may make requests to Lebanon for deferral and require that the results of the investigation and a copy of the court records be forwarded to the Tribunal;

CONSIDERING that in his Request, after having taken note of the Decision as it relates to the confidentiality of the case and emphasised that he has an obligation henceforth to establish the truth regarding the attacks, the Prosecutor requested that the Pre-Trial Judge, pursuant to Article 4, paragraph (3) of the Statute and Rule 17, paragraph (E) of the Rules,⁴ order the competent Lebanese authorities to: (i) defer the case concerning this attack to the Tribunal, and (ii) forward to him the results of the investigations and a certified copy of the court records relating to it;⁵

CONSIDERING that, in support of his Request, the Prosecutor submitted that, in order to best conduct his investigations, he must have available to him the complete case file relating to the case in hand whereas, to date, he has in his possession only part of the file, together with some documents he received by virtue of the requests for assistance he made to the Lebanese authorities;⁶

CONSIDERING that the Pre-Trial Judge finds that the submissions put forward by the Prosecutor in his Request are well-founded and that, as a consequence, provide the grounds on which the present request for deferral is based, pursuant to the requirements of Rule 17 of the Rules, insofar as: (i) the Tribunal henceforth has jurisdiction over the Hamadeh Case by virtue of the Decision on the Connected Case Submission, and (ii) the deferral of competence from the

⁴ *Ibid.*, paras 3 and 6.

⁵ *Ibid.*, paras 4, 8 and 10.

⁶ *Ibid.*, para. 7.

Lebanese judicial authority seized with the case to the Tribunal and the provision to the latter of the results of the investigation and a copy of the court records relating to it are necessary in order to allow the Prosecutor to carry out his duties in accordance with Article 11, paragraph (1) of the Statute;

FOR THESE REASONS,

PURSUANT TO Article 15, paragraph (2) of the Agreement, Article 4, paragraph (3) of the Statute and Rule 17, paragraphs (E) and (F) of the Rules,

THE PRE-TRIAL JUDGE

DECLARES the Request admissible and well-founded;

REQUESTS the Lebanese judicial authority seized with the Hamadeh Case, to:

- i) defer that case to the competence of the Tribunal; and
- ii) upon receiving this Order, forward to the Prosecutor all the results of the investigation and a certified copy of the court records relating to that case, as soon as possible and within 14 days at the latest; and

ORDERS the Registry to serve this Order on the Lebanese Public Prosecutor at the Court of Cassation and on the Lebanese judicial authority seized with the Hamadeh Case, together with, for the purpose of the deferral procedure, a copy of the Decision on the Connected Case Submission, and recalls that the Decision is confidential and may not be disclosed.

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

Leidschendam, 19 August 2011

[signature]

Daniel Fransen
Pre-Trial Judge

