

## **JUDGMENT SUMMARY**

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**Leidschendam, 16 June 2022**

### **Summary of Sentencing Judgment in Prosecutor v. Hassan Habib Merhi and Hussein Hassan Oneissi**

*Please find below the summary of the Sentencing Judgment read out today by Presiding Judge Hrdličková.*

Pursuant to the Scheduling Order of 30 May 2022, the Appeals Chamber today delivers the Sentencing Judgment in the case of *Prosecutor v. Merhi and Oneissi* (STL-11-01).

Before pronouncing the Sentencing Judgment, the Appeals Chamber would like to express its gratitude to all those who assisted us throughout the proceedings to bring this case to a fair and expeditious conclusion.

I will now read out a summary of the Appeals Chamber's findings. The Appeals Chamber stresses that this summary does not in any way form part of the Sentencing Judgment. The sole authoritative account of the Appeals Chamber's findings is the written Sentencing Judgment, which will be made available to the Parties and Participants via Legal Workflow following this hearing.

The case originates from an explosion that occurred on Monday, 14 February 2005 in Beirut, near the St Georges Hotel, killing the former Lebanese Prime Minister Mr Rafik Hariri and 21 others, and injuring at least another 226 people. Following this attack, the United Nations Security Council, acting under Chapter VII of the UN Charter, created the Special Tribunal for Lebanon.

On 10 March 2022, the Appeals Chamber issued its Judgment in this case, unanimously reversed the acquittals of Messrs Merhi and Oneissi, and found them guilty of all the crimes alleged against them. Specifically, Messrs Merhi and Oneissi were convicted of being co-perpetrators of the crime of conspiracy to commit a terrorist act and of being accomplices to a terrorist act, intentional homicide, and attempted intentional homicide.

On 23 March 2022, the Legal Representative of Victims filed observations on sentencing. On 25 March 2022, the Prosecution filed its submissions. On 8 April 2022, Counsel for Mr Merhi and Counsel for Mr Oneissi filed submissions in response.

Sentencing has multiple purposes. The two primary aims are retribution and deterrence. A sentence imposed upon a convicted person should not be understood as a means of expressing revenge or vengeance, but must rather reflect the outrage of the international community at the crimes. A sentence must be capable of dissuading wrongdoers from repeating the offence in the future and discourage others from committing similar offences. The overarching goal of both retribution and deterrence is thus prevention of crime and, ultimately, protection of the public. A secondary purpose of sentencing is rehabilitation.

A sentence must be individualized and based solely on the facts of a particular case, including the nature and gravity of the offence of which an individual has been convicted, his or her criminal conduct, and his or her individual circumstances.

The Appeals Chamber, in determining the sentences to be imposed, has been careful to avoid double-counting, so that a fact taken into account when assessing the gravity of an offence cannot also be taken into account when assessing aggravating circumstances.

In the same vein, if a fact satisfies an element of one of the crimes for which the accused was convicted, it cannot also constitute an aggravating circumstance for that crime. It can, however, be taken into account as an aggravating circumstance for another crime that does not contain this fact as a constitutive element.

Finally, the offences for which Messrs Merhi and Oneissi were convicted contain distinct elements, and therefore no issue arises in respect of impermissible cumulative convictions.

The Appeals Chamber first turns to Mr Merhi. The terrorist act in which Mr Merhi conspired, and of which he was an accomplice, consisted in the killing of Mr Hariri on 14 February 2005. The attack involved the use of a large amount of military-grade explosives, which were detonated in a busy public place, in broad daylight. As a result, 22 people were killed and 226 others were injured, and many buildings were destroyed.

The Appeals Chamber has carefully reviewed the submissions regarding the extent of the harm caused to the victims of the attack. We note that victims of the attack suffered from physical, material, and mental harm.

The evidence also demonstrates that the attack terrorized, not only the direct victims, but more generally the people of Lebanon.

It is therefore undeniable that the offences of which Mr Merhi was found guilty are extremely grave. Terrorism is a particularly heinous crime. It constitutes a callous disregard of human life. It is a brazen disrespect for the rights of others. It is an intolerable threat to the peace, safety, and harmony of the community. It destabilizes a country and its social and governmental institutions. At its core, terrorism is employed to spread fear or to coerce governmental authorities to do or to refrain from doing that which its perpetrators wish. It is thus antithetic to democratic governance and to the rule of law. Worse still, terrorism has the potential to disturb international peace and security, with all the attendant evil consequences that ensue from this. The United Nations Security Council characterized the terrorist attack of 14 February 2005 as a threat to international peace. The Security Council, acting under Chapter VII of the UN Charter, therefore established this Tribunal with the mandate to bring to justice those responsible for the attack as a means of maintaining or restoring the peace that was threatened by that attack. Given the evil nature of terrorism, the sentence that we shall impose on the persons convicted as being responsible for the attack of 14 February 2005 must reflect the revulsion of the international community to such attacks. The sentence must also deter those persons and others, both in Lebanon and worldwide, from committing similar attacks and sound a warning that involvement in such conduct does not pay.

In respect of aggravating circumstances pertaining to Mr Merhi, Mr Hariri and 21 other persons died as a result of the terrorist act that occurred on 14 February 2005. The detonation of the explosive device also caused significant damage to surrounding buildings with people inside them. As one of the three members of the Green Network, the mission command of the attack, Mr Merhi was fully aware that the planned attack involved the killing of Mr Hariri by means of an explosive device in a busy place, the centre of Beirut, in broad daylight on 14 February 2005. Mr Merhi knew that Mr Hariri would be killed, other people would die and be injured, and buildings would be destroyed. The following aggravating circumstances have thus been established beyond reasonable doubt: the death of individuals; the partial destruction of

buildings with people inside them; and the use of an explosive device in carrying out the intentional homicides and attempted intentional homicides.

The Appeals Chamber also finds that it has been established beyond reasonable doubt that Mr Merhi acted with premeditation as an accomplice to intentional homicide and attempted intentional homicide. This also aggravated his sentences.

The Appeals Chamber notes that Mr Merhi does not have any prior criminal convictions. This circumstance has been recognized by other international tribunals to be a potential mitigating circumstance. However, balanced against other factors in the case germane to sentencing, the gravity of the offences of which Mr Merhi was convicted, and the aggravating circumstances that have been established, by far outweigh and pale into insignificance Mr Merhi's prior clean criminal record, his age, and his family circumstances at the time of the attack.

The assistance provided by Mr Merhi consisted of directing and coordinating one of the two prongs of the attack, namely, the false claim of responsibility. Those in charge of the preparation for and planning of the attack devised and implemented, months in advance of the attack, an intricate plan to identify a scapegoat to feature in the videotape of the false claim of responsibility. This videotape was then given to media outlets. The aim of the videotape was to deflect attention and ultimate responsibility from those who planned and perpetrated the attack. The Appeals Chamber finds that the false claim of responsibility was an essential part of the planned attack. If the videotape had not been ready to be disseminated on 14 February 2005, the crimes would not have been committed. The fact that Mr Merhi was an accomplice to some of the crimes is therefore not a basis to commute his sentence.

The Appeals Chamber will now turn to Mr Oneissi.

We have just found that the gravity of the crimes in question was extreme.

In respect of aggravating circumstances, Mr Oneissi was involved in the preparation and dissemination of the false claim of responsibility, and was fully aware that the planned attack involved the killing of Mr Hariri. With the knowledge of the perpetrators' intent and with the intent to help further the terrorist act and the intentional homicide of Mr Hariri, Mr Oneissi accepted the fact that other people would die and be injured. We therefore hold that the following aggravating circumstance has been established beyond reasonable doubt: the death of individuals as a consequence of the terrorist act.

We also find that it has been established beyond reasonable doubt that Mr Oneissi acted with premeditation as an accomplice to intentional homicide and attempted intentional homicide. This also aggravated his sentences.

The Appeals Chamber notes that Mr Oneissi does not have any prior criminal convictions. However, balanced against other factors in the case germane to sentencing, the gravity of the offences of which Mr Oneissi was convicted, and the aggravating circumstances that have been established, by far outweigh and pale into insignificance Mr Oneissi's prior clean criminal record.

The assistance provided by Mr Oneissi consisted of actively participating in one of the two prongs of the attack, namely, the preparation and dissemination of the false claim of responsibility. Those in charge of the attack devised and implemented, months in advance of the attack, an intricate plan to identify a scapegoat to feature in the videotape of the false claim of responsibility. Mr Oneissi was party to performing the task overseen by Mr Merhi who had been put in charge, as one of the three members of the mission command network, of the preparation and dissemination of the false claim. The aim of the false claim was to deflect attention and ultimate responsibility from those who planned and perpetrated the attack. The Appeals Chamber therefore finds that the false claim of responsibility was an essential part of the planned attack and that, had the videotape not been ready to be disseminated on 14 February 2005, the crimes would not have been committed. The fact that Mr Oneissi was an accomplice to some of the crimes is therefore not a basis to commute his sentence.

Based on the applicable law and the relevant facts, and taking into account the submissions of the Prosecution, the Legal Representative of Victims, and Counsel for Messrs Merhi and Oneissi, the Appeals Chamber hereby decides to exercise its discretion to impose a sentence for each crime of which Messrs Merhi and Oneissi were convicted in order to reflect their criminal responsibility for each of these crimes.

The Appeals Chamber therefore unanimously decides to sentence Messrs Merhi and Oneissi to life imprisonment, the heaviest sentence under the Statute and Rules, *for each of the five counts* of which they were convicted, as follows:

Count 1 – Conspiracy to commit a Terrorist Act: *life imprisonment*;

Count 6 – Being an Accomplice to the felony of Committing a Terrorist Act: *life imprisonment*;

Count 7 – Being an Accomplice to the felony of Intentional Homicide of Rafik Hariri: *life imprisonment*;

Count 8 – Being an Accomplice to the felony of Intentional Homicide of 21 persons in addition to the Intentional Homicide of Rafik Hariri: *life imprisonment*;

Count 9 – Being an Accomplice to the felony of Attempted Intentional Homicide of 226 persons in addition to the Intentional Homicide of Rafik Hariri: *life imprisonment*.

The five sentences of life imprisonment imposed on Messrs Merhi and Oneissi shall run concurrently.

This concludes the summary of the Sentencing Judgment of the Appeals Chamber in the present case. The Judgment will be uploaded to the Tribunal's website shortly in each of the Tribunal's three official languages: English, French, and Arabic.

The proceedings are now adjourned.

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