SPECIAL TRIBUNAL FOR LEBANON

NINTH ANNUAL REPORT (2017-2018)
Dear Prime Minister,

Dear Secretary-General,

I have the honour of sending you the enclosed annual report addressing the Special Tribunal for Lebanon’s progress and achievements during the period between 1 March 2017 and 28 February 2018.

I wish to express my gratitude, on behalf of our personnel, Judges and Principals, to the international community and Lebanon in particular, for their continuous support and cooperation, which has allowed us to continue to fulfil our mandate. The ongoing diplomatic, operational and financial support we continue to receive is indispensable for the success of our mission.

The Tribunal has accomplished key milestones during the reporting period. Amongst the most important of these was the closing of the Prosecutor’s case-in-chief in the Ayyash et al. case—a product of the collective efforts of the Office of the Prosecutor, Defence teams and Trial Chamber. Another landmark achievement was the presentation of evidence on behalf of the victims of the 14 February 2005 attack, which serves to remind us that ours is a tribunal dedicated to the pursuit of justice for victims of crimes within our jurisdiction and for the people of Lebanon at large.

In last year’s annual report, I recalled our commitment to effective functioning and the good administration of justice, and on delivering the concrete results expected by our key stakeholders: Lebanon and the wider international community. This year’s report explores our progress in that respect, made possible thanks to committed personnel in Beirut and Leidschendam who work tirelessly towards our collective goals. We value each of our personnel for their role in our accomplishments and progress to date.

The significance of the Tribunal’s mission is underscored by the massive scope and scale of our core work trying those accused of crimes under our jurisdiction. The nature of the complex investigations and litigation within our purview means that our criminal justice processes play out over years rather than months. In this context, we are aware of the need to ensure effective, fair and expeditious trials of the cases before us.

The success of our mission going forward will demand our firm commitment, and that of our stakeholders, to the principles on which we were established: a desire to seek justice for victims and for the Lebanese public and the international community to whom we are accountable; a commitment to the highest standards of international justice; respect for the rights of the accused; and a dedication to carrying out our functions fairly and efficiently.

The hearing of the Victims’ case in the last year demonstrated the Tribunal’s commitment to promoting the interests of victims, a central aspect of our mission. With the completion of the Prosecution case in February 2018, the Tribunal is now commencing a new phase, as the Defence teams have the opportunity to present their cases and we approach the end of the Ayyash et al. trial. We stand well prepared to tackle the challenges that remain before us: completing our judicial work, implementing strategies for the Tribunal’s downsizing and ensuring its legacy in the years ahead.

Ivana Hrdličková
President
# Table of Contents

PART I – INTRODUCTION .............................................................................................................................. 7

PART II – MAIN ACTIVITIES OF THE TRIBUNAL ............................................................................................. 8

A. Chambers and Office of the President ........................................................................................................... 8
   1. Introduction ................................................................................................................................ 8
   2. Judicial activities ............................................................................................................................ 8
   3. Staff appeals ............................................................................................................................. 19
   4. Office of the President .............................................................................................................. 19
   5. External relations ...................................................................................................................... 20
   6. The Way Forward ..................................................................................................................... 21

B. Office of the Prosecutor ........................................................................................................................... 22
   1. Introduction .............................................................................................................................. 22
   2. The trial of Ayyash et al.—presentation of the Prosecution’s evidence-in-chief ..................... 23
   3. The trial—preparation and activities in support of the presentation of the case ................... 27
   4. Submission of a confidential indictment .................................................................................. 28
   5. Ongoing investigations within the jurisdiction of the OTP ....................................................... 29
   6. Assessment of potentially related cases .................................................................................. 30
   7. Other ongoing work of the OTP ................................................................................................ 30
   8. The way forward ....................................................................................................................... 31

C. The Defence Office ....................................................................................................................................... 33
   1. Introduction ................................................................................................................................ 33
   2. Defence Office involvement in the judicial activities of the Tribunal ...................................... 33
   3. Regulatory activities by the Defence Office ............................................................................. 37
   4. List and training of Defence Counsel ........................................................................................ 38
   5. Institutional activities of the Defence Office ............................................................................ 39
   6. Review of 2017 ......................................................................................................................... 41
   7. Next steps ................................................................................................................................... 42

D. Registry ......................................................................................................................................................... 43
   1. Introduction ................................................................................................................................ 43
   2. Effective judicial support ........................................................................................................... 43
   3. Efficient administration .............................................................................................................. 45
   4. Engaging the public .................................................................................................................... 47
   5. Security and safety ....................................................................................................................... 48
   6. Securing support ......................................................................................................................... 48
   7. Tribunal premises outside the Netherlands ............................................................................. 49
   8. The way forward ....................................................................................................................... 49

PART III – CONCLUSION ................................................................................................................................... 51
This report addresses the operation and activities of the Special Tribunal for Lebanon between 1 March 2017 and 28 February 2018. During that time, the Tribunal’s focus has been trying those accused of crimes falling under its specialized jurisdiction.

At the centre of the Tribunal’s mission is the search for justice for the victims of the 14 February 2005 attack which killed 22 persons, including former Lebanese Prime Minister Rafik Hariri, and injured 226 others. Substantial progress has been made in this regard in the ongoing Prosecutor v. Ayyash, Merhi, Oneissi and Sabra case, which is presently at trial. During the reporting period, the Tribunal has also been active in relation to the indictment submitted by the Prosecutor to the Pre-Trial Judge in the STL-17-07 case, which is connected to the attack of 14 February 2005. At present, the details of the victims, crimes and suspects that are currently the subject of the proceedings before the Pre-Trial Judge are confidential and ex parte.

It has often been remarked that the Tribunal is a tribunal of firsts: the first internationalized tribunal with jurisdiction over the crime of terrorism outside of armed conflict; the first contemporary international tribunal to capitalize on the utility of in absentia proceedings as a mechanism for uncovering the truth and bringing an end to impunity; the first to provide for an independent Defence Office within its Statute to protect the equality of arms. These are just some of the Tribunal’s many distinctive features that have been on display over the reporting period. Others include the application of Lebanese criminal law—the subject of litigation before the Trial and Appeals Chambers in Ayyash et al. case and the STL-17-07 case, respectively. This has resulted in the translation, analysis and application of Lebanese law by international lawyers and Judges. Also in the Ayyash et al. case, legal representatives presented evidence on behalf of the victims independently of the Prosecution case, enabling them to share their stories, insights and concerns regarding the impact of the 14 February 2005 attack upon them. All the while, the Tribunal functioned thanks to cooperation with Lebanon, the Host State and other international partners, including those donors which constitute its Management Committee.

The Tribunal’s four Organs—Chambers, the Office of the Prosecutor, the Defence Office and the Registry—each play significant and vital roles in fulfilling the Tribunal’s mission.

During the reporting period, the Office of the Prosecutor completed the presentation of the third and final phase of its evidence and marked the formal close of its case against the accused in the Ayyash et al. case. It also oversaw ongoing investigations in relation to connected and related cases, and submitted a proposed indictment in the STL-17-07 case.

Over the past year, the Defence Office provided operational and administrative support to Defence Counsel and members of their teams in the Ayyash et al. case, and made submissions in the context of preliminary questions posed by the Pre-Trial Judge to the Appeals Chamber. The Defence Office has also continued to carry out institutional activities, both within the Tribunal and beyond.

All the while, the Registry worked to facilitate the expeditious and cost-efficient completion of the Tribunal’s mandate by servicing judicial proceedings, providing efficient administrative support, raising awareness and engaging the public, securing the support of the international community and ensuring a safety and security of staff and premises.

The contributions of each Organ are addressed in detail in the sections that follow.
A. Chambers and Office of the President

1. Introduction

Judicial activities have been conducted during the reporting period by the Pre-Trial Judge, the Trial Chamber and the Appeals Chamber, as well as the Contempt Judge.

Notably, trial proceedings in the Ayyash et al. case, concerning the 14 February 2005 attack against former Lebanese Prime Minister, Rafik Hariri, have advanced towards finalization, with the completion of the Prosecution case in February 2018 in addition to the interposition of the case by the Legal Representatives of the Victims (“LRVs”) in 2017. The review of the indictment submitted by the Prosecutor in the case of STL-17-07, which is connected to the attack of 14 February 2005, is underway before the Pre-Trial Judge.

2. Judicial activities

(a) STL-11-01 – Prosecutor v. Ayyash, Merhi Oneissi and Sabra

The trial of Mr Salim Jamil Ayyash, Mr Hassan Habib Merhi, Mr Hussein Hassan Oneissi and Mr Assad Hassan Sabra continued throughout the reporting period. In 2017, the Trial Chamber sat for 97 days, with some adjournments necessitated by procedural issues arising from the presentation of evidence. The Trial Chamber sat for a total of 386 days between the opening of the Prosecution’s case on 16 January 2014 and the end of 2017. This produced 86,559 pages of transcripts in the Tribunal’s three official languages.1

During 2017, the Trial Chamber issued 167 written decisions and orders amounting to 1,377 pages, as well as 80 oral orders. This takes the total number of written decisions and orders issued since the beginning of the trial to 31 December 2017 to 590, constituting 4,518 pages, in addition to 273 decisions and orders delivered orally in court.

Between 1 January and 31 December 2017, the Trial Chamber received evidence from 67 witnesses including the live testimony from 14 witnesses, 5 of whom testified via video-conference link from the Beirut Office. It also admitted the written statements from 57 witnesses into evidence. From the commencement of the trial to the end of 2017, the Trial Chamber received the evidence of 297 witnesses, including live testimony from 124 witnesses and the statements of 193.2

The Trial Chamber received witness testimony over the reporting period which primarily concerned telecommunications evidence relating to mobile telephone networks allegedly involved in the 14 February 2005 attack, and the attribution of telephone numbers to the Accused and to the named co-conspirator, Mr Mustafa Amine Badreddine. This included the testimony of Prosecution expert witnesses, Mr Gary Platt and Mr John Edward Philips, and a Prosecution analyst, Mr Andrew

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2 20 witnesses gave evidence in both oral and written form.
Donaldson. In a first for the Tribunal, the Trial Chamber also heard the case put forward by the LRVs on behalf of the victims participating in these proceedings.

Relevant to the current reporting period, progress in the Ayyash et al. case continued in March 2017, with the Trial Chamber receiving the testimony of expert witness Mr Platt, a Prosecution investigator, concerning the alleged telephone activity of the Accused and their co-conspirators in the lead up to the 14 February 2005 attack, and the connections between this activity and the known activity and movement of Mr Hariri. From mid-March to mid-April, Defence counsel cross-examined Mr Platt.

Throughout March, the Trial Chamber issued decisions on the admission of evidence and orders varying the protective measures for a witness and two participating victims. The Trial Chamber decided to admit ten call sequence tables ("CST") and related witness statements tendered by the Prosecution in relation to Mr Ayyash and Mr Merhi. In particular, the Trial Chamber found that these landline and mobile CSTs of numbers attributable to Mr Ayyash, Mr Merhi and his associates and relatives, and Reuters and Al-Jazeera news agencies were relevant to the delivery and receipt of the pleaded false claim of responsibility for the attack and that the witness statements of a Prosecution analyst relevant to and probative of the reliability of these tables.

The Trial Chamber issued a number of major decisions pertaining to the admission of evidence in April 2017. This included a decision admitting 12 documents and a witness’ statements concerning Hezbollah, its officials and third party contacts. The Prosecution pleads in the amended consolidated indictment that “all four Accused, as was Mustafa Badreddine, are supporters of Hezbollah” a Shiite Muslim political party and military organization in Lebanon, headed, since 1992, by its Secretary General, Mr Hassan Nasrallah. To demonstrate the nature of the relationship of the Accused and Mr Badreddine with Hezbollah, the Prosecution had tendered for admission into evidence Mr Nasrallah’s public statements and articles relating to the death of the brothers of Mr Merhi, Mr Sabra and Mr Oneissi. In the same decision the Trial Chamber also admitted further documents including the agenda book of the current Lebanese Minister for Education, Mr Marwan Hamadeh, and a phonebook of a former Lebanese general, Mr Nabih Sahyouni, and a witness’ statements. It found that these documents and written statements were relevant to the Prosecution’s allegations that specific Hezbollah officials, such as Mr Wafiq Safa, the head of the “central unit for liaison and co-ordination” in Hezbollah, and Mr Ali Ammar, a member of the Lebanese Parliament, were in contact with mobiles allegedly used by Mr Ayyash, Mr Merhi and Mr Badreddine.

In another decision in April, the Trial Chamber allowed the Prosecution to add to its exhibit list a statement of Mr Donaldson covering the same subject matter as his attribution report related to Mr Merhi, which examined evidence regarding the attribution of three mobile numbers: “Green 071”, “Purple 231” and a personal mobile number ending in 091. The Trial Chamber considered that the statement presented further analysis relevant to the attribution of Purple 231 to Mr Merhi. The Trial Chamber held that allowing the statement’s addition to the Prosecution’s exhibit list would not adversely affect the Defence’s ability to prepare for trial or cause undue delay because the statement had been disclosed to the Defence, and it had five months to prepare on the issues analysed in the statement. Subsequently, in June, the Trial Chamber dismissed a Merhi Defence application to certify this decision for interlocutory appeal finding that the issue identified by the Defence did not accurately reflect the decision nor arise from it, but merely disagreed with it.

With Judge David Re partially dissenting, the Trial Chamber decided to admit into evidence the witness statement of Witness PRH024, a relative of Mr Sabra, a Syrian national, under Rule 158 of the Tribunal’s Rules of Procedure and Evidence ("Rules"), which provides for the admission into evidence of statements of witnesses who are unavailable to testify. The majority found that the
witness could not with reasonable diligence be traced and was therefore unavailable within the meaning of Rule 158. Notwithstanding the witness’ apparent unwillingness to appear for cross-examination, the majority held that both the Prosecution and the Trial Chamber had diligently attempted to secure the witness’ attendance by issuing summons which were not successfully served on the witness, and concluded that any attempts to serve future summonses would be equally unsuccessful. The evidence suggested that, in all likelihood, the witness no longer lives in Lebanon, but may be based in Syria, and it was unlikely that further information regarding his whereabouts would be forthcoming in the near future. The witness eventually became uncontactable on his known telephone numbers. Judge Re, in his partial dissent found that even though both the Office of the Prosecutor (“OTP”) and the Lebanese Government made substantial efforts to trace the witness, he was not convinced that the “reasonable diligence” requirement of the Rule was fully satisfied, proposing an additional step to satisfy Rule 158, being the issuance of another, general summons for the witness to appear on a date to be confirmed, and a request for the Lebanese Government to take all necessary steps, including liaising with any bodies necessary, to secure the witness’ testimony. The Trial Chamber later denied the Sabra Defence’s application to certify this decision for interlocutory appeal.

In late April and early May 2017, the Trial Chamber received further evidence from Mr Philips, an expert in telecommunications, cell site analysis and Global System for Mobile Communications (“GSM”) as applied to cell site analysis. This testimony included examination-in-chief by the Prosecution and cross-examination by the Merhi Defence and Oneissi Defence.

Prosecution analyst Mr Donaldson appeared on 8 May 2017, to testify in a voir dire hearing concerning his qualifications, in order for the Trial Chamber to assess whether he could give opinion evidence on the issue of co-location as a non-expert witness. Proceedings were adjourned, however, for a brief period in May to allow the Trial Chamber to deal with this question and various other Defence applications that arose in relation to Mr Donaldson’s evidence, including applications to adjourn or exclude his evidence. These issues, together with filings originating from the LRVs and the Registry, were also discussed in a status conference conducted on 17 May, presided over by Judge Re in his capacity as Judge Rapporteur.

In May, the Trial Chamber dismissed a joint Defence motion and allowed the use of PowerPoint presentations during Mr Donaldson’s testimony as demonstrative evidence to facilitate understanding of his complex technical evidence. The Trial Chamber also issued a decision admitting into evidence documents and witness statements relating to the attribution of telephone numbers to Mr Ayyash, Mr Merhi and Mr Badreddine, and other telephone numbers in contact with those numbers.

In continuing to determine matters related to his evidence, in a decision on 2 June, the Trial Chamber found that Mr Donaldson may provide non-expert opinion evidence on whether co-location is possible on the basis of the evidence he had reviewed, given his experience in analyzing call data records (“CDR”) and cell site evidence. The Trial Chamber found that Mr Donaldson’s evidence lies somewhere between that of an expert and that of an analyst who is putting together numerous pieces of evidence to provide a summary overview, with analytical opinions, from which the trier of fact can draw conclusions. The Trial Chamber considered Mr Donaldson’s reports providing positive conclusions on co-location of mobiles attributed to the Accused on the one hand, and the reluctance of Mr Philips, the Prosecution’s expert witness in cell site analysis to express categorical opinion on co-location on the other. It concluded that Mr Donaldson may provide opinion using Mr Philips’ terminology that, based on the evidence he reviewed, mobiles “could be co-located”, the evidence “would not preclude co-location”, the evidence “may preclude co-location” and the evidence “would preclude co-location”, and on whether this is consistent with a mobile having a single user.
The Trial Chamber also addressed various other procedural matters related to Mr Donaldson’s testimony in June 2017. On 2 June, it ordered the Prosecution to immediately disclose Mr Donaldson’s draft statements and reports to Defence Counsel, having considered samples of these and other types of documents provided by the Prosecution to the Trial Chamber on an *ex parte* basis. On 21 March 2017, counsel for Mr Merhi had sought an order for the disclosure of eight categories of documents concerning Mr Donaldson, who was due to begin testifying before the Trial Chamber in May 2017. These categories included any document containing questions put to and answers provided by Mr Donaldson, email exchanges between the Prosecution and Mr Donaldson related to his evidence, notes taken by members of the OTP during discussions with Mr Donaldson relating to the content of his testimony, draft statement and draft report prepared by Mr Donaldson, any document or item of evidence annotated by Mr Donaldson, any presentation, final or draft, he may use in court, any document containing an opinion or comments from Mr Donaldson. The issue for determination before the Trial Chamber was whether the Prosecution must, under Rule 110 (A) (ii), disclose the requested documents as comprising (or on the basis that they qualify as) “witness statements” under this Rule, or whether the Prosecution is entitled to claim, under Rule 111, exemption from disclosure of the documents, or any of them, on the basis that the disputed item is an internal work product of the Prosecution. To determine this, the Trial Chamber addressed three sub-issues: the definition of witness statement under Rule 110 (A) (ii), whether the documents are internal work product or fall outside of this ambit because they are the product of the witness, and whether the Prosecution may claim exemption from disclosure of the disputed documents solely on the basis of Mr Donaldson’s status as a staff member. Having reviewed international case law, the Trial Chamber concluded that more than one definition of the term “witness statement” existed, and each document has to be dealt with on case-by-case basis, according to the type of the testimony the witness will give, the character of the witness, and the content, use, function and source of the document or material itself. The Trial Chamber applied these principles to the unusual circumstances arising from Mr Donaldson’s dual and overlapping roles as a Prosecution staff member who was part of the team investigating the case and a Prosecution witness testifying at trial on other matters.

In another decision issued on the same day, it dismissed applications by the Merhi Defence and Sabra Defence to postpone Mr Donaldson’s testimony until the Prosecution had disclosed material relating to his evidence and the Defence has had time to review it, finding that in the circumstances such a postponement would not be justified. However, on 8 June, the Trial Chamber granted an Ayyash Defence application, supported by the Merhi Defence, Oneissi Defence and Sabra Defence, to adjourn Mr Donaldson’s testimony until the Prosecution had completed the disclosure of PowerPoint slides relating to his evidence. Mr Donaldson’s testimony—concerning the methodology used in his analysis and reports attributing certain mobile telephones to the Accused and to the alleged co-conspirator and former Accused, Mr Badreddine—commenced on 20 June 2017.

Also in June, Trial Chamber issued two more decisions on the admission of evidence. It admitted ten documents from various dates in May 2016 related to Mr Badreddine’s death. These included four videos recorded from Al-Manar television showing ceremonies commemorating Mr Badreddine’s death including Hezbollah officials paying condolences to his family, a coffin draped with a Hezbollah flag and his brothers following behind, and speeches by Mr Nasrallah and Mr Badreddine’s brother; articles with photographs reporting on the commemoration ceremonies for Mr Badreddine in Beirut, Lebanon and in Tehran (Iran), the latter showing photos of a meeting between Mr Badreddine’s family and the Supreme Leader of Iran, Ayatollah Khamenei on 27 May 2016; and extracts from an article with photographs and a video containing the biography of Mr Badreddine, depicting him in military fatigues engaged in military operations. The Trial Chamber held that these documents were relevant to the material fact pleaded in the amended consolidated indictment, that Mr Badreddine was a supporter of Hezbollah. Four of the documents
are also relevant to the identification of Mr Badreddine as “Sami Issa”, an alias that he allegedly used, and the other four are relevant to attributing mobile numbers to Mr Badreddine. The Trial Chamber also allowed the Prosecution to add the documents, where necessary, to its exhibit list.

The Trial Chamber admitted 26 documents comprising financial records, land registry records, subscriber records, vehicle registration records, exit-entry records to and from Lebanon, Hajj application records, an official personal family status extract, an electricity supply record and a medical record. It considered that they assist in attributing numbers to Mr Merhi, or to third party contacts who contacted Mr Merhi or members of his family, or to members of Mr Merhi’s immediate and extended family, or assist in identifying members of Mr Merhi’s extended family. It found, in turn, that these documents also assist in the analysis of the geographical profile of relevant mobile numbers and in attributing numbers to Mr Merhi. Seven of these documents were added to the Prosecution’s exhibit list with the Trial Chamber’s leave. In the same decision the Trial Chamber admitted into evidence a witness statement on the review of relevant SMS CSTs for Purple 231 and personal mobile phone 091, attributed by the Prosecution to Mr Merhi (the former) and his family (the latter).

Throughout July 2017, the Trial Chamber continued to receive Mr Donaldson’s testimony on attribution and, in 16 written decisions and orders, disposed of a wide-range of matters. This included the admission into evidence of 58 documents and three witness statements relating to the attribution of telephone numbers to the Accused and Mr Badreddine (and the latter’s use of the alias “Sami Issa”), and granting protective measures to two Prosecution witnesses. It also dismissed five Defence applications for certification to appeal decisions concerning the disclosure of materials relating to Mr Donaldson’s testimony and the admission of evidence. The Trial Chamber also sought the Parties’ and the LRVs’ submissions and observations on the elements of the offences charged in the amended consolidated indictment, modes of liability and other relevant legal matters.

On 13 July 2017, the Pre-Trial Judge granted the status of victim participating in the proceedings to V087. The Pre-Trial Judge considered the application admissible at this stage of the proceedings since Rule 86 of the Rules does not set time limits for such requests. In addition to the analysis contained in a confidential and ex parte annex to the decision, the Pre-Trial Judge was satisfied that there are no reasons, at this stage, to conclude that granting participating victim status to V087 would prejudice the Accused’s rights, and that there are sufficient safeguards in place to ensure that the proposed participation would not cause unnecessary delays or inefficiency in the proceedings. Finally, the Pre-Trial Judge considered that V087 should participate in the proceedings through a legal representative and be part of the group of victims identified in previous decisions.

In July, the Trial Chamber also authorized the LRVs to present their case in August 2017. More specifically, in the interests of justice, and to ensure a meaningful participation in the proceedings, the Trial Chamber varied the order for the presentation of evidence under Rule 146 (B) of the Rules, and interposed the victims’ case during the Prosecution case. The Trial Chamber found that the proposed evidence was relevant to the events of 14 February 2005, the effects of the explosion on victims, and the harm suffered by the victims as its result, and that it is also representative of a larger group of participating victims. It authorized the LRVs to present viva voce (live) evidence by six victims, and a victimologist, Professor Dr Rianne Letschert, and to submit for admission into evidence witness statements and documents supporting the “proposed agreed facts”, and issued directions on the LRVs. The Trial Chamber also deferred deciding—pending receipt of a document setting out his evidence—whether Dr Fares Souaid, a surgeon, political observer and former Member of the Lebanese Parliament, may testify about the political background and chain of events that preceded and followed Mr Hariri’s assassination, and as a physician, about the humanitarian and psychological problems and pain of victims. Subsequently, the LRVs withdrew their application to present his evidence.
Following the completion of Mr Donaldson’s evidence-in-chief and cross-examination by counsel for Mr Oneissi, the Trial Chamber began hearing the victims’ case on 28 August 2017. It heard the live testimony of six participating victims, some testifying via video-conference link from the Special Tribunal’s Beirut Office, and received the witness statements of a further 24 into evidence. The Trial Chamber heard the victims recount their recollection of the events of 14 February 2005, the physical, emotional and material harm that they and their families suffered as a result of the attack, and their memories of those who died or were injured on that day. The victims also expressed their faith in the Tribunal and in its ability to render justice and closure with respect to those responsible for the attack.

The Trial Chamber allowed 14 public participating victims to be present in the courtroom in public hearings during the presentation of the evidence most relevant to each of them. It also personally addressed some of them sitting in the courtroom. The Trial Chamber authorised the Registrar to provide live-streaming of the presentation of this evidence through a one-way video-conference link to a secure location in Beirut, to allow those public participating victims who for different reasons did not travel to Leidschendam to observe public hearing sessions without a thirty-minute delay, as though they were present in the courtroom’s public gallery.

The Trial Chamber permitted Professor Dr Rianne Letschert to provide opinion evidence as a non-expert witness on the victimological profile of the participating victims as the victims of the 14 February 2005 explosion, their needs and the ways in which access to justice can fulfil those needs. It also decided to admit her report “We Want Our Rights Back—Expert Report on the Views and Concerns of the Victims Participating at the Special Tribunal for Lebanon”. Professor Dr Letschert testified on 8 September 2017. Her evidence and report outlined the needs of victims who participate in judicial proceedings and her views on the Tribunal’s victim’s participation model, particularly in light of her interviews with the majority of the victims participating before the Trial Chamber. She also noted that the participating victims felt empowered by being able to sit in the courtroom and actively take part in the trial related to the loss of their loved ones. She testified that the victims’ participation before the Special Tribunal has been “a very meaningful participation”.

In August 2017, the Trial Chamber also decided to admit into evidence seven documents which consisted of bank records, a Lebanese entry/exit record, a mobile telephone subscriber record, a CST explanatory document and a Lebanese vehicle registration document. The Trial Chamber held that these documents assist in attributing numbers to third parties who contacted Mr Ayyash or Mr Merhi’s relatives who contacted Mr Merhi, and may identify Mr Ayyash’s address and Mr Ayyash’s and his relative’s travel at times relevant to the Prosecution case. In turn, this assists in the geographic profile of the relevant mobiles and the attribution of numbers to Mr Ayyash.

On 7 September 2017, in the exercise of its discretion, the Trial Chamber authorised the Head of Defence Office (“HDO”) to file observations on the Lebanese criminal law, specifically on “the elements of the offences charged in the amended consolidated indictment, on the modes of liability applicable under the relevant Lebanese laws, and on any other relevant legal matter”. The HDO made no substantive legal submissions and, in subsequent decisions, on 21 and 22 September, the Trial Chamber dismissed his applications to stay any ruling on the applicable law and an application for certification to appeal the issue of his right of audience.

In September 2017, the Trial Chamber also issued decisions that dismissed a Merhi Defence motion for the disclosure of material relating to Mr Donaldson’s testimony and a Sabra Defence application for certification for interlocutory appeal of a decision to admit a statement of Mr Sabra’s relative, Witness PRH024, who was untraceable and hence unavailable within the meaning of Rule 158 of the Rules. It also ordered the Prosecution to provide an update on its efforts to secure the attendance of this witness for cross-examination.
From 19 September, Mr Donaldson was cross-examined by the Sabra Defence, particularly concerning the methodology he adopted in the preparation of his attribution reports and the underlying evidence used to attribute a phone number in the purple group, “Purple 018”, to Mr Sabra.

On 25 September, the Trial Chamber issued the first of six decisions concerning Sabra Defence applications to admit documents “from the bar table” relating to Mr Ahmed Abu Adass, a young Palestinian man alleged to appear on a videotape falsely claiming to be the suicide bomber on behalf of a fictional fundamentalist group called “Victory and Jihad in Greater Syria”, as pleaded in the amended consolidated indictment. This decision considered over 128 documents tendered by the Sabra Defence—70 witness statements, 54 other documents and four items already in evidence—and held that the witness statements cannot be admitted from the bar table over the Prosecution’s objections, but that 49 other documents were admissible. In November 2017, the Trial Chamber dismissed a Sabra Defence application for certification to appeal this decision. Also in November, the Trial Chamber decided to receive the Sabra Defence’s summary of evidence—a supporting document summarizing the facts underlying its six bar table motions, to assist the Trial Chamber in determining the relevance and probative value of the evidence proposed for admission—as a supplement to its six evidentiary motions.

On 29 September 2017, the Merhi Defence began its cross-examination of Mr Donaldson, focusing on his attribution of Green 071 and Purple 231 to Mr Merhi. This continued in October 2017, as the Merhi Defence advanced a case suggesting that Mr Merhi was not the user of Green 071 as it co-located with another mobile number—a number subsequently referred to as the “Grey mobile”.

Counsel for Mr Ayyash cross-examined Mr Donaldson on 3, 5-6 October and, after an adjournment, on 16-18 October, and the Oneissi Defence reopened its cross-examination on 18 October regarding 12 requests for assistance to Lebanon disclosed by the Prosecution to the Defence on the Trial Chamber’s order.

On 2 October 2017, the Trial Chamber denied the Merhi Defence’s application to reconsider its decision of 25 January 2017 regarding Mr Gary Platt’s area of expertise, and to exclude specific passages of Mr Platt’s testimony in which he offers an opinion regarding the nature and role of the “Purple phones” and how they worked.

In the same month, in six separate decisions, the Trial Chamber: required the Registrar to provide submissions on the technical and practical aspects of introducing real-time French transcription services of court proceedings; decided to admit six photographs seized during a search of Mr Abu Adass’ home; denied a Prosecution request for protective measures for a witness; and dismissed separate applications by the Prosecution, Merhi Defence, Sabra Defence and Oneissi Defence for certification to appeal an earlier decision admitting the statements of an unavailable witness (Witness PRH103).

On 20 October 2017, the Trial Chamber decided to admit the audio recordings and transcripts and associated documents of the Prosecution interview of Brigadier General Wissam Al-Hassan, a former Lebanese Internal Security Forces (“ISF”) official, who was Mr Hariri’s head of the security at the time of the 14 February 2005 attack. The Trial Chamber considered that Mr Al-Hassan had become the head of the ISF Information Branch and was assigned to lead the investigation into Mr Hariri’s death and noted that he also died in a car bombing in Beirut on 19 October 2012. It considered further that his interview with the Prosecution includes information about the background to the investigation into the attack against Mr Hariri, and provides portions of hearsay evidence that the “Green network” was a Hezbollah network, and information about three networks of mobile telephones that he and his colleagues, in particular the late Captain Wissam
Eid, the former head of the Technical Division of the ISF’s Information Branch, discovered and investigated. It also noted that, in his interview, he discussed four meetings he had with Mr Nasrallah in 2005 and the information he received from Mr Nasrallah linking one of the networks to Hezbollah.

In a subsequent decision the Trial Chamber ordered the Prosecution to file a public redacted version of its summary statement of evidence in relation to paragraph 49 of the amended consolidated indictment which alleges all the Accused—and the late Mr Badreddine—to be supporters of Hezbollah.

In an oral decision issued on 8 November 2017, the Trial Chamber permitted the Prosecution to recall Mr Philips, the Prosecution’s expert in cell site analysis, to present additional evidence in relation to the possible co-location of two mobile telephones attributed to Mr Merhi, Green 071 and Purple 231, with a third one, the Grey mobile, to rebut an issue raised during Mr Donaldson’s cross-examination by the Merhi Defence. On the following day the Trial Chamber denied a Merhi Defence application for certification to appeal this decision. Mr Philips testified on 9 November and concluded, on the basis of his report and material provided to him by the Prosecution, that the three mobiles could have been used by the same person. Mr Philips was cross-examined by the Merhi Defence on the same day.

In November, the Trial Chamber issued 18 public written decisions and orders. In five decisions issued on 30 November 2017, the Trial Chamber determined the remaining five Sabra Defence motions seeking the admission of documents from the bar table related to Mr Abu Adass. The Trial Chamber denied the admission of 98 statements, over the Prosecution’s objections, and admitted or decided to admit 23 other documents. In December, the Trial Chamber dismissed a Sabra Defence application for certification to appeal these decisions. On 30 November, the Trial Chamber denied the Ayyash Defence’s application to admit 14 witness statements into evidence.

On 6 December, the Trial Chamber issued a decision dismissing a Prosecution application requesting reconsideration of an earlier decision admitting an exhibit into evidence and on the following day admitted five CSTs tendered by the Ayyash Defence and the Merhi Defence during the cross-examination of Mr Donaldson. It also rejected a Prosecution request to redact, in part, a prior decision admitting 49 documents tendered by the Sabra Defence relating to Mr Abu Adass.

On 8 December, the Trial Chamber admitted the statement of an unavailable witness, Witness PRH028, who had assisted in attributing mobile telephone numbers to Mr Ayyash and Mr Merhi.

On 12 December, the Trial Chamber admitted an expert report prepared by Mr Philips concluding that Green 071, Purple 231 and the Grey mobile could have had a single user, and decided to receive a combined CST presenting the relevant CDR of the three mobiles.

The Trial Chamber also formally noted the agreement between the Prosecution, Ayyash Defence, Sabra Defence and the LRVs as to 172 uncontested facts concerning the deaths and injuries resulting from the 14 February 2005 attack and held that it would consider them as proved at trial in the cases against Mr Ayyash and Mr Sabra. In another decision on 12 December, the Trial Chamber decided to admit 175 documents submitted by the LRVs supporting “proposed agreed facts”, and another three unrelated documents.

On 13 December 2017, the Trial Chamber admitted nine statements of Witness PRH056 who it found was unavailable to testify orally within the meaning of Rule 158 of the Rules. The Trial Chamber had unsuccessfully explored and exhausted all existing possibilities to secure the witness’ live testimony. It found that an established medical condition affected the witness’ capability to
testify, and the circumstances satisfied an “objective unavailability” test applied in the case law of the International Criminal Tribunal for the former Yugoslavia, which provided useful guidance in interpreting a person’s unavailability under Rule 158. Five of these statements were tendered by the Prosecution, and four by the Sabra Defence. The Trial Chamber considered the witness’ evidence relevant to, and probative of, Mr Abu Adass’ disappearance. Subsequently, on February 2018, the Trial Chamber denied applications from the Sabra Defence and the Oneissi Defence to certify its decision for interlocutory appeal, and following further submissions from the Parties, admitted further two statements of the same witness that had been tendered by the Sabra Defence.

On 13 and 14 December 2017, the Trial Chamber sat to resolve any outstanding procedural matters and to formally receive into evidence Prosecution and Defence exhibits.

Trial proceedings continued on 11 January 2018, with the Sabra Defence’s cross-examination of Prosecution witness, Mr Quentin Mugg, about his investigative work with the OTP during 2010, particularly his investigations concerning Mr Abu Adass. He was briefly re-examined by the Prosecution on the same day, after which the Sabra Defence sought to admit a witness statement it had put to him into evidence.

The Trial Chamber also sat for two days on 25 and 26 January 2018 for procedural matters and to receive evidence. On 25 January, in an oral decision, the Trial Chamber partially granted, on an exceptional basis, the Merhi Defence’s request to interview a Prosecution investigator who had participated in interviewing a witness. The Trial Chamber emphasized that its decision was not to be seen as creating precedent as it was decided entirely in the circumstances, and that it applied the interests of justice test, interpreted in a very broad fashion.

In a written decision on 26 January 2018, the Trial Chamber denied the Oneissi Defence’s application to admit two CSTs marked for identification into evidence. It found that the Oneissi Defence, as the tendering party, bore the full evidentiary onus of establishing the prima facie reliability of both tables and that it had failed to do so. It further stated that, despite its previous orders, the Oneissi Defence persisted in refusing to provide a statement in any form from the creator of the tables to establish their reliability and had therefore failed to demonstrate their prima facie reliability and probative value. It further found that the only reason given for the lack of compliance by the Oneissi Defence was to avoid a potential violation of Article 7 of the Code of Professional Conduct for Defence Counsel and Legal Representative of Victims appearing before the Special Tribunal for Lebanon. However, the Trial Chamber held that Article 7 (C) (iii) of the Code was directed towards potential conflicts arising from counsel’s previous employment or involvement in matters of substance connected with the case, not to impose a blanket prohibition on members of a Defence team from providing evidence at trial, except under the circumstances explicitly mentioned in that Article. The Trial Chamber held that the Oneissi Defence application for variation of its order was procedurally improper, as the Oneissi Defence had already breached that order.

On 29 January 2018, the Trial Chamber granted the Prosecution’s application to amend its exhibit list to add a supplementary CST of a mobile number attributed by the Prosecution to Mr Rustom Ghazaleh, a senior Syrian military intelligence officer stationed in Beirut in 2004 and 2005. It also decided to admit into evidence the table and an accompanying statement by a Prosecution analyst. The Trial Chamber was satisfied that the supplementary CST was relevant to demonstrating a contrast between the patterns of activities of the mobile attributed Mr Ghazaleh before and after a particular political event in September 2004 in Beirut, i.e. the “first Bristol Group meeting” held on 22 September 2004 at the Bristol Hotel in Beirut where Lebanese political blocs and interests jointly opposed to the Syrian interference in Lebanese affairs met. It also found the table to be probative of the chronology of events preceding Mr Hariri’s assassination, the interactions between Syrian
and Hezbollah officials, and the political background surrounding the material facts pleaded in the amended consolidated indictment. It found the witness statement of the analyst to be relevant to and probative of the reliability of the supplementary CST.

On 29 January 2018, the Trial Chamber issued an order responding to an application by the Merhi Defence to adjourn the trial proceedings for a period of one to four months to complete its investigations concerning a witness. The Trial Chamber stated that these investigations should have already been underway, and that the request would have the effect of postponing the completion of the Prosecution case. While the Trial Chamber noted that its preliminary view was that the period sought was excessive, it concluded that, in order to decide whether grant the adjournment or not, it required further information from the Merhi Defence to assess any prejudice that would occur if the adjournment was not granted and to assess whether the Merhi Defence had exercised due diligence. On 1 February 2018, the Merhi Defence notified the Trial Chamber that it required no further adjournment, and that the Prosecution may close its case.

The Trial Chamber immediately scheduled a hearing for 7 February 2018, at which it formally received documents and witness statements into evidence, revisited exhibits marked for identification, and presided over the formal close of the Prosecution case. At the same hearing, Co-counsel for Mr Ayyash submitted that “the Prosecution had not met its burden” without advancing further arguments in support of a judgement of acquittal under Rule 167 of the Rules. On 13 February 2018, the Sabra Defence informed the Trial Chamber that it would not move the Trial Chamber to enter a judgement of acquittal in respect of Mr Sabra, under Rule 167.

On 20 and 21 February 2018, the Trial Chamber heard the Oneissi Defence’s oral submissions seeking a judgement of acquittal on all counts pleaded against Mr Oneissi in the amended consolidated indictment, and the Prosecution’s response on the Oneissi Defence and Ayyash Defence submissions.

On 20-22 February 2018, the Trial Chamber heard submissions from the Oneissi Defence and the Prosecution, under Rule 167 of the Rules, on the issue of whether there was evidence capable of supporting a conviction against Mr Oneissi. As at the time of finalization of this report in late February 2018, the Trial Chamber’s determination under Rule 167 is anticipated imminently, at which point the Trial Chamber is expected to issue scheduling orders under Rule 128 ordering the Defence of any Accused who elected to present a case, to file witness and exhibit lists, witness summaries and points of contention. More information about the Rule 167 proceedings is available via the Tribunal’s website.

During 2017, the Trial Chamber admitted into evidence or marked for identification a total of 773 exhibits, totalling 29,144 pages. From the commencement of the trial in the Ayyash et al. case to the end of 2017, the Trial Chamber had admitted or marked for identification 3,075 exhibits, totalling 137,558 pages.

Throughout the reporting period, Judge Re, in his capacity as Presiding Judge of the Trial Chamber, at times assisted by the other Trial Chamber Judges, presided over regular case management meetings with the Parties and LRVs.

(b) STL-17-07 – Connected Case

On 11 September 2017, the Pre-Trial Judge filed a public redacted version of his 11 August 2017 Order on Preliminary Questions to the Appeals Chamber. In that Order, the Pre-Trial Judge had submitted 15 questions to the Appeals Chamber pursuant to Rule 68 (G), after having received a
request to confirm a proposed indictment from the Prosecutor on 21 July 2017. The Pre-Trial Judge considered that several questions arose on the interpretation of the applicable law, in particular, in relation to the crime of criminal association under Article 2 of the Tribunal’s Statute and on the prima facie test applicable to the confirmation of the indictment.

In a decision issued on 23 August 2017, the Appeals Chamber granted a Prosecution request that the proceedings temporarily remain confidential to minimize the risks associated with public proceedings. The following day, the Appeals Chamber ordered the Prosecutor and Head of Defence Office to file written submissions in relation to the preliminary questions. On 5 September, the Appeals Chamber dismissed an application by the Head of Defence Office to immediately make public the Rule 176 bis proceedings, including the Prosecution’s earlier request for confidentiality, or, in the alternative, to grant him leave to inform Defence Counsel in the Ayyash et al. case. Pursuant to the Appeals Chamber’s decision of 23 August, the Rule 176 bis proceedings were nonetheless made public on 8 September. On 13 September 2017, the Appeals Chamber scheduled a public oral hearing concerning the preliminary questions, which took place on 11 October 2017.

On 18 October 2017, the Appeals Chamber issued its decision. It defined the crime of criminal association for the first time by an international criminal tribunal. In doing so, the Appeals Chamber found that criminal association as it exists under Lebanese law consists of an oral or written agreement between two or more persons and the particular purpose or subject of which is the perpetration of one or more felonies mentioned in Article 335 of the Lebanese Criminal Code. The Appeals Chamber further clarified that to establish a criminal association, it is necessary to demonstrate that an accused had the intention to establish or join the criminal agreement, but that they are not required to know precisely the felonies intended to be committed. The Appeals Chamber also expanded upon particular elements of the crime of criminal association, articulated the distinction between the crimes of criminal association and conspiracy under Lebanese law, and clarified the scope of the materials that the Pre-Trial Judge is permitted to review in determining whether or not to confirm a proposed indictment submitted by the Prosecutor.

(c) **Contempt**

In accordance with Rule 60 bis of the Tribunal’s Rules, the Tribunal may hold in contempt those who knowingly and wilfully interfere with its administration of justice.

(i) **In the case against Akhbar Beirut S.A.L. and Mr Ibrahim Mohamed Ali Al Amin (STL-14-06)**

During the reporting period, the Contempt Judge, with the assistance of Lebanese authorities, has continued to monitor the efforts to execute the sentences imposed at the Sentencing Hearing held on 29 August 2016 against Akhbar Beirut, a legal person, and Mr Ibrahim Mohamed Ali Al Amin.

Akhbar Beirut and Mr Al Amin were convicted and fined for their role in publishing information relating to 32 purported confidential witnesses in the Ayyash et al. case.

(d) **El Sayed**

Pursuant to the Pre-Trial Judge’s decision of 8 October 2012, the Prosecution submitted to the Pre-Trial Judge, in April and October 2017, updated risk assessments for a number of individuals whose statements Mr Jamil El Sayed had requested be disclosed.
3. **Staff appeals**

The Judges adjudicated a number of staff appeals concerning various administrative decisions of the Registrar during the reporting period. Staff appeal judgements are made available to the Tribunal’s staff members on the Tribunal’s intranet, with appropriate redactions to protect the privacy of affected individuals.

4. **Office of the President**

The President worked to promote the effective functioning of the Tribunal and to strengthen the good administration of justice, redoubling efforts to promote regulatory activities focussed on the three central tenets: transparency, efficiency and accountability.

(a) **Transparency**

The Management Committee conducted its annual visit to the seat of the Tribunal in Leidschendam on 2 May 2017. The visit provided the Management Committee with an opportunity to meet with the President and other Principals, the Judges and staff, and to participate in discussions regarding the Tribunal’s internal management, progress, success and challenges.

The Trial Chamber has made every effort to ensure, insofar as it is possible while allowing for the contingencies of complex litigation, that the *Ayyash et al.* proceedings have followed the timeline created in the previous reporting period. Thanks to this commitment, key milestones forecast for the reporting period were realized. The current timeline, which may require adjustment in light of contingencies that arise through litigation, estimates issuance of a trial judgement before the end of 2018. Within other Chambers, timeline indicators have been used to promote discussion concerning effective judicial administration.

The Office of the President continued to lead efforts to develop universally applicable performance indicators together with other international courts and tribunals, namely, the International Criminal Court, Mechanism for International Criminal Tribunals, Kosovo Specialist Chambers and the International Criminal Tribunal for the former Yugoslavia.

In line with Chambers’ commitment to transparency, the Code of Conduct for Judges, adopted in late 2016, was made publicly available via the Tribunal’s website.

(b) **Efficiency**

The President, Vice-President and other Judges have participated in ongoing efforts to review the efficacy of proceedings at the Tribunal. At a Plenary meeting on 3 April 2017, and again in the context of a Rules Committee meeting in October 2017, the Tribunal’s Judges have exchanged views on various proposals to improve the efficiency and effectiveness of the Tribunal’s Rules.

Increasing focus has been paid to ensuring appropriate staffing numbers in Chambers to fairly, efficiently and expeditiously conduct the Chambers’ judicial workload and ancillary activities. Accordingly, additional experienced legal staff were recruited to provide necessary support during the final phases of the trial in the *Ayyash et al.* case.

The President also completed the roll-out and implementation of a series of policies intended to simplify the administrative work associated with the implementation of Judges’ rights and
obligations, in order to promote consistent and transparent practices. References to these policies, which were welcomed by the United Nations (“UN”) Office of Legal Affairs and the Management Committee of the Special Tribunal for Lebanon, have since been included in the updated conditions of service setting out the Judges’ rights and obligations.

The President has supported cooperation between all Organs to promote good working relations between internal stakeholders. This has included supporting collaborative efforts to commence the strategic planning necessary in order to ready the Tribunal to transition towards its closure upon the conclusion of its mission.

(c) Accountability

Commitment to the faithful discharge of official duties and to the development of a culture of excellence is central to maintaining the trust of court users, the wider public and the international community. For Chambers, achieving these requires the visible commitment to the norms embodied in professional and ethical standards applicable to Judges.

Throughout the reporting period, the Judges have respected the direct correlation between their accountability and the independence of judiciary, working towards promoting the highest ethical standards in their work. In July 2017, in coordination with UN Headquarters in New York, the Office of the President facilitated the delivery the inaugural specialized ethics and professional practice seminar attended by all of the Tribunal’s Judges and Principals. In December 2017, in cooperation with the Registry, Judges received personalized training on developments in the Tribunal’s information security processes.

5. External relations

In light of the Tribunal’s strong relationships with external stakeholders, the President conducted numerous meetings with members of the diplomatic, legal, political and academic communities in The Hague, Beirut, New York and elsewhere.

In June 2017, the President met with UN Secretary-General in New York. The two leaders affirmed their shared objectives of efficiency, transparency and accountability. During the reporting period, the President also briefed the Management Committee in meetings held in New York and Leidschendam. In October 2017, the President requested an extension of the Tribunal’s mandate on behalf of the Tribunal’s four Principals. On 22 December 2017, following consultation with Lebanon and the Security Council, Secretary-General Guterres extended the Tribunal’s mandate for a period of three years from 1 March 2018, or upon the completion of the cases before the Tribunal, if sooner.

The President also travelled to New York in January 2018, to meet with the new Permanent Representative of the Mission of Lebanon to the United Nations, representatives of the Management Committee and interested States, to update them on the Tribunal’s progress.

In various events in The Hague, Beirut and elsewhere, the President, Vice-President and other Judges promoted the Tribunal’s relationships with civil society by delivering lectures on various topics related to the Tribunal’s work. In line with the Chambers’ vision to continue outreach and engagement with the Lebanese legal community and promote Lebanese participation in international criminal law during the reporting period, this included lectures delivered as part of the Inter-University Programme on International Criminal Law and Procedure.
In October 2017, together with representatives of various institutions the President participated in the inaugural conference on increasing the efficiency of international criminal justice hosted by the French National School of the Judiciary (École Nationale de la Magistrature). Other attendees included the Presidents of the International Criminal Court, International Criminal Tribunal for the former Yugoslavia and Kosovo Specialist Chambers, as well as representatives of the UN Office of Legal Affairs.

During the reporting period, Chambers staff also worked to prepare the 2016 Casebook, a fully-indexed compilation of the most important decisions rendered by Chambers in 2016. Produced in all three of the Tribunal’s official languages, the 2016 Casebook is publicly available through the Tribunal’s website and in print. Casebooks from previous years can also be obtained online.

6. The Way Forward

For the coming reporting period, the Chambers will continue to promote the efficiency and efficacy of court proceedings and to optimize the fair and effective use of the Tribunal’s resources. A commitment to transparency, efficiency and accountability will remain at the forefront of the judicial administration.

Three key foci will be at the centre of Chambers’ activities over the course of the next year:

(i) Completion of the Tribunal’s judicial work as the Ayyash et al. trial moves towards completion and the issuance of a judgement and the STL-17-07 proceedings continue before the Pre-Trial Judge;
(ii) An increased focus on planning for the effective transition towards the completion of the Tribunal’s mission; and
(iii) Discussing, considering and making decisions about Chambers’ contributions to the Tribunal’s intended legacy, to best ensure that the Tribunal continues to have a lasting impact after the completion of its mandate.
1. Introduction

The period from March 2017 to February 2018 has seen considerable achievements by the Office of the Prosecutor (“OTP”). The Prosecution completed presenting its evidence-in-chief in the *Ayyash et al.* case against the individuals accused of criminal responsibility for the attack against former Lebanese Prime Minister Rafik Hariri. In a further significant development, the Prosecutor submitted a confidential indictment to the Pre-Trial Judge for confirmation on 21 July 2017. Ongoing investigations and extensive other work behind the scenes in relation to all cases within the OTP’s jurisdiction contributed to the completion of the Prosecution case in chief and the submission of the indictment. The Prosecutor has put in place a transition plan to ensure the OTP can meet the needs as it moves to the next stages of the ongoing trial, and can move forward quickly if the indictment is confirmed.

This report highlights these achievements:

First, the report describes the work accomplished in completing the presentation of the Prosecution’s evidence-in-chief in the *Ayyash et al.* trial. The focus during the reporting period was on presenting the third and final part of the Prosecution case, which concerns the identity of the Accused and their respective roles in preparing and perpetrating the attack, and preparing the false claim of responsibility. This part of the case, involving expert evidence in telecommunications and attribution, has been technical and complex. As anticipated, it has been time consuming, not only in its presentation but in the time taken for challenges to admissibility, the qualifications of expert witnesses and analysts, and the scope of their testimony; for cross-examination; and for Judges’ questions. This is the first time in international proceedings that technical evidence of this nature has been presented.

With the presentation of this expert technical and analytical testimony, the Prosecution has presented evidence of a pattern of criminal conduct and the identity of the perpetrators. In doing so, it has pulled together many of the strands of evidence that have been presented in court during the trial. Taken as a whole, the Prosecution evidence provides a comprehensive picture of what happened on 14 February 2005, and the respective roles of the four Accused and the former accused, the co-conspirator Mr Mustafa Amine Badreddine. This picture has emerged by showing how all the evidence fits together—its links and inter-relationships—and how the different strands corroborate each other.

Second, the report notes the Prosecutor’s submission of a confidential indictment (with a large volume of supporting material) to the Pre-Trial Judge for confirmation, on 21 July 2017. The report indicates the considerable investigative and analytical work achieved which contributed to the submission of this confidential indictment. It also describes briefly the Prosecution’s detailed written and oral submissions in interlocutory proceedings before the Appeals Chamber on the preliminary legal questions raised by the Pre-Trial Judge in relation to his review of the indictment.

Third, the report touches on other ongoing work within the jurisdiction of the OTP, much of it behind the scenes. This includes the extensive work done to ensure the legal arguments and

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1 This section has been prepared by the Prosecutor.
evidence in this complex case are presented as effectively and expeditiously as possible. It also includes the investigations carried out in support of trial, which have enabled the Prosecution to address matters arising during trial in a timely way; the investigative and analytical work that contributed to the submission of the confidential indictment; and the ongoing full-fledged investigations into the three terrorist attacks. Other important out of court work has included meeting disclosure obligations, conducting missions, ensuring witness participation, and seeking and securing State cooperation.

Fourth, the report indicates that the Prosecutor has engaged in considerable planning for the future. His aim is to ensure that the OTP can meet the needs arising from the next stages of the proceedings in the Ayyash et al. case and, at the same time, is able to move forward quickly with pre-trial activities should the confidential indictment be confirmed. He has also sought to ensure sufficient capacity to carry out the other critical ongoing work within the jurisdiction of the OTP highlighted above. To this end, he has put in place a transition plan, involving a slight restructuring and realignment of resources. The plan also involves the creation of a separate multidisciplinary team, to ensure that there is a dedicated capacity to focus on the review and assessment of the other terrorist attacks that occurred in Lebanon which may potentially fall within the jurisdiction of the Tribunal.

Lastly, the report sets out the anticipated way forward for the coming year, the objectives of the OTP, and the intention to meet such objectives within a budget that is in effect a reduction for the fifth year in a row.

2. The trial of Ayyash et al.—presentation of the Prosecution’s evidence-in-chief

During the reporting period, the Prosecution completed the presentation of its evidence-in-chief in this highly complex terrorist case. The focus has been on presenting evidence concerning the identity of the Accused and their respective roles in preparing and perpetrating the attack and preparing the false claim of responsibility.

To place the evidence called during the reporting period within the wider context of the Prosecution case, it may assist to recall that the Prosecution identified for the Court three main categories of evidence to be called at trial:

- first, the forensic evidence on the cause of the explosion of 14 February 2005 including evidence related to the death and injury of the victims of this attack, and the collection and verification of telephone records evidence;

- second, the evidence of the preparatory acts undertaken by the four Accused and their co-conspirators in 2004 and 2005 to prepare for and carry out the assassination of Mr Hariri, including the political and historical context for the attack;

- third, the evidence concerning the identity of the Accused and their respective roles in preparing and perpetrating the attack and preparing the false claim of responsibility.
The presentation of the final stages of the Prosecution case in 2017 and early this year has included technical expert evidence in telecommunications and attribution which shows a pattern of criminal conduct and identifies the perpetrators. It has involved a pulling together of the considerable evidence that the Prosecution has presented on the activities of covert teams of conspirators using covert / unattributed telephone networks to observe Mr Hariri; conduct surveillance of and monitor Mr Hariri and establish his patterns; prepare for the attack; and conduct and carry out the attack on the day, 14 February 2005.

Three main strands of expert testimony were presented to the Court during this period:

(i) A qualified expert in the surveillance of criminal networks and covert cellular networks presented a detailed chronology of phone activity by the four Accused and their co-conspirators from the beginning of September 2004 through to the assassination on 14 February 2005; and linked it to the known activity and movements of Mr Hariri and other persons in the case. In doing so, it was possible to demonstrate the emergence of clear networks of interlinked phones—in some cases identifiable as what can be termed “mission phones”, that is, used exclusively for one purpose such as surveillance, strategic command or finally for the attack. This expert’s evidence in 2017 (the third and final tranche of his evidence) extended for 36 sitting days from January to April (nine of which were Defence cross-examination) and attracted extensive and detailed questioning from the Judges.

(ii) An expert witness in telecommunications and cell site analysis also presented the third and final part of his testimony. He took the Trial Chamber through the complexities of the technical analysis of mobile telephone networks. His testimony focussed on an analysis of the use of “personal phones” in conjunction with mission phones to demonstrate that those personal phones were in the same hands as those carrying mission phones. This expert testified for ten days in April and May (including five days of Defence cross-examination on this final part of his evidence, as well as on the evidence he had given in 2015 for seven days, and in August-September 2016 for six days).

(iii) A qualified analyst testified about the attribution of the phones to the individual Accused, showing that the preparation for and perpetration of the attack and the preparation of the false claim of responsibility, were carried out by the accused persons and the former accused, the co-conspirator Mr Badreddine. This witness explained the attribution process—in essence the identification of the holders of the telephones—and drew together the considerable attribution evidence. He testified for 37 days between May and October (including 17 days of Defence cross-examination).

As the Prosecution was coming to the completion of its projected evidence, an additional issue came to light in cross-examination by one of the Defence teams. This led to the Prosecution calling further expert evidence and conducting some additional investigations. As a result, further evidence has come to light and been submitted, which strengthens the Prosecution’s case.

In addition to the three experts who have been the main focus of the testimony, the evidence of 31 further witnesses was presented over the 91 days on which the Court sat to hear Prosecution evidence between January and December. One of these witnesses was called for cross-examination only. Fifteen of the 31 witnesses sought and received protective measures—in each case requiring written application on their behalf by the Prosecution. The Prosecution also presented extensive
written evidence found admissible by the Trial Chamber, which is relevant to the attribution of the network phones and personal phones to the four Accused and to the identified co-conspirator.

With the presentation of this expert technical and analytical testimony, the Prosecution has pulled together many of the strands of evidence that have been presented during the trial. Its significance cannot be overstated. The use of technical data and telecommunications evidence to not only track, but also identify the perpetrators and their role is unique in international criminal proceedings. The use of call data records and attribution of telephones in domestic proceedings would often be more straightforward. The present case, in a manner which is unprecedented, has called upon the best available experts to reconstruct what occurred. The work done has been painstaking, rigorous—and ground-breaking. The process of attribution has been built up by the Prosecution in a layered fashion, and has required not only 67 separate witnesses but over 800 exhibits to identify the individuals. In addition, the Prosecution submitted evidence in court relating to the sophisticated and careful efforts of the Accused to avoid detection and mislead the investigation – through, for example, the false subscriber details for the phones. A considerable amount of evidence had to be called to prove a negative, i.e., that the persons listed as using the phones were false, as a first step in proving the real users and the real purpose of their use.

As the case proceeded through the third evidentiary component, multiple attempts were made by some Defence teams to adduce evidence during the Prosecution case, as opposed to calling it during the allocated period for Defence evidence. Although the majority of these efforts were successfully resisted by the Prosecution, the extensive filings required diverted time and resources away from the advancement of the Prosecution evidence. There was a short hiatus in the presentation of the attribution evidence, which was interrupted by the summer judicial recess, and by the interposition of the evidence of the Legal Representatives of Victims from 28 August to 8 September 2017.

Steps taken to present the evidence in an effective and expeditious way during the reporting period included:

- **Streamlining the presentation of the evidence**: The Prosecution continued to make extensive use of the court rules to put evidence before the court in written form. This approach, set out in the Rules, reduces the court time needed. The Prosecution requested the admission of written witness statements to avoid witnesses attendance in court, and the admission of considerable evidence “from the bar table”, without requiring a witness to produce or identify it. The Chamber was amenable to this approach, admitting witness testimony and documents in written form, subject to the presentation of oral summaries in court, and cross-examination of certain witnesses where requested by Defence Counsel.

  The Prosecution continued to review its witness list, and reduce, where possible, the number of witnesses as they are no longer needed. To take one example, as the result of the death of one of the accused, the Prosecution not only reviewed evidence arising from his death for relevance to the case, but considered how the case might be streamlined during this reporting period after he was re-categorized as a “co-conspirator”.

- **Providing narrative overviews and using visual aids to assist the understanding of the evidence**: To assist the Trial Chamber—as well as Defence Counsel and the participating victims—to better follow and understand the complex technical evidence, the Prosecution has continued to use various visual aids to help explain expert reports and testimony. This has included a combination of the electronic presentation of evidence (“EPE”) and PowerPoint slides. To take one example, the Trial Chamber granted the Prosecution’s application to use PowerPoint slides to assist the understanding of the oral evidence of its
expert on covert networks and surveillance in relation to his 458 page report on “Communications Evidence concerning the assassination of Rafik Hariri: Chronology Report”. His PowerPoints included 212 frames on chronology and another 164 on “Common Mission Phones”.

In advance of this expert’s testimony, the Prosecution also provided three other documents intended as an aide-mémoire of relevant events that the Trial Chamber and the parties could refer to during the testimony. These comprised a “Narrative Overview of Telephone Activity and Events Relevant to the Case for the Prosecution”, a “Chronology of Relevant Events” over the same time period, and an introductory PowerPoint presentation of the chronology. In addition, the Prosecution has, where appropriate, presented short thematic summaries of the evidence, including so-called roadmaps, to contextualize the evidence.

- **Adjusting the presentation of the evidence**: Some restructuring of the testimony of the Prosecution’s witness on attribution and a change in the manner in which the evidence was to be presented was necessitated by three Trial Chamber decisions of 2 June 2017. Immediately thereafter, the Prosecution prepared and disclosed additional PowerPoint slides regarding the methodology used by the witness in his five attribution reports. When the witness resumed his testimony on 20 June 2017, PowerPoint slides were used to help explain the methodology.

- **Seeking to narrow the issues in contention**: While recognizing that the court proceedings are adversarial, the OTP has continued to try to find common ground with Defence Counsel to facilitate the expeditiousness of the proceedings and utilize valuable court time for truly contentious matters.

In scheduling witnesses, the Prosecution has sought and taken into account the Defence estimates for cross-examination. Even when those estimates changed, or were inaccurate, the Prosecution adjusted its witness schedule to accommodate these changes. In one such instance, one Defence Counsel’s estimate of two days’ cross-examination of a witness turned into nine days. In addition, one Prosecution witness was called specifically to accommodate Defence requests.

- **Ensuring the appearance of witnesses**: The Prosecution has continued to count on the support of witnesses and victims, many of whom have testified in court. Not only was their testimony necessary, their participation was at the heart of the proceedings. The OTP recognizes their courageous efforts in coming forward to testify. The OTP has contacted witnesses in advance in order to address the need for protective measures and, if so, has taken steps to ensure these measures are in place. In 2017, this has included successfully obtaining protective measures from the Court for 15 witnesses who either testified viva voce before the Court – one in closed session – or in writing. This demonstrates the reality of testifying before the Tribunal, but also that the Prosecution was able to play a role in ensuring that the witnesses would testify, despite security or other concerns.

Witnesses required for attendance by the Trial Chamber have in some cases been unwilling to come forward, and summonses have been applied for and granted. A crucial witness remained in a third State and was unwilling to attend the Tribunal; despite efforts to have the witness depose before a court in that State, this proved not to be possible. The Trial Chamber eventually admitted the witness’s evidence under Rule 158 of the Rules (which regulates the admissibility of evidence of “unavailable persons”).
Some idea of the overall scope of the Prosecution case is revealed in the number of witnesses and exhibits:

With respect to witnesses, in 2014, the Prosecution presented 90 witnesses over 75 court sitting days. In 2015, the Prosecution presented 107 witnesses over the 126 court days scheduled for witness testimony, one of whom had previously testified in 2014. In 2016, the Prosecution presented the evidence of 45 witnesses over the 81 days scheduled by the Court to hear evidence; 33 of these were new witnesses, while 12 witnesses had previously testified, on different topics, in 2015. In 2016, 18 witnesses testified in person before the Court—either in the courtroom at the seat of the Tribunal in Leidschendam and/or via video-link from the Tribunal’s Beirut Office. At the Prosecution’s request, the Trial Chamber admitted into evidence the witness statements of another 27 witnesses, without the witnesses having to attend court to give oral testimony. In 2017, the Prosecution presented the evidence of 34 witnesses over the 91 days on which the Court sat to hear Prosecution evidence; 31 of these were new witnesses, while three expert witnesses had previously testified, on different topics, in 2014, 2015 and 2016. In 2017, seven witnesses testified in person before the Court. At the Prosecution’s request, the Trial Chamber admitted into evidence the witness statements of another 27 witnesses, without the witnesses having to attend court to give oral testimony.

With regard to exhibits, in 2014, 432 Prosecution exhibits were admitted into evidence, with an additional 425 admitted in 2015. A further 68 Prosecution exhibits had been put before the court and marked for identification at that stage. In 2016, 1,119 Prosecution exhibits were admitted into evidence, including 46 exhibits admitted during the hearings in relation to the death of Mr Badreddine. In 2017, 465 Prosecution exhibits were admitted into evidence, with an additional 17 admitted in 2018. By the end of the current reporting period, all the documentary evidence from the Prosecution had been presented to the Trial Chamber for admission.

3. The trial—preparation and activities in support of the presentation of the case

A considerable amount of other work has been carried out by the OTP, much of it behind the scenes, to enable the Prosecution to present its case in court.

During the past year, this has included extensive litigation and the presentation of testimonial evidence and documentary exhibits to prove the Prosecution case against four accused of the assassination of former Prime Minister Hariri. Presenting evidence in court has been enhanced by the use of visual aids regarding technical evidence. Out of court efforts have included conducting missions; follow up investigations, disclosure, and seeking and ensuring cooperation.

Specifically, the Prosecutor highlights the type of work required:

First, documentary and expert evidence was gathered and presented on the technical and factually complex attribution of the phones used to carry out the preparation and commission of the assassination, to those persons who committed the crimes. This included the filing of 14 motions to tender evidence and witness statements without the need to call witnesses to testify, and an additional motion to tender a witness statement in lieu of examination-in-chief, subject to cross-examination. Some of these motions were large and complicated, requiring an extensive number of days or weeks to prepare.

Second, a new evidentiary theory put forward by one of the Defence teams in the course of cross-examination required the Prosecution to call further expert evidence and to conduct additional
investigations. As a result of this further work, important additional evidence came to light which strengthens the Prosecution case, and has been presented in court.

Third, additional motions arose throughout the trial. These included submissions, pursuant to a Trial Chamber order, on the elements of the offences charged in the Amended Consolidated Indictment and on the modes of liability applicable under Lebanese Laws. They also included submissions relating to disclosure, to ensure disclosure obligations were met while at the same time maintaining the protection required by a State or entity where material may be sensitive.

Fourth, the Prosecution continued to meet its ongoing disclosure obligations, including by providing recently taken witness statements, new exhibits, material received pursuant to “Requests for Assistance” and potentially exculpatory material under Rule 113 of the Rules. In addition, the OTP responded to more than 100 separate written requests from the various Defence teams for the inspection of evidence within the OTP’s possession.

Fifth, in presenting the evidence, the Prosecution has used visual aids to assist the Court in understanding the highly technical telecommunications evidence. This has involved a combination of the EPE and PowerPoint slides. Sometimes the EPE has been used “live” in the courtroom; but the data has primarily been captured in screenshots and incorporated into PowerPoint slides to streamline the testimony. Numerous PowerPoint slides have been prepared and presented to assist in understanding the thousands of facts contained in the EPE and the expert reports.

Sixth, the Defence sought to submit Defence evidence during the Prosecution case. This entailed significant litigation and numerous filings spanning the year. In particular, one team attempted to seek admission via written motions for 185 witness statements without cross-examination. The second team sought to admit—during the cross-examination of a Prosecution witness—the statements of 13 other witnesses without cross-examination. Although the majority of these efforts were successfully resisted by the Prosecution, the extensive filings required diverted time and resources away from the advancement of the Prosecution evidence.

Seventh, in the range of 20 missions have been carried out in relation to trial proceedings and related investigations. A large number of interviews were conducted by OTP investigators based in the Beirut Office, resulting in an efficient use of resources in both offices.

Eighth, seeking and securing cooperation by States has been, and remains, an important aspect of the OTP’s work. Much of the OTP’s trial work requires State support, for example, to interview witnesses or obtain forensics or technical expertise. The OTP takes note of the cooperation provided by Lebanon and the good working relationship with the Lebanese judicial authorities. As noted above, every effort is made by the Prosecution to ensure that, in relation to disclosure, protections are in place that may be required by a State or entity where material may be sensitive. Continued support is necessary. With the trial in the Ayyash et al. case entering its final stages, the OTP needs to maintain the levels of support necessary not only to be able to conduct and complete the trial, but also to continue with related investigative work.

4. Submission of a confidential indictment

In a significant development, the Prosecutor submitted a confidential indictment to the Pre-Trial Judge for confirmation, on 21 July 2017.

Though the indictment is confidential, the Prosecutor can indicate that extensive investigative, analytical and legal work were required to prepare the submission, which was supported by a large
volume of evidential supporting material. This filing was the result of the concerted efforts of a dedicated team of experienced investigators, analysts and support staff, working together with trial counsel, to ensure the sufficiency and admissibility of the evidence gathered.

The Prosecution also provided detailed written submissions on the preliminary legal questions posed by the Pre-Trial Judge to clarify the legal framework applicable to his review of the indictment. In a hearing before the Appeals Chamber, on 11 October 2017, the Prosecutor made oral submissions on these questions, including the constituent elements of the crime of criminal association as defined in Article 335 of the Lebanese Criminal Code; the distinction between the crime of criminal association and the crime of conspiracy; and the criteria for reviewing the indictment.

In addition, the Prosecutor has engaged in considerable planning to ensure that the OTP can move forward quickly if the indictment is confirmed.

5. Ongoing investigations within the jurisdiction of the OTP

During the reporting period, the OTP continued investigations necessary to support the Prosecution’s case and to consider any evidence regarding others who may be responsible for the 14 February 2005 attack. The Prosecutor remains open to receive any information that might be relevant to any investigative matter within the jurisdiction of the OTP, including in relation to command responsibility.

The OTP continues with its intense and focussed investigations into the three terrorist attacks that have been found to be connected with the attack against Mr Hariri and been deferred to the Tribunal. These are:

- the attempted assassination of Mr Marwan Hamade, the former Economy Minister, on 1 October 2004;
- the assassination of Mr George Hawi, the former Head of the Communist Party, on 21 June 2005; and
- the attempted assassination of Mr Elias el-Murr, the outgoing Deputy Prime Minister and former Defence Minister, on 12 July 2005.

These attacks have some similarities. But there are also differences which require distinct investigative strategies, requiring careful and time-consuming investigations.

Significant progress has been made and a number of different investigative and analytical lines of inquiry are still being pursued. The Prosecution is analyzing the evidence both on an individual case basis, and overall in relation to the combined evidence related to all three cases. This involves forensic, investigative, analytical and legal work, with a view to potential prosecutorial activities. There is close cooperation between the dedicated Connected Cases Team, the Trial Team working on the Ayyash et al. case, and the Related Cases Team.
6. **Assessment of potentially related cases**

A further component of the OTP’s work concerns other attacks that occurred in Lebanon which may potentially fall within the jurisdiction of the Tribunal. As the OTP has no jurisdiction over these cases, it cannot conduct full investigations into them. Unless jurisdiction is sought, these cases remain for the Lebanese judicial authorities to investigate and prosecute.

The role of the OTP is limited to analysing and assessing whether any other attacks occurring in Lebanon within the relevant timeframe could be connected to the attack against Mr Hariri on 14 February 2005 in the manner required by Article 1 of the Statute. If the Prosecutor is satisfied that there is a requisite connection to the 14 February 2005 attack, the OTP would take the steps necessary to seek jurisdiction over these cases in accordance with the Statute.

Recently, the Prosecutor created a separate Related Cases Team, to ensure that there is a dedicated capacity to focus on the review and assessment of the potentially related cases. This multi-disciplinary team, which groups together investigators, analysts and lawyers, will also ensure the preparedness and ability of the OTP, where and when appropriate, to provide material to the relevant Lebanese judicial authorities for their investigations.

To the extent possible and appropriate, the OTP is continuing, when requested, to provide material generated by the UN Independent International Investigation Commission or the OTP to the Lebanese judicial authorities. The cooperation and assistance can thus be, in a sense, not only from States to the Tribunal, but also from the OTP to Lebanon.

7. **Other ongoing work of the OTP**

During the reporting period, the OTP has also dedicated time and resources to other ongoing work, including the following:

- **El Sayed matter**: In accordance with the Pre-Trial Judge’s Order of 8 October 2012, the OTP submitted in April and October 2017 updated risk assessments for a number of individuals whose statements Mr Jamil El Sayed had requested be disclosed.

- **Support to the Lebanese judicial authorities**: As noted above, the OTP is continuing to provide support to the Lebanese judicial authorities, when requested and where appropriate, which may be of assistance to them in relation to cases within their jurisdiction.

- **Management, budget and staffing**: A considerable amount of time and energy is spent by the Prosecutor and OTP senior management in effective management planning to meet evolving operational needs. Effective change management, resource allocation, and identification of needs, have contributed—in addition to the hard work and dedication of staff members—to the ability to accomplish the achievements of the past year detailed in this report. As in previous years, the work has been done within the limits of a reduced budget. This reporting period has also seen careful forward planning to identify the staffing and resources required to ensure that the OTP can meet the needs arising from the next stages of the ongoing trial, and can move forward quickly if the confidential indictment is confirmed.
The way forward

In the coming year, the OTP will be focussed on its five primary objectives.

The first primary objective is to prepare for and efficiently conduct the final stages of the trial and complete the Ayyash et al. case. The Prosecution has completed its case. The next phases are anticipated to be any Defence case, closing submissions, and final judgment by the Trial Chamber. The OTP’s focus will be on the preparation for and response to any Defence application under Rule 167 of the Rules and any evidence presented by the Defence teams; the presentation of rebuttal evidence if necessary; and the presentation of the Prosecution closing brief. The timing of these next stages of the proceedings is not yet clear. The Prosecutor can indicate, however, that the OTP is taking steps to ensure that it will be ready for these next stages in accordance with the schedule set by the Trial Chamber.

The second primary objective is to complete the preparations for the next stage of the proceedings if the confidential indictment is confirmed. If confirmed, there are numerous procedural steps that must take place before the Pre-Trial Judge can submit the file to the Trial Chamber for trial. Advance preparation in anticipation of these steps, including presenting proposals to the Judge to reduce the time for pre-trial proceedings, is being and will be undertaken. In the event of such a pre-trial phase, this would be expected to entail further intensive investigative, analytical and legal work to prepare for trial.

The third primary objective is to continue the ongoing investigations and extensive other work behind the scenes in relation to all cases within the OTP’s jurisdiction. This will include, notably, investigations that may be necessary in support of trial in the Ayyash et al. case; investigative and analytical work in relation to possible pre-trial proceedings; and the ongoing full-fledged investigations into the three terrorist attacks.

The fourth primary objective is to continue the inter-related review and assessment of the other terrorist attacks which may potentially fall within the jurisdiction of the Tribunal. A recently created separate Related Cases Team will focus on analyzing and assessing whether any other attacks occurring in Lebanon within the relevant timeframe could be connected to the attack against Mr Hariri on 14 February 2005 in the manner required by the Statute. The OTP will also continue to provide support to the Lebanese judicial authorities, where appropriate, by providing any artefacts or analysis that may assist with their own investigation of the cases that remain within their jurisdiction.

The fifth primary objective is to maintain effective management planning to meet evolving needs. Managing staff and resources to adjust to the constant transition inherent in the work—target identification, investigations, different stages of legal proceedings, completing one case and staffing up for another—where there is the continuous staff turnover associated with ad hoc institutions, requires adaptability and constant adjustment of skills to needs. The objective is to align existing resources to meet future needs through adjustment, reassignment, training and staff buy-in when there is change, as opposed to constant recruitment of new staff.

In light of the next stages of proceedings in the Ayyash et al. case, and the possible confirmation of the indictment, the Prosecutor has engaged in considerable consultations and forward planning to be able to meet the evolving needs. He has put in place a transition plan, involving a slight restructuring and a realignment of resources. This seeks to ensure that the OTP can meet the needs arising from the remaining stages of the proceedings in the Ayyash et al. case; can move forward quickly with pre-trial activities should the confidential indictment be confirmed; has sufficient
capacity to carry out the other critical ongoing work within its jurisdiction; and has a dedicated capacity to focus on the potentially related cases. The Prosecutor is determined that all this work is to be done within the existing level of resources. To the extent possible, therefore, the OTP will endeavour to redeploy resources from other teams within the Office, as the work allows. It will rely on the flexibility of staff members to take on different work as necessary, and provide such training as may be required. Above all, the OTP will continue to count on the hard work and extra efforts of staff members that made possible the achievements of the past year.

In the coming year, the OTP will continue to operate within the limits of the budget—a budget that is, in effect, a reduction for the fifth year in a row.
C. The Defence Office

1. Introduction

The focus of 2017 was the continuation of the trial in the Ayyash et al. case (STL-11-01), with the Prosecution presenting the main part of its case related to telephone evidence. Significantly, however, in a departure from the order in which evidence is presented under the Rules of Procedure and Evidence (“Rules”), the Trial Chamber decided *proprio motu* to interpose in that presentation, over a number of days in August and September 2017, the oral evidence of some of the victims participating in the proceedings and the presentation of their evidence through the Legal Representatives of Victims.

In accordance with its mandate, the Defence Office provided year-round operational and financial support and legal assistance to all Defence Counsel in the Ayyash et al. case and the members of their teams in order to enable them to effectively represent the rights and interests of the Accused in the ongoing proceedings.

The year was also marked by the Prosecutor filing a new indictment before the Pre-Trial Judge (STL-17-07). The Defence Office’s involvement in this new case arose through the preliminary questions on the applicable law put by the Pre-Trial Judge to the Appeals Chamber.

Lastly, throughout the entire year, the Defence Office continued to carry out its institutional activities, both within the Tribunal and beyond.

A detailed description of all Defence Office activities is provided below.

In order to successfully fulfil its mandate, the Defence Office comprises a Legal Advisory Section, a Legal Aid Unit and an Operational Support Unit. The Defence Office has 12 staff, of seven different nationalities. All the activities of these sections are overseen by the Head of Defence Office, assisted by his Deputy.

2. Defence Office involvement in the judicial activities of the Tribunal

Although the Defence Office is not a party in the trial, it does take part in the judicial activities of the Tribunal in a number of ways.

(a) Monitoring the proceedings and attending the hearings

The Defence Office, consistent with its practice since the trial began, follows daily the ongoing proceedings before the Tribunal through its staff within the Legal Advisory Section, whether by examining all the motions filed by the Parties and participants in the trial, or by analysing and summarizing the decisions of the Judges or Chambers.

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4 This chapter was prepared by the Head of Defence Office.
This real-time monitoring of the proceedings is also ensured by one or more members of Defence Office staff being in constant attendance whenever the Court is in session. This monitoring allows the various sections of the Defence Office to adapt the services that they provide according to the actual and current needs of the Defence teams, as well as to the prevailing judicial situation of the Tribunal. It enables the Legal Aid Unit, for example, to determine the resources reasonably required by the teams to defend the rights and interests of the Accused. Equally, it allows the Defence Office’s Liaison Officer in Beirut to anticipate cooperation requests from the teams to the Lebanese authorities and enables members of the Legal Advisory Section to advise Defence Counsel and members of their teams promptly and according to the realities of the trial. This close monitoring of the proceedings also enables the Head of Defence Office to intervene effectively at the request of Counsel or Chambers, or *proprion motu*, under Rule 57 (F) of the Rules, and likewise to make any decisions regarding matters that fall under his mandate in an informed manner.

(b) Composition of the Defence teams

(i) The Ayyash et al. case (STL-11-01)

Each Defence team is made up of a Lead Counsel and two Co-Counsel. Defence Counsel are assisted by one or more experienced Legal Officers, a Case Manager, as well as one or more people responsible for reviewing the evidence. In total, 12 Counsel and 15 assistants work for the Defence in the Ayyash et al. case. Experts in mobile telephony and consultants have also been recruited when Counsel have provided justification for such a requirement.

Throughout the past year, there have been changes among Counsel in the Defence team for Mr Sabra. On 3 February 2017, the Head of Defence Office accepted the withdrawal of Dr Guénaël Mettraux from his position as Co-Counsel within Mr Sabra’s Defence team; Dr Mettraux had requested to be relieved of his duties upon being selected for inclusion on the roster of Judges at the Kosovo Specialist Chambers. On 22 May 2017, the Head of Defence Office appointed Ms Sarah Bafadhel, a barrister registered at the Bar of England and Wales (United Kingdom), to the position of second Co-Counsel within Mr Sabra’s Defence team. Ms Bafadhel had been the team’s Legal Officer since 1 February 2013 and on 12 May 2017 she was admitted to the list of Counsel authorized to practise before the Tribunal.

(ii) The case of Akhbar Beirut S.A.L and Mr Ibrahim Mohammed Ali Al Amin (STL-14-06)

Although the trial in the Akhbar Beirut case (STL-14-06) is now over, matters relating to the enforcement of the sentence remain pending before the Contempt Judge in that case. Consequently, Counsel appointed to represent the Accused in these proceedings remains assigned until such time as the Contempt Judge relinquishes the case.

(c) Management of legal aid

Over the past year, the Legal Aid Unit took a number of decisions concerning the assignment of persons assisting Counsel, the resourcing of Defence teams and other relevant matters associated with the administration of legal aid.

The Legal Aid Unit also liaised with the relevant sections of the Registry (Budget, Finance, Human Resources and Security) in order to facilitate the effective implementation of decisions related to legal aid.
The Legal Aid Unit implemented and monitored the legal aid budget for individual teams, as well as the legal aid programme as a whole. It ensured that all financial obligations and expenditure remained within budget and, to that end, drew up periodic financial reports, including the semi-annual and annual reports.

The Defence Office also identified a number of provisions in the Legal Aid Policy regarding the forthcoming phases of the proceedings which it intends to amend in order to meet the requirements of the proceedings. Accordingly, the Defence Office drew up a draft amendment and launched a consultation process on this issue with the Defence teams and other internal stakeholders. The approach adopted is intended to maintain continuity of representation and equality of arms, whilst at the same time safeguarding resources and ensuring appropriate use of public funds.

(d) **Operational support to Defence teams**

(i) **Defence investigations**

Over the last year, the Defence Office dealt with 17 official requests for assistance from the Defence teams to the Lebanese authorities.

The Liaison Officer also provided support to Defence Counsel in organizing their investigative missions and planned and organized all the missions to Lebanon undertaken by the Head of Defence Office.

(ii) **Logistical support**

The Defence Office Case Manager, who first joined the Legal Advisory Section as a Legal Officer, was replaced in July 2017 by a new Case Manager. Throughout the year, she continued to provide logistical support to all Defence teams and to liaise between them and the various sections of the Tribunal responsible for logistical, technical and IT matters. She also provides daily assistance to the Legal Advisory Section in the management and analysis of all documents filed before the Tribunal, as well as monitoring the hearings before the Trial Chamber.

Lastly, during the data migration to the new version of Legal Workflow, the Case Manager served as an intermediary between the Defence teams and the Registry. She subsequently assisted members of the Defence teams and members of the Defence Office in the use of this new version of Legal Workflow. Additionally, the Case Manager continued to organize and run training sessions on Legal Workflow and Transcend software for new members of the Defence teams and the Defence Office, including interns.

(e) **Legal support to the Defence teams**

(i) **Research and legal advice**

Last year saw the Legal Advisory Section respond to numerous requests for legal assistance from the Defence teams in various forms, including legal consultations, as well as research and legal analysis in the form of memoranda and draft motions.

(ii) **The Casebook**

Over the course of 2017, the Legal Advisory Section updated its Casebook of decisions rendered by the Tribunal. In so doing, it seeks to respond rapidly to questions from the Defence teams regarding
Tribunal case law and thus facilitate the drafting of their motions and of other documents filed before the Tribunal. The task of updating the Casebook, which will form part of the Tribunal’s legacy, will henceforth be carried out in conjunction with the Legal Advisory Section of the Office of the Prosecutor.

(iii) Training

The members of the Legal Advisory Section also continued their induction training courses for staff members and interns newly arrived in the Defence Office and the Defence teams. These training sessions are focused in particular on the state of progress of the proceedings in the various cases currently before the Tribunal, as well as on the law and case law of the Tribunal.

At the request of Defence Counsel, members of the Legal Advisory Section also organized ad hoc training sessions on legal and procedural issues before the international tribunals.

(iv) Defence Training Day

On 15 June 2017, the Defence Office organized a training day for Defence Counsel assigned in the Ayyash et al. case (STL-11-01) and for members of their teams, including persons assisting Counsel and interns. During the event, Defence Counsel pointed to the challenges they encounter and the Defence Office engaged with them in order to find constructive solutions that might be implemented in order to meet those challenges. The Defence Office also gave practical advice to the Defence teams on archiving under the internal Regulation on the closing and preservation of the case file by Lead Counsel.

(f) Written and oral interventions by the Head of Defence Office

During the past year, the Head of Defence Office intervened in the proceedings pending before the Tribunal on several occasions in accordance with the conditions provided for under Rule 57 (F) of the Rules.

(i) The Ayyash et al. case (STL-11-01)

The Head of Defence Office participated in the debate called by the Trial Chamber on the applicable law in the Ayyash et al. case.

Following the Trial Chamber’s Order of 27 July 2017 instructing the Parties and the Legal Representatives of Victims to file written submissions on the applicable law in the Ayyash et al. case no later than 8 September, the Head of Defence Office informed the Trial Chamber of his intention to file submissions in that debate, in the interests of justice, under Rule 57 (F) of the Rules.

Directed by the Trial Chamber to provide reasons supporting his wish to intervene, the Head of Defence Office, in his submissions of 31 August 2017, recalled that his rights of audience, being a principle enshrined in the Rules and inherent to his status as an independent organ, may only be subject to oversight a priori by the Trial Chamber if the exceptional circumstances of the case so required. The Head of Defence Office therefore sought clarification from the Trial Chamber in the case at hand as to the exceptional circumstances warranting such a restriction of his rights. On 7 September 2017, although the Trial Chamber had not provided the requested clarification, it did finally give leave to the Head of Defence Office to file his submissions proprio motu on the applicable law by the following day. On 8 September 2017, the Head of Defence Office filed a request for certification to appeal that decision, on the grounds that the Trial Chamber had erred in restricting his rights of audience by making them subject to the Trial Chamber’s prior control. The
Head of Defence Office argued that this restriction effectively prevented him from exercising his mandate and from being heard on matters going to fairness and the rights of the Defence, thereby significantly affecting the fairness of the proceedings. That request for certification to appeal was denied.

On the same day, the Head of Defence Office filed his submissions. He drew the Trial Chamber’s attention to the risks involved in it embarking upon, and hearing, a discussion on the applicable law, given that a similar debate was also before the Appeals Chamber in the STL-17-07 case (see below), a debate which only the Defence Office and the Prosecutor had been informed of prior to 8 September. The Head of Defence Office therefore called upon the Trial Chamber to not rule on the applicable law pending a resolution of those matters by the Appeals Chamber.

(ii) The STL-17-07 case

The Defence Office took part in the entire debate on the preliminary questions on the applicable law put by the Pre-Trial Judge to the Appeals Chamber within the procedural framework for confirmation of the indictment filed by the Office of the Prosecutor in the STL-17-07 case.

**Filing of written submissions**

On 25 August 2017, the Head of Defence Office was served an Order by the Appeals Chamber ordering him to file confidential written submissions on the preliminary questions submitted by the Pre-Trial Judge to the Appeals Chamber in the new case, STL-17-07.

On 7 September 2017, the Head of Defence Office filed submissions which he confined to the matter of the applicable law before the Appeals Chamber. He stressed in particular that if one or more suspects in the STL-17-07 case were in fact already represented by Counsel assigned in the Ayyash et al. case, discussing the applicable law in the absence of those Counsel would raise serious questions as to the fairness of the proceedings. On 14 September 2017, the Head of Defence Office replied to the Prosecution’s submissions on the applicable law.

**Oral submission before the Appeals Chamber**

On 11 October 2017, the Appeals Chamber held a hearing where it heard the Defence Office and the Prosecution on the preliminary questions put to it by the Pre-Trial Judge.

Having reiterated his reservations about ruling in abstracto on the applicable law, the Head of Defence Office made submissions on the powers of the Pre-Trial Judge. Additionally, the Head of the Legal Advisory Section drew the attention of the Appeals Chamber to errors of interpretation of Lebanese case law contained in the Prosecution filings.

3. **Regulatory activities by the Defence Office**

As with every year, the Head of Defence Office took part in the work of the Rules Committee and proposed and defended a number of amendments to the Rules before the Judges comprising the Committee.

At the proposal of the Head of Defence Office, Rule 57 (A) of the Rules was amended and henceforth provides that in order to be eligible for the position of Head of Defence Office, the candidate must have been admitted to the practice of law for at least 20 years, and not 15 years as
stated in the Rule’s original form. This amendment, equating to the minimum number of years required in order to be appointed as President of the Bar Association in Lebanon, seeks to ensure that a person appointed to carry out the duties of Head of Defence Office possesses sufficient professional experience and authority to properly exercise his or her responsibilities.

The Head of Defence Office had also proposed amending Rule 60 (A) of the Rules relating to professional misconduct of Defence Counsel. He sought to include the obligation for a Judge or Chamber to consult him when Defence Counsel are subject to proceedings for professional misconduct.

Lastly, the Head of Defence Office had proposed the amendment of Rule 126 (C) of the Rules regarding interlocutory appeals. His intention was to have future requests for certification to appeal regulated by the Appeals Chamber (or by a Judge Rapporteur within that Chamber), rather than by the Trial Chamber or the Judge who rendered the impugned decision. The proposal sought to unburden the Trial Chamber of significant litigation and to establish a right of appeal.

These final two amendment proposals were rejected by the Judges’ Plenary.

4. List and training of Defence Counsel

(a) Admission of new Counsel to the list

During the course of the past year, the Defence Office received nine new applications from lawyers wishing to be admitted to the list of Defence Counsel drawn up pursuant to Rule 59 of the Rules.

On 12 May 2017, the admission panel held six interviews from Beirut as a result of which the six candidates were admitted to the list, two as Lead Counsel and four as Co-Counsel.

By the end of 2017, the list comprised 178 Counsel practising before 32 different national jurisdictions. Of that number, 15 Counsel are registered with one of the two Lebanese bar associations.

(b) Training Counsel newly admitted to the list

On 14 and 15 December 2017, the Defence Office held a training session for 17 lawyers recently admitted to the list of Defence Counsel.

Welcomed by the President of the Tribunal and the Head of Defence Office, the 17 Defence Counsel from nine different countries including Lebanon, and from 13 different bar associations, were able over the two-day course to familiarize themselves with both the law and applicable procedure before the Tribunal, as well as with the various practical, legal and ethical challenges facing Defence Counsel before the Tribunal.

The lawyers took part in workshops on Defence investigations led by Defence Office staff. They also attended presentations on Lebanon, telephone evidence, the role of victims before the Tribunal and the Legal Aid Policy. They were also able to talk with Counsel already assigned in the Ayyash et al. case, as well as with the Defence Office Liaison Officer in Lebanon. Lastly, in real-life conditions, they made submissions on procedural issues in the Antonio Cassese Courtroom. The entire training course was delivered and interpreted in the three languages of the Tribunal, Arabic, English and...
5. **Institutional activities of the Defence Office**

(a) **Participation of the Head of Defence Office in the internal functioning of the Tribunal**

The Head of Defence Office, alongside the three other Heads of Organs, took part in the monthly meetings of the Tribunal’s Senior Management Board, various internal events – including town hall meetings – as well as external events, such as diplomatic briefings.

The Head of Defence Office also made the voice of the Defence heard when he spoke to the members of the Tribunal’s Management Committee, to stakeholders in the UN, as well as to embassies based in The Hague and in Lebanon. In this context, the Head of Defence Office met members of the Management Committee during their visit to the Tribunal on 2 and 3 May 2017 and facilitated their meeting with Defence Counsel in the *Ayyash et al.* case. The Head of Defence Office also met members of the Management Committee as part of his mission to New York (United States) from 29 to 31 October 2017. During this trip, he also met the UN Under-Secretary-General for Legal Affairs.

(b) **Institutional representation of the Defence outside the Tribunal**

During the course of 2017, the Head of Defence Office met members of the judicial, diplomatic and academic community, both in The Hague and during his visits elsewhere, in order to present the Tribunal’s activities, the work of the Defence Office, and to promote the rights of the Defence.

(i) **Missions to Lebanon**

The Head of Defence Office travelled to Lebanon in February, May and November 2017. During these visits, he met the President of the Republic, the Prime Minister, the Minister of Justice, the Minister of State for Human Rights, the Foreign Minister and the former President of the Progressive Socialist Party. He met members of the diplomatic community based in Lebanon, as well as the Director of General Security and the Director General of the Internal Security Forces.

The Head of Defence Office also took part in several conferences at the Beirut and Tripoli Bar Associations, the Islamic University and the Saint-Esprit de Kaslik University as part of the Inter-University Programme. In the course of working sessions, he also met with the Presidents of the Beirut and Tripoli Bar Associations, as well as members of the Bar Association Committee responsible for monitoring the work of the Tribunal.

(ii) **Maintaining and developing institutional relations with the national bar associations**

As part of their mandate, both the Head and the Deputy Head of Defence Office have continued their outreach work with various national bar associations and international lawyers’ associations.

Accordingly, the Head of Defence Office spoke at the Congress of the Federation of the European Bars, held on 2 June 2017 in The Hague, and at the 61st Congress of the International Association of Lawyers, held in Toronto, Canada, on 27 and 28 October 2017.
The Defence Office also worked alongside the International Criminal Court Bar Association (ICCBA) in a variety of areas, in particular during an international meeting of bar associations held on 29 March 2017 in The Hague, and in organizing the Fifth Meetings of the Defence. Members of other international lawyers’ associations (the International Criminal Bar, the International Bar Association, the Organization for the Harmonization of Business Law in Africa, the International Association of Lawyers, the Association of Defence Counsel practising before the International Courts and Tribunals, the Conférence Internationale des Barreaux and the European Bars Federation) and delegates from national bars (Beirut, Nuremberg and Paris) also contributed to a project that emerged from the Defence Meetings, namely the Joint Code of Ethics (see below). Most then attended a working meeting held at the headquarters of the Tribunal on 7 July 2017, introduced by the President of the Tribunal in the presence of the Registrar and the Prosecutor.

(iii) Memorandum of Understanding with the Islamic University

In May 2017, the Head of Defence Office signed a Memorandum of Understanding with the President of the Islamic University of Lebanon for a research and internship programme. The Memorandum provides, on the one hand, that the Defence Office may commission researchers and students at the Islamic University to undertake legal research and, on the other, that students may apply for an internship at the Defence Office. The Defence Office has already received one student from that university and expects to receive one or more others during the course of 2018. A training programme for students from the Islamic University in anticipation of their internship at the Tribunal was also put in place under the coordination of the Defence Office Liaison Officer, beginning in January 2018.

(iv) Participation of the Head and the Deputy Head of Defence Office in conferences and events

Over the course of the past year, the Head of Defence Office, the Deputy Head and the Head of the Legal Advisory Section attended conferences and events in The Hague and elsewhere. Speaking at these events, they described the role of the Defence at the Tribunal as well as the challenges it faces and explained the contribution made by the Defence Office as an independent organ in the context of international criminal justice.

(v) Presentation of the work of the Defence to groups visiting the Tribunal

During the past year, various members of the Defence Office made presentations to the 68 groups that visited the Tribunal during 2017. Covering the issues and challenges faced by Defence Counsel practising before the Tribunal as well as the role of the Defence Office, the presentations were delivered in the Tribunal’s three official languages, as well as Spanish.

(vi) Fifth Meetings of Defence Offices (Nuremberg)

As foreshadowed in the previous report, the Defence Office organized the Fifth International Meetings of the Defence from 8 to 10 November 2017 in partnership with the International Nuremberg Principles Academy (“the Academy”), and with the support of the Nuremberg Bar, the Nuremberg Bar Association and the International Criminal Court Bar Association. These Meetings were held in the historic Courtroom 600 of the Nuremberg Tribunal in Germany.

Following a welcome address by the Academy’s Deputy Director, speaking on behalf of the Director, the Meetings received a message of support from the Lebanese Minister of Justice, who also extended a particular welcome to the President of the Beirut Bar Association, who was accompanied by a sizeable delegation from his Bar.
The Tribunal was represented by its President, who chaired one of the panel sessions, and by representatives from several sections of the Registry, including Victims’ Participation, Interpretation, and Public Information and Communication.

As is the case each year, the round tables reviewed the current situation of the international tribunals. Following a fascinating keynote speech by Professor Doctor Christoph Safferling on the Defence at the Nuremberg trials, there were a number of outstanding presentations. Members of the Registry from the Tribunal gave presentations on interpretation, on victims and on the accused before international criminal tribunals, and a talk was also given on the Nuremberg trials memorial.

The Meetings closed with the official presentation of two documents designed to equip Counsel practising before the Tribunal and before the other international criminal tribunals with tools aimed at enhancing their professional skills: the Practical Guide to Defence Investigations in International Criminal Trials and a Code of Professional Conduct for all Counsel appearing before the International Criminal Tribunals (dubbed “the 2017 Nuremberg Code”). The Meetings also saw the establishment of a follow-up committee for the Code, which will be responsible for keeping the Code constantly updated.

Both these documents were produced by working groups designated at the 2015 Defence Meetings. Over the last two years, the groups worked and collaborated with numerous international professional organizations and with practitioners of all nationalities and legal cultures. An extremely dynamic workshop was also set up at the Beirut Bar to work on the Code of Conduct. Additionally, the Defence Office called for contributions from some 30 practitioners from within the profession to participate with it in drafting the Practical Guide to Investigations.

Both documents were produced in French and English and, ultimately, both will be translated into Arabic. Accordingly, they will form part of the legacy of the Tribunal.

(c) Involvement in the Transition Planning Process

Defence Office staff took part in the working groups set up as part of the Transition Planning Process. This process involves the four organs of the Tribunal and the staff representative body. It seeks to draw up a completion strategy for the Tribunal’s activities, thereby enabling it to complete its mandate effectively and professionally.

6. Review of 2017

Contrary to expectations in the previous report, the Prosecution did not complete the presentation of its evidence in 2017. Given that the Prosecution continued to make amendments to its witness and exhibits lists, it was impossible for the Defence to accurately predict when the Prosecution would close its case and the impact that this would have on the proceedings. As with last year, the length of the proceedings and their unpredictable nature also had an impact on staffing levels, given that some Defence team members (including one Defence Counsel and a person assisting counsel) resigned during the course of the year. Despite these difficulties, and in order to secure the best possible working conditions for Defence teams, the Defence Office has striven on a daily basis to fulfil its mandate and has responded to every request for assistance from the Defence teams.

The year 2017 was also marked by the Prosecution’s filing of a new indictment following its investigations in the Connected Cases (STL-17-07). The Defence Office participated in the
proceedings before the Appeals Chamber in that case, ensuring that both the rights and interests of the suspects in that case, as well as those of the Accused in the Ayyash et al. case, were safeguarded.

Throughout 2017, the Defence Office has endeavoured to participate, to the fullest extent possible, and within the ambit of its mandate, in all the judicial operations of the Tribunal in order to defend respect for the principle of equality of arms and to safeguard the rights of the Defence. Nevertheless, it had to face a number of obstacles, including limitations to its right to a hearing and its right to access public and confidential documents, which made exercising its mandate difficult.

Throughout the entire course of the year, and as he has done from the start of his mandate, the Head of Defence Office has advocated respect for legal, cultural and linguistic diversity, a diversity which contributes to the richness of the Tribunal. Significantly, he supported the Registry’s requests to the Trial Chamber to allow real-time French transcription in the courtroom, as was the case during the hearing of 11 October 2017 before the Appeals Chamber, particularly since the Registry had already committed resources to that end. The Defence Office has also received Lebanese interns on a very regular basis, in order to afford them the opportunity to consolidate their knowledge of their Tribunal and, more generally, of international law.

Lastly, as announced in its previous report, the Defence Office organized the Fifth Meetings of the Defence, held in the historic courtroom 600 of the Nuremberg Tribunal. The success of the Meetings was unanimously acclaimed by the international legal community, particularly in that it saw the launch of two important documents designed to facilitate the work of the Defence, both before the Tribunal itself and before the other international criminal tribunals.

7. **Next steps**

Barring further delays, 2018 should mark the presentation of exculpatory evidence by the Defence and the end of the oral proceedings before the Trial Chamber in the Ayyash et al. case.

The various sections of the Defence Office will therefore have to anticipate all the issues and difficulties that the Defence teams will inevitably face during this crucial period and adapt the assistance it provides them, be it legal, financial or logistical, to those specific circumstances.

2018 should also bring with it a decision by the Pre-Trial Judge confirming or otherwise the indictment submitted to him by the Prosecutor in the STL-17-07 case. The Defence Office has no knowledge of either the number of potential Accused or the scope of the charges. However, it stands ready to face any activity linked to the possibility of the confirmation of an indictment in that case.

The Defence Office also continues to prepare for the possibility of a new contempt case and for its impact, as much on the budget as on the legal support inherent with the arrival of one or more new Defence teams. With that in mind, the Legal Aid Unit, as it did last year, is keeping part of its budget frozen in order to respond to the potential needs arising from the opening of a new contempt case.

Lastly, the Defence Office is planning to prepare new projects related to the legacy of the Tribunal in order to ensure that the Defence Office’s know-how and legal knowledge may be accessible to actors in the field of justice and to all other interested parties, both in Lebanon and beyond.
1. Introduction

The Registry provides support to the Chambers, the Office of the Prosecutor and the Defence Office to facilitate their functioning and ensure that the Tribunal is in a position to expeditiously carry out its mandate in the most cost-efficient manner. It also takes appropriate measures to ensure that the decisions rendered by the Chambers and Judges are executed.

During the last twelve months, the Registry’s highest overarching responsibility remained the effective support to and servicing of the judicial proceedings. Stemming from this central responsibility, the Registry’s work focused on implementing the following priorities: providing efficient administration of the Tribunal; raising awareness of the Tribunal’s work and engaging the public; securing continued political, financial and operational support for its work; ensuring a safe and secure work environment and safeguarding the welfare of staff. Cross-sectional collaborations across the Registry facilitated many achievements, including the presentation of the Victims’ case; the logistical and legal support for witnesses to testify from third-party states; the facilitation of French real-time transcriptions; the submission of legal filings in the Tribunal’s proceedings; the conclusion of contracts with vendors and suppliers of services; and presentations to visiting students and academics.

In close consultation with the other Organs and Staff Union, the Registry commenced work on the development of the Tribunal’s Strategic Transition Plan. This process will guide the Tribunal through its changing operational requirements during the forthcoming phases of its work, while maximizing operational and financial efficiencies.

The majority of the Registry’s operations fall under the Division of Judicial Support Services or the Division of Administration. These Divisions are complemented by the Public Information and Communications Section (“PICS”), the Security and Safety Section (“SSS”), the Registry Legal Office and the Immediate Office of the Registrar.

2. Effective judicial support

The Division of Judicial Support Services delivered efficient, impartial and reliable court management; translation and interpretation language services; assistance to victims participating in the proceedings; and support and protection to witnesses and victims. These services, which were facilitated through corresponding Registry Sections, formed the backbone of the Registry’s effective judicial support and highlighted the dynamic operations required to facilitate a complex trial.

(a) Court management

During 2017, the Court Management Services Section (“CMSS”) supported the proceedings with the processing of 781 filings, corresponding to 12,996 pages of official court documents. It also implemented the seamless processing and distribution of 297 transcripts in the Tribunal’s three official languages, corresponding to a total of 24,089 pages. It further served as the in-court Registry representative during court proceedings by providing a Court Officer and a Courtroom

5 This section has been prepared by the Registrar.
Clerk at each hearing in Leidschendam, as well as a Court Officer when witnesses testified from the Beirut Office. In addition, CMSS provided support service for the work of Chambers.

(b) Language Services

The Language Services Section (“LSS”) worked to enable multilingual oral and written judicial proceedings through the provision of language services to all Organs in the Tribunal’s three official languages (Arabic, French and English) and other languages as required. This contribution to the Tribunal’s core activities was delivered by staff based in both Leidschendam and the Beirut Office.

During 2017, in-court interpretation services along with support for field investigations and outreach and public information events amounted to 1,029 interpreter days. 14,170 translation pages were delivered by LSS to clients across the Tribunal. Additional services provided by LSS comprised 1,373 days of language assistance, editing and 6,236 minutes of transcription.

During the reporting period, LSS undertook a major drive to further develop its long-standing cooperation with Lebanese universities. This was achieved through the delivery of a series of training events on legal translation and interpretation at Lebanese universities and the welcoming of Lebanese interns to its Leidschendam office. Further training events are planned at additional universities in Lebanon.

(c) Assistance to victims participating in the proceedings

In 2017, the Victims’ Participation Unit (“VPU”) continued supporting and monitoring the work of the Legal Representatives of Victims Participating in the Proceedings (“LRVs” and “VPPs” respectively). The VPU provided coordination, logistics and technical assistance leading up to and throughout the presentation of the Tribunal’s first Victims’ case. The VPU administered the Tribunal’s legal aid policy for victims and continued to respond to numerous requests on various legal aid matters from the LRVs. In addition to its core responsibilities relating to the participation of victims in the proceedings, the VPU administers the funds for use by the Amicus Curiae Prosecutor in relation to the ongoing contempt matters and provides administrative management and support to the Amicus team.

The VPU continues to receive applications from victims wishing to participate in the proceedings and, during the reporting period, one new application was filed with VPU and transmitted to the Pre-Trial Judge, who granted the application.

The VPU continued to facilitate the attendance of victims to attend sessions of the Ayyash et al. trial in Leidschendam. The presentation of the Victims’ case created an opportunity to bring the trial closer to victims. During the Victims’ case, the VPU facilitated the attendance of 14 VPPs and further facilitated the attendance of another eight VPPs during the course of the year. This involved substantial collaboration with other sections of the Registry, especially the VWU, in order to ensure that appropriate facilities and support in order to meet the needs of visiting participating victims.

During 2017, the VPU assisted and facilitated several LRV missions to Beirut, during which the LRVs met with victims and potential witness in preparation for their case. In December, the VPU conducted a two-day mission in Beirut to participate in the International Criminal Justice and the Special Tribunal for Lebanon conference, co-organized by the Tribunal and the NGO ALEF (Act for Human Rights), and to engage with counterparts in the Lebanese legal community.

(d) Support and protection to witnesses and victims

The Victims and Witnesses Unit (“VWU”) continued to support the Tribunal’s proceedings by ensuring the secure and timely appearance of victims and witnesses in court. The VWU provided
operational, legal, administrative and logistical assistance to facilitate 95 days of testimony by witnesses for the Office of the Prosecutor and the LRV. Additionally the VWU facilitated 44 days of victim attendance at proceedings. Throughout, the VWU maintained the required analytical and risk assessment procedures to independently review and assess requests and requirements for procedural protective measures introduced in the proceedings by the OTP, the Defence, the LRV and, if needed, by the VWU proprio motu.

Additionally, the VWU continued to assess and monitor the physical, emotional and psychological well-being of victims and witnesses before, during and after testimony and provided counselling, psychological support interventions and other support to victims and witnesses when required. Through its psycho-social support expertise, the VWU was able to provide tailored support measures to meet the individual and specific needs of each witness and victim who appeared before the Tribunal. Special attention was given to those victims and witnesses who reported vulnerabilities or special requests for assistance.

The VWU continued to maintaining a robust capability to provide protection, support and emergency response services to victims, witnesses and others at risk on account of testimony, or their interaction with the Tribunal, when required.

The identification, assessment and mitigation of potential threats and risks to victims and witnesses remain of paramount importance and a key challenge. The VWU continued to work closely with Lebanese interlocutors in the provision of protection and support. Similarly the VWU continued to strengthen the support and cooperation with States to ensure effective and sustainable witness protection and support arrangements, in the form of relocation agreements and other types of operational assistance, which remain of vital importance for the work of the VWU and the success of the Tribunal.

3. Efficient administration

The Division of Administration delivered efficient support to all Organs, including: recruitment, human resources management and financial services; preparation, presentation and implementation of the Tribunal’s budget; delivery of procurement services; information management and technological services, facilities management and common services; and other services required for the efficient administration of the Tribunal. These administrative services facilitated the judicial proceedings and ensured that fiscal responsibility was exercised throughout the Tribunal such that operations were undertaken with efficiency and cost-effectiveness.

During the reporting period, the External Auditor of the Tribunal certified its eighth audit which found no material errors or weaknesses and provided an unqualified opinion on the 2016 financial statements. The Tribunal continued to develop best internal control and risk management practices.

(a) Human and financial resources

During the reporting period, the Human and Financial Resources Services Section (“HFRS”) provided the recruitment, human resources management and financial services required to support the operational needs of the Tribunal. HFRS supported all Judges, lawyers, consultants and staff inside and out of the courtroom. Through supporting the Tribunal’s workforce planning, processing payments to vendors, adminstering contracts, preparing the Tribunal’s financial statements and monitoring its accounts, HFRS assisted the judicial proceedings by facilitating the Tribunal’s personnel and by overseeing its payments.
By the end of 2017, 415 staff members were employed by the Tribunal, 64 of whom work in the Beirut Office. 65 nationalities are represented at the Tribunal. 68 staff members are Lebanese, representing 16.4% of the total number of staff. The gender distribution is 45.5% female and 54.5% male.

In addition, 69 interns participated in the work of the Tribunal during 2017, and efforts continue to increase the interest of Lebanese students to participate in the internship program. Collaboration between HFRS and PICS to support public information efforts and outreach activities aimed at attracting Lebanese interns contributed to this success. Additionally, the National Visiting Professionals program provides Lebanese lawyers the opportunity to gain experience at the Tribunal.

(b) Budget

The Budget Unit drafted, monitored and accurately reported on the Tribunal’s annual budget. These efforts ensured that trial operations continued with the efficient management of Tribunal funds. As in previous years, the 2018 budget is based on parameters set through intensive consultations with the Tribunal’s Principals. Budget-limiting measures focused on areas that have the least detrimental effect on anticipated judicial activities. The Tribunal’s budget for 2018 was approved at EUR 58.8 million, a decrease of 0.3% when compared to 2017.

(c) Procurement services

Over the course of the last year, the Procurement Section (“PS”) provided strategic advice and operational support to ensure that the Tribunal’s resources were used efficiently and in accordance with the regulatory framework and the best value for money principle. In this regard, the PS supported judicial activities by initiating new tender processes, negotiating with vendors and completing various contract renewals and/or extensions. In so doing, it worked in close collaboration with all Registry Sections and other Organs to issue, monitor and administer over 450 contracts.

(d) Facilities management and common services

The General Services Section (“GSS”) is composed of the Common Services Unit and the Facilities Management Unit. During the reporting period, these units provided a diverse range of services to the Tribunal including transportation, mail, travel, visa, graphics, reproduction, in-house printing and asset management. Furthermore, the GSS provided building management, maintenance and space planning services, and in this regard commenced several projects including, at Headquarters, a Security Systems Enhancement (to be completed in 2018) and rationalization of internal work spaces to ensure a better workflow for each of the Organs. Additional security measures were implemented at the Beirut Office and included improved access controls. By ensuring that the Tribunal’s premises, assets and infrastructure continue to function appropriately, the GSS facilitated judicial activities within the Tribunal’s buildings in The Hague and Beirut.

(e) Information management and technological services

During the reporting period, the Information Services Section (“ISS”) supported the proceedings by providing comprehensive information management and information technology support to all Organs. In addition, the ISS continued the streamlining and optimization of the information systems which aim to serve the Tribunal’s needs—in particular those of the trial—for the remainder of the mandate.

The ISS recorded a number of achievements during this reporting period. The Tribunal’s award winning Legal Workflow system, which allows for the effective administration of judicial
information and processes at all stages of a case, received a major platform upgrade. In 2017, 9,233 filings were processed, and at 31 December 2017, the system contained 13,896 pieces of evidence and stored 197,480 documents.

The ISS continued to ensure that the Tribunal’s technology is fit for purpose. It did so by updating, upgrading and replacing aging systems to ensure that critical systems and technology are operational, efficient, secure and cost-effective. In this regard, the ISS supported the improvement of the Tribunal’s administrative systems (Budget, Payroll and Human Resources), refreshed the Courtroom camera systems and further strengthened its cyber-security programme. It further reviewed and commenced activities to upgrade the Tribunal’s internal Intranet and Internet presence which had become outdated.

During 2017, the Tribunal’s Library, which is managed in ISS, welcomed an average of 156 visitors per month and played a vital role in providing research assistance by processing 2,496 requests and by conducting research trainings. In addition to the print books collection, out of which 1,955 were consulted or loaned, the Library provided access to legal e-books to facilitate research in connection to the judicial proceedings. In addition, the Library continued to make the Tribunal’s jurisprudence available to the public through the Legal Tools Database and maintained relations with other international courts and organizations.

4. Engaging the public

The Public Information and Communications Section consists of the Outreach and Legacy Unit based in Beirut and the Public Affairs Unit and Spokesperson based in Leidschendam. PICS proactively engaged with Lebanese, regional and international key external stakeholders including the media, legal community, NGO representatives, academics, students, Lebanese officers to raise awareness and increase understanding of the Tribunal’s ongoing work. It also organized capacity building activities in Beirut. PICS operates in the Tribunal’s three official languages (Arabic, English and French).

In Lebanon, court proceedings were covered by the media on a daily basis, with public interest spiking during judicial milestones such as the presentation of the Victims’ case in Ayyash et al. trial and the filing of a confidential indictment before the Pre-Trial Judge. The Spokesperson actively engaged with Lebanese and international media to explain, provide information, answer questions and clarify any misunderstandings with regard to the complex ongoing judicial proceedings. Events—including a Journalist Seminar held in mid-February 2018 for Lebanese and regional media at the Tribunal’s premises in Leidschendam—media briefings and press releases also assisted with keeping media informed, and helped with increasing awareness and understanding of the Tribunal’s ongoing work.

Information on the Tribunal’s judicial and non-judicial work was also made more accessible to the public through monthly bulletins providing summaries of developments, as well as new publications such as the Primer on Telecommunications Evidence which assist the general public, journalists and other interested parties with understanding the complex technical terms and concepts used in the evidence presented in the Ayyash et al. trial. Considering the importance of victims in the fulfilment of the Tribunal’s mandate, special attention was given by PICS to the Victims’ case by producing dedicated publications and video Q&As to explain their role in the proceedings and inform of victims’ testimonies told in court.

Principal platforms for public information continued to include the website (that hosts video and audio streaming of court proceedings) and social media (Twitter, Facebook, LinkedIn, YouTube and Flickr). The website received 200,000 visits in 2017 and the Tribunal’s twitter followers exceeded 24,100—the second highest number of followers among international criminal tribunals—of which
the majority are based in Lebanon. PICS also welcomed 68 group visits of students, academics, judges and diplomats from all over the world to the Tribunal’s premises in Leidschendam, where they were briefed by representatives of each Organ and attended court proceedings.

Other PICS activities focused on capacity building initiatives in Lebanon, which will contribute to the Tribunal’s legacy. Activities included round-tables, workshops and trainings for key audiences in Beirut. For example, in collaboration with the Human Rights Institute of the Beirut Bar Association and the Friedrich Ebert Stiftung, PICS conducted a two days training for lawyers on the conduct of international criminal proceedings at the Beirut Bar Association. PICS’ flagship program continues to be the Inter-University Program on International Criminal Law and Procedure (“IUP”), which is organized in cooperation with eleven Lebanese Universities and the TMC Asser Institute. The sixth edition of the IUP took place in 2017 and was completed successfully with the graduation of 147 Lebanese students, joining the ranks of over 700 students who have completed the program since 2011. With no specialization in international criminal law offered at any Lebanese university prior to that time, the program is the first of its kind.

5. Security and safety

The Security and Safety Section is responsible for providing operational support and oversight of the security management framework, which in turn regulates the strategic direction and governance of security at the Tribunal.

By maintaining its operational capability, SSS has provided the appropriate levels of security for Principal Officials, staff and visitors to the Tribunal, as well as enabling the safest and most efficient conduct of the programmes and activities of each Organ as well as protection and support to the Court, personnel, programmes, facilities and assets.

6. Securing support

Throughout the reporting period, the Registrar continued to implement strategies to secure the political, financial, legal and operational support for the successful completion of the Tribunal’s mandate.

This included maintaining relations with the diplomatic communities in The Hague, Beirut and New York, among other locations. Through the formulation and implementation of a robust fundraising strategy, the Registrar ensured adequate and continued funding for the Tribunal’s activities with the support of the Management Committee.

Since 2009, 28 states have contributed to the Tribunal. This includes Lebanon’s contribution and voluntary contributions or in-kind support from Australia, Austria, Belgium, Canada, Croatia, the Czech Republic, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, Japan, Luxembourg, the Netherlands, New-Zealand, the Russian Federation, Sweden, the Former Yugoslav Republic of Macedonia, Turkey, the United Kingdom, the United States of America, Uruguay and other states. The Tribunal has also received voluntary contributions from the European Union.

The Registry continued to receive on-going financial, operational and judicial support from the Government of Lebanon. Additionally, it enjoyed the continued cooperation and support of the Government of the Netherlands in relation to the Tribunal’s premises, its external security, the issuance of visas and residence permits, in addition to other matters.

The Registry also continued its efforts to engage third-party states to support the judicial proceedings, including the solicitation, negotiation and conclusion of cooperation agreements, including those regarding enforcement of sentencing. The Registry further liaised with third-party
states to ensure that legal and operational frameworks were in place to support the proceedings, and assisted in concluding memoranda of understanding with other international organizations.

Further, the Tribunal enjoyed continued cooperation with the international courts and organizations based in The Hague, including: an information-sharing session; joint training sessions for Registry Sections; collaborative organization of outreach events; technical support; assistance in language services; and inter-library loans. Such mutual assistance contributed to internal cost efficiencies.

7. Tribunal premises outside the Netherlands

(a) Beirut Office

Throughout the reporting period, 64 Tribunal staff members were posted in Lebanon.

Regular missions to Lebanon by Leidschendam-based staff and the Tribunal’s Principals ensured that the Organs and particularly the Registry sections were adequately supported in Lebanon.

In total during 2017, the Beirut Office has supported around 70 missions to Lebanon by the Principals and staff members from Chambers, the Registry, the OTP and the Defence Office, as well as the Amicus Curiae Prosecutor.

Additionally, the Registry in Beirut provided all necessary administrative, logistical and security assistance to the work of resident staff from Chambers, Prosecution, Defence and Registry.

External relations function remains also an element of the Registry’s work in Beirut. The main case, the news of a potential connected case, and contempt proceedings, bring attention on the Tribunal in Lebanon which necessitates regular contact and engagement with Lebanese political figures, members of the diplomatic community and UN representatives.

(b) New York Liaison Office

In New York, the Liaison Office supported the Management Committee in its consideration of the Tribunal’s financial and administrative matters, including by providing background information and responding to the queries of the Management Committee’s members.

The Liaison Office also regularly updated the Management Committee’s members about the Tribunal’s relevant developments.

The Liaison Office continued to offer political advice to the Registrar and to coordinate fundraising in New York. It also ensured that interested States, UN departments and NGOs were informed of the work and challenges of the Tribunal. Finally, the Liaison Office helped organize visits of representatives from all Organs to New York and Washington DC throughout the reporting period.

8. The way forward

In the coming year, the Registry will continue to enable and facilitate the smooth conduct of the judicial proceedings. It will do so by maximizing operational processes and by acting as cohesive support and assistance network. At the same time, it will ensure that the Tribunal carries out its mandate with maximum fiscal restraint and efficiency.
The Registrar adopted a series of strategic priorities for the coming year, many of which have rolled over from the reporting period: ensuring effective support and servicing of the judicial proceedings; providing efficient administration of the Tribunal; enhancing the Tribunal’s image; securing continued support for its work; and ensuring a safe and secure work environment. In addition to these on-going priorities the Registrar will continue to work on the development of the Tribunal’s Strategic Transition Plan and a dynamic fundraising policy to meet its current and future needs. In doing so, he will ensure that the Registry streamlines services by operating as one integrated Registry team.
With key milestones observed in the Ayyash et al. case and the filing of a proposed indictment in relation to the STL-17-07 case, the reporting period has witnessed concrete progress in the Tribunal’s core mandated work.

Created in response to the 14 February 2005 attack against former Lebanese Prime Minister Rafik Hariri, and entrusted also with the jurisdiction to try perpetrators of Connected Cases, the Tribunal plays an extraordinary role in the context of both Lebanese and international criminal justice systems. The exceptional nature of the Tribunal and the importance of its mission to seek truth, secure justice and fight impunity are fundamentals appreciated across the Tribunal. As each Organ works towards the completion of our mission, we are reminded that this is a Tribunal for Lebanon. It is pursuit of this mission, in service of the Lebanese public and in particular the victims of the crimes under the Tribunal’s jurisdiction, that motivates the operations and achievements detailed in this report.

Behind the scenes, the Tribunal’s personnel have worked vigorously to make these achievements possible. Despite the complexity of the proceedings and the unfamiliar territory the Tribunal has frequently been required to navigate; all four Organs have continued to rise to the challenges inherent in carrying out the Tribunal’s mission.

Lebanon remains a crucial partner in ensuring the smooth conduct of the Tribunal’s daily operations. Financial, diplomatic, political and logistical cooperation is both indispensable and a distinctive feature of the Tribunal’s success. The Tribunal is also indebted to the international community for the support we continue to receive. As such, we are ever cognizant of the need to complete our mission expeditiously and in accordance with the highest standards of international justice, in order to deliver responsible outcomes and ensure we remain accountable to all our stakeholders. During the reporting period, this was reflected through the reductions in the Tribunal’s budget without compromising the quality or efficacy of the Tribunal’s work.

With the Tribunal’s mandate having been extended for a further three years or until the completion of the cases before the Tribunal if sooner, we renew our commitment to efficacy and the good administration of justice. Our primary objective in the next reporting period will be the expeditious and efficient completion of our judicial activities. To this end, the Trial Chamber anticipates rendering its judgment in Ayyash et al. case in the second half of 2018, with any appellate proceedings to follow.

In line with our priorities for our next mandate, our attention will also naturally turn to the transition planning inevitable for all temporary institutions. The groundwork has now been laid for these upcoming phases and our efforts will continue on the back of collaboration between the all Organs, to ensure these processes are well-conceived and smoothly executed.

In this context we will also prioritize developing strategies for handling the Tribunal’s legacy. Discussions with internal and external stakeholders aimed at generating Lebanese ownership of this legacy will form the basis of decisions about how best to ensure that we maximize the Tribunal’s lasting impact after the completion of our mission.
## Geographical Representation of International Staff Recruited at the Professional Level and Higher and in the FS Categories

As of 31 December 2017

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**Total Staff**: 195