

Judgment pronouncement

Introduction

1. Just before 13:00 on Monday 14 February 2005, the former prime minister of Lebanon, Mr Rafik Hariri, was travelling in his convoy in Beirut between the Lebanese Parliament and his home, Quraitem Palace.

2. As it approached the St Georges Hotel, near the coast, a massive explosion was detonated. Mr Hariri was killed in the blast. Twenty-one others, including eight members of Mr Hariri's convoy, and innocent bystanders, also died. Three of the victims died after the explosion, two on the following day, and the third, the Lebanese MP, Mr Bassel Fuleihan, succumbed after lying in a coma for two months.

3. At least another 226 people were injured, some very seriously. People passing in the street and working in nearby buildings sustained terrible injuries. Many buildings were badly damaged.

4. The explosion was triggered by a suicide bomber in a Mitsubishi Canter—a light tarpaulin covered truck, loaded with more than two tonnes of RDX high-grade explosives—that detonated as Mr Hariri's heavily protected six vehicle convoy passed the St Georges Hotel. The explosives had the equivalent of 2,500 to 3,000 kilograms of TNT. The explosion left a crater in the road over ten metres wide and almost two metres deep.

5. Mr Hariri and his convoy had been under surveillance for some months before his assassination. Those engaged in the surveillance were communicating in the field using three sets of mobile telephone networks. To distinguish the three networks, the Prosecution labelled them as the Yellow, Blue and Red networks.

6. The Red network was the assassination team. The users of the Blue and Red network mobiles communicated only with each other. Another network, labelled as the Green network, of three mobiles, was alleged to have coordinated and monitored all aspects of the operation targeting Mr Hariri which eventually resulted in his death. The Accused, Salim Jamil Ayyash, Hassan Habib Merhi, and the former Accused, Mustafa Amine Badreddine, are alleged to have been the members of this three mobile network. Mr Ayyash is also alleged to have used a Red network mobile.

7. In the months before the attack, network mobiles had followed Mr Hariri as he travelled around Lebanon. This included his trips to Beirut Airport, to his villa in Faqra, north of Beirut, to his villa at Naameh, south of Beirut, when he visited mosques and churches, when he met Hezbollah's Secretary-General in south Beirut, when he went to the Parliament, and when he had lunch and dinner engagements. The network mobiles were also engaged in static surveillance near Quraitem Palace and along some of the routes he travelled.

8. The aim of this surveillance was to obtain information about Mr Hariri's movements, his security detail, his level of protection and eventually to determine a suitable method to murder him, including finding an appropriate location for the intended attack. Mr Hariri's convoy was equipped with electronic jammers that would have blocked the remote detonation of any explosive. Thus, a vehicular borne improvised explosive device, or a 'VBIED'—in the form of a suicide bomber driving a light truck loaded with explosives that he could safely self-detonate—was chosen for the attack.

9. Shortly after the explosion on the afternoon of Monday 14 February, the Al-Jazeera news network in Beirut received calls claiming responsibility for the attack, and saying that a video was in a nearby tree. An Al-Jazeera employee cautiously retrieved the package with a video and a letter from the tree. Three calls were made to Al-Jazeera, with the last being a menacing call exhorting the immediate broadcast of the video. The callers had also first contacted Reuters. Two of the Accused, Hussein Hassan Oneissi and Assad Hassan Sabra, were alleged to have made these calls and to have observed the video collection from the tree.

10. In the video, which Al-Jazeera broadcast later that afternoon, a young Palestinian man, Mr Ahmad Abu Adass, claimed to represent a fundamentalist group called 'Victory and Jihad in Greater Syria' and to have executed a 'resounding martyrdom operation' against Mr Hariri as an agent of the 'infidel Saudi regime'. The attached letter claimed that the suicide operation was carried out by 'the Mujahid, Ahmad Abou-Adass'. The Prosecution termed this as a 'false claim of responsibility' for the attack on Mr Hariri. And indeed it was. The group is fictional and Mr Abu Adass did not kill himself in the explosion; he was not the suicide bomber.

11. Mr Abu Adass, a religious 22 year old, disappeared from his home in Beirut on the morning of Sunday 16 January 2005 and his family has not seen him since. Presumably, he is no longer

alive. Mr Oneissi and Mr Sabra were alleged to have arranged his disappearance by recruiting him at a mosque in Beirut in the preceding weeks in January 2005.

12. The successful attack on Mr Hariri was carefully planned and implemented. The six core Red network mobile users were responsible for Mr Hariri's murder on 14 February 2005.

13. The Yellow, Blue and Red network mobile users observed Mr Hariri and his convoy's movements in the weeks and months before the attack. Some members of the Red network also used Blue and or Yellow network mobiles. On the day of the attack, the Red mobile users observed Mr Hariri's movements at the Parliament and were present there and near the crime scene shortly before the explosion. They also coordinated the Canter's movement towards the convoy. The Red network users made their final calls in the minutes before the attack and these anonymous mobiles were never used again.

14. The false claim of responsibility video was aimed at diverting attention away from the true perpetrators.

15. The attack was an act of terrorism that was designed to spread fear among the Lebanese population. It was committed for political and not personal reasons.

The Accused

16. The four Accused are Salim Jamil Ayyash, who was born on 10 November 1963 in Harouf, Lebanon, Hassan Habib Merhi, born on 12 December 1965 in Beirut, Hussein Hassan Oneissi, who was born in Beirut on 11 February 1974, and Assad Hassan Sabra, also born in Beirut and whose date of birth is 15 October 1976. A fifth and former Accused, Mustafa Amine Badreddine, who was also known as 'Sami Issa'—and is alleged to have been a co-conspirator—was born in Beirut on 6 April 1961. All five, the Prosecutor alleged, are supporters of Hezbollah, a Lebanese political and military organisation.

17. The amended consolidated indictment contains nine counts, alleging crimes committed contrary to the Lebanese Criminal Code. The crimes are of conspiracy to commit a terrorist act by means of an explosive device, committing a terrorist act by means of an explosive device, the intentional homicide of Mr Hariri and of the 21 others, the attempted intentional homicide of the 226 people injured in the blast and of being accomplices to these crimes.

18. The Prosecutor alleged that each of the four Accused and Mr Badreddine participated in the conspiracy. They had the following roles in the attack:

- i. Mustafa Amine Badreddine monitored, and together with Salim Jamil Ayyash, coordinated the surveillance of Mr Hariri in preparation of the attack, including the purchase of the Canter. He also monitored the physical perpetration of the attack, and monitored with Hassan Habib Merhi the coordination of the preparation of the false claim of responsibility;
- ii. Salim Jamil Ayyash, with Mustafa Amine Badreddine, coordinated the surveillance of Mr Hariri in preparation of the attack, including the purchase of the Canter. He communicated with Hassan Habib Merhi in relation to preparations for the attack, including the false claim of responsibility. He coordinated the physical perpetration of the attack and participated in carrying out the surveillance and assassination;
- iii. Hussein Hassan Oneissi and Assad Hassan Sabra, under Mr Merhi's coordination, participated in identifying a suitable person to use in a video-taped false claim of responsibility for the attack, namely, Mr Abu Adass. Immediately after the attack, they disseminated statements falsely attributing responsibility for the attack, ensured the delivery of the video and attached letter to Al-Jazeera, and ensured its broadcast. This too was under Mr Merhi's coordination. Mr Oneissi, additionally and again under Mr Merhi's coordination, participated in Mr Abu Adass's disappearance for the purpose of creating a false claim of responsibility; and
- iv. Hassan Habib Merhi, with Mustafa Badreddine, coordinated the false claim of responsibility and at times was in communication with Assad Sabra for this purpose. He coordinated Mr Oneissi's and Mr Sabra's activities in identifying and effecting the disappearance of a suitable person, Mr Abu Adass, who would be used in the video. Immediately after the attack, he coordinated their activities in disseminating statements falsely attributing responsibility for the attack, ensuring the delivery of the video and attached letter to Al-Jazeera and ensuring its broadcast.

19. Mr Oneissi and Mr Sabra, according to the Prosecutor, used their personal mobiles to communicate with each other and Mr Merhi in relation to the false claim of responsibility. These

three mobiles were termed the ‘Purple group’ of mobiles. Mr Badreddine, Mr Ayyash and Mr Merhi were alleged to have communicated in a closed three-mobile Green network, in which Mr Ayyash and Mr Merhi used their Green mobiles only to communicate with Mr Badreddine.

20. The Prosecution attempted to prove that they were using their network mobiles based upon the co-location of the network mobiles with their own personal mobiles. In other words, that the personal and network mobiles made calls and travelled in a manner suggesting that they had a single user, meaning that one person was using them.

21. The Prosecution presented a vast quantity of documents and telecommunications evidence, including the call data records of the calls made, and cell site evidence of the cell towers activated, in attempting to prove first, that the Accused and Mr Badreddine were using the personal mobiles alleged. Second, that these were co-locating with the network mobiles. And third, that the network mobiles were engaged in Mr Hariri’s surveillance and assassination.

22. The four Accused, and five, while Mr Badreddine was an accused person on the indictment, were tried *in absentia*, after the Trial Chamber had decided that they were aware of the indictment and had absconded or otherwise could not be found.

23. The Trial Chamber heard evidence from 269 Prosecution witnesses, 119 of whom gave live testimony in the courtroom or through video-conference link, and it received the evidence of 150 witnesses through their written statements. The total number of witnesses at trial was 297.

24. The Trial Chamber ordered protected measures to protect the identity of many witnesses—including 46 witnesses who testified in court—due to concerns for their personal safety or that of their families. It also received the evidence of 20 Prosecution expert witnesses, and, in respect of identification procedures, one Oneissi Defence expert witness.

25. The Trial Chamber received over 3,000 exhibits into evidence from the Prosecution, the Defence and the legal representatives of the participating victims. The judgment is over 2,600 pages with more than 13,000 footnotes. We have also prepared an authentic and authoritative abbreviated summary of the judgment, of around 150 pages that extracts the main findings and cross-references them to the judgment. This pronouncement is a shorter summary to publicly explain the lengthy fully reasoned judgment.

The cell site and telecommunications evidence

26. The Prosecution's case relied upon telecommunications evidence. Without this, there was no case against the four Accused. Over the years of the investigation, the investigators examined the records of millions of calls and text messages to find evidence of communications between mobiles from which patterns could be found.

27. This started with examining the records of the mobiles used around the Parliament and crime scene area on the day of the attack on Mr Hariri. The investigators, initially from the Lebanese investigating authorities, found a group of mobiles that were only communicating with each other.

28. This group, that came to be known as the Red network, had eight mobiles. They were all anonymous. The SIM cards were all purchased in Tripoli, in northern Lebanon, in late December/early January 2005 and they were initialised there within minutes of each other on 4 January 2005. Their credit was topped up in Tripoli, on 2 February. Five handsets were bought together, also in Tripoli, in late December 2004.

29. The six principal mobiles in this Red network all made their last calls in the minutes before the attack on Mr Hariri. They were never used again after that. This group of mobiles was completely anonymous. There were no calls outside the group and no texts sent within it. The only evidence the investigators had of their use was the cell towers to which they were connecting, and when, and which numbers they were calling. From this, they tried to find out who was using them, and who were the callers.

30. The investigators then examined other mobiles that were in the same cell sectors at or around the same time. They were trying to find out if other mobiles were co-locating with the Red network mobiles. They did what is called a 'cell dump'. That involves examining the records of all connections to specified cells and filtering for which mobiles are contacting others. They look for patterns, and then repeat this with target mobiles in other cells that the mobiles connect to.

31. They were trying to find whether mobiles were doing what's called 'co-locating'. Co-locating simply means that the mobiles are travelling together in such a manner that one person could be using more than one mobile. A common example is of someone carrying both their work

and personal mobile around with them in their pocket or bag. When the two mobiles are together, they will connect to the same cell towers. The mobile can be identified through the unique number of each handset and SIM card number that every mobile has.

32. Now, normally, we might expect that a work mobile would be predominantly used during working hours, and a personal mobile more frequently used out of work hours and in different areas. But whichever it is, most people leave a distinct geographic signature when using their mobiles. Most people habitually use their mobiles in the same areas, and for example, don't use them at night when they are at home asleep. They may receive SMS messages when they are not using the mobile, because they are sleeping, but the cell where the mobile is when it receives the text is recorded in the call data records. Thus, we can normally know where the mobile was during the night, unless it was switched off.

33. The first use of a mobile in the morning and the last use at night leaves clues as to where the user is staying that night. Most people also have a pattern of contacts, in who they call, text and message. This too can provide clues as to who is using it. If investigators have the mobile in their hands they can of course examine it for other clues such as notes, photographs, encrypted messages and so on. But the investigators here only had the cell tower connections to go on.

34. Every cell tower has an area of what is called its predicted best server coverage area, which is normally divided into three triangular cells on each tower or mast. That simply means the place it is predicted that your mobile will connect to cell A, as opposed to cell B, or cell C. Each cell has its own name. But this isn't an exact science as the predicted best coverage areas overlap especially around the edges, meaning that your mobile can potentially connect to more than one cell. Or if the network is congested, the call may be directed to the next available cell, which will be one of the cells surrounding the one that the mobile actually is in.

35. To work out if mobiles are co-locating requires some cell site expertise, someone who understands cell coverage areas, the principles of radio propagation, and how mobile networks operate.

36. These experts will examine the call patterns of the target mobiles to work out if *it is possible* and it stressed here, *possible*, that two more mobiles could have a single user. Sometimes no particular expertise is needed to work this out. For example, if two mobiles always connect to the

same cells at the same time every day. Or if two mobiles make separate calls in different cells, but where it's possible to travel the distance between the cells in the time between the calls. For example, two cells two kilometres apart with calls made in each cell within fifteen minutes of each other.

37. But it can be far from straightforward, as mobiles connect to cell towers by radio propagation. The radio waves from the cell and the mobile will hit and bounce off buildings and hills and other geographical features, and can take shortcuts across water far from a predicted coverage area. This can make it difficult to pinpoint where the mobile is. The networks use predictive software to show the predictive best server coverage of each cell on a tower. This is for commercial reasons, to provide the best coverage possible for their customers. They can change the coverage area by adjusting the cell tower antenna—by changing its angle up or down, for instance. Or installing a relay station or, in extreme circumstances, a new cell tower.

38. The predicted coverage areas also don't come in neat semi-circular triangles. Rather because of topography including tall buildings, these can be very patchy, meaning that bits of the predicted coverage of cell A can be in the middle of the predicted coverage area of the neighbouring cell B. Someone using a mobile on the eastern side of a six storey building could connect to a different cell to someone using it on the western side, or on the ground floor. The cell you connect to while walking in the street might not be the one that your mobile connects to while you are using it in the back garden of a house in the same street.

39. So some expertise is required to interpret the call connections. And as a further complication, the Trial Chamber received evidence that Lebanon's Alfa network's predicted best server coverage maps of 2004 and 2005—covering the indictment period—were only around 60 to 70 per cent accurate.

40. Now, that's good enough for the networks' commercial purposes, but it's not good enough to pinpoint precisely where a mobile is. So a mobile's connection to a cell can only approximate where a mobile is. And this is only to the extent that it will most probably be connecting to the cell that provides the predicted best coverage area to where the mobile actually is. In this case, that was the only evidence that the Prosecution had of where the mobiles were. That is, the personal and network mobiles that the Prosecution said that the four Accused and Mr Badreddine were using.

41. There was no GPS to isolate their location and no direct evidence of who was using a mobile, and when and where. There were no smartphones in Lebanon in 2004 and 2005. The case was entirely circumstantial. The only exceptions were when witnesses testified as to where they were at a particular time, and the cell site data of their mobile connections matched this. This was particularly important in pinpointing Mr Hariri's locations when he was under surveillance. His bodyguards used their mobiles and the media covered his appearances. His office kept records of where he went and when. And his numerous trips out of Lebanon. Putting these things together, it was possible to conclusively establish where he was, and whether any network mobiles were nearby at the same time. If they were, the Trial Chamber could then consider whether the network mobiles were conducting surveillance of him. Or, alternatively, if their presence there was simply coincidental when compared to where they were before and afterwards.

42. For example, if Mr Hariri visited a church and the network mobiles started connecting to cells covering the church, or he went out to lunch and the same thing happened, or he travelled to his Faqra Villa about 50 kilometres north of Beirut in the Faraya area and the network mobiles were suddenly connecting to cells along the route on his way there and back, patterns emerge. And it is the consistency of these patterns that allows conclusions that these things are beyond coincidence.

43. The Trial Chamber heard evidence of all of these facts. What has just been said, is just a way of explaining it in a simplified manner.

44. The Trial Chamber heard a lot of evidence about whether the Prosecution's cell site evidence was reliable. The Trial Chamber has concluded that it was sufficiently reliable to use to establish where mobiles *generally* were. This is reliable enough to establish the patterns of travel of multiple mobiles, for example, if they travel in the same direction in a manner in which co-location is possible and the sample size is sufficiently large to draw this conclusion. Meaning, the more calls, the longer the period and the more they travel.

45. It is nowhere near 100 per cent reliable, but this isn't necessary to establish these patterns. But this becomes more important when precision is needed to place someone at a certain place like a particular payphone or a mosque or a tree at a specified critical time. If someone is alleged to

have used a certain payphone at a particular time, and the only evidence of this is that their mobile connected to a nearby cell at around that time, this is far more difficult to prove.

46. The Prosecution and Defence used what are called call sequence tables to show the call connections—cells, mobiles and texts. These are extracts from the call data records of the telecommunications companies, put into tables. Without these, the raw call data records are just strings of incomprehensible numbers.

Standard of proof

47. The Prosecution must prove the guilt of the Accused ‘beyond reasonable doubt’. The Accused are presumed innocent until a verdict of guilt is entered.

48. The Trial Chamber considered every crime and charge against each Accused individually, determining for each whether the evidence establishes beyond reasonable doubt all facts indispensable to a conviction. The Trial Chamber judges voted separately on each charge in the indictment and also, if necessary, to make separate findings on whether each Accused was guilty as charged. The verdict here is unanimous on each count.

49. The Trial Chamber has assessed each piece of evidence in the context of all related evidence. Taking this approach is particularly important in evaluating the Prosecution’s telecommunications evidence. The evidence against the four Accused is almost entirely circumstantial. It is only from reviewing the relevant facts in their entirety that a chamber can see patterns that *could potentially* emerge from which conclusions could be drawn that they are so striking as to be beyond coincidence. And hence provide proof beyond reasonable doubt of facts that are indispensable to a conviction.

50. The Trial Chamber is also acutely aware of the difficulties in attempting to assess the reliability and credibility of witness testimony—especially in an international setting, through interpretation and many years after the attack on Mr Hariri—in evaluating the evidence of each witness.

Political background and context

51. The Trial Chamber heard extensive evidence from the Prosecution and the Defence of Mr Oneissi concerning the political and historical background to the attack. Mr Marwan Hamade, Mr Walid Jumblatt, Mr Fouad Siniora and Mr Jamil El-Sayyed and other politicians and officials testified about the events leading to Mr Hariri's assassination.

52. The Trial Chamber, it is stressed, has no role as a trial court in either writing or correcting any version of history that witnesses or anyone may have urged on it. Its role is to decide only whether the four Accused are guilty beyond reasonable doubt of any of the charges.

53. The attack on Mr Hariri, however did not occur in a political or historical vacuum. The Trial Chamber cannot ignore the background to the attack as providing a possible motive for it. Motive, though, is not a legal element of any of the crimes charged.

54. The assassination by car bombing of a prominent politician—who had recently resigned as the prime minister and was preparing to contest the next parliamentary elections—was undoubtedly a political act. Understanding the political background to the attack gives context to why Mr Hariri was targeted in this manner, but only as it relates to whether the Accused on trial are guilty of any counts charged on the indictment.

55. The evidence showed Syria's overwhelming political, military and economic dominance in Lebanon after the end of the tragic civil war. Opponents of the Syrian presence included Mr Jumblatt's Druze political faction, Christians and members of Mr Hariri's Future Movement. Mr Hariri's political allies vocally supported a United Nations Security Council resolution, number 1559, which, in September 2004, called for the disarming of militias in Lebanon and the withdrawal of foreign troops from Lebanon. One militia was Hezbollah's. The soldiers were Syrian.

56. The Syrians even imposed electoral candidates on Mr Hariri—these were known as the 'Syrian deposits'. Mr Hariri resisted: he did not want this. The Syrian government, over Mr Hariri's opposition, also wanted to extend President Emile Lahoud's term-limited mandate. This could only be done by the Lebanese Parliament changing the constitution. In August 2004, the Syrian President, Mr Bachar Al-Assad effectively ordered Mr Hariri to support Mr Lahoud's extension, stating that Syria alone would choose the President of Lebanon.

57. In the months before his assassination, Mr Hariri's allies were publicly calling for an end to the Syrian political, military and economic dominance over Lebanon. His supporters held three meetings in the Bristol Hotel in Beirut and issued calls for the end of Syrian domination of Lebanon. These occurred in September and December 2004, and a final one just twelve days before his murder, on 2 February. These meetings came to be known as the 'Bristol Group' meetings.

58. There was an attack on the life of Mr Hariri's political ally and friend, Marwan Hamade on 1 October 2004 when a car bomb exploded outside his house. Mr Hamade escaped death and was seriously injured but his bodyguard died and another person was seriously injured. Witnesses testified that the attack on Mr Hamade could be construed as a warning to Mr Hariri and Mr Jumblatt not to cross the line in relation to the Syrian regime.

59. Mr Hariri resigned as prime minister on 20 October 2004 and was planning to run in the May 2005 elections. He would have been supporting proposing the loosening of Syrian dominance over Lebanon and the immediate withdrawal of Syrian troops. The Syrian government, however, was supporting a new electoral law designed to diminish Mr Hariri's chances of having members of his bloc elected to Parliament and hence his prospects of a new term as prime minister. The Syrian government was also insisting, over Mr Hariri's opposition, that he accept the so-called Syrian 'deposits' in his electoral list. Mr Hariri also regularly met senior Syrian officials operating inside Lebanon. These included the Chief of Syrian Military Intelligence in Lebanon, Mr Rustom Ghazaleh.

60. Over more than eleven years before his death—from 1993 to 2005—Mr Hariri paid millions of US dollars and in regular monthly cash payments to Mr Ghazaleh. This included a 'double' payment on Sunday 13 February 2005, the day before the attack. The payments were seen as a form of blackmail necessary to preserve the relationship. The Trial Chamber is also satisfied that Mr Ghazaleh had a good reason to demand this timely final double payment.

61. The growing opposition to the Syrian presence in Lebanon threatened Syria's interests. The Trial Chamber is of the view that Syria and Hezbollah may have had motives to eliminate Mr Hariri, and some of his political allies. However, there was no evidence that the Hezbollah leadership had any involvement in Mr Hariri's murder and there is no direct evidence of Syrian involvement in it. The Trial Chamber also received evidence that Hezbollah's Secretary-General

and Mr Hariri had good relations in the months before the attack, and that Mr Hariri supported the disarming of Hezbollah's militia only once peace with Israel was achieved.

62. For the reasons set out a little later, the Trial Chamber has found that the date when the conspirators decided to proceed with attack on Mr Hariri's life coincided with two important events in early February 2005. These were first a visit to his home by the Syrian Deputy Foreign Minister, and second, the next day a third meeting of the anti-Syrian opposition at the Bristol Hotel.

The victims

63. The explosion had a terrible, devastating and dramatic impact and effect on its victims.

64. Participating victims provided direct evidence of the terrible consequences of the attack. Families lost spouses, parents, siblings, carers, children and other close relatives. Some suffered catastrophic injuries. Fifteen and a half years later the scars remain. Some still suffer from PTSD. Many have permanent injuries.

65. There is no doubt that terrorism is one of the most serious and heinous crimes and that the attack was very grave. The gravity of the crime encompasses its impact on the victims.

66. The harm suffered by the victims—the lost lives, personal injuries or the loss of a family member—cannot be restituted, as restoration of the original situation of the victim, before the violation, is impossible. The judgment highlights what happened to many victims.

67. The Trial Chamber cannot order reparations but it may identify victims, which may assist them in claiming compensation before a national court or another competent body. The Trial Chamber is satisfied beyond reasonable doubt that direct and indirect victims suffered harm.

68. The disparity in treatment among the participating victims as to 'compensation'—meaning financial—for the loss or damage suffered, was dramatic. Some victims received money from a state body, others from the Hariri family. Most got nothing. Victims who provided evidence felt a real sense of injustice because some were compensated while most were not.

69. Compensation for victims of serious crimes must be appropriate and proportional to the gravity of the harm suffered. It should not depend on the circumstances of the victims, their connections, employment relationship or insurance scheme. As a general proposition, the Trial

Chamber agrees that victims of crimes should be entitled to receive a form of statutory compensation.

70. The Trial Chamber—at the invitation of the Legal Representatives of Victims—reminds the Lebanese Government of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, of the need for just ‘compensation’ for the victims of crime. It also reminds the Lebanese government of the importance of having an adequate compensation scheme for victims. As an alternative, a voluntary trust fund could be established to compensate the victims in the cases within the Tribunal’s jurisdiction.

The attack

71. Turning to the attack, in more detail. On the morning of Monday 14 February 2005, Mr Hariri left Quraitem Palace to attend a morning session of the Lebanese Parliament. Shortly before 12:00, he left Parliament and went to café *Place de l’Étoile* opposite where he stayed for around 45 minutes. At around 12:45, he left the café and asked his security detail to prepare his convoy to go back to the palace to attend a luncheon appointment. At around 12:49, he entered his armoured vehicle, accompanied by MP Mr Bassel Fuleihan. At approximately 12:55, as the convoy passed a Mitsubishi Canter on *Rue Minet el Hosn* outside the St Georges Hotel, the suicide bomber detonated the explosives.

72. Mr Hariri was driving himself. Seated next to him was Mr Bassel Fuleihan MP. His car was the third in the convoy. Behind him were two more vehicles, and a makeshift ambulance followed the convoy. It had an Internal Security Forces—or ‘ISF’—lead escort.

73. The explosion occurred around 40 or 50 metres behind the lead vehicle in Mr Hariri’s convoy. Witnesses described two deep sounds a second apart, a ‘huge roaring sound’ and ‘a wave of hot pressure’, a ‘huge explosion’, ‘the sound of an aircraft going through the sound barrier’ or ‘a missile thrown by a large artillery gun’, and described it as ‘like an earthquake.’ The explosion was heard throughout the city, up to 25 kilometres away. While some could barely remember the ordeal due to the injuries and shock, and described it as ‘dream-like’, many gave a vivid account of the explosion and immediate aftermath.

74. It severely damaged nearby buildings such as the HSBC Bank.

75. Seventy to eighty firefighters arrived to try to put out the fire. Mr Fuleihan survived the immediate impact of the explosion. He was transferred from the American University of Beirut Medical Center to France for treatment, where he succumbed to his injuries two months later.

76. In February and March 2005, the Lebanese Military Intelligence and Internal Security Forces conducted their own investigation and analyses of the explosion. Following a request from the Lebanese prime minister, the UN Secretary-General dispatched a fact-finding mission to Beirut to inquire into the causes, the circumstances and the consequences of this assassination.

77. The investigation was not conducted according to international standards. It was mismanaged, disorganised and there was a chaotic approach to the crime scene investigation, particularly in the initial period after the explosion. The crime scene was not properly secured.

78. Critical evidence—in the form of the vehicles in Mr Hariri's convoy—were removed by the ISF from the crime scene on the very evening of the attack. Tow trucks and other heavy-duty vehicles drove onto the crime scene to do this. The crime scene was damaged. It was also unnecessary: there was no urgency. The Trial Chamber finds incomprehensible what happened.

79. There was no proper coordination of the initial investigation. There was no coordinated procedure to search for missing persons in the days following the explosion. The body of one victim was found only after repeated attempts by his family to search for him at the crime scene, on their own and on one occasion with search dogs they brought onsite and paid for themselves. They found his body some seventeen days afterwards. Another victim's body was found the day after the explosion, and was probably alive for twelve hours afterwards and may otherwise have survived, had he received timely medical treatment.

80. In the year after the explosion, international forensic teams from Switzerland, the Netherlands, the UK and Spain assisted the international investigators from the UN fact-finding mission and the UNIIC. That's the United Nations International Independent Investigation Commission that was established by the Security Council in April 2005. It assisted the Lebanese investigating authorities until February 2009.

81. The Trial Chamber is, however, satisfied that Lebanese officers and experts, but assisted by multiple international forensic teams, conducted *some* thorough and successful investigations

into *various* aspects of the explosion and in very difficult circumstances. This included explosives, ballistics and forensic crime scene investigation—including Lebanese volunteers and international underwater diving teams and experts in identifying vehicle parts—and forensic science and human identification.

82. The various investigations collected key evidence at the crime scene, such as the vehicle parts and some of the human remains. The gross deficiencies in the initial investigation did not affect in any material manner the evidence underlying the issues that require the Trial Chamber’s deliberation on the guilt of the Accused. However, strong lessons must be learned from what occurred.

The explosion

83. The attack was a detonation reaction of high explosives. The damage and destruction to the St Georges and Byblos Hotels demonstrated the nature of the explosion. The St Georges Hotel for example suffered a bent column and canopy. A three-and-a-half metre section of the 20 cm thick front wall of the Byblos Hotel wall was pushed back 60 centimetres by the explosion. The mangled metal fragments found at the scene of the explosion, and the presence of what is called ‘washout’ on several of them, further confirms that high explosives were used during the attack. This was an enormous explosion.

84. The quantity of explosives used was between 2,500 to 3,000 kilograms of TNT equivalent. The explosive used is RDX which is also available as Semtex. Some witnesses observed that RDX is so powerful that it is most suitable for military purposes. It was detonated approximately 50 to 80 centimetres above ground level and the explosive charge was rectangular in shape. It created a crater that, based on the cone shape, had a diameter of around 11.4 metres with a depth of around 1.9 metres, within a margin of error of several per cent.

85. The expert evidence was that an explosion in a narrow street with tall buildings with few openings will create higher peak pressure and peak impulse values because of reflections from the nearby walls. This is known as the ‘canyon effect’.

86. The explosives were loaded on the cargo tray of the back of a white Mitsubishi Canter, a common type of light truck, covered in a tarpaulin. This vehicle, stolen in Japan, was imported

into Lebanon from the UAE in December 2004 and sold in Tripoli in mid January 2005 to two unknown men.

87. Parts of the Canter were recovered at the crime scene and in the waters of the nearby port. The engine block identifies it as the Japanese Canter.

88. Mr Hariri's convoy was equipped with jamming devices, designed to prevent a remote detonation of a bomb. They were activated and working on the day.

89. The consensus of the various Lebanese and international investigation teams was that a suicide bomber triggered the explosion. The Trial Chamber agrees. Each team eliminated the other possible means of detonation as inappropriate for targeting a moving convoy of vehicles. This leaves only the possibility of a remote control device or a suicide bomber. The Trial Chamber has found beyond a reasonable doubt that a suicide bomber triggered the attack.

90. Twenty-three people died in the explosion or in the aftermath of the blast, including the suicide bomber. However, only 20 complete bodies were recovered from the crime scene.

91. The remains of an unidentified man were found near to the blast. In total, the experts and investigators recovered and identified 92 human parts belonging to him. The quantity of remains was small, with a combined weight of less than one kilogram. This included smaller pieces of tissue and bones. A burnt tooth sample from this person did not match the DNA profile of Ahmad Abu Adass, the young Palestinian man in the false claim video. His DNA profile was not found at the crime scene.

92. Based on the DNA evidence found at the scene and the analysis of DNA samples from Mr Abu Adass's family members, the Trial Chamber is satisfied beyond a reasonable doubt that Mr Abu Adass was not the suicide bomber.

93. The unidentified male was the closest in proximity—within one to two metres—of the explosive device when it detonated. He was most likely the suicide bomber.

94. Beyond the evidence that the tooth belonged to a young male in his early 20s, there is no further identifying evidence in the human remains analysed by the forensic experts as to his identity. The Trial Chamber therefore cannot make a finding on the 'unidentified male's' identity.

The mobile telephone networks

95. The Prosecutor alleges that the four Accused and Mr Badreddine carried out Mr Hariri's assassination by using groups of mobiles that operated as networks. These were mobile groups with a high frequency of contacts within the group.

96. The Green network of three mobiles allegedly monitored and coordinated the attack and the false claim of responsibility. The Red network of eight mobiles carried out the assassination of Mr Hariri. The Blue network of 15 mobiles and the Yellow network of 13 mobiles, were used to prepare for the attack, including the surveillance of Mr Hariri. The three mobiles in the fifth group, the Purple mobiles, were used to communicate with each other and others outside the group to coordinate the false claim of responsibility. This may sound complicated and indeed it is very complex trying to unravel what occurred by examining cell site and call data records.

97. The handsets and SIM cards were purchased anonymously or with fake identification and paid in cash, including top-ups. Some handsets were swapped between mobiles in the different networks.

98. The Trial Chamber finds that the Green, Red, Blue and Yellow networks were interconnected and coordinated with each other and operated as covert networks at the relevant times.

99. The assassination team used six Red mobiles, including on the day of the attack. At least two also used Blue mobiles. Given their high forensic profile, the discovery of the Red mobiles by investigators was inevitable. They were used in the area of the crime scene at the time immediately preceding the crime. The Red network mobiles ceased use just before the explosion. Their users took extreme care to limit their traceability, which meant that the anonymity of the users of the Red mobiles was the most protected.

100. This created a need for the Blue mobiles, which could be used more generally for surveillance and other activities.

Attribution of the mobiles to the four Accused and Mustafa Badreddine

101. The case against the four Accused—and proving Mr Badreddine’s pleaded role in the conspiracy charged—depends upon the Prosecution successfully proving that they were using specified mobiles. This is termed ‘attribution’. Proving this attribution of specified personal mobiles is the first step towards co-location of the network mobiles and their attributed personal mobiles.

102. This part of the Prosecution case is factually very complicated. Neither the Accused nor Mr Badreddine had mobile subscriptions in their own names, which could have made the attribution analysis easier. The investigators worked ‘backwards’ by first identifying the patterns of mobile use in suspected closed networks that appeared to be connected with the surveillance, and or assassination of Mr Hariri, and then attempting to find mobiles that were co-locating with these identified network mobiles. They then had to identify who was using the mobiles that appeared to be co-locating with the network mobiles. Finally, this had to be connected to any known and provable events linked to the crimes.

103. The investigators closely examined the circumstances surrounding the mobile use to attempt to find their users. The UNIIC and the Prosecution engaged in a complex and time-consuming inquiry checking for everything that could be gleaned from the ‘associations’ of a targeted mobile, attempting to determine who was using it, to connect it with a suspect, or to identify a potential new suspect. This inquiry included analysing each mobile’s pattern of use—such as where it was used, who it was in contact with and how often and who its contacts contacted.

Taking the four Accused in turn:

Salim Jamil Ayyash

104. According to the indictment, he was using four network mobiles, termed Yellow 294, Blue 233, Red 741 and Green 300.

105. Mr Ayyash owned an apartment in Hadath, Beirut and used a family residence in Harouf in southern Lebanon, near Nabatiyeh. He worked for the Lebanese Civil Defence at the Al-Doueir station, near Harouf, until February 2002, and then until November 2004, was the Head of the Markaba station, before transferring back to Al-Doueir.

106. The Prosecution led evidence of his personal mobile and landline use, and the contacts of each number, and what was termed the geographical profile, namely the cells that the mobiles were connecting to. This means where they were when they made and received calls. The numbers calling, and called, and texts sent and received were termed the ‘contact profile’. The same technique was laboriously used with each mobile in the case. And with each Accused. From this, the investigators compiled a profile on each mobile that the Prosecution used to submit that only the named Accused person could have been using the particular mobile in question.

107. Mr Ayyash used the landlines at the two properties, which were in his name, and personal mobiles numbered 165, 170, 935 and 091. These mobiles had similar contact profiles and were used as contact numbers for official and business purposes such as passport applications, family service providers and for insurance claims and towing after his car was involved in an accident. The SIM of one was used in his BMW.

108. He also travelled to Mecca to perform the Hajj in January 2004. While he was there, he used his bank card to withdraw cash from ATMs. The importance of this to the case is to compare his mobile usage then with his mobile usage a year later when he allegedly made another pilgrimage there.

109. In January 2005, Mr Ayyash was again recorded as travelling to Saudi Arabia from Beirut, between 15 and 28 January. If he was not in Lebanon then, he could not have been using the three network mobiles—Red, Blue and Green. It would have to have been someone else. The Prosecution case against him would fail on that basis alone.

110. To prove that Mr Ayyash remained in Lebanon the Prosecution compared the call patterns of the mobiles that Mr Ayyash was using in January 2004 with those he was using in January 2005, and additionally their co-location with a Yellow network mobile in 2004, number 669. Its SIM was also used in Mr Ayyash’s personal mobile 170. The Trial Chamber has found, but only on the preponderance of the evidence—from the common movement and the number of overlapping cell activations—that it is more likely that Mr Ayyash was Yellow 669’s principal user.

111. The Lebanese border records and the flight manifest of MEA show Mr Ayyash leaving Lebanon for Saudi Arabia with his wife and daughter on 15 January 2005. He had obtained a special Hajj passport for the travel and had taken time off work for the pilgrimage. However, his

leave was cancelled and he was reimbursed a travel allowance on the basis that he was working for the Civil Defence, involved in duties such as firefighting and rescue work. Additionally, the Trial Chamber received evidence that the passport control system at Beirut Airport at the time was inadequate as it was overwhelmed by thousands of pilgrims. Pilgrims with Hajj passports were checked in as a group and their passports were collected as a group and given to the border officials for stamping. Individual identities were not checked. The Saudi records show Mr Ayyash and his wife's names as entering and leaving, but not their daughter who the Lebanese recorded as leaving and entering Lebanon. The system was flawed and unreliable at both ends.

112. Mr Ayyash's attributed network mobiles, Blue 233 and Green 300 remained active during the 2005 Hajj, and Red 741 started its network activities. The mobiles continued to co-locate and move in tandem in the periods analysed including the 2005 Hajj. In contrast with personal mobile 165's handset change during the 2004 Hajj, personal mobiles 170 and 091 continued to use the same handset before and after the 2005 Hajj. These personal and network mobiles had a single user during the 2005 Hajj, except for the duration of mobile 091's separation from the other mobiles on the afternoon of 28 January 2005.

113. The Trial Chamber has therefore found that Mr Ayyash remained in Lebanon and did not travel to the Hajj. This finding is essential for deciding whether he was involved in the attack.

114. The evidence establishes that he was using Yellow 294 until 7 January 2005, based upon its co-location with his personal mobile 935 and their common calling patterns.

115. Blue 233 was used for preparations in the attack on Mr Hariri, including surveillance. It was used by Mr Ayyash from Monday 10 January until at least 14 February 2005. Its co-location with Mr Ayyash's personal mobiles 170 and 091 was such that the Trial Chamber finds that they had a single user.

116. Mr Ayyash, according to the Prosecutor was Green 300's user from 30 September 2004 to Monday 14 February 2005, as one of three mobiles that were used to monitor and coordinate the preparation for the attack on Mr Hariri. This mobile contacted only one other—Green 023, that the Prosecutor attributed to Mustafa Badreddine.

117. Green 300 made its final call on 14 February 2005, an hour before the attack on Mr Hariri, connecting, at the end of that call to a temporary relay cell, placed on the back of a truck across the road from the Phoenicia Hotel facing in the hotel's direction and close to the scene of the attack. This small temporary cell had a predicted coverage area of around 150 metres.

118. The cumulative occurrences of possible co-locations between Mr Ayyash's personal mobiles 935, 091 and 170 and the network mobiles Yellow 294 and Blue 233 with Green 300 over this period of four and a half months has convinced the Trial Chamber that these mobiles had a common user in Salim Ayyash.

119. Red 741, according to the Prosecutor in the amended consolidated indictment, was one of six Red mobiles used by the 'assassination team'.

120. The Prosecution attempted to prove that Mr Ayyash was using it through its co-location with Mr Ayyash's personal mobiles 091 and 170, and the network mobiles Blue 233 and Green 300.

121. The attribution of this mobile is the key to the case. Whoever was using it was closely involved in Mr Hariri's murder.

122. Red 741 dislocated from mobile 091 on Wednesday 2 February 2005, when it was topped up in Tripoli. Logically, whoever was topping up a group or network of mobiles took the mobiles from their individual users to Tripoli.

123. The Trial Chamber is satisfied beyond reasonable doubt, based on the totality of the evidence, that Red 741 also had the same user as these other mobiles analysed above. That user was Mr Ayyash from Friday 14 January to Monday 14 February 2005. The Trial Chamber is therefore satisfied beyond reasonable doubt that Mr Ayyash was the user of Red 741 from Friday 14 January to Monday 14 February 2005.

124. The evidence also establishes that Mr Ayyash had affiliations with Hezbollah.

Hassan Habib Merhi

125. The next Accused is Hassan Habib Merhi who was alleged to have used his personal mobile Purple 231 to organise the false claim of responsibility for the attack. Allegedly he communicated with Mr Badreddine exclusively on a Green mobile, number 071.

126. The case that Mr Merhi was using either Purple 231 or Green 071 is circumstantial. Purple 231 was not subscribed in his name, and was last used on Tuesday 15 February 2005, the day after the attack.

127. The Prosecution sought to establish that Mr Merhi was using Purple 231 by proving that he and his family were using a personal mobile number 6091, and then comparing the geographical and contact profiles of the two mobiles. From this, it then sought to demonstrate that Purple 231 and Green 071 were co-locating in a manner proving that the two mobiles had a single user, namely Mr Merhi.

128. The evidence proves that Mr Merhi and his family were using mobile 6091.

129. The strongest piece of evidence linking Purple 231 with him was in November 2004 when someone, calling from Purple 231 called a furniture store, and gave the name Hasan Merey for the delivery of mattress to his address, and giving the contact number of mobile 6091.

130. During the trial another mobile, termed the ‘Grey mobile’ was put into evidence by the Merhi Defence as one potentially co-locating with Green 071, meaning that it was not Mr Merhi if he was using Purple 231. However, the Prosecution then investigated the Grey mobile and found evidence that incontrovertibly proved that Mr Merhi was its user. He was identified by his passport photograph, the mobile number and SMS content. But it was co-locating with Purple 231. The Trial Chamber has found beyond reasonable doubt—based on the Grey mobile—that Mr Merhi was using Purple 231 at the relevant time.

131. Whether Mr Merhi was using Green 071 rests solely upon its co-location with Purple 231 and the Grey mobile. There is some reasonable evidence that the three mobiles *could* be co-locating. But ultimately, there was insufficient evidence to make a finding to the high standard of beyond reasonable doubt that Mr Merhi was using Green 071. There were an inadequate number of calls, and significantly, a lack of movement from which it could positively conclude that Green 071 was co-locating with either Purple 231 or the Grey mobile in a manner in which the two

personal mobiles, plus Green 071, had a single user. The Trial Chamber was not satisfied beyond reasonable doubt that Mr Merhi was using a Green network mobile.

Hussein Hassan Oneissi

132. Hussein Hassan Oneissi was previously known as Hussein Hassan Issa. The Prosecutor alleges that he was using his personal mobile Purple 095 in the false claim of responsibility. It was not subscribed in his name. It was last used on Wednesday 16 February 2005.

133. Numerous documents, such as applications to open bank accounts and to purchase a vehicle use this as a contact number for Mr Oneissi who was then known as Hussein Issa. The call data records demonstrate that a significant number of the top 30 contacts are with numbers attributed to Mr Oneissi's family, in-laws and acquaintances. Most notably, the highest-ranking contact is with a number attributable to his mother with which Purple 095 had 747 contacts.

134. The totality of the evidence points to him as its principal user. The only conclusion reasonably available from the totality of the evidence was that Mr Oneissi was the principal user of Purple 095 from at least 9 January 2003 until 16 February 2005. The Trial Chamber is satisfied of this beyond reasonable doubt.

Assad Hassan Sabra

135. Mr Sabra married Ms Hala Salloum in November 2000 and they lived in Beirut. He is alleged to have used a personal mobile Purple 018 between November 2001 and 16 February 2005, and for false claim related activities. This mobile had numerous contacts with family members of both.

136. To prove he was using this mobile the Prosecution used two other mobiles, numbers 546 and 657 that were used from 24 February and 20 July 2005 respectively, to attribute Purple 018 to Mr Sabra.

137. There is no direct evidence of who Purple 018 'belonged' to. It had no subscriber details and there was no evidence of its use as a contact number for anything. The Prosecution relies on its contact profile, the content of six SMS messages, the cells to which it connected and the contact

and geographical similarities, including text message content, with two mobiles that were used after this one.

138. This is the weakest of any of the attribution evidence led against the four Accused and Mr Badreddine. No conclusive evidence was presented about exactly where Mr Sabra lived during the indictment period, namely from late 2004 to early 2005, nor with whom, nor where he worked, nor what he did. Mr Sabra, on the Prosecution's case, was using Purple 018 until Wednesday 16 February 2005, when it was discarded.

139. There was no evidence of a geographical footprint that could be traced to Mr Sabra by virtue of his home address, place of work and his leisure and social activities including those with his family. Nor for his wife, Ms Salloum, another potential user of Purple 018.

140. The evidence attributing Purple 018 to Mr Sabra is weak; without examining mobiles 546 and 657 it cannot be attributed to him. Nor could the Trial Chamber conclude that he was its user during the relevant period.

141. Mr Sabra and his wife, Ms Salloum, used both mobiles 546 and 657 although it appears that they were more often used by Ms Salloum.

142. The evidence establishes that Mr Sabra and Ms Salloum were using Purple 018 from 22 November 2001 until 16 February 2005. They then used mobiles 546 and 657.

143. The Trial Chamber, however, has been unable to find calling patterns for the user(s) of Purple 018 from which it could discern that it had a single user either in the attribution period or the pleaded indictment period. On some days, assuming that Mr Sabra was more likely to contact his relatives than his wife's, and vice versa, either could have been using the mobile and at different times.

144. The Trial Chamber therefore cannot conclude that Mr Sabra was the sole, main or principal user of Purple 018 during the period pleaded in the indictment for his involvement in the conspiracy charged, namely, from 22 December 2004 to 14 February 2005. The evidence points to shared use with his wife. The Trial Chamber cannot positively conclude from the only evidence it has—namely, that of the mobile's geographic and contact profiles, for there is no conclusive

relevant text message content—that Mr Sabra was the sole user of the mobile on the days on which it is pleaded that he was using the mobile for any false claim of responsibility related activities.

145. The Trial Chamber is therefore unable to conclude beyond reasonable doubt that the only inference reasonably available from the evidence is that Mr Sabra was the single user of the mobile between 22 December 2004 and 14 February 2005. This is fatal to the case against Mr Sabra.

Mustafa Amine Badreddine

146. Mustafa Amine Badreddine was twice married, with six children. His late brother in law was Imad Mughniyeh, who was married to Mr Badreddine’s sister, Saada. Mr Badreddine was one of the four original accused in this case when it started, before Mr Merhi’s case was joined.

147. In May 2016, Hezbollah announced his death as a Hezbollah commander fighting in Syria. On 11 July 2016, the Trial Chamber, acting according to the Appeals Chamber’s majority decision, terminated the case against him without prejudice to resuming the proceedings should evidence that he is alive be adduced in the future. His name remained in the amended consolidated indictment that the Prosecutor filed following this order.

148. In this it is alleged that Mr Badreddine, who also used the alias ‘Sami Issa’, participated in a conspiracy with the four Accused aimed at committing a terrorist act to assassinate Mr Hariri. Specifically, he monitored, and with Mr Ayyash, coordinated the surveillance of Mr Hariri in preparation for the attack and the purchase of the Canter used in the attack.

149. Additionally, the Prosecutor alleged that he monitored the physical perpetration of the attack. And that he monitored, and with Mr Merhi coordinated the preparation of the false claim of responsibility for the attack.

150. His involvement in the attack, according to the Prosecutor, is shown by using a Green network mobile. Mr Badreddine is alleged to have used his Green network mobile 023 to communicate with Mr Ayyash, who was using his Green mobile 300, and with Mr Merhi who was using Green mobile 071, ‘to exchange information regarding all aspects of the conspiracy and coordinate the acts done in furtherance of the conspiracy’. It was a coordination network used exclusively by these three co-conspirators. Mr Badreddine is also alleged to have been—as are the four Accused—a supporter of Hezbollah.

151. To prove that he was using Green 023, the Prosecution led evidence that Mr Badreddine was also using two personal mobiles, numbers 663 and 354 that co-located with Green 023. It led extensive evidence of the use of these two mobiles. Mr Badreddine was also using five other mobiles numbers ‘used in sequential order, meaning that each phone was used for a period of weeks or months and then replaced by another’.

152. Some witnesses knew Mr Badreddine under his alias of Sami Issa. He attended the Lebanese American University as a student between 1997 and 2004. He graduated in 2005 with a Bachelor of Arts in Political Science. From about 2002 to 2005, calling himself Sami Issa, he befriended students at the university and socialised with them. Sami Issa had bodyguards, one or more apartments in or near Jounieh, which is about 20 or so kilometres north of Beirut, a boat called ‘Samino’ that he moored north of Beirut and he owned a jewellery business, Samino Jewellery, that had three branches in Beirut.

153. Ten witnesses identified his mobile numbers 354 and 663, as Sami Issa’s. Text messages used the names ‘Sami’ and ‘Samino’. Sami Issa, like Mustafa Badreddine, had a leg injury and walked with a limp. Text messages to both personal mobiles refer to his leg and foot injuries. The two also shared the same birthday, 6 April.

154. Sami Issa travelled with armed bodyguards, used multiple mobiles and took precautionary measures to avoid being photographed, or leaving his fingerprints on objects.

155. One mobile had 855 contacts with one of Mr Badreddine’s girlfriends and 128 with another. It also had 2,056 contacts with his sister’s mobile and hundreds of contacts with the Samino outlets. Another had 21,372 contacts with one girlfriend and 3,151 with another. It had thousands of contacts with the Samino stores and its associates, as well as 1,895 with an employee.

156. The two mobiles had an overlapping geographical profile and use pattern and numerous common contacts.

157. A third personal mobile had hundreds of contacts with the mobiles of Sami Issa’s business partner at Samino and its registered owner. It had a smaller circle of contacts—including what were described as Samino ‘insiders’, Hezbollah officials and several Badreddine family members—and a lower volume of traffic.

158. In May 2016, when Hezbollah announced Mr Badreddine's death in combat in Syria, it released biographical details including photographs and video footage, and stated that he was a senior Hezbollah military commander. Eight witnesses recognised Mr Badreddine as the person they knew as Sami Issa. The evidence that Mr Badreddine was Sami Issa, and was using the three personal mobiles is overwhelming.

159. The cell site evidence establishes that mobiles 354 and 944 co-located, and that mobiles 944 and 663 co-located. Both had a single user. Green 023 was used on 57 days between 28 September 2004 and 12 February 2005. It moved consistently with the other three mobiles.

160. The evidence establishes that Mr Badreddine was using personal mobiles 354, 663 and 944 in the periods alleged, either under his own name or his alias Sami Issa. These mobiles co-located with Green 023—especially in their movements between the Jouneih area and southern Beirut—in such a manner that the only reasonable conclusion from the evidence is that Mr Badreddine was also using that mobile and as its single user.

The surveillance of Rafik Hariri before his murder

161. In the months before Mr Hariri's assassination, the Blue, Red and Yellow networks—and specifically the six core Red mobiles, the six core Blue mobiles and the four core Yellow mobiles—conducted observations and surveillance of Mr Hariri and his movements. On 39 days between Wednesday 20 October 2004 and Monday 14 February 2005, there was significant network activity in the area of his home, Quraitem Palace.

162. On fourteen days between Thursday 11 November 2004 and Monday 14 February 2005, network mobiles 'followed' Mr Hariri's security detail. This showed an unequivocal pattern of the network mobiles shadowing Mr Hariri. On some of these days, and on others in the same period, network mobiles connected to cells providing coverage to locations relevant to Mr Hariri, such as Quraitem Palace. Some of the surveillance, especially in the weeks before Mr Hariri's death, was clearly connected with the assassination. These network mobiles generally activated cells near Quraitem Palace when Mr Hariri was present there.

163. There is no direct evidence that the users of the network mobiles were engaged in surveillance of Mr Hariri. The evidence is circumstantial, consisting only of call data and cell site

records showing the cell activations—that reveal the calling and cell siting patterns of the network mobiles—and matching these with Mr Hariri’s provable known movements. When the two correspond, patterns emerge from which it can be concluded that the locations of network mobiles and Mr Hariri coincided in a manner meaning either that they were following or observing him or his security detail.

164. The Red, Blue and Green networks operated completely covertly. Yellow network mobiles swapped handsets between the SIM cards, including between three Blue network mobiles and on Mr Ayyash’s personal mobiles 165 and 170. The Blue mobiles operated as a covert network and a core of six operated covertly from some time in December 2004 until Monday 14 February 2005. They communicated almost exclusively with each other.

165. The Red network, apart from its surveillance activities, also had a crucial role in executing the attack on 14 February 2005. It was, as the Prosecution alleged, the assassination team or network.

166. The Red mobiles were active in the area of Quraitem Palace in the morning and then in the Parliament and crime scene area. They were indisputably involved in Mr Hariri’s assassination. In the last two hours before the attack, 33 calls were made between the six Red mobiles. Between 12:49 and 12:53. Mr Ayyash’s Red 741 and the five other Red network mobiles were involved in the final seven calls of this network. The explosion that killed Mr Hariri and others occurred at 12:55. These mobiles were never used again.

167. There were insufficient Green network calls to allow the Trial Chamber to link them to pleaded events, which would have provided the necessary factual context. The Green network had the appearance of a triangular framework with Mr Merhi’s attributed Green 071 and Mr Ayyash’s Green 300 never calling each other but only communicating with Mr Badreddine’s Green 023.

168. Insufficient evidence exists to conclude that the Green network was the mission command, the apex of the operation, with Mr Badreddine at its peak functioning as a ‘mission command’.

169. The Trial Chamber was of the view that it was not the only reasonable conclusion from the evidence that the Green network acted as the mission command. The Trial Chamber allowed for the reasonable possibility that the Green network had another function, not necessarily at the apex

of all other networks. The Trial Chamber therefore cannot be satisfied beyond reasonable doubt that Mr Badreddine masterminded the attack, as alleged.

170. Some core users of the Red, Yellow, Green and Blue networks had a common mission, namely the assassination of Mr Hariri. The evidence is insufficient, however, to establish that all surveillance by network mobile users in the months preceding Mr Hariri's death was a preparatory act for the assassination and hence connected with it. Mr Hariri was also under surveillance by others, including the ISF. The only conclusion available from the totality of the evidence is that the network mobiles were engaged in surveillance of Mr Hariri in the months prior to the attack, and that a portion of it was preparatory work for his assassination.

171. The days of use of the Green, Blue and Red networks largely overlapped, and between Friday 14 January and Monday 14 February 2005, the Red mobiles were active on 11 days, the Green mobiles on 21 days and the Blue mobiles on all 31 days. It is clear from the patterns of cell activations and the sequences of some calls between network users that the four networks were interconnected and coordinated with each other.

172. The Prosecution proved both static and mobile surveillance of Mr Hariri on a number of days.

173. The cell mast activations of the mobiles used by Mr Hariri's security detail prove his movements; his detail was always with him. Other evidence such as photographs and media reporting also corroborates Mr Hariri's visits to various locations. Additionally, the Trial Chamber received ample evidence from his staff, and palace documents such as its visitor's logbook, and of media releases, of his presence at Quraitem Palace and his absences from Beirut and Lebanon, to prove where Mr Hariri was at all relevant times. This evidence effectively proves Mr Hariri's movements between Wednesday 20 October 2004 and Monday 14 February 2005.

174. The Trial Chamber has analysed both the static and mobile surveillance alleged. It has examined the evidence of each alleged incidence and in the light of the evidence of the networks and their connections.

175. The ultimate issue is whether the various network cell activations and calls, in combination with Mr Hariri's movements, leads to only one inevitable conclusion, namely, that they were

engaged in the surveillance, or ‘observations’ of him. The Trial Chamber is satisfied that this is what happened.

176. The evidence establishes that on 39 days between Wednesday 20 October 2004 and Monday 14 February 2005 there was significant network activity in the area of Quraitem Palace.

177. There was an unequivocal pattern of the networks shadowing Mr Hariri. On a number of occasions between Thursday 11 November 2004 and Monday 14 February 2005, it is obvious from the presence of network mobiles connecting to cells near where Mr Hariri’s security detail was, that they had ‘followed’ him to where he was. One striking feature is that during Mr Hariri’s absences from Lebanon, network activity significantly scaled down, and most ceased around Quraitem Palace.

178. The patterns of calls between network mobiles, their presence connecting to cells around Quraitem Palace, the airport, in the Faraya area and in other places where Mr Hariri was such as his visits to churches, his dinners and lunches, is beyond coincidence. There are too many calls and too many instances of network mobiles sharing a locality with Mr Hariri, and over an extended period, for this to be accidental. This happened too often and in too many different places to be spontaneous. The mobile users were communicating in closed networks, and on different days, their users operated in locations where Mr Hariri was present.

179. There was also static surveillance. Clear patterns emerged of network mobile presence near Quraitem Palace and along the route to Mr Hariri’s Faqra Villa, near Faraya. Significantly, there was very little network activity around Quraitem Palace when Mr Hariri was not there.

180. The users of the Blue, Red and Yellow networks—and more specifically the six core Red mobiles, the six core Blue mobiles and the four core Yellow mobiles—conducted observations or surveillance of Mr Hariri and his movements on different days from Wednesday 20 October 2004 to Monday 14 February 2005.

181. The Trial Chamber is therefore satisfied that the only reasonable conclusion available from the evidence is that Mr Hariri was under surveillance from Wednesday 20 October 2004 to Monday 14 February 2005, with the surveillance in the latter period connected with his possible assassination.

182. But the Trial Chamber cannot find that all of it was connected with the plan to assassinate Mr Hariri. The evidence only suffices to establish that the final decision to assassinate Mr Hariri was most probably made sometime in early February 2005. The Trial Chamber, however, cannot positively conclude that the surveillance in October, November and December 2004 and in January 2005 was solely for the purpose of planning his assassination.

183. Undoubtedly, some of it in the latter part of January 2005 was directed at obtaining information about Mr Hariri's movements and convoy, if needed, to continue with a plan to assassinate him, which had been hatched by then. At least some of the users of the Red, Yellow, Green and Blue networks had a common mission, namely the assassination of Mr Hariri. However, the fact that these networks were connected and that their existence was linked to Mr Hariri's movements and eventually his assassination, does not mean that every user of every network mobile knew about the mission to assassinate him, either in detail or at all.

The Canter

184. Two men purchased the Canter in cash in mid-January 2005 in Tripoli. Neither call data records nor the dealership's records can confirm the sale date. The Prosecution argues that the truck was sold on 25 January 2005 and Mr Ayyash coordinated its purchase. The preponderance of witness evidence supports that date, which is confirmed by the network activity. The Ayyash Defence submits that 17 January 2005 is more likely—indeed that cell coverage records prove it could not have been 25 January 2005—and that the witnesses' conclusion about that date was unpersuasive, given the methods by which they reached it. Furthermore, according to the Ayyash Defence, Mr Ayyash was in Saudi Arabia, not Lebanon, from 15 to 28 January 2005.

185. The Trial Chamber has concluded that 25 January 2005 is the more likely date. There is insufficient evidence to determine beyond reasonable doubt either any particular network mobile user's role in the Canter's purchase, or what any of them did afterwards to prepare it for use in the attack.

False claim of responsibility for the attack

186. In the immediate aftermath of the explosion on 14 February 2005, Beirut was in a state of chaos and crisis. The Trial Chamber received evidence of an atmosphere of turmoil that included the overloading of the mobile networks and a breakdown in communications.

187. People were desperately trying to obtain information about family and friends. The crime scene was swamped with emergency and security personnel, journalists, and many others who should not have been there, including people looking for their loved ones. It was at first unclear whether Mr Hariri had survived the attack. When his death was announced, the obvious question was ‘who was responsible’. It was in this setting, but before Mr Hariri was officially confirmed dead, that the Beirut offices of Reuters and Al-Jazeera received calls claiming responsibility for the attack.

188. Some hours later, international media outlets then broadcast a claim of responsibility for the attack in which a twenty-two year old Palestinian, Mr Ahmad Abu Adass, claimed responsibility for the attack on behalf of an unknown fundamentalist group called *El-Nusra-wal-Jihad-fi-Bilad-El-Sham* ‘Victory and Jihad in Greater Syria’. His family had reported him missing a month earlier.

189. The Prosecutor’s case is that the claim of responsibility was false and that the fundamentalist group is fictional. Rather, that Mustafa Badreddine, Mr Merhi, Mr Oneissi and Mr Sabra were responsible for manufacturing a false claim of responsibility to deflect attention away from the true perpetrators of the attack.

190. Under Mr Merhi’s coordination, Mr Oneissi and Mr Sabra are alleged to have participated in disseminating statements falsely attributing responsibility for the attack, ensuring the delivery of the video and a letter to Al-Jazeera, and that the video would be broadcast.

191. Their role in the claim of responsibility is the sole basis for Mr Merhi’s, Mr Oneissi’s and Mr Sabra’s alleged criminal responsibility. The core events of the false claim plot as alleged by the Prosecutor were:

- the conspirators identifying a suitable person to make the false claim—namely Mr Abu Adass, who was a young introverted person with strong religious leanings—in the Arab

University Mosque in Beirut. Mr Oneissi befriended Mr Abu Adass by pretending to be 'Mohammed', who needed assistance in learning how to pray;

- effecting the disappearance of Mr Abu Adass from his home on Sunday 16 January 2005: 'Mohammed' also participated in this;
- creating a video in which Mr Abu Adass falsely claimed responsibility for the attack on Mr Hariri; and
- disseminating and publishing the false claim via media outlets immediately after the assassination on Monday 14 February 2005.

192. The Trial Chamber heard evidence of what occurred in the mosque in January 2005 from Mr Abu Adass's family, friends and associates, and of those who received and broadcast the video on the afternoon of Monday 14 February.

193. As noted earlier, the Trial Chamber was not convinced beyond reasonable doubt that Mr Merhi was using Green 071. Nor that Mr Sabra was the sole user of Purple 018. But to do justice to the Prosecutor's case the Trial Chamber has also analysed the evidence on the assumption that Mr Sabra *was* Purple 018's single user. So even if the Trial Chamber is wrong about that, it has still nonetheless analysed whether, if they were using those mobiles, they still could be guilty.

194. Four calls were made to the news outlets, Reuters and Al-Jazeera in Beirut in the afternoon after the attack, from four different payphones and using the same telecard. These were one to Reuters at 14:11, and three to Al-Jazeera, at 14:19, 15:27 and 17:04.

195. The Beirut Al-Jazeera bureau chief, Mr Ghassan Ben-Jeddo, took three calls relating to this. At around 14:19 someone called Al-Jazeera's Beirut office. Mr Ben-Jeddo testified that the caller said something very similar to the written text containing the claim of responsibility for the assassination, which the Al-Jazeera office received later.

196. The second call was at 15:27. The caller told Mr Ben-Jeddo that there was a video tape on a tree near the Al-Jazeera building, next to a pink building. He said that it must be retrieved within fifteen minutes or it would not be found.

197. A technician working at Al-Jazeera, then volunteered to go and get the tape. He walked around the tree two or three times before he noticed a white box on one of the branches. He climbed about a metre or a metre and a half up the tree and collected the box.

198. A third call was made to Al-Jazeera at 17:04. The caller became threatening, and in a sharp voice said that Al-Jazeera would hear a lot in the future about the group claiming responsibility for the attack, and that it was in the company's interest to cooperate.

199. The video was broadcast on Al-Jazeera at 17:30. The video tape contained a footage of Mr Abu Adass, who was seated under a banner purportedly to be that of the group *El-Nusra-wal-Jihad-fi-Bilad-El-Sham*, reading out a claim of responsibility stating that:

to inflict just punishment upon the agent of that regime and its cheap tool in Greater Syria, the sinner and holder of ill-gotten gains Rafiq Hariri, through the execution of a resounding martyrdom operation; such as to confirm our promise of Victory and 'jihad' and to herald numerous martyrdom operations against the infidels, apostates and tyrants in the Greater Syria.

200. The letter accompanying the video tape stated that a suicide mission had been carried out against what was described as the 'agent of infidelity in the Land of the Two Holy Places', meaning Rafic Hariri and Saudi Arabia, through a suicide operation carried out by Ahmad Abu-Adass. And, it said, 'Attached is a film of the martyr Ahmad Abou Adass, who carried out the operation'.

201. The Trial Chamber cannot determine who made the calls, nor how many callers there were. Mr Ben-Jeddo testified that three different people called Al-Jazeera regarding the claim of responsibility. It is also possible that another, different person called Reuters. Although it is most likely that the same people made the calls, there is no way of comparing whether the same person(s) called both Reuters and Al-Jazeera.

202. It also cannot determine *when* the package was placed in the tree; there is no evidence about whether it was placed there before or after the attack.

203. The two mobile telecommunications networks suffered instability and congestion on the afternoon of Monday 14 February 2005 in Beirut after the attack on Mr Hariri, and especially in the area relatively near the crime scene. This affects the reliability of this evidence.

204. The network congestion that afternoon means that Mr Sabra's shared Purple mobile and Mr Oneissi's personal Purple mobile may not have been connecting to the best serving cell for *any* of the calls they made that afternoon. Theoretically they could have been in the coverage area of any of the six neighbouring cells—or cells adjacent to these—when they made the calls.

205. It is of course suspicious that the user of Purple 018, and Mr Oneissi as the user of Purple 095 or both were *relatively near* the four payphones, or the tree containing the video on Monday 14 February 2005. This is in the qualified sense of their being at least within a few kilometres of them at relevant times, while recognising the possible patterns that emerge. And that this occurred within a comparatively short period around when the calls to Reuters and Al-Jazeera were made, and the video was collected. The strongest evidence is that the users of the two Purple mobiles were connecting to a cell providing coverage to the tree when the Al-Jazeera employee collected that package, thus *potentially* allowing them to observe what was happening. However, the networks were congested at the time. The mobile users may have been somewhere nearby, and not connecting to the cell providing this coverage, and therefore not within viewing distance of the tree. It is impossible to tell.

206. The patterns of contacts between Purple 018 and Purple 095, and Purple 018 and Purple 231 also clearly attract suspicion. These mobiles were in contact with each other on Monday 14 February 2005 at times relatively close to the times of the telephone calls and the video collection.

207. However, Mr Ben-Jeddo firmly stated that there were three distinct callers. He may well have been mistaken; it is of course possible that one person disguising their voice made all three calls. The caller(s) may not even have been male. But that is the evidence.

208. However suspicious the Purple mobiles' movements and communications with each other on Monday 14 February 2005 and in the preceding weeks are, they are insufficient to establish Mr Oneissi's and Mr Sabra's involvement in the claim of responsibility. There is too much uncertainty surrounding what they were doing. There is no evidence of the content of their calls, their texts, and whether they met, or where and when and what was discussed. Nor does the evidence establish that Mr Sabra was using Purple 018 that afternoon.

209. The Purple mobile activity highlighted by the Prosecution is too remote in time and distance to demonstrate that the Accused were present at the payphones when the calls were made, were otherwise involved in the calls, or were located at the site of the video collection.

210. Going back to the person in the video, the false claim plot centres on its subject, Mr Ahmad Abu Adass. He was a young man, perhaps with an introverted personality, who in the period before his disappearance was becoming increasingly religious. He was attending the mosque near his home daily and had developed an interest in Islamic literature. Mr Abu Adass also appears to have been disinterested in politics. These factors, in the Trial Chamber's assessment, could have made him susceptible to approaches from groups wishing to recruit young vulnerable people to their religious causes. He could not drive. This also reasonably excludes him as the suicide bomber.

211. The evidence implicating Mr Merhi, Mr Oneissi and Mr Sabra in participating in the activities relating to making the claim of responsibility, on the Prosecution's case, must be considered in combination with the evidence of their alleged involvement in Mr Abu Adass's disappearance in January 2005, including that of his alleged 'abduction'. The evidence in this respect is completely circumstantial.

212. The Prosecutor alleged that in late December 2004 to early January 2005, Mr Abu Adass was identified as a likely scapegoat for making the false claim. Mr Oneissi, the Prosecutor pleaded, posing as 'Mohammed', approached people, including Mr Abu Adass, at the Arab University Mosque in Beirut. The telecommunications evidence also placed Mr Oneissi and Mr Sabra around the Arab University Mosque in the relevant period.

213. The evidence of Mr Abu Adass's possible encounters with anyone called 'Mohammed' in the mosque in December 2004 and January 2005 is mostly hearsay and some comes from statements admitted into evidence of unavailable witnesses who did not testify and could not be cross-examined. This substantially diminishes their reliability. The thread running through all accounts is of Mr Abu Adass teaching someone to pray in the mosque near his home in the weeks before his disappearance. Only one witness provided direct evidence of Mr Abu Adass (apparently) teaching anyone to pray in the mosque.

214. That witness saw Mr Abu Adass with a young man in the mosque shortly before his disappearance—Mr Abu Adass disappeared on Sunday 16 January 2005. He was teaching the young man how to pray.

215. Another witness encountered a ‘Mohammed’ in the mosque at the beginning of January 2005, who said that he did not know how to pray and would like the witness to teach him how. The witness pointed at Mr Abu Adass as someone who could, and was better suited to teach ‘Mohammed’ how to pray. More than five years later the witness tapped on Mr Oneissi’s photograph on a photo board shown to the witness by Prosecution investigators.

216. However, the two witnesses do not necessarily correlate or corroborate each other. There is no certainty that they were referring to the same person and that it was the ‘Mohammed’ in question.

217. The Prosecution has therefore not established beyond a reasonable doubt that Mr Abu Adass met a person called ‘Mohammed’ at the mosque in late December 2004 or early January 2005 and taught him how to pray.

218. Moreover, the purported identification evidence of ‘Mohammed’ as Mr Oneissi was flawed and unreliable. There was a gap of more than five years between when the witness saw ‘Mohammed’ in the Arab University Mosque in January 2005 and the purported identification of Mr Oneissi as this ‘Mohammed’ to Prosecution investigators in March 2010. The identification was also conducted in a flawed manner. An Oneissi Defence expert, whose evidence the Trial Chamber accepted, testified about this. The Trial Chamber has therefore not relied on the identification evidence.

219. The Prosecution’s case alleging Mr Oneissi’s and Mr Sabra’s involvement in the ‘Mohammed’ story and Mr Abu Adass’s disappearance and his subsequent appearance in the broadcast video hinges upon it proving their presence in and near the Arab University Mosque at the relevant times in late December 2004 and early January 2005. The allegation that Mr Oneissi befriended Mr Abu Adass, pretending to be ‘Mohammed’ and seeking assistance in learning how to pray was central to this part of the case.

220. To a large extent the Prosecution case theory of Mr Merhi's, Mr Oneissi's and Mr Sabra's involvement in the plot to kill Mr Hariri relied upon proof that Mr Oneissi was 'Mohammed' as the lynch pin for proving his and Mr Sabra's involvement in the telephone calls to Al-Jazeera and Reuters on 14 February 2005.

221. The combination of this evidence—together with the Purple mobiles' activations on the afternoon of Monday 14 February—*might* have allowed the Trial Chamber to draw the necessary inferences that they were responsible for making the calls to the news agencies. However, without the evidence of their pleaded participation in the 'Mohammed' story—and by extension Mr Abu Adass's disappearance—their only connection to the conspiracy was Mr Oneissi's Purple 095's and Mr Sabra's attributed Purple 018's presence, at various times, at locations 'near' the payphones, and the tree, on the afternoon of 14 February 2005. And additionally, 'near' the Arab University Mosque in December 2004 and January 2005.

222. So once the main evidence linking Mr Oneissi with 'Mohammed' is eliminated from consideration, the Prosecution's case against the three Accused considerably weakens.

223. Mr Oneissi's Purple 095 was 'in the vicinity' of the mosque on five days, in the sense of connecting to nearby cells. A witness described meeting a 'Mohammed' in the mosque, on one of two of these days. The mobile Purple 018, used by Mr Sabra and his wife, was also 'near' the mosque on eight days in the same period.

224. The Trial Chamber however cannot find that Mr Abu Adass met a 'Mohammed' in the mosque. It has only concluded that a witness met someone named 'Mohammed' there in early January 2005, that this person asked the witness to teach him how to pray and the witness pointed at nearby Mr Abu Adass as someone who was better suited to teach this 'Mohammed' how to pray. There was no reliable evidence that Mr Abu Adass actually did this.

225. Mr Oneissi's Purple mobile's presence 'in the vicinity' of the mosque on one of the two possible dates for the encounter is insufficient, of itself, to establish beyond reasonable doubt that Mr Oneissi was 'Mohammed'. This is so even when considering it with the totality of the Purple mobiles' activity at the time.

226. There was no evidence connecting calls between the three Purple mobiles with anything related to Mr Abu Adass, the mosque, anyone called 'Mohammed', Mr Abu Adass's disappearance, the video or its making or its broadcast. And the last call between Green 071, attributed to Mr Merhi, and Mr Badreddine on Green 023 was on Monday 7 February 2005, in circumstances which appear to be devoid of context.

227. There is also no reliable evidence connecting any of the three with Mr Abu Adass's disappearance from his home on the morning of Sunday 16 January 2005.

228. The evidence that Mr Abu Adass left his home with 'Mohammed' is insufficiently reliable to find that this occurred. Mr Abu Adass could also have left with someone else, or departed alone. The Trial Chamber cannot safely find that Mr Abu Adass left with 'Mohammed' on Sunday 16 January 2005.

229. On the morning of Sunday 16 January 2005, Green 071 called Mr Badreddine's Green 023 five times. Despite this, there is no reliable evidence connecting Mr Merhi's calls on his attributed Green network mobile to Mr Badreddine that morning with the disappearance, notwithstanding their temporal coincidence with his disappearance that day. Therefore, the only conclusion reasonably available from the cell site evidence of the mobile activities is that the Trial Chamber cannot positively find that any of the three Accused were involved in Mr Abu Adass's disappearance on Sunday 16 January 2005.

230. The Trial Chamber cannot determine when the video tape was made beyond the obvious that it was made after Mr Abu Adass's disappearance on Sunday 16 January, and before Mr Hariri's assassination on Monday 14 February 2005.

231. There is no evidence connecting any of the Accused with the making of the video nor any of the other preparatory acts to making the claim of responsibility on Monday 14 February 2005. The Trial Chamber therefore cannot conclude that the only inference reasonably available from the totality of the evidence is that any of the three Accused were involved in making the video used in the claim of responsibility for the attack.

232. The heart of the Prosecution's case against Mr Merhi, Mr Oneissi and Mr Sabra is that the claim of responsibility was false. The amended consolidated indictment avers that they participated

in making a knowingly false claim of responsibility and the Prosecution's case proceeded on that basis. However, no *direct* evidence that it was a *false* claim of responsibility was produced at trial.

233. There is also no *direct* evidence linking Mr Abu Adass with the crime scene. The only evidence is his appearance on the video.

234. The only evidence about the existence or otherwise of this group comes from Mr Ben-Jeddo, who testified that it had not been heard of before, or after, the claim of responsibility.

235. Mr Abu Adass may have voluntarily joined a fictitious jihadi group—or perhaps thought that he had joined a real one—and freely participated in a video claiming responsibility for an attack before it had occurred. Maybe he was lured into making the video, for unknown reasons. Or, alternatively, he was forced to do so. The evidence is insufficient to allow the Trial Chamber to draw any positive conclusions either way.

236. The Trial Chamber is satisfied beyond reasonable doubt that the claim of responsibility for the attack as shown in the video, letter and telephone calls to Reuters and Al-Jazeera, was a false claim. The most likely explanation is that those responsible for Mr Hariri's assassination attempted to turn attention away from themselves by diverting it to someone claiming a hatred of Mr Hariri based upon his connections with Saudi Arabia, ostensibly to avenge the deaths of those who Saudi security forces had killed.

237. The Trial Chamber, however, cannot positively determine from the totality of the evidence whether Mr Abu Adass was forced to participate in making the video, or alternatively, whether he did so voluntarily. Either is possible. Given that Mr Abu Adass does not claim to be the suicide bomber, he could have been tricked into making the video. On the other hand, he could have agreed to do it without needing to have been duped. The content of the video does not permit the Trial Chamber to draw an inference one way or the other.

238. The Trial Chamber also cannot make any explicit finding about Mr Abu Adass's fate; he is most likely deceased, and most possibly, from soon after his disappearance. There is no evidence on the record from which the Trial Chamber can make a definite finding about what happened to him, or when.

239. Mr Abu Adass was not the suicide bomber and his disappearance is consistent with him being used to set up a false claim of responsibility for the attack by those who perpetrated it. The evidence also suggests that the group *El-Nusra-wal-Jihad-fi-Bilad-El-Sham* was fictitious, meaning that both aspects of the false claim were indeed false.

240. Even if the Trial Chamber's conclusion that Mr Abu Adass was not the suicide bomber is incorrect, the findings of criminal responsibility against Mr Merhi, Mr Oneissi and Mr Sabra would not change. Whether or not Mr Abu Adass was the suicide bomber, there is still insufficient evidence to prove beyond reasonable doubt their participation in the counts charged in the amended consolidated indictment.

241. Mr Merhi, Mr Oneissi and Mr Sabra were, on the Prosecution's case, using their personal mobiles to communicate—at least by mobile telephone—in executing the false claim of responsibility.

242. However, one or two days after Mr Hariri's assassination, they were all discarded.

243. The coincidental cessation in the use of the Purple mobiles, after several years of active use, may indeed suggest that this decision came after a certain event, and due to some fear. However, such a decision, in the context of an alleged conspiracy whose participants otherwise used a covert network, seems contradictory and difficult to explain.

244. However, ultimately it is not the only reasonable inference available from the evidence. Another is that they were not involved in the alleged criminal activity or that they were not previously aware of the scope and significance of their call activity. Otherwise, they would not have used their personal mobiles to carry it out.

245. The Prosecutor relied on this strand of evidence to buttress a circumstantial case regarding mobile usage. The discarding of the mobiles was used to help prove that the three Accused were involved in making the false claim of responsibility. Conversely, the mobile activities on Monday 14 February were used to prove that something occurred that required the three to discard their mobiles over the next few days. That is, that they had a criminal reason to do so. In other words, the two strands of evidence must be taken together.

246. Hence, even if the Trial Chamber is wrong in not finding that the only inference reasonably available from the evidence is that the discarding of the mobiles soon after the attack means that they were involved in the attack, this only has context when considered with all the other cell site evidence. But as the Trial Chamber cannot be convinced beyond reasonable doubt that the mobiles' activities on the afternoon of 14 February only equated to participation in the false claim of responsibility, discarding these mobiles within the next two days cannot persuade the Trial Chamber that the Prosecutor has proved that they were used in the false claim.

247. The Prosecution has therefore not proved its case beyond reasonable doubt of Mr Merhi's, Mr Oneissi's and Mr Sabra's participation in the false claim of responsibility for the attack on Mr Hariri.

Committing a terrorist act by means of an explosive device

248. The explosion on 14 February 2005 was a terrorist act within the meaning of Article 314 of the Lebanese Criminal Code committed by means liable to create a public danger such as explosive devices. Detonating an 'explosive device' of 2,500 to 3,000 kilograms of TNT equivalent high explosives, set on the back of a light truck, falls squarely within Article 314 as one 'committed by means liable to create a public danger'.

249. This particular device was of such a powerful explosive, RDX, and so large that it was inevitably going to kill or injure numerous people who were nearby when it exploded. Detonating a device of that magnitude likewise was inevitably going to destroy or damage proximate buildings and vehicles, and ignite fires. The explosion endangered anyone and any nearby property.

250. The device exploded in a busy city street in the middle of a weekday: it was detonated approximately 50 to 80 centimetres above ground level in a street lined by multi-storey buildings. This created a 'canyon effect' that increased its destructive power.

251. Numerous members of the public were bound to have been inside buildings or passing by in vehicles or on foot, and within the explosion's range, regardless of the fact that the target was Mr Rafik Hariri. And hundreds were, as is shown by the proportion of those killed and injured who were not members of Mr Hariri's convoy. More than half of the 22 killed by the explosion,

other than the suicide bomber, and almost all of the 226 others who were injured, had no connection with Mr Hariri's convoy.

252. The explosion was an act intended to cause a state of terror. The size and power of the explosive device, the manner, time and place of its detonation, and its intended target prove this. Detonating the device in those circumstances obviously had the potential to cause fear and panic among, at least, members of the public in the area of the detonation. Anyone knowing that the attack was to be committed in this manner must have foreseen these consequences.

253. The fact that a suicide bomber targeted Mr Hariri also shows that the explosion was intended to cause a state of terror. It was foreseeable that the public would learn that a suicide bomber triggered the attack and that this too would frighten and horrify them. Indeed, the video featuring Mr Abu Adass expressly claimed that a suicide bomber had triggered the explosion.

254. Mr Hariri was a former prime minister of Lebanon and a prominent political figure who, at the time of his death, was preparing for parliamentary elections in May 2005. His murder, or attempted murder, in a huge explosion would attract enormous publicity and cause many Lebanese to experience fear, insecurity and loss. The evidence from participating victims and witnesses proves that this occurred. Anyone who knew that the explosion was to be triggered in the street when Mr Hariri's convoy was passing, must have foreseen that numerous people would be killed or injured, regardless of whether it succeeded in killing him.

255. The state of terror was not just intended for the immediate area of the attack. The attack was intended to resonate throughout Lebanon and in the region, and its intended effects were not just confined to Mr Hariri's supporters. Rather, the evidence of the political background to the attack shows that it was designed to destabilise Lebanon generally.

256. The explosive device triggered that day, both in itself and in the circumstances of its detonation, was likely to kill multiple people when detonated.

257. With so large a group affected, the reasons why the injured did not die were unlikely to be the same for each person. Medical treatment after the attack would likely have saved some people's lives. Others may have avoided serious injury in the first place, by virtue of where they were at the

moment of the blast. The Trial Chamber is satisfied on the evidence that these as well as a range of other circumstances prevented the death of the 226 injured.

The conspiracy to commit a terrorist act

258. The four Accused are charged with participating in a conspiracy, in which they together with Mustafa Amine Badreddine ‘and others as yet unidentified, including the assassination team, agreed to commit a terrorist act by means of an explosive device’ in order to assassinate Mr Hariri. Mr Ayyash, Mr Badreddine and Mr Merhi are alleged to have been in the conspiracy between Thursday 11 November 2004 and Monday 14 February 2005, while Mr Oneissi and Mr Sabra are alleged to have joined the conspiracy between Wednesday 22 December 2004 and Monday 14 February 2005.

259. The evidence does not establish either Mr Oneissi or Mr Sabra’s participation in the conspiracy, so this only concerns the roles of Mr Ayyash, Mr Badreddine and Mr Merhi.

260. To assassinate someone as closely guarded and protected as Mr Hariri required much careful planning and preparation in the context of this case. This included:

- obtaining a detailed knowledge of his movements, his convoy, its personnel and his usual position within it;
- establishing closed mobile networks for communications between those having some role in the plot, knowing or otherwise;
- choosing a method of assassination;
- obtaining the Mitsubishi Canter, the vehicle used for the assassination;
- picking a suitable site for an explosion;
- selecting a manner of detonation including recruiting the suicide bomber;
- procuring the explosives; and
- setting up the claim of responsibility, including arranging Mr Abu Adass’s role in it.

261. Not everyone in the plot needed to know that they were part of a conspiracy that involved killing Mr Hariri. At least some users of the Green, Red, Blue and Yellow mobile networks had the common aim of assassinating Mr Hariri, but others may not have. A number appear to have

been involved in the essential preparatory work, but the number who had to have known of the objective of the plot, namely to kill Mr Hariri, of necessity, would have been smaller.

262. The Trial Chamber has found that there was an agreement between two or more people to commit a terrorist act by means of an explosive device in order to assassinate Mr Hariri. Many people were involved in the preparatory steps, with numerous different mobile users having conducted surveillance, for instance.

263. The Trial Chamber cannot establish how many knowing participants there were in the overall conspiracy. Some but not all of these people needed to know that the conspiracy to commit a terrorist act had Mr Hariri as its target. Those involved in the surveillance of Mr Hariri's movements in December 2004 and January and February 2005 must have known that he and his convoy were the targets *of the surveillance*.

264. The user of every core Red, Blue and Yellow mobile, including Mr Ayyash, who conducted surveillance of Mr Hariri and his movements, would have known that Mr Hariri was the person under watch. Although they did not need to know the precise reason why, they had to have been trusted associates. This could have been through common membership in an organisation.

265. The six core Red mobile users must have known who they were tracking on the day of the attack, both from their actions that day and their role in the surveillance leading to it. As for the claim of responsibility, anyone who was aware of the content of the video tape or its accompanying letter *before* the attack necessarily knew that Mr Hariri was the intended victim of a 'martyrdom', the term used in the video of the claim of responsibility, or a suicide operation. But knowledge of this fact alone does not necessarily extend to awareness that Mr Hariri was going to die in a *terrorist* attack using an explosive device, as opposed to another manner of attack, for example, by shooting him in a public place. And the video does not mention how Mr Hariri was to die, nor when.

266. Whoever triggered the explosive device that was on the Canter knew that they were detonating an explosive device in a public location in a manner intended to spread terror, and that it would kill and injure people. They must have known that they were going to detonate the explosives when Mr Hariri's convoy passed and that it was the target of the attack. The driver of the Canter was required to move towards Mr Hariri's convoy as it passed the St Georges Hotel and

to detonate the explosives. After eliminating other possibilities as not reasonably available on the evidence, the Trial Chamber has concluded beyond reasonable doubt that the suicide bomber himself detonated the explosives. The suicide bomber, therefore, at least legally, was a member of the conspiracy. And as his body was not identified, his identity remains unknown.

267. The evidence does not establish that the two men who bought the Canter in Tripoli, in mid-January 2005, knew that it was intended to be used in an attack on Mr Hariri. Or that it was to be loaded with RDX or other explosives and used in the attack in that way.

268. There is no evidence of mobile use *directly* connecting Mr Ayyash or any other Accused person with its purchase. It is possible that whoever purchased the Canter—or at least one of the two—either knew of or participated in placing the RDX on it. On the other hand, it is equally conceivable that they did not.

269. The Canter, however, was not sold to the two buyers until either Monday 17 or Tuesday 25 January 2005. Mr Ayyash's Green mobile was in Tripoli on 11 January. He may have been there looking around for a suitable vehicle to use in the attack. But he may have been there for some other reason.

270. Logically, those involved in the plot to kill Mr Hariri would have participated in some way in the Canter's purchase and employed a certain discipline while doing so. They most probably selected this particular truck yard in Tripoli because it sold trucks for cash, with little documentation and without verifying buyers' identities. Its location in Tripoli also, as the Prosecution contends, moved the purchasers away from Beirut where the explosion was to occur. Nevertheless, those who actually bought the Canter did not need to have been aware of the objective of the conspiracy.

271. The conspiracy could have been tight, restricted to a handful of participants, or alternatively, one with a broader but still restricted membership, possibly limited to the ten or so suggested by the Prosecution. In this second scenario, the participants had varying roles, but each part was sufficiently important to the plan's success that, before the attack on 14 February 2005, each of them knew its essential elements. That is, not just that their operation focused on Mr Hariri, but also that the aim was to kill him, and how this was to be done.

272. The members of such a conspiracy would have included some or all of those who executed the terrorist attack, including the six core Red mobile users on 14 February 2005 and, at least legally, the suicide bomber. They may also have included the two men who purchased the Canter and the person(s) who loaded the explosives onto it. In addition, such a conspiracy could also have included those who persuaded or directed others to do the acts needed to prepare for and execute the attack, even if they did not themselves participate directly in any of those acts; and those who prepared the false claim of responsibility for the attack.

273. The dissemination of the claim of responsibility was clearly meant to divert attention away from the attackers and to avoid detection and apprehension, but the conspirators may also have intended to foster a state of terror by broadcasting a claim by an unknown, fictitious militant group.

274. Preparing the false claim involved committing serious criminal acts including the possible abduction and murder of Mr Abu Adass, who disappeared in mid-January 2005. The planning of and propagating the claim of responsibility—including preparing Mr Abu Adass for the video and then filming him—required strict secrecy and particular skills. Evidently, at least one person who participated in it knew of its connection with Mr Hariri’s intended assassination before it occurred. The video, however, does not say how Mr Hariri was to be murdered; there is no mention of an explosion.

275. Whoever made the video must have known of its connection with Mr Hariri’s intended death. Logic dictates that more than one person would have been involved in making the video and preparing Mr Abu Adass for his role in it. However, there is no evidence of when this occurred; the video must have been made between Sunday 16 January 2005 when Mr Abu Adass left his home, and the time when the attack occurred on Monday 14 February 2005. But exactly when is a matter of speculation, as nothing connects any of the Accused with anything related to making the video, including when, where and how it was made.

276. Apart from the six core Red mobile users, the suicide bomber, those who purchased the Canter or loaded the explosives, those who prepared the false claim and those who directed them, unknown others *may* have helped to prepare the attack and, legally, participated in the conspiracy. An alternative inference, namely that only a much smaller subset had the necessary knowledge to be conspirators, is also available on the evidence. The conspiracy plausibly could have comprised

only those who *definitely had to* know the assassination operation's aim in order to fulfil their role in it.

277. Thus, it is equally conceivable that the conspirators deliberately kept that aim secret from as many people involved as possible—by doing key tasks, such as assembling the explosive device themselves—or restricting the information flow between their operatives, or both. The networks' hierarchical and compartmentalised communication structure would have facilitated this.

278. If membership of the conspiracy was on a 'need-to-know' basis, this eliminates several potential conspirators. First, someone tasked only with conducting surveillance before the day of the attack did not need to know that its objective was to murder Mr Hariri. Indeed this may not have been the sole purpose of much of the surveillance.

279. The Trial Chamber could therefore not conclude that all of those involved in the surveillance were knowingly participating in the conspiracy alleged. Rather, because of Mr Hariri's status and the prevailing political environment, they could reasonably have thought they were just engaged in routine monitoring of his movements. The evidence that Mr Hariri thought that he was under surveillance also supports this possible inference. His security detail certainly believed this, and must have factored this into the measures they adopted to protect him in the months before his death.

280. Naturally, whoever was engaged in the surveillance would have had to have been trusted enough not to have revealed their roles in the enterprise which would have become evident after the attack. In other words, anyone who had been involved in the surveillance of Mr Hariri before 14 February 2005, using mobiles that they were instructed either to discard or to return to someone afterwards for collection, would have realised at least *after the explosion* that their surveillance activities were connected with the attack. Only trusted associates could have been assigned such a task. But this does not mean that all of them must also have been entrusted, before the attack, with the information that it would happen, nor how, nor when, nor that they agreed to commit it.

281. Similarly, while those whose role was confined to preparing either the claim of responsibility or the explosive device—if there were any such people—*may* have been fully aware of the conspiracy's aim, the evidence does not establish that they *had to be*.

282. Rather, it is also reasonably conceivable that someone involved in the plot met Mr Abu Adass in the Arab University Mosque and lured him from his home, but did not know that these actions were connected with Mr Hariri's intended assassination, nor that he was to be killed specifically by a large explosive device.

283. The Trial Chamber received no evidence from which it could conclude when, where and how the explosives came to be on the Canter. The evidence can only establish that it must have been between Monday 17 January and Monday 14 February 2005. For operational security and safety reasons, it can probably safely be assumed that the explosives were loaded onto the light truck only after firm decisions had been made to use the Canter, and when.

284. Moreover, whoever put the explosives on the Canter did not have to have known why, namely, that a suicide bomber was to drive it into Mr Hariri's convoy, nor even that it was to be detonated in a public place. Placing explosives on a truck and their detonation at a later point are not necessarily connected activities, especially as it is unknown when the explosives were put on the Canter. However, it is far more likely that whoever did this *was* involved in the conspiracy. It was a core activity in the conspiracy and, of necessity, such an action should have been restricted to those in on the plot.

285. This is for the obvious reason that once the explosion occurred anyone who had *unknowingly* assisted would have realised what they had done, thus potentially compromising the secrecy of the operation.

286. However, a trusted operative could have been tasked with putting the explosives on the Canter without being informed of precisely why—but nonetheless still sufficiently trusted not to reveal this afterwards. The explosives would have had a volume of a minimum of 1.3 cubic metres and weighed close to two tonnes. The mere fact of placing or loading this quantity of RDX onto the Canter would have been inherently suspicious.

287. This too points to the involvement in the conspiracy of people with a commonality such as membership of an organisation, namely a tight-knit organisation in which trusted operatives are delegated particular sensitive tasks. The Trial Chamber therefore believes that the most logical inference available from the evidence is that whoever put the explosives on the Canter was either part of the conspiracy or was trusted enough not to reveal their role in it. But it cannot be satisfied

which, if either, occurred. It simply has no direct evidence one way or another as to what occurred. Additionally, there is no circumstantial evidence from which it could draw an inference establishing how the RDX came to be on the Canter, or who put it there.

288. Whether the conspiracy was thus restricted to two, or was larger, its members might have decided together to assassinate Mr Hariri, in a large explosion in a public place, before the Red, Blue and Yellow mobiles' surveillance or any other preparation began.

289. However, the conspirators may also have reached that decision later; perhaps as late as mid-January 2005, which is the earliest time on the evidence when the Canter could have begun to have been fitted for the attack. Alternatively, if it were a larger conspiracy some members, such as some of the Red mobile users, may have joined that conspiracy well after it was formed, possibly even learning the full or real objective only on the morning of the attack. All of these scenarios are possible on the evidence and any of them would fulfil the definition of a conspiracy, namely an agreement to commit the pleaded crime.

290. The assassination of the former Lebanese prime minister did not occur in a vacuum, nor was it organised by the six core users of the Red network. The political and background evidence points to it being a political act directed by those whose activities Mr Hariri's were threatening. There is no evidence that Mr Ayyash or the other five core Red users fell into this category. The evidence is of their involvement in the conspiracy at least on 14 February 2005 and the immediate period leading to it, but the evidence does not establish affirmatively who directed them to murder Mr Hariri and thus eliminate him as a political opponent.

Salim Jamil Ayyash

291. The evidence connecting Mr Ayyash with the attack on Mr Hariri stems from his use of mobile Red 741. Without this there would be no evidence linking him with the explosion on 14 February 2005. He did not detonate the explosive with his own hands.

292. The Red network was the assassination team. It was a closed network that ceased operation immediately before the attack, after its use in the previous month in the surveillance of Mr Hariri and his convoy's movements.

293. It operated extensively on the day of the attack. Red network mobile users were near or in the area of Quraitem Palace just after Mr Hariri had left for the Parliament and they were active in monitoring him at the Parliament, when he was in the Parliament area. They must also have assisted in preparing the Canter for the attack at the crime scene. The Trial Chamber agrees with the Prosecution's description of the Red network in the amended consolidated indictment and its final trial brief as the 'assassination team'.

294. The only reasonable conclusion available from the evidence is that, on Monday 14 February 2005, the Red mobiles tracked the movement of Mr Hariri and his convoy, alerted the others involved of his location and prepared for surveillance and for the execution of the attack along the route that he was expected to take. This must have also aimed at ensuring that the explosive detonated at the exact time the convoy would pass. The users of the Red mobiles had prepared the attack through repeated operations of surveillance and reconnaissance in previous days.

295. Mr Ayyash as the user of Red 741, Blue 233 and Green 300 must have been a core member of the conspiracy. Subject 6, using Red 678 and Blue 610 was also a conspirator. Overall, by virtue of their activities on 14 February 2005 and their surveillance of Mr Hariri in the preceding weeks, the Trial Chamber is also convinced that the six core Red mobile users had the role that the Prosecution alleged of an 'assassination team'. They all knowingly agreed to murder Mr Hariri using an explosive device; they are thus conspirators.

296. Even if the conspiracy was deliberately kept 'tight', the users of the six core Red mobiles were participants. Some of those mobiles made significantly more calls than others did on 14 February 2005. All six played a crucial role in executing the attack.

297. The evidence also suggests that each Red mobile user also knew beforehand that the aim behind their tracking of Mr Hariri that day was his murder using an explosive device in a public place. Besides the times and places that day at which they made and received calls, it is particularly relevant that every core Red mobile user then stopped using that mobile, forever, shortly *before* the attack. It is improbable that all of them would do this, if some of them did not know that the attack was going to happen.

298. A mobile user in any of the covert networks who had a supervision role, someone who not only reported on developments but also coordinated, directed and or supervised others, must have known more about the mission than the users under their direction. The more extensive the contact that user had with other network mobile users and with the acts needed to prepare for and then execute the terrorist attack to kill Mr Hariri, the more likely they would know that the mission's overall aim was the attack.

299. My Ayyash as Red 741's user fits this profile. That mobile's call activity in the hours before the attack on 14 February 2005, in itself, makes it inconceivable that its user did not know the aim of the conspiracy by then.

300. Red 741's calls to three other core Red mobiles that morning day triggered their users' relocation to the Parliament area and by doing so, launched the beginning of the operation. The Trial Chamber is satisfied that this is the only reasonable inference available from the evidence.

301. This evidence also supports the inference that Red 741's user coordinated at least some of the acts that executed the attack. Red 741's contact within the Red network on the day of the attack was also uniquely extensive; only Red 741 had calls with every other core Red mobile. Moreover, on four different days before 14 February 2005, Red 741 had had calls with various other Red mobile users at the same time that they were conducting mobile surveillance.

302. The Trial Chamber for these and other reasons is therefore convinced beyond reasonable doubt of Mr Ayyash's participation in the conspiracy alleged. It is the only reasonable inference available from the totality of the evidence.

303. Regarding the date of the commencement of the conspiracy, it is not possible to find a definite date on which those responsible for organising the conspiracy agreed that Mr Hariri was to be assassinated. They may have initially formed the intention to murder him in late 2004, given the volatile political environment and events at that time, following President Lahoud's mandate extension. Among other political developments that the Trial Chamber has described by that time the first two Bristol group meetings had occurred—on 22 September and 13 December 2004—Mr Hariri was planning to run for office again and was known to wish to loosen Syrian dominance over Lebanon.

304. Factually, the following demonstrates that the planning for a *possible* attack on Mr Hariri must have started from at least mid-January 2005: the Red network handsets and SIM cards were purchased in Tripoli in late December 2004/early January 2005, and were initialised on 4 January 2005. The Red network—the assassination team, of which Mr Ayyash was a member—began surveillance of Mr Hariri’s movements from Friday 14 January and continued doing so until his death. Mr Abu Adass disappeared on Sunday 16 January, and the video was made between then and the attack. The Canter was purchased on either 17 or 25 January, but most probably on 25 January.

305. It is highly probable that those responsible for organising Mr Hariri’s assassination decided to murder him only if he continued on his foreshadowed political path away from Syria, and had commenced their preparations for this by at least January 2005. Assassinating the former, and probable, future prime minister was an act that those responsible must have known would have had significant regional and international consequences. They could only have decided to go through with it after having made a careful cost-benefit analysis in which they judged that the advantages of eliminating Mr Hariri would significantly outweigh the disadvantages.

306. Despite these preparatory steps none, either individually or collectively, inevitably led to Mr Hariri’s assassination. The video could have been made and never used, as Mr Abu Adass was clearly dispensable; the Canter could have been purchased and then used for some other purpose, or sold; and, the information gained from the surveillance could have been stored for future use. The intended possible attack could have been aborted at any time. It is most likely that those responsible were prepared either way, namely, to continue to the attack if necessary, or to call it off.

307. This decision to kill Mr Hariri, and in an enormous explosion in a public place, would not have been taken lightly. Mr Hariri had numerous powerful regional and international allies and connections, including in the United States, France, Saudi Arabia and United Nations officials. It is thus highly likely that the decision to give the go ahead only occurred in February 2005 after the third Bristol Group meeting on Wednesday 2 February 2005. Mr Hariri had sent his delegates to the meeting. It was at this third meeting that its participants had agreed to call for the immediate and total withdrawal of Syrian forces from Lebanon, a position that Mr Hariri, according to his

confidantes, had by then adopted. They had also called for the dismantling of the Syrian security apparatus in Lebanon, with Mr Hariri's tacit support.

308. Significantly, the meeting had occurred the day after the Syrian Deputy Foreign Minister, Mr Walid El-Moallem, visited Mr Hariri at his home, for the final time, on Tuesday 1 February 2005. The transcript of its audio recording reveals that Mr Hariri had told Mr El-Moallem that 'Lebanon will not be ruled by Syria forever', as it was 'unacceptable', that he could 'bear no more orders' from Syria, that 'three quarters of me is already on the opposition side' and that there was 'interference in every small detail in the country'.

309. Despite Mr El-Moallem's approach to Mr Hariri, the Bristol Group's public statement, reported on Thursday 3 February 2005, went much further in relation to Syria's involvement in Lebanon than in its previous statements. A significant cross-section of the Lebanese political class was by then publicly advocating the full implementation of the 1989 end of civil war Taif Agreement, and Syria's political, security and military redeployment from Lebanon.

310. The Trial Chamber is therefore satisfied, based on the confluence of these events, that the *final* decision to commit the terrorist act was made only in the two weeks preceding Mr Hariri's death. This is the only inference reasonably available from the evidence.

311. Because of his role in the conspiracy, Mr Ayyash as the user of Red 741, Blue 233 and Green 300 must have known its aim, whether conditional or final, for some time before the attack. This was most likely by mid to late January 2005 at the latest, on the basis that the Canter was most probably purchased on 25 January, and preparations for its use in the attack could have begun. From the available evidence, the Trial Chamber cannot determine whether Mr Ayyash as the user of Red 741, Blue 233 and Green 300 did anything in relation to either the false claim of responsibility, or the preparation of the Canter and the explosive device. In any event, it need not do this in order to determine his criminal responsibility.

312. For the purposes of Mr Ayyash's criminal responsibility it is legally sufficient for the Trial Chamber to find that the evidence establishes beyond reasonable doubt that he had agreed to commit the crimes charged by the day of the attack, namely Monday 14 February 2005. The Trial Chamber therefore finds that Mr Ayyash was a member of the conspiracy in having agreed to commit the terrorist act charged from at least sometime in early February and at the very latest by

Monday 14 February 2005. It is satisfied that this is the only inference reasonably available from the totality of the evidence.

313. The Trial Chamber is therefore satisfied beyond reasonable doubt that Mr Ayyash possessed the requisite knowledge that the explosive device was liable to create a public danger. That is the only conclusion that is reasonably available from the evidence. The same evidence establishes beyond reasonable doubt his knowledge and his intention to murder Mr Hariri with explosive materials.

314. The Trial Chamber therefore finds Mr Ayyash guilty beyond reasonable doubt, as a co-perpetrator, of the intentional homicide of Mr Rafik Hariri. The same evidence also establishes beyond reasonable doubt his knowledge and his intention to commit the intentional homicide of 21 other people, and the attempted intentional homicide of the 226 others. Mr Ayyash intended to kill the members of Mr Hariri's convoy and the members of the public who died in, or as a result of the explosion, or who were injured in the attack. Or, alternatively, he at least foresaw that deaths would occur and accepted that risk. The Trial Chamber also finds, in respect of the 226 people injured in the attack, that their death was prevented solely by circumstances beyond the perpetrators' control.

315. There is no other conclusion reasonably available from the evidence. Detonating a truckload of explosives in a busy street near occupied buildings will inevitably kill many people. Some may not die but instead sustain injury. Some injuries will be severe. However, whether or not these people died from their injuries, the act of participating in the detonation of the explosion was an act likely to cause death. In this respect, the conduct amounted to an attempted intentional homicide with premeditation by using explosive materials. Although Mr Ayyash did not act alone; he had an important role in the operation against Mr Hariri.

316. The Trial Chamber is satisfied beyond reasonable doubt that the Prosecution has proved the guilt of Salim Jamil Ayyash on all counts charged in the amended consolidated indictment.

Hussein Hassan Oneissi and Assad Hassan Sabra

317. Mr Sabra's attributed mobile Purple 018 and Mr Oneissi using his personal mobile Purple 095 called each other, and Mr Merhi on Purple 231, during the relevant pleaded period. Their

mobiles were near areas where some false claim-related activities took place, such as the Arab University Mosque in late December 2004 and early January 2005. The two personal mobiles were used near relevant payphones on 14 February 2005, and the tree from which the video was collected. Their personal mobiles stopped use shortly after the attack.

318. This conduct, however, is insufficient either to prove conduct that assisted the perpetrators' preparation for the attack or that helped to shield the perpetrators or accomplices from justice. Their actions, in Mr Oneissi being in these locations and Mr Sabra's shared personal mobile Purple 018 also being there, therefore do not satisfy the *actus reus* for accomplice liability.

319. The Prosecution has also failed to establish the mental element of accomplice liability for either Accused. Using or not using a mobile, calling each other and being somewhere in the area of locations where false claim-related activities took place cannot demonstrate beyond a reasonable doubt that they knew and accepted that the perpetrators would carry out an attack using an explosive device that was likely to kill people and spread terror. This is said on the assumption that Mr Sabra was using his attributed mobile at all relevant times.

320. Even if it was proved that they did participate in calling the news agencies *after* the attack on 14 February 2005, the Trial Chamber cannot conclude beyond reasonable doubt that the two were aware *in advance* of the attack, which occurred at around 12:55, that calling Al-Jazeera and Reuters later that afternoon was connected with the attack. This is an essential legal requirement as an accessory under the Lebanese Criminal Code.

321. The Trial Chamber accepts that if they indeed participated in making the calls to either news outlet—by virtue of the content of the letter that was read during the call—they would have known *then* that their actions were connected with the attack. However, this would not of itself prove their knowledge of this before the attack, as is required for criminal liability as an accomplice under the Lebanese Criminal Code.

322. The Trial Chamber's conclusion as to the lack of evidence that Mr Oneissi or Mr Sabra participated in the 'Mohammed deceit', the 'abduction' of Mr Abu Adass or the dissemination of the false claim therefore precludes their liability as accomplices.

323. The Trial Chamber therefore finds that Mr Oneissi's and Mr Sabra's liability as accomplices for the crimes charged has not been proven beyond a reasonable doubt.

324. The Trial Chamber's determination that the Prosecution failed to prove the two Accused took part in the false claim is fatal to the charge of conspiracy. The Trial Chamber therefore finds that Mr Oneissi and Mr Sabra cannot be found responsible for conspiracy to commit a terrorist act as charged in count one.

Hassan Habib Merhi

325. Mr Merhi's sole pleaded role in the conspiracy is as the coordinator of the false claim of responsibility. This depends upon Mr Oneissi and Mr Sabra acting as charged.

326. Concerning the conspiracy and the alleged calls to and from Mr Badreddine in the Green network, and in particular Mr Abu Adass's disappearance, the only reliable evidence supporting it is of mobile calls between the three Purple mobiles over two separate periods. Both aspects come solely from the call data records of two mobiles in 2004 and 2005, namely, his personal mobile Purple 231 and the Green network mobile, 071.

327. There is no reliable evidence of anything relevant to the case regarding the making of the claim of responsibility, including its preparatory activities involving Mr Abu Adass, occurring on these days. Without these connections, however, the calls between Mr Badreddine's Green 023 and Green 071, lack context. There is, it is emphasised, no evidence of what was said in the calls or any meetings between the users of the Green network mobiles.

328. There is no context from which the Trial Chamber can determine why the calls were made. It has insufficient evidence to connect these calls to Mr Abu Adass's disappearance.

329. When the evidence regarding 'Mohammed' goes, all that remains are the calls between Mr Merhi and Mr Oneissi and Mr Sabra's shared mobile in the weeks before Mr Abu Adass's disappearance. Of itself, no matter how holistically the evidence is viewed, this cannot provide sufficient proof of their involvement in Mr Abu Adass's disappearance, and certainly not for the pleaded purpose, namely of finding someone suitable to make a false claim of responsibility.

330. Mr Merhi's sole role in the conspiracy is connected with the false claim of responsibility and coordinating Mr Oneissi and Mr Sabra. As the Trial Chamber is not satisfied beyond reasonable doubt that the pair did any of the pleaded activities—namely, those connected with Mr Abu Adass's alleged grooming, luring, disappearance, alleged 'abduction' and subsequent appearance on the broadcast video—it likewise follows that Mr Merhi cannot be found guilty of coordinating those activities.

331. Mr Merhi, allegedly coordinated with Mr Badreddine the preparation of the false claim of responsibility. He allegedly co-ordinated the activities of Mr Oneissi and Mr Sabra in the lead-up and aftermath of the attack. But the Trial Chamber cannot find beyond reasonable doubt that Mr Merhi was using Green 071, and even if he were, there was no reliable evidence providing context to the calls with Mr Badreddine's mobile 023.

332. The Trial Chamber cannot link Mr Oneissi and Mr Sabra to the false claim of responsibility. Accordingly, the link between Mr Merhi and the false claim of responsibility is missing. He must be acquitted.

Whether Mustafa Amine Badreddine had a role in the conspiracy

333. To connect Mr Badreddine to the conspiracy to commit the terrorist act and to murder Mr Hariri, the Trial Chamber must be satisfied beyond reasonable doubt that the only reasonable conclusion available from the evidence is that Mr Badreddine had the intention and performed the necessary acts to commit the crimes charged. This is not a finding of Mr Badreddine's guilt beyond reasonable doubt as he is no longer an accused person.

334. The Trial Chamber cannot find that the Green network operated as a command mission network with Mr Badreddine at its peak; in other words that he was the main conspirator. The Trial Chamber carefully examined each call in the Green network, but to be satisfied beyond reasonable doubt that that was indeed what was occurring—and that no other reasonable conclusion is available from the evidence—each call has to connect to evidence of what was occurring when the calls were made.

335. Despite the eighty brief calls made over four months the Trial Chamber cannot reconcile their timing and the location of the callers with the Prosecution's pleaded allegation that Mr

Badreddine was at the peak of a conspiracy to commit a terrorist act in murdering Mr Hariri. The calls have no content and finding context from their timing and location is very difficult. There is also no evidence of what was said in the calls, nor of any meetings between Mr Badreddine and Mr Ayyash.

336. One call, on 14 February 2005 appears connected to the attack on Mr Hariri. The remaining calls, however, cannot be linked to anything directly connecting to Mr Hariri, his movements or any other evidence relating to the conspiracy pleaded.

337. Therefore it is not the only reasonable conclusion from the evidence that the Green network acted as the mission command to coordinate Mr Hariri's assassination.

338. This does not alter the Trial Chamber's conclusion in relation to Mr Ayyash. It is not necessary that the Trial Chamber find that Mr Badreddine had the pleaded role alleged by the Prosecutor to find that Mr Ayyash participated in the conspiracy.

339. The Trial Chamber—with Judge Braidy dissenting on whether it should make legal findings on this issue at all—is not convinced that Mr Badreddine had the role pleaded in the amended consolidated indictment.

Disposition

The Trial Chamber finds **Salim Jamil Ayyash** guilty as co-perpetrator of:

COUNT 1—Conspiracy aimed at committing a terrorist act

COUNT 2—Committing a terrorist act by means of an explosive device

COUNT 3—Intentional homicide of Rafik Hariri with premeditation by using explosive materials

COUNT 4—Intentional homicide of 21 persons in addition to the intentional homicide of Rafik Hariri with premeditation by using explosive materials, and

COUNT 5—Attempted intentional homicide of 226 persons in addition to the intentional homicide of Rafik Hariri with premeditation by using explosive materials.

The Trial Chamber finds **Hassan Habib Merhi, Hussein Hassan Oneissi** and **Assad Hassan Sabra** not guilty of all counts charged in the amended consolidated indictment, namely counts one, six, seven, eight and nine.