

PRONOUNCEMENT OF SENTENCING JUDGMENT

1. In the judgment delivered publicly on 18 August 2020, the Trial Chamber unanimously found Salim Jamil Ayyash guilty beyond reasonable doubt as a co-perpetrator of the five counts charged against him in the amended consolidated indictment.

2. These were of participating in a conspiracy aimed at committing a terrorist act; committing a terrorist act by means of an explosive device; the intentional homicide of the former Lebanese prime minister Mr Rafik Hariri with premeditation by using explosive materials; the intentional homicide of an additional 21 people with premeditation by using explosive materials; and the attempted intentional homicide of 226 people with premeditation by using explosive materials.

3. The Trial Chamber unanimously acquitted the other three Accused, Mr Hassan Habib Merhi, Mr Hussein Hassan Oneissi and Mr Assad Hassan Sabra of all counts charged against them.

The Trial Chamber found the following relevant facts at trial proved against Mr Ayyash:

4. On Monday 14 February 2005, at around 12:55 Mr Hariri, was murdered in a terrorist attack perpetrated by a suicide bomber who detonated explosives equivalent to 2,500 to 3,000 kilograms of TNT, as Mr Hariri's convoy passed the St Georges Hotel in downtown Beirut. The explosives were concealed on the tray of a Mitsubishi Canter light truck that had been anonymously purchased in Tripoli the month before.

5. Twenty-two people including Mr Hariri were killed and 226 others were injured as a result of the explosion. Many buildings and other property sustained severe damage. The attack was intended to spread terror in Lebanon, and indeed did so. A video-taped false claim of responsibility for the attack was given to media outlets and broadcast within hours of the attack.

6. The attack against Mr Hariri was a political one. He had resigned as the prime minister of Lebanon on 20 October 2004 and was intending to contest elections scheduled for May 2005.

7. Syria had had an overwhelming political, military and economic dominance in Lebanon since the end of the Lebanese civil war in 1990. This was attracting increasing international concern, and in September 2004, a UN Security Council resolution, number 1559, had called upon

‘all remaining foreign forces to withdraw from Lebanon’. It expressed grave concern ‘at the continued presence of armed militias in Lebanon, which prevent the Lebanese Government from exercising its full sovereignty over all Lebanese territory’. It called for ‘the disbanding and disarmament of all Lebanese and non-Lebanese militias’. It declared ‘its support for a free and fair electoral process in Lebanon’s upcoming presidential elections conducted according to Lebanese constitutional rules devised without foreign interference or influence’.

8. By early February 2005, a broad political coalition that included members of Mr Hariri’s parliamentary block, the Future Movement, was calling for the withdrawal of Syrian forces from Lebanon. The Syrian authorities were growing increasingly concerned by these developments, and on 1 February 2005, the Syrian Deputy Foreign Minister, Mr Walid El-Moallem, visited Mr Hariri at his home, Quraitem Palace in Beirut. In the meeting Mr Hariri had told him: that ‘We want a pro-Syrian regime in Lebanon. But, at the same time, Lebanon will not be ruled by Syria forever’.

9. The visit coincided with the third meeting, on 2 February 2005, of the so-called ‘Bristol Group’, a loose political coalition that reflected a broader public opposition to the Syrian presence in Lebanon, and in which some of Mr Hariri’s prominent supporters participated. At this meeting, the Bristol Group called for a total withdrawal of Syrian forces from Lebanon.

10. The Trial Chamber found the evidence ‘sufficient to establish that the attack on Mr Hariri most likely had some connection with the Syrian presence in Lebanon and tensions between the Syrian government and opponents of its continuing presence.’

11. In the months before the attack, from at least 20 October 2004—after the passage of the Security Council resolution—users of three covert mobile networks, colour-coded by the Prosecution as Red, Blue and Yellow networks, had observed Mr Hariri’s and his security details’ movements. Mr Ayyash used mobiles in each network. Their aim was to obtain information about Mr Hariri’s whereabouts and security arrangements, and eventually to determine a suitable method to murder him, including finding an appropriate location for the intended attack.

12. The final decision to proceed with the plan to murder Mr Hariri was probably made sometime in early February 2005, in the two weeks before the attack. Users of six Red network mobiles, including Mr Ayyash, were involved in Mr Hariri’s assassination.

13. The Trial Chamber found that Mr Ayyash, who was the single user of mobiles described as ‘Green 300’, ‘Red 741’, ‘Blue 233’ and ‘Yellow 294’, had directly contributed to it and had a central role in the execution of the attack. It did not find that he instigated it.

14. Using his Red and Blue network mobiles, Mr Ayyash had been involved in the surveillance of Mr Hariri on five occasions in the two weeks before the attack.

15. From at least 3 February 2005 the surveillance in which Mr Ayyash was involved was an act preparatory to the assassination. The Red mobile network, of which he was a member, was integral to the assassination. It functioned as a closed network that ceased operation immediately before the attack, after having been used in the previous month in the surveillance of Mr Hariri and his convoy’s movements. Mr Ayyash’s central role in the attack on Mr Hariri was shown by his participation in what the Prosecution correctly described as the ‘assassination team’ that perpetrated the attack.

16. On the morning of the attack, Mr Hariri’s convoy travelled first from his home at Quraitem Palace to a session of the Parliament in central Beirut, before leaving the Parliament to return for a luncheon engagement.

17. The Red network operated extensively that day. Red network mobiles were in or near the area of Quraitem Palace just after Mr Hariri had left for the Parliament and were active in monitoring him when he was at the Parliament. The Red network mobiles tracked Mr Hariri and his convoy’s movements, alerted other members of the network to his location and prepared for the surveillance and execution of the attack along the route that he was expected to take. This was aimed at ensuring that the explosives detonated at the exact point when the convoy was to pass. This must have included assisting preparing the Mitsubishi Canter for the attack at the crime scene.

18. In the hour and a half before the attack, Mr Ayyash was near the Parliament when Mr Hariri was there, near the crime scene and making calls to other Red network users who were also in both locations or between them. Mr Ayyash’s calls to the other Red mobiles—about an hour and a half before the attack—triggered their relocation to the Parliament area, launching the beginning of the operation to assassinate Mr Hariri.

19. Around 12:50, Mr Hariri departed the Parliament in his convoy to return to Quraitem Palace. Coincidental with this, Mr Ayyash received his final Red mobile call, of ten seconds, from a Red mobile user who would have had the best line of sight of the convoy's movements. Mr Ayyash was then still somewhere between the Parliament and crime scene, which are about two kilometres apart.

20. At 12:54:55 Mr Hariri's convoy passed the HSBC bank and eight seconds later, the explosion occurred. The Red network mobiles were never used again. At the time of the attack, only two of the Red network mobiles, including Mr Ayyash's were close to the crime scene.

21. In the two hours before the attack there were 33 calls between the Red network users. Mr Ayyash's Red 741 was the only mobile that day that was in contact with all the other Red mobiles. Its movements and its call patterns show that it had a central role in the attack. Mr Ayyash, as the user of Red 741, coordinated some of the acts that executed the attack. Red 741's user also fits the profile of a mobile user in the covert networks with a supervision role.

22. The explosion was massive, and the explosives were designed to target an armoured convoy moving at speed. The blast left a crater with a diameter of around 11.4 metres and a depth of around 1.9 metres. It caused colossal damage to the buildings in its immediate vicinity. These buildings had people inside them.

23. Terrorism is one of the most serious and heinous crimes and this particular attack was very grave. The 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. It was detonated by a suicide bomber in a busy public street, in the middle of a weekday, and caused an indiscriminate loss of life and destruction. The device exploded 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. The explosion endangered property and anyone who was nearby.

24. It was intended to and in fact inflicted terror. It also caused fear and panic among, at least, members of the public in the area of the detonation. The huge explosion attracted enormous publicity and caused many Lebanese to experience fear, insecurity and loss.

25. The explosion killed Mr Hariri and eight members of his convoy and caused the death of thirteen bystanders. Eighteen participating victims suffered direct physical, mental and or material harm as a result. They suffered from long-lasting and persisting physical injuries and mental illnesses, which required immediate or repeated medical intervention and or long-term medication. Many experienced post-traumatic stress disorder, depression and panic attacks.

26. Fifty-two indirect participating victims, dependants or relatives of persons who died in the explosion, suffered relevant harm as a direct result of the explosion. They described the psychological effect and grief that they had endured, and the devastating impact that the loss of their loved ones had on their lives, including anxiety and PTSD. They also described their search of the crime scene or going to the hospitals or morgues in Beirut searching for their relatives and the traumatic experience of seeing the damaged bodies of loved ones.

27. Five witnesses, who are not participating victims, suffered relevant harm as a direct result of the explosion. Their harm included permanent or long-lasting physical impairment and mental and emotional distress as a result of the explosion or from losing a family member and friend.

28. A victimologist interviewed many of the victims of the attack and provided evidence about the effects of acts of terrorism on a society more generally. She explained that acts of terrorism spread outwards affecting primary, secondary and tertiary victims, in other words the society at large. Of its broader impact, some victims said that it was an attack was on the whole country. Some victims feared further attacks. Very few received any form of compensation.

29. The same facts have proved each of the five crimes committed by Mr Ayyash. The counts have separate legal elements of proof.

30. The Prosecution, the Ayyash Defence and the Legal Representatives of Victims filed written sentencing submissions. The Trial Chamber provided a list of questions to them, arising from their submissions, for a response in a sentencing hearing that was held on 10 November 2020.

31. The trial and the sentencing proceedings were conducted in Mr Ayyash's absence. The Trial Chamber found that he was aware of the indictment and had absconded and all reasonable steps had failed to secure his appearance before the Special Tribunal. The practical effect of this

is that the Ayyash Defence had no direct instructions from Mr Ayyash for its sentencing submissions.

The law on sentencing

32. Articles 2 and 24 of the Statute of the Special Tribunal for Lebanon and Rules 171 to 173 of the Special Tribunal's Rules of Procedure and Evidence govern sentencing proceedings.

33. Article 2 provides that the Lebanese Criminal Code and Lebanese law of 11 January 1958 on 'Increasing the penalties for sedition, civil war and interfaith struggle' apply to prosecuting and sentencing at the Special Tribunal. But this is subject to Article 24 under which Trial Chamber may sentence a convicted accused person to a period of imprisonment of up to life.

34. The 1958 law provides a penalty of life imprisonment with hard labour for terrorism offences, or the death sentence, where the act results in death or the total or partial destruction of a building having one or more people inside, or the total or partial destruction of a public building. Entering into a conspiracy to commit such an offence is punishable by hard labour for life. However, in reality this has little effect in this case because the maximum sentence available is life imprisonment.

35. The submissions differed as to which law was applicable. According to the Prosecution, both Lebanese law and international criminal law apply, while the Legal Representatives submit that the Trial Chamber should also consider other national sentencing practices. The Ayyash Defence, on the other hand, argues that only international criminal law, and not Lebanese law, applies. The three, however, correctly argue that the maximum available sentence is one of life imprisonment.

36. The Prosecution asks the Trial Chamber to impose five concurrent life sentences on Mr Ayyash; one for each count. The Ayyash Defence argues that a single sentence is appropriate and that a life sentence would be disproportionate. The Legal Representatives of Victims submit that the appropriate sentence should be the highest, life imprisonment, to reflect the harm to the victims and the Lebanese community as a whole.

37. Additionally, they ask the Trial Chamber to impose a significant fine on Mr Ayyash and to request the Lebanese authorities to freeze his assets to forfeit them, for the victims' benefit. A fund should also be created to address the harm suffered by the victims of the attack.

38. The Prosecution and Ayyash Defence opposed these arguments on possible financial penalties as not being within the Special Tribunal's statutory framework.

39. On this issue, the Trial Chamber cannot accept the Legal Representative's arguments. The Statute does not permit fines, financial orders or penalties. The Trial Chamber is not persuaded, in the absence of an express power to fine a convicted offender or to directly order compensation or reparations, that it could make such an order.

The aims of sentencing

40. The primary aims of sentencing under international criminal law are retribution, or imposing a just and appropriate punishment on the offender, and deterrence, both at the individual and societal level. Rehabilitation is another though less important factor.

41. Deterrence is normally divided into two categories, individual and general deterrence. Individual deterrence aims to deter the convicted person from offending, while general deterrence aims to ensure that other potential perpetrators are dissuaded from committing the same or similar crimes.

42. In sentencing Mr Ayyash, individual deterrence, combined with a limited form of general deterrence is probably more realistic than general deterrence in its widest sense. This is because Mr Ayyash's role was essentially that of a member of the assassination team.

43. This political attack was aimed at eliminating a political obstacle or opponent. Although there was no *direct* evidence, it most probably had to have involved state actors. The state with the most to gain from Mr Hariri's elimination most likely was Syria. Further, Mr Ayyash was affiliated with Hezbollah. Hezbollah is allied with Syria.

44. Given the highly probable role of a state actor in this terrorist attack, the aim of wider general deterrence in sentencing here, insofar as it extends to the instigators of state sponsored crimes, is less likely to have the intended effect. This wider form of general deterrence may

therefore have less significance in crimes involving state actors where the risk of apprehension for the instigators is slight. Individual and a more limited form of general deterrence for people such as Mr Ayyash may be more pertinent: a severe sentence may act as a warning to potential perpetrators who are engaged by state actors to commit acts of terrorism.

45. Retribution is highly applicable in sentencing for political crimes of this nature. Retribution should not fulfil a desire for revenge but instead is an ‘expression of the outrage of the international community at the crimes committed’. This is apposite in an attack against a political figure that achieved its intended destabilising effect in spreading terror in Lebanon for political reasons. Security Council resolution number 1757 of 2007 categorised the attack on Mr Hariri as a ‘terrorist act and its implications constitute a threat to international peace and security’.

46. Rehabilitation is inapplicable here. The Trial Chamber received no relevant information in respect of Mr Ayyash’s individual personal circumstances.

47. In sentencing Mr Ayyash, the Trial Chamber should consider, among other things, gravity, individual circumstances, any aggravating circumstances or mitigating circumstances, and the general practice regarding prison sentences in Lebanon.

48. Aggravating factors must be established beyond reasonable doubt, and cannot be ‘double-counted’, that is, considered both as aggravation and as part of gravity.

49. According to the Prosecution, under Lebanese law the crimes would result in the most severe penalty. The extreme gravity of Mr Ayyash’s crimes, his leading calculating role in their execution and their devastating impact on the victims and Lebanese people justify the imposition of the most severe sentence of life imprisonment.

50. The Ayyash Defence highlights that the Trial Chamber did not find Mr Ayyash criminally responsible as the ‘originator, architect or overall coordinator’ of the attack, nor that he recruited or trained others to participate in it. Nor that he acquired the equipment, or had specific knowledge about the type and quantity of explosives, used in the attack. This justifies a lesser sentence. The Trial Chamber found that Mr Ayyash ‘did not act alone’, rather he was a single participant in a complex network, the majority of whom the Prosecution has been unable to identify.

51. Gravity, according to the Legal Representatives, is one of the most important sentencing factors in international criminal law. They submit that the crimes are of extreme gravity. The explosive device was intended not only to kill Mr Hariri but also to cause massive destruction, injury and death. Apart from the enduring harm to the survivors, the attack also ‘transcended identifiable victims and affected Lebanese society as a whole.’ The infliction of terror on the overall population must be taken into account.

Gravity

52. The Trial Chamber considers that the gravity of the offences is the primary factor in sentencing for these crimes. Mr Ayyash’s crimes are extremely grave. He had a central role in the attack and made a significant contribution to it. He was responsible, as a co-perpetrator, for committing these crimes.

53. Apart from the suffering of the direct and indirect victims, this shocking terrorist attack also inflicted a form of collective harm on the Lebanese people. It attacked their system of government. Lebanon is a parliamentary democracy. Its politicians and leaders should be removed from office at the ballot box rather than by the bullet or a bomb in a terrorist attack. The attack was aimed at eliminating a prominent member of parliament and a former prime minister who was to be a candidate in the 2005 elections. The attack undermined the foundations of the Lebanese state.

54. The Trial Chamber could have found beyond reasonable doubt that this attack on democracy could aggravate the crimes. However, as the Prosecutor did not specifically plead it as an aggravating circumstance, the Trial Chamber instead will treat it as contributing to the gravity of the crimes.

Aggravating circumstances

55. The following statutory aggravating features under Lebanese law have been established beyond reasonable doubt for the purposes of sentencing in a Lebanese court:

56. **Count two**—in committing a terrorist act by means of an explosive device, the terrorist act caused the deaths of 22 people, and the partial destruction of buildings with people inside such as

the St Georges and Byblos hotels. One victim died under the rubble in a building opposite the St Georges Hotel.

57. **Counts three, four and five**—the evidence established the aggravating features of the intentional homicide of Rafik Hariri with premeditation by using an explosive device, the intentional homicide of 21 other people with premeditation by using an explosive device, and the attempted the intentional homicide of 226 people with premeditation by using an explosive device.

58. The Trial Chamber also finds that the following two facts that have been established beyond reasonable doubt also aggravate the offence. First, there were multiple victims: 22 dead and at least another 226 injured: this was not in dispute at trial. Second, the explosion had a long-term and continuing effect on numerous victims.

Mitigating circumstances

59. The Trial Chamber must also consider any mitigating circumstances. These can include voluntary surrender; the expression of remorse or compassion towards victims and good character with no previous convictions. Mitigating factors will not lead to an automatic reduction of a sentence, and a life sentence may be imposed if the gravity of the offence warrants it. The Trial Chamber has received no evidence of any mitigating circumstances here.

Mr Ayyash's individual personal circumstances

60. Very little evidence of Mr Ayyash's individual circumstances was put in evidence at trial, and none was adduced during the sentencing hearing. The following is known:

61. He was born in November 1963 in Nabatiyeh, Lebanon. He married Ms Fatimah Hajj and they had three children. In March 2002, he purchased an apartment in Beirut in Hadath. He also used a family residence in Harouf, in southern Lebanon.

62. He worked for the Lebanese Civil Defence from 1986 after two years of education at the American University in Beirut. His first post was as a 'Technical Pharmacist'. As of March 1995, he was as a 'First Technical Assistant'. He first worked at the Al-Doueir station near Harouf until February 2002. From then until November 2004, he was the head of the Markaba Station before transferring back to Al-Doueir.

63. Mr Ayyash is a Shiite Muslim who performed the Hajj to Mecca in early 2004. He had affiliations with Hezbollah. He also had a strong association with motor vehicles. He had no relevant criminal convictions.

Separate or a single sentence

64. The Trial Chamber may impose either a single sentence ‘reflecting the totality of the criminal conduct of the accused’, or separate sentences on each count, to be served consecutively or concurrently.

65. In the Prosecution’s submission, the Trial Chamber should impose a sentence of life imprisonment for each of the five counts, to be served concurrently as one overall life sentence. This would properly reflect the inherent gravity of each of the crimes committed, their impact and Mr Ayyash’s leading role. His conduct, although based on the same incident, materialised in five distinct criminal offences with distinct elements. Under Lebanese law, someone convicted of the crimes for which Mr Ayyash was found guilty could be sentenced to the death penalty or hard labour for life.

66. The Ayyash Defence submits that a single sentence reflecting the totality of Mr Ayyash’s conduct as found by the Trial Chamber should be imposed because the convictions are based on the same facts and culpable conduct. A sentence of five terms of life imprisonment would be grossly disproportionate.

67. The criminality underlying each count of the five counts is grave. The underlying criminal conduct proving each count is identical. For the conspiracy pleaded in count one, only an agreement to do this was legally required to prove the crime.

68. The Trial Chamber should also consider, as appropriate, the practices of international criminal courts and tribunals and the Lebanese courts. It has examined both but is bound by neither. It was unable to find any Lebanese decisions relating to crimes comparable to those committed by Mr Ayyash in the attack on Mr Hariri’s life.

69. The Trial Chamber will exercise its discretion to impose separate sentences on each count. This approach is consistent with Lebanese judicial practice. It allows the Trial Chamber to avoid

double-counting, to clearly set out its assessment and findings of the gravity of each crime, and to impose distinct sentences for each as to reflect his culpability in a precise manner.

70. Imposing a separate sentence for each crime allows public understanding that each crime is by itself grave. This applies equally for count five—in which no deaths occurred—of the attempted intentional homicide of 226 people with premeditation by using explosive materials. All of these victims were injured, some very seriously, as a result of Mr Ayyash’s role in exploding 2,500 to 3,000 kilograms of TNT equivalent explosives in a busy Beirut street.

71. Imposing separate sentences also has the advantage, in an appeal of allowing the Appeals Chamber to address the penalty imposed for each crime without having to engage in potential first instance appellate resentencing on separate counts.

The sentence

72. In sentencing Mr Ayyash the Trial Chamber must balance all the relevant factors identified before.

73. Mr Ayyash participated in an act of terrorism that caused mass murder. His role and that of the others in the Red network was vital to the success of the attack. Contrary to the Ayyash Defence’s submissions, the mere fact that Mr Ayyash did not himself instigate the crimes does not of itself lessen the gravity of the crimes so as to reduce the sentence. Mr Ayyash played a leading role in Mr Hariri’s assassination; he participated in the crimes as a co-perpetrator.

74. In noting the aggravating factors and making positive findings on gravity, the Trial Chamber is not ‘double-counting’. The use of explosives in counts three to five are aggravating factors that will elevate the penalty if the convicted person is sentenced in Lebanon, but their use and their effect could also contribute to the overall gravity of the crimes, such as to increase the sentence.

75. The crimes here are so grave that the Trial Chamber could consider each of the statutory aggravating circumstances as factors contributing to their gravity. Whichever route is taken the result is the same; the crimes are so serious as to attract the maximum sentence.

76. The offences are so serious that very few circumstances could equate to mitigating features that could reduce the appropriate sentence. There are none here. The Trial Chamber has considered Mr Ayyash's individual circumstances based on the evidence put before it in trial. Nothing in Mr Ayyash's known personal circumstances could reduce the sentence.

77. In the circumstances, the Trial Chamber is satisfied that it should impose the maximum sentence for each of the five crimes of life imprisonment, to be served concurrently. Had Mr Ayyash been convicted of only one of any of the five counts, each is individually serious enough to attract such a sentence. The sentences cannot be cumulative, thus they should be served concurrently.

Compensation for victims of this attack and other crimes in Lebanon

78. Finally, few of the victims of this heinous attack have received just compensation for their loss and harm. For this reason the Trial Chamber has examined the issue in some detail in the hope that some amends can be made.

79. During the trial, the Trial Chamber received a significant amount of evidence from participating victims. The issue of just compensation for the harm to the victims and their families featured prominently. A few had received some form of compensation from the Hariri family. One had receive a cheque from an *ex gratia* scheme, the Higher Relief Commission, which is subordinated to the prime minister's office. Some had insurance against which they could claim. Some had medical expenses paid for them. However, it appears that most received either inadequate or no just compensation.

80. Lebanon has no national victims' compensation scheme. The perpetrators of offences causing harm are liable for paying compensation, and in practice, reparations are ordered against them. But this requires a judgment against them.

81. To obtain compensation, a victim of the attack on Mr Hariri would have to initiate a civil claim against a convicted person. However, if the claim is unsuccessful—and Mr Ayyash has been neither located nor apprehended—or alternatively if orders for compensation cannot compensate all the victims of the attack, the victims have no further options for claiming, and receiving, compensation.

82. The Legal Representatives seek the establishment of a trust fund for victims of Mr Ayyash's crimes, namely terrorism, noting that 'this case is a starting point'. Referring to the lack of a general victims' compensation scheme in Lebanon they ask the Trial Chamber to recommend the creation of one.

83. They also refer to United Nations General Assembly resolutions on victims' rights from 1985 and 2005 that set out basic principles and guidelines. These state that if a person liable to pay reparations is unable or unwilling to do so, a 'State should undertake efforts to provide compensation'.

84. The Special Tribunal, unlike the International Criminal Court, has no statutory compensatory or reparations mechanism. The Statute does not authorise the Trial Chamber to make financial orders against a convicted accused person, such as to pay compensation or reparations to a victim of crimes within its jurisdiction. But it does not expressly prohibit the Special Tribunal from establishing or administering any such scheme that does not involve making orders against a convicted person.

85. The Trial Chamber may make relevant recommendations on matters of concern that it has encountered in the proceedings. The participation of victims in the proceedings has widened the scope of possible findings.

86. The Prosecution endorsed the Trial Chamber recommending any legal measures that properly compensate all of the victims. The Ayyash Defence did not oppose such recommendations so long as they were not directed at Mr Ayyash.

87. The two United Nations General Assembly resolutions establish principles for restituting and compensating the victims of crime, violations of international humanitarian law (war crimes, crimes against humanity) and international human rights law (like torture). UN member states, under these principles, should establish national compensation schemes

88. Compensation should be appropriate and proportional to the gravity of the harm suffered. Some participating victims had a real sense of injustice because while some were compensated most were not. Compensation should not depend on a victim's connections, employment

relationship or insurance scheme. Victims of crimes, as a general proposition, should be entitled to receive a form of statutory compensation.

89. Some victims sought compensation from the High Relief Commission. It is funded from donations to the government. But this public agency reports to the Lebanese prime minister, or the cabinet, who may ask it to compensate as a matter of urgency people affected by catastrophes, floods, acts of war or famines. In effect, it is a discretionary *ex gratia* scheme. And grants may be made using political considerations. It is neither a national victims' compensation scheme nor one that complies with the relevant UN principles.

90. The UN General Assembly's 1985 Basic Principles declare that victims of crime have a right to a remedy regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted. If compensation is not fully available from the offender or other sources, States should endeavour to provide compensation to victims, their families, and establish national compensation funds. The 2005 Basic Principles state that victims should be provided with full and effective reparation, which includes restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. They must also have proper access to justice.

91. There was real inequality in how the victims of Mr Ayyash's crimes were treated and compensated. This is unfair and contrary to the UN Basic Principles. The Trial Chamber believes that it has a moral and legal duty to the victims of crimes found to fall within the Special Tribunal's jurisdiction to do anything it can to help them obtain redress. It cannot make formal orders against Mr Ayyash or the Government of the Lebanese Republic. All it can do, in an attempt to ensure the consistent application in Lebanon of the UN Basic Principles, and thus fairness to the victims, is to make recommendations.

92. Lebanon should therefore introduce a national compensation scheme for victims of crime generally. The scheme should be independent and involve the neutral determination, free from political considerations, of compensating the victims of established crimes. It should confirm to the UN principles.

93. The scheme could also decide just compensation for victims of any of the crimes falling with the Special Tribunal's jurisdiction. Many national schemes provide useful models. The essence of such a scheme is that the scheme itself—whatever model is chosen—rather than a

convicted offender, would compensate eligible victims. Victims' compensation can include direct financial payments as a form of damages, and a range of associated expenses such as medical, counselling, funeral and burial, legal, travel and moving costs, and also compensate for lost opportunities such as lost employment, wages, education and social benefits.

94. The Trial Chamber also agrees with the Legal Representatives' general submissions on establishing a trust fund for victims. Nothing in the Statute prevents the Special Tribunal from establishing and administering such a special trust fund. If it did, it would have to be funded by international donors. The purpose of such a trust fund could be to compensate not only the victims of the attack of 14 February 2005, but the victims of any crimes determined to be within the Special Tribunal's jurisdiction.

95. The Registrar and international trustees could administer a trust fund, which would be responsible for determining just compensation. An appeal could lie on a point of law to a specially constituted chamber of the Special Tribunal. Changes to the Rules would be needed. This is achievable. These are merely possibilities.

96. Establishing such a trust fund is consistent with the Special Tribunal's objectives and would provide a just and neutral mechanism to compensate victims of crimes determined to be within its jurisdiction.

97. The Trial Chamber therefore recommends—independently of its recommendation to Lebanon to establish a national victims' compensation mechanism—the establishment of a special trust fund for victims of crimes determined to be within the Special Tribunal's jurisdiction.

98. The Trial Chamber here also revisits the issue of psychological support for the victims of crimes testifying in an international setting and the need for professional psychological support in Beirut in any future proceedings. It recommends that the Registrar and the Victims' Participation Unit consider this recommendation.

The Trial Chamber imposes the following sentences on **SALIM JAMIL AYYASH**, to be served concurrently:

COUNT 1—Conspiracy aimed at committing a terrorist act, imprisonment for life;

COUNT 2—Committing a terrorist act by means of an explosive, imprisonment for life;

COUNT 3—Intentional homicide of Rafik Hariri with premeditation by using explosive materials, imprisonment for life;

COUNT 4—Intentional homicide (of 21 persons in addition to the intentional homicide of Rafik Hariri) with premeditation by using explosive materials, imprisonment for life; and

COUNT 5—Attempted intentional homicide (of 226 persons in addition to the intentional homicide of Rafik Hariri) with premeditation by using explosive materials, imprisonment for life.

99. Finally, Mr Ayyash has been shielded from justice. The Lebanese authorities have been unable to apprehend him and transfer him to the seat of the Special Tribunal since it issued an international warrant for his arrest in June 2011. Those who are shielding him from justice should surrender him to the Special Tribunal.