



## Security Council

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### **Report of the Secretary-General submitted pursuant to Security Council resolution 1757 (2007) of 30 May 2007**

#### **I. Introduction**

1. The present report is submitted pursuant to paragraph 3 of resolution 1757 (2007) of 30 May 2007, by which the Security Council requested me to undertake, in coordination, when appropriate, with the Government of Lebanon, the steps and measures necessary to establish the Special Tribunal in a timely manner and to report to the Council on the implementation of the resolution within 90 days of its adoption and periodically thereafter.

2. By resolution 1757 (2007), the Security Council decided, acting under Chapter VII of the Charter of the United Nations, that the provisions of the document annexed thereto (the “Annex”) on the establishment of the Special Tribunal, including the statute attached thereto (the “Statute”), would enter into force on 10 June 2007, unless the Government of Lebanon had notified the United Nations in writing that the legal requirements for entry into force had been complied with before that date.

3. On 10 June 2007, as no notification had been received prior to that date, the provisions of the Annex and the Statute entered into force. Thereafter, as mandated by the Security Council in its resolution 1757 (2007), I commenced to undertake the steps and measures necessary to establish the Special Tribunal in a timely manner. The most immediate actions taken since 10 June relate to: (a) the location of the seat of the Special Tribunal; (b) the appointment of the judges, the Prosecutor, the Deputy Prosecutor, the Registrar and the head of the Defence Office; (c) the staffing requirements and budget of the Tribunal; (d) the funding of the Tribunal, including both its establishment and operation; (e) the Management Committee; (f) security issues; and (g) communications and outreach.

4. The present report discusses in detail the steps already undertaken towards the establishment of the Special Tribunal and provides an outline of the next steps.

#### **II. Location of the seat**

5. Pursuant to article 8, paragraph 1, of the Annex, “[t]he Special Tribunal shall have its seat outside Lebanon”. In the paragraph it is further stipulated that “[t]he location of the seat shall be determined having due regard to considerations of



justice and fairness as well as security and administrative efficiency, including the rights of victims and access to witnesses, and subject to the conclusion of a headquarters agreement between the United Nations, the Government and the State that hosts the Tribunal”.

6. After considering possible seats and noting that having the Special Tribunal located in the Netherlands would fully meet the criteria set forth above, on 23 July 2007, I wrote to the Prime Minister of the Netherlands inviting his Government to consider hosting the Special Tribunal. In my letter, I emphasized that the experience and knowledge gained by the Netherlands in hosting several international courts and tribunals was invaluable. I cited the unique and essential role of the Netherlands in the development of international justice and the rule of law. In a letter dated 14 August 2007, the Prime Minister of the Netherlands informed me that his Government was favourably disposed towards hosting the Special Tribunal. From 27 to 30 August 2007, the Legal Counsel of the United Nations led a delegation to The Hague to initiate discussions with the authorities of the Netherlands regarding the modalities for the establishment of the Special Tribunal. The delegation visited possible sites for the Special Tribunal, identified issues for discussion and agreed upon further steps to achieve progress in a timely manner. In the coming weeks, subsequent meetings will be held to follow up the discussions.

### **III. Appointment of the judges, the Prosecutor, the Deputy Prosecutor, the Registrar and the head of the Defence Office**

7. I will describe below the appointment processes for the judges, the Prosecutor, the Deputy Prosecutor, the Registrar and the head of the Defence Office.

#### **A. Judges**

8. In accordance with article 2, paragraph 5 (c), of the Annex, the Secretary-General and the Government of Lebanon will consult on the appointment of the judges. Paragraph 5 (a) stipulates that the Lebanese judges will be appointed by the Secretary-General from a list of 12 persons presented by the Government of Lebanon upon the proposal of the Lebanese Supreme Council of the Judiciary. In accordance with paragraph 5 (b), the international judges will be appointed by the Secretary-General upon nominations forwarded by States at the invitation of the Secretary-General, as well as by competent persons. Pursuant to paragraph 5 (d), the Secretary-General will appoint all of the judges upon the recommendation of a selection panel composed of two judges, currently sitting on or retired from an international tribunal, and the representative of the Secretary-General.

9. On 10 July 2007, the Government of Lebanon forwarded to me, in a sealed envelope, a list of the 12 judges proposed by the Lebanese Supreme Council of the Judiciary. The list will remain sealed until the selection process of all judges begins. With a view to appointing both Lebanese and international judges at the same time, the Legal Counsel sent a letter on 1 August 2007 to all Member States, on my behalf, inviting them to consider submitting candidates for appointment as judges of the Special Tribunal no later than 24 September 2007.

10. In the meantime, I have begun the process of establishing the selection panel, which will take up its task by October 2007. In keeping with article 2, paragraph 5 (d) of the annex, I will indicate my intention to the Security Council before appointing the members of the panel. The selection panel will interview the candidates during the third quarter of 2007, and I hope to appoint the judges by the end of 2007.

11. Pursuant to article 17 (b) of the annex, the judges will commence their judicial functions on a date to be determined by me, in consultation with the President of the Special Tribunal, who will be elected in accordance with article 8, paragraph 2, of the Statute. In order to draft the rules of procedure and evidence of the Special Tribunal, as envisaged in article 28 of the Statute, and to address other organizational matters as set out in article 17 (b) of the Annex, the judges may be convened on an ad hoc basis prior to the commencement of their judicial duties.

## **B. The Prosecutor and the Deputy Prosecutor**

12. Pursuant to article 3 of the Annex, the Prosecutor will be appointed by the Secretary-General upon the recommendation of a selection panel (established in the same manner as that for the international judges), in consultation with the Government of Lebanon. A Lebanese Deputy Prosecutor will be appointed by the Government of Lebanon, in consultation with the Secretary-General and the Prosecutor, to assist the Prosecutor in the conduct of investigations and prosecutions.

13. The recruitment of the Prosecutor will begin in due course. With regard to the Deputy Prosecutor, the Government of Lebanon has forwarded to me, in a sealed envelope, a list of suggested names in preparation for her or his appointment. The list will remain sealed until the selection process begins.

14. The provisions set out in article 17 (a) of the Annex call for appropriate arrangements to be made to ensure that there is a coordinated transition from the activities of the International Independent Investigation Commission (the "Investigation Commission") to the activities of the Office of the Prosecutor. The Secretariat has initiated discussions with the Investigation Commission aimed at achieving that end and will remain in close contact with the Commission to ensure effective coordination during the period of the establishment of the Special Tribunal.

## **C. The Registrar**

15. Pursuant to article 4 of the annex, the Secretary-General will appoint the Registrar, who will be a staff member of the United Nations. I will start the process of identifying suitable candidates before the end of the year. He or she will take office at an appropriate time in order to develop the administrative and judicial infrastructure of the Special Tribunal so as to enable it to be operational on the date of the commencement of its functioning. The Registrar will also assist with the transition from the Investigation Commission to the Special Tribunal.

#### **D. Head of the Defence Office**

16. Pursuant to article 13, of the Statute, an independent head of the Defence Office, responsible for appointing the Office staff, drawing up a list of defence counsel and providing support and assistance to defence counsel and persons entitled to legal assistance, will be appointed by the Secretary-General in consultation with the President of the Special Tribunal.

17. I will initiate the process of identifying appropriate candidates for the position before the end of the year. The head of the Defence Office will be appointed at a later stage.

#### **IV. Staffing requirements and estimated budget**

18. A preliminary estimate of the staffing requirements and the budget of the Special Tribunal has been made for the three years to which reference is made in article 5, paragraph 2, of the Annex. In making the estimate, attention was paid to the experiences of other international tribunals, in particular that of the Special Court for Sierra Leone, which shares characteristics with the Special Tribunal.

19. While it is possible to determine the organizational and operational framework of the Special Tribunal, many issues which may have significant budgetary consequences, relating, inter alia, to the premises of the Tribunal, the number of accused persons, witnesses and trials, and the level of security required, have yet to be clarified. Therefore, the budget allocation herein presented constitutes an overall estimate rather than a precise evaluation of the funding necessary to support the operation of the Special Tribunal throughout its mandate.

20. In addition, the staffing requirements and the budget were necessarily developed on the basis of a number of assumptions, many of which may vary depending on the course of events during the establishment and operation of the Special Tribunal. Those assumptions are as follows:

(a) The work of the Office of the Prosecutor will be directed by the Prosecutor, based on the efforts already being carried out by the Lebanese authorities assisted by the Investigation Commission. The Prosecutor will benefit greatly from the work of the Lebanese authorities and the Investigation Commission in that regard. However, the Prosecutor will need the necessary time to complete the investigation work, as well as to prepare and submit an indictment;

(b) The terms and conditions of service for both judges and staff will be guided by those of the judges and staff of the Special Court for Sierra Leone, with appropriate modifications;

(c) A phased-in approach to the establishment and operation of the Special Tribunal will be adopted in accordance with the chronology of the legal process;

(d) The President of the Tribunal will take up his or her full-time duties on the date on which the Special Tribunal commences functioning;

(e) There will be three working languages with regard to the trial proceedings: Arabic, English and French;

(f) An office of the Special Tribunal will be established in Lebanon.

21. At this stage, no assumption can be made concerning the cost involved in providing for a courtroom, detention facility or office accommodation for staff.

22. Consequently, mindful of the considerations addressed above, including the required estimates referred to in article 5, paragraph 2, of the Annex, and taking into account established trends, in particular at the Special Court for Sierra Leone, it is estimated that the Special Tribunal will require a staffing level of between 415 and 430 posts and a total budget of \$35 million for the first 12 months of its operations, \$45 million for the second 12 months and \$40 million for the third 12 months.

23. It may be necessary to consider budgeting in the second and third years of the Special Tribunal for a second Trial Chamber. As provided for in article 2, paragraph 2, of the Annex “[t]he Chambers shall be composed of a Pre-Trial Judge, a Trial Chamber and an Appeals Chamber, with a second Trial Chamber to be created if, after the passage of at least six months from the commencement of the functioning of the Special Tribunal, the Secretary-General or the President of the Special Tribunal so requests”. This would entail, if required, the appointment of four additional judges and an examination of how to accommodate an additional Trial Chamber within the existing physical infrastructure. Should a second Trial Chamber be created, it is estimated at the present time that the additional annual financial requirements would be \$8 million.

24. A draft budget including staffing requirements across the organs of the Special Tribunal, will be prepared in due course.

## V. Funding

25. As provided for in article 5, paragraph 1, of the annex, the expenses of the Special Tribunal will be borne in the following manner:

(a) Fifty-one per cent of the expenses will be borne by voluntary contributions from States;

(b) Forty-nine per cent of the expenses of the Tribunal will be borne by the Government of Lebanon.

26. Pursuant to article 5, paragraph 2, of the Annex, “[i]t is understood that the Secretary-General will commence the process of establishing the Tribunal when he has sufficient contributions in hand to finance the establishment of the Tribunal and 12 months of its operations plus pledges equal to the anticipated expenses of the following 24 months of the Tribunal’s operation”.

27. On 26 July 2007, the Secretariat created a trust fund to receive contributions for the establishment and activities of the Special Tribunal. A letter to Member States inviting them to contribute to the trust fund will soon be sent.

## VI. Management Committee

28. In accordance with article 6 of the Annex, the United Nations and the Government of Lebanon “shall consult concerning the establishment of a Management Committee”.

29. Accordingly, on 9 July 2007, the United Nations and the Government of Lebanon agreed to establish a Management Committee, which, *inter alia*, would (a) provide advice and policy direction on all non-judicial aspects of the operation of the Special Tribunal, including questions of efficiency; and (b) perform other functions as agreed by the members of the Committee. They also agreed that the United Nations would be entrusted with establishing the Management Committee, including drafting the terms of reference in consultation with the Government of Lebanon.

## **VII. Security**

30. Ensuring the security of the Special Tribunal's officials is a matter of the highest priority in order to preserve the integrity and the independence of the Tribunal. Overall security arrangements will be made in consultation with the authorities of the Netherlands and of the Government of Lebanon.

## **VIII. Outreach and communications**

31. The creation of the Special Tribunal has already attracted significant interest in both Lebanon and the international community. That interest will only increase as the establishment of the Special Tribunal moves forward. Therefore, a communications strategy, including an outreach programme for the region, must be developed and implemented.

32. Adopting an effective communications strategy to provide accurate information about the establishment, role and activities of the Special Tribunal is of the utmost importance. It is also crucial to ensuring that the entire process is perceived as transparent, fair and accessible.

33. A key element for the success of the Special Tribunal is not only that justice be done but also that justice must be seen to be done. As the Special Tribunal's seat will be located outside Lebanon, the development of an effective and comprehensive outreach programme bringing the activities of the Special Tribunal closer to the population of Lebanon and the wider region is a priority.

## **IX. Next steps**

34. In order to support the successful and timely implementation of Security Council resolution 1757 (2007), the establishment of the Special Tribunal will proceed in three phases: (a) a preparatory phase; (b) a start-up phase; and (c) the commencement of functioning.

### **A. Preparatory phase**

35. During the preparatory phase, which is currently under way, the following actions will be undertaken:

- (a) Identifying the premises for the seat of the Special Tribunal, in coordination with the authorities of the host State, that would provide for the detention of accused persons, the conduct of trial proceedings and offices;
- (b) Negotiating a headquarters agreement with the host State;
- (c) Making preliminary legal and administrative arrangements with respect to the presence in Lebanon of an Office of the Special Tribunal for the conduct of investigations;
- (d) Appointing the judges, the Prosecutor, the Deputy Prosecutor and the Registrar;
- (e) Identifying candidates for the head of the Defence Office;
- (f) Finalizing the drafting of the terms and conditions of service of judges and of the staff;
- (g) Developing a draft budget, including a staffing table, for the Special Tribunal;
- (h) Initiating fund-raising for the establishment and operation of the Special Tribunal;
- (i) Drafting the terms of reference of the Management Committee and determining its composition, in consultation with the authorities of the Government of Lebanon and interested Member States;
- (j) Formulating and implementing communications and outreach policies for the period before the Special Tribunal becomes operational.

## **B. Start-up phase**

36. The start-up phase will begin when the Registrar has been appointed. This phase of activity includes the following actions:

- (a) Working on the preparation of the premises identified for the Special Tribunal;
- (b) Beginning the process for the recruitment and appointment of staff;
- (c) Establishing a core unit of Registry personnel to assist the Registrar in preparing for the Special Tribunal to become operational.

37. In addition, during the start-up phase, the Commissioner of the Investigation Commission, working together with the Registrar, should begin taking administrative measures to ensure a coordinated transition from the Investigation Commission to the Office of the Prosecutor.

## **C. Commencement of functioning**

38. The responsibility falls upon me to determine when the Special Tribunal will commence functioning. This can occur when sufficient financial means have been received pursuant to article 5, paragraph 2, of the Annex. In addition, pursuant to article 19, paragraph 2, of the Annex, the Special Tribunal will commence functioning on a date to be determined by me, in consultation with the Government

of Lebanon, taking into account the progress of the work of the Investigation Commission.

39. Once the Special Tribunal is ready to commence functioning, the judges, the Prosecutor and the Registrar will be sworn in and the first plenary meeting convened. The purpose of the meeting will be twofold: (a) to elect the President of the Special Tribunal; and (b) to adopt a schedule for the drafting of the rules of procedure and evidence and other necessary documents (such as the directives on the assignment of defence counsel, on the detention of persons awaiting trial or appeal and on the code of professional conduct for defence counsel). After his or her election, I will consult with the President regarding the appointment of the head of the Defence Office, pursuant to article 13 of the Statute.

40. As set out in article 17 of the annex, the judges will serve on an ad hoc basis during this initial period of operation of the Special Tribunal. I envisage that the judges of the Trial and Appeals Chambers will only commence their official judicial functions at a later stage. However, the pre-trial judge would start her or his duties earlier than the other judges in order to issue any warrants and orders required for the conduct of investigations and for the preparation of trials.

## **X. Final observations**

41. It is my belief that the establishment of the Special Tribunal will contribute to ending impunity in Lebanon for the crimes under the Tribunal's jurisdiction. The United Nations remains committed to assisting the Government of Lebanon and the Lebanese people towards this end by creating a tribunal of an international character grounded in the highest standards of international justice. As the process to establish the Special Tribunal advances, I will keep the members of the Security Council apprised of this important work.

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