HANDBOOK ON
THE SPECIAL TRIBUNAL FOR LEBANON



INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE
PROSECUTIONS PROGRAM

FRIEDRICH EBERT STIFTUNG

international center for TRANSITIONAL JUSTICE

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FOREWORD

The Special Tribunal for Lebanon is an internationalized court that will sit in the Netherlands and seek accountability for a specific set of crimes in Lebanon. Based on negotiations between Lebanon and the United Nations but ultimately decided by the UN Security Council, the Tribunal's creation is a major innovation in Lebanese and regional traditions of justice. It is also similar to, but quite different from, many of the international and mixed tribunals that have been established recently, including the International Criminal Tribunal for the former Yugoslavia and the Special Court for Sierra Leone.

The establishment of the STL raises many questions. What are the similarities and differences to other tribunals? What is their practical importance? How will proceedings work? What role can media and civil society groups play? This handbook is designed to help answer these questions and many more. Based on publicly available information and the expertise of the International Center for Transitional Justice (ICTJ)—which has monitored and analyzed prosecutions in many different parts of the world—this handbook is intended to be a source of clear and accessible information about the Tribunal for anyone who is interested, in particular civil society and media groups.

It remains to be seen whether or how the Tribunal might contribute toward accountability in Lebanon, but it is clear from experience of tribunals elsewhere that informed debate, rigorous monitoring, and an engaged public are vital if the Tribunal is to have any legitimacy among those it is intended to serve. We hope this handbook will help support such monitoring, engagement, and debate.

The ICTJ is a nongovernmental organization that provides technical expertise and comparative information to societies and governments on issues of transitional justice: that is, in dealing with the legacies of past atrocities or systematic human rights abuse. For further information, please see www.ictj.org.

This Handbook was prepared for a series of events organized by the Friedrich Ebert Stiftung in partnership with ICTJ to raise the awareness of the Lebanese and Arabic media on comparative and technical aspects of the Special Tribunal for Lebanon. These events included a roundtable for editors held in Beirut April 7, 2008 and a training for journalists in Berlin and The Hague on May 5-7, 2008. ICTJ is very grateful to FES for its support in the compilation of the Handbook.

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GLOSSARY OF ACRONYMS

ECCC	Extraordinary Chambers in the Courts of Cambodia
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICTJ	International Center for Transitional Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
JSMP	Justice Sector Monitoring Program in Timor-Leste
LPC	Lebanese Penal Code
NGO	Non-Governmental Organization
SCSL	Special Court for Sierra Leone
SLCMP	Sierra Leone Court Monitoring Program
STL	Special Tribunal for Lebanon
UN	United Nations
UNSC	United Nations Security Council
UNIIIC	United Nations International Independent Investigation Commission
UN OLA	United Nations Office of Legal Affairs

I. THE SPECIAL TRIBUNAL FOR LEBANON: BASIC FACTS

What is the Special Tribunal for Lebanon?

The Special Tribunal for Lebanon (STL) is a new body that was established pursuant to Security Council Resolution 1757 (2007). It is a mixed or "hybrid" tribunal set up to try the alleged perpetrators of a series of assassinations and assassination attempts on prominent Lebanese political and media figures beginning in 2004. It will mostly apply Lebanese law but be based in the Netherlands and have Lebanese and international judges, as well as Lebanese and international staff.

A string of high-profile assassinations and assassination attempts targeting Lebanese figures started in October 2004, and included the assassination of former Prime Minister Rafiq Hariri on February 14, 2005. After Lebanese and international investigations commenced, the government of Lebanon wrote to the United Nations on December 13, 2005, requesting UN assistance in establishing "a tribunal of an international character" to prosecute the alleged perpetrators. The Security Council acknowledged the Lebanese government's request two days later in Resolution 1644 (2005).

On March 29, 2006, the Security Council mandated the UN Secretary-General to negotiate an agreement with the Lebanese government (Resolution 1664). Negotiations took place and resulted in the drafting of the Agreement and Statute for the Tribunal, but the Agreement could not be signed because of a political stalemate in Lebanon.

Instead, on May 30, 2007, the UN Security Council used its Chapter VII enforcement powers and decided in Resolution 1757 that the Agreement and Statute of the Special Tribunal for Lebanon would enter into force June 10, 2007. Both documents were annexed to the resolution. (Chapter VII of the UN Charter allows the Security Council to take certain measures to enforce international peace and security.)

The Agreement will be in force for three years, after which "the Parties shall, in consultation with the Security Council, review the progress of the work of the Special Tribunal." If the Tribunal's activities have not been completed, the Agreement can be extended for a period to be determined by the Secretary-General in consultation with the government of Lebanon and the Security Council (art. 21(2) of the Agreement).

How does the STL differ from the UN International Independent Investigative Commission?

The UN International Independent Investigative Commission (UNIIIC) is entirely separate from the STL but may be seen as its precursor. The UNIIIC was established by the UN Security Council in Resolution 1595, April 7, 2005. The Commission's mandate was to assist Lebanese investigations into all aspects of the Hariri assassination. Since that time the UNIIIC has given frequent public reports on its activities and has also provided assistance in investigating some 20 other attacks. The UNIIIC has Chapter VII powers.

The UNIIIC is independent from but its work is related to the STL. Its role is to gather evidence but not to conduct the prosecutions. The information it has gathered will be handed over to the STL. The current commissioner will eventually become the prosecutor, and the work of the Commission is likely to inform the work of the Office of the Prosecutor.

What is the mandate of the STL?

The core mandate of the STL is defined by Article 1 of its Statute. Lawyers also refer to the mandate as "jurisdiction."

The STL has a narrow mandate; it has jurisdiction to try those allegedly responsible for:

- The attack of February 14, 2005, resulting in the death of former Lebanese Prime Minister Rafiq Hariri and the death or injury of other persons;
- Other attacks that occurred in Lebanon between October 1, 2004, and December 12, 2005, or a later date to be determined by the UN and the Lebanese Republic with the consent of the Security Council. It is important to note that the Tribunal will have jurisdiction over the later attacks only if it finds them to be connected to the attack of February 14, 2005, "in accordance with the principles of criminal justice" and of a similar nature and gravity.

The Statute specifies in article 1 that the factors used to determine a "connection" to the Hariri case are as follows:

- Criminal intent or motive;
- Purpose of the attacks;
- Nature of the victims targeted;
- Patterns of the attacks (modus operandi);
- The perpetrators.

It is important to realize that the STL's mandate is the narrowest of any international or hybrid tribunal established to date. All others have had jurisdictions over serious international crimes such as war crimes or crimes against humanity.

What are the crimes that the STL can try?

A unique feature of the STL is that it will try only domestic crimes. A court's mandate over crimes is sometimes called "subject matter jurisdiction." The Council restricted STL's subject matter jurisdiction to crimes defined under Lebanese law. Article 2(a) of the STL Statute, which defines its applicable criminal law, refers to specific crimes defined by the Lebanese Penal Code (LPC, also known as Law No. 340 of 1943):

- Acts of terrorism (arts. 314–316);
- Crimes and offences against life and personal integrity (arts. 547–568), which include homicide and bodily harm;
- Illicit associations (arts. 335–339), which include "associations of criminals," an offense that resembles to some extent the concept of "criminal conspiracy," well known in Anglo-Saxon criminal law;
- Failure to report crimes and offences (arts. 398–400).

An initial attempt was rejected to include international crimes, such as crimes against humanity, in the Statute. Similarly, attempts were abandoned to include in the Statute references to international and regional terrorism instruments, such as the Arab Convention on the Suppression of Terrorism.

Lebanese law provides a definition of terrorism that dates back to 1943, when the Lebanese Penal Code was enacted. LPC art. 314 defines "terrorist acts" as "acts designed to create a state of alarm which are committed by means such as explosive devices, inflammable materials, poisonous or incendiary products or infectious or microbial agents likely to create a public hazard."

What forms of participation in the crimes will the STL consider?

An individual can participate in an organized crime in many ways. The STL will determine individual responsibility for a crime in accordance with the Lebanese Penal Code provisions on criminal participation (arts. 212–222), and article 3 of the Statute on Individual Criminal Responsibility.

The LPC includes forms of participation such as committing a crime, instigating it, and participating as an accomplice. These forms are included in article 3(1)(a) of the Statute.

Some of the other forms of participation enumerated in article 3 come directly from international law. These are sometimes referred to as "modes of liability" or "modes of responsibility." Modes of liability exist to explain participation in complex or organized crimes and to ascribe responsibility to different levels of perpetrators.

One of the modes that comes from international law is called the "common purpose" doctrine. Art. 3(1)(b) states that a person can participate in a "common purpose" if he intentionally contributes with the aim of furthering the general criminal activity or purpose of the group. This has some similarities to the notion of conspiracy, which LPC article 280 defines as the agreement to commit a crime between two or more persons. It also resembles the offense of "associations of criminals" that LPC article 335 defines as an association or agreement, either written or oral, between two or more persons with the purpose of committing crimes.

Another mode of liability, found in art. 3(2), is "superior responsibility." A superior may be responsible for the acts of those under him if they were in his "effective authority and control" and if:

- The superior knew or consciously disregarded information that clearly indicated that the subordinates were committing or about to commit the crimes;
- The crimes were within the effective responsibility and control of the superior;
- The superior failed to take all necessary or reasonable measures within his power to prevent or punish the crimes.

These provisions generally follow art. 28 of the Rome Statute of the International Criminal Court (ICC). This mode of liability makes it possible to go up the chain of command to prosecute those who may have masterminded but not personally committed the crimes.

Can the STL try anyone, at any rank?

In principle the Tribunal can try any individual if there is no bar to its jurisdiction. Immunities or amnesties may constitute a bar or "barrier" to jurisdiction. Immunities for heads of state and other senior government officials are normally applicable in international law. The Statute contains no provisions that limit the immunity of heads of states or other high-level officials. This renders the STL unlike other international tribunals. Exceptions to such immunity are contained in the Statutes of the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), the Special Court for Sierra Leone (SCSL), and the ICC. Before those courts sovereign immunity does not apply, and heads of state can be tried.

The applicability of immunities will be left to the STL judges to decide. An emerging norm under customary international law envisages that immunity for heads of states can be lifted before international courts for certain core international crimes such as genocide, war crimes, and crimes against humanity; but this

category is not yet generally considered to include terrorism. It is therefore an open question whether this norm would apply before the STL.

The Statute of the STL states, "[A]n amnesty granted to any person for any crime falling under the jurisdiction of the Special Tribunal shall not be a bar to prosecution" (art. 6). It also states that the fact that a person acted pursuant to an order of a superior will be considered in mitigation but will not be considered a defence (art. 3(3)). This means that those subject to superior orders may be eligible for a reduced or mitigated sentence.

Where will the STL be located?

The Special Tribunal for Lebanon will be located in the Netherlands and will have an office in Lebanon. Article 8 of the Agreement states that the Tribunal shall have its "seat" outside Lebanon. The location or "seat" was to 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." On December 21, 2007, the UN legal counsel concluded an agreement with the Netherlands to host the Tribunal and signed a "headquarters agreement."

The building chosen for the STL is in Leidschendam, a suburb of The Hague. It used to house the former headquarters of the Netherlands General Intelligence Agency. For the first few years the building will be donated by the government of the Netherlands. The agreement between the UN and Lebanon also provides for an office of the Tribunal in Lebanon to facilitate further investigations.

The Hague is mostly known as a center of international courts and organizations. It hosts the International Court of Justice, the International Criminal Court, the International Criminal Tribunal for the former Yugoslavia, and the Appeals Chamber of the International Criminal Tribunal for Rwanda. The Netherlands also hosted the Lockerbie trial, in which two Libyan suspects were tried for bombing Pan Am Flight 103 over Lockerbie, Scotland. The trial was conducted by a Scottish court sitting in the Netherlands.

Considering the fact that the STL will be located outside Lebanon, it will be extremely important to conduct an effective outreach program to Lebanese society and the wider public to enhance understanding of the STL's activities. This is especially crucial considering the political controversies that accompanied the STL's birth in Lebanon, which precluded any detached and objective discussion.

What is the timeline for the STL's opening?

The factors that will determine the Tribunal's start date include its financial situation and the progress of the UNIIIC. Article 19 of the Agreement states that the Special Tribunal shall commence functioning on a date to be determined by the Secretary-General in consultation with the government of Lebanon, taking into account the progress of the UNIIIC's work. The Tribunal is widely expected to begin functioning in phases over the summer of 2008, although this does not mean the trials will start anytime soon.

Art. 5(2) states, "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 the first twelve months of its operations plus pledges equal to the anticipated expenses of the following 24 months of the Tribunal's operations."

In his report of March 12, 2008 (S/2008/173), the Secretary-General indicated that he had

the contributions for the STL's establishment and its first 12 months of operations. He also indicated that the Tribunal's preparatory phase was over, and the start-up phase would commence. Senior personnel, starting with the registrar, prosecutor, president of the Tribunal and pre-trial judge, would assume that their functions and a transition between the work of the UNIIIC and the Office of the Prosecutor would be organized. The start-up phase will also involve the judges drafting the Rules of Procedure and Evidence.

What were the events leading up to Resolution 1757?

The following points summarize the events leading up to the passage of Resolution 1757.

- On February 14, 2005, the former prime minister Rafiq Hariri and 22 other people were killed in a massive explosion on the Beirut seafront. At the time of his killing Hariri was one of the country's most prominent leaders. His assassination spurred outrage in Lebanon and internationally. It was followed by mass demonstrations calling for the truth behind the assassination, as well as Syria's withdrawal from Lebanon.

- The day after the assassination the Security Council asked the Secretary-General to "follow closely the situation in Lebanon and to report urgently on the circumstances, causes and consequences of this terrorist act" (S/PRST/2005/4).

- On February 25, 2005, the Security Council dispatched a fact-finding mission to Lebanon headed by Irish Deputy Police Commissioner Peter Fitzgerald. In his report dated March 25, 2005, Fitzgerald concluded that Lebanese investigative processes "suffered from serious flaws" and for a number of reasons was "unlikely to reach a satisfactory and credible conclusion" (S/2005/203). The report said an international independent investigation would be essential to help uncover the truth.

- On April 7, 2005, and with the approval of the Lebanese government, the Security Council issued Resolution 1595, which created the UNIIIC. Its purpose was to assist the Lebanese authorities in their investigations of all aspects of the Hariri assassination, including helping identify its perpetrators, sponsors, organizers, and accomplices.

- Since then the UNIIIC has provided technical assistance to the Lebanese authorities in the investigation of roughly one dozen other attacks that took place

- From 2004 to the present, at least 61 people were killed and some 484 injured.[1] The UNIIIC's mandate has been repeatedly prolonged.

- In a letter dated December 13, 2005, Lebanese Prime Minister Fuad Siniora requested the Security Council to "establish a tribunal of an international character to convene in or outside Lebanon, to try all those who are found responsible for the terrorist crime perpetrated against Prime Minister Hariri" and to expand the mandate of the UNIIIC to cover all "assas-

1 Other prominent assassinations and attacks include those against: Minister and MP Marwan Hamadeh (October 1, 2004); journalist and historian Samir Kassir (June 2, 2005); former Secretary General of the Lebanese Communist Party Georges Hawi (June 21, 2005); Minister Elias Murr (July 12, 2005); journalist May Chidiac (September 25, 2005); journalist and MP Gibran Tueni (December 12, 2005); Lieutenant-Colonel Samir Shehadeh (September 5, 2006); Minister and MP Pierre Gemayel (November 21, 2006); MP Walid Eido (June 13, 2007); MP Antoine Ghanem (September 19, 2007); Brigadier General François Al-Hajj (December 12, 2007); and Captain Wissam Eid (January 25, 2008).

sination attempts and assassinations and explosions" in Lebanon since October 1, 2004.

- On March 29, 2006, the Security Council requested the Secretary-General to negotiate an agreement with the Lebanese government to establish a tribunal of an international character (Resolution 1664). Several rounds of consultations subsequently took place with Lebanese officials and judges among others. As a result of these consultations, initial drafts of an Agreement and Statute were presented to Lebanon's prime minister and justice minister in September 2006.

- On November 21, 2006, the Security Council approved the draft agreement; the UN and Lebanon signed it on February 6, 2007, after which the Lebanese cabinet passed it on to the Lebanese Parliament for ratification. But because of serious Lebanese political disagreements the speaker of Parliament would not convene a parliamentary session to ratify it, as required by the Lebanese Constitution.

- On May 15, 2007, the prime minister of Lebanon sent a letter to the Secretary-General informing him that "for all practical purposes the domestic route to ratification had reached a dead end, with no prospect for a meeting of parliament to complete formal ratification" (S/2007/286). The prime minister further requested that the Tribunal "be put into effect by the Security Council." Meanwhile a group of 70 MPs signed a petition asking the UN to put the STL into force—a request officially endorsed by the prime minister in a letter to the Secretary-General.

- On May 30, 2007, the Security Council adopted Resolution 1757, which gave the Lebanese until June 10, 2007, to notify it of the ratification of the Agreement. Otherwise it would come into effect on that date by virtue of the resolution. These developments explain why the resolution brings into force an agreement with Lebanon.

The establishment of the STL was a matter of great controversy inside Lebanon and also internationally. Pro-government forces in Lebanon hailed it as a triumph. Opposition parties, however, denounced it for various reasons, including that it violated Lebanese sovereignty.

What was the process in the Security Council?

Resolution 1757 was strongly contested in the Security Council. It passed with 10 votes in favor, including Belgium, Congo, France, Ghana, Italy, Peru, Slovakia, the United States, and the United Kingdom, and five abstentions, by Qatar, South Africa, China, Russia, and Indonesia. Common objections included interference in domestic affairs and the fear that a Chapter VII resolution would further destabilize Lebanon.

II. BASIC STRUCTURE OF THE STL AND SAFEGUARDS FOR ITS INDEPENDENCE

What is the relationship between the STL and the UN?

The Special Tribunal for Lebanon is not a United Nations institution but will maintain links with the UN. For instance, the UN is a party to the Agreement with Lebanon and the registrar is a UN employee. In this capacity the Office of Legal Affairs (OLA, which gives legal advice to the Secretary-General) has worked on issues related to the Tribunal from the time when it was first conceived. Once the Tribunal starts operating the role of the OLA will diminish, but it will still remain a relevant actor, particularly when the Tribunal starts to wind down its activities. Once it begins functioning the Tribunal may be expected to keep the UN closely informed of its activities. However, as mentioned above, the STL does not have a direct relationship to the Security Council. As it is not funded by regular contributions to the UN, it has no duty to report to the General Assembly.

What is the Management Committee?

The STL's Management Committee is responsible for giving policy direction and advice on all nonjudicial aspects of the Tribunal's work. It was created by the UN Secretary-General on February 13, 2008, and its members include the Tribunal's major donors.

The Management Committee has the following duties.

- Receiving and considering progress reports from the STL and providing advice and policy direction on all nonjudicial aspects of the Tribunal's operations, including questions of efficiency;
- Reviewing and approving its annual budget and taking necessary financial decisions, including advising the Secretary-General on these matters;
- Ensuring that all organs of the STL operate in as efficient, effective, and accountable a manner as possible, and that optimum use is made of resources contributed by donor states without prejudice to the principle of judicial independence;
- Assisting the Secretary-General in ensuring that sufficient funds are available for the STL's operation, including the development of fundraising strategies, in close consultation with the registrar;
- Encouraging all states to cooperate with the STL;
- Reporting on a regular basis to the Group of Interested States (a flexible forum of UN member states that are interested in getting information on the Special Tribunal but may or may not support it).

Its terms of reference are not yet public. Current members of the Management Committee include the United Kingdom (chair), Germany, the Netherlands, the United States, France, and Lebanon; the UN (the Secretary-General or his representative) is an ex-officio member. This means that the UN does not vote on Management Committee decisions. Membership may still be expanded upon decision of the Committee if any additional significant donors to the Tribunal wish to join.

It is important to note that the Management Committee sets policy only on nonjudicial aspects of the Tribunal's work; it does not have any mandate over judicial issues. The registrar will lead the court's day-to-day administration.

The STL Management Committee resembles a similar structure established in Sierra Leone. That management committee, which also included the Sierra Leone government and the UN Secretariat, was hailed as an advance because it provided better external management oversight than had previously been the case. At the same time it did not always succeed in securing funding or state cooperation for the SCSL. Tribunal officials themselves did much of the work on fundraising or enhancing state cooperation through diplomatic channels.

How is the STL funded?

Fifty-one percent of the STL's budget will come from voluntary contributions from UN member states, and the government of Lebanon will fund 49 percent. The Agreement states that the STL needs to receive funding for its first year and pledges to fund the following two years before it can start functioning (art. 5(2)).

The Agreement also states that if the Secretary-General does not receive sufficient voluntary contributions, he and the Security Council may explore "alternate means of financing." This provision may be intended to help the STL avoid some of the problems faced by the SCSL, which has spent much time struggling to find the voluntary contributions it requires to function. What is meant by alternative means of financing is not completely clear at this stage, but an example could be a grant from the regular budget of the United Nations similar to the one made to the Special Court for Sierra Leone.

The Secretary-General informed the Security Council in his report of September 4, 2007, of projections that the STL would require US$35 million for the first 12 months of its operation (exclusive of costs related to preparation of the premises), $45 million for the second 12 months, and $40 million for the third 12 months. A second Trial Chamber during the STL's second or third years would require an additional $8 million.

On February 13, 2008, the Secretary-General announced he had received indications that expected contributions to the STL would meet the budgetary requirements for the establishment and first 12 months of the Tribunal's operations. The UN Secretariat is still receiving indications that additional member states intend to make significant contributions. It is up to the Management Committee to decide whether it will announce the names of donor countries and their contributions. These may also be found in the STL's annual reports once they are produced.

At the time of writing the UN OLA and the registrar were preparing a proposed budget that they would eventually submit to the Management Committee for its consideration and approval.

What safeguards the STL's independence?

Lebanon is beset by severe internal and regional political crises. Opinions are deeply divided over the STL's desirability and legitimacy. Many commentators have asked whether the Tribunal can function as an independent judicial institution in these circumstances. Such questions are normal for all international and hybrid tribunals, since their creation is almost always viewed in political terms. But Lebanon's delicate situation means that answering such questions will be vital to the STL's progress and functioning.

While no one can predict what will happen, it is important to note that a number of safeguards for independence are in the Tribunal Statute. Most obviously, the Tribunal's location and mixed national and international composition are two important factors in insulating it from domestic political pressures. The Tribunal

is also required to follow a number of important international fair trial standards. Other, more specific, protections include:

- Lebanon has a duty to cooperate with the STL according to art. 15 of the Statute; it cannot ignore its obligations or seek itself to interfere in STL affairs;
- If Lebanon does not pay its share of the funding, the STL's work will not stop. Instead, Resolution 1757 specifies that the Secretary-General can resolve funding issues in a variety of ways;
- The STL Statute provides that judges and prosecutors shall be independent in the performance of their functions and shall not accept or seek instructions from any government or any other source;
- The Agreement and the Statute require all staff members to act with impartiality and independence. Rules will discipline or dismiss judges, prosecutors, and staff proven to have acted inappropriately or in a biased manner. If they do so, theoretically this behavior could result in their dismissal.

Some fear that the states that fund the STL may seek to interfere in its operations. In practice it is important to remember that the Management Committee has no control over judicial functions. Nonetheless, to ensure the perception of independence, the STL should try to gather funds from a wide variety of sources. In Sierra Leone a defence counsel filed a motion arguing that because the SCSL was funded by a small number of states, it could be seen as insufficiently judicially independent. The Court rejected the motion, but similar issues could arise in the case of the STL.

One of the best protections against political manipulation will be transparency. It is vital that the Tribunal communicate clearly, effectively, and openly about its proceedings and decisions. It is also vital that journalists and civil society monitor developments regularly and seek to hold the Tribunal to a high standard of performance.

III. THE COMPOSITION OF THE STL

What is the main composition of the STL?

Article 2(1) of its Statute provides that the STL shall consist of the following organs:

- The Registry (which deals with administration);
- The Chambers (the judges);
- The Prosecutor;
- The Defence Office.

The basic functions of each will be explained below.

How are the prosecutor and judges appointed?

The method of appointment to the STL is unique. Following what appears to be a new trend in the establishment of international tribunals, the Secretary-General appointed a selection panel to interview and recruit judges and the prosecutor. The STL is only the second tribunal after Cambodia to use such a panel. It comprised Judge Mohamed Amin El Mahdi (Egypt), who served as judge of the ICTY from 2001 to 2005; Judge Erik Møse (Norway), a judge and former president of the ICTR; and Nicolas Michel, the UN's legal counsel. The panel interviewed candidates, including Lebanese judicial candidates nominated by the Lebanese government, for the positions of judges and prosecutor in late 2007.

The use of a selection panel is said to provide a better guarantee than previous mechanisms of the selection of impartial and professional senior officials. It does not necessarily produce a more transparent process, however. Indeed, for reasons of security, particularly for the Lebanese judges, the names of those selected will not be disclosed before the STL starts functioning.

A. The Registry

What is the Registry?

The Registry coordinates the STL's administration and operation, including in particular the Chambers, the Office of the Prosecutor, and the Defence Office. The Secretary-General, in consultation with the Lebanese government, appoints the registrar to a three-year, renewable term. On March 10, 2008, the Secretary-General appointed Robin Vincent (United Kingdom) as the STL registrar. Mr. Vincent was formerly registrar of the SCSL and acting deputy registrar of the ICTY. Similar to Sierra Leone, the registrar is the only permanent official in the STL who is also a UN staff member.

The Registry has charge of development of the STL's buildings, translations, human resources, detention unit, witness protection, security, finance and procurement, recruitment and staffing, and public information and outreach. The role and responsibilities of the STL Registry are much broader than those of the clerk of the court's office in the domestic Lebanese system, whose function is mostly clerical and limited in general to the administrative organization of court proceedings and record keeping.

What are the privileges and immunities of the STL staff?

While in Lebanon or the Netherlands the STL judges, prosecutor, registrar, and head of the Defence Office enjoy privileges and immunities normally given to diplomats. However, these are not for their personal benefit but to allow

them to freely and independently perform their professional duties. The Secretary-General may waive these privileges, for instance for actions that are outside the scope of their professional duties.

Immunity also applies to Lebanese staff for acts performed in their professional capacity. The headquarters agreement between the UN and the Netherlands will govern the privileges and immunities of the Tribunal's staff based in the Netherlands. None of the STL staff will pay taxes; nor will they be subject to ordinary immigration requirements. It is important to note that these privileges and immunities also apply to defence lawyers to enable them to do their job.

Last, the Office of the Special Tribunal in Lebanon is protected under the Statute, and no one can enter it or confiscate any of its documents without permission. This is sometimes called "inviolability" (Agreement art. 9).

What measures will be put in place for the security of staff, judges, accused persons, and witnesses?

One of the core issues at stake during a criminal investigation and a trial is the security of witnesses and Tribunal staff. The decision to locate the STL outside Lebanon was part of an effort to reduce security concerns for its judges and staff.

The LPC does not include specific provisions for a witness protection program. In charge of developing and overseeing such programs, the Tribunal Registry has already held consultations with the ICTY and the SCSL. The Registry is likely to form a victim and witness unit. Such a unit serves to create the optimal conditions, both physical and mental, for producing a witness in court, including psychological support. Witnesses themselves decide whether they agree to testify and accept protective measures. Generally the Tribunal makes a threat assessment before deciding on witness protection. One tactic is to reduce the person's exposure. For example, a witness can be assigned a pseudonym so his or her name is not used in court, or the identity may be kept secret until a specific time before the witness testifies. It is a general principle that individuals should receive protection as long as a threat exists—if necessary, lifelong. Relocation agreements with third countries also may prove necessary.

International and hybrid tribunals have had a relatively good record on staff safety and witness protection programs. But the problem should not be underestimated. For instance, in Iraq a number of staff members of the Iraqi Special Tribunal were killed, as were their family members. Weak or insufficient protective measures can considerably affect the smooth functioning of a tribunal. In the case of Iraq, judges and staff suffered considerable psychological strain resulting from their constant worrying about security.

It is important to note the tension between the need to guarantee the security of witnesses and victims and the rights of an accused to a public trial and examination of witnesses. For instance, although the safest way for a witness to testify could be anonymously, in general international and hybrid tribunals have not allowed this. Holding large parts of the trial in closed session could likewise be problematic. The Tribunal's key task is to balance the rights of the accused and the interests of witnesses and victims.

As the host country of the STL the Netherlands will be responsible for security outside Special Tribunal premises.

B. The Chambers

What are the Chambers and how were judges selected?

The Chambers of the STL comprise a pre-trial judge, up to two Trial Chambers (each composed of three judges) and an Appeals Chamber (of five judges). No fewer than 11 judges and no more than 14 will serve on the STL, with a majority of international judges in each chamber. Judges will be appointed for a three-year period and are eligible for reappointment.

According to article 9 of the Statute all judges shall be "persons of high moral character, impartiality and integrity, with extensive judicial experience. They shall be independent in the performance of their functions and shall not accept or seek instructions from any government or any other source."

On August 1, 2007, the Secretary-General sent a letter to all member states, inviting them to nominate candidates for appointment as STL international judges. Competent individuals were also requested to put forth names. (This process of extending nominations to actors other than states is new, the only precedent being Cambodia). The Lebanese government was also consulted. On December 4, 2007, having selected and interviewed the candidates, the selection panel made its recommendations to the Secretary-General, who accepted the panel's recommendations. The names of the judges were not immediately announced due to the need to put in place adequate security measures.

The nomination process for Lebanese judges was different. As proposed by the Supreme Council of the Judiciary of Lebanon, the Lebanese government submitted to the OLA a confidential list of 12 names from which four judges were to be selected (one Trial Chamber, two Appeals Chamber and one alternate). The selection panel made the choice, but the identities of these judges have not been announced. The process is confidential to ensure the safety of the candidates.

The Agreement states that Lebanese judges are to be given full credit for their period of service with the STL when they return to Lebanon, and they shall be reintegrated at a level comparable to that of their former position (art. 2(8)). However, there may be some doubt as to whether and when they could return to Lebanon, considering the very sensitive nature of the cases they will be dealing with.

The Tribunal judges will take office on a date to be determined, rather than the first day of the functioning of the STL. The main reason for this is efficiency: Trial and Appeals Chamber judges may not have a full workload in the early stages. Their delayed start date is intended to cut costs.

C. The Office of the Prosecutor

How are the prosecutor and his deputy appointed, and what is their role?

The Statute provides for an international prosecutor responsible for the conduct of the investigations and prosecutions before the STL. He or she will be assisted by a Lebanese deputy prosecutor. The prosecutor is appointed for an initial three-year term and is eligible for reappointment for a further period to be determined by the Secretary-General in consultation with the Lebanese government.

The selection panel selected and interviewed candidates for the position of prosecutor in October 2007. In early November 2007 the Lebanese government was consulted on the appointment of the prosecutor. On November

8, 2007, the selection panel recommended that Daniel Bellemare of Canada be appointed prosecutor, and the Secretary-General accepted the recommendation.

On November 14, 2007, the Secretary-General informed the Security Council of his intention to appoint Mr. Bellemare to succeed Mr. Brammertz as the UNIIIC commissioner. On the same day the Secretary-General informed the Security Council that he would appoint Mr. Bellemare as the STL prosecutor. Mr. Bellemare is currently the UNIIIC commissioner and will commence his official duties as the STL prosecutor at a later date.

The government of Lebanon will appoint a Lebanese deputy prosecutor in consultation with the Secretary-General and the prosecutor. The combination of an international prosecutor and a national deputy is not unique to the STL; it was also proposed at the SCSL. In Cambodia nationals and internationals serve as co-investigating judges and co-prosecutors.

The Statute emphasizes that the prosecutor and the deputy prosecutor shall be of high moral character and possess the highest level of professional competence as well as extensive experience in the conduct of investigations and prosecutions of criminal cases. Both shall be independent in the performance of their functions and shall not accept or seek instructions from any government or any other source. Similar provisions are found in the statutes of all the other international or internationalized criminal courts.

Because the procedure followed by the STL will differ from the one ordinarily used before Lebanese courts, the role and functions of the prosecutor and his office are also unique. The prosecutor has the ultimate responsibility to conduct the investigations and prosecutions before the STL. In the Lebanese system the investigative aspect of the prosecutor's role ordinarily belongs to an investigative judge who conducts investigations in the pre-trial phase.

The STL prosecutor's investigative powers are defined by its Statute, which indicates notably that "the Office of the Prosecutor shall have the power to question suspects, victims, and witnesses, to collect evidence, and to conduct on-site investigations. In carrying out these tasks, the prosecutor shall, as appropriate, be assisted by the Lebanese authorities concerned" (article 11(5)). The details of their cooperation will have to be worked out once the prosecutor and deputy prosecutor are appointed.

Who works in the Office of the Prosecutor?

The prosecutor and deputy prosecutor will hire staff, both Lebanese and international, as they deem fit. The number and categories of staff they employ will be at their discretion. It is likely that they will employ qualified investigators, trial attorneys, and prosecutors, as well as other specialists such as forensic or ballistic experts. It is probable that they will try to combine Lebanese and international staff, and insist on the appropriate language skills to ensure efficient work.

As the UNIIIC has preceded the Tribunal, a number of its staff may join the Office of the Prosecutor. The Statute states that "[a]ppropriate arrangements shall be made to ensure that there is a coordinated transition" from the UNIIIC to the Office of the Prosecutor (art. 17(a)). The preservation of institutional memory and experience will be taken into consideration in this regard, meaning that it is likely that former UNIIIC staff will be hired.

Where will the Office of the Prosecutor be based?

While the trial attorneys responsible for prosecutions and others are likely to be based at the seat of the STL in The Hague, some of the Office of the Prosecutor's staff will remain based in Lebanon to carry out investigative functions and coordinate with witnesses.

How will the prosecutor liaise with the Lebanese judicial authorities and the UNIIIC?

Both during the investigations and the prosecutions the prosecutor and his team will need the assistance of the Lebanese judicial authorities and the UNIIIC, as both have already conducted work on the cases within the STL's mandate. Both the UNIIIC and the Lebanese judicial authorities, and more specifically the investigative judges in the Hariri case and the other cases, seem to have accomplished much work that may or may not come before the Tribunal under art. 1 of the Agreement.

The Statute regulates some aspects of this cooperation. Within two months after the prosecutor takes office the STL shall request the judicial authority of Lebanon to defer the Hariri case to its competence. The results of the investigation, any court records, and "[p]ersons detained in connection with the investigation shall be transferred to the custody of the Tribunal" (art. 4(2)).

The cooperation of the Lebanese judicial authorities and the Commission will also be crucial to the prosecutor regarding other cases that could be tried by the STL. Finding connections between the Hariri case and any other cases requires deep knowledge and understanding of these other cases that the prosecutor will have to obtain from others. The Lebanese judicial authorities have the obligation to inform the STL regularly of the progress of their investigation. In addition, the prosecutor has authority to request relevant national judicial authorities to refer the results of an investigation and a copy of the court's records for review and eventually to defer to the competence of the STL, transferring any persons detained in connection with such a case (art. 4(3)).

It is important that there be a coordinated transition from the activities of UNIIIC to the activities of the Office of the Prosecutor. The current UNIIIC mandate runs until June 15, 2008, although it could be extended. At some point after that the commissioner will commence his functions as the prosecutor to ensure effective coordination. As both the STL and UNIIIC were established by Security Council resolutions, it is likely (and highly desirable) that their respective activities will be synchronized to ensure a smooth transition.

D. The Defence Office

Who should ensure the rights of the defence?

A fair and effective defence is essential to the Tribunal's overall credibility. The Tribunal itself, rather than just the defence counsel, is the guardian of the rights of the defence. It is not solely the function of the defence counsel. A fundamental aspect of the STL's work will be to ensure that all suspects and accused persons brought before it are provided with an effective defence as defined by article 14 of the International Covenant on Civil and Political Rights (ICCPR). The trials of former senior Iraqi officials before the Iraqi Special Tribunal repeatedly showed that weaknesses in the defence fundamentally affect the right to a fair trial and can fatally undermine the Tribunal's credibility.

The Defence Office will organize support of the defence. The Defence Office will be an

independent part of the STL structure. The STL is the first internationalized tribunal to include a defence office as a fourth "organ" of the court; this means that under the STL Statute the Defence Office will have status equal to that of the prosecutor's office, the Chambers and the Registry. Many observers see this as a step forward in ensuring an effective defence for the accused in these trials. The government of Lebanon is obligated to cooperate fully with defence counsel in the pursuit of their duties.

All accused have the right to a defence lawyer to represent them in the proceedings. If they can pay for their own lawyer they can choose a lawyer to represent them. If they are unable to pay the STL will provide them with a lawyer from a list of approved counsel.

What is the role of the Defence Office?

The Defence Office will have responsibility to assign its own lawyers any accused who cannot afford to appoint their own lawyer, who will be on a list of qualified defence counsel developed and kept by the office. Accused may also retain their own lawyers.

The office will then be responsible to assist assigned lawyers as well as lawyers retained by the accused in legal research, collection of evidence, advice, and appearing in court. The head of the Defence Office should be independent, appointed by the UN Secretary-General in consultation with the STL's president. The Defence Office will also be staffed by one or more lawyers known as "public defenders," who will perform the functions described.

In other hybrid tribunals, such as Bosnia, defence offices have sometimes engaged in legal training and education of a broader group of international law specialists and have built connections between the tribunal and the wider legal and academic community. These might well be useful functions for the STL Defence Office to undertake. In addition the Defence Office should conduct strong outreach to assist the general public in understanding the importance of the rights of the defence.

Will Lebanese lawyers be involved?

Lebanese lawyers will probably play an important role in the defence of any Lebanese person appearing before the STL. Tribunal proceedings will be guided to some extent by Lebanese legal procedures and will apply Lebanese criminal law. Accused often prefer lawyers from their own country.

It is also likely that defence lawyers from other countries may be retained, for instance by families of accused, or seek to be included on the list of defence counsel available for defendants to choose from. The precise qualifications required for lawyers to be included on the list will be developed once the Defence Office has been established.

IV. PROCEDURES OF THE STL

What legal procedure will the STL follow? What are the Rules of Procedure and Evidence?

The Statute incorporates some procedural elements that follow the Romano-Germanic, inquisitorial or civil law system on which the Lebanese legal system is based; it also incorporates some elements of the Anglo-American or common law system, particularly with respect to the prosecutor's role.

Similar to the ICTY and the ICTR as well as the SCSL and the Cambodian ECCC, the STL will apply rules that the judges themselves will draw up. These will be known as the "Rules of Procedure and Evidence," and once finalized they probably will be available on the Tribunal's Web site. Giving the judges the power to draw up their rules of procedure is totally foreign to the Lebanese system, in which the legislature normally establishes such rules. In drawing them up the judges will be guided by the Lebanese Code of Criminal Procedure but will also draw from existing international criminal procedure as applied before other international criminal courts.

What languages will the STL use?

The official languages of the STL are Arabic, French, and English. This means that important documents should be translated into all three languages. However, the working language in some of the trials may be one of them—the judges will decide which (art. 14).

What are the rights of suspects and accused before the STL?

Under international law as well as the STL Statute, all suspects (art. 15) and accused persons (art. 16) brought before the STL will be entitled to basic minimum guarantees to ensure that the proceedings against them are fair. These articles draw on international human rights law, in particular art. 14 of the ICCPR.

These rights include the right to be presumed innocent until proven guilty and to know and understand the charges brought against them, including the nature of the evidence that will be used to support any charges. Suspected and accused persons have the right not to incriminate themselves, which includes the right to remain silent. Accused persons are also entitled to a public hearing before an independent and impartial tribunal and a trial without unreasonable delay. The accused has the right to challenge the legality and conditions of detention, including when circumstances have changed since the initial arrest.

The accused will have the right to legal representation in the form of a lawyer and the opportunity to consult a lawyer at all stages of the process. Furthermore, suspects and accused persons will have the right to free assistance from an interpreter if they do not understand the language used by the STL.

The accused must have the chance to challenge evidence against them, including through cross-examination of witnesses, and the right to present their own witnesses or other evidence to the court. For all of these rights to be effective, the defence must have sufficient time and facilities to prepare its case. These latter rights are sometimes referred to as "equality of arms."

Ensuring that these rights are respected will be essential to the STL's credibility. For instance, one major criticism of the trials before the Iraqi Special Tribunal has been its failure to consistently and unequivocally uphold these rights of the accused.

Can the trials be fair?

International minimum fair-trial guarantees for the accused are contained in article 16 of its Statute, but Tribunal proceedings should be closely monitored to ensure that these guarantees are fulfilled in practice.

In other tribunals the defence has often complained of a lack of "equality of arms," particularly its need for adequate resources to do its work. The defence will require particular assistance in making it possible to conduct effective investigations. Disclosure of key documents by the prosecution in adequate time for the defence to prepare is also likely to be an important issue.

What happens at the investigation and pre-trial stages?

The work already carried out by UNIIIC will probably save time and effort in completing the STL investigations. At the same time, it should not be expected that the STL can just continue where the UNIIIC left off, or that the Tribunal will be in the position to issue indictments immediately after it comes into existence. This may take some time. The STL will receive evidence from the UNIIIC under article 19 of its Statute, but the judges will decide on its admissibility and weight.

Compared to other international criminal tribunals, the STL is unique because it includes in the Statute the position of a pre-trial judge whose responsibility will be to review and confirm indictments, issue arrest warrants, and transfer requests and any other orders required for the conduct of the investigation and the preparation of the trials. The pre-trial judge therefore provides judicial oversight of the work of the prosecutor. This will probably include reviews of the legality of detention, an issue likely to confront the STL early on because of the controversy over the detention of eight individuals in Lebanon in connection with the Hariri assassination. The role of the pre-trial judge is to some extent comparable to the role of the indictment chamber (Chambre des mises en accusation) in the Lebanese criminal legal system.

The extensive role attributed to the pre-trial judge is innovative in comparison to other existing international or hybrid criminal jurisdictions. This innovation recognizes the crucial importance of effective pre-trial judicial administration in expediting international criminal proceedings.

How does the trial begin?

In other tribunals an initial appearance takes place within a short time after an accused is arrested. At an initial appearance before the trial chamber the accused is asked whether he or she understands the charges and to enter a plea of guilty or not guilty.

Although the procedures of the STL still need to be clarified, a hearing will be held for the accused to enter a plea (art. 20(1)). After this, in most situations it has still taken some time for the trial to commence, because the defence will need time to prepare its case.

Will the accused be indicted and tried jointly or separately before the STL?

Either scenario is possible, but it is not necessarily to be expected that each accused individual will be indicted and tried separately before the STL. Several accused could be charged or tried together, particularly if their actions form part of the same transaction or of a joint criminal enterprise, while ensuring that their individual rights are not prejudiced by a joint trial.

What can be expected during the trial?

In most other international and hybrid tribunals (with the exception of the ECCC), the

prosecutor and defence counsel were basically in charge of presenting their cases, while the judges took a more passive role.

In the case of the STL the judges will play a much more active role following Lebanese criminal procedure. Article 20(2) of the STL Statute indicates that "examination of witnesses shall commence with questions posed by the presiding judge, followed by questions posed by other members of the Trial Chamber, the Prosecutor and the Defence." This role of judges at the trial stage is similar to that played by trial judges in the Lebanese domestic system. It is also found in other inquisitorial systems in continental Europe, including France and Germany.

These changes were introduced in international criminal law through the STL Statute because one well-recognized consequence of the use of the adversarial system for complex crimes has been lengthy trials. The drafters were probably inspired to some extent by existing Lebanese criminal procedure. Their hope may have been that the STL would contribute to the development of international criminal law by following a procedure that more closely resembles the civil law and may be more efficient. The Statute also says that the STL will confine the trial to an expeditious hearing of the issues, and it shall take strict measures to prevent any action that may cause delay.

While it is not possible to say with certainty the stages that the trial will follow without the Rules in place, this could be the expected sequence:

- Pre-trial proceedings (review of indictment, confirmation of indictment, orders and warrants for investigation and arrest or transfer of persons) (art. 18)
- Commencement of trial and entering of a plea (art. 20)
- Witnesses are examined by the judge, followed by the prosecution and defence (art. 20)
- Trial Chamber may call additional witnesses (art. 20)
- Judgment (art. 23)

Like other tribunals the STL may admit any relevant evidence if it has probative value—if it contributes to proving the crime, unless admitting such evidence would be unfair. The Lebanese criminal law system appears to be even more liberal vis-à-vis the admissibility of evidence, stipulating that the judges can admit any form of evidence provided it has been publicly examined during the trial. As with other tribunals, evidence can be expected to take the forms of witnesses, expert witnesses, documents, and forensic evidence.

How long will a trial take?

It is not possible to say with any certainty how long the trials might take, but it is realistic to think in terms of years rather than months for any complex criminal trial. Indictments may not be issued immediately after the Tribunal starts to function. It is also realistic to expect a time lag between the indictments and the start of any trial.

What is a trial in absentia and what are the implications?

A trial in absentia occurs without the accused being present or in custody of the Tribunal. In other international or hybrid tribunals, the possibility of such trials did not exist. This is not necessarily because such trials are inherently unfair; after all, many domestic legal systems, including the Lebanese system, allow for such trials. However, it may be more difficult to make such a trial appear fair. For this reason, trials in absentia remain controversial in the international community. Some people support

them as a way to move ahead even when an accused does not surrender. Others oppose them as unfair, at least in appearance. It has been more common for the accused to attend the start of the trial but then to miss subsequent sessions as a form of protest. This was particularly common during the Milosevic trial.

Trials of the accused in absentia are possible under the Statute, but only under certain circumstances:

- If the accused has waived his or her right to be present;
- If the accused has fled or cannot be found;
- If the state concerned has not handed him or her over to the STL.

Contrary to the Lebanese domestic system, an accused tried in absentia must be represented by a defence counsel, either chosen by the defendant or appointed. The importance of having high-quality defence for this process is obvious. That is why the establishment of the Defence Office is of such importance. There is a right to a retrial if the accused does eventually appear and was not represented by counsel of his or her choosing when tried in absentia. These safeguards take into account case law developed by the European Court of Human Rights.

Can victims participate?

The right of victims to participate in the proceedings is in article 17 of the Statute. It states, "Where the personal interests of the victims are affected, the Special Tribunal shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Pre-Trial Judge or the Chamber and in a manner that is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial." This provision mirrors the statute of the ICC but also follows civil law tradition in allowing for victim participation; its actual scope remains unclear.

What is clear is that the participation provided for by the STL Statute is more limited than the Lebanese partie civile model of participation, which allows victims who have suffered harm to be present or represented at all stages of the trial, to participate in the proceedings, and to demand compensation.

Do victims have the right to compensation?

Article 25 of the Statute merely provides that the STL may identify the victims who have suffered harm as a result of a crime that falls under its jurisdiction. The registrar will transmit the decisions of the STL on the guilt of the accused to the Lebanese government.

Based on the decision and pursuant to the relevant national legislation, it will be left to the victim to bring an action in a national court or another competent body to obtain compensation. However, when the victim does so, a Tribunal judgment of guilt or innocence will be binding on the national court.

These provisions fall short of the right to reparations that victims have before the ICC, where they can claim reparations directly from the Court. The same is true in Cambodia, although there, victims may receive only "nonfinancial and collective" reparations, which are likely to be purely symbolic. As mentioned above, the Lebanese domestic system allows victims who have suffered harm to directly claim damages as partie civile before the criminal court trying the case.

How does the STL reach a final judgment?

The accused will be convicted only if the Trial Chamber is convinced of guilt beyond a reasonable doubt (article 16(3)c).

The judgments of the STL do not require unanimity but only a majority of the judges per chamber (two-thirds for Trial Chambers and three-fifths for Appeals). A judgment shall be given in public and accompanied by a reasoned opinion in writing. As in the Lebanese domestic system separate or dissenting opinions are allowed; they are common in the other tribunals.

Appeals are allowed for

- An error on law that invalidates an earlier decision;
- An error of fact that has led to a miscarriage of justice (a very grave error).

The Appeals Chamber may revise, reverse, or affirm decisions taken by the Trial Chamber. Also, if new facts that were not known during the proceedings but may be decisive come to light, a judgment may be reviewed by the Appeals Chamber. This could take place far in the future, after the conclusion of the trial, and would therefore require a residual mechanism to deal with it if the Tribunal has already closed its doors. (See the explanation below of residual issues.)

What penalties can be imposed, and where can sentences be served?

Although many of the crimes concerned are punishable by the death penalty under Lebanese law, the highest penalty the STL can impose is life imprisonment. Since the UN has a policy of not imposing the death penalty, the latter will not apply as otherwise the UN could not have been a party to the Agreement.

In making decisions on sentencing the STL will consider the gravity of the crimes and the individual circumstances of the convicted person. It will also take into account both international and Lebanese practice. The STL Statute provides that the sentence shall be served in a state designated by the president of the STL from a list of states that have said they are willing to accept convicted persons. The STL registrar will negotiate "enforcement of sentences" agreements to this effect. The STL shall continue to supervise the sentence, although the hosting state will determine the conditions. Also, if a convicted person becomes eligible for pardon or commutation of sentence in that state, the state shall notify the Tribunal. Such pardon or commutation shall happen only if the president of the STL considers it in the interests of justice and the general principles of law.

V. THE STL'S POWERS IN REGARD TO STATE COOPERATION

Is the government of Lebanon obliged to cooperate with and assist the STL?

The cooperation between Lebanon and the STL is governed by the Agreement and the Statute. The Lebanese government has an all-encompassing and unconditional obligation to cooperate with the STL. According to the Agreement, the government should cooperate with all organs of the STL, in particular the prosecutor and the defence counsel, at all stages of proceedings (art. 15(1)). Lebanon should facilitate access of the prosecutor and the defence counsel to sites, persons, and relevant documents required for the investigation. It must comply without undue delay with any request for assistance by the STL or any order issued by its chambers (art. 15(2) of the Agreement).

Whether in practice Lebanon will assist the STL remains to be seen and may ultimately depend on the political interests of any specific government. The UNIIIC has said that so far the government of Lebanon has provided exemplary cooperation to the Commission since its establishment in April 2005. Nevertheless, this could always change, and the government could delay handing over suspects and thus slow the proceedings.

Legal experts debate whether, because the Security Council acted in part under Chapter VII of the UN Charter when it adopted Resolution 1757, the obligations for Lebanon contained in the Agreement may be international legal obligations under Chapter VII of the Charter. In any case, it is probable that if the Lebanese government did not cooperate with the STL, the latter could report this situation to the UN Security Council, which could remind Lebanon of its obligation or request it to cooperate.

Will the Lebanese judicial authorities also cooperate with and assist the STL?

The STL is a specific jurisdiction, not considered part of the Lebanese judicial system (art. 4(1) of the Statute). However, it is not being established in a vacuum, and its mandate also corresponds to the competence of the Lebanese judicial authorities.

Although the STL and the Lebanese judicial authorities are concurrently competent, the STL has primacy over the domestic courts of Lebanon. This means that the Lebanese judicial authorities may be requested to hand over investigations or cases to the STL and would then be obliged to do so (art. 4 of the Statute). In other words these obligations are not subject to some of the uncertainties inherent in international cooperation in judicial matters arising from the existence of concurrent jurisdiction.

The Agreement and the Statute regulate the cooperation between the STL and the Lebanese judicial authorities. Article 11(5) of the Statute indicates, "In carrying out [his or her investigative] tasks, the Prosecutor shall, as appropriate, be assisted by the Lebanese authorities concerned." As already indicated, Lebanon should facilitate access of the prosecutor and defence counsel to sites, persons, and relevant documents required for the investigation, and comply with any request for assistance. Because of their nature the implementation of these obligations will largely involve the Lebanese judicial authorities.

Concerning the Hariri case, since the Lebanese judicial authorities appear to have done much work already, the STL will need their cooperation to finalize the investigation, prepare the indictment, and prosecute the case. Not later than two months after the prosecutor

takes office, the results of the investigation conducted by the Lebanese judicial authorities shall be referred to the STL (art. 4(2) of the Statute), and persons detained in connection with the investigations shall be transferred to STL custody.

The requirement to transfer detainees directly concerns the four high-ranking officials of the Lebanese security and intelligence services arrested August 30, 2005, by the Lebanese authorities and detained among others in conjunction with the investigation of the Hariri case, as well as any other persons arrested in connection with this case. It is unclear whether their immediate physical transfer is envisaged or merely a transfer of the authority over their custody. In all likelihood, to comply with international standards, such persons would probably appear before a judge of the STL who would ascertain the legality of their detention and ensure their rights are respected. Concerning any other case over which the STL is competent, the Statute provides that the Lebanese authorities refer the results of their investigations to the STL at its request. The STL may then decide to request the transfer of a case and any persons detained in connection with it (art. 4(3) of the Statute). In addition, the Lebanese judicial authorities are under a general obligation to inform the STL regularly of the progress of their investigations, so as to enable the prosecutor to establish any possible connections between the cases.

The Statute also provides that the STL will receive all evidence collected separately and according to different procedures and standards by the Lebanese authorities and by the Commission's investigators (art. 19 of the Statute). This does not, however, mean that the judges will automatically render such evidence admissible.

Are states other than Lebanon obliged to cooperate with the STL?

The Statute and Resolution 1757 do not specify whether states other than Lebanon (third states) have an obligation to cooperate with the STL. The resolution does not explicitly call upon all states to cooperate with the STL, thus differing from three earlier resolutions (1595, 1636, and 1644, all of 2005) calling on states to cooperate with the UNIIIC. States are therefore free to decide whether or not they will cooperate with the STL.

This may become problematic for the STL, especially if coercive measures, such as arrests or seizures, are necessary. Cooperation may depend on the nationality of those accused of the crimes and whether they benefit from the support of a state—for instance a state of which they are a national or resident, especially if the accused have the nationality of a country whose laws protect its nationals from extradition, or where they hold positions granting them immunity under national laws. This has caused some commentators to be quite pessimistic about the STL, speculating that it might have difficulties in carrying out its work.

The Statute and Resolution 1757 are also silent as to whether the STL has primacy over any domestic judicial system other than Lebanon's. This could be important, as some of the cases falling within the STL's mandate are investigated outside Lebanon and could possibly be tried there. For example, Samir Kassir had both French and Lebanese nationalities. The French judicial authorities opened an investigation into his assassination in July 2005, following a request by his family.

Nevertheless, according to some international treaties pertaining to terrorism, such as the 1994 UN Convention on the Safety of United Nations and Associated Personnel, the 1997 UN Convention for the Suppression

of Terrorist Bombings, the 1999 International Convention for the Suppression of the Financing of Terrorism, as well as some resolutions of the Security Council adopted under Chapter VII, states have a duty to cooperate in the investigation of terrorist crimes and are obliged to either extradite or prosecute those responsible. The Security Council has repeatedly characterized crimes falling within the mandate of the STL as terrorist acts or terrorist crimes (see for instance Security Council Resolutions 1595, 1636, 1644, 1664, 1686, 1748, and 1757). This may create a basis for the STL to request assistance from states.

The STL cannot rely on a solid, general legal basis to request cooperation from third states, but it could conclude agreements with such states, as it is entitled to do pursuant to article 7 of the Agreement between the UN and Lebanon.

More drastically, the STL can always approach the Security Council to act again under Chapter VII of the Charter and oblige recalcitrant states to comply with requests for assistance, including the arrest and transfer of suspects. Acting under Chapter VII of the Charter, on an ad hoc basis the Security Council could oblige an unwilling individual state to comply with a request for assistance from the STL. The Security Council has used Chapter VII as the basis of a number of resolutions demanding that individual states extradite persons suspected of having committed terrorist crimes (such as Security Council Resolutions 748 (1992) and 1192 (1998)). But the experience of previous international and hybrid courts has demonstrated the limits of such an approach. For instance, the Security Council has been reluctant to impose sanctions for noncompliance with such resolutions. In that sense even Chapter VII powers may not be decisive.

On the other hand, a fair amount can be accomplished through diplomacy. A recent example is Charles Taylor, former president of Liberia, whom Nigeria handed over to Liberia to be surrendered to the SCSL in March 2006. Nigeria was not under a legal obligation to do so but was persuaded through diplomacy.

VI. THE STL FROM A COMPARATIVE PERSPECTIVE

How does the STL compare to international tribunals?

The STL is the latest of a number of international and hybrid tribunals. Two of the earliest and most famous international tribunals were the International Military Tribunals of Nuremberg and Tokyo, which were established to try war crimes and crimes against humanity by Germans and Japanese after World War II. Building on these precedents, in the 1990s the UN Security Council created the International Criminal Tribunal for the former Yugoslavia (ICTY) and Rwanda (ICTR).

These two tribunals are sometimes referred to as ad hoc international criminal tribunals. That is, they were not meant to be permanent institutions, and both will close after they finish their work.

- The ICTY was established in May 1993 by a unanimous vote in the Security Council (Resolution 827). The creation of the ICTY was an immediate response to the international community's outrage at violations that had occurred in the former Yugoslavia without an effective military response. The media highlighted many of these violations, reminiscent of World War II, in reportage on concentration camps such as Omarska in Bosnia. A report prepared by a Security Council-appointed investigative commission described the violations, and shortly thereafter the Security Council established the ICTY under Chapter VII of the Charter. The states of the former Yugoslavia themselves were not involved in the establishment of the tribunal, which was effectively imposed on them.

- While the events in the former Yugoslavia were going on, genocide erupted in 1994 in Rwanda. There was no military intervention, and the prior establishment of ICTY prompted the establishment of a second tribunal. The ICTR was set up in November 1994 in Security Council Resolution 955. Unlike the former Yugoslavia, the Rwandan government requested the establishment of the ICTR, created to try those responsible for the genocide of at least half a million Tutsis and moderate Hutus. Nonetheless, Rwanda eventually voted against the resolution, protesting its limited temporal mandate and the fact that the death penalty was prohibited. Rwanda had also wanted the tribunal to be established in Rwanda rather than neighboring Tanzania, where it is currently located, and wanted Rwandans to participate in the Tribunal.

There are a few major differences between these ad hoc tribunals and the STL.

- *A negotiated process.* Although considered illegitimate by the opposition at some point, the Lebanese government was actively involved in the negotiation of the STL Statute. This was not the case for the other two tribunals. The decision to have the Lebanon Tribunal come into force through a Chapter VII resolution was not the UN's original intention but was the result of the stalemate in Lebanon's own domestic ratification process.

- *Chapter VII enforcement powers.* The way the STL was established differed from the ad hoc ICTY and ICTR. The latter two were created under Chapter VII of the Security Council. Under Chapter VII of the UN Charter, the Security Council has wide-ranging powers to oblige states to take actions in the interest of international peace and security. The Security Council has bestowed Chapter VII enforcement

powers on the Rwanda and Yugoslav tribunals. This means that all UN member states have the obligation to comply with the tribunals' decisions and requests in the same way they must comply with all Security Council Chapter VII resolutions. As these tribunals enjoy a direct link to the Security Council, they can refer issues of non-cooperation to it. The Council can enforce cooperation with the tribunals through sanctions (although it has not yet done so).

- In the case of Lebanon many would argue that Chapter VII applies only to paragraph 1 of the text of Resolution 1757, which covers (1) the entry into force of the Agreement and Statute; (2) the obligations surrounding the seat of the Court; and (3) the funding mechanism of the Court (the UN Secretary-General can proceed to obtain further voluntary contributions if Lebanon cannot make its financial contribution). The Agreement and Statute bind Lebanon but are silent on the power to compel third states to comply with orders or requests from the STL.

- The ad hoc tribunals are funded through UN-assessed contributions. Their budgets are drawn from the UN's overall budget, which depends on the compulsory fees required from UN member states. The ad hoc tribunals have to follow all the UN staff regulations, including ensuring the geographic distribution of staff among member states. In contrast, the STL will be funded through voluntary contributions, as well as a contribution by Lebanon, and will not be bound by UN staffing and bureaucratic rules.

- The STL will have a much narrower mandate than the international criminal tribunals. The ICTY and ICTR were established to try massive crimes, such as war crimes, crimes against humanity, and genocide, committed by a multitude of persons. The STL will try those responsible for the assassination of Rafiq Hariri and any other attacks that occurred in Lebanon between October 1, 2004, and December 12, 2005, or any later date decided by the parties to the Agreement, if these crimes are connected with the same principles of criminal justice and are of a nature and gravity similar to the Hariri assassination.

- The international criminal tribunals have primacy over all domestic courts. The tribunals can demand that any domestic court in any country of the world hand over their cases to the tribunals to be tried. The STL Agreement and Statute specify only that the Tribunal has primacy over the courts of Lebanon.

Finally, none of these courts should be confused with the International Criminal Court (ICC), a permanent, treaty-based court that also has its headquarters in The Hague. The ICC has jurisdiction over war crimes, crimes against humanity, and genocide, but only for crimes committed on the territory of or by the nationals of state parties, unless the Security Council refers crimes to it. The ICC currently has 105 members, but Lebanon is not a member.

How does the STL compare to other hybrid tribunals?

The STL is similar to other hybrid tribunals in some respects, but there are also crucial differences. After the establishment of the international criminal tribunals in the 1990s, a new generation of tribunals came into being to try war crimes, crimes against humanity, and genocide, as well as domestic crimes. These are often called hybrid criminal courts or tribunals. Hybrid tribunals often have a mixed international and national composition; for instance,

they employ both international and national staff and often apply a mixture of international and national law. They may exist as chambers within a preexisting national court, as in Bosnia and Cambodia. Although they have most frequently been established with UN involvement, they are usually not established pursuant to Chapter VII resolutions (although theoretically they could be).

- In East Timor (2000) and Kosovo (1999), the UN took over the government of these territories from Indonesia and Serbia, respectively. The United Nations also had to administer their criminal justice systems. Both legal systems were in ruins or otherwise compromised after prolonged conflict. As part of its administration the UN created mixed or international panels of judges and hired international prosecutors to deal with serious crimes. In Bosnia-Herzegovina since 2005, international prosecutors and judges serve on special chambers of the State Court that deal with war crimes, corruption, or organized crime.

- All of these courts have limitations on their respective jurisdiction that are similar to those of national courts. For instance, they do not have powers to compel other states to hand over accused or evidence; instead they have recourse to ordinary channels of judicial assistance or cooperation. In some instances the lack of these powers was a serious hindrance, as accused persons were sheltering across international boundaries. For instance the special panels in East Timor could not compel the cooperation of Indonesia in handing over senior Indonesian military officials who were allegedly responsible for the crimes in East Timor in 1999. This was a serious drawback.

- In Sierra Leone (2002) and Cambodia (2003) hybrid courts were created at the governments' request pursuant to agreements between the governments and the UN. In the case of Cambodia the negotiations were very lengthy and an agreement was only signed after many years. There the hybrid chamber forms part of a national court and is known as the Extraordinary Chambers in the Courts of Cambodia (ECCC). In these cases the terms of the agreement bound only the UN and the government that signed the agreement; other states do not necessarily have to comply. For example, former Liberian President Charles Taylor lived openly in Nigeria even after he was indicted by the SCSL, but Nigeria had no legal obligation to hand Taylor over, since the provisions of the agreement between the UN and Sierra Leone did not apply to Nigeria.

Like other hybrid tribunals the STL will have a mixed composition of judges and staff. Addressing the Security Council (S/2006/176 of March 21, 2006), the UN Secretary General reported, "It became clear from our consultations with the Lebanese authorities that the creation of an exclusively international tribunal would remove Lebanese responsibility for seeing justice done regarding a crime that primarily and significantly affected Lebanon."

Although there are some similarities between the hybrid tribunals discussed above and the STL, there are also many differences. These include:

- *No final agreement for Lebanon.* The STL was supposed to come into existence through an agreement, in which case it would have most closely resembled Sierra Leone or Cambodia. Although the Lebanese government signed an agreement with the UN, its parliament never ratified the Agreement, which finally came into force by virtue of UN Resolution 1757.

- *Seat of the Tribunal.* The Tribunal's Agreement and Statute appended to the resolution are quite similar to those drafted for Sierra Leone. Like the SCSL, the STL will have a majority of international judges and an international prosecutor and registrar (chief administrator). On the other hand, a critical difference is that the STL will be based in The Hague, far from the place where the crimes were committed. Most hybrid tribunals are located where the crimes occurred. In this sense the STL resembles the SCSL, which decided to hold the trial of Charles Taylor in The Hague for security reasons.

- *A narrow mandate.* The jurisdiction of the STL is far narrower that of than other tribunals; it is not mandated to try violations of international criminal or humanitarian law. Instead article 1 of the Statute defines the Tribunal's jurisdiction as being "over persons responsible for the attack of 14 February 2005 resulting in the death of former Lebanese Prime Minister Rafiq Hariri and in the death or injury of other persons," as well as other attacks if they are connected in accordance with the principles of criminal justice and are of a nature and gravity similar to the Hariri attack.

- Furthermore, the STL will be trying crimes defined in "the provisions of the Lebanese Criminal Code relating of the prosecution and punishment of acts of terrorism, crimes and offences against life and personal integrity, illicit associations and failure to report crimes and offences, including the rules regarding the material elements of a crime, criminal participation and conspiracy," as well as articles 6 and 7 of the Lebanese Law of January 11, 1958, on "Increasing the penalties for sedition, war and interfaith struggle" (art. 2 of the Statute). In this respect the STL can be said to be similar to the Lockerbie trial, which also had a limited mandate, resulted from prolonged negotiations, and was endorsed by the Security Council. That trial took place in the Netherlands under Scottish law.

What lessons can the STL learn from other tribunals?

Despite its differences from other tribunals the STL can still draw some important lessons from them.

- *Importance of outreach.* It is widely acknowledged that the ICTY and ICTR started outreach late. The result was that the populations affected by the crimes often did not know about the trials. The SCSL performed better in this regard by implementing an outreach strategy from the outset. Outreach can help manage expectations of a Tribunal's potential and limitations. Although many challenges lie ahead for the STL, a good communications strategy and outreach both in Lebanon and the region will be vital.

- *Importance of a robust defence.* Increasingly participants in international trials have come to realize the importance of a strong defence to the credibility of a trial, particularly when it is dealing with highly sensitive political issues and widespread crimes. Although the importance of the defence is widely acknowledged, it has practical implications that have not always been recognized. An effective defence needs time and resources. The trial of Saddam Hussein in Iraq did not fully respect these needs, and its fairness suffered greatly as a result.

- *Need for efficiency.* Other tribunals have often been criticized for the length and

slow pace of their trials, resulting in very high costs over a prolonged period. Increasingly the international community has become fatigued by the high costs, and the Security Council is now pressuring the ICTY and ICTR to wind down their operations. While hybrid tribunals have generally been much cheaper, they have not been beyond such criticism. In the case of the SCSL, a frequent criticism has been that the funds should have been contributed to the national justice system. The SCSL has continuously struggled for funds. Complex criminal trials will always take months if not years to complete, but the STL is dealing with crimes of a different nature and should attempt to conclude its trials within a reasonable time.

- *Link between state cooperation and political support.* Ultimately the question whether a tribunal does or does not have Chapter VII powers may not be as decisive as whether it will enjoy regional or international political support. Such support is necessary not only for the arrest of accused persons or for obtaining evidence, but also for agreements on witness protection and enforcement of sentences. To attract widespread political support, the Tribunal must be independent and perceived to be so.

VII. THE ROLE OF CIVIL SOCIETY AND THE MEDIA

What role can civil society and the media play?

Both civil society and the media can play important roles in relation to the Special Tribunal. Before, during, and after the Tribunal they can:

- Monitor the various steps involved in the Tribunal's establishment and, once it starts operating, the trials;
- Nurture an informed discussion of Tribunal developments, including its impact both domestically and regionally.

The Agreement between the Lebanese government and the UN was finalized once it came into force as per Resolution 1757; however, media or civil society organizations may still wish to offer their views on the particulars of these documents, even though they will not be changed. This activity could contribute to a critical discussion of the Agreement based on factors other than political affiliation. The media could extend discussion to the general public by publishing these views.

One of the crucial phases in establishing the Tribunal is the drafting of the Rules of Procedure and Evidence. Members of local bar associations that are familiar with Lebanese jurisdiction, as well as other civil society organizations, should offer their recommendations and comments on the drafts before these come into force. The media can also play a fundamental role in feeding this discussion and ensuring transparency during the process.

Before and during trial it is important for the media to explain to a general audience the processes involved and how the trial will proceed, as well as monitoring whether all norms of international law are fully respected. For example, commentators should be aware of the role of the Defence Office and help explain it, as well as conveying the respective interests of victims and the accused.

Civil society in general, and the media in particular, should highlight the most important issues, monitor concerns over fairness and independence, and help shape realistic discussions about and expectations of the Tribunal. For instance, in Sierra Leone and Timor-Leste new local organizations were set up to monitor the trials and provide detailed, independent commentary on the proceedings. (See, for instance, www.slcmp.org for the Sierra Leone Court Monitoring Program and http://www.jsmp.minihub.org for the Justice Sector Monitoring Program in Timor-Leste.)

In other tribunals civil society has played a number of additional roles, including sharing documentation with the tribunal on violations within its jurisdiction; providing support (including psychological) to victims and witnesses; advocating increased political support for the tribunal; and filing amicus curiae briefs on particular topics. Tribunals such as the SCSL organized an interactive forum with key NGOs. The SCSL also organized a large conference on victims' expectations of the Court in partnership with civil society organizations and joined with NGOs on outreach. It remains to be seen whether civil society organizations will play a similar role in relation to the STL. The STL's narrow mandate may make a difference in this respect.

What access can the media or civil society observers expect?

As a matter of principle the media and interested civil society observers should have access to the STL to fulfill the right of the accused to a public trial. The STL is currently formulat-

ing an outreach and communications strategy. Most of the proceedings should be public. The Tribunal is likely to have a public gallery from which the media can observe the trial, since not having one would violate the accused's right to a public trial under human rights law.

The STL may issue its own guidelines governing its relationship with the media; if it does, the media should be consulted as part of this process. The building may be expected to have facilities for the media, as is the case with some other tribunals. The public information office will be the main interlocutor for the media and will assist its work by issuing materials on important events.

However, it is undeniable that access by Lebanese journalists will be complicated by the fact that the Tribunal is situated in The Hague. Those unable to travel to The Hague may need a video feed with transmissions of the trials at a location in Lebanon. The same is being done in Sierra Leone for the trial of Charles Taylor.

The UN Office of Legal Affairs' spokesperson on the STL has said that there will also be a Tribunal Web site that should be closely monitored. Journalists should be aware that they can probably request copies of public documents from the STL even if these are not available online. At the time of writing the STL Web site was under construction, but information on the Tribunal can be found at http://www.un.org/apps/news/infocus/lebanon/tribunal.

The STL will also have the power to go into closed sessions to which the public will be denied access. This happens at other tribunals and is usually for purposes of witness protection. A transcript may subsequently become available, but identifying information on the protected witness will be deleted. In some tribunals select civil-society monitors have been given access to closed sessions.

What is contempt of court?

Contempt of court is a measure the STL can take to punish people who violate its orders. The most relevant and likely way this could happen is if someone from the media discloses the name of a protected witness or publishes a confidential document. Penalties may include being barred from the STL or even a fine or imprisonment.

The ICTR has made a few failed attempts to prosecute journalists for contempt of court. All were linked to alleged disclosure of a protected witness's identity. In the past two years there were several successful prosecutions of Croatian journalists for breach of witness protection. Some of the reporters received hefty fines up to 15,000 euros. One was sentenced to three months' imprisonment. In at least one case the charges included the disclosure of a confidential court document that did not involve witness protection issues. Some press freedom organizations have expressed concern over such prosecutions. At the same time clear consensus exists in the profession on the duty to prohibit life-threatening disclosure of a protected witness's identity and more general violation of witness protection orders.

Recently the ECCC warned journalists covering its activities that they would be prosecuted if they released materials the Court deemed confidential, even if they were unrelated to witness protection. For example, some of the documents included photos and footage of one of the accused. International tribunals have applied different policies regarding contempt of court actions against journalists, but recent developments make it important for any reporter covering such proceedings to be well informed on the policies before starting work.

How can I contact the Special Tribunal?

The UN has appointed a communications adviser for the Tribunal, a staff member in the OLA, Radhia Achouri. Ms. Achouri speaks Arabic, French, and English.

Her contact information is:
Radhia Achouri
Communications Adviser on the
Establishment of the STL
Office of the Legal Counsel, Office of Legal Affairs

UN Secretariat in New York

E-mail: achouri@un.org

In due course the Special Tribunal is expected to set up its own public information office.

VIII. OUTREACH, LEGACY AND RESIDUAL ISSUES

What is outreach?

The STL is likely to have an outreach program to tell wider audiences about the Tribunal, beyond its public information function. Without effective outreach the STL could be the subject of misinformation. The purpose of outreach will be to facilitate a comprehensive understanding of the activities of the STL in Lebanese society and the region, as well as gathering views and opinions of the STL. For this reason it will be important to facilitate genuine dialogue and discussion about the STL in Lebanese society. For other international or hybrid jurisdictions, a key goal is promotion of understanding of the principles of impartiality, independence, and equality before the law to promote a better relationship between the people and legal institutions. In short, an effective outreach capability can transform the way an institution is perceived by its major stakeholder, the affected population.

What are the legitimacy challenges of the STL?

All international tribunals continuously struggle with the issue of legitimacy. They are often created by Security Council resolutions or international agreements but are not always discussed extensively by local stakeholders before their creation. The very populations they are intended to serve do not always know about their work. Proceedings and cases may be contentious. The Nuremberg trials initially faced challenges and opposition within Germany, and it took time for people to accept the results. In Serbia, for instance, the work of the ICTY has been contested, and Serbs have alleged that it has focused disproportionately on Serbian perpetrators compared to those from other ethnic groups.

The STL faces particular challenges. Local and regional perceptions of the Tribunal are already heavily divided and will be influenced by several factors:

- Lebanon's historical context, which includes a 15-year war followed by a 1991 general amnesty law; Israeli and Syrian occupations, which also resulted in human rights violations; and the Israeli-Lebanese conflict of July 2006;
- Perceptions that the STL is an example of selective justice. Given the lack of accountability measures for most other events in Lebanon's recent history, the creation of the Tribunal has inspired the criticism that justice is reserved only for the elite;
- The local and regional political context, in which no internal consensus exists on the STL, and some parts of the political class fear it will be manipulated by foreign powers. This concern should be taken particularly seriously;
- Many governments in the region frequently establish and manipulate legal mechanisms for political ends. A glaring example is the weak performance of the Iraqi High Tribunal, the only other internationalized prosecutorial mechanism in the region.

Some commentators have argued that if trials are handled successfully, the Tribunal's impact will go beyond the immediate victims of the bombings; it may help stop the destabilizing attacks that have been such a common feature of Lebanese politics and conflict. Others note that the Tribunal is an important development because it is the first full-fledged judicial response to such crimes, one that may leave a useful legacy in Lebanon by stimulating the development of its legal system. By its very existence the Tribunal will also underscore

the need of victims of many other crimes for accountability.

But the fact remains that the jurisdiction of the STL is limited by definition, affecting mainly victims of the various bombings. This will complicate the STL's role compared to that of other international tribunals, which have derived an essential part of their legitimacy from trying massive crimes that affected large parts of the population.

Whatever happens, it is clear that the STL's outreach and communication strategies are vital means to promote informed debate rather than arguments based purely on political grounds or misinformation. The STL should be very clear in its outreach about what it can and cannot do.

What legacy can the STL have?

Legacy may be defined as the STL's lasting impact in bolstering the rule of law by conducting effective trials to contribute to ending impunity while also strengthening domestic judicial capacity. The potential legacy of the STL may be found in three specific areas: legal developments; strengthening Lebanese investigative and judicial capacities; and the so-called demonstration effect of the STL in raising awareness of accountability and the rule of law. The work of the STL can be highlighted by the media, which can play a direct role in disseminating the demonstration effect. For the STL to have any demonstration effect, however, it should be seen as totally independent, nonpolitical, and strictly upholding international standards of human rights, including the rights of the accused. In other words, unless the STL sets an example in its work it cannot demonstrate new standards.

Since a number of Lebanese staff will work for the Tribunal, their legal skills may benefit from training programs and mentoring. Some skills, such as forensic skills, capacity for witness protection, and other investigative techniques, may be transferred from the Tribunal to the Lebanese legal system. These improvements could all be part of the legacy the Tribunal leaves in Lebanon.

What happens after the STL closes its doors?

It is unclear how long the STL will exist. As mentioned, the Agreement will be in force for three years, after which it can be extended for a period to be determined by the Secretary-General in consultation with the government and the Security Council (art. 21(2) of the Agreement). Its lifespan will be particularly hard to predict because it is not known how many assassinations will be found to be connected with the Hariri killing. However, when the STL has finished its main work some important issues, such as protection of witnesses, archiving of documents, supervision of sentences, and possible review proceedings, will require continued attention. These are sometimes referred to as residual issues. Currently the other tribunals, including ICTY, ICTR, and SCSL, are discussing what to do about such issues after they close down in the next few years; accordingly they have implemented a completion strategy. The decisions they make could give guidance to the UN and Lebanon as they consider their options. The STL should devise an appropriate completion strategy even as it begins its work.

GLOSSARY OF LEGAL TERMS

ACCUSED

A person who has been charged with committing the offence, another term for the defendant in a criminal case.

ACQUITTAL

A verdict at the end of a criminal trial that the accused person (the defendant) is not guilty of the crime.

AD HOC TRIBUNALS

International tribunals established by the UN Security Council to investigate and prosecute serious breaches of human rights and international humanitarian law in former Yugoslavia and Rwanda.

ADJOURNMENT

A postponement or suspension of a court hearing or trial session until a later date.

ALLEGATION

Any statement of fact in a pleading before a court. It is usually the duty of the party who makes an allegation to produce evidence in support of it at trial – for example, for the prosecution to bring before the court evidence in support of its contention that the defendant committed the alleged crime.

AMNESTY

A grant of immunity from otherwise applicable law that is given by a state to a designated class of persons for a designated class of offences.

APPEALS CHAMBER

A higher court that has jurisdiction to hear appeals against the judgment and/or sentence imposed by the trial court and to review the procedural decisions of the trial court.

CHAMBERS

A description of the way judges organize themselves to conduct trials and other hearings. A number of judges – usually three – will form one trial chamber.

CLOSED SESSION / SESSION IN CAMERA

The Latin term "in camera" means, in a legal context: "in the chamber", "in private". A closed session or session in camera is a court hearing session that is closed to the public

CLOSING ARGUMENTS

Summarizing statements made at the end of a trial by prosecution and defence in which each side provides its assessment of the evidence and testimony presented during the trial and sets out the reasons why the verdict should go in its favor.

COMMAND RESPONSIBILITY

A concept by which one may be criminally responsible for the acts of one's subordinates, if one was in a position to prevent and punish the subordinates' crimes and failed to do so. This is true even if the superior himself did not issue any orders to commit the crime. It is also called "superior responsibility"

COMPLETION STRATEGY

The policy goal enunciated by a United Nations Security Council Resolution to complete the work of the two ad hoc tribunals (ICTY and ICTR) by 2010. The Special Court for Sierra Leone also has a completion strategy to conclude its work by 2009.

CONTEMPT OF COURT

An offence against the integrity, dignity or effective functioning of the court, which is liable to be punished by the judge(s) presiding over the court. It encompasses acts such as deliberately

obstructing the court's proceedings by refusing to obey a court order or interfering with court procedures, or expressing abuse against or showing disrespect for the court. Contempt may be punishable by fines or imprisonment.

CONCURRENT JURISDICTIO

Jurisdiction exercised simultaneously by more than one court over the same subject matter.

CROSS-EXAMINATION

The process of close questioning by prosecution and defence lawyers of the witnesses called by the other side, in order to test, challenge or discredit their testimony given under direct examination

DEFENCE COUNSEL / DEFENCE LAWYER

A lawyer who represents and advises an accused person and presents their case to the court, with the aim of ensuring that the accused person receives a fair trial.

DETENTION UNIT

A place where those accused before tribunals are imprisoned before they are convicted

DEFENDANT

A person charged with a crime and against whom court proceedings are brought (see Accused above).

DUE PROCESS

The concept by which those subject to legal proceedings, notably persons charged with committing crimes, should have their rights under the law respected at all times throughout the process from arrest through to trial and sentencing, and should receive the full benefit and protections that those rights confer.

DISCLOSURE

The process of making known evidence to the opposing party in a trial and to the Trial Chamber.

EQUALITY OF ARMS

A concept by which each party must be afforded a reasonable opportunity to present its case. Both parties are treated in a manner ensuring that they have a procedurally equal position during the course of the trial, and are in an equal position to make their case.

EXPERT WITNESS

A witness whose testimony will relate to specific scientific, technical or other matters and who has the professional expertise and training to be able to testify authoritatively on the particular matter in question.

EXCULPATORY EVIDENCE

Evidence that tends to show the innocence of an accused person. When gathered by the Prosecutor, there are often special disclosure obligations associated with exculpatory evidence.

EX PARTE

The Latin term "ex parte" means, in a legal context: "proceeding brought by one person in the absence of another." Any proceedings with a court by one party in the absence of, or without giving notice to the other party.

FORENSIC EVIDENCE

Evidence that is obtained by the application of scientific methods and is susceptible to use in court proceedings; examples include medical evidence such as obtained through DNA testing or pathological examination of a deceased person found in a mass grave, and evidence from a ballistics expert.

HYBRID COURTS

Courts comprising a mix of international and national judges which often apply a mix of

international and national law. Examples include the Special Court for Sierra Leone or the Extraordinary Chambers in Cambodia.

IN CAMERA

See closed session.

INDICTMENT

A formal document accusing one or more persons of committing a crime or series of crimes. It is usually read out to the accused at the commencement of the trial before they are asked to plead, i.e. to declare whether they are guilty or not guilty of the crime.

INDIGENT

A person who is indigent is one who is poor and cannot afford basic necessities. In such a case, the court may assign a lawyer to represent the defendant funded by the court or a legal aid system.

INTERNATIONAL CRIMINAL LAW

The law applied by international, hybrid and domestic courts and tribunals pertaining to genocide, crimes against humanity and war crimes. In international courts, this also includes criminal procedure.

JUDGMENT

The finding and decision of a court at the conclusion of a trial or other legal proceedings.

JOINDER

Joining parties or claims in a court case – for example, in order to try several accused together in one trial on the grounds that there is a common case to be made against them.

JURISPRUDENCE

A collection of reported cases from previous legal hearings that together form the body of law within a jurisdiction.

JURISDICTION

The area and matters over which a court has legal authority. Jurisdiction also signifies the geographical limits within which the judgments or orders of a court can be enforced or executed.

LEGACY

Ensuring that an international or hybrid tribunal has an impact on the domestic level, for instance that it helps to build the skills of local lawyers, prosecutors, and judges.

MODES OF LIABILITY

The legal basis that establishes individual responsibility (e.g. instigating, ordering or aiding and abetting the commission of a crime).

OPENING STATEMENT

Statements made at the start of a trial by attorneys/lawyers for each side. The opening statement outlines the party's legal position and previews the evidence that will be introduced later during the trial.

PROSECUTION

The institution or conduct of legal proceedings against a person accused of a crime.

PRE-TRIAL JUDGE

The STL has a pre-trial judge who issue summons or arrest warrants, hold pre-trial hearings on issues such as protection of witnesses, representation of victims, and confirm charges against an accused.

PRIMA FACIE CASE

"Prima facie" is a Latin term, meaning "on the face of it", that is used in a legal context to define whether there is enough evidence to warrant a case continuing to trial in the judicial process.

PRESIDING JUDGE

In jurisdictions with several judges, one of them

is usually chosen to direct the daily proceedings of the trial.

PRESUMPTION OF INNOCENCE

A legal concept that means that an accused is presumed innocent until he is proven guilty beyond reasonable doubt, at the end of a trial and appeal.

REASONABLE DOUBT

The doubt that prevents one from being firmly convinced of a defendant's guilt, or the belief that there is a real possibility that the defendant is not guilty. "Beyond a reasonable doubt" is the standard used to determine whether a criminal defendant is guilty.

REDACTION

Legal documents made public by courts often come in a 'redacted' form, where key information has been edited out to protect the identity of witnesses. Revealing information which has been redacted can constitute contempt of court.

REGISTRY

The Registry is one of the four organs of the STL. It is responsible for those functions which support the Court process as a whole, including the management and administration of the court.

RULES OF PROCEDURE AND EVIDENCE

The rules which govern the procedures and the introduction and admissibility of evidence in legal proceedings.

SEALED INDICTMENT

An indictment can be sealed so that it stays non-public until it is unsealed. A sealed indictment might be used where the prosecutor, for whatever reason, does not wish to alert the prospective defendant to the fact that criminal charges are being investigated.

SENTENCE

The punishment imposed by a court on a person convicted of a crime.

SEVERANCE

The opposite of Joinder (see above), severance is when one of more accused are removed from a joint indictment in order to be tried separately.

STANDARD OF PROOF

The legal standard of proof indicating the degree to which the point must be proven. For instance, the standard of proof at the end of a criminal trial is "beyond reasonable doubt."

STATUTE OF LIMITATIONS

A statute establishing a time limit for prosecuting a crime, based on the date when the offense occurred.

SUSPECT

Someone who is under suspicion of having committed a crime. If the individual is formally charged with an offence, the reference is generally to a defendant or an accused, rather than a suspect. Both have rights under international law and the STL Statute.

TRIAL

A legal proceeding before a court to examine and assess the evidence against a person accused of a crime.

TRIAL CHAMBER

The chamber of the court before which trials are conducted and from which judgments may be appealed to the Appeals Chamber.

WITNESS PROTECTION

A series of measures that can be granted through Court orders to protect witnesses, such as voice and image distortion, redaction of identifying information from documents, closed sessions.

UNITED NATIONS DOCUMENTS RELATING TO THE SPECIAL TRIBUNAL FOR LEBANON as of April 10, 2008

14 February 2005

Declaration by Security Council President (S/PRST/2005/4)
The declaration condemned the assassination of former Lebanese Prime Minister Rafiq Hariri.

24 March 2005

Report of the fact-finding mission to Lebanon (S/2005/203)
A UN fact-finding mission concluded that an international investigative commission would be required to find those who were responsible for the Hariri assassination.

29 March 2005

Letter from Government of Lebanon to UN Secretary General (S/2005/208)
The government expressed its readiness to fully cooperate with an investigative commission.

7 April 2005

Security Council Resolution 1595(2005) (S/RES/1595(2005))
The Security Council established the UNIIIC to assist Lebanese authorities in their investigation of the assassination.

16 June 2005

Letter from UN Secretary General to the Security Council (S/2005/393)
The Secretary General reported that the UNIIIC was fully operational pursuant to Resolution 1595. Annexed to the letter was a Memorandum of Understanding between the Government of Lebanon and United Nations regarding cooperation for the UNIIIC.

20 October 2005

First Report of the UNIIIC (S/2005/662)

31 October 2005

Security Council Resolution 1636(2005) (S/RES/1636(2005))
The Security Council requested that the UNIIIC report on the progress of its investigations by 15 December 2005.

10 December 2005

Second Report of the UNIIIC (S/2005/775)

13 December 2005

Letter from Prime Minister of Lebanon to UN Secretary General (S/2005/783)
The Prime Minister requested the establishment of a "tribunal of international character." He further requested that the mandate of the UNIIIC be expanded to include the investigation of terrorist acts in Lebanon since 1 October 2004.

15 December 2005

Security Council Resolution 1644(2005) (S/RES/1644(2005))
The Security Council requested that the UNIIIC continue to report on its progress every three months.

14 March 2006

Third Report of the UNIIIC (S/2006/161)

21 March 2006

Report of the UN Secretary General pursuant to Resolution 1644 (S/2006/176)
Noted that consultations were underway between the UN and Lebanese authorities regarding the establishment of a potential tribunal.

29 March 2006

Security Council Resolution 1664(2006) (S/RES/1664(2006))
The Security Council requested the Secretary General negotiate an agreement with the

Government of Lebanon to establish a tribunal.

10 June 2006

Fourth Report of the UNIIIC (S/2006/375)

15 June 2006

Security Council Resolution 1686(2006) (S/RES/1686(2006))
The Security Council extended the mandate of UNIIIC to 15 June 2007.

25 September 2006

Fifth Report of the UNIIIC (S/2006/760)

21 November 2006

Report of the UN Secretary General on the Establishment of the Special Tribunal for Lebanon (STL) (S/2006/893)
The report outlined an agreement between the UN and the Government of Lebanon to establish the Special Tribunal. Draft texts of the Agreement between Government of Lebanon and the UN and the Statute of STL were appended to the report.

21 November 2006

Letter from Security Council President to the UN Secretary General (S/2006/911)
The Security Council welcomed the agreement between the Government of Lebanon and the UN establishing the STL.

21 November 2006

Statement by Security Council President (S/2006/46)
Condemned the assassination of Pierre Gemayel on 21 November 2006.

21 November 2006

Letter from the UN Secretary General to the Security Council President (S/2006/914)
Noted that the Government of Lebanon had requested the assistance of the UNIIIC to investigate the murder of Pierre Gemayel.

22 November 2006

Letter from Security Council President to the UN Secretary General (S/2006/915)
Extended the mandate of the UNIIIC to include the investigation of the murder of Mr. Gemayel.

12 December 2006

Sixth Report of the UNIIIC (S/2006/962)

23 January and 6 February 2007

Agreement between the UN and Lebanon (Annex to S/2006/893)
The agreement to establish the STL was signed by the Government of Lebanon (23 January) and the UN (6 February).

21 February 2007

Letter from Prime Minister of Lebanon to the UN Secretary-General (S/2007/159)
The Prime Minister requested that the mandate of the UNIIIC be extended for a further period of one year to 15 June 2008.

15 March 2007

Seventh Report of the UNIIIC (S/2007/150)

27 March 2007

Security Council Resolution 1748(2007) (S/RES/1748(2007))
The Security Council extended the mandate of UNIIIC until 15 June 2008.

30 May 2007

Security Council Resolution 1757(2007) (S/RES/1757(2007))
Acting in part under Chapter VII of the UN

Charter, the Security Council established the Special Tribunal for Lebanon as of 10 June 2007. Annexed to the Resolution was the Statute of the STL (this version of the statute was identical to the one annexed to the Secretary General's report of November 2006).

14 May 2007

Letter from Prime Minister of Lebanon to the UN Secretary General (S/2007/281)
The Prime Minister expressed concern that domestic ratification of STL would be impossible and requested that the UN Security Council intervene to establish the STL.

12 July 2007

Eighth Report of the UNIIIC (S/2007/424)

23 July 2007

Letter from the UN Secretary-General to Prime Minister of the Netherlands The letter inquired whether the Netherlands would be willing to host the STL.

14 August 2007

Letter from Prime Minister of the Netherlands to UN Secretary-General. The letter confirmed that the Netherlands is willing to host the STL.

4 September 2007

Report of the UN Secretary-General pursuant to Resolution 1757 (S/2007/525)
The report announced that the provisions of the STL statute (as annexed to Resolution 1757(2007)) entered into force on 10 June 2007.

28 November 2007

Ninth Report of the UNIIIC (S/2007/684)

31 January 2008

Exchange of letters between the UN Secretary-General and the Security Council (S/2008/60 and S/2008/61)
The Secretary-General informed the Security Council of Lebanon's request that the UNIIIC further expand its mandate to investigate the murder of Wissam Eid and others. The Security Council complied with this request.

12 March 2008

Second Report of the UN Secretary-General pursuant to Resolution 1757 (S/2008/173)
The report stated that the "Preparatory" phase of the STL was complete and that the "Start-Up" phase of the tribunal had commenced.

27 March 2008

Tenth Report of the UNIIIC (at the time of writing, did not have an official document number).

HANDBOOK ON THE SPECIAL TRIBUNAL FOR LEBANON
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