

Conception, Legacy, and Legitimacy of The . Special Tribunal for Lebanon

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ABSTRACT

This study analyzes critically the conception of the special tribunal for Lebanon (STL) and its legacy and legitimacy. The author finds that the tribunal was formed without taking all stakeholders of Lebanon on-board such as the president and the alliances formed at that time. The tribunal is also an example of selective justice. The author argues that the tribunal should have been formed respecting the sovereignty and legal framework of Lebanon. In this respect, examples of International Criminal Tribunal of the Former Yugoslavia (ICTY) and International Criminal Tribunal of Rwanda (ICTR) provide guidelines and precedence that must be followed.

Keywords: STL, ICTY, ICTR, Rafik al Hariri.

Introduction

International peace and security have always been a great concern in the Middle East. Lebanon, in particular, has been facing political turmoil for many years stemming from the diversity of the Lebanese people and the 15 years of civil war. February 14, 2005 was the day, when the former Prime Minister of Lebanon, Rafik el Hariri, lost his life in a bomb attack by an anonymous group in central Beirut (Knudsen, 2010). The Security Council (SC) of the United Nations passed a resolution 1757 (2007) that formed the special tribunal for Lebanon (Scharf, 2011). The tribunal is commonly known as Al Hariri's tribunal. This study aims to analyze critically the legality of establishing an Ad Hoc tribunal for investigating the assassination of Rafik el Hariri. The study will highlight the procedural challenges and the accusation of politicization of the court. The main research question of the study is, "Does the selective justice provided by the Special Tribunal for Lebanon (STL) impair the legality of the court?" The study aims to clarify the allegations of illegality.

The study elaborates the complications in the political situation of Lebanon that led to the assassination of the Prime Minister. It also aims to clarify the conception of the special tribunal for Lebanon concentrating on the initial agreement between the UN and Lebanon, the circumstances leading to the agreement, and its effect on the STL as a judicial body established through invoking chapter VII by the Security Council. The study challenges the legitimacy of STL; the implications arising for invoking chapter VII and its encroachment on Lebanon's sovereignty. It discusses the concept of selectiveness in justice, the narrow jurisdiction of the court in comparison with what have come to be known as "core crimes" and whether it rises up to their threshold.

Political Situation in Lebanon

Lebanon has a unique form of minorities that give the population a perplexed order. The national pact of 1943 defined a power structure among three ethnic groups (Ghosn, 2011). According to the pact, the president of the country will be a Maronite Christian. The Speaker of the Parliament will be chosen from the member of Shia Muslim community. The Prime Minister of the country will be a Sunni Muslim. The pact was later codified in Al Taef Accords and the distribution continued after the end

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of the war. Before the beginning of the Lebanese civil war, there were a series of historical events and political dilemma. Lebanon was governed by Maronite Christian leaders. They held the majority of higher positions of the state and had the last say in all matters. The distribution of power did not reflect the correct demographic order of the country. The Muslims in Lebanon felt as second class citizens and started to demand additional power and share in the government. The situation further aggravated when Jordan expelled the Palestinian Liberation Organization (PLO) following the bloody confrontations known as Black September(Ensalaco,2010). The Palestinian forces then moved to Lebanon in 1970. There were already ethnic tensions building up in Lebanon. The arrival of Palestinian forces increased this tension. On April 13, 1975, there was an assassination attempt on the Maronite Christian leader Pierre Gemael(Stier,2014). The attempt of the gunmen failed; however he attacked a bus carrying Palestinians in retaliation. The attack killed about twenty-six of the bus passengers. This event erupted violence and there was a fight between Palestinian militiamen and the Phalangists. The incident marked the beginning of the long civil war that destroyed Lebanon and divided the country.

The two key parties in the civil war were right-wing Lebanese Christians (belonging to Al Kataeb Party) (Smith, 2011), and left-wing Lebanese Muslims. The Muslims had formed an alliance with the Palestinians who came to Lebanon after being expelled from Jordan. Syrian forces consisting of 30,000 troops were also involved and they took the side of Christian phalangists. The atrocious scene on the streets of Beirut was full of war crimes and crimes against humanity. There were many assassinations of high profile religious and political figures. The civil war ended in October 1990. It was a time when Lebanese army and Syrian forces forced out General Michel Aoun from the government. However, the event followed with the occupation of Lebanon by Syria that lasted for almost 15 years. It is also known as Pax Syriana (El-Husseini, 2012).

Al-Taef Accord of 1989 is a document that is regarded as a compromise among the political leaders in Lebanon(Gagab,2011). The agreement addressed many important issues for maintaining future stability in Lebanon. One of the issues addressed was the fair distribution of power through major constitutional amendments. In the Post-Taef era, the parliament passed an amnesty law on August 26, 1991(Humphrey,2011). The law provided amnesty to all warlords for the crimes committed prior to the enactment of the law. It also provided grand immunity from serious war crimes. Hence, there was no prosecution on the basis of mass killings, summary executions, and forced disappearance. The law also allowed the trial for the perpetrators of assassination. The law was highly criticized as it results in selective justice between victims. Since then, Lebanon has suffered from a pattern of impunity for all grave breaches. The establishment of the STL is a symbolic measure to end the era of impunity and bring the criminals to justice.

The Lebanese Prime Minister El Hariri was a Sunni Muslim and a self-made billionaire. He became the Prime Minister for a number of years and widely dominated the economic and political rise of the country(Neal,2010). He was assassinated on February 14, 2005 when his motorcade was bombed in central Beirut. The suspects included Syria that had military interests in Lebanon and had been dealing with El Hariri. It eventually led to the withdrawal of the troops of Syria from the Lebanese territory. El Hariri's assassination changed the political landscape of Lebanon. A dominant alliance was formed known as March 14th coalition. The coalition included Sunni Future Movement, Christian Parties, Lebanese Forces, and the Socialist Party. They all opposed Syrian presence and supported the Special Tribunal for Lebanon. Another alliance in Lebanon was formed that is known as March 8th coalition. The alliance included Shiite parties and the free patriotic movement of Christian general Michael Aoun. The alliance is an opposition party in Lebanon and has reservation about the Special Tribunal

for Lebanon. The alliance supports Syria and considers STL as an attempt of foreign powers to seize the sovereignty of Lebanon and impose new political order (Marieke Wierda and Habib Nassar, 2007).

1. Chapter VII of UN Charter

Chapter VII of the UN Charter describes the course of action when there are acts of aggression or threats to the peace of the world. The chapter contains thirteen articles from article 39 to article 51. According to article 39, the Security Council of the United Nations is empowered to decide on the existence of threats to the world peace and take measures to restore international security and peace (United Nations, Chapter VII). For establishing STL, the UN Security Council acted in accordance with this chapter. It endorsed the agreement between the government of Lebanon and the UN on May 30, 2007. The resolution number of the Security Council was 1757 (2007). The resolution had annexed documents that contained 30 articles. In the beginning paragraph, it states that the tribunal will carry out its functions as per the provisions of this Statute. The annexure is divided into four sections. Section 1 defines the jurisdiction of the tribunal and the applicable criminal law. Section 2 describes the organization of the tribunal. Section 3 describes the rights of victims and defendants. Section 4 describes the conduct of proceedings (United Nations, 2015b).

2. Invoking the Chapter VII of the UN Charter to Develop the STL

There was a massive deadlock present within the Lebanese political framework, regarding the agreement, and hence a consensus was very difficult to be attained. The major conflict was present between the two political alliances present in the country, known as the Pro Syria and the governing coalition. The lack of consensus building initiative which was present between the predominant political stakeholders in the country, led to the failure of ratification of the agreement by the Lebanese parliament. The resentment and the conflict of

ideologies present within the Lebanese political environment can also be highlighted by the resignation of the Shia ministers as a sign of protest. After exhausting all of the attempts to achieve the ratification of the agreement through the government, President Siniora requested the SC security general to put in to affect the STL (Marieke Wierda and Habib Nassar, 2007).

3. Conception of the Special Tribunal of Lebanon

After the assassination of El Hariri, the Lebanese judicial authorities initiated an investigation. The case was referred to the justice council. Also, a fact-finding mission of the Security Council was sent to Lebanon. The mission aimed to analyze the various aspects of the Beirut Bombing of 14 February. The mission also analyzed the actions taken by the Lebanese authorities in response to the attack. The mission issued an explanatory report of the situation. The mission concluded that there is a need of an international investigation. It is because of the inability of the Lebanese authorities to conduct an investigation that is independent of all external influences (Middle East Report, No 100-2 December 2010). The reliance on the security agencies of Lebanon was questionable. Based on the report, the Security Council issued a resolution that established an inquiry commission to find the causes and circumstances of assassination. The Lebanese government approved the decision. It expressed its intention to extend full cooperation to the commission within the framework of the legal systems and the sovereignty of Lebanon Middle East Report, No 100-2 December 2010).

The United Nation International Independent Investigation Commission (UNIIC) established on April 7, 2005 (Khashan, 2011). In a letter dated December 13, 2005, the Prime Minister Siniora made two requests to the secretary general of the United Nations. The first request was to establish a treaty-based tribunal to try the perpetrators of the Hariri assassination. The second request was to extend the UNIIC's mandate to investigate the assassination attempts in a historical

context that began in Lebanon with the attempt on the life of Minister Marwan Hamade on October 1, 2004. Hence, the work of the Commission was extended to a further six months from 15 December 2005. Also, the mandate of the Commission was enhanced to include all connected terrorist attacks perpetrated in Lebanon since October 1, 2004 of similar nature and gravity. On September 6, 2006, the Legal Counsel of Security Council travelled to Beirut and presented the initial draft agreement and statute to the Prime Minister and to the Minister of Justice of Lebanon for their consideration. The Agreement between the United Nations and the Government of the Lebanese Republic establishing the Special Tribunal of Lebanon (STL) was signed on January 23, 2007. STL has primacy over national courts. STL differs from other international judicial organs on various aspects. There is an application of Lebanese national criminal code, in addition to the presence of more civil law elements, rather than common law elements. the Statute of the Special Tribunal for Lebanon was also appended (Saul, 2011), providing the legal framework under which the Tribunal shall operate, having the Lebanese Criminal Law as the applicable law, but imposing some limitations on its application such as the preclusion of some penalties enlisted in the Lebanese Law, one of which is the Death Penalty (Lecture by Judge Ralph Riachi - The Special Tribunal for Lebanon and international criminal law: contradictory or complementary)

Throughout the period subsequent to the conclusion of the Agreement, and at the time of drafting resolution 1757(2007), Lebanon's government could not engage and involve the two political alliances in the development process of the Agreement. The Political Deadlock prevented the endorsement of the Agreement by the Parliament of Lebanon. The Speaker of the Parliament, Berri, refused to call the session of the parliament so as to facilitate and satisfy the stipulated procedural process for ratification of the Agreement. The March 8 coalition of which Amal Movement was part of had concerns

regarding the effects of the international Tribunal on the Lebanese sovereignty. Noting that, the governing coalition of March 14 constituted, in fact, a majority of the Lebanese Parliament holding 69 of the 128 seats. The March 14 coalition was against the interference of Syria in Lebanon, and was highly in favor of conducting an international investigation, and consequently with the formation of STL.

The pro-western Prime Minister, Fouad Siniora, called the tribunal a triumph for Lebanon against injustice, crime and tyranny. In addition to the failure of endorsement of the Agreement by the Lebanese parliament, and prior to the approval by the government, it's worth mentioning that in November 2006, five Shiite ministers submitted their resignations from the cabinet, indicating their non participation (Hilal Khashan, 2011).

Meanwhile, the president in office Emile Lahoud expressed his objections and reservations to the tribunal earlier on, stating that one cannot make Lebanon at these troubled times a place for experimenting and testing (Harris, 2013). The two objections were as follows; firstly, he did not take part in the negotiations for the Agreement, emphasizing on the fact that president should be involved in the process and give his approval before it goes to the cabinet. His second reservation was in regards to the statute of the ST as it proposes to seat more foreign judges than Lebanese. In order to satisfy Prime Minister Siniora's request, Article 19 of the Agreement was amended, and sponsors of the Resolution (1757) decided to act under Chapter VII of the United Nations Charter, thereby reaffirming that the terrorist attack constitutes a threat to International security and peace as encompassed in Article (39) of the Charter. They set June 10, 2007 as the date of entry into force of the Agreement and all annexed documents.

4. double standards of UN Security Council

There are various factors that reflect double standards of the UN Security Council in the establishment of STL. The first argument given is that the Council differed in its reaction for two assassinations that took place in the same

period. The first was the Hariri's assassination and second was the assassination of the Former Pakistani Prime Minister Mohtarma Benazir Bhutto on December 27, 2007. In the later case, the UN Secretary General did not opt for the urgent reporting of the consequences and causes of this terrorist act. Also, in the case of assassination of Benazir Bhutto, UN emphasized that the determination of criminal responsibility would be made by the Pakistani authorities. In the case of Hariri's assassination, this responsibility was delegated to an international tribunal without the consent of the authorities of Lebanon. Another important issue is the mandate of STL. It is mandated to investigate only a single attack. On the contrary, the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for Former Yugoslavia were established to try massive violations of international law. The mandate of STL is considered as the narrowest mandate of any international tribunal(Nashabe,2012).

5. STL's Challenge of Selective Justice

Establishing an international tribunal under Ch VII that has jurisdiction over the political assassination of Hariri, a former Prime Minister, and connected crimes, the UN provides solid grounds for claiming that International Justice clearly discriminates between victims and thus confines Justice to state officials and political leaders(Knudsen,2010). As stated in the Tadic Case "the Security Council had been inconsistent in creating this Tribunal while not taking a similar step in the case of other areas of conflict in which violations of international humanitarian law may have occurred". A similar argument may be raised when addressing the establishment of STL, with a history that reveals the international community's consistent and on-going failure to insist on justice and accountability in the context of the Lebanese civil war(Clark,2009).

In addition to the UN's inaction in response to the Hezbollah-Israeli conflict of 2006 which resulted in the death of nearly 1000 Lebanese and Israeli civilians.

Laying emphases on the contrast in UNSC's actions in response to the abovementioned conflicts and the massive human rights violations that took place, all of which inevitably sharpens a sense that Justice has been politicized(Burgis-Kasthala,2013). STL has, by far, the narrowest mandate among other tribunals of an international character. Subsequent to the SG's acknowledgment of the selective nature of STL's jurisdiction and the extension of its mandate to include attacks that occurred between 1 October 2004 - 12 December 2005 or a later date to be determined by the UN and Lebanon with the consent of the SC only if they are deemed to be connected to the Hariri assassination and are of similar nature and gravity. According to Article (1) of the Agreement, factors that formulate such a connection include but are not limited to a combination of the following elements, inter alia, "criminal intent (motive), the purpose behind the attacks, the nature of the victims targeted, the pattern of the attacks (modus operandi) and the perpetrators."

The abovementioned article reveals that STL has, by far, the narrowest mandate among other tribunals of an international character. Hence, it is observed that the justice being promoted in the case of STL is Selective Justice on a political basis.

The purpose of establishing the tribunal was to put an end to impunity and set straight a foundation for criminal accountability, and was hoped to have a preventive effect; what took place was contradictory to the initial expectations, as the 2006 Hezbollah-Israeli conflict resulted in great violations of international humanitarian law, amounting in crimes that are International by nature and fall under the definition of Core Crimes(Humphrey,2011). To further stress on political assassinations

6. Challenges for the legitimacy of STL

Responding solely to PM Siniora's request might implicate that international criminal law is being politicized, as the UN is favoring one political alliance over the other. The Lebanese people are not against a trial

per say, but would favor having a trial to be a matter of Lebanese jurisdiction. It is pertinent to note that Siniora's government did not have a representation of all political alliances at the time of request (Makhzoumi,2010). The legitimacy of STL becomes further questionable because a cabinet that lacks representation of the opposition should not have the capacity to represent the state of Lebanon as a whole on the international level, in addition to the fact that the Agreement was neither had the consent of President nor the parliament within the constitutional framework. Such request by the government would amount to an illegal reduction and confiscation of the authorities of the government and the president. Consequently, as the governing coalition was in control of Lebanese political international representation, an action in response to their request for an International tribunal by overstepping the Lebanese state and its constitution would prejudice the UN's impartiality before the international community, and would be viewed as an intervention with the Lebanese internal politics.

By altering the legal nature of article 19(2) of the Agreement, the SC is bypassing the constitutional procedures for ratification and entry into force of the Agreement. As a result, this might be viewed as interference by the UNSC with the domestic affairs and legislative dependence of a sovereign state. It is also non-compliance by SC with its own decision. From another perspective, the Special Tribunal is, in the first place, a Treaty-based organ between the state of Lebanon and the United Nations. The Secretary General explicitly described the legal nature of STL as a treaty-based organ. In respect of the International Law principle *Pacta sunt servanda*, the Agreement may not enter into force, as this can be considered as an encroachment upon the sovereignty of Lebanon.

STL has made its entry with a Temporal Jurisdiction of prosecuting persons responsible for the February 14, 2005 political assassination resulting in the death of former Prime Minister Rafiq Hariri and in the death of other persons. It indicates a general aim of halting

political assassination against a prolonged history of impunity, and to surmount the several cases of state imposed amnesia. As STL extends criminal justice from enforcing the internationally agreed upon Core Crimes of whom, by nature, affront to all human kind, to applying domestic legislation that is coherent with international legal standards. Such an extension might entail that the assassination of Hariri and connected crimes rise to the level of "Gravity Threshold"(O'Brien,2012). When assessing the Gravity Threshold, as mentioned in Article 17(1)(d) of the Rome Statute and interpreted by the Pre-Trial Chamber (PTC I) of the International Criminal Court.

one should consider the following elements, noting that they are non-discretionary, but rather essential for meeting the Threshold (i) the conduct must be either systematic or large scale, and (ii) due consideration must be given to the "social alarm" caused by the conduct in the international community. (iii) the person responsible for the relevant conduct must be among senior leaders suspected of being the most responsible for the crimes that fall within the jurisdiction of the Court. Acknowledging that the Hariri assassination might be of a distinct nature and gravity, it is not fully in conformity with the abovementioned conditions.

The situations justify resort to power by the Scare. Ch VII has been invoked twice till our day today with regards to ending impunity, and enforcing criminal justice on an international level; the UNSC resolutions establishing the International Criminal Tribunal of Rwanda (ICTR)(Westberg,2010) and the International Criminal Tribunal of the Former Yugoslavia (ICTY)(Orentlicher,2010). These international ad hoc tribunals were established to prosecute persons responsible for committing serious violations of international humanitarian law; grave breaches of the 1949 Geneva conventions, Genocide, Crimes against humanity and War crimes. It should be noted that Gravity Threshold was respected while assessing the need for establishing both tribunals. The abovementioned tribunals

do not have jurisdiction over any other crimes, even ones' that are covered by international conventions but which fall within the competence of national courts. For that reason, STL would be the only international tribunal, established by virtue of a UNSC resolution, with the task of enforcing Domestic law, and a subject matter jurisdiction of prosecuting less serious crimes that have gained the "international" characteristic because the SC decided they should be so.

Contrary to that, it may be argued that having the international threshold is not a pre-requisite to establishing an international tribunal, as it is established that the SC has the absolute authority to invoke Ch VII in any case that the SC deems grave enough to constitute a threat to international peace and security in conformity with Article 39 of The Charter, as stated in the Tadic case. Legitimacy is usually derived from the tribunal's ability to represent a large number of victims, with a subject matter of jurisdiction not confined to assassinations of state officials and leaders. ICTR was established following a 100 days war that resulted in the killing of an estimated 800,000 Rwandans' (Lebensohn, 2012). As for the ICTY it has jurisdiction over crimes Committed in the Territory of the Former Yugoslavia since 1991, along with perpetrators of the Bosnian Ethnic cleansing campaign in the year of 1992, with an estimated number of casualties ranging between 140,000 – 200,000. It is worth mentioning that the assassination of Hariri was not the first of its kind since the independence of Lebanon; the record of political assassinations includes two presidents and three prime ministers as well as a significant number of parliament members and political figures before and after the Hariri Incident, All of which questions the subject matter of Selective Justice.

7. Lebanon – The Local Context

(Abboud,2013) argues that it is important to focus on why the mechanism of tribunal was extended to the Middle East. In this case, the mechanisms of international law have been used to achieve political ends. In case of

STL, there is a marked shift of the Security Council from the prior trajectories (resolution 1559, resolution 1680, resolution 1701) to resolution 1757. The aspect of disarmament of Hezbollah also indicates the culmination of domestic interests with global actors and geopolitical interests.

(Dirani,2008) analyzed social patterns in Lebanon in relation to the four determinants of social patterns. These include horizontal/vertical collectivism and horizontal/vertical individualism. The author also analyzed the determinants of contextual factors. These include age, gender, income, education, and demographic location. The author argues that there is a high collectivist orientation in the Arab countries including Lebanon. The decision making is made at a group level rather than based on the perceptions of an individual. Individual initiatives are less important than consensus, group harmony, and cooperation. In Lebanon, much emphasis is given on obedience, compliance, and shared responsibility. The reward systems take into consideration loyalty to the group and tenure. The leadership is expected to foster group culture and supportive atmosphere(Ibid).

8. Uniquenes of STL

There is a unique feature of the Special Tribunal for Lebanon in comparison to other international tribunals. The uniqueness of the tribunal is that the applicable law is in essence national in nature. The tribunal makes use of the provisions of the Lebanese Criminal Code. The provisions are related to the prosecution of crimes and terrorism against life and personal integrity. The international nature of the tribunal is such that a judiciary has been composed for the tribunal. The judiciary consists of international judges, Lebanese judges, and an international prosecutor. In this context, the provision of STL to hold trials in absentia is perplexing. According to STL article 22, the trial can be held in absentia under three conditions. The first condition is where the accused has waived the right of presence. The second condition is

where another State did not hand over the accused to the tribunal. The third condition is when the accused could not be found after taking all the reasonable steps. (Jordash and Parker ,2010) argue that holding a trial in absentia is a violation of the minimum standards of fairness. The absent accused loses the opportunity of an effective defense. The implementation of the article in its current form affects the legitimacy of the tribunal(Ibid).

STL is unique in the sense that it is the first international criminal jurisdiction that is exercising its powers over domestic crimes. Another close example is that of the Special Court for Sierra Leone. The court was given jurisdiction over crimes that fall under the law of Sierra Leone. However, in that case, domestic subject matter played a very limited role. Another example is that of the Iraqi High Tribunal. The tribunal had jurisdiction over Iraqi domestic crimes as well as international crimes. However, a unique element in STL is that it has jurisdiction solely over domestic crimes. Article 314 of the Lebanese Penal Code describes terrorist acts as those acts that are intended to generate a state of alarm. They are committed through various means. These include explosive devices, poisonous products, incendiary products, inflammable materials, and infectious agents. The acts have the potential of creating a public hazard. (Jurdi,2007) argues that this definition has various deficiencies. The first deficiency is that the explanation suffers from excessive breadth. The definition is very broad and lacks focus and emphasis. The definition does not classify the political or ideological motives for defining the acts of terrorism. As a result, even non-relevant crimes may be classified as terrorist crimes. In one case, the Lebanese Criminal Court of Cassation declared an act as a terrorist act even though it had created a state of alarm only for a few people. (Michael P. Scharf , 2011)

The definition fails to identify the extent of alarm, upon which the act should be classified as terrorist act. The second deficiency in the definition is the use of materials that cause public hazard. It is impossible to

provide an exhaustive list in the law. However, the definition excludes the attacks that may be created by weapons not creating a public hazard. For example, if a person kills ten civilians with guns, he may escape the ambit of article 314, where in fact, the act can terrorize or aim to terrorize a civilian population(Ibid).

9. Trial for the Act of Terrorism

The United Nations created STL to try the act of terrorism. The validity of the tribunal is highly debated because it is mandated to try only cases of terrorism. The subject matter jurisdiction of the tribunal is framed only in relation to the law of the land. According to a statute of the tribunal, the tribunal does not have the right of eliminating the official immunity provided by the State. In legal terms, international crimes are also known as *stricto sensu* crimes. These crimes refer to those forms of conduct, in which the people involved in these crimes are regarded as enemies of all mankind. *Stricto sensu* crimes include war crimes, genocide, and crimes against humanity. However, STL is mandated to try only cases of terrorism. To date, terrorism has not been a universally recognized and an international crime. As a result, no previous U.N. sponsored tribunal was given the task of investigating an act of terrorism. The tribunal may lead the initiative of developing an international definition related to the crimes of terrorism(Doherty,2010).

On January 21, 2011, STL's pre-trial judge raised several questions that dealt with the crime of terrorism. The first question asked if the tribunal can take into account international definitions of terrorism when article 2 of the status clearly mentions referring to the Lebanese Criminal Code. The second question asked that if the international notions on terrorism are to be applied, is there any such international definition of terrorism? The third question asked if there is no universal and international definition of terrorism, how it is possible for the chamber to interpret Lebanese definition of terrorism. The chamber subsequently argued that terrorism constitutes a crime under international law. The international definition is applicable to the law of

Lebanon(Ambos,2011).

10. Compulsion for Invoking Chapter VII

As per the original conditions, STL was to be established through the agreement between UN and Lebanon upon ratification by the parliament of Lebanon. However, the domestic political deadlock prevented parliamentary ratification. The Security Council of UN emphasized that if the ratification could not be achieved by June 10, 2007, statute of STL will come into force automatically. The government of Lebanon could never ratify the agreement from the parliament and STL entered into force on the announced date. The indictment was filed against four accused. The four accused were Salim Jamil Ayyash, Hussein Hassan Oneissi, Mustafa Amine Baddredine, and Assad Hassan Sabra. They had the allegations that they were involved in the attack on Rafik el Hariri. In June, 2011, the pre-trial judge confirmed this allegation. The four accused people filed motions against the judgment. They challenged the jurisdiction of the tribunal and based their arguments on the legality of the tribunal(Nikolova,2013).

The jurisdiction of STL is totally focused on one crime. The main driving force behind the establishment of this tribunal was France. There were various reasons for its keen interest. The first reason was the historical ties of France with Lebanon. Then president of France Jacques Chirac and Rafiq Hariri had close personal relationship. France also made efforts to address concerns of other members of the Security Council on this issue. The tribunal was initially envisioned as a hybrid tribunal. It had to be formed through the bilateral treaty between Lebanon and the UN. The model followed for this arrangement was the Special Court for Sierra Leone. However, the failure of the Lebanese government to get acceptance within the country compelled the UN secretary general to invoke chapter VII for bringing the agreement into force. The narrow jurisdiction of the tribunal generated a lot of controversies. The jurisdiction is only limited to the assassination of Hariri and other related attacks. The attacks should fall in the date range

between October 1, 2004, and December 12, 2005. Another limitation is the subject matter jurisdiction of the tribunal. The jurisdiction is limited to crimes under the law of Lebanon. These also include the provisions that are related to the punishment and prosecution of acts of terrorism. (Cerone,2011) argues that Internationalization for the tribunal was deemed necessary for capacity and security reasons. The spirit was to bolster judicial independence. However, the international authorities deemed the law of Lebanon a sufficient basis for establishing the responsibility of the crime(Ibid).

11. Decision of the Appeals Chamber

The appeals chamber in the Special Tribunal for Lebanon made an observation that it has a mandate under article 2 of the statute to consider the clauses on terrorism as described in the articles 6 and articles 7 of the law of Lebanon (Statute of the STL). These articles enacted in the Lebanese law on January 11, 1958. They were in relation to increase in penalties for civil war, sedition, and interfaith struggle. The appeals chamber concluded that the tribunal should consider the criminal law of Lebanon instead of considering international criminal law. The crime of terrorism should be established under the Lebanese law. The appeals chamber also held that although the tribunal is not directly applying the international law, the international law may be referred for the application and interpretation of Lebanese law. The basis of this decision was the status of the tribunal as an international tribunal. The tribunal has a transnational character and Lebanon is bound to the customary rule as a member of the international legal order(Bernhaut,2011).

12. Internationalized Court

Theoretically, STL cannot be strictly classified to the category of international criminal courts. During the voting session on resolution 1757 (2007), Russia made an observation that STL has hybrid and mixed nature. These attributes prevent the categorization of STL as an international criminal jurisdiction. (Serra,2008) argues that such courts should be named as internationalized courts. They are transitional criminal jurisdictions that

have been formed under the UN aegis. Their formation is marked by international crisis and serious violations of humanitarian law. In a hybrid court, foreign judges sit with domestic judges. Both try together the alleged perpetrators of crimes. The courts enjoy a primacy position over the domestic system of law. They apply local criminal law with amendments for international standards. The hybrid formula had its first test in Kosovo in February 2000. Afterwards, it was also applied in other post crisis contexts. Examples include The UN Transitional Administration in East Timor (from July 2000 to May 2005), Bosnia-Herzegovina (since March 2005), Sierra Leone (since July 2001), and Cambodia (since July 2006)(Ibid).

13. RESERVATIONS ON STL

There are a number of serious reservations and questions related to the legitimacy and focus of STL. It can be regarded as an international case of legal exceptionalism and tribunalization. The Security Council did not make it clear what qualitative elements of the assassination give legitimacy to the international action. On the contrary, it is easier to frame the event as a domestic issue. It is not clear how the assassination was so significant that it necessitated formation of an international judicial body for the prosecution of a single crime of murder. Another thing that is unclear is why the crime was deemed to be tried as a crime of terrorism. Another thing, ambiguous in this case, is the sudden labeling of Hezbollah as terrorists by the Special Tribunal for Lebanon. The tribunal held it as potential perpetrator of the event. The political biases and preoccupations raise serious questions about the legitimacy of STL. It is difficult to justify in legal terms this particular breach of Lebanese sovereignty(Abboud,2013).

14. Joint Criminal Enterprise

The statute of STL recognizes Lebanese Criminal Code as the main source of crimes. Hence, the punishments also need to be in consistency with the same code. However, the punishments are not recognized in the same code. Hence, there is a risk of the violation of the

legality. This violation is particularly evident when it comes to command responsibility. From the point of view of the principle of legality, the only legal system that is pertinent in this case is the Lebanese legal system. It is because the crimes at hand are the crimes against the law of Lebanon. International principles and rules are not relevant in this case. However, the Security Council made it relevant through the inclusion of common purpose liability into the Statute. (Milanovic,2007) emphasizes a point related to the complexity of international jurisprudence. It is not possible for the prosecutor to charge joint criminal enterprise (JCE) with a broad common purpose. As an example, consider that the charge is maintaining Syrian influence in Lebanon. It might have been the motive for the assassination, but it is not a crime within the jurisdiction of the tribunal. The prosecutor can only charge the narrowest possible common purpose. It could be the basic crime over which the tribunal has jurisdiction. However, the narrow common purpose will in essence reduce joint criminal enterprise to regular complicity. There will be a little value addition from the use of the concept. The prosecution will need to prove for each defendant that he shared the purpose of assassination. If the prosecution could prove that, it would never need joint criminal enterprise(Ibid).

15. Foreign Policy Perspective

In the cases of state-sponsored political assassinations, foreign policy is of crucial importance. The main motive in such cases may be the tension between an international norm and the ambition of state actors to protect the national interests as per their perceptions. The assassination of Hariri cannot be analyzed solely from the perspective of foreign policy. There is an existence of multiple interest groups in Lebanon. They might have played some role in the assassination of Hariri. According to one opinion, Hariri and Jumblat were leading the anti-Syrian coalition. The coalition had threatened Syrian interests that might have tempted Syria towards this act. However, it is only an

allegation and one does not know the extent to which it is true. The only thing that can be implied from the assassination of Hariri is that the matters of foreign policy intersect with the contemporary themes of international organizations. The effectiveness and the purpose of STL are dependent on how the assassination of Hariri is defined. The argument that the tribunal performs a moral function blurs the difference between political assassination and terrorism. The debates over the assassination highlight the differences in the definition and meaning of political assassination. The characterization of an act as an act of terror or a political assassination is always a social, political, and cultural construction(Bosco,2009).

16. Influencing Factors

STL has been a major cause of deadlock in Lebanon. The anti-Syria coalition has majority in the government. It consistently asked for the establishment of an international tribunal to probe the assassination of Hariri. The coalition hoped that it would be proved in the tribunal that Syria played a key role in the assassination of Hariri. On the other hand, Hezbollah-led opposition opposed the establishment of STL. It termed it as interference by the outside actors. In this situation, resides a powerful paradox. The political majority is in favor of the formation of the tribunal and wants to fight against impunity. The political majority is not only in favor of the establishment of STL, but also challenge its limited mandate. The families of other people that lost their lives in this incident ask why only the family of one man is entitled to the truth; whereas others are being denied the same truth. The families mention three important sources in favor of their stance; international humanitarian law, international criminal law, and international human rights law(Jaquemet,2009).

According to a report of the Director of National Intelligence, U.S., there is an acute political tension in Lebanon due to the pending indictments against Hezbollah. It has threatened renewed violence in Lebanon. Hezbollah succeeded in collapsing the

government and attempted to install a new government. It aimed that by installing a new government, the cooperation of Lebanon with STL could be ended. As a result, Sunnis that were aligned with Prime Minister Sa'ad Hariri started street protests against the power play of Hezbollah. Several factors aggravated these tensions. These include uncertainty about the new government, the potential of the escalation of localized violence, and the fate of the tribunal. Another important factor in the context of Lebanon is the role of Al-Qa'ida. It remains interested in the use of Sunnis in Lebanon to carry out terrorist acts against Israel, West, and the U.S. However, Al-Qa'ida is not positioned well to establish itself due to organizational shortcomings, lack of trusted leaders, disunity among the groups, and strong opposition from local security services(Clapper,2011).

17. Conclusion

In a nutshell, it's pertinent to identify that the political situation in Lebanon comprises a unique case of a non-comprehensible state policy; where the country is not represented solely by the president or by the government or the parliament for that matter. As each of the above, represent their political alliances rather than the country as a whole.

Further noting that impunity has become a commonly accepted approach in response to hideous crimes, which was, and still remains evident through the prolonged state enforced amnesia that continues to be welcome by the Lebanese people. STL may, in the exceptional case of the state of Lebanon, embody the law enforcement mechanism that, till recent years, has failed to exist, eventually putting an end to impunity.

In conclusion, International Law remains of a distinct nature, not confined to the legal principles of national law, and thus, there can be no definite answers to the questions raised throughout this article, it definitely comprises a grey area. As the Agreement was enforced through a SC Resolution, procedurally, the legality of the Tribunal may not be questioned. Contrary to that, in the present circumstances, singling out for prosecution the

assassination of Rafiq Hariri, while disregarding a score of other Grave violations of International Humanitarian Law and what have come to be considered as Core

Crimes could have serious implications on the impartiality and objectivity of the tribunal and invoke the perception of selective justice.

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مشروعية تشكيل المحكمة الخاصة في لبنان

محاسن الجاغوب *

ملخص

تقدم هذه الدراسة تحليلاً نقدياً للمحكمة الخاصة في لبنان ومدى شرعية تشكيلها . ويرى الباحث أن المحكمة تشكلت دون أخذ جميع الاطراف المعنية والقوى السياسية في لبنان بعين الاعتبار، حيث إن المحكمة الخاصة في لبنان هي أيضاً مثال على العدالة الانتقائية. ويعتقد الباحث أنه كان على مجلس الأمن مراعاة احترام السيادة الداخلية اللبنانية ونظمها القانونية عند تشكيل المحكمة .

لقد أوضحت هذه الدراسة أن ما يميز هذه المحكمة عن سواها من المحاكم الجنائية الأخرى ذات الطابع الدولي أنها الأولى من نوعها التي تشكل للمحاكمة عن جريمة اغتيال سياسي وصفت بالإرهابية. والأمثلة من المحكمة الجنائية الدولية ليوغوسلافيا السابقة (ICTY) والمحكمة الجنائية الدولية لرواندا (ICTR) التي توفر المبادئ التوجيهية والسوابق التي يجب اتباعها.

الكلمات الدالة: المحكمة الخاصة بلبنان، المحاكم الخاصة بيوغوسلافيا سابقا ورواندا، رفيق الحريري.

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