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International Law Programme Meeting Summary

The Special Tribunal for Lebanon (STL)

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INTRODUCTION

This is a summary of a meeting held at Chatham House on 14 September 2012.

Marten Youssef, spokesperson of the Special Tribunal for Lebanon¹ discussed the unique features of the Special Tribunal and recent developments in the Special Tribunal's work.

This meeting was not held under Chatham House Rule.

The Creation of the Special Tribunal for Lebanon (STL)

The Special Tribunal for Lebanon (STL) was established on 1 March 2009. Its main mandate is to try those accused of committing the 14 February 2005 attack - and connected cases - which resulted in the killing of 23 people, including the former prime minister of Lebanon, Rafiq Hariri, and the injury of many others. The tribunal was established following a request by the Government of Lebanon to the United Nations. The subsequent agreement between Lebanon and the United Nations came into force through [UN Security Council Resolution 1757](#) of 30 May 2007. The Tribunal has four organs: Chambers, The Office of the Prosecutor, the Defence Office and Registry. The Tribunal's headquarters are in The Hague, the Netherlands. The Tribunal has also an office in Beirut, Lebanon.

Recent developments

The first trial is scheduled to commence on 25 March 2013.

The Tribunal's Unique Features

The STL is characterised by the following features, most of which are unique to this Tribunal and do not exist in other international tribunals or courts:

- Trying the crime of terrorism as a distinct crime;
- Allowing trials *in absentia* (without the accused being present or in the custody of the tribunal);

¹ Marten Youssef has worked as a journalist in the Middle East and Africa, as well as in Canada. He has been with the Special Tribunal for Lebanon as the spokesperson since March 2011.

- Allowing victims' participation in the trial;
- The establishment of an independent Defence Office;
- An autonomous pre-trial judge.

DISCUSSION

How can trials in absentia conform to the Tribunal's obligations under international law regarding due process rights?

Trials *in absentia* potentially compromise the accused's rights under international law (e.g. International Covenant on Civil and Political Rights, Art 14) to be present at his trial and to defend himself, while using counsel of his own choice and examining witnesses. Indeed, trials *in absentia* are justified only in exceptional circumstances and the same rule continues to apply in relation to trials before the STL. The rationale guiding the Tribunal is that justice cannot be paralysed due to the unwillingness of the accused to acknowledge the Tribunal or the refusal of a state to hand him over to the Tribunal. Therefore, trials *in absentia* will be conducted only where all measures to bring the accused to trial have been exhausted. In addition, the fact that a trial *in absentia* is permitted, or already taking place, does not exempt the Lebanese authorities and INTERPOL from pursuing their efforts to arrest the accused and bring him to trial. In this respect it should be noted that the Lebanese government is obliged to report to the Tribunal, on a monthly basis, on its efforts and progress on this matter.

As to the rights of the accused, each accused is represented by a defence counsel who is appointed by the Defence Office to ensure the rights of the accused to a fair trial. In addition, each accused who is tried *in absentia* has a right to request a retrial. The legacy of the Tribunal will be measured by the fairness of its trials and ensuring the right of the accused, even the one who is sentenced in *absentia*.

The point was made in the discussion that, unlike cases where the accused is physically present, in trials *in absentia* the defence counsel cannot communicate with his client and thus cannot present an alibi; therefore, the role of the defence in such cases is to check the strength of the prosecution and maybe to suggest an alternative scenario. In general, the Defence Office enjoys a relatively generous budget that can maintain a permanent staff of legal counsel and investigators who work on a full time basis. In addition, the existence of an independent Defence Office facilitates an institutional treatment regarding common matters of the defence and thereby avoids the need for each defence counsel to apply to the Tribunal separately.

What will happen if the Tribunal convicts in absentia and then by the time the accused wishes to exercise his right to a retrial the Tribunal is closed?

The United Nations, the international community and the Lebanese Government will need to decide what will happen in such cases. Nevertheless, it is clear that the right of the accused

to a retrial will continue to exist. It is yet to be seen how it will work in practice. One option may be to summon a special *ad hoc* panel to try such cases if and when the need arises.

How can the Tribunal comply with international human rights norms where the Lebanese domestic law contradicts such norms?

The Tribunal must respect the accused's rights. Where the Lebanese domestic law contradicts international human rights norms the Tribunal will comply with the latter. For example, the Lebanese law allows capital punishment and forced labour. Such punishments, however, are not an option for the Tribunal.

One of the due process rights of the accused is to allow him a reasonable time to prepare his defence. How will the Tribunal respond to adjournment requests from the defence (to allow more time for preparation of the defence) considering the pressure from the Tribunal's donors to commence the trial?

March 2013 is a tentative date. Closer to the hearing date the defence will have an opportunity to request an adjournment if this is required. The events in the region may also affect the date. It should be noted that the pressure to commence the trial comes not only from the international donors but also from within Lebanon given the time which has elapsed since the events occurred.

What is the relation between the STL and the United Nations International Independent Investigation Commission (UNIIC) and how does the STL address the problem of the 'false witnesses'?

The STL and UNIIC are completely separate organisations. Before the STL was established the United Nations established the UNIIC, which worked on Rafiq Hariri's assassination. The role of UNIIC was to gather evidence and to assist the Lebanese authorities to conduct their investigations. Allegedly, some people gave the Investigative Commission false testimonies that eventually lead to the arrest and detention of four generals. However, when the Tribunal was established the Prosecutor examined the evidence and decided that it was not sufficient to sustain the charges. He therefore requested the pre-trial chamber to release the general and subsequently, the pre-trial chamber ordered their release. At present, the Tribunal has no jurisdiction to act upon the matter of false witnesses further due to the fact that it is not within its mandate to prosecute individuals who allegedly gave false testimony to the UNIIC.

Can the Tribunal order compensation to victims?

The Tribunal will not award compensation to victims. However, according to the Statute of the Tribunal, victims may bring an action in a national court or other competent body to obtain compensation based on the decision of the Tribunal.

Is it expected that the Lebanese Government will fulfil its obligation to fund the Tribunal?

According to the agreement between the United Nations and Lebanon, Lebanon is obliged to fund 49% of the Tribunal budget (the remaining 51% comes from voluntary contributions from states). In the last four years, the Lebanese government complied with this obligation. Last year, despite a significant delay in payment, the Lebanese government eventually forwarded the money. The president and prime minister assured the Tribunal that Lebanon will fulfil its obligation and it is expected that they will do so.