

The *Ratione Subjecate Materiae* of the Special Tribunal for Lebanon

Imaddin Muhamad

School of Law

Damascus University

Abstract

The focus of this paper is to address the problems concerning the subject-matter jurisdiction of the Special Tribunal for Lebanon (STL). It discusses the *ratione subjecate materiae* of the international tribunals, and tribunals of international character, in contrast to the STL, which is contrary to the other tribunals in which the *ratione subjecate materiae* is limited to national crimes under the Lebanese Criminal Code (LCC). The paper will also examine the crime of terrorism as it is stated in the LCC by analysing the *actus reus*, and *mens rea* of the crime, and in doing, so will conclude that terrorism is not yet considered an international crime. Although the mental and material elements of crimes against humanity are met in the assassination of Rafik Hariri, (and other attacks are included within the subject-matter jurisdiction of the STL), these crimes were not classified as such. This appears to be due to the will of the Security Council (SC) to sever the STL's authority to prosecute other atrocities committed on the territory of Lebanon in recent years, especially serious war crimes and crimes against humanity which have been committed on that same territory in the period of mid-2006 during the Israeli aggression on Lebanon. In addition, there has been the positioning of the institution (STL) generally as one that is a national tribunal with international features, rather than a truly international tribunal. This, in itself, may lead to complicate the mission undertaken by the STL Prosecutor, and will do little to assist any of the issues surrounding 'Chain of Command' immunity regarding Heads of State and other Senior Officials.

I. Introduction

The trials before the Special Tribunal for Lebanon (STL) commenced on 16 January of this year, 2014.¹ It will be both important and relevant to address the problems relating to the subject-matter jurisdiction of this tribunal which will undoubtedly emerge over the course of the trials. This is due to the fact that this tribunal has a unique character for two main reasons. Firstly, despite it being an international tribunal it will exercise its jurisdiction solely upon crimes derived from domestic sources; the provisions of the Lebanese Criminal Code (LCC) relating to the prosecution and punishment of acts of terrorism, and any relevant articles related to crimes and offences against life and personal integrity; illicit associations and failure to report such crimes and offences in the LCC. Secondly, based upon these facts alone it will also constitute a very narrow mandate for a tribunal of an international character. This is especially surprising concerning a country like Lebanon, where many other political assassinations, terrorist attacks and also war crimes have been committed. This in itself makes it rather extraordinary that the judicial scope of the STL is quite limited.

This article analyses the subject-matter jurisdiction of the STL by considering the very limited and narrow mandate of its subject-matter jurisdiction, which will create and produce legal problems for the STL. This article will also examine the extent to which the Lebanese definition of terrorism, as applied by the STL, may contribute to the pursuit of international law and justice. This will be a matter which will rest upon the discretion and creativity of the judges who will be responsible for the development of the Tribunal.

In order to address these matters in a coherent manner, it will be necessary to proceed with the historical back-ground of the attack on the Lebanese ex-premier (section II), followed by an analysis of the *ratione subjecate materiae* of the international tribunals and the tribunals of international character (section III), the unique characteristics of the STL (section IV), terrorism as identified under the Lebanese criminal code (section V) including felonies and misdemeanours against human life, physical integrity and illicit association(section VI) and finally those acts under the jurisdiction of the STL which are considered crimes against humanity (section VII).

¹Ayyash et al. (STL-11-01)STL-11-01/PT/PTJ/F1026/A02/PRV/20130802/R242559-R242602/EN/af

II- Historical Background:

At approximately 12.55pm on 14 February 2005, an explosion outside the St. George Hotel in Beirut killed the ex-Premier of Lebanon, Rafik Hariri, and 22 other people.² The SC was swift to condemn the attack and the United Nations (UN) Secretary-General dispatched a UN fact-finding commission to Lebanon. On 7 April 2005, the SC established “an international independent commission,³ determining that this terrorist act constituted a threat to international peace and security.⁴ On 13 December 2005, the Head of the Lebanese Government requested the establishment of a tribunal to try those charged in the Hariri assassination.⁵ By 13 November 2006, an agreement was reached between the Government of Lebanon and the UN for a Special Tribunal for Lebanon,⁶ and, by early February 2007, the UN and Lebanon had signed an Agreement to create a Special Tribunal for Lebanon. However, due to the parliamentary crisis in Lebanon, this agreement was unable to receive satisfactory ratification. Therefore on 30 May 2007 the SC, acting under Chapter VII of the UN Charter, established the STL.⁷ By 21 December 2007, a UN Headquarters’ Agreement enabling the seat of the STL to be held in the Netherlands was signed by the UN Secretary-General.⁸ The STL adopted its rules of procedures and evidence on 20 March 2009,⁹ the trials before the STL started on 16 January 2014.¹⁰

III. The *Ratione Subjectae Materiae* of the International Tribunals and Tribunals of International Character

The *ratione subjectae materiae* of the international tribunals consists of the core international crimes (war crimes, crimes against humanity and genocide) as established in the Nuremberg Court (IMT);¹¹ Tokyo Tribunal (IMTFE),¹² Yugoslavia Tribunal (ICTY),¹³ Rwanda Tribunal (ICTR),¹⁴ the East Timor Court

²S/2006/760(2006), Fifth Report of the UNIIC, Para. 18.

³UNSC/RES/1595(2005)Middle East.

⁴ UNSC/RES/1636(2005) Middle East..

⁵S/2005/783 Letter from Prime Minister of Lebanon to UN Secretary General.

⁶ S/2006/893Report of the Secretary-General on the establishment of a special tribunal for Lebanon.

⁷S/RES/1757(2007) the situation in the Middle East.

⁸SG/SM/11347 Special Tribunal for Lebanon to Be Based at the Hague, 21 Dec 2007.

⁹STL/BD/2009/01/Rev. 3

¹⁰Ayyash et al. (STL-11-01) STL-11-01/PT/PTJ/F1026/A02/PRV/20130802/R242559-R242602/EN/af

¹¹ Art. 6 IMT Charter.

¹² Art. 5 IMTFE Charter.

¹³ Art. 1,2,3,4, and 5 ICTY Statute.

¹⁴ Art. 1, 2, 3, and 4 ICTR Statute.

(UNTAET),¹⁵ The Extraordinary Chambers in Cambodian Courts (ECCC),¹⁶ and the International Criminal Court (ICC),¹⁷ The trial of those accused of the assassination of Rafik Hariri could not be brought before the ICC, not because Lebanon is not a signatory to the Rome Statute, but rather because the crime (terrorism) is not among those of which the ICC has jurisdiction.¹⁸ It is worthy to note that a number of these tribunals, such as the Sierra Leone Court (SCSL),¹⁹ have jurisdiction over crimes under the national criminal law, in addition to those crimes which consist of violations against International Humanitarian Law (IHL).

IV. The Unique Characteristics of the Special Tribunal for Lebanon (STL)

The Special Tribunal for Lebanon (STL) is the seventh tribunal of international character established under the auspices of the United Nations (UN),²⁰ and has jurisdiction over those persons responsible for the attack of 14th February 2005. If the Tribunal finds that other attacks that occurred in Lebanon between 1 October 2004 and 12 December 2005, (or any later date decided by the Parties and with the consent of the Security Council), are connected, and are of a nature and gravity similar to the attack of 14 February 2005, then in accordance with the principles of criminal justice it will also have jurisdiction over those persons responsible for such attacks. This, incidentally, means that it may not be ascertained until at the very end of the trial whether the Tribunal has jurisdiction over certain acts, which may lead to some practical but interesting problems. The STL may find itself in a situation where it has been proven beyond reasonable doubt that the defendant has committed an attack, but where there is no proof of a connection of that required by Article 1, the Tribunal could not enter judgment as it would lack jurisdiction but nor could it refer the case back to the Lebanese courts as this is not foreseen in the Statute.²¹ Therefore, the STL will have jurisdiction over local crimes under the LCC which will be applicable to the prosecution and punishment of crimes of terrorism; crimes and offences against

¹⁵ Art. 4, 5, 6, 7, 8, and 9 of the UNMIK Regulation 2000/15.

¹⁶ Art. 3, 4, 5, 6, 7, 8 and 9 of the Law on the Establishment of the ECCC 2004.

¹⁷ Art. 6, 7 and 8 ICC Statute.

¹⁸ **Daoud Khairallah**, 'The Hariri and Saddam Tribunals: Two Expressions of Tortured Justice', **1(4)** *Contemporary Arab Affairs*, (2008), at 593.

¹⁹ Art. 2, 3, 4, and 6 SCSL Statute.

²⁰ **Bert Swart**, 'Co-operation Challenges for the Special Tribunal for Lebanon', **5(5)** *Journal of International Criminal Justice*, (2007), at 1153.

²¹ **Bjorn Elberling**, 'The Next Step in History-Writing through Criminal Law: Exactly How Tailor-Made is the Special Tribunal for Lebanon?' **21(2)** *Leiden Journal of International Law*, (2008), fn. 25.

life and personal integrity; illicit associations and failure to report crimes and offences, including the rules regarding the material elements of a crime, as well as criminal participation and conspiracy.²² In addition, Articles 6 and 7 of the Lebanese law of 11 January 1958 will also be applied.²³ The STL will be the first criminal jurisdiction of an international character to hear prosecutions of the crime of terrorism. It may prove to be the first international criminal jurisdiction to try only one case, taking into consideration the common features of the seventeen attacks that the STL will have jurisdiction to try the perpetrators for.²⁴

Considering the politically motivated efforts on the part of some of the permanent members of the SC who worked the hardest to establish the STL, combined also with the abuse of discretion on the part of the SC in exercising its authority, are factors accounting for the uniqueness of certain characteristics of the Tribunal including its departure from conventional precedent and legally acceptable norms. The STL is the only tribunal established under the auspices of the UN that has not been delegated to deal with flagrant violations of international humanitarian law. The main crime the STL will deal with is a politically motivated murder, described by the UN Security Council as a "terrorist act".²⁵ All the resolutions issued by the SC, in what is termed "War on Terrorism", request that member States adopt appropriate legislation to prosecute and punish the perpetrators of such crimes.²⁶ On both a political and legal level, the principle of the rejection of selective justice had to be clearly stated, and as such, the UN was thus affirming that, from the view of the international community, the deaths of certain individuals were not more important than those of others,²⁷ however the subject matter jurisdiction of the STL refers to the contrary, while effectively ignoring other war crimes which took place in Lebanon prior to the assassination of Rafik Hariri. Another distinguishing feature of the Hariri Tribunal is that it is the first special tribunal established to try the murders of a former prime minister or prominent individual. It is important to note that those major world powers which were so vocal about establishing the STL failed to intervene similarly after the recent assassination of former Pakistani Prime Minister, Benazir Bhutto, notwithstanding the appeal of many

²² Art. 2 (a) STL Statute.

²³ Art. 2 (b) STL Statute.

²⁴ **James Cockayne**, 'The Special Tribunal for Lebanon-A Cripple from Birth?' Foreword, **5(5)***Journal of International Criminal Justice*, (2007), at 1062.

²⁵ **Daoud Khairallah**, *supra note 15*, at 593.

²⁶ See as an example: SC/RES/1373 (2001) Threats to international peace and security caused by terrorist acts, SC/RES/1566(2004) Threats to international peace and security caused by terrorist acts.

²⁷ **Choucri Sader**, 'A Lebanese Perspective on the Special Tribunal for Lebanon: Hopes and Disillusions', **5(5)***Journal of International Criminal Justice*, (2007), at 1085.

Pakistanis, and others, to establish an international tribunal or even an international commission to investigate her murder.²⁸ To conclude, it appears that the STL possesses extremely unique characteristics concerning its subject-matter jurisdiction which may impact upon its proceedings and ultimately affect its judicial outcome.

V. Terrorism under the Lebanese Criminal Code (LCC) 1943

The LCC states: Article 314: “Terrorist acts are all acts intended to cause a state of terror and committed by means liable to create a public danger such as explosive devices, inflammable materials, toxic or corrosive products and infectious or microbial agents.”²⁹

The LCC criminalises conspiracy to commit a terrorist attack and makes it punishable by a fixed-term of hard labour. A terrorist act, under the LCC, would carry a penalty of hard labour for at least five years and a penalty of hard labour for life if it results in even partial destruction of a building, industrial establishment, vessel or other facility or impedes any means of broadcasting, communications and transport. The death penalty would be imposed if the act leads to the death of a person or to the complete or partial destruction of a building in which one or more persons are present.³⁰ This has since been superseded by The Law of 11 January 1958, which provides for a supplementary criminalization of conspiracy, and increased the penalties applicable to terrorist crimes.³¹ The LCC, under the section on Crimes against the Internal Security of the State Section, criminalises crimes against the Constitution, (Articles 301, 302,303, 304 and 305 LCC), and usurpation of the political, civilian or military institutions of the State, (Article 306 LCC), but without defining each of these terms.³² A paragraph was also recently added to this Article criminalising the funding of terrorism or terrorist activities or terrorist organisations.³³

In response to the question presented by the pre-trial judge of the STL, of whether the Tribunal should consider international notions on terrorism, despite Article 2 of the Statute only referring to the Lebanese Criminal Code (LCC), the

²⁸ **Daoud Khairallah**, *supra note 15*, at 593.

²⁹ Art. 314 of the (LCC) 1943.

³⁰ Art. 315 LCC.

³¹ Art. 6 of the Law of 11 January 1958.

³² **Nidal Nabil Jurdi**, ‘The Subject-Matter Jurisdiction of the Special Tribunal for Lebanon’, *5(5)Journal of International Criminal Justice*, (2007),fn.22.

³³ Art. 316 *bis* LCC.

Appeal Chamber stated that it will apply Lebanese law as interpreted and applied by Lebanese courts,³⁴ allowing the recourse to Lebanese criminal law is to this law in action.³⁵ Therefore, the application of Lebanese law requires more than a narrow examination of specific past decisions. It requires the Tribunal to objectively identify the principles that express the 'state of the art' in Lebanese jurisprudence.³⁶ As an international court, it may depart from the application and interpretation of national law by national courts under certain conditions: such as when a specific interpretation or application appears to be *unreasonable*, or may result in a *manifest injustice*, or is *not in consonant with international principles and rules* which are legally binding upon Lebanon.³⁷ Therefore, the Tribunal must apply the provisions of the LCC, and not those of international treaties ratified by Lebanon or customary international law to define the crime of terrorism.³⁸ The Tribunal notes, however, that international conventional and customary law can provide guidance to the Tribunal's interpretation of the LCC.³⁹ The Tribunal found that unlike many national systems, which provide for the implementation of customary international law in their Constitution, in their ordinary law, or in case law, Lebanese law does not expressly and specifically observe the application of customary rules or principles of international law.⁴⁰ Customary international law can be and normally is applied by Lebanese courts. However, this body of international law may not be applied in penal matters without the appropriate national legislation which incorporates international rules into Lebanese criminal provisions.⁴¹ The Appeal Chambers have concluded that the allegations falling under the jurisdiction of the Tribunal have been uniquely regarded by the UN Security Council as a "threat to international peace and security" and have also justified the establishment of an international Tribunal entrusted with the task of prosecuting and trying the alleged composers of those acts. The Tribunal therefore holds that it is justified in interpreting and applying Lebanese law on terrorism in light of international legal standards on terrorism, given that these standards specifically address transnational terrorism and are also binding upon Lebanon.⁴² The fact that a terrorist act may threaten

³⁴*Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging*, STL-11-01/I/AC/R176bis, 16 February 2011, ('Decision'), Para 35.

³⁵**Kai Ambos**, Case Comment: Judicial creativity at the Special Tribunal for Lebanon: is there a crime of terrorism under international law? (24) *Leiden Journal of International Law*, 2011, p. 657.

³⁶Decision, Para 36.

³⁷Decision, Para 39.

³⁸Decision, Para 44.

³⁹Decision, Para 45.

⁴⁰Decision, Para 115.

⁴¹Decision, Para 114.

⁴²Decision, Para 124.

international peace and security does not change the applicable national law. Indeed, it is up to the territorial state to decide, pursuant to its domestic rules, whether it applies its national terrorist offences (if there are any) or takes recourse to international law.⁴³ This definition of terrorism in the LCC is consistent with international principles of law. Thus, there is no reason for the Tribunal to depart from it. It is therefore appropriate that Article 314 LCC can and should be applied as understood in Lebanese practice.

A. The *Actus Reus* of Terrorism under the Lebanese Criminal Code

To constitute an act of “terrorism” pursuant to Article 314, the underlying conduct must have been committed by various means and methods. Such means and methods included explosive devices, inflammable materials, toxic or corrosive products or infectious or microbial agents. This requirement effectively sets a limit regarding the range of acts that could qualify as terrorism under that provision. Whilst the list of the means and methods is not exhaustive, the principle *ejusdem generis* would limit any culpable conduct to those similar in kind and nature to those listed in the provision (“such as”). This explains that conduct such as slashing tyres, gluing door locks or sending threatening letters would not qualify. Case law suggests that the means used by the accused must be liable to create a public danger, i.e., reach beyond those directly targeted by the act and in a sufficiently broad group that it is not merely the unintended consequences of the use of that means or method. This has been said to exclude from the range of that offence any crime committed by a firearm. While such acts may constitute a criminal offence under Lebanese law, they will not be qualified as terrorism under Article 314. The definition of what might qualify as explosive devices, inflammable materials, poisonous or incendiary products or infectious or microbial agents is primarily an issue of evidence in relation to which technical or expert evidence is called at trial and which has to be determined on a case by case basis. It is useful, in this context, to remember that “terrorism” forms part of a category of offences against the State’s internal security thereby suggesting that its effect should be directly relevant to the State’s internal order and not just be limited to an unidentifiable group of individuals. This explains, for instance, that the use of a small quantity of explosives (whilst being included as one of the means listed above) or a violent

⁴³ Kai Ambos, ‘Case Comment’, *supra note* 32, at 660.

armed exchange between two individuals is insufficient to bring the matter within the definition of that crime.⁴⁴

The Appeals Chamber concluded that Lebanese courts appear to have further concluded that the definition of (terrorist) "means" is limited to those means which *as such* are likely to create a public danger, namely a danger to the general population. It would follow that the definition does not embrace any non-enumerated means referred to in Article 314 ("means such as ... ") unless these means are similar to those enumerated in their effect of creating a public danger *per se*.⁴⁵ Thus, according to Lebanese courts the means that may cause a "public danger" include only those means which may harm innocent victims who are not specifically targeted but are injured by mere chance. In effect, if the innocent victims happen to be in the location where the terrorist means is used.⁴⁶ The Chamber did not agree with this restrictive interpretation of the means requirement and suggested a broader understanding of public danger. Article 314 requires that the means used to carry out a terrorist act should be capable of causing a "public danger", namely that the means, in addition to injuring the physical target of the act, be such so as to expose other persons to adverse consequences. This may occur even when a terrorist shoots at a person in a public road, thereby endangering a large number of other persons simply because they happen to be present at the same location. Moreover, a "public danger" may also occur when a prominent political or military leader is killed or wounded, even if this occurs in a house or in any other closed place with no other persons are present. In such cases, the danger may manifest if there are other leaders, belonging to that same faction or group, being assassinated or in causing a violent reaction by other factions. These consequences are undoubtedly capable of causing a common or "public danger", as required by Article 314 of the Lebanese Criminal Code, regardless of the weapon used.⁴⁷

The perspective of the Appeal Chamber can be challenged upon various grounds. Firstly, it leads to a limitless extension of the crime. While the criteria of the means is not exhaustive, ('such as'), the means listed share a common characteristic which does not allow for their control once they have been employed. As such their use entails uncontrollable risks for an undetermined number of persons and objects. This is the justification to qualify the respective acts, on the objective level, as 'terrorist' and the perpetrators as 'terrorists'. For the interpretation of the additional means not listed, they must also create

⁴⁴Defence Office's submission pursuant to Rule 176 *bis* (31 January 2011), para 77- 80.

⁴⁵Decision, Para 52.

⁴⁶Decision, Para 53.

⁴⁷Decision, Para 126-7.

uncontrollable risks. If the connection between the listed and the additional means is severed, as suggested by the Chamber, the latter ones can no longer be reasonably defined. Ultimately, such a 'liberal' interpretation of the means requirement violates the *lex certa* element of the principle of legality (*nullum crimen sine lege*). It would be an *ex post facto* interpretation of crimes already committed and would therefore also conflict with the *lex praevia* rule.⁴⁸ The Chamber itself sees that its interpretation may expand one of the objective elements of the crime as already applied in Lebanese cases. This conflicts with the principle of legality.⁴⁹

The maxim *nullum crimen sine lege* (substantive legality), as understood in Lebanese law as a civil law jurisdiction, does not, in principle, allow for the "internationalisation" of domestic criminal law offences and while Art. 314, provides for a concluding offence definition, it does not require interpretative assistance by international law.⁵⁰ This implies that individuals are *expected and required to know* that a certain conduct is criminalised under international law. From the time that the same conduct is criminalised also under the national legal order, an individual may be punished by the domestic courts for any conduct predating the adoption of the national legislation.⁵¹ This in effect means that an act that has been commissioned which did not fall under previous criminal legislation can then be prosecuted under the current legislation. This in itself adds another unique dimension to the STL in as much as it allows for a departure from judicial norms.

B. The *Mens Rea* of Terrorism under the Lebanese Criminal Code

The *mens rea* of terrorism under Article 314 consists of two sub-elements: a general intent (i.e., knowledge of the relevant facts and conscious decision to act with that knowledge) to commit the underlying conduct that forms the basis of the charges and a special intent (i.e. the knowledge and conscious decision) on the part of the accused to create a state of terror. The special intent must be proven in relation to any person charged with a crime under Article 314, i.e. regardless of the nature of his alleged participation. Motives are not relevant,

⁴⁸Kai Ambos, 'Case Comment', *supra note* 32, at 661- 2.

⁴⁹Decision, Para 130.

⁵⁰Kai Ambos, *amicus curiae* brief on the question of the applicable terrorism offence in the proceedings before the Special Tribunal for Lebanon, with a particular focus on a '*special*' *special intent* and/or a *special motive* as additional subjective requirements, STL-11-01/I/AC/R176bis (11 February 2011), Para 3.

⁵¹Decision, Para 133.

under Lebanese law, to the definition of that offence although proof of their existence could be relevant to establishing the requisite special intent.⁵² The *mens rea* consists of the general intent to commit the *actus reus* including the specific intent “to cause a state of terror”. There is no political or coercive motive required in Article 314 and the intent to spread terror is all that is required. There is no express definition of “state of terror” in the LCC. The express definition is to cause a real fear, anxiety, panic and psychological trauma to be spread among the public with the intent being to spread such feelings amongst the population or a group of people. Lebanese jurisprudence has held that the intent to cause terror can be inferred from the particular circumstances of each case.⁵³

The fact that Article 314 appears ambiguous as to whether the criteria of ‘public hazard’ must be caused by the means used to commit the crime, or by the crime itself, should, therefore, be interpreted as referring to the means used other than being understood as a risk resulting from the effect of the whole crime, and, at the same time, there is no requirement for the actual occurrence of the public hazard as an outcome of the crime. It is sufficient that the means used is of a nature that will likely cause a public hazard.⁵⁴ Based upon the above, it is apparent that the facts of the assassination of Rafik Hariri exhibit the hallmarks of causing a state of terror:

- a. The use of large quantities of explosives;
- b. The location being a busy public area during the daytime;
- c. The large amount of people killed and/or injured;
- d. The media reporting claims that the assassination was allegedly caused by a suicide bomber automatically becomes associable in the public mind with terrorism.⁵⁵ This is a special subjective element called ‘special general intent’ as opposed to a ‘special intent’ aimed at certain political goals. Lebanese courts have considered the following as circumstances relevant to showing intent to cause a state of terror: the social or religious status of the principal target; the commission of the attack in daylight in a street full of people; the collateral killing of bystanders; the use of explosives; and the destruction of residential and commercial buildings.⁵⁶

For the general mental element, the acts required need not be criminal by themselves; it suffices that the respective (neutral) acts are carried out

⁵²Defence Office's submission, *supra note* 41, Para 81.

⁵³Prosecutor's Brief filed pursuant to the president's order of 21 January 2011. Responding to the questions submitted by the pre-trial judge (Rule 176 *bis*) (31 January 2011), Para 28-9.

⁵⁴Nidal Nabil Jurdi, *supra note* 29, at 1132-3.

⁵⁵Prosecutor's Brief, *supra note* 50, Para 32.

⁵⁶*Ibid.*, Para 30 .

consciously and willingly by the perpetrator. Clearly, if an act constitutes a criminal offence, such as a killing, the perpetrator must act with the respective mental element of this offence, particularly that they are 'liable to create a public danger'.⁵⁷ This definition has not ceased to be sufficient because an internationalized tribunal has been created. Instead, this very Tribunal has been mandated (and is required) to apply this definition of terrorism to any case where this crime is being charged.⁵⁸ In conclusion, according to the Lebanese law, terrorism is the commission of *any* act by means that are per se liable to create a public danger with the intent to cause a substantial terrorizing impact upon the population or a significant group thereof. This definition is not unreasonable and does not result in apparent injustice. Neither is it inconsistent with international principles of law. Thus, there is no reason for the Tribunal to depart from it. Article 314 LCC can and should be applied as understood in Lebanese practice.⁵⁹

i. Is Terrorism an International Crime?

The Chamber found that a number of treaties, UN resolutions, and the legislative and judicial practice of States proves the formation of a general *opinion juris* in the international community, accompanied by a practice consistent with such *opinio*, to the effect that a customary rule of international law regarding the international crime of terrorism, at least *in time of peace*, has indeed emerged. This customary rule requires the following three key elements: (i) the perpetration of a criminal act (such as murder, kidnapping, hostage-taking, arson, and so on), or threatening such an act; (ii) the intent to spread fear among the population (which would generally entail the creation of public danger) or directly or indirectly coerce a national or international authority to take some action, or to refrain from taking it; (iii) when the act involves a transnational element.⁶⁰ However, it is a different matter to infer from this prohibition the existence of an international crime of terrorism.⁶¹ The Chamber admitted that the existence of a customary rule outlawing terrorism does not automatically mean that terrorism is a criminal offence under international law.⁶² To be established as an international crime, a domestic offence has to be **considered** by the world community as an attack on either universal values, (such as peace or human rights), or on values held to be of paramount importance in that community. In addition, it is necessary that States and intergovernmental

⁵⁷Art 210 LCC: '*No one shall be sentenced to a penalty unless he consciously and willingly committed the act.*'

⁵⁸Defence Office's submission, *supra note* 41, Para 84.

⁵⁹**Kai Ambos**, 'Case Comment', *supra note* 32, at 664.

⁶⁰Decision, Para 85.

⁶¹**Kai Ambos**, 'Case Comment', *supra note* 32, at 665.

⁶²Decision, Para 103.

organisations, through their acts and pronouncements, sanction this attitude by clearly expressing the view that the world community considers the offence at issue as amounting to an international crime.⁶³

The fact that terrorism is not part of the core offences of the ICC Statute and that it has so far not been possible to adopt a *comprehensive* terrorism convention is evidence to the contrary, namely that terrorism is not (yet) recognized as an international crime in its own right. Terrorism is only part of the suppression conventions that provide for implementation obligations of states.⁶⁴ The Chamber's argument of a special treatment of terrorism as compared to other transnational offences only demonstrates that terrorism is a 'special' transnational offence that may come closer to a true international crime than 'ordinary' transnational offences. In effect, terrorism is currently positioned between an ordinary transnational, treaty-based offence and an international crime proper. It is, so to say, evolving to the supreme level of a true international crime.⁶⁵

VI. Felonies and Misdemeanours against Human Life, Physical Integrity and Illicit Association

The *ratione subjectate materiae* of the STL also includes crimes and offences against life and personal integrity, illicit associations,⁶⁶ and failure to report crimes and offences, including the rules regarding the material elements of a crime, criminal participation and conspiracy.⁶⁷ These crimes include a group of criminalised acts under Section 8 of the LCC which relates to murder.⁶⁸

What is interesting is the reference to two Articles in the 1958 Law, which came under the jurists' criticism. These two Articles do not include any definition of any crime though they just aggravate the punishment of terrorism. It is not clear, therefore, what the purpose is of referring to these two Articles if it is taken into consideration that the Statute of the STL includes an Article regarding the punishments which the STL could impose on the crimes which fall within its subject matter jurisdiction.⁶⁹ It is even more surprising given that the Statute of the STL does not allow either the imposition of hard labour or the death penalty.⁷⁰ The Statute explicitly states that the maximum penalty is

⁶³Decision, Para 91.

⁶⁴**Kai Ambos**, 'Case Comment', *supra note* 32, at 670.

⁶⁵*Ibid.*, at 671.

⁶⁶Art. 335 LCC.

⁶⁷Art. 2 (a) STL Statute.

⁶⁸Art. 547 LCC.

⁶⁹Art. 24 STL Statute.

⁷⁰**Bjorn Elberling**, *supra note* 18, fn. 27.

imprisonment for life or a specified number of years.⁷¹ It is interesting to note how relatively trivial some of the charges may be: ‘illicit associations and failure to report crimes and offences’, as this is not generally the criteria of the jurisdiction of an international court but rather tends to show, through the extent of these crimes, how nationally centred this tribunal actually appears. However, it may also be a strategy to include the so-called ‘small fish’ in cases involving ‘bigger fish’, with the possible aim of turning them into insider witnesses for this particular prosecution.⁷² It is easy to criticise the Statute’s limitation of subject-matter jurisdiction to this narrow set of offences, since it would have been more in the interest of justice to adopt a broader category of crimes against state security provided for by Lebanese law such as treason, espionage, contacts with the enemy, crimes against the Constitution and the incitement of civil war.⁷³

Despite the STL having the jurisdiction to try those responsible for the aforementioned seventeen attacks, the UNIIC also had jurisdiction to investigate. This demonstrates that Article 2 of the STLst was formulated against the background of the findings of the UNIIC⁷⁴ regarding the crimes for which the suspects were investigated.⁷⁵ Referral to some of these crimes which were deleted from the STL’s *ratione subjecate materiae* can be noted: possessing and using arms;⁷⁶ hiding information regarding crimes against the State’s security;⁷⁷ falsification and the use of fraud in the use of private documents;⁷⁸ using false documents despite knowing that they are false;⁷⁹ and giving false testimony before judicial or administrative authority.⁸⁰

Despite the STL being the only international tribunal exercising jurisdiction exclusively over crimes defined under national law, the Statute does not include a provision stipulating that these crimes shall not be subject to any statute of limitations.⁸¹ However, the final version of the Statute differs substantially from the initial drafts. In particular, the reference to the Arab Convention for the

⁷¹ Art. 24 (1) STL Statute.

⁷² **Stephen Kay**, ‘International Terrorism: A Special Tribunal for Lebanon- Syria, Lebanon, and the Assassination of Former Premier Rafik Hariri’, 13 (Supp) *UCL jurisprudence Review*, (2007).at 21.

⁷³ *Ibid.*,

⁷⁴ **Bjorn Elberling**, *supra note 18*, at 534.

⁷⁵ Para. (49) of the UNIIC Third Report, S/2006/161

⁷⁶ Art. 72 and 76 of the Lebanese Law on Weapons and Ammunitions 1959.

⁷⁷ Art. 398 LCC.

⁷⁸ Art. 471 LCC.

⁷⁹ Art. 454 LCC.

⁸⁰ Art. 408 LCC.

⁸¹ **Cecile Aptel**, ‘Some Innovations in the Statute of the Special Tribunal for Lebanon’, 5 (5) *Journal of International Criminal Justice*, (2007), at 1108.

Suppression of Terrorism in previous drafts was removed, thus depriving the STL of the possibility of formulating proceedings on the basis of this broad definition of terrorism.⁸² It is regretful that the real aim of the SC was a strict confinement of the STL, as to date, it is the only international tribunal empowered to hear cases of terrorism using the application of domestic laws. This renders the possibility of considering terrorist offences as crimes falling under international criminal law as problematic.⁸³

VII. Acts under the Jurisdiction of the STL are Crimes against Humanity

A. the *Actus Reus* of the Crimes against Humanity

The material element of the crimes against humanity is satisfied in the crimes under the jurisdiction of the STL. It is a known fact that the crimes of: homicide; persecution; extermination; or other inhuman acts are all considered as crimes against humanity when committed as part of a widespread or systematic attack directed against any civilian population, with the knowledge of that attack. There seems to be reasonable grounds to believe that both, the assassination of former Lebanese Prime Minister Rafik Hariri, and other connected attacks between 1 October 2004 and 12 December 2005 are crimes against humanity, despite the fact that they have not been qualified as such in the STL's Statute.⁸⁴ In keeping with the SC's mandate requesting the Secretary-General to establish a tribunal of an international character and in the circumstances of Lebanon, where a pattern of terrorist attacks seems to have emerged, it was considered whether or not to qualify the crimes as crimes against humanity and to define them, for the purpose of this Statute, as murder or other inhumane acts of similar gravity causing great suffering or serious injury to body or to mental health, when committed as part of a widespread or systematic attack directed against the civilian population.⁸⁵ Firstly, in terms of acts, most of the crimes under the jurisdiction of the STL are crimes of terrorism under Lebanese law, which are in themselves acts of murder, assassinations and explosions that could be defined as acts of murder or inhumane acts.⁸⁶ Secondly, in the Lebanese situation, there are a number of indicators that these acts raise the level which forms such a

⁸²Art. 1 of the Arab Convention for the Suppression of Terrorism, 22 April 1998.

⁸³Choucri Sader, *supra note 24*, at 1087-8.

⁸⁴Nidal Nabil Jurdi, *supra note 29*, at 1135.

⁸⁵S/2006/893, Report of the Secretary-General on the establishment of a special tribunal for Lebanon, Para. (23)

⁸⁶Nidal Nabil Jurdi, *supra note 29*, fn. 9.

systematic attack against a civilian population. The STL will exercise jurisdiction over the 14 attacks that have occurred in Lebanon since 1 October 2004 and may exercise jurisdiction over the other future related crimes. The UNIIC found that the similarities between most of the attacks are evident and that preliminary analysis suggested that these attacks were executed by the same perpetrators, using the same *modus operandi* and with the same criminal intent.⁸⁷ Finally, in terms of ‘attack against a civilian population’, the attacks solely targeted individuals that were members of, or closely associated with, the ‘March 14’ Coalition.⁸⁸ Also, the areas that witnessed terrorist explosions were mainly of a population that supported this alliance, it can be thus argued that such attacks against a ‘defined group’, defined on a political basis – elevating the conduct above the definitional threshold of those carried out against a ‘civilian population’, which is one of the hallmarks of a crime against humanity. Moreover, these crimes may be regarded as grave with regard to the quantity of explosive used and with regard to the method of terrorisation of the population. Based on this, the material elements of the crime against humanity seem to be fulfilled for the series of crimes under STL jurisdiction.⁸⁹

Mindful of the differences in scope and number of victims between the series of terrorist attacks committed in Lebanon and the killings and executions perpetrated on a large and massive scale in other parts of the world, subject to jurisdiction of any of the existing international criminal jurisdictions, it was nevertheless considered that the 14 attacks committed in Lebanon could meet the *prima facie* definition of the crime, as developed in the jurisprudence of international criminal tribunals. The attacks that occurred in Lebanon since 1 October 2004 could reveal a “pattern” or “methodical plan” of attacks against a civilian population, albeit not in its entirety. They could be “collective” in nature or “a multiple commission of acts” and, as such, exclude a single, isolated or random conduct of an individual acting alone. For the crime of murder, as part of a systematic attack against a civilian population, to qualify as a “crime against humanity” and its massive scale is not an indispensable element.⁹⁰

⁸⁷Fourth Report of the UNIIC, UN Doc. S/2006/962, 10 June 2006, §67.

⁸⁸Sixth Report of the UNIIC, UN Doc. S/2006/962, 12 December 2006, §69.

⁸⁹**Nidal Nabil Jurdi**, *supra note 29*, fn. 9.

⁹⁰S/2006/893, Report of the Secretary-General on the establishment of a special tribunal for Lebanon, Para. (24)

B. the *Mens Rea* of the Crimes against Humanity

The mental element requires firstly the criminal intent or recklessness for committing crimes against humanity, such as murder, rape, torture, extermination etc. Secondly, there should be knowledge that the crime is part of a widespread or systematic attack. The Tribunal will exercise jurisdiction exclusively over the attack of 14 February 2005 and the 'connected' attacks of similar nature and gravity; this connection may be established through, *inter alia*, 'criminal intent' (motive).⁹¹ Therefore, it is arguable that those persons who were involved intentionally in these connected attacks knew, or were able to foresee, that these attacks constituted part of a systematic attack, another of the hallmarks of involvement in a crime against humanity.⁹² The attacks under the jurisdiction of the STL seemingly meet the threshold of a crime against humanity. However, it must be noted that this *prima facie* crime against humanity is less grave in terms of scope and the number of victims than other crimes against humanity that have been prosecuted by other international courts. Nevertheless, the gravity criterion is arguably met in other ways, as these attacks have caused a threat to the security of Lebanon, regional stability and to international peace and security.⁹³ Also, the assassination of Rafik Hariri, and subsequent attacks, can be considered grave given the scale of the explosion, and the objective of terrorising the population. Although one can argue that these attacks do not fulfil the gravity criterion in its quantitative sense as stipulated in the ICC Statute, such a requirement is not one of the elements of crimes against humanity when prosecuted outside the ICC, although such prosecutions do still require the occurrence of a widespread or systematic attack,⁹⁴ although the assassination of Mr Hariri satisfied the customary requirements for a crime against humanity, making it, therefore, a crime against international law,⁹⁵ in addition the Under Secretary-General for Legal Affairs referred early in the negotiations to raising the possibility of incorporating legal grounds that would enable judges, in certain circumstances and with sufficient proof, to qualify crimes as crimes against humanity.⁹⁶ Considering the views expressed by interested members of the

⁹¹ Art. (1) STL Statute.

⁹² Nidal Nabil Jurdi, *supra note 29*, fn. 10.

⁹³ S/RES/1636(2005) Middle East, S/RES/1644(2005) Middle East, S/RES/ 1757(2007) the situation in the Middle East.

⁹⁴ Nidal Nabil Jurdi, *supra note 29*, fn. 11.

⁹⁵ Marko Milanovic, 'An Odd Couple: Domestic Crimes and International Responsibility in the Special Tribunal for Lebanon', 5(5)*Journal of International Criminal Justice*, (2007), at 1139.

⁹⁶ S/2006/893/Add.1, Statement by Mr Nicolas Michel, Under-Secretary-General for Legal Affairs, the Legal Counsel, at the informal consultations held by the Security Council on 20 November 2006, Para.(2)

Security Council, there was insufficient support for the inclusion of crimes against humanity within the subject matter jurisdiction of the tribunal. For this reason, therefore, the qualification of the crimes was limited to common crimes under the LCC.⁹⁷

Despite the material and mental elements of the crimes against humanity being met in the crimes under the jurisdiction of the STL, which results in the exemption of crimes against humanity from the STL *ratione subjecate materiae*, this will frustrate the mission of the Prosecutor thus making a more difficult and complicated task.⁹⁸ If the crimes against humanity had have been included in the STL's Statute this may have assisted in alleviating the problematic legal issues which the STL faces, such as the immunity of Heads of State and other Senior Officials.⁹⁹ It would also have allowed for the Tribunal to rely on an extensive body of international jurisprudence regarding crimes against humanity, instead of depending solely on the jurisprudence of the Lebanese courts, which could be described as scattered and lacking in consistency. In the worst-case scenario, the situation may become even more tragic if more 'connected' crimes occur later, adding further gravity regarding the quantitative criterion.¹⁰⁰

Had the SC been persuaded that the Hariri assassination constituted a crime against humanity or an offence constituting a threat to international peace and security, it would have been fully justified in establishing, unilaterally, a tribunal under the auspices of Chapter VII as it did when establishing the (ICTY) and the (ICTR). Instead, the SC chose to take the exceptional step of ordering, by resolution, the entry into force of a treaty with a State that did not ratify it through its constitutional process, something it had never done before.¹⁰¹

The possibility of the extension of the Special Tribunal's jurisdiction to attacks which took place after 12 December 2005 is aimed at deterring and stopping the serial political assassinations conducted after that date. Those assassinations targeted politicians who took part in the Cedar Revolution.¹⁰² As Rafik Hariri, and other victims of terrorist attacks in Lebanon, were not assassinated during an armed conflict, these murders cannot be considered as war crimes or other violations of international humanitarian law.¹⁰³ As the STL has no jurisdiction on

⁹⁷S/2006/893, Report of the Secretary-General on the establishment of a special tribunal for Lebanon, Para. (25).

⁹⁸Nadim Shehadi and Elizabeth Wilmschurt, 'The Special Tribunal for Lebanon: The UN on Trial?' Chatham House, July 2007, MEP/IL BP 07/01, at 7.

⁹⁹ChoucriSader, *supra note 24*, at 1086.

¹⁰⁰Nidal Nabil Jurdi, *supra note 29*, at 1128.

¹⁰¹DaoudKhairallah, *supra note 15*, at 599.

¹⁰²ChoucriSader, *supra note 24*, at 1085-6.

¹⁰³Marko Milanovic, *supra note 92*, at 1140.

crimes that constitute a breach to international criminal law, or international humanitarian law, this will make the STL similar to the court hearing the Lockerbie case, which was the first precedent of linking a normal crime – the explosion of the plane was not an international crime - to the threat to international peace and security.¹⁰⁴

i. Why the Assassination of Rafik Hariri, and Other Crimes, Were Not Classified as Crimes Against Humanity?

As the SC's session was not a public one, there can only be speculation as to why there was 'insufficient support' for a prosecution based on the undisputedly international category of crimes against humanity, and why, taking into account the views of 'interested members of the Security Council', the decision was taken to prosecute undisputedly national crimes on the basis of the domestic criminal code:

One explanation may be that in extending the subject-matter jurisdiction of the Court to genuinely international crimes, framed broadly as crimes against humanity, it might inadvertently find itself with the authority to prosecute other atrocities committed on the territory of Lebanon in recent years. Indeed, one of the ironies of the STL is that it will address the admittedly serious terrorist crimes committed in Lebanon's territory since early 2005 but not arguably more serious war crimes and crimes against humanity committed on that same territory in mid-2006.¹⁰⁵

Another explanation for the decision not to include crimes against humanity within the STL's subject-matter jurisdiction may be the positioning of the institution generally as on that is national with international features, rather than a truly international tribunal. By confining subject-matter jurisdiction to the national criminal code, the SC signals that the STL is more 'hybrid' or 'mixed' than international and that the international involvement is essentially that of technical assistance.¹⁰⁶ Although terrorist crimes as such have not previously figured in the statutes of international criminal tribunals, there were proposals to

¹⁰⁴ **Fredric Megret**, 'A Special Tribunal for Lebanon: the UN Security Council and the Emancipation of International Criminal Justice', *21(2) Leiden Journal of International Law*, (2008), at 508.

¹⁰⁵ **William A. Schabas**, 'The Special Tribunal For Lebanon: Is A "Tribunal Of An International Character" Equivalent To An "International Criminal Court"?' *21(2) Leiden Journal for International Law*, (2008), at 519-20.

¹⁰⁶ See: *Ibid.*, at 520.

include them in the Rome Statute of (ICC). The Final Act of the Rome Conference does not contain a reference to terrorist crimes, and it is likely that the issue will be revived at the Review Conference,¹⁰⁷ although unfortunately nothing has changed since that Conference. There are also twelve international treaties dealing with specific forms of terrorism. Although the treaties impose obligations concerning prosecution and mutual legal assistance, they fall short of declaring terrorism to be an ‘international crime’, and do not even hint at the exercise of universal jurisdiction over such crimes.¹⁰⁸ Terrorism, as such, is still not classed as a true independent crime under international law, i.e. an illicit act for which an individual can incur criminal responsibility at the international level, regardless of municipal law, when it fulfils neither the requirements for a war crime nor those for a crime against humanity.¹⁰⁹

All four SC Resolutions that address the 14 February attack qualify that attack as a terrorist crime. The terrorist crime qualification appears in the Resolution which established the UNIIC. The Resolutions consider the 14 February 2005 attack and its implications a threat to international peace and security, and justify the measures adopted by the SC under Chapter VII of the UN Charter, and Resolution 1757 which establishes the STL.¹¹⁰ These four Resolutions attest to the UN SC’s intention to include terrorist crimes, along with war crimes, genocide and crimes against humanity in the category of crimes subject to international criminal law and therefore under the jurisdiction of an international tribunal. In this regard, the preliminary drafts of the STL’s Statute allowed the international judges to consider terrorist crime as a crime under international criminal law.¹¹¹ In the initial draft of the STL Statute, even though the international judges may have lacked the will and boldness to find terrorist crimes to be amongst those crimes that attract individual criminal responsibility under international law, they could nevertheless have applied the body of international criminal law on the basis that the crimes in question additionally constituted crimes against humanity. The application of international criminal law would have, among other things, deprived certain potential suspects of the protection of any legal or constitutional immunity they may now benefit from, since the STL now exercises jurisdiction only over crimes under Lebanese law.¹¹² Although the Secretary-General supported the opinion that terrorist

¹⁰⁷The Review Conference of the Rome Statute of the International Criminal Court took place in Kampala, Uganda, from 31 May 2010 to 11 June 2010.

¹⁰⁸*Ibid.*, at 520-1.

¹⁰⁹Marko Milanovic, *supra note 92*, at 1141.

¹¹⁰ UN SC Resolutions: 1595 (2005), 1636 (2005), 1644 (2005), 1757 (2007).

¹¹¹Choucri Sader, *supra note 24*, at 1087.

¹¹²Choucri Sader, *supra note 24*, at 1086.

crimes such as those which were committed in Lebanon could be qualified as crimes against humanity, there is a basis for an opposing argument which suggests that basing prosecutions on an expansive interpretation of crimes against humanity might unnecessarily complicate prosecutions.¹¹³ The Appeals Chamber of the ICTY has set a low threshold for crimes against humanity, describing them as more than merely ‘isolated or random acts’.¹¹⁴ The Rome Statute of the ICC, on the other hand, is more exigent, as it requires an existence of ‘a course of conduct involving the multiple commissions of [punishable] acts ... against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack’.¹¹⁵ Persuasive arguments have suggested that crimes against humanity, as formulated in Article 7 of the Rome Statute as well as under customary law, do not apply to the acts of non-state terrorist groups such as al Qaeda.¹¹⁶

Derogations to the general rules on the immunity of State Officials are usually limited to international crimes, and could therefore not apply before the STL. In light of the omission of this principle, and due to the specific jurisdiction of the STL, which does not extend to core international crimes, this omission may keep State Officials out of the reach of the STL and hence further restrict the scope of its activities.¹¹⁷

VIII. Conclusion

The creation of the STL under Chapter VII may empower the STL with authority which could exceed those of treaty-based Tribunals. Its enforcement powers stem from Chapter VII of the UN Charter and that might arguably make its enforcement powers similar -- in some respects -- to those of the ICTY and ICTR.

The STL’s *ratione subjecate materiae* is limited to national crimes under the LCC, this makes the STL the first tribunal of international character which has no jurisdiction on international crimes; What is surprising is that its Statute was devoid of any reference to the notion that these crimes will never be finished by limitation, however, the enforcement of these domestic provisions by an international tribunal will likely have an impact upon the development of a definition of international terrorism. In this regard, the creativity of the judges of

¹¹³William A. Schabas, *supra note 102*, at 1086.

¹¹⁴*Prosecutor v. Kunarac et al.*, Judgement, Case No. IT-96-23/1-A, A. Ch., 12 June 2002, Para. 96.

¹¹⁵Rome Statute of the International Criminal Court, (2002), Art. 7(2)(a).

¹¹⁶M. Cherif Bassiouni, *The Legislative History of the International Criminal Court: Introduction, Analysis and Integrated Text*, Vol. I (2005), at 151-2, in: William A. Schabas, *supra note 102*, fn 35.

¹¹⁷Cecile Aptel, *supra note 78*, at 1111.

the STL will be central to their structuring of the jurisprudence of the Tribunal. Despite the fact that both the *actus reus* and *mens rea* of the crimes against humanity are met in the 14 February 2005 attack with other crimes falling within the jurisdiction of the STL. Omitting reference to the latter was not accidental but rather it was due to those superpowers in the SC whose aim appeared not to enable the STL to have jurisdiction over other alleged war crimes, such as those committed during the Israeli war on Lebanon in 2006. There is also no inclusion within the mandate of the STL to address other atrocities which occurred during the fifteen years civil war in Lebanon (1975-1990) or to try those responsible for international crimes unlike the other tribunals.

By depending upon the definition of terrorism under the LCC, and failing to take into consideration these crimes; i.e. crimes against humanity, will only produce negative results and hinder, or at least limit, the extent and power of the STL's jurisdiction.

It will complicate the mission of the Prosecutor as well as exasperate the problem of immunity of Senior Officials. It is certainly clear that the STL's jurisdiction does not imply international crimes, as the desire of those who created the STL was to establish it as a national court with some international characters and not as a pure international tribunal. Lebanon has been a country beset by severe internal and regional political crises with opinion deeply divided over the STL's ability to function as an independent judicial institution. The defects and shortcomings in the STL's *ratione subjecate materiae* will become more apparent if there arises fresh assassinations and terrorist attacks in Lebanon in the future.

It is my opinion that these problems relating to the narrow subject matter jurisdiction of the STL could be addressed by a variety of measures. The Statute of the STL itself could be amended. This would not be a new innovation as amendments were made to the Statutes of the international tribunals, ICTY and ICTR, as well as the tribunals with international character such as the ECCC. Other measures could involve recourse for the Security Council to adopt a new resolution to expand the subject-matter jurisdiction of the STL, and to re-adopt the definition of terrorism as outlined in the Arab Convention for the Suppression of Terrorism (which was mentioned in the draft of the statute of the STL). In addition, amendments could be made to the Lebanese criminal legislations regarding the definition and punishment of terrorism; however, this would all raise the obstacle of the principle of "non-retroactivity of criminal laws".

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