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Hybrid Tribunals as an Effective Instrument for Dispute Resolution under International Criminal Law: An Analysis with Special Reference to Court of Lebanon

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ABSTRACT

Hybrid tribunals have been established in recent years for investigating and prosecuting individuals accused of gross violations of international human rights law and international humanitarian law. They are termed 'hybrid 'as their composition, and applicable law embraces both international and national elements. Currently, there are six tribunals in operation, namely, the Special Court for Sierra Leone, the Extraordinary Chambers in the Courts of Cambodia, the International Judges and Prosecutors Programme in Kosovo, the War Crimes Chamber for Bosnia and Herzegovina, the Iraqi High Tribunal, and the Special Tribunal for Lebanon. Different mechanisms have established them. The present paper seeks to highlight the key elements of these tribunals, which are common to all and their advantages and disadvantages. The prime focus of this paper is the Special Tribunal for Lebanon which is a unique model in itself. It also discusses how these hybrid tribunals place themselves within the framework of international criminal law and the justice system.

I. INTRODUCTION

The evolution and development of international criminal law is comparatively nascent. This branch of law deals with the imposition of individual criminal responsibility for grave violations of human rights, mass atrocities, and the commission of international crimes.[2] The individuals are generally governed by the national laws of the states concerned, but considering the nature of international crimes, the states agree to try the individuals by international mechanisms. The establishment of the Tribunals for Former Yugoslavia and Rwanda in the late 1990s marked the beginning of the international criminal law regime. [3]Hybrid or 'mixed' tribunals emerged in the late 1990s and early 2000s as a mode of transnational justice where states were left incapacitated

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[2]ROBERT CRYER et al., AN INTRODUCTION TO INTERNATIONAL CRIMINAL LAW AND PROCEDURE 3(2 d ed. 2010).
[3] Ibid.

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or stripped of their judicial system and needed international assistance post-conflict.[4] The methods of establishing hybrid tribunals differ from each other, and there is no uniform pattern. Entirely local courts endure many issues extending from serious co-ordinations or monetary confinements to elevated levels of debasement and politicization. Some common elements are universal to almost all hybrid institutions that are: application of international and domestic laws, the composition of the international and domestic judges and personnel, employing international and national lawyers, formal international participation.[5]

In contrast, fully universal courts have demonstrated disengagement with local substances and may indeed be considered imperialistic. Therefore, hybrid tribunals are considered a good option for dispute resolution as they are composed of international and national features. The crimes that occur within a state's domestic bounds may attract international jurisdiction when the charges become of the nature of international crimes. The core international crimes have been identified as war crimes, crimes of aggression, crimes against humanity, and genocide. However, there are many more which can be brought within the ambit of broad international crimes. The existence of fundamental universal human rights is the shared link, the violation of which aids the international community to step forward. The international tribunals were created in the wake of administering justice after the World War and impounding individual criminal responsibility upon those responsible for it.[6] The hybrid tribunals can be viewed as one of the best mechanisms for adjudicating international crimes as it keeps the domestic laws alive and respects state sovereignty.[7] The present paper focuses on outlining the concept of hybrid justice in contrast to complete international adjudicating mechanisms. It highlights the advantages and the limitation of the hybrid model of justice. The special focus of the paper lies in the Special Tribunal for Lebanon, which is unique from other hybrid tribunals.

II. CONCEPT OF HYBRID JUSTICE: EVOLUTION OF AD HOC TRIBUNALS POST WORLD WAR

The concept of Hybrid justice is one of the approaches to deal with international crimes. It was developed as a middle path between domestic and international justice, the reason being to aid the political tensions existing in the particular state of conflict.[8] Elizabeth Bruch states that the

[4] AARON FITCHELBERG, HYBRID TRIBUNALS, A COMPARATIVE EXAMINATION 4 (1 ed. 2015).
[5] *Hybrid Tribunals: Core Elements*, PUBLIC INTERNATIONAL & POLICY GROUP 2013(Aug. 27, 2021, 11:00 AM), https://syriaaccountability.org/wp-content/uploads/PILPG-Syria-Hybrid-Tribunals-Memo-2013_EN.pdf
[6] A. Rubin, *An International Criminal Tribunal for Former Yugoslavia*, PACE INT. L.R., 6.
[7] Lindsey Raub, *Positioning Hybrid Tribunals in International Criminal Justice,* INTERNATIONAL LAW AND POLITICS 2009, 1013, 1039.
[8] Etelle R. Higonnet, *Restructuring Hybrid Courts: Local Empowerment and National Criminal Justice Reform* 23 ARIZONA JOURNAL OF INTERNATIONAL AND COMPARATIVE LAW, 2006, 347, 356.

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Tribunal can be hybrid in its creation, composition, and its mandate. Post-Cold War, the beginning of the Hybrid Tribunals is said to be founded. Hybrid institutions are independent criminal organizations that function outside the scope of domestic jurisdiction. They are usually created by international instruments, apply domestic and international law elements, and comprise of foreign and local judges.

The Tribunal at Nuremberg is seen to be the first international criminal body that recognized the authority to condemn and prosecute international crimes universally. It served as a pioneer for international prosecution and opened the gates to a new era in international human rights regime. It was only after the world saw the trials at Nuremberg that affirmed that grave human rights violations could not go unpunished. Earlier to this, there was no legal precedent for subjecting offenses such as war crimes, crimes against humanity, and genocide to universal jurisdiction. The major criticism that the Nuremberg faced was it was tainted with 'victor's justice' as the Allied Powers conducted the proceedings of the tribunals.[9] The United Nations Security Council passed Resolution to create the first international criminal *ad-hoc* Tribunal, i.e., International Criminal Tribunal for the Former Yugoslavia after the end of the second world war in 1993.[10] It was created to prosecute those responsible for serious international humanitarian law violations committed in the territorial jurisdiction of former Yugoslavia since 1991. Although it was established as a temporary court for addressing a single series of events, it laid the foundation for establishing other hybrid tribunals in different territorial jurisdictions and political contexts. The International Criminal Tribunal for Rwanda was also created on the same lines for ensuring prosecutions for those considered most responsible for the gravest crimes committed in 1994.[11] The tribunals and, after that, the International Criminal Court faced challenges in involving the affected local population, who were the ultimate victims of these international crimes. The issue of jurisdiction of the ICC is also a hindrance as it is limited. Owing to this gap in international criminal law where the national mechanisms are inadequate or non-existent, and the cases do not fall within the jurisdiction of the ad-hoc tribunals and the ICC, or where the prosecutor cannot proceed with the case due to inadequacy of the gravity, the international community has turned towards this new model of hybrid justice. Special Court for Sierra Leone (SCSL), the Extraordinary Chambers in the Courts of Cambodia (ECCC), the Serious Crimes Panel, Dili (SCPD), the Bosnia War Crimes Chamber (BWCC), the UNMIK

[9] James Meernik, *Victor's Justice or the Law? Judging and Punishing at the International Criminal Tribunal for the Former Yugoslavia*, SAGE JR., 2003, 10.
[10] Cryer, *supra* note 2.
[11] UN Security Council, SECURITY COUNCIL RESOLUTION 2029 (2011) [International Criminal Tribunal for Rwanda (ICTR)], 21 December 2011, S/RES/2029(2011), https://www.refworld.org/docid/4f1576532.html].

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Court in Kosovo, Iraq Special Tribunal, War Crimes Chamber for Bosnia-Herzegovina and the Special Tribunal for Lebanon (STL) are all examples of hybrid and internationalized courts that have sought to integrate foreign laws and personnel with domestic ones to different degrees and different extents.[12]

Methods for establishing hybrid tribunals

The nature and circumstances of conflict determine the methods for establishing hybrid tribunals. Generally, either the states integrate hybrid tribunals into their existing judicial system or function independently.[13] There are four ways in which the states show these tribunals:

a) under the authority of United Nations Security Council Resolution in territories under the UN administration

b) by bilateral agreement

c)domestic courts with international elements

d)by UN Security Council Resolution

There is no fixed pattern for the establishment of these tribunals. After the ICTY and ICTR, only the STL was created through a UN Security Council Resolution under Chapter VII.[14]

Creation under UN Administrations

*A*n interim administration of the United Nations can establish a hybrid tribunal. In a post-conflict situation where government structures break down, it can be placed under the administration. The Special Panel for Serious Crimes in East Timor(SPSC) was set up by this method. The United Nations Temporary Authority in East Timor established the SPSC in Dili District Court after the pro-Indonesian militia caused destruction in the capital city and indulged in mass killings.[15] The UN also established a hybrid tribunal in Kosovo after the brutal conflict between the Serbs and the Albanians under the leadership of Slobodan Milosevic. Kosovo also experienced a brutal conflict between Serbs and Albanians under the leadership of Milosevic,

[12] Harry Hobbs, *Hybrid Tribunals and the Composition of the Court: In Search of Sociological Legitimacy*, CHICAGOJR.INT.LAW,482,487(2016)https://chicagounbound.uchicago.edu/cjil/vol16/iss2/5.
[13] *Supra* note 5.
[14]Lindsey Raub, *Positioning Hybrid Tribunals in International Criminal Justice,* 41 INTERNATIONAL LAW AND POLITICS, 2009, 1013, 1039.
[15] United Nations Transitional Administration in East Timor [UNTAET], *On the Organization of Courts in East Timor*, U.N. Doc. UNTAET/REG/2000/11 (Mar.6, 2000), *available at* http://www.unmit.org/legal/UNTAET-Law/Regulations%20English/Reg2000-11.pdf; as amended by UNTAET, *On the Amendment of UNTAET.*

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after which the UN established the hybrid Tribunal.[16] The hybrid Tribunal worked similarly to the domestic court with elements of international law and personnel.

By Bilateral Agreements

The affected states may request the UN to establish tribunals by bilateral agreements. It is generally done when the affected states' government does not agree to the creation, or its political narrative prevents it.[17] For example, the Special Court for Sierre Leonne was established by a formal agreement in 2002 when the conflict left the state incapacitated. The Tribunal was funded by voluntary contributions from the member states of the UN. It held the capacity to prosecute both domestic and international crimes and employed national and foreign personnel.[18] The same approach was followed to establish Extraordinary Chambers in the Courts of Cambodia (ECCC) by bilateral agreement between the United Nations and the Government of Cambodia. The government approached the UN in 1997 for assistance in prosecuting the leaders of the Khmer Rouge who were responsible for the killings from 1975 to 1979. The negotiations lasted for a good seven years, after which the UN finally reached an agreement and created the ECCC that United Nations and Cambodia funded.[19]

Established as Domestic Courts with International Elements

States may also choose to establish tribunals as domestic courts that are primarily domestic with international law and involve some international personnel to look after the trials.[20] These tribunals are more suitable for the states whose citizens are skeptical of international involvement. For instance, in former Yugoslavia, the Office of High Representative for Bosnia was created by the Dayton Peace Agreement. It was tasked with reforming the Bosnian legal and judicial system. The High Representative created the War Crime Chamber to phase out international personnel over five years. The positioning of the War Crime Chamber within the domestic legal system made it more approachable to the citizens of Bosnia than the ICTY, which was seated at Hague.[21]

[16] S.C. Resolution 1244, U.N. Doc. S/RES/1244 (June 10, 1999) http://www.treasury.gov/resource-center/sanctions/Programs/Documents/1244.pdf.
[17] Etelle R. Higonnet, *Restructuring Hybrid Courts: Local Empowerment and National Criminal Justice Reform* 23 ARIZONA JOURNAL OF INTERNATIONAL AND COMPARATIVE LAW, 2006, 347, 355.
[18] Human Rights Watch, Brining Justice: The Special Court for Sierra Leone, Accomplishments, Shortcomings and Needed Support 10, 2004 www.hrhttp://www.hrw.org/reports/2004/sierraleone0904/sierraleone0904.pdf.
[19] Brian D. Tittemore, Khmer Rouge Crimes: The Elusive Search for Justice, http://www.wcl.american.edu/hrbrief/v7i1/khmer.htm.
[20] *Supra* note 14.
[21] *Supra* note 14.

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Created through Security Council Resolution

In contrast to all other tribunals, the Special Tribunal for Lebanon is the only hybrid Tribunal created through the Security Council's Resolution.[22] The STL is different from the other hybrid tribunals primarily for two reasons. Firstly as it was created to adjudicate persons responsible for a specific crime. The STL is seated at the Hague, unlike other tribunals that are established within their own territorial bounds. An UN-appointed Registrar oversees the functioning of the Tribunal.[23]

III. ADVANTAGES AND LIMITATIONS OF HYBRID TRIBUNALS

The international judges and prosecutors seem to enhance the perception of an impartial judicial system. The international character of these tribunals allows greater participation from minority groups. Because these tribunals are situated within the territorial bounds of the affected state, internationalized tribunals may enable a sense of domestic ownership and involvement with the criminal justice process. The hybrid model ensures accountability for human rights violations and respects the independence and sovereignty of nation-states. The Iraqi Tribunal is one example that portrays resistance to universal sovereignty over international crimes.[24] Accordingly, the Iraqi Tribunal was "*built on the truism that sovereign states retain primary responsibility for adjudicating violations of crimes defined and promulgated under international law*.[25]

Advantages of hybrid tribunals

Hybrid tribunals are preferable as they require few resources and less cost than ones requiring exorbitant costs.[26] They also provide maximum victim participation since they operate at the *locus deliciti.* Victims are offered greater transparency. The evidence and witness are also easily available facilitated by the proximity of tribunals to the place of crime.[27] Owing to the destruction of the legal landscape of post-conflict states, along with collapsed infrastructures, with a lack of qualified personnel, hybrid tribunals offer a feasible option to contribute to post-

[22] U.N. Doc. S/RES/1757, 2007, http://www.stl-tsl.org/en/security-council-resolution-1757.
[23] Statute of Special Tribunal for Lebanon, Art. 12.
[24] Guy Roberts, Assault on Sovereignty: The Clear and Present Danger of the New International Criminal Court, AMERICAN UNIVERSITY INTERNATIONAL LAW REVIEW 17, no. 1,2001, 35-77.
[25] Michael A. Newton, The Iraqi High Criminal Court: controversy and contributions, INTERNATIONAL REVIEW OF THE RED CROSS, 88, 2006, 401, (August 26, 2021, at 10 PM), https://www.icrc.org/en/doc/assets/files/other/irrc_862_newton.pdf.
[26] Paul W. Bennetch et. al., *Improving Hybrid Tribunal Design: Domestic Factors, International Support, and Court Characteristics*, Stanford Law School, 7, https://www-cdn.law.stanford.edu/wp-content/uploads/2016/07/Bennetch-Sellers-McGuire-Improving-Hybrid-Tribunal-Design-Domestic-Factors-International-Support-and-Court-Characteristics.pdf.
[27] Caitlin E. Carroll, *Hybrid Tribunals are the Most Effective Structure for Adjudicating International Crimes Occurring Within a Domestic State*, 90 LAW SCHOOL STUDENT SCHOLARSHIP,2013, 18-19.

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trial success of the domestic state. As hybrid tribunals incorporate international and national laws, they exhibit impartiality as national trials have often proved to be one-sided, especially when prosecuting government may have a hand in committing crimes.[28]

Disadvantages of hybrid model

While the hybrid model offers a good approach towards achieving justice for crimes involving gross violations of human rights, it also has the tendency to have certain disadvantages. One of the most serious flaws is that instead of engulfing the best of both international and national judicial mechanisms, it may incorporate the worst of both.

Where the crimes like war crimes, crimes against humanity, etc have occurred, the affected state's territory might be a dangerous place to hold trials. The tribunals can run the risk of being influenced by the very perpetrators who committed or ordered the commission of the crime. [29]The heads of the state, if tried, may get significant support from the local population, which can pose a serious danger to the adjudicating authority. Witness protection is also a major concern in in-situ trials as they may be terrified to give testimony. Hence, all possible precautions should be taken while these trials are being held, like in camera hearings can be done in some cases, while a portion of the trial can be held outside the country. Security of the judges or the prosecutors may also be one of the reasons of concern as the opposing groups can create a hindrance in the justice process. It is because the states are reluctantly in putting to trials their nationals on their territory. The Iraqi High Tribunal had been under the radar for its being inclined to victor's justice that was previously seen during the International Military Tribunals for Nuremberg and Tokyo. [30]

As the tribunals blend international and national staff, they may face logistical and training difficulties. The judges of the domestic courts might not be well acquainted with the international laws, and hence it can hinder the justice system. It is also possible that incorporating dual elements might lead to inconsistency between the national and international laws.[31] The international and national judges might differ in their ideologies and philosophies from civil and common law systems. The international judges form a minority, and complete impartiality might not be ensured. Funding has also been a significant issue due to the reluctance of the relevant international actors and the affected states to allocate an adequate amount.

[28] Laura A, Dickinson, *The Promise of Hybrid Courts*, 97 AM. J. INT'L L, 295 (2003).
[29] Elizabeth M. Bruch, Hybrid Courts: Examining Hybridity through a Post-Colonial Lens, 28 BOSTON UNIVERSITY INT'L LJ., 2010, 35-36.
[30] Sarah Williams, *Hybrid Tribunals: A Time for Reflection*, 10(3) INT'L J. TRANSITIONAL JUSTICE, 2016, 538–547.
[31] Ibid.

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It can be submitted that hybrid and internationalized tribunals have a lot to their credit, but they are also surrounded by issues that cannot be neglected. The impunity gap has always existed in the international justice system. These hybrid tribunals may not be able to fill that due to their political factors, state sovereignty, and resource constraints.

IV. THE SPECIAL TRIBUNAL FOR LEBANON: BACKGROUND CONFLICT

One such exemplary example of Hybrid Courts can be found in Special Tribunal for Lebanon. The Special Tribunal for Lebanon was set up in Leidschendam, a suburb of The Hague, in the Netherlands. In April 2005. The assertion of 'A tribunal of an international character' first appeared in the letter that initiated the Special Tribunal for Lebanon, which the Prime Minister of Lebanon sent to the Secretary-General on December 13, 2005. The Secretary-General acknowledged the request by replying that "*it became clear from our consultations with the Lebanese authorities that the creation of an exclusively international tribunal would remove Lebanese responsibility for seeing justice done regarding a crime that primarily and significantly affected Lebanon. Therefore it appears that the establishment of a mixed tribunal would best balance the need for Lebanon and International involvement in the work of the Tribunal."*

The former Lebanese Prime Minister Rafiq Hariri's assassination in 2005 was the main focus for creating the Tribunal. On February 14, 2005, in Beirut, the former Prime Minister of Lebanon, Rafik Hariri, 22 others were killed, and 226 were injured. The blast was allegedly from a suicide bomb that was hidden in a large van.[33] A video and a letter were received on the same day by Beirut news. Ahmad Abu Adass took responsibility for the blast and belonged to the fundamentalist group called Victory and Jihad in Syria. On February 25, 2005, the United Nations Secretary-General dispatched a fact-finding mission to Beirut, which Irish Deputy Police Commissioner Peter FitzGerald headed. The United Nations-mandated an independent

[32] Ibid.

[33] Hassan M. Fattah, *Beirut Car Bomb Kills Ex-Premier; Stability at Risk*, N.Y.TIMES, Feb. 15, 2005, (Aug. 27 2021, 3:30 PM) https://www.nytimes.com/2005/02/15/world/middleeast/beirut-car-bomb-kills-expremier-stability-at-risk.html.

investigative probe into the matter.[34]

The domestic authorities wanted an international mechanism keeping in view the Lebanese domestic laws and procedures, prosecutors, and mixed judges. The mission conducted a probe of the Lebanese investigations and legal proceedings, examined the evidence, met with several political groups, and spoke to witnesses. They concluded that the investigation was tainted with serious flaws and the matter needed an international body. The Tribunal was to be created by an agreement between Lebanon and the United Nations, but the government of Lebanon did not ratify it due to political factors. This Tribunal was unique because it was the first one to have jurisdiction over terrorism. The applied law was domestic, and the victims were made to participate in the tribunal proceedings. The wing of the defense was also set up separately and independently. The Nuremberg tribunal allowed the trials in absentia, the second being the Special Tribunal for Lebanon. However, it attracts criticism because it is limited in its jurisdiction of the killings between 2004 to 2005 rather than focusing on the civil war, the role of Syrian forces, and the other crimes committed.[35]

The broad question remains whether the trials in absentia are an effective way to render complete justice. It can birth a credible narrative of what happened and ultimately who was responsible. The STL agreement was signed by the government of Lebanon in 2007 and forwarded to the parliament of Lebanon for its approval and ratification. While the cabinet approved it, the pro-Syrian parliamentary speaker refused to ratify. The United Nations intervened to resolve the deadlock. After that, the prime minister's request was sent to the Security Council to establish the Tribunal unilaterally. The Tribunal was finally established through a resolution 1757 of the Security Council on May 30, 2007, acting under Chapter VII of the Charter.

It can be seen that STL was established with a balanced negotiated process. The affected state requested assistance in bringing the perpetrators to trial. The assassination of Hariri acted as a catalyst to further the aid of the Tribunal in the politically motivated violence in Lebanon. The judicial system in Lebanon was functional, yet a need was felt to elevate the trials to an international one.

Jurisdiction of STL

The jurisdictional extent of a tribunal refers to the Tribunal's competence to adjudicate on the

[34] *Report of the Fact-Finding Mission to Lebanon inquiring into the causes, circumstances and consequences of the Assassination of Former Prime Minister Rafik Hariri,1 1,* (S/PRST/2005/4) (March 24, 2005).
[35] B. Fassbender, *Reflections on the International Legality of the Special Tribunal for Lebanon*, 5 J INT CRIMINAL JUSTICE, 2007, 1091, 1096.

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matter brought before it. The jurisdiction of a tribunal is composed of four elements: personal jurisdiction (*ratione personae*), territorial jurisdiction (*ratione loci*), temporal jurisdiction (*ratione temporis*), and subject matter jurisdiction (*ratione materiae*). The jurisdiction of the Tribunal is necessary to be determined as it can affect the effectiveness and legitimacy. A limited personal jurisdiction may exclude specific individuals and groups from the reach of the Tribunal, whereas the material jurisdiction will decide whether the crime is an international crime or an ordinary crime under domestic law.[36] The jurisdictional concerns may attract criticism as they may give rise to allegations of bias, like the one created by the victorious party. They were criticized for dispensing 'victor's justice.'

The primary aim of any adjudicating body under international criminal law is to achieve the principle of non-impunity. For this reason, the Tribunal should be able to have maximum jurisdictional reach. The tribunals face multiple challenges due to many factors such asfrastructure, funds, domestic politics, state sovereignty. Therefore, it is relevant to analyze the jurisdiction of the STL to understand its extent and scope better.

Temporal jurisdiction

It refers to the duration of time in which the Tribunal may exercise its jurisdiction. The STL intended to exercise its jurisdiction to a single event of the assassination of Prime Minister Hariri.[37] Its temporal jurisdiction was restricted to the events that occurred on February 14, 2005. But the Security Council extended the mandate to be covering the related attacks, and subsequently, the Tribunal could cover all the connected attacks occurring in Lebanon between October 1, 2004, to December 12, 2005. [38]To determine whether the attack is linked, the Tribunal has to consider the motive and purpose behind the attacks, the nature of the targeted victims, the perpetrators. The attacks after 2005 could also be brought within reach of the Tribunal with the mutual understanding of the Security Council and the Government of Lebanon.

Territorial Jurisdiction

The territorial jurisdiction of the Special Tribunal for Lebanon is unclear as its primary focus lies in the act, particularly the crime of terrorism related to the assassination of the Prime Minister. But the action occurred in the territory of Lebanon. The jurisdiction can be extended

[36] Sarah Williams, *Hybrid and Internationalised Criminal Tribunals- Selected Jurisdictional Issues*, OXFORD HART PUBLISHING, 2012, 520.
[37] STL Statute, Art. 1, Jurisdiction of the Special Tribunal for Lebanon.
[38] David Re, *The Special Tribunal for Lebanon and National Reconciliation*, Fichel Policy Brief Series No. 32, TOAEP, 2015, 2.

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to cover other attacks that occurred in the territory. The territoriality principle that the Tribunal can rely upon is the one that was adopted by the SCSL concerning Taylor and bring to trial all those accused of committing preparatory acts outside the Lebanese territory.

Personal Jurisdiction

It was assumed that the actual assassin was killed during the explosion. Hence, the personal jurisdiction of the Tribunal was focused on the ones who planned and ordered the attack rather than the actual perpetrators. However, the rule 60 bis of Rules of Procedure and Evidence STL,[39] it also has jurisdiction over contempt and obstruction of justice. It has arisen from the

[39] Contempt and Obstruction of Justice (A) If a Judge or Chamber finds that counsel or anyone appearing in proceedings before the Tribunal is offensive, abusive or obstructing the proper conduct of the proceedings, or is negligent, or otherwise fails to meet the acceptable standards of professional competence and/or ethics in the performance of his duties, the Judge or Chamber may, after giving them the opportunity to be heard:
(i) issue a formal warning;
(ii) defer, suspend, or refuse audience to them; or
(iii) determine that they are no longer eligible to represent a suspect or an accused before the Tribunal, a victim participating in the proceedings, or to appear before the Tribunal.
(B) An order under paragraph (A) (iii) may only be made by the Pre-Trial Judge, the Contempt Judge, or a Chamber.
(C) The Judge or Chamber may also, with the approval of the President, communicate any misconduct of counsel to the professional body regulating the conduct of counsel in the counsel's national jurisdiction.
(D) The President, in consultation with the prosecutor, the Head of Defence Office and the Registrar, shall publish and oversee the implementation of a Code of Professional Conduct for Counsel appearing before the Tribunal.
Rule 60 bis
Contempt and Obstruction of Justice
(added November 10 2010, amended and renumbered February 20, 2013)
(A) The Tribunal, in the exercise of its inherent power, may hold in contempt those who knowingly and wilfully interfere with its administration of justice upon assertion of the Tribunal's jurisdiction according to the Statute. This includes, but is not limited to, the power to hold in contempt any person who:
(i) being a person who is questioned by or on behalf of a Party in the circumstances not covered by Rule 152, knowingly and wilfully makes a statement which the person knows is false and which the person knows may be used as evidence in proceedings before the Tribunal, provided that the statement is accompanied by a formal acknowledgment by the person being questioned that he has been made aware about the potential criminal consequences of making a false statement;
(ii) being a witness before a Judge or Chamber refuses or fails to answer a question without reasonable excuse, including the situation described in Rule 150(F);
(iii) discloses information relating to proceedings in knowing violation of an order of a Judge or Chamber;
(iv) without reasonable excuse fails to comply with an order to appear or produce documents before a Judge or Chamber;
(v) threatens, intimidates, causes any injury or offers a bribe to, or otherwise interferes with, a witness who is giving has given, or is about to give evidence in proceedings before a Judge or Chamber, or a potential witness;
(vi) threatens, intimidates, offers a bribe to, or otherwise seeks to coerce any other person, with the intention of preventing that other person from complying with an obligation under an order of a Judge or Chamber; or
(vii) threatens, intimidates, engages in serious public defamation of, by statements that are untrue and the publication of which is inconsistent with freedom of expression as laid down in international human rights standards, offers a bribe to, or otherwise seeks to coerce, a Judge or any other officer of the Tribunal.
(B) Any incitement or attempt to commit any of the acts under paragraph (A) is punishable as contempt of the Tribunal with the same penalties.
(C) The President shall designate a Contempt Judge in accordance with the relevant Practice Direction to hear cases of contempt and obstruction of justice. The Contempt Judge shall also hear cases under Rule 152.
(D) A Party believing that a person is in contempt under paragraph (A) (i) may so inform the relevant Judge or Chamber, submitting, where appropriate, supporting material. In other cases, a Party or any other interested person may inform the Judge or Chamber of an allegation of contempt or obstruction of justice. The Judge or Chamber shall refer the matter to the President for referral to a Contempt Judge.

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principle of common law, the doctrine of inherent powers. A court may exercise jurisdiction that is ancillary or incidental to its primary jurisdiction to ensure justice's good and fair administration.[40] In case of Karma, Mohamed Tahsin Al Khayat and Ors. were indicted on counts of contempt and obstruction of justice. They were informing the public about the proceedings of the Tribunal that were not supposed to be known publicly.[41] In case no. STL-14-05, it was held that Rule 60bis applies to natural persons only. It does not apply to legal persons.

Subject-matter jurisdiction

Ratione materiae of the Tribunal was limited to crimes of terrorism under Lebanese law. The Tribunal was to rely on relevant provisions under Lebanese penal law on terrorism, illicit associations, and offenses against life and personal integrity.[42] Article 314 of the Lebanese

(E) When the Contempt Judge has reason to believe that a person may be in contempt of the Tribunal, he may:
(i) invite the prosecutor to consider investigating the matter with a view to the preparation and submission of an indictment for contempt;
(ii) where the prosecutor indicates a preference not to investigate the matter or submit an indictment himself, or where in the view of the Contempt Judge, the prosecutor has a conflict of interest with respect to the relevant conduct, direct the Registrar to appoint an amicus curiae to investigate the matter and report back to the Contempt Judge as to whether there are sufficient grounds for instigating contempt proceedings; or
(iii) initiate proceedings himself.
(F) If the Contempt Judge considers that there are sufficient grounds to proceed against a person for contempt, he may:
(i) in circumstances described in paragraph (E) (i), direct the prosecutor to prosecute the matter; or
(ii) in the circumstances described in paragraph (E) (ii) or (iii), issue an order in lieu of an indictment and either direct amicus curiae to prosecute the matter or prosecute the matter himself.
(G) With respect to contempt under paragraph (A) (i), the Contempt Judge shall undertake the steps in paragraph (E) or (F) only if there is prima facie evidence that the alleged contempt has led to a material interference with the administration of justice.
(H) The rules of procedure and evidence in Parts Four to Eight shall apply mutatis mutandis to proceedings under this Rule.
(I) Any person indicted for or charged with contempt shall be afforded the rights envisaged in Rule 69 and, if that person satisfies the criteria for determination of indigence established by the Registrar, be assigned counsel in accordance with Rule 59.
(J) The maximum penalty that may be imposed on a person found to be in contempt of the Tribunal shall be a term of imprisonment not exceeding seven years, or a fine not exceeding 100,000 Euros, or both.
(K) Payment of a fine shall be made to the Registrar to be held in a separate account.
(L) If a counsel is found guilty of contempt of the Tribunal pursuant to this Rule, a relevant Judge or Chamber may determine that counsel is no longer eligible to represent a suspect or accused before the Tribunal, or that such conduct amounts to the misconduct of counsel pursuant to Rule 60, or both.
(M) A decision of a Contempt Judge finalizing a contempt case may be appealed to a bench of three judges designated by the President in accordance with the relevant Practice Direction. Notice of appeal shall be filed within fifteen days of the filing of the impugned decision. The Appellant's brief shall be filed within fifteen days of the filing of the notice of appeal.

[40] Ibid.

[41] New TV S.A.L., Karma Mohamed Tahsin Al Khayat Case no. STL-14-05/PT/AP/AR126.1 Decision on Interlocutory Appeal Concerning Personal Jurisdiction in Contempt Proceedings, Appeals Panel, 02. October 2014. para. 32.

[42] Nidal Nabil Jurdi, *The Subject-Matter Jurisdiction of the Special Tribunal for Lebanon, Journal of International Criminal Justice* 5, Issue 5, 2007, 1125–1138, JOURNAL OF INTERNATIONAL CRIMINAL JUSTICE, Volume 5, Issue 5, November 2007, Pages 1125–1138, https://doi.org/10.1093/jicj/mqm071 https://doi.org/10.1093/jicj/mqm071.

Penal Code lays down the provision for 'terrorist act'. They are defined as acts designed to create a state of alarm which are committed using inflammable materials, explosive devices, poisonous or incendiary products or infectious or microbial agents likely to create a public hazard.'[43] In terms of mens rea, the definition of terrorism requires a general as well as special intent to commit such acts. The general intent required by Lebanese law is the knowledge and will to commit such acts. The special intent is associated with creating a state of alarm or fear in others. However, the STL was established through the normal ratification process, but it would be considered an International Criminal body.[44] It also compels us to think that does the definition of terrorism as defined under Lebanese law provide the basis for the Tribunal to provide an international definition of terrorism? Here the STL's power of enforcement seems similar to that of the other international tribunals created under Chapter VII, like those of ICTY and ICTR, as they provided the potential for the development of International Criminal law that we see today. The STL may also be monumental in contribution towards 'internationalizing' the definition of terrorism as a core international crime alongside the ones recognized today. The STL is the only hybrid Tribunal that prosecutes only domestic crimes provided under Lebanese law, including the crime of terrorism, illicit association, and the failure to report crimes.[45]

Trials in absentia in Special Tribunal for Lebanon

The STL statute provides for the trials in absentia. It is provided in Article 22 of the STL statute:

The Special Tribunal shall conduct trial proceedings in the absence of the accused if he or she:
(a) Has expressly and in writing waived his or her right to be present;

(b) Has not been handed over to the Tribunal by the State authorities concerned;

(c) Has absconded or otherwise cannot be found, and all reasonable steps have been taken to secure his or her appearance before the Tribunal and to inform him or her of the charges confirmed by the Pre-Trial Judge.

The STL statute departed from absentia trials provisions of other international tribunals and provided for a form of 'total in absentia' trial. The International Military Tribunal at Nuremberg provided for trials in absentia. Thereafter no other tribunal except the STL has allowed total absentia trials.[46] Even when the ICTY and ICTR were established, it was considered to have

[43]Handbook on the Special Tribunal for Lebanon, INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE PROSECUTIONS PROGRAM, https://www.ictj.org/sites/default/files/ICTJ-Lebanon-STL-Handbook-2008-English.pdf.
[44] *Supra* note 35.
[45] STL Statute, Art.1, Jurisdiction of the Special Tribunal.
[46]Maya Trad, *Trials in Absentia at the Special Tribunal for Lebanon: An Effective Measure of Expediency or an Inconsistency with Fair Trade Standards*, 3 SOAS L.J., 2016, 38.

provisions for absentia trials. Still, it was rejected by the UN saying, "*A trial should not commence until the accused is physically present before the International Tribunal. There is a widespread perception that trials in absentia should not be provided for in the [ICTY] statute as this would not be consistent with article 14 of the [ICCPR], which provides that the accused shall be entitled to be tried in his presence."*[47] Despite the guarantee of the presence of the accused as several of 'minimum guarantees' under the ICTY statute, some portions of Milosevic's trials were conducted in absentia. It was done during his long periods of illness.[48] The Special Court for Sierre Leone established in 2002 adopted a similar approach incorporating the right of the accused to be present as that of ICTY and ICTR but qualified that right in situations in which he flees or refuses to attend.[49] However, the UN Mission in Kosovo in 2001 prohibited in absentia trials without qualification.[50] The Extraordinary Chambers of the Courts of Cambodia procedure allowed for absentia proceedings if the accused is present initially, then flees, refuses to attend, or disrupt the proceedings.[51] Therefore, with the exception of UNMIK, the tribunals have followed the approach towards partial in absentia evolved through ICTY and ICTR. The Rome Statute allows for trials even in the absence of the accused if the accused is disruptive of proceedings of the Court.[52] Therefore, the idea of the presence of the accused during the proceedings in recognized under international law, the STL's complete in absentia trial provisions marks a departure from modern international tribunals.[53] It can bring about some challenges for the Tribunal for when an accused who subsequently fled is found and seeks extradition, challenges the Tribunal for trial in absentia. It is likely to also raise fair trial issues and other rights of the accused.

The UN has set a precedent of in absentia trials by adopting the STL. Subsequently, on what basis will it be able to oppose the creation of such provisions in the future for other tribunals? The fundamental principle of criminal law is seen to be now negotiable in future tribunals after the STL. It might be a practical way of holding the trials for those absent, but it may negatively impact the international community more than it will be benefited. [54]

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[47] Optional Protocol to the International Covenant on Civil and Political Rights, December 19, 1966, 999.
[48]Hirad Abtahi & Grant Dawson, The anatomy of Milosevic trial(2001-2006), JINT.J HUMANITARIAN ACTION 1, 2016, (August 27, 2021 at 11 PM), https://doi.org/10.1186/s41018-016-0004-x.
[49] Statute of the Special Court for Sierra Leone, Art. 17(4) (d), 2002.
[50]Chris Jenks, *Notice Otherwise Given: Will in Absentia Trials at the Special Tribunal for Lebanon Violate Human Rights,* 33 Issue 1, FORDHAM INT'L L.J., (August 25, 2021, at 4:00 PM), https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2176&context=ilj.
[51] G.A. Res. 57/228, It 2, 4(a), U.N. Doc. A/Res/57/228 (May 22, 2003).
[52]Chris Jenk, *Notice otherwise given: Will in absentia trials at the Special Tribunal for Lebanon violate Human Rights?, 33:57,* FORDHAM INT'L. L.J., 66-68, https://core.ac.uk/download/pdf/216917322.pdf.
[53] Gardner et al., *Reconsidering trials in absentia at the Special Tribunal for Lebanon: an application of the Tribunal's early jurisprudence,* THE GEORGE WASHINGTON INT'L L.R., 43(1), 2011, 91-136.
[54] *Ibid.*

V. CONCLUSION

International criminal law was developed primarily to prevent human rights violations. The modern international criminal law regime was founded by establishing ad-hoc and international tribunals of ICTY and ICTR. Hybrid tribunals are shown to exhibit an exemplary blend in protecting human rights and respecting state sovereignty. The use of domestic actors, penal laws, infrastructure, applicable national laws allows greater acceptability among the affected state. Hybrid tribunals balance the dichotomy that exists between the conflicting state sovereignty and universal human rights. It is seen that most of the tribunals were created during or after an armed conflict to prosecute those most responsible or to prove accountability for the acts of the previous regime. But the establishment of the Special Tribunal for Lebanon shows that the use of these international mechanisms can even be extended to other contexts like terrorism. STL is an exception to other international tribunals that exercised jurisdiction over the 'core' international crimes as that of crime against humanity, war crimes, genocide, and crime of aggression. Hybrid or internationalized tribunals may include both crimes under international and national laws, but the STL statute provides for the crime of terrorism as defined under national law only. The criterion for a tribunal to be called as international does not require to include international crimes within jurisdictions, as we can infer from STL. The fact that STL's jurisdiction has only the crime of terrorism under national law does not render it a national adjudicating body. It includes other factors like its legal basis, funding, and establishment. Hence, the extent of internationalization in terms of application of international law, composition, infrastructure is one of the key elements in creating a strong legal framework for the Tribunal. It is important that whatever mechanism is adopted to ensure justice, there should be a balance between safeguarding the basic principles of criminal jurisprudence while upholding the established international laws.

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