LEGACY OF THE SPECIAL TRIBUNAL FOR LEBANON: TERRORISM AS A CRIME UNDER INTERNATIONAL CUSTOMARY LAW, CRIMINAL RESPONSIBILITY OF LEGAL PERSONS AND TRIAL IN ABSENTIA

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Abstract: *The article examines the contributions of the Special Tribunal for Lebanon (STL) to the development of international criminal law, highlighting two key areas. First, as the first tribunal in the history of international criminal law that addressed the crime of terrorism, the STL presented its definition under international customary law. Second, it is the first tribunal which established the criminal responsibility of a legal (moral) person. Another distinctive aspect of the STL is its allowance for trials in absentia, a practice the authors believe diverges from prevailing trends and is unlikely to be adopted by other tribunals. Additionally, the STL has further elaborated on procedural offences, which, however, are not the article's primary focus. The paper also briefly addresses the tribunal's establishment, which was based on a "dictated agreement," presenting an intriguing legal issue on its own.*

Keywords: *Special Tribunal for Lebanon, international criminal law, terrorism, criminal responsibility of legal persons, trial in absentia*

INTRODUCTION[1]

Special Tribunal for Lebanon (hereinafter only "STL") finished its work on 31 December 2023 when its extended mandate ended. It was a hybrid tribunal seated in Hague that mixed international and national (Lebanese) aspects. Among notable international aspects is the composition of the judicial plenum, whose president was a highly esteemed scholar of international law Antonio Cassese, and later Czech judge Ivana Hrdličková; The STL was established under Chapter VII of the United Nations Charter, by UN Security Council resolution 1757 issued on May 30, 2007. This allowed the UN Security Council to intervene in the domestic affairs of member states in extraordinary circumstances. Lebanon was obliged under this agreement to cooperate, under penalty of international sanctions, and finance half of its budget. The Secretary-General of the UN set the start date of the court as March 1st, 2009.[2] The Special Tribunal for Lebanon is an international tribunal due to its establishment by the United Nations Security Council, and it has a mixed nature as its judicial body is composed of both Lebanese and international judges. The legal basis for its existence and functioning, which was the agreement between the United Nations and the Leb-

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[1] Supported by and prepared within the framework of interdisciplinary project APVV-23-0509 A Paradigm Shift in the Understanding of War and Armed Conflict from Theological-Historical and Legal Perspectives at Comenius University Bratislava (2024-2028).

[2] NASHABE, Omar. Qira'a Awaliya fi Hukm al-Mahkama al-Khassa bi-Ightiyal al-Hariri: 'Adam al-Hasm Yaftah Bab al-Tawzif al-Siyasi. [Preliminary Reading of the Special Court's Judgment on the Hariri Assassination: Indecision Opens the Door for Political Exploitation]. In: *Al Akhbar* [online]. 15. 9. 2020 [2025-01-29]. Available at: <https://al-akhbar.com/Politics/293878>.

anon adopted authoritatively under Chapter VII of the UN Charter by UN Security Council resolution no 1757 (2007).[3]

The legal basis itself is an interesting legal question. The question is if there can be an international agreement where one of the parties did not consent to it, as the constitutional procedures required by Lebanese law were not met.[4] On the other hand the prime minister was in favour of the agreement and that is under the Vienna Convention on the Law of Treaties (1969) sufficient, however with risk of relative invalidation under art. 46 of the mentioned convention, as violation was publicized[5] and manifest for the other party (UN); and concerned a rule of fundamental importance regarding competence to conclude treaties.[6] The authors do not dispute that the STL has a legal basis, as resolutions of the UN Security Council do not require consent to be binding. But, probably, it should not be called "agreement." The UN Security Council resolution was formulated in a way, that the agreement will come into force despite of whether Lebanon agrees with it or not.[7] This, however, will not be dealt with in this paper, as it aims to focus namely on the contribution to the development of international criminal law, not on the law of international treaties.

The national aspect was the judges, even though they did not form even half of the plenum, and the applicable law, which was the Lebanese criminal law. The STL nevertheless said that it is "still an international tribunal" and thus in case of discrepancy between Lebanese law and international law, international law shall prevail.[8]

It held proceedings against nine persons, including two legal (juridical) persons. Five persons were indicted for crime of terrorism. "Terrorism proceedings" were completed *in absentia*. Three of them were sentenced, one acquitted and one died before the verdict. Other persons were indicted for contempt – two natural persons, journalists, and two legal persons (newspaper and TV station).

The novelties of the STL could be seen in several areas. The author sees as the most important defining terrorism as a separate crime under international customary law. It is understood by scholars that acts of terrorism can amount to, e.g. crimes against humani-

[3] For context of its creation see e.g. PLAS, Pascal Justice pénale internationale: le cas du Tribunal spécial pour le Liban. *Les Cahiers de la Justice*. 2021, Vol. 2, No. 2, pp. 335–349. Critical view is e.g. JURDI, Nidal Nabil The Special Tribunal for Lebanon: Lessons from a Missed Legacy. *Journal of International Criminal Justice*. 2023, Vol. 21, No. 4, pp. 755–773.

[4] According to Article 52 of the Lebanese Constitution, the President of the Republic shall negotiate and ratify international treaties in agreement with the Prime Ministers. However, The STL was established without the approval of the Council of Ministers as required.

[5] This requirement follows from the interpretation of the International Court of Justice. See Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening), Judgment, 1. C. J. Reports 2002, p. 430, para. 265. Confirmed in Maritime Delimitation in the Indian Ocean (Somalia v. Kenya), Preliminary Objections, Judgment, I.C.J. Reports 2017, p. 24, para. 48.

[6] The UN SC resolution itself refers to the fact, that the relevant procedures at the level of Lebanon were not met and that there "the establishment of the Tribunal through the Constitutional process is facing serious obstacles" S/RES/1757 (2007).

[7] See "The provisions of the annexed document, including its attachment, on the establishment of a Special Tribunal for Lebanon shall enter into force on 10 June 2007, unless the Government of Lebanon has provided notification under Article 19 (1) of the annexed document before that date;" S/RES/1757 (2007).

[8] Case no. STL-11-01/I/AC/R176bis, Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, 15. February 2011. para. 16.

ty,[9] but it is far from being settled if terrorism is a separate crime under international law. STL was the first ad hoc (hybrid) tribunal that dealt with the crime of terrorism and introduced a definition of terrorism as a crime under international customary law. This step was seen as highly controversial, as the debate on the definition of the crime of terrorism has been held for almost one hundred years with no final consensus among states and which current deadlock on negotiations on the Comprehensive Convention on Terrorism (CCIT); and, it was not necessary, possibly even *ultra vires*,[10] to define it as this tribunal had to apply Lebanese law.

Another aspect is that the STL dealt with the criminal responsibility of legal persons as a first tribunal on an international level. Even though legal persons were not prosecuted for the crime of terrorism, but for contempt, contempt is itself a crime for which an international tribunal may impose a sentence based on international law.

The Special Tribunal also includes an advanced system for victim participation compared to other international courts, as well as a witness protection system.

What could be highlighted concerning the STL is also the fact that the STL held trials *in absentia*, which is considered atypical in international criminal justice and even in many of the national criminal systems. This raises various issues related to the rights of the accused as well as to the overall meaning of such proceedings. This, however, the authors do not consider to be among the main legacy of the STL. Therefore, it will not be elaborated in this paper, as broadly as other topics.

I. TERRORISM AS A CRIME UNDER INTERNATIONAL CUSTOMARY LAW

The first serious attempt on international law to define terrorism as a crime dates to the Convention for the Prevention and Punishment of Terrorism adopted under the auspices of the League of Nations in 1937. Despite this convention never came into force, it can be considered a milestone that inspired following development of antiterrorist international regulation. It defined terrorism as a criminal offence directed against another High contracting Party (thus against another state) intended or calculated to create a state of terror of particular persons, or a group of persons or the general public.[11]

After the Second World War no other comprehensive treaty on terrorism was adopted, only treaties covering particular elements of expressions of terrorism, like the International Convention for the Suppression of Terrorist Bombings (1997), International Convention for the Suppression of the Financing of Terrorism (1999) and several other. For all these, it is common that they are addressing obligations towards states, which must criminalize treaty-based crimes in their respective legal orders. The negotiations on the Complex Convention on Terrorism (CCIT) have been in a deadlock for decades now.

These conventions are not primarily directed towards individuals and thus do not define terrorism as a crime under international law. In case of non-implementation, a re-

[9] SVAČEK, Ondřej *International Criminal Law*. Olomouc: Univerzita Palackého v Olomouci, 2012, p. 79.
[10] Ibid.
[11] Art. 2, Convention for the Prevention and Punishment of Terrorism (1937).

sponsibility of the state will arise for non-compliance with an international agreement, but not for an individual.

In the case of crimes under international law, on the other hand, criminal responsibility flows directly from international customary law[12] towards individuals, who are criminally responsible (in principle)[13] despite what the national law states.

Aside from the treaties, terrorism was defined also for specific purposes of some international organisations, like the United Nations,[14] the European Union[15] or the North Atlantic Treaty Organisation,[16] which all created principally similar definitions of terrorism.

As per Lebanese law, the Lebanese Criminal Code defined the crime of terrorism under its article 314 as follows: "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."[17]

The Trial Chamber disagreed with the Appeals Chamber's stance that this definition should be interpreted with reference to international law, considering such reference unnecessary because Article 314 is clear.

Before we elaborate further we will note, that the Appeals Chamber stance was given in its interlocutory decision, which was given *in abstracto,* without seeing the indictment, without any reference to the facts, and without encroaching on the right of future defendants to seek reconsideration of these matters in light of the particular facts of a case.[18] Not respecting this "advisory decision" however would lead to practical risk that the Trial's decision would be overturned by the Appeals Chamber when deciding in a particular case.

After examining Lebanese jurisprudence on the matter, the Trial Chamber determined that to meet the criteria for committing a terrorist act using an explosive device, a person must:

1. Carry out an act using an explosive device that can create a public danger;
2. Be aware that the act involves an explosive device that can create a public danger; and
3. Intend to induce a state of terror.

Proof of motive is not legally required, although it can be useful in contextualizing the offences and providing evidence of a person's intent.[19]

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[12] Criminal responsibility under international law is not depended on if the crime is defined in treaty, or if the state of individual's nationality is party to the respective treaty. Even if respective state is party to a relevant convention, individual is not party to the convention, so in from one point of view, individual cannot be responsible for the violation of a treaty, but only for violation of custom which was expressed in the treaty.

[13] In principle, as in some cases the legality under national law may be raised as a defence. Namely, if the unlawfulness of the legislation or direct order was not manifest. Compare e.g. art. 33, Rome Statute of the International Criminal Court (1998).

[14] E. g. UN Security Council resolution S/RES/1566 or UN General Assembly Declaration on Measures to Eliminate International Terrorism A/RES/49/60

[15] E. g. Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism.

[16] E. g. MC 0472/1 Military Committee Concept for Counter-Terrorism from 4 December 2015.

[17] Criminal Code of Lebanon, para. 314. In: *Lebanese Criminal Code* [online]. [2025-01-29]. Available at: <https://www.legal-tools.org/doc/d0f1c2/pdf/>.

[18] Case No. STL-11-01/I/AC/R176bis, Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, 15. February 2011. para. 8.

[19] STL-11-01/S/TC: The Prosecutor v. Salim Jamil Ayyash Sentencing Judgment, paras. 6191-6199.

The Trial Chamber also rejected the Appeals Chamber's suggestion that merely threatening to create a public danger could constitute part of the actus reus under Article 314, as this was not a requirement under Lebanese law but rather introduced by the Appeals Chamber through its examination of international law.

Additionally, the Trial Chamber disagreed with the Appeals Chamber's interpretation of "means" in Article 314. The Appeals Chamber believed that "means" included the use of any device or substance, however modest, that poses a public danger in the circumstances of its use. In contrast, Lebanese courts held that the actus reus required proof of a more extensive danger based on the force and violence extending beyond the immediate and direct location of use.[20]

From all mentioned sources, that are defining terrorism for various purposes, it is possible to extract some common aspects of the definition, and that is namely the *dolus specialis* – intent to intimidate the population or force the government or international organisation to act or to refrain from acting. Commission of the criminal act in question hence is not the true aim of terrorism, but only a tool to achieve an aim.

As we noted, the negotiation of CCIT is in a deadlock. Despite that there is partial success and large part of the work done, the problem remains in crucial element of the convention, which is the definition of terrorism.

The main reasons for the deadlock are disagreements on who terrorists are, as a person can be a terrorist for one state and the same person can be a fighter for freedom for another. Second is that terrorism is indeed commonly understood as something more than a mere act of terror, but it is rather an "ideology-driven act." This ideological motive however makes the phenomena of terrorism very complex to grasp.[21] States are not united in how broad the concept of terrorism should be, and some provide quite extensive definitions, whereas others are understanding terrorism narrowly, to prevent potential misuse against, e.g. the opposition to the government.[22]

Within the Arab region, the Arab Convention on the Suppression of Terrorism was established under the supervision of the League of Arab States in 1998 and amended in 2008.

In this regard, considering terrorism as an international crime was important. The Rome Statute lacks provision on the matter; terrorism is not explicitly defined as a material element of a crime against humanity or a war crime. However, some scholars argue that terrorism can be considered a war crime if the prohibited conduct consists of any violent act or threat to commit such an act against civilians or other persons not directly participating in hostilities (the wounded, shipwrecked, or prisoners of war). Terrorism can also be considered a crime against humanity since terrorist acts may fall within

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[20] RIKHOF, Joseph Special Court for Lebanon Conviction for Terrorism. In: *PKI Global Justice Journal* [online]. 18. 9. 2020 [2025-01-29]. Available at: <https://globaljustice.queenslaw.ca/news/special-court-for-lebanon--conviction-for-terrorism>.

[21] E.g. David C. Rapoport identifies four distinctive waves of terrorism, each of them defined by pursuance of a specific ideological aim – liberty (anarchy), self-determination (nationalism), communism (marxism) or religion (Islamic law) RAPOPORT, David C. *Waves of Global Terrorism: From 1879 to the Present.* New York: Columbia University Press, 2022, p. 448.

[22] BEKELE, Henkok Kebede. Problem of Defining Terrorism under International Law: Definition by the Appeal Chamber of Special Tribunal for Lebanon as a Solution to the Problem. *Beijing Law Review.* 2021, No. 12, pp. 619–622.

the category of crimes against humanity, regardless of whether they are committed in peacetime or wartime, if these terrorist acts form part of the material elements of a crime against humanity: "murder, torture, rape, enforced disappearance".

The fundamental basis for considering terrorism as an independent international crime lies in the establishment of an international tribunal to prosecute those responsible for terrorist crimes, known as the Special Tribunal for Lebanon.[23]

Up to the creating of the STL there was no international or hybrid tribunal with jurisdiction over crime of terrorism. Before the STL held trials against a particular accused, the STL's Appeals Chamber responded to the Pre-Trial Judge's questions in its interlocutory decision on the applicable law. Fifteen questions can be divided into five groups in which the first was:

"Whether the Tribunal should apply international law in defining the crime of terrorism; if so, how the international law of terrorism should be reconciled with any differences in the Lebanese domestic crime of terrorism; and in either case, what are the objective and subjective elements of the crime of terrorism to be applied by the Tribunal."[24]

The Appeal Chamber was deciding with the famous Antonio Cassese serving as a presiding, and judge rapporteur. We consider this fact as relevant, as Cassese even before the ruling was proposing in its works, that terrorism is a crime under international customary law.[25]

The first part related to the question of whether the STL should apply international law, as part of its hybrid character, was that it ought to apply Lebanese law. The STL ruled that it must "abide by the highest international standards of criminal justice, and its statute incorporates certain aspects of international criminal law."[26] Thus in a situation that applicable Lebanese law would be divergent from international law, international law shall have precedence. The international law shall be applied also in cases of lacuna.[27]

For these purposes, the STL defined the crime of terrorism in the following way:

"(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."[28]

[23] DARWISH, Tarteel The substantial law applicable before the Special Tribunal of Lebanon "critical analysis". *Beirut Arab University Journal – Journal of Legal Studies.* 2017, No. 6. In: *Beirut Arab University Journal - Journal of Legal Studies* [online]. [2025-01-29]. Available at: <https://doi.org/10.54729/2958-4884.1041>.

[24] STL-11-01, Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, 16 February 2011.

[25] E.g. CASSESE, Antonio The Multifaceted Criminal Notion of Terrorism in International Law. *Journal of International Criminal Justice.* 2006, Vol. 5, No. 4, pp. 933–958; CASSESE, Antonio Terrorism is Also Disrupting Some Crucial Legal Categories of International Law. *European Journal of International Law.* 2001, Vol. 12, No. 5, p. 994.

[26] STL-11-01, Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, 16 February 2011, para. 16.

[27] STL-11-01, Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, 16 February 2011, paras. 17, 40.

[28] STL-11-01, Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, 16 February 2011. para. 85.

We may consider as fourth element: "in time of peace."[29]

As the Lebanese criminal code contains the definition of terrorism, there was no urgent need to define terrorism for purposes of the STL.[30] The STL nevertheless might use the definition under international law as a "guidance" for interpretation of relevant provisions of Lebanese criminal law. For example, the definition provided by the STL is more extensive than the one under Lebanese law, which does not consider as terrorism acts committed by knives (cold weapons) or by machine guns and so on, but requires using of explosive devices, inflammable materials and so on.[31] This, however, is only a hypothetical issue, as the criminal act in question involved the usage of explosives and was therefore qualified as terrorism also under Lebanese criminal law.

Despite that the problem is only hypothetical, defining the crime of terrorism more broadly (extensively) than how it is defined under Lebanese law potentially breaches the principle of non-retroactivity of criminal legislation (*nullum crimen sine lege praevia*). According to the STL Appeals chamber, this broader definition of terrorism is not interpretation *contra legem*, but just a matter withing the margin of interpretation, where the STL inclined to extensive one. Moreover, the definition of crime terrorism in the view of the Appeals chamber is law existing *ante facto*, and "thus it is a reasonably foreseeable application of existing law".[32]

The definition of crime of terrorism, as defined by the STL, is broader not only relating to the objective element (*actus reus*) of the crime, but also relating to the subjective element (*mens rea*) of the crime, as in the definition of the STL the *dolus specialis* element is missing. This element is a typical common aspect of definitions of terrorism under various international sources and documents, as we pointed out previously. In both cases, it is more extensive interpretation *contra favour rei*. This special motive (*dolus specialis*) is not only typical trait of terrorism recognised by various legal scholars, but also by the political science or science of international relations.

Of course, interpretation *in favour rei* does not mean, that in all cases the court has to resolve an issue for the advantage of the accused, but in cases where there is reasonable unclarity, this should be the principial attitude of the court. It is only curious, that even the prosecution (not only the defence) was claiming that the is no definition of crime of terrorism,[33] and hence taking the narrower approach to the definition of crime of terrorism.

It would be oversimplification to say, that the STL reasoning was without any bases and superficial. The STL went into evidencing the *usus* and *opinio juris* as elements of

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[29] STL-11-01, Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, 16 February 2011. para. 85.

[30] "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." Criminal Code of Lebanon, para. 314.

[31] STL-11-01, Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, 16 February 2011, paras. 45–46.

[32] STL-11-01, Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, 16 February 2011, paras. 46.

[33] STL-11-01, Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, 16 February 2011, footnote 128.

international custom. It pointed out many international documents and agreements, international and national case-laws (from five states). STL went also to the study of national criminal legislation as, in STL's words, consistent domestic legislation can be important for indicating the emergence of customary rule, the attention cannot be given only to one big internal legal system, but on the other hand, does not require induction from the legal system of all states.[34]

The STL understood, that a crime that is present in the majority of criminal systems, or that has a cross-border element, does not equal a crime under international customary law. There is a need to identify "common understanding" by the international community, that this crime violates (or threatens) universal values, which is, according to the STL, met.[35] *"Difference in treatment of these various classes of criminal offences, and the perceived seriousness of terrorism, bears out that terrorism is an international crime classified as such by international law, including customary international law, and also involves the criminal liability of individuals."*[36]

Regarding the *opinio juris*, the STL took so-called Sørensen's doctrine[37] of positive presumption of *opinio juris*, according to which it is not necessary to provide evidence on *opinio iuris* if general practice is evidenced. This presumption is rebuttable.

The STL was not able to say, that customary rule on crime of terrorism already emerged in the context of armed conflict but think that it is currently in the process of emergence. This is because there in a divergence of positions of states towards so-called "freedom fighters."[38] That is persons who are fighting in pursuance of freedom, against the oppression of in seek of rights, but as they are too weak to use regular legal methods of force "in open field", usually against superior governmental armed forces, they are resorting to acts of terrorism.

The "advisory" decision of the STL's Appeals Chamber was widely criticized. Not only because of defined elements of the crime of terrorism but also because the STL was not restrictive in fulfilling its judicial functions. According to Gillet and Schuster, there is no legal system, that would allow a higher court to interpret a law for criminal procedures at lower instances with abstention of specific facts of a case.[39] According to the STL, it was

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[34] Ibid., para. 91.

[35] To turn into an international crime, a domestic offence needs to be regarded by the world community as an attack on 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 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. Ibid., para. 91

[36] STL-11-01, Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, 16 February 2011, para. 104.

[37] SØRENSEN, Max Principes de droit international public. *Recuell des Cours de I'Academle de La Haye*. 1960, Vol. 100, p. 51. STL-11-01, Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, 16 February 2011, para. 101.

[38] "The rule is not already emerged mainly because of states that are opposing to create such a rule in times of armed conflict, because of advocating in favour to so called freedom fighters." STL-11-01, Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, 16 February 2011, para. 101. See also GANOR, Boaz Defining Terrorism: Is One Man's Terrorist Another Man's Freedom Fighter? *Police Practice and Research*. 2002, No. 3, pp. 287–304.

[39] GILLETT, M., SCHUSTER, M. Fast-track Justice: The Special Tribunal for Lebanon Defines Terrorism. *Journal of International Criminal Justice*. 2011, Vol. 9, No. 5, p. 996.

necessary to ensure fast procedure.[40] However the sentence was issued more than ten years after delivering the interlocutory decision, it is thus hard to see how this decision helped the speedy trial, taking in mind that the STL was deciding *in absentia*.

As the STL was founded to apply Lebanese law, the approach of the STL should be the opposite. It should apply the Lebanese law, as interpreted by Lebanese authorities, and only when the interpretation would be contrary to the international law, raise the question of precedence.[41] The Lebanese courts are the most familiar with the application and interpretation of Lebanese law. Lebanon is a state with a continental legal culture, therefore even under the law of Lebanon the courts are not strictly bound by previous decisions. The STL has the right to diverge from the interpretation of others. But this itself might result in the violations of the rights of the accused, even though that was not the case in the relevant situation. As we said, the issue is just hypothetical. The Criminal Code of Lebanon in paragraph 314 defining terrorism uses the term "such as" which allows extensive interpretation of the crime of terrorism. So, we agree with Venture, that it is more accurate to say, that the STL disagreed with judicial interpretation of Lebanese criminal law, not that the STL disregarded Lebanese law.[42] Moreover, the direct application of international law and its precedence over Lebanese statutory law is coherent with the Lebanese constitutional system.[43]

So, the hypothetical issue would be a conflict between a monistic approach and internationally-conform international law v. legitimate expectations of the subjects of law.

Despite of above-described criticism, the STL decision can be considered a milestone, or point of reference, as before the STL there was no general definition of the crime of terrorism. It may take its place in the long effort of the international community to formulate such a definition.[44]

In our opinion, the STL definition is too extensive, as it does not include *dolus specialis* – ideological motive – in the subjective element (*mens rea*) of the crime, and simultaneously too narrow, as its commission is limited to the "peace time." Even taking in mind the reasoning of the STL, we think that the STL should narrow its definition not regarding the time aspect of the objective element (*actus reus*) of the crime, but regarding the subject (perpetrator) and, if the STL sees that correct, exclude members of insurrectional or national liberation movement from eligible subjects of the definition of crime.

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[40] STL-11-01, Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, 16 February 2011, para. 9.

[41] PELLET, Alain Article 38 In: Andreas Zimmermann et al. (eds.). *The Statute of the International Court of Justice: a Commentary.* Oxford: Oxford University Press, 2012, p. 860.

[42] VENTURA, Manuel J. Terrorism According to the STL's Interlocutory Decision on the Applicable Law. *Journal of International Criminal Justice*. 2011, Vol. 9, No. 5, pp. 1027–37.

[43] JURDI, Nidal Nabil et al. (eds.). *The Special Tribunal for Lebanon: Law and Practice*. Oxford: Oxford University Press, 2014, pp. 84–85.

[44] SCHARF, Michael Special Tribunal for Lebanon Issues Landmark Ruling on Definition of Terrorism and Modes of Participation. *ASIL Insights*. 2011, Vol. 15, No. 6. In: *ASIL Insights* [online]. [2025-01-29]. Available at: <https://www.asil.org/insights/volume/15/issue/6/special-tribunal-lebanon-issues-landmark-ruling-definition-terrorism-and#_ednref10>. SCHARF, M. Defining Terrorism as the Peacetime Equivalent of War Crimes: Problems and Prospects. *Case Western Reserve Journal of International Law*. 2004, Vol. 36, No. 2, p. 365. In: *Case Western Reserve University School of Law* [online]. [2025-01-29]. Available at: <http://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1399&context=jil>.

According to many scholars, like Saul, due to the difficulties of the international community in defining terrorism "the arguments that terrorism is a customary international crime are premature,"[45] and "at the current state of international law, terrorism can only be qualified as a particularly serious transnational, treaty-based crime that is, at best, on the brink of becoming a true international crime but has not achieved this status yet."[46]

There was also another group of scholars represented namely by Cassese.[47] The STL could potentially change the position in favour of the latter group. According to this group, there is indeed a disagreement, but on the other hand, there is a general consensus on some major features of terrorism, and that terrorism is threatening international values. The fact that there is no consensus on every aspect of the definition does not mean that terrorism is not regarded by the international community as punishable. We see some merit in such reasoning, however, this cannot be considered as a satisfactory state of the situation regarding the legality principle and rights of the accused. In the doctrinal literature, we see after the STL's decision a still divergence, but perhaps a slight shift towards upholding rather the STL's line of thought.[48] But event critics are confirming, that "the tide may be turning,"[49] and when it will turn, the STL legacy perhaps will be acknowledged in this regard. In this moment, the discussion in continuing.[50]

II. CRIMINAL RESPONSIBILITY OF LEGAL PERSONS

Before the STL rulings, there was not a single criminal case at an international (or semi-international) level that would involve a legal person. Regarding jurisdiction *ratione personae* this was explicitly restricted to natural persons (ICC) or the term "person" was interpreted in the meaning of natural persons.

The London Charter of the International Military Tribunal in Nuremberg included a provision on "criminal organisations,"[51] but its purpose was not to establish criminal responsibility of legal persons, but criminal responsibility of individuals who were members of organisations that were recognized by the International Military Tribunal in Nuremberg as criminal. This could be seen as an expression of collective criminal

[45] SAUL, Ben *Defining Terrorism in International Law*. Oxford: Oxford University Press, 2006, p. 270.

[46] AMBOS, Kai, TIMMERMANN, Anina Terrorism and Customary International Law. In: Ben Saul (ed.). *Research Handbook on International Law and Terrorism*. Cheltenham: Edward Elgar, 2020, p. 28.

[47] CASSESE, Antonio, YASMIN, Naqvi Terrorism as an International Crime. In: Andrea Bianchi (ed.). *Enforcing International Law Norms against Terrorism*. Oxford: Hart, 2004, p. 214.

[48] LEMOS, Miguel Is terrorism a jus cogens crime? *Revista Portuguesa de Ciencia Criminal*. 2021, pp. 70–84. BEKELE, Henkok Kebede. Problem of Defining Terrorism under International Law: Definition by the Appeal Chamber of Special Tribunal for Lebanon as a Solution to the Problem. *Beijing Law Review*. 2021, No. 12, pp. 619–630.

[49] SAUL, Ben Legislating from a Radical Hague: The United Nations Special Tribunal for Lebanon Invents an International Crime of Transnational Terrorism". *Leiden Journal of International Law*. 2011, Vol. 24, No. 3, p. 699.

[50] MINAKAWA, Makoto Is terrorism a crime under customary international law? *Journal of Nagoya Gakuin University*. 2022, Vol. 58, No. 3, pp. 41–54.

[51] Art. 6, Charter of the International Military Tribunal - Annex to the Agreement for the prosecution and punishment of the major war criminals of the European Axis (1945): "... power to try and punish persons who, acting in the interests of the European Axis countries, whether as individuals or as members of organizations, committed any of the following crimes ..."

responsibility of individuals for mere membership,[52] and it was not necessary in subsequent proceedings at the national level to prove guilt for particular crimes.[53] The criminal organisations as such, however, were not sentenced or acquitted.

It is said by some[54] that the International Military Tribunal in Nuremberg even rejected criminal responsibility of legal persons, referring to its, maybe most famous, statement, that "crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced." And the legal persons are, indeed, abstract entities. This, however, has to be seen in the context, that International Military Tribunal in Nuremberg rejected the position, that only the state can be responsible for violations of international law. And, actually, legal persons were held responsible in subsequent proceedings and national level, for complicity in crimes.[55]

Eventually, regarding the institute of criminal organizations, following the development of international criminal law went on a different way, strictly respecting the principle of individual criminal responsibility (*nulla poena sine culpa*).

Neither the notion of Joint Criminal Enterprise, elaborated by the International Criminal Tribunal for former Yugoslavia, can be understood as criminal responsibility of legal persons.[56] This tribunal referred also to the judgements of the International Military Tribunal in Nuremberg, but Joint Criminal Enterprise is more similar to the institute of conspiracy and common plan than to the institute of criminal organisation. The International Criminal Tribunal for former Yugoslavia said, that members of such joint criminal enterprise are responsible as co-perpetrators and not as accomplices (for aiding and abetting). The joint criminal enterprise itself, however, was not criminally responsible per se, thus it is not possible to understand it as criminal responsibility of a legal person.

Finally, criminal responsibility of legal persons is neither the institute of superior responsibility, where superiors in a non-military organisation, which could be a legal person, including a commercial corporation, can be held responsible for their negligence in the prevention and repression of crimes under international law of their inferiors. Again, the legal persons as such are not the responsible ones, only the concrete individuals in superior positions withing the structure of the respective legal person.

In 2019 the International Law Commission adopted Draft Articles on Crimes Against Humanity where it states, in article 6, that "shall take measures… to establish the liability

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[52] Art. 10, Charter of the International Military Tribunal – Annex to the Agreement for the prosecution and punishment of the major war criminals of the European Axis (1945): "In cases where a group or organization is declared criminal by the Tribunal, the competent national authority of any Signatory shall have the right to bring individuals to trial for membership therein before national, military or occupation courts. In any such case the criminal nature of the group or organization is considered proved and shall not be questioned." The International Military Tribunal in Nuremberg mitigated the strictness of the provision by defining that only some groups of persons should responsible for membership, and others (e.g. administrative staff and so on) should not.

[53] Art. 2, Control Council Law No. 10 (20 December 1945).

[54] E.g. MATTHEW, Gillett Testing the Limits of the Law against Those Who Test the Tribunal's Limits. *Journal of International Criminal Justice*. 2017, p. 12.

[55] ALKHAWAJA, Osama In Defense of the Special Tribunal for Lebanon and the Case for International Corporate Accountability. *Chicago Journal of International Law*. 2020, Vol. 20, No. 2, pp. 459–461.

[56] Prosecutor v. Tadić, Case No. IT-94-1-A, Judgement, 15 July 1999, paras. 191–229.

of legal persons... Subject to the legal principles of the State, such liability of legal persons may be criminal, civil or administrative."[57] Due to the formulation that allows the state to decide the form of liability, which is not necessarily criminal, it may be concluded that the criminal responsibility of legal persons does not derive directly from international law, but rather indirectly, through implementation in national legal systems. Commentary to these Draft articles reflected also the decisions of the STL.[58] Nevertheless, the International Law Commission did not include the notion that legal persons shall be criminally responsible. This question is left in the discretion of the state, contrary to the natural persons, which shall be criminally responsible irrespective of the national law regulation.

Some international treaties deal with the issue of responsibility of legal persons, like the International Convention on the Suppression and Punishment of the Crime of Apartheid (Apartheid Convention). Apartheid Convention in art. 1 (2) says that "the present Convention declare criminal those organizations, institutions and individuals committing the crime of apartheid." It is not clear what distinction is between organization and institution, but it is clear, that the Apartheid Convention distinguishes them from individuals – natural persons. In art. 3 it says that the members of such organizations and institutions are criminally responsible. In art. 10 then that these organizations and institutions responsible for the crimes. It is not clear if it has to be a criminal responsibility, presumably yes. Unlike as in case of natural persons, the Apartheid Convention does not state, that "international criminal responsibility shall apply" also to organizations and institutions.

Some other conventions are similarly dealing with issue of responsibility of legal persons, but the overall conclusion is that the responsibility of legal persons is indirect and can be understood as an example of treaty-based crimes,[59] or the modality of responsibility (civil, administrative, criminal) is left to the discretion of the states. Professor Stahn however said that according to him there are at least "seventeen multilateral international instruments with provisions on corporate criminal liability."[60]

The milestone in the development of criminal responsibility of legal persons under international law are two cases – New TV S.A.L., Karma Mohamed Tahsin Al Khayat (STL-14-05) and Akhbar Beirut S.A.L, Ibrahim Mohamed Ali Al Amin (STL-14-06) (Case STL-14-05/A/AP). Khayat is the first-ever accused to appear willingly before the STL. In both, the Contempt Judge ruled pursuant to Article 60 *bis* of STL's rules and regulations, that legal persons were not subject to its jurisdiction, and the Appeals Panel overturned those

[57] Draft articles on Prevention and Punishment of Crimes Against Humanity 2019. *Yearbook of the International Law Commission*. 2019, Vol. II, Part Two.

[58] Another mentioned is Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human rights (Malabo Protocol), which extends the jurisdiction of the African Court of Justice and Human Rights, and includes jurisdiction ratione personae over legal persons (art. 46C – corporate criminal liability). This, however, is still not in force. STL thus remains as the only exception.

[59] See closer e.g. ŠTURMA, Pavel *Mezinárodní trestní soud a stíhaní zločinů podle mezinárodního práva [International Criminal Court and pursuit crimes under International Law]*. Praha: Karolinum, 2002, p. 32. CLARC, Roger S. Treaty Crimes. In: SCHABAS, William A. *International Criminal Law*. Cambridge: Cambridge University Press, 2016, pp. 214–229.

[60] STAH, Carsten Liberals vs Romantics: Challenges of an Emerging Corporate International Criminal Law. *Case Western Reserve Journal of International Law*. 2018, Vol. 50, p. 95.

decisions. In both cases, it was the same Contempt Judge who delivered the decisions, and, in both cases, he decided that the STL had no right to rule on the criminal responsibility of legal persons. "It is noteworthy that the first instance judgment in the second case was delivered after the judgement in the first case was already overturned by the Appeals Panel. Yet, the judge did not change his mind."[61] Further, Contempt is closely related to Freedom of expression. The latter is regarded as the essential foundation for establishing democratic societies, and safeguarding this freedom fosters the development of a positive character that can develop and benefit societies. Thus, one could ask: How the Special Tribunal for Lebanon balance the right of freedom in the media with the need to maintain respect for the court and ensure the proper administration of justice, particularly in cases of contempt? [62]

Jurisdiction *ratione materiae* is limited to the crime of terrorism. STL nevertheless extended its jurisdiction also over the contempt based on the doctrine of inherent powers or competence. It thus established that the STL has also powers that are supplementary to its primary jurisdiction and exercise of which is necessary for ensuring the administration of justice in the areas for which the judicial body was formed in the first place.[63] Contempt is also a criminal offence for which a criminal court (STL) can impose a criminal sentence (namely monetary).

The Contempt Judge (*judge compétent en matière d'outrage*) of the first instance confirmed this view on inherent power to prosecute and sentence the offence of contempt. But considered, that the responsible one could be only the natural persons and rejected sentencing the legal persons.

Contempt Judge referred to the textual interpretation of the STL' Statute which used masculine and feminine gender, but not neutral, and concluded that whatever advantage *de lege ferenda* it would be to have possibility to sentence a legal person for contempt, this advantage is not sufficient to firmly establish jurisdiction of the STL *de lege lata*.[64]

The Contempt Judge believed that the term "person" used in the STL's Statute and in the STL's Rules of Procedure and Evidence should be interpreted in the ordinary sense,[65] and that in criminal law means a natural person. As a standard, the Contempt Judge considered the principle *societa delinquere non potest*. This lack of explicit jurisdiction *ratione personae* over legal persons cannot be saved by looking for their implicit basis.[66] As the Contempt Judge said, there are situations when the court has to fill the lacunae, but in this situation, it would go against the ordinary meaning of the term "person" in international as well as national criminal legal context. There is a global trend moving towards

[61] ZIEMBLICKI, Bartosz *Liability of companies before international criminal courts. Právo v podnikání vybraných členských států EU: sborník příspěvků k 12. ročníku mezinárodní vědecké konference.* Praha: TROAS, 2020, p. 132.
[62] DARWISH, Tarteel Ḍawābiṭ al-Iʿlām fī al-Maḥkama al-Khāṣṣa bi-Lubnān. Regulations of Media in the Special Tribunal for Lebanon. *Journal of Law and Political Science*. 2018, No. 17 (2018), pp. 297–300.
[63] Case no. STL-14-05. Decision on Motion Challenging Jurisdiction and on Request for Leave to Amend Order in Lieu of an Indictment, 24. July 2014. paras 29–30.
[64] Case no. STL-14-05. Decision on Motion Challenging Jurisdiction and on Request for Leave to Amend Order in Lieu of an Indictment, 24. July 2014. paras. 63, 68.
[65] Art. 31 (1) Vienna Convention on the Law of Treaties (1969).
[66] Case no. STL-14-05. Decision on Motion Challenging Jurisdiction and on Request for Leave to Amend Order in Lieu of an Indictment, 24. July 2014. paras. 70–71.

the criminal responsibility of legal persons, but this cannot be understood as a universal standard yet.[67]

This was reversed by the Appeals Panel which said that the interpretation "in the spirit of law" must be applied to ensure full functionality and effectiveness of the law. The principle *in dubio pro reo* should be applied only subsequently under rule 3 of the STL's Rules of Procedure and Evidence, and thus concluded that the Contempt Judge "erred in stating that the Tribunal's contempt jurisdiction is limited to natural persons under the principle contained in Rule 3 (B), according to which in case of any ambiguity one must resort to the interpretation most favourable to the accused."[68]

Appeals Panel, in which Ivana Hrdličková served as Judge Rapporteur, did not see why the term "person" has to be limited to natural persons only. A person in legal context may include legal persons as well. If the authors of the STL Statute and STL's Rules of Procedure and Evidence wanted to exclude legal persons, they would do it explicitly as in the case of the victim. The interpretation of the first-instance contempt judge was, according to the Appeals Panel, interpretation in the letter and not in the spirit of the law. What is more, the textual interpretation of the Contempt Judge was based on the English language version but has no support in the Arab and French language versions.[69] On the other hand, art. 33(4) of the Vienna Convention on the Law of Treaties (1969) provides that in instances of language inconsistencies "the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted." "Given that the French and Arabic versions of the STL Statute contain the term "persons," which is ambiguous, and the English version indicates that the term "persons" refers to natural persons, the most direct means of reconciling those versions would be to interpret the broader Arabic and French versions in light of the more specific English version."[70]

Based on the quite progressive development of the institute of criminal responsibility of legal persons around the globe the Appeals Panel disagreed that the principle *societas deliquere non potest* is still valid. On the contrary, the majority of jurisdictions already recognise the possibility of corporate criminal responsibility.[71] And even in relation to the states that do not incorporate criminal responsibility of legal persons, there is the possibility of administrative sanctions which, by their effect, may amount to the severeness of criminal sanctions.[72]

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[67] Case no. STL-14-05. Decision on Motion Challenging Jurisdiction and on Request for Leave to Amend Order in Lieu of an Indictment, 24. July 2014. paras. 74–75.

[68] Case no. STL-14-05. Decision on Interlocutory Appeal Concerning Personal Jurisdiction in Contempt Proceedings, 02. October 2014. para. 74.

[69] In French language, on contrary to the English language, the pronoun (his/her, son/sa) is connected to the object not to the subject. E.g. English: that is his mother/father, French: c'est sa mère/son père.

[70] MATTHEW, Gillett Testing the Limits of the Law against Those Who Test the Tribunal's Limits. *Journal of International Criminal Justice*. 2017, p. 11.

[71] ZERK, Jennifer *Corporate Liability for Gross Human Rights Abuses: Towards a Fairer and More Effective System of Domestic Law Remedies: A report prepared for the Office of the UN High Commissioner for Human Rights*, 2014, p. 32. In: *Office of the UN High Commissioner for Human Rights* [online]. [2025-01-29]. Available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/Business/DomesticLawRemedies/StudyDomesticeLawRemedies.pdf>.

[72] Case no. STL-14-05. Decision on Interlocutory Appeal Concerning Personal Jurisdiction in Contempt Proceedings, 02. October 2014. paras. 36–44.

The fact, that no international criminal body involved responsibility of legal persons does not mean that it is that it is impossible to sentence a legal person as no international criminal tribunal neither concluded opposite.[73]

Finally, the Lebanese criminal law – article 210 of the Lebanese Criminal Code – recognises criminal responsibility of both natural (physical) as well as legal (moral) persons and thus the criminal responsibility is for accused legal persons foreseeable in the context of the Lebanese society.[74]

The decision of the Appeal Panel was adopted by a majority of 2:1, where in favour was the Czech judge Hrdličková, serving as Judge Rapporteur and judge Nosworthy. Against was Lebanese judge Walid Akoum. The dissenting judge said that interpretation in the spirit of the law is not *carte blanche* for a court and considered such a decision as contrary to the principle *nullu crimen sine lege scripta and stricta*, as well as against the principle *in dubio pro reo*. He pointed out, that the effect would be possible to achieve by prosecuting natural persons, including managers of the companies, thus it was not necessary for the STL to extend its jurisdiction under the doctrine of inherent powers; and also highlighted the fact, that in states which introduced criminal responsibility of legal persons, they did it explicitly.[75]

The Contempt Judge Letteri in the second case, who was the same judge as in the first case, deciding after the appeal decision was already delivered in the first case, again decided, that the STL does not have jurisdiction over legal persons and compared it to the standards of adjudication in totalitarian systems. The appeals decision in the second case was adopted unanimously, judge Akoum not being part of the Appeals Panel.

Both contempt cases involved natural persons (journalists) as well as legal persons (companies – newspaper and TV station – for which they were working). In both the factual situation lied in informing the public about the identities of protected witnesses. The first was acquitted and the second was sentenced to a fine of 6 000 euros taking into account that it was the first case at the level of international criminal bodies.[76]

STL was able to impose only a sentence of imprisonment or a fine. The scope of applicable sentence to the legal persons is in general, naturally, broader and may include judicial surveillance or even its dissolution.[77]

Decisions of the STL erupted a doctrinal criticism which was at times even quite harsh, like stating that the decision “as being based upon strained textual analyses… and inconsistent teleological reasoning.”[78]

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[73] Ibid., paras. 61–67.

[74] Ibid., paras. 68–71.

[75] Case no. STL-14-05. Decision on Interlocutory Appeal Concerning Personal Jurisdiction in Contempt Proceedings, 02. October 2014. Dissent.

[76] Case no. STL-14-06, Reasons for Sentencing Judgment, 05. September 2016. paras 21, 24.

[77] KAEB, Caroline The Shifting Sands of Corporate Liability under International Criminal Law. *George Washington International Law Review*. 2016, Vol. 49, No. 2, pp. 386–396.

[78] McDERMOTT, Yvonne Rees Corporate liability for contempt at the Special Tribunal for Lebanon: the saga continues. In: *humanrightsdoctorate.blogspot.com* [online]. [2025-01-29]. Available at: <https://humanrightsdoctorate.blogspot.com/2015/02/corporate-liability-for-contempt-at.html>; or JACOBS, Dov. A Molotov Cocktail on the Principle of Legality: STL confirms contempt proceedings against legal persons. In: *dovjacobs.com humanrightsdoctorate.blogspot.com* [online]. [2025-01-29]. Available at: <https://dovjacobs.com/2014/10/06/a-molotov-cocktail-on-the-principle-of-legality-stl-confirms-contempt-proceedings-against-legal-persons/>.

According to Kyriakakis the fact that the issue of criminal responsibility of legal persons was discussed at the negotiations of the Rome Statute of International Criminal Court and was not implemented reflects rather the non-existence of general consensus and thus of correspondent of such customary norm in international law.[79] On the other hand, the reason may lie in the fact, that not all states established criminal responsibility of legal persons in their national legal order which would raise practical issues related to raised issues related to future cooperation with the court and complementarity principle,[80] and simple lack of time in negotiations, and not because it would be refused as a substantive institute.[81] After all, the aim of the Rome Statute was not to comprehensively codify international law, but only for the purposes of the court.[82]

In addition, the states went through a development from the end of the 20th century when negotiations were held towards the inclusion of criminal responsibility of legal persons in their criminal orders. Today the majority of the states recognise the possibility of responsibility of legal persons for crimes, and states are actually under obligation (according to ILC) to impose some form of responsibility for crimes under international law.

Explicit limitation of jurisdiction *ratione personae* of the International Criminal Court is firstly not a limitation for other tribunals and secondly is a procedural issue not related to substantive issues among which the responsibility of legal persons lies. Some merits however lie in the argument that the Statutes of previous UN Tribunals (ICTY, ICTR) explicitly said that these tribunals have jurisdiction over natural persons. Why the "Statute-giver" (UN Security Council) decided in the case of the STL to use different phrase and omitted the adjective "natural" is unclear. This itself may open the doors to a more extensive interpretation of the term person. According to some the reason why other tribunals did not decide to sentence legal persons was a mere lack of will, not a legal obstacle.[83]

Criminal responsibility of legal persons has significant importance. There are instances where corporations are perpetrators (or accomplices) of crimes committed in states where they are having only filial companies. Crimes may be committed not because of interests of particular individual, but rather as a result of a corporate policy or culture. Instance often includes environmental damages; gross violations and mistreatment of workers; or financing of criminal groups.[84] If it would be left only on the decision of states if they wish to implement criminal responsibility, the principle of universality would not be applied. This is highly important in relations to corporations,

[79] KYRIAKAKIS, Joanna Corporations before International Criminal Courts: Implications for the International Criminal Justice Project. *Leiden Journal of International Law*. 2017, Vol. 30, No. 1, pp. 221–222.

[80] Due to the fact that some state do not have implemented corporate responsibility, that would lead to automatic fulfilment of inability component of complementarity and possible overburdening of the court. KAEB, Caroline The Shifting Sands of Corporate Liability under International Criminal Law. *George Washington International Law Review*. 2016, Vol. 49, No. 2, p. 353.

[81] METTRAUX, Guénaël *International Crimes: Law and Practice: Volume II: Crimes Against Humanity*. New York: Oxford University Press, 2020, p. 109.

[82] Art. 10, Rome Statute of the International Criminal Law (1998).

[83] ALKHAWAJA, Osama *In Defense of the Special Tribunal for Lebanon and the Case for International Corporate Accountability*. p. 454.

[84] See closer e.g. EBERECHI, Ifeonu Armed Conflicts in Africa and Western Complicity: A Disincentive for African Union's Cooperation with the ICC'. *African Journal of Legal Studies*. 2009, Vol. 3, pp. 53–76.

which main headquarters are in "global north" and harming consequences of their decisions is in "global south."[85]

Only by targeting the corporation as such it is possible to change the policy.[86] Decisions could be adopted because the managers are following interests of the corporate collectively, that is encouraging criminal behaviour,[87] and not because of their personal interests. Threat of prosecutions may "draw the behaviour of global corporations into the normative order constructed by international criminal justice."[88] In this sense it is important that the criminal responsibility would be drawn upon the supranational corporation as such and not only on individual companies making its parts.[89]

Of course, the opposite can be the case, and the managers are misusing their position for their own personal interest. It is thus important that criminal responsibility of legal persons would not replace the criminal responsibility of individuals but will supplement it.

Abovementioned is, however, still a statement *de lege ferenda*, and alone is still insufficient basis to say, that the international law evolved to include criminal responsibility of legal persons under international law.

We disagree with opinions that the Nuremberg justice held legal persons responsible making it precedence, that legal persons may be held responsible for violations of Hague law.[90] The famous I. G. Farben case is, first of all, an instance of a domestic prosecution held at military courts of the USA. With Nuremberg tribunal they had in common only the seat (*Justizpalast*).

In the absence of relevant norm, the judicial creativity, especially in criminal law, has to be restrictive. On the other hand, there is no norm that is prohibiting for a international or national criminal court to sentence a legal person, taking into account that the international law has, in general, dispositive character, the relevant court may consider it suitable and necessary to sentence a legal person and it cannot be *in abstracto* seen as impasse. We hold the view that is has to be proportional. Decisions such as of the STL may, later, lead to formation of customary norm.

Even now trend can be seen to extend human rights violations responsibility to corporate entities.[91] It is just matter of will, if the responsibility will gain criminal character. Hu-

[85] KYRIAKAKIS, Joanna Corporations before International Criminal Courts: Implications for the International Criminal Justice Project. *Leiden Journal of International Law*. 2017, Vol. 30, No. 1, pp. 231–232.

[86] KAEB, Caroline *The Shifting Sands of Corporate Liability under International Criminal*. pp. 375–376.

[87] KAEB, Caroline. A New Penalty Structure for Corporate Involvement in Atrocity Crimes: About Prosecutors and Monitors. *Harvard International Law Journal*. 2016, Vol 57, p. 21.

[88] KYRIAKAKIS, Joanne *Corporations before International Criminal Courts: Implications for the International Criminal Justice Project*. p. 11.

[89] ZIEMBLICKI, Bartosz Liability of companies before international criminal courts. *Právo v podnikání vybraných členských států EU: sborník příspěvků k 12. ročníku mezinárodní vědecké konference*. Praha: TROAS, 2020, p. 135. ICJ indirectly said that "lifting the corporate veil" was "a general principle of law originating from domestic legal systems." Barcelona Traction, Light and Power Company, Limited, Judgment, I.C.J. Reports 1970, pp. 38–39. para. 56-58. According to ALKHAWAJA, Osama In Defense of the Special Tribunal for Lebanon and the Case for International Corporate Accountability. *Chicago Journal of International Law*. 2020, Vol. 20, No. 2, p. 465.

[90] GIANNINI, Tyler, FARBSTEIN, Susan. Corporate Accountability in Conflict Zones: How Kiobel Undermines the Nuremberg Legacy and Modern Human Rights. *Harvard International Law Journal*. 2010, Vol. 52, pp. 119–135. KYRIAKAKIS, Joanne *Corporations before International Criminal Courts: Implications for the International Criminal Justice Project*. p. 223.

[91] KAEB, Caroline *The Shifting Sands of Corporate Liability under International Criminal Law*. p. 360.

man rights violations, if they are widespread or systematic, may constitute crimes against humanity, or when committed with *dolus specialis*, may constitute crime of genocide.

Other questions remain open, even if the development would go on the way towards criminal responsibility of legal persons under international law like what is the definition of legal person under international law; or if the responsibility of the legal persons is based on attribution of natural person's *mens rea* to the legal person or the legal person has its own criminal intent. The STL did not answer the question is the legal person can be criminally responsible alone, or there has to be a natural person whose crime will be attributable to the legal person. STL. Some states require identification of a natural persons whose conduct is attributable to the legal person (manager, employee etc.), other not.[92] STL used attributability modality based on Lebanese Criminal Code,[93] but this approach cannot be used, if criminal responsibility of legal persons would be accepted in international law as such. The contribution of the STL hence might be innovative but remains incomplete.

As Ivana Hrdličková herself said "It remains unclear whether and how this will affect international criminal law in general, and whether other international courts will have a reason to consider similar issues in the future."[94]

It has to be noted that the direct transfer of STL's decision to hold legal persons responsible for the domain of core crimes under international law is not straightforward. Such a shift would require substantial legal and institutional adjustments. It is not straightforward, namely because the corporate responsibility was raised concerning procedural offences, not the core crimes under international law. However, the STL's findings may serve as a reference point for other courts and tribunals, particularly those examining the feasibility of holding legal persons accountable for crimes under international law. Its reasoning was general enough and focused on the interpretation of the term "person." This interpretation does not have to be limited only to the core crimes. In this way, it would be premature to say that STL opened the door, but we would be bold enough to say that it paved the road towards its opening. The opening would remain for a decision of other courts and tribunals.

III. TRIAL IN ABSENTIA

A trial *in absentia*, also known as a trial in the defendant's absence, is a legal proceeding where the accused is not physically present during the trial (*nunquam praesens)*. This

[92] In French approach the court must find elements of the offense in individual, and then attribute it to the legal entity, as corporation lack minds, whereas in US corporations are seen as fully independent entity with personality of their own. See e. g. TRIPONEL, Anna Comparative Corporate Responsibility in the United States and France for Human Rights Violations Abroad. *Proceedings of the New York University 61st Conference on Labor.* 2010, p. 80. SKUPSKI, George The Senior Managment Mens Rea: Another Stav at a Workable Intergration of Organizational Culpability into Corporate Criminal Liability. *Case Western Reserve Law Review.* 2011, Vol. 62, No. 1, pp. 263–265.

[93] This itself is criticized, as the STL's Statute allowed to referred to Lebanese Code of Criminal Procedure, i tis thus unclear why the STL used Lebanese.

[94] HRDLIČKOVÁ, Ivana Unikal'nye pravovye svoystva Spetsial'nogo tribunala po Livanu. [Unique legal features of the Special Tribunal for Lebanon]. *Mezhdunarodnoe pravosudie (Международное правосудие).* 2019, Vol. 9, No. 4, p. 109.

form of trial contradicts the defendant's right to be present in court which is a fundamental principle. The latter is an important aspect of the right to a fair trial. It allows the defendant to participate in their defense and consult directly with their legal counsel according to Article 14 (3) (d) of the International Covenant on Civil and Political Rights. However, it is the only alternative if the defendant voluntarily chooses not to appear when summoned, if the accused was not found or impossible to be located, or if the accused cannot be extradited to the jurisdiction where the trial is taking place.[95]

Trials *in absentia* play a crucial role in maintaining the integrity and efficiency of the justice system by balancing the defendant's rights with the court's duty to uphold justice. While the presence of the accused is essential for a fair trial–ensuring direct confrontation with witnesses and accurate verification of statements–there are circumstances where proceeding without the defendant becomes necessary. Preventing obstruction of justice is a key justification, as a defendant's absence can lead to delays, dispersal of evidence, expiration of statutes of limitation, or even a miscarriage of justice. This is particularly important in civil law systems, where trials serve a broader societal function beyond resolving disputes between two parties. Although attending one's trial is a fundamental right, it is also a duty, and courts may impose sanctions on those who deliberately evade justice. Legal doctrines such as "fugitive disenfranchisement" serve as deterrents against flight, ensuring that defendants cannot manipulate the system to avoid accountability. While some jurisdictions allow full trials in absentia, others, like the U.S., place limitations on when such proceedings can occur. Ultimately, legal systems must balance the ideal of truth-seeking through a defendant's presence with the need to prevent individuals from effectively vetoing their own trials through deliberate absence.[96]

Among international tribunals, the STL is the only recent exception to conduct a trial *in absentia*. As state by Dr. Omar Nashabe, it is also the first mixed international court to try defendants in absentia, with the Defense Office appointing lawyers to defend the rights and interests of absent defendants without communicating with them. Pursuant to Article 22 of the *STL Statute*, the tribunal shall conduct a trial in the absence of the accused under certain circumstances. Nevertheless, before resorting to this measure, all reasonable efforts must be made to secure the accused's presence. This was evident in the *Prosecutor v. Salim Jamil Ayyash et al.* STL-11-01.[97] In the latter, the accused was not found, and all reasonable steps were taken. Thus, the trial was held in *absentia*.

In this notable decision, the Trial Chamber of the STL concluded that four accused had either absconded or could not be found, despite extensive attempts by Lebanese authorities to apprehend them. These efforts included seven months of widespread me-

[95] PARRY, Ryan The absconding Accused and the ICC: An examination on the legitimacy and capacity of the International Criminal Court to hold in absentia trials. In: *PKI Global Justice Journal Queens Law* [online]. 2. 11. 2021 [2025-01-29]. Available at: <https://globaljustice.queenslaw.ca/news/the-absconding-accused-and-the-icc-an-examination-on-the-legitimacy-and-capacity-of-the-international-criminal-court-to-hold-in-absentia-trials>.

[96] GARDNER Maggie Reconsidering Trials in Absentia at the Special Tribunal for Lebanon: An Application of the Tribunal's Jurisprudence. *Georges Washington International Law Review*. 2011, Vol. 43. In: *Cornell University Law Library* [online]. [2025-01-29]. Available at: <https://scholarship.law.cornell.edu/facpub/1530/>.

[97] STL-11-01/S/TC: The Prosecutor v. Salim Jamil Ayyash Sentencing Judgment.

dia coverage of the indictment, informing the accused of the charges against them and their right to participate in the trial. To determine whether 'all reasonable steps' had been satisfied, the Tribunal analyzed Lebanese criminal procedures and drew guidance from international precedents, particularly Rule 61 decisions at the International Criminal Tribunal for the former Yugoslavia "ICTY" and the International Criminal Tribunal for Rwanda "ICTR". In prior cases such as Martic, Rajic, Karadzic, and Mladic, the ICTY found that measures such as widespread media publication of indictments and official notices sufficed to establish that the accused had been properly informed. As a result, the Trial Chamber ruled that the criteria for a trial *in absentia* had been met and ordered the proceedings to continue without the accused. This decision underscores the balance that international courts must strike between safeguarding the rights of the accused and ensuring that justice is not obstructed by deliberate evasion.[98]

At the STL, a trial *in absentia* is allowed under Article 22 of its statute, under 3 circumstances:

a) When the accused waves the right to be present explicitly.
b) When State authorities have not handed over the accused to the court. And
c) When the accused has absconded or cannot be found after reasonable steps have been taken.

Eventually, a trial *in absentia* seems to be a last resort when there are no other alternatives to proceed. Despite the ongoing debate surrounding trials *in absentia*, they serve as a necessary mechanism to prevent impunity when accused individuals evade judicial proceedings. Through the enforcement of rigorous procedural safeguards, the STL has reaffirmed its commitment to upholding due process while ensuring that justice is served in complex international cases.

The former Minister Bahij Tabbara commented: "The Special Tribunal for Lebanon is a unique experience among international courts. Its procedures, especially the trial of defendants *in absentia*, increase its distinction. These and other characteristics make it a unique, independent body. It is neither affiliated with the Security Council nor is it part of the Lebanese system. Therefore, "It is very unlikely that the experience will be repeated again in the future."[99]

CONCLUSION

The innovative contributions of the STL lies in the area of defining of terrorism as a crime under international customary law and in the sentencing of legal persons. In both cases the authors finds that the STL findings were probably premature, not reflecting the law *de lege lata*, and possibly ruling *ultra vires*. We consider them as progressivist and pragmatic rulings. Pragmatism and progressivism in judicial decisions is on the fine line with the *ultra vires*.

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[98] STL-11-01/I/TC: The Prosecutor v. Salim Jamil Ayyash et al., Decision to Hold Trial in Absentia.

[99] AL-MUSTAQBA Nadwa ,an Kitab al-Mahkama al-Khassa bi-Lubnan: Tajriba Farida wa A'la Damanat al-Muhakama al-'Adila [Seminar on the Book "The Special Tribunal for Lebanon"]: A Unique Experience and the Highest Guarantees of a Fair Trial). In: *rightsobserver.org/blog/* [online]. [2025-01-29]. Available at: <https://www.rightsobserver.org/blog/>.

On the other hand, in both senses the STL is possible point of reference for precise definition of a crime of terrorism with which the international community struggles for almost one hundred years. And, important milestone regarding criminal responsibility of legal persons, need of which if becoming more a more urgent in globalised world, so much different from the one in 1940s when contemporary international criminal law was born.

Despite of the quite broad criticism, STL was an UN affiliated judicial body which authoritatively declared what is the law. "For consideration of the problem of responsibility of legal persons in international law, that decision is of great importance,"[100] as it may influence legal opinions of other judicial bodies, of the legal doctrine as well as the formation of customary international law.

After all, decisions of the Nuremberg and Tokyo tribunals also went ahead of their time and shaped the future of the international criminal justice. It is only to be seen, if the fate of the STL ruling will be like theirs, or it will be considered as a dead-end in the history of international criminal law. The STL decisions were already reflected by the International Law Commission in preparation of Draft Articles on Crimes Against Humanity.

There are three possible scenarios: the STL decisions will shape the future, the STL decisions will echo into the silence or, as some said, they will have "rather negative impact on the development of international law," tend they will "undermine the international community's confidence in judicial institutions and mechanisms,"[101] due to its arbitrariness.

We would be more careful to say, that "it is a clear signal, that companies are subjects to international criminal liability,"[102] which we still consider a premature statement. But the STL said not only it had inherent power to sentence a legal person, but that "corporate criminal liability has become a general principle of law… based its decision on evolving international standards, as well as trends in national jurisdictions."[103] Since nearly all states have recognized corporate liability in the criminal context, and since no international court that adjudicates criminal law has prohibited corporate criminal liability as a matter of law, it follows that the STL's analysis regarding corporate criminal liability can be understood as correct and be applied in a broad general context in international law.[104]

The STL's argumentation and interpretation may lead to a shift in the view on corporate responsibility, but at this point, the international law is not there yet.

Given the power and authority that the STL represents, its supporters see its establishment as a significant milestone in the effort to end impunity in Lebanon. However, irrespective of the political framework guiding the STL's work, one could ask: was the STL An Exception or a Pathway to Combating Impunity?

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[100] BOŽIĆ, Vanda, JOSIPOVIĆ, Ivo Kaznena odgovornost i progon pravnih osoba za kaznena djela u Republici Hrvatskoj. *Godišnjak Pravnog fakulteta u Sarajevu.* 2020, Vol. 63, p. 357.

[101] SINYAKING Ivan I., SKURATOVA, Alexandra Yu Special Tribunal for Lebanon and progressive development of international criminal law. *Law Enforcement Review.* 2021, Vol. 5, No. 4, pp. 226–236.

[102] ZIEMBLICKI, Bartosz *Liability of companies before international criminal courts.* p. 134.

[103] ALKHAWAJA, Osama *In Defense of the Special Tribunal for Lebanon and the Case for International Corporate Accountability.* p. 453.

[104] Ibid., p. 484.

Regarding lasting effects of the STL the authors consider it is regrettable that the webpage of the STL, with its online case database, ceased to be functioning with the ending of the STL as such. We express our hope that such case database will be created in the future, or its functioning will be renewed, either by the UN or by Lebanon. At this time, scholars and other interested in the contributions of the STL wishing to study primary sources (case-law) are left to secondary sources of knowledge, basically randomly finding some decisions that someone decided to upload or publish. Some decisions of the STL currently cannot be found online at all.

During the research, the authors noted that while the Special Tribunal for Lebanon (STL) has garnered significant attention within the international academic community, it remains relatively peripheral to focused scholarly inquiry. Additionally, the STL has surprisingly attracted limited serious attention from domestic, Lebanese scholars. Reasons for this can be an interesting field for future research.