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CURRENT LEGAL DEVELOPMENTS

The Special Tribunal for Lebanon: Introductory Note

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On 30 May 2007 the UN Security Council adopted Resolution 1757(2007),[1] creating the Special Tribunal for Lebanon (STL) to try those responsible for the assassination of the former Lebanese prime minister, Rafik Hariri, which also claimed the life of twenty-two other persons. Following sensitive and unsuccessful discussions about the location of the seat of the tribunal, the government of the Netherlands informed the UN Secretary-General in September 2007 that it was favourably disposed to hosting the tribunal and, after three months of negotiations, signed, on 21 December 2007, in accordance with paragraph 1(b) of the resolution, a Headquarters Agreement enabling the seat of the STL to be in the Netherlands.[2]

The creation of this new tribunal raises many complex legal questions. The tribunal was originally devised along the lines of the Special Court for Sierra Leone[3] – that is, a tribunal endowed with international legal personality[4] – on the basis of an international treaty concluded between the United Nations and the state of Lebanon that was due to be ratified by Lebanon. Because of the impossibility of securing ratification, the Security Council eventually made use of its powers under Chapter VII of the UN Charter and the possibility arising out of Article 29 of the Charter of creating a new subsidiary organ. Although in this particular respect the STL accordingly seems to bear a strong resemblance to the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), it would be misleading simply to perceive Resolution 1757 as another use of Chapter VII to create a subsidiary judicial organ. Indeed, the STL differs to a considerable extent from its elder sisters located in The Hague and Arusha respectively. It is precisely the aim of this symposium to examine, with the benefit of hindsight,[5]

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1. UN Doc. S/RES/1757 (2007).
2. 'Special Tribunal for Lebanon to Be Based at The Hague', UN Secretariat press release, UN Doc. SG/SM/11347.
3. According to commentators, Art. II of the Agreement endows the SCSL with international legal personality. See in particular Zsuzsanna Deen-Racsmány, '*Prosecutor v. Taylor*: The Status of the Special Court for Sierra Leone and Its Implications for Immunity', (2005) 18 LJIL 299–322.
4. See, e.g., Art. 7 of the Statute, which endowed the Special Tribunal with the capacity to enter into agreements with states 'as may be necessary for the exercise of its functions and for the operation of the Tribunal'. One may note that this provision was not subject to any amendment in the statute 'enacted' by Resolution 1757(2007).
5. For shorter analyses in the immediate aftermath of the creation of the tribunal, see the various contributions published in the *Journal of International Criminal Justice*, (2007) 5, 1061–214.

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the specific dimension of this use of the power of the Security Council, as well as the special features of the new institution established pursuant to Resolution 1757.

In the light of its peculiar constitutive history, the question as to how the STL should be characterized is warranted. In this respect, William A. Schabas examines whether the *special* tribunal is also an *international* tribunal. He identifies features that may influence the discussion as to whether the STL can be characterized as an 'international criminal court' or not, and he examines the possible consequences of this characterization in terms of questions regarding immunity.

The contribution of Schabas on the nature of the tribunal is followed by the challenging discussion carried out by Frédéric Mégret on the specific use of its powers made by the Security Council in order to open the door for international criminal law. In his analysis the author shies away from resorting to the mundane argument pertaining to the existence of a threat to the international peace to underpin this particular use of the powers of the Security Council, but shows that the creation of the STL should rather be appraised from the vantage point of international criminal justice as a whole. This perspective helps him to demonstrate the extent to which international criminal justice has gradually severed itself from a logic based on international peace and security, thereby acquiring a logic of its own.

Finally, Björn Elberling, in a more provocative style, attempts to shed some light on the manner in which the tribunal can be used to rewrite Lebanese history and how this specific use of the tribunal may, in turn, impinge on its legal framework.

These three contributions analyse the STL from very different angles. They explain how this 'strange animal' has significant ramifications for more general questions of public international law, and more specifically the law on peace and security and international criminal law. It is our hope that this symposium will stimulate further research on the entanglement of, and interaction between, these two fields of international law.

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