

The Cooperation Regime of the Special Tribunal for Lebanon¹

The Special Tribunal for Lebanon (‘STL’ or the ‘Tribunal’) is an internationalised or ‘hybrid’ international criminal tribunal established by an agreement between Lebanon and the UN. While the International Criminal Tribunals for Rwanda (‘ICTR’) and the former Yugoslavia (‘ICTY’) benefitted from a blanket duty on all states to cooperate with them, the STL’s cooperation regime, much like that of the Special Court for Sierra Leone (‘SCSL’) and the Extraordinary Chambers in the Courts of Cambodia (‘ECCC’), is more limited in scope. This is partly due to the manner in which the STL was established and partly due to the nature of the STL’s work. State cooperation and, to a lesser extent, cooperation with international organisations, non-state entities, and individuals is crucial to the successful accomplishment of the tasks of any international criminal tribunal. The Registrar acts under the delegated authority of the President to negotiate such agreements as may be necessary for the functioning of the Tribunal.² This paper will detail the scope of the STL’s cooperation regime and the Registrar’s activities within this regime.

The Establishment of the STL and the Cooperation Framework

On 14 February 2005, the former Prime Minister of Lebanon, Rafik Hariri, was killed in an explosion near Beirut’s St Georges Hotel. The political situation in Lebanon prompted the Lebanese Government to request international assistance from the UN, which came in the form of the United Nations International Independent Investigation Commission (‘UNIIC’), established pursuant to United Nations Security Council (‘UNSC’) Resolution 1595 (2005). It was designed to ‘assist the Lebanese authorities in their investigation of all aspects of this terrorist act, including to help identify

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² References to the Registrar shall be understood as the legal person of the Registrar as referred to in the relevant legal documents.

its perpetrators, sponsors, organizers and accomplices.’³ The Resolution ‘[c]alls on all States and all parties to cooperate fully with the Commission.’⁴

The STL was established by the Agreement between the UN and the Lebanese Republic on the Establishment of a Special Tribunal for Lebanon (‘Agreement’) which was annexed to and brought into effect by UNSC Resolution 1757 (2007).⁵ It was designed to carry on the activities of the UNIIC and ensure accountability for the crimes under its mandate, which had further been expanded to include additional assassinations. The Agreement emphasises the need for a ‘coordinated transition from the activities of the UNIIC [...] to the activities of the Office of the Prosecutor’ of the Tribunal and requires that the progress of the UNIIC be taken into account in consultations regarding the commencement of the functioning of the Tribunal.⁶ Nonetheless, the STL, while brought into being by a UNSC Resolution adopted under Chapter VII of the UN Charter, lacks a legal basis to compel states to comply with its requests for cooperation. Indeed, UNSC Resolution 1757 (2007), in contrast to Resolution 1595 (2005), does not impose a duty on states to cooperate with the STL with the exception of Lebanon which, by virtue of Article 15 of the Agreement, ‘shall cooperate with all organs of the Special Tribunal’. The Tribunal operates a dual cooperation regime. On the one hand, it theoretically enjoys the full cooperation of Lebanon. On the other hand, the Tribunal must itself seek the aid of other states where necessary.

The financing mechanism of the Tribunal is the prime illustration of this dual cooperation regime. Under Article 5 of the Agreement, Lebanon is bound to provide forty-nine per cent of the Tribunal’s expenses, while the fifty-one percent remaining shall be borne by voluntary contributions from other states. It is the Registrar’s responsibility to present the budget to the Management Committee (‘MC’)

³ UN Security Council Resolution 1595 (2005), 7 April 2005, S/RES/1595 (2005), at 1.

⁴ Ibid, 7.

⁵ UN Security Council Resolution 1757 (2007), 10 June 2007, S/RES/1757 (2007) [UNSC Res. 1757 (2007)].

⁶ Article 17 (a), Agreement between the UN and Lebanon, annexed to UNSC Res. 1757 (2007) [Agreement between the UN and Lebanon].

and lobby potentially interested states to contribute to its expenses.⁷ The STL's MC, unlike its counterpart at the SCSL, was not created by a panel of interested states, but was established in accordance with Article 6 of the Agreement. It is composed of representatives from Lebanon, the Netherlands as the Host State, other states who significantly contribute to the Tribunal, and the UN Secretary General represented by a member of the UN Office of Legal Affairs who participates *ex officio* in the meetings. The MC is responsible for giving policy and direction on all non-judicial matters and it approves the STL's budget. A monthly report is circulated to the MC's members to keep them abreast of all developments at the Tribunal.

The Statute⁸ and the Rules of Procedure and Evidence ('RPEs' or 'Rules') of the STL refine the roles of the various actors in the STL's cooperation regime; for example, the President represents the Tribunal externally and has the authority to invite states to conclude cooperation agreements with the STL.⁹ This is in contrast to the cooperation tools of the ICTR and the ICTY. Their Statutes, at their respective Articles 28 and 29, reiterate the obligation for states to cooperate with these tribunals.

At the STL, while the President is endowed with such authority by virtue of the Statute and the Rules, it is, however, the Registrar, a UN staff member and thus a natural candidate for diplomatic activities, who assumes this function in practice. The Registrar acts in that capacity on the legal basis of Rule 39 of the RPEs which allows the President to authorise the Registrar to "negotiate cooperation agreements and entertain relations with international entities." The Prosecutor and the Head of the Defence Office are also given certain roles in respect to the cooperation with states in investigations and prosecution.¹⁰

⁷ Rule 48(A), Rules of Procedure and Evidence of the STL, adopted on 20 March 2009, corrected on 3 April 2014, STL-BD-2009-01-Rev.6-Corr.1; Article II, Special Tribunal for Lebanon, Financial Rules and Regulations, 5 June 2008.

⁸ Statute of the Special Tribunal for Lebanon, attachment to UNSC Res. 1757 (2007) [STL Statute].

⁹ Article 10(1), STL Statute; Rules 13 and 21 (B), RPEs.

¹⁰ Rules 14, 15, 16, 17, 18, and 19, RPEs.

The position of the Defence Office of the STL, as an organ of the Tribunal with equal footing to the Office of the Prosecutor, is one of the innovations of the Tribunal.¹¹ Indeed, the legal frameworks of the ICTY and ICTR, as well as those of the ECCC and the SCSL, do not have express provisions stipulating that states must comply with requests of the defence.¹² The ICTR and the ICTY attempted to lessen this inequity between the Prosecutor and the Defence in the rules regarding State cooperation through jurisprudence.¹³ However, this did not necessarily result in a fairer outcome for the defence.¹⁴ The drafters of the STL's legal framework wanted to avoid these complications – ensuring an equality of arms between the Prosecutor and the Defence – and empowered the Defence to request cooperation on equal standing to the Prosecutor.

The Rules make a distinction between three categories of states¹⁵. The first is Lebanon which, as we have seen, has a duty to cooperate with the STL. The second and third categories are third states, that is, states other than Lebanon.¹⁶ Third states that have an obligation to cooperate with the Tribunal pursuant to an agreement made with the STL fall under the second category. Finally, states that do not have an obligation to cooperate with the STL are classified under the third category. The following sections are organised in such a way as to reflect this distinction in the Rules and to detail what forms of cooperation the STL has enjoyed from each of these categories, and drawing parallels to the practice at the other international tribunals where appropriate.

¹¹ Article 7, STL Statute.

¹² B. Swart, 'Cooperation Challenges for the Special Tribunal for Lebanon', (2007) 5 *Journal of International Criminal Justice* 1153, at 1155.

¹³ C. de los Reyes, 'State Cooperation and its Challenges for the International Criminal Tribunal for Rwanda', in E. Decaux, A. Dieng & M. Sow (eds.), *From Human Rights to International Criminal Law / Des Droits de l'Homme au Droit International Pénal* (2007), 62 ff. See, in particular, at the ICTR: *The Prosecutor v. Hassan Ngeze*, Case No. ICTR-97-27-1, Decision on the Defence Motion to Have the Court Request a Subpoena Duces Tecum for the Production of the Defendant's Arrest and Certified Court Records, 10 May 2000; *The Prosecutor v. Theoneste Bagosora et al.*, Case No. ICTR-98-41-T, Request to the Government of Rwanda for Cooperation and Assistance Pursuant to Article 28 of the Statute, 10 March 2004.

¹⁴ *Ibid.*

¹⁵ Rule 21, RPEs.

¹⁶ Rule 2, RPEs.

Cooperation with Lebanon

There are a host of obligations arising from agreements concluded with Lebanon that permit smooth cooperation. This intimacy between Lebanon and the Tribunal ensures that the STL does not encounter the issues of non-cooperation that plagued the ICTR in, for example, the *Barayagwiza* matter.¹⁷ Of course, the STL's situation is very different from that of the ICTR as it relies on Lebanon not only for cooperation in the investigations and judicial matters, but also for its financing. Cooperation between the STL and Lebanon is governed by the Agreement mentioned above as well as a number of memorandums of understanding between the Tribunal's organs and Lebanon. Article 15(1) of the Agreement provides that the Lebanese Government shall cooperate with all organs of the STL, in particular with the Prosecutor and defence counsel. Article 15(2) builds on this obligation, stating that the Lebanese Government shall 'comply without undue delay' with any request for assistance from the STL or an order issued by Chambers, including but not limited to the identification and location of persons, the service of documents, the arrest or detention of persons, and the transfer of an indicted person to the Tribunal. We can distinguish several forms of cooperation that Lebanon provides, which includes financial support, legal and diplomatic cooperation, assistance to parties, and practical assistance.

Financial

As noted above, the STL is financed by a mix of mandatory contributions by the Lebanese Government and voluntary contributions from the international community. The Lebanese Government provides forty-nine percent of the STL's annual budget.¹⁸ This is in contrast to the ICTY and ICTR, which are financed directly from the UN budget as expenses of the UN in accordance with Article 17 of the UN Charter.¹⁹ Unlike the SCSL, which has a similar funding

¹⁷ On the *Barayagwiza* matter, see C. Ryngaert, 'State Cooperation with the International Criminal Tribunal for Rwanda', 13 *International Criminal Law Review* (2013), at 129-133.

¹⁸ Article 5, Agreement between the UN and Lebanon.

¹⁹ Article 30, ICTR Statute; Article 32 ICTY Statute.

mechanism, the STL has enjoyed a relatively steady level of funding,²⁰ and this is due in no small part to the Lebanese Government, which has not failed to comply with their payment obligations. Having only one source of fixed funding, however, causes budgetary planning issues. The STL relies on good fiscal management – in order to maintain efficiency at minimal cost – and outreach to the international community. As a result, the Registrar is required to regularly meet with political and judicial representatives in Beirut to discuss recent developments of the Tribunal and to provide guidelines on Lebanon’s international obligations.

Legal and Diplomatic

The Memorandum of Understanding (‘MoU’) between Lebanon and the STL²¹ concerns the establishment of an office located in Beirut ‘for the conduct of investigations and any other activities on behalf of the Special Tribunal.’²² This implements Article 8(3), and builds upon the obligation enshrined in Article 15(1) of the Agreement.²³ The Agreement and the MoU provide that the STL shall have full judicial capacity in Lebanon,²⁴ shall be free from interference from the Lebanese government, and shall be assisted, as may be necessary to carry out its functions, by the Lebanese government.²⁵ This includes the obligation for Lebanon to defer to the STL’s jurisdiction when it so requests. The Lebanese authorities, for example, promptly complied with the STL’s requests to release four generals who were detained by them in connection with Lebanese police investigations into the attack of 14 February 2005.²⁶

²⁰ G. Tortora, ‘The Financing of the Special Tribunals for Sierra Leone, Cambodia, and Lebanon’, (2013) 13 *International Criminal Law Review* 93, at 122.

²¹ Memorandum of Understanding between Lebanon and the Special Tribunal for Lebanon concerning the Office of the Special Tribunal in Lebanon, 17 June 2009 [MoU between Lebanon and the STL].

²² *Ibid*, Article 2.

²³ Article 8(3), Agreement between the UN and Lebanon.

²⁴ *Ibid*, Article 7; Article 3, MoU between Lebanon and the STL, Article 3.

²⁵ *Ibid*, Articles 9-10; Articles 4 and 14, MoU between Lebanon and the STL.

²⁶ Order Regarding the Detention of Persons Detained in Lebanon in Connection with the Case of the Attack against Prime Minister Rafiq Hariri and Others, CH/PTJ/2009/06, 29 April 2009. *See also*, L. Korecki, ‘Procedural Tools for Ensuring Cooperation of States with the Special Tribunal for Lebanon’, (2009) 7 *Journal of International Criminal Justice* 927, at 929.

The Lebanese Minister of Justice is the designated Lebanese representative under the MoU. The Lebanese authorities are obliged to facilitate the relocation of international staff to the Beirut Office and the ‘unrestricted freedom of entry into, exit from and movement within its territory’ of witnesses, victims, and other persons invited or requested to be present at the seat of the tribunal.²⁷ The Lebanese MFA discharges this obligation by facilitating the acquisition of visas and residency permits, and granting privileges and immunities to the STL and its staff in accordance with the Agreement between the UN and Lebanon.²⁸ The Lebanese authorities also provide day-to-day practical assistance to the STL, including the provision of public services, and the provision of communication facilities. Lebanon is also under obligation to assist with security matters by taking adequate and effective measures to ensure the appropriate security, safety and protection of all persons referred to in the MoU while in Lebanon.²⁹ This assistance is provided by the Lebanese Ministry of Defence (‘MoD’) and the Internal Security Forces (‘ISF’).

Cooperation with the Prosecution

The MoU between the Office of the Prosecutor (‘OTP’) and Lebanon (‘OTP MoU’)³⁰ sets out the modalities of their cooperation as provided for in Rule 16 of the STL’s RPE. The OTP MoU provides that the Lebanese authorities will provide the OTP with all necessary assistance to fulfill its mandate, including the transfer of all material, both documentary and physical, relevant to the mandate of the STL, and the facilitation of access to all places, sites, persons and documents for investigative purposes.³¹ The OTP MoU provides that the STL Prosecutor may make requests ‘for assistance of any kind or requests for judicial or legal proceedings’ in accordance with the Lebanese Code of Criminal Procedure.³² The Lebanese authority which acts as the focal point for these

²⁷ Article 5, MoU between Lebanon and the STL.

²⁸ Agreement between the UN and Lebanon; Article 11-12 and 19-22, MoU between Lebanon and the STL.

²⁹ Article 23, MoU between Lebanon and the STL.

³⁰ Memorandum of Understanding between the Government of Lebanon and the Office of the Prosecutor of the Special Tribunal regarding the modalities of cooperation between them, 5 June 2009.

³¹ Ibid, Article 3.

³² Ibid.

requests is the Office of the Prosecutor-General at the Court of Cassation. The OTP is also assisted in its dealings with the Lebanese authorities by the fact that their Deputy Prosecutor is appointed by the Lebanese government under Article 11 of the Statute.

Cooperation with the Defence

Similarly, the MoU between the Defence Office and Lebanon ('Defence MoU') sets out the modalities of the assistance which Lebanon must provide to the Defence Office, as provided for in Rule 16 of the STL's RPE. It builds upon Article 18 of the MoU between Lebanon and the STL, which provides that counsel for the defence and those assisting them shall be able to work independently, free from any measure which may affect the free and independent exercise of their duties.³³ The Defence MoU states that the Lebanese authorities shall afford the defence the ability to carry out their investigations freely and independently without interruption.³⁴ Article 4 of the Defence MoU specifies that, when defence counsel require assistance to conduct their investigations, they can address this request to the Lebanese authorities, through the Director of the Litigation Division of the Lebanese Ministry of Justice, who would then relay the requests to the appropriate authorities. However, as noted by the Trial Chamber, 'Article 4 contains no enforcement mechanism'.³⁵ In this instance, the Defence may invoke Article 5, which specifies the assistance for coercive measures which the Lebanese authorities may grant to the Defence. However, in order to trigger Lebanese judicial enforcement under Article 5, the judicial intervention by the STL, under Rule 77 (A), is first required.

³³ Article 18, MoU between the STL and Lebanon.

³⁴ Memorandum of Understanding between the Government of the Lebanese Republic and the Defence Office on the modalities of their cooperation, 28 July 2010.

³⁵ STL, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi, and Sabra*, Further Decision on Motions under Rule 20 (a) by Counsel for Assad Hassan Sabra and Four Orders to Lebanon to Cooperate with the Tribunal, 31 March 2014, para. 26.

Sanction for non-compliance

Rule 20 of the RPEs may be invoked to enforce requests under Rules 16 and 17. Rule 20(A) is derived from Article 15(A) of the Agreement between the UN and Lebanon.³⁶ It enables a Pre-Trial Judge or Chamber to make a finding of non-compliance against Lebanon where the Lebanese authorities have failed to comply within 30 days with a request for information, cooperation, deferral, or any order for cooperation issued by a Pre-Trial Judge or Chamber made in accordance with Rule 20 (A), (B), or (D).³⁷ As explained by the Trial Chamber, the RPEs specify a four-step process in circumstances of an alleged non-compliance. First, a Chamber enters a finding of non-compliance, second, the President consults with the Lebanese authorities, with a view to obtaining the requested assistance. Third, after these consultations, the Chamber must be of the view that a satisfactory response is not forthcoming within a reasonable timeframe, and fourth, and only then may the President may make a judicial finding of non-compliance, and then refers the matter to the UNSC for consideration and further action if appropriate.³⁸

The requirement for consultations found in the STL's Rule 20 (C) is absent from the procedure at the ICTR and ICTY. In addition, as noted by the STL's Trial Chamber, a finding of non-compliance is discretionary as the STL's RPEs, much like the Rome Statute of the ICC, provide that the Chamber *may* make such a finding after a failure to comply with an order.³⁹ This contrasts with the equivalent rules of the ICTY, ICTR, and SCSL, which provide that a Chamber *may* advise the President and are silent on whether the decision is discretionary, although their case law holds that it is. The situation at the STL is, of course, different compared to the *ad hoc* tribunals as Lebanon has committed itself to funding the Tribunal. It thus has an obvious financial interest to cooperate with the Tribunal and to comply with requests and orders for assistance.

³⁶ STL, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi, and Sabra*, Clarification regarding Orders to Lebanon to Cooperate with the Special Tribunal, 23 June 2014, para. 10.

³⁷ Rule 20(C), RPEs.

³⁸ *Ibid*, Rule 20(C); STL, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi, and Sabra*, STL-11-01/T/TC, Decision on Updated Request for a Finding of Non-Compliance, 27 March 2015, para. 34.

³⁹ STL, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi, and Sabra*, STL-11-01/T/TC, Decision on Updated Request for a Finding of Non-Compliance, 27 March 2015, para. 35.

While the support received from Lebanon has generally been of a satisfactory nature, the judges at the STL have intervened in several instances to ensure cooperation with the parties.⁴⁰ Indeed, both the Prosecution and Defence Counsel for Mr Sabra have gone so far as to call for a finding of non-compliance against Lebanon, in accordance with Rule 20(C) of the RPEs.⁴¹ However, as of yet, neither the Pre-Trial Judge nor the Trial Chamber has made such a finding. This is because in these instances there was insufficient evidence of non-compliance;⁴² the Chamber was not ‘satisfied that the Lebanese authorities ha[d] failed to exercise due diligence to provide the requested assistance without delay’,⁴³ or the Lebanese authorities were misinformed as to who was competent to serve the Tribunal’s orders⁴⁴ or “that the ‘continuing process’ of compliance is advanced, although not yet complete.”⁴⁵

Cooperation with Third States

⁴⁰ STL, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi, and Sabra*, STL-11-01/T/TC, Decision on Updated Request for a Finding of Non-Compliance, 27 March 2015; Second Decision on Badreddine Defence Motion for Order to Lebanon to Cooperate with the Special Tribunal and orders to Lebanon, 30 May 2014; Further Decision on Motions under Rule 20 (a) by Counsel for Assad Hassan Sabra and Four Orders to Lebanon to Cooperate with the Tribunal, 31 March 2014; *Prosecutor v. Ayyash, Badreddine, Oneissi, and Sabra*, STL-11-01/T/TC, Decision on Second and Fifth Motions by Counsel for Assad Hassan Sabra and Two Orders to Lebanon to Cooperate with the Tribunal, 31 January 2014; STL-11-01/PT/TC, Decision on Motion Filed by Counsel for Mr. Badreddine and Order to Lebanon to Cooperate with the Special Tribunal, 13 January 2014; Order Relating to Five Defence Motions for Orders to Lebanon on State Cooperation, 16 December 2013.

⁴¹ STL, *Prosecutor v. Ayyash, Badreddine, Oneissi, Merhi, and Sabra*, STL-11-01/T/TC, Second Request for Finding of Non-Compliance, 12 June 2012; Consolidated Request for finding of non-compliance, 14 April 2014; STL-11-01/PT/PTJ, Decision on Prosecution’s Confidential and *Ex Parte* request for a judicial finding that the Lebanese authorities have failed to comply with the arrest warrants pursuant to Rule 20(C) of the Rules, 22 December 2011; STL-11-01/I/TC, Decision on the Confidential and Ex-Parte Prosecution’s Request for a Judicial Finding that the Lebanese authorities have failed to comply with the arrest warrant pursuant to Rule 20(C), 2 November 2011.

⁴² STL-11-01/I/TC, Decision on the Confidential and Ex-Parte Prosecution’s Request for a Judicial Finding that the Lebanese authorities have failed to comply with the arrest warrant pursuant to Rule 20(C), 2 November 2011.

⁴³ STL-11-01/PT/PTJ, Decision on Prosecution’s Confidential and *Ex Parte* request for a judicial finding that the Lebanese authorities have failed to comply with the arrest warrants pursuant to Rule 20(C) of the Rules, 22 December 2011, para. 26

⁴⁴ STL, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi, and Sabra*, Clarification regarding Orders to Lebanon to Cooperate with the Special Tribunal, 23 June 2014.

⁴⁵ STL, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi, and Sabra*, STL-11-01/T/TC, Decision on Updated Request for a Finding of Non-Compliance, 27 March 2015, para. 59.

The cooperation framework for third states is much more scant in nature when compared to Lebanon's obligations. Arguably, the two most important forms of cooperation for an international tribunal are those concerning the collection of evidence and those concerning the transfer of indicted individuals. There are three avenues for a third state to cooperate with the STL. Firstly, the STL may enter into agreements with states pursuant to Article 7 of the Agreement between the UN and Lebanon. Secondly, the UNSC, acting under Chapter VII of the Charter could require a state to assist the Tribunal. Finally, a state may choose to cooperate on an ad-hoc basis, without being legally required to do so.⁴⁶ States that have concluded arrangements or agreements with the STL are obliged to discharge their obligations as stipulated in such agreements.⁴⁷ Where they fail to do so, the only recourse available would be a dispute settlement mechanism if provided for in the relevant agreement or instrument.⁴⁸

Forms of Assistance Third States may provide

Fortunately, for the STL, many states appear to be willing to assist without a formal instrument obliging them to do so. Fundamentally, the STL relies upon donations from the international community to make up fifty-one percent of its annual budget. The Tribunal has been fortunate to benefit from the voluntary donations of over 28 states and the European Union.⁴⁹

If states lack the financial means to contribute to the STL's work, they may still assist the Tribunal in other areas. They can cooperate by arresting and transferring any indicted individual to the seat of the Tribunal, or if requested can trace, freeze, or seize property, proceeds or instrumentalities of the crime.⁵⁰ The Registrar is tasked with entering into ad hoc agreements with transit states so that those

⁴⁶ B. Swart, 'Cooperation Challenges for the Special Tribunal for Lebanon', (2007) 5 *Journal of International Criminal Justice* 1153, at 1159.

⁴⁷ Rule 21 (A), RPEs.

⁴⁸ Rule 21 (A), RPEs.

⁴⁹ STL, Sixth Annual Report 2014-2015; Fifth Annual Report 2013-2014, at 27, available at http://www.stl-tsl.org/index.php?option=com_k2&Itemid=285&id=3549_c992a7708d81c59d8877a086d27f602b&lang=en&task=download&view=item [last accessed 15 February 2015].

⁵⁰ While precedent on this issue is scarce, at the ICTR, based on Rule 40(A) of the RPE, which allows the Prosecutor in a case of urgency to request a state to "seize physical evidence" a request was made to the French authorities by the Prosecutor to freeze the bank accounts of Felicien Kabuga, who allegedly financed the genocide in Rwanda. The French authorities complied with the request.

travelling to the seat of the Tribunal may transit or move temporarily within a state free from interference. In addition, the Registrar is also tasked with negotiating agreements with states for the relocation of witnesses, and the enforcement of sentences. Here the STL can build and capitalise on the precedent set by the ICTY and ICTR;⁵¹ by not only entering into agreements with new states but by entering into discourse with those states who have already indicated their willingness to assist international courts and tribunals.

However, if a state does not comply with the terms of an *ad hoc* arrangement, in the absence of a dispute settlement mechanism, there would be little recourse of which the STL could avail itself. Under Rule 21(B) RPEs, where such a state fails to comply, the President may engage in consultations with the competent authorities of that state with a view to obtaining the requested assistance.⁵² As highlighted by Swart, the STL model has a reduced opportunity for cooperation with third states.⁵³ Nonetheless, while this model reduces the means of obtaining assistance from third states, it lowers the pressure on these states, thus enhancing the chances of ‘fruitful negotiation’.⁵⁴ Rule 21 of the STL’s RPEs was amended in June 2009 to reflect this incentive for states to cooperate.⁵⁵ The original Rule 21 envisaged that third states could be reported to the UNSC, but this harsh sanction was felt to be a barrier for encouraging states to enter into agreements with the STL.

Cooperation with the host state

Pursuant to Article 8 of the Agreement between the UN and Lebanon, the seat of the Tribunal shall be outside of Lebanon. As the state hosting the STL’s headquarters, the Netherlands is an example of a state which has provided assistance to the STL albeit based on an agreement with the UN. This

⁵¹ By way of example, the ICTR signed eight bilateral agreements on the enforcement of sentences with Mali, Benin, Swaziland, France, Italy, Sweden, Rwanda, and Senegal. The ICTY signed 16 such bilateral agreements with Italy, Finland, Norway, Austria, Sweden, France, Spain, Denmark, United Kingdom, Belgium, Ukraine, Portugal, Estonia, Slovakia, Poland, and Albania.

⁵² Rule 21 (B), RPEs.

⁵³ B. Swart, ‘Cooperation Challenges for the Special Tribunal for Lebanon’, (2007) 5 *Journal of International Criminal Justice* 1153, at 1159.

⁵⁴ L. Korecki, ‘Procedural Tools for Ensuring Cooperation of States with the Special Tribunal for Lebanon’, (2009) 7 *Journal of International Criminal Justice* 927, at 933. This lack of pressure on states is also in conjunction with the limitations which the STL has in its use of information provided by states as contained in Rules 116-118 of the RPEs.

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type of agreement is not unique, and similar headquarters agreements exist at the ICTR, ICTY, SCSL, and ICC, as each is headquartered in a different state to that where the crimes took place. The Agreement between the Kingdom of the Netherlands and the United Nations concerning the Headquarters of the Special Tribunal for Lebanon ('Headquarters Agreement')⁵⁶ aims to create conditions conducive to the stability and independence of the Tribunal and to facilitate its smooth and efficient functioning. It achieves this by granting the STL legal personality in the Netherlands, and by providing it with all privileges and immunities necessary for the discharge of its mandate.

Similar to the Lebanese Ministry of Foreign Affairs, the Dutch Ministry of Foreign Affairs works closely with the STL, in order to ensure that all persons covered in the Headquarters Agreement are provided with the required visas, privileges and immunities. The Tribunal is represented by the Registrar in matters related to the host state. The Headquarters Agreement has an entire section devoted to cooperation between the STL and the Netherlands. It contains reciprocal duties for both. The Dutch authorities and the STL are obliged to cooperate on issues concerning local laws and measures to allow the Tribunal to carry out its functions independently and safely.⁵⁷ This includes matters relating to the enforcement of local laws, police regulation, the abuse of any privileges or immunities granted under the Agreement, and on security matters.⁵⁸ If the Dutch authorities fail to abide by their obligations in the Headquarters Agreement, the first recourse is to 'consultation, negotiation, or other agreed mode of settlement.' Failing that, the STL and the Netherlands may call an arbitral tribunal to finally settle the dispute.⁵⁹

Cooperation with international organisations and non-governmental organisations

The STL builds upon the lessons learned from the ICTY and ICTR that international organisations can be a great source of assistance. This assistance can take the form of voluntary contributions to

⁵⁶ Agreement between the Kingdom of the Netherlands and the United Nations concerning the Headquarters of the Special Tribunal for Lebanon, 21 December 2007.

⁵⁷ Ibid, Article 30 (2) to (5).

⁵⁸ Ibid, Articles 30 and 38.

⁵⁹ Ibid, Article 48.

the STL's budget as, for example, those provided by the EU. Pursuant to Regulation 3.7 of the STL's Financial Rules and Regulations, the Registrar may accept voluntary contributions from states and inter-governmental organisations. Contributions that directly or indirectly involve additional financial liability for the Tribunal shall require the consent of the MC. Such contributions are to be credited to the STL's General Fund.

The STL has signed agreements with the International Committee of the Red Cross ('ICRC')⁶⁰ and Interpol.⁶¹ Similar agreements exist between the ICRC and the tribunals for Rwanda and the former Yugoslavia. The Agreement with the ICRC provides that the Registrar is to facilitate the ICRC inspections, by informing the Committee of all detainees and the full details of their detention in advance of its visits, allowing the Committee to have unlimited access to visit, inspect, and interview detainees held in the detention facilities. This helps to ensure that the detainees are held in accordance with accepted international standards. The purpose of the Agreement with Interpol is to establish a framework for the cooperation in the field of criminal justice, investigations, and proceedings in relation to crimes within the STL's jurisdiction.⁶² The STL and Interpol agreed to cooperate with one another by exchanging information, facilitating the STL's direct access to Interpol's police information system, and entitling the STL to request the Interpol General Secretariat to issue and circulate Interpol notices of all types, including red notices.⁶³

Additionally, the STL has been fortunate to enjoy the continued assistance of the Hague-based international courts and tribunals, including the joint organisation of various training sessions and outreach events, the loaning staff members, providing technical support, assisting in language services, as well as inter-library loans.⁶⁴ This assistance and experience gained from the other courts

⁶⁰ Agreement between the Special Tribunal for Lebanon and the International Committee of the Red Cross on Visits to persons Deprived of Liberty Pursuant to the Jurisdiction of the Special Tribunal for Lebanon, 12 June 2009.

⁶¹ Cooperation Agreement between the International Criminal Police – Interpol and the Special Tribunal for Lebanon, 11 October 2009.

⁶² *Ibid.*, Section 1.

⁶³ *Ibid.*, Sections 2-4. See also, STL/11-01/T/TC, Decision ordering the Arrest of Salim Jamil Ayyash, Mustafa Amine Badreddine, Hassan Habib Merhi, Hussein Hassan Oneissi, and Assad Hassan Sabra, 17 April 2014, at 3.

⁶⁴ STL, Fifth Annual Report 2013-2014.

and tribunals has facilitated the STL's fiscal micromanagement policy, thereby contributing to internal cost efficiencies.

CONCLUSION

Compared to the cooperation regimes at the ICTY and the ICTR, the STL's cooperation regime is limited due to its inability to compel states other than Lebanon to cooperate with it. This has meant that the STL has faced some unique challenges in getting the cooperation of states. From the STL's inception, the successive Presidents and Registrars of the STL have managed to gain the financial and other support of 28 states, including Lebanon and the Netherlands which has allowed us to maintain a level of financial stability. This, in addition to the assistance provided by the other international tribunals, international organizations, such as the EU, the ICRC, and Interpol, has aided the Tribunal immensely in ensuring that the proceedings are held to the highest international standards.

In December 2014, it was announced that the STL's mandate would be extended for a period of three years;⁶⁵ a period in which the President, Ivana Hrdličková, and the Registrar, will redouble the efforts to gain the cooperation of third states. They will attempt to secure political and financial support from states and inter-governmental organisations. They will do this by implementing an active fundraising strategy with the goal of broadening the contribution base, and continue to pursue relocation and enforcement of sentences framework agreements with states. With the Public Information and Communications Section, they will increase awareness and understanding of the Tribunal's work through enhancing public information and communications activities in Lebanon and around the world. Finally, looking towards the end of the Tribunal's activities, they will develop a plan to ensure that the Tribunal's legacy is embedded in the culture of Lebanon and the region.

⁶⁵ See <http://www.un.org/sg/offthecuff/index.asp?nid=3783> [last accessed on 20 February 2015].