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**About the Association**

*The mission of the New York City Bar Association, which was founded in 1870 and has 25,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.*

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**Re: Financial Crisis Threatening the Closure of the Special Tribunal for Lebanon**

On behalf of the New York City Bar Association (the “Association”), I write respectfully to express concern at the announcement by the Special Tribunal for Lebanon that it is facing an unprecedented financial crisis that, if not resolved, will result in the Tribunal’s inability to operate beyond July 2021 and to terminate the two cases currently before it.<sup>1</sup> I understand that Lebanon, which covers 49% of the Tribunal’s budget, has informed the United Nations that it will not be able to honor its financial obligations, and that other contributions from the Tribunal’s Management Committee, of which you are members, have not been forthcoming. This unprecedented situation gravely threatens the future of the Tribunal and sets a dangerous precedent for the future of international justice.

The Association is an independent nongovernmental organization of over 25,000 lawyers, judges, law professors and government officials from throughout the United States and over 50 other countries. Through the Cyrus R. Vance Center for International Justice (“Vance Center”), we work with non-governmental organizations in the United States and around the world to promote human rights and the rule of law. The President of the Special Tribunal for Lebanon, Judge Ivana Hrdličková, visited the Vance Center in 2017 and spoke at the New York City Bar Association to members of the Vance Center and the Association’s Middle East and North Africa, United Nations, and International Law Committees.

The Special Tribunal for Lebanon (STL) was established in 2009 by the United Nations Security Council<sup>2</sup> at the request of Lebanon to prosecute those accused of carrying out the attack on February 14, 2005, which killed 22 people, including the former prime minister of Lebanon, Rafik Hariri, and injured 226 others. It also has jurisdiction over related attacks carried out in Lebanon between October 1, 2004 and December 12, 2005 that are connected to the February 2005 attack and are of a similar nature and gravity. The STL is headquartered in The Hague, Netherlands, and has offices in Beirut, Lebanon.

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<sup>1</sup> “Severe financial crisis threatens the STL’s ability to fulfil its mandate,” Special Tribunal for Lebanon (June 2, 2021), available at: <https://www.stl-tsl.org/en/media/press-releases/severe-financial-crisis-threatens-the-stls-ability-to-fulfil-its-mandate>.

<sup>2</sup> Resolution 1757 (2007) under Chapter VII of the United Nations Charter.

The STL is an independent judicial organization composed of Lebanese and international judges that conducts its trials under Lebanese criminal law. The STL is the first international tribunal to prosecute terrorism as a distinct crime and to establish jurisprudence that terrorism is an international crime. It is also the first international tribunal to try cases under national law and the first to have an independent Defense Office with equal status to the Office of the Prosecutor to protect the rights of the accused to a fair trial. These unique features of the STL mark an important evolution in international justice.<sup>3</sup>

The STL has made significant positive contributions to the development of international criminal law. It is the first international court to have relied on evidence from digital forensics and to derive criminal responsibility from it.<sup>4</sup> It is also the first international tribunal to hold that legal entities can be held liable for criminal conduct as a general principle of international law.<sup>5</sup> The STL is also the first international tribunal since Nuremberg to allow trial *in absentia*.

In August 2020, the STL delivered its first judgment in *The Prosecutor v. Salim Jamil Ayyash, Hassan Habib Merhi, Hussein Hassan Oneissi, Assad Hassan Sabra*, which concerned the February 2005 attack. Four accused individuals faced trial *in absentia* for this attack: Salim Jamil Ayyash, Hassan Habib Merhi, Hussein Hassan Oneissi, and Assad Hassan Sabra. They were charged with conspiracy to commit a terrorist act, intentional homicide, attempted intentional homicide, and other related charges. On August 18, 2020, the Trial Chamber unanimously found Mr. Ayyash guilty beyond a reasonable doubt as a co-perpetrator on all counts, and the other defendants not guilty on all counts. On December 11, 2020, the Trial Chamber unanimously sentenced Mr. Ayyash to five concurrent sentences of life imprisonment, holding that each of Mr. Ayyash's five crimes was serious enough to deserve the maximum sentence. The Trial Chamber also issued a renewed arrest warrant, an international arrest warrant, and an order and request for the transfer and detention of Mr. Ayyash, calling for those shielding Mr. Ayyash to surrender him to the Tribunal. The *Ayyash et al.* case is currently in the appeals phase as the Appeals Chamber considers the Prosecution's appeal against the acquittals of the other defendants. A total of 70 victims participated in the case. This judgment marked a historic milestone for Lebanon and international justice in general: it is the only measure of justice the victims have received to date and it opens the way for them to seek compensation in Lebanon.

Another case, *The Prosecutor v. Salim Jamil Ayyash*, in which the defendant faces charges of conspiracy aimed at committing a terrorist act, criminal association, committing terrorist acts, intentional homicide with premeditation, and attempted intentional homicide with premeditation, was set to go to trial in June 2021. However, on June 3, 2021, in response to a communication from the STL Registrar concerning the severe financial situation facing the Tribunal, Trial Chamber II ordered the cancellation of the start of the trial, which was scheduled for June 16. The trial remains suspended until further notice. This case relates to three attacks

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<sup>3</sup> "About the STL," Special Tribunal for Lebanon, available at: <https://www.stl-tsl.org/en/about-the-stl/unique-features>.

<sup>4</sup> Michael Plachta & Afrah Tahir, International Criminal Court and Ad Hoc Courts, 36 IELR 293 (2020).

<sup>5</sup> Osama Alkhawaja, In Defense of the Special Tribunal for Lebanon and the Case for International Corporate Accountability, 20 CHI. J. INT'L L. 450 (2020).

against Mr. Marwan Hamade, Mr. Georges Hawi, and Mr. Elias El-Murr on October 1, 2004, June 21, 2005, and July 12, 2005 respectively, which the Tribunal has determined are connected to the February 2005 attack that killed former Prime Minister Rafik Hariri and many others. Thirty-one victims are participating in this case before the STL.

On June 2, 2021, the STL announced in a press release that the tribunal was facing an unprecedented severe financial crisis.<sup>6</sup> The Tribunal further announced that “[it had] no choice but to activate a process of separation of staff in all four organs of the Tribunal . . . , and to initiate draw down activities related to the protection of witnesses and securing the Tribunal’s records, evidence and sensitive material.”<sup>7</sup> The Tribunal stated that it will be forced to halt all activities by July if a solution is not found before then. The Tribunal had already significantly reduced its budget for this year in light of the Covid-19 pandemic and the unstable situation in Lebanon. However, when Lebanon announced earlier in the year that it will not be able to honor its financial commitment to the STL (49% of the budget), the Tribunal found itself in a dire financial crisis. To make matters worse, other supporters including members of the Management Committee, of which your country is a member, have also failed to make their contributions.<sup>8</sup> If those financial contributions, including additional funding to cover Lebanon’s share, are not made before the end of the month, “the Tribunal will be forced to close its doors in the coming months, leaving important cases unfinished to the detriment of victims, the fight against impunity and the rule of law.”<sup>9</sup>

This situation is an unprecedented and dangerous development in international justice, and those who support legal accountability and the rule of law at home and abroad cannot stand idly by. The STL is the only potential source of justice for the victims of the 2004 and 2005 attacks. Its landmark judgment last year gave hope to hundreds of victims in Lebanon. The STL also stands as an important example of justice and accountability for the youth in Lebanon who have so little to believe in as their country continues to be gripped by protracted political uncertainty. The international community, which stood by Lebanon at the time of the horrible attacks of 2004 and 2005, must continue to do so now that the country is once again facing a difficult political and economic crisis. The international community must remain true to the commitment it made to the Lebanese people, and the victims in particular, when it set up the STL: that justice will be done and that perpetrators will be held accountable. It cannot abandon the Tribunal at this critical time.

The recent explosion at the Beirut port, which killed approximately 200 people, injured thousands, and left countless others homeless, only exacerbated Lebanon’s social, political and economic challenges.<sup>10</sup> Today, the country continues to struggle with civil unrest, increasing

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<sup>6</sup> “Severe financial crisis threatens the STL’s ability to fulfil its mandate,” *supra* note 1.

<sup>7</sup> *Id.*

<sup>8</sup> Besides Lebanon, voluntary contributions from States and international organizations such as the United States, the United Kingdom, the Netherlands, France, Italy, Germany, Canada, Japan and the European Union make up the other 51 per cent of the STL’s budget. Together this group forms the STL’s Management Committee, which provides advice and policy direction on all non-judicial aspects of the operations of the Tribunal, reviews and approves its annual budget to ensure financial efficiency, and assists in securing funding.

<sup>9</sup> “Severe financial crisis threatens the STL’s ability to fulfil its mandate,” *supra* note 1.

<sup>10</sup> “UN chief launches plan to revitalize Beirut as ‘beating heart of Lebanon,’” UN News (Dec. 2, 2020), *available at*: <https://news.un.org/en/story/2020/12/1079072>.

poverty and unemployment, and a sharp rise in Covid19 infections.<sup>11</sup> Despite the general feeling of despair and hopelessness, many people, especially the youth, are determined to look towards a brighter future.<sup>12</sup> Part of this bright future is a country where the rule of law, justice, and accountability reign. The STL is an instrument that can help Lebanon build a real culture of justice and accountability and keep the hope of young Lebanese alive. International partners have an obligation to support Lebanon and the STL at this critical time by continuing to fund the STL so it can complete its current docket.

I call on you to find a solution to STL's financial crisis to enable the Tribunal to continue its critical work.

Respectfully,

Sheila S. Boston, President  
New York City Bar Association

Alexander Papachristou, Executive Director  
Cyrus R. Vance Center for International Justice

Timothy James McCarthy, Chair  
Middle Eastern & North African Affairs Committee

Stephen L. Kass, Chair  
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Cc. Honorable Judge Ivana Hrdličková  
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<sup>11</sup> “From the field: port explosion which ‘burnt hearts’ of Beirut residents,” UN News (Jan. 6, 2021), *available at*: <https://news.un.org/en/story/2021/01/1081462>.

<sup>12</sup> *Id.*