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When the Exceptional becomes the Ordinary

Prosecution of Terrorists in Lebanon

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1 INTRODUCTION

1.1 Object of the Thesis

The object of this thesis is the prosecution of terrorists under domestic Lebanese law and its compliance with obligations under international law.

Lebanon is a nominal democracy in the Middle East with a legal system that scores relatively well on standards of rule of law.¹ This generally extends to the justice system and penal prosecutions². However, certain types of infractions in Lebanon are not prosecuted before the ordinary courts. Rather, those accused of certain specific crimes are transferred to courts outside of the ordinary judicial system. The most notorious among these special courts are the military courts. Accusations of terrorism or terrorist related activity belong to this latter category of crimes, which are transferred to the military courts. The subject of this thesis is said prosecution of alleged terrorists before the Lebanese military courts; the thesis will review these prosecutions in light of the legal obligations that arise for Lebanon under international law. More specifically, this thesis will examine to what extent the material and procedural rules for prosecuting terrorists under Lebanese domestic law are in compliance with international human rights law standards of due process and fair trial.

This thesis consists of two main parts. Part one outlines and analyses the material definition of terrorism under Lebanese domestic law and international law. Part two presents the Lebanese prosecution procedures in light of international standards of due process and fair trial. It will analyze how this procedure works before ordinary courts, and subsequently makes a comparative analysis of how the same principles apply to terrorist suspects before the military courts.

1 Lebanon ranks first in the region on protection of fundamental rights (ranked thirty-ninth globally). Also, Lebanon has a relatively effective checks on government power (ranking forty-fourth), including a vibrant civil society and a free media; see World Justice Project ("WJP") Rule of Law Index 2012-2013, p 41-42, Accessed on 20/5/17, https://worldjusticeproject.org/sites/default/files/documents/WJP_Index_Report_2012.pdf

2 WJP Rule of Law Index "*Global Survey on Government Accountability, Crime, Fundamental Right, Access to Justice—Lebanon ranks 49th out of 99 countries overall*", March 5, 2014, Accessed on 20/5/17, https://worldjusticeproject.org/sites/default/files/2014_index_press_releases/wjp_2014_index_pr-lebanon.pdf

1.2 Methodology

For the purpose of international law, this thesis relies on the traditional sources of international law, listed in Article 38 (1) of the Statute for the International Court of Justice (the "ICJ").³ Primary sources of international law are international conventions and international custom, in the sense of a combination of state practice and *opinio juris*. Secondary sources of international law are judicial decisions and teachings of the most highly qualified publicists. General principles of law and rules of equity as recognized by civilized nations will also be relied on.⁴ For the purpose of domestic Lebanese law, this thesis will refer to the Lebanese Constitution, provisions of the Lebanese Penal Code and The Lebanese Code of Procedures on Criminal Conduct and Terrorism.⁵

Gaining access to procedural information from the military courts is difficult as many restrictions exist in the interest of national security. Therefore, the information gathered concerning these prosecutions is largely reliant on available NGO reports and media resources. In addition, the author has conducted four extensive interviews with persons involved with the military courts. One interview was conducted with an informant who has been arbitrarily detained for alleged terrorist crimes before a military court. Another interview was conducted with Judge Mohammad Saab, a Senior advisor to the minister of Justice 2014-2016, and currently an investigative judge specialized in terrorism cases with an extensive experience with the procedures in question. Two semi-structured interviews were conducted with Lebanese lawyers Nabil Halabi, a human rights lawyer, and Mohammad Sablounh. Both lawyers specialize in terrorism cases and are currently engaged in defending suspects before the Military Courts.⁶

3 Statute of the ICJ (adopted June 26, 1945, entered into force October, 24 1945) 3 Bevans 1179, 59 Stat. 1055, TS No. 993. (the "ICJ Statute")

4 See Article 38 (1) (c) of ICJ Statute

5 The Lebanese Constitution enacted May 23, 1926 (with its Amendments)

<http://www.presidency.gov.lb/English/LebaneseSystem/Documents/Lebanese%20Constitution.pdf>;

The Lebanese Penal Code, Legislative Decree no. 340

https://www.unodc.org/cld/document/lbn/1943/lebanon_penal_code.html?;

Lebanese Code of Criminal Procedure. issued as per Law No. 328 of 7 August 2001 and its Amendments

<https://www.stl-tsl.org/en/documents/relevant-law-and-case-law/applicable-lebanese-law/340-lebanese-code-of-criminal-procedure;>

Amendment of certain articles of the Criminal Code Law, enacted on the January 11, 1958

<https://www.stl-tsl.org/en/documents/relevant-law-and-case-law/applicable-lebanese-law/341-law-enacted-on-11-january-1958>

6 The interviews are on file with the author and may be provided on request.

For the purpose of analyzing the Lebanese context and history, various literature sources, journals and reports were relied on.

A translated verdict carried out by the Military Courts is attached in an annex hereto, in order to give an insight on the form used by the court to indict terrorists.

1.3 Background and History

Terrorism is a topic which gives rise to numerous controversies under both international law and in domestic legal systems all over the world. Acts of terrorism pose a serious threat to peace and security at the domestic and international level, and needs to be dealt with by international law and national judicial systems alike. At the international level, a notable challenge is the persisting elusiveness of the term “terrorism”. The term remains wrapped in a controversial debate with a magnitude of different political perspectives, preventing the establishment of a unified universal definition. At the domestic level, the issue of the notion stretches over the judicial procedures taken in the course of trying suspects of terrorism. Countries in the Middle East are increasingly exposed to violence targeting non-military targets by non-state actors for the purpose of influencing political processes.⁷ This region is also struggling with how the judicial domestic system handles the sensitive matter of terrorism. Domestically, acts that can be linked to terrorist activity fall under the legislation dealing with threats to national security. These provisions are strict, and the accused risks heavy punishment. In the regional practice of the Middle East, it is a rather common approach to transfer individuals accused of terrorist-related activity to exceptional courts such as a military tribunals. These practices raise questions of legality and challenges human rights law in many respects.

As domestic law is enforced in the particular context of a state, it will always reflect the specific accumulation of history in a given country. The *Lebanese Republic* is renowned for its strategic position and for being the first democratic parliamentary state in the Middle East with a healthy political life and active struggle.⁸ This broad acknowledgment of Lebanon’s judicial system as one of the best functioning systems in the region, makes a study of terrorism prosecution in Lebanon interesting for a variety of reasons.

⁷ Six Arabic countries are among the top ten and Lebanon’s rank is 24; see Institute for Economics and Peace “*Meaning and Understanding the Impact of Terrorism*” The global Terrorism Index 2016, p. 10, 38, Accessed on 22/04/17, <http://economicsandpeace.org/wp-content/uploads/2016/11/Global-Terrorism-Index-2016.2.pdf>

⁸ In the ranking for Middle Eastern and North African Countries 1972-1973 Lebanon scored the highest per Middle East and North Africa region on political rights and civil liberties, and was the only “free” Arabic country in the ranking; see, Bellin, E., *The Robustness of authoritarianism in the Middle East: Exceptionalism in comparative perspective. Comparative politics, Comparative Politics*, Vol. 36, no. 2, 2004, p. 140

In contrast to other Arabic countries, which have been under the rule of either a monarch or a long-lasting autocrat, the Lebanese political life is an institutionalized democracy of sorts with a parliamentary system. An inquiry into the level of compliance with international standards therefore begins from a different point of departure: it seeks to examine how prosecutions are conducted in what appears to be a vigorous legal system.

Lebanon is constantly challenged to maintain its democratic status.⁹ This continuous struggle is particularly visible when it comes to enforcing laws in an equal manner to both Lebanese residents and citizens throughout the territory. This struggle is most clearly defined where the enactment of terrorist legislation and the enforcement of its provisions are concerned.

Owing to its geographical location, Lebanon has a particularly important role in complying with counter-terrorist obligations.¹⁰ Indeed, Lebanon is a neighboring country to many conflict zones in which groups that have been labeled as “terrorist organizations” operate.¹¹ Some of these groups have a heavy presence in Lebanon. While dealing with this quickly growing threat, Lebanon is expected to comply with its obligations under international law. Thus, Lebanon is burdened with the responsibility of directing efforts to efficiently fighting terrorism, while upholding international standards in terms of human rights law and international humanitarian law. It can be assumed that the larger the threat of terrorist violence, the heavier the burden on the judicial system. A study of prosecution of terrorism in Lebanon provides insight into compliance with international standards by the legal system in a state under heavy pressure.

To review the Lebanese practice regarding laws and the enforcement of laws on state security, means to epitomize other practices in the region. As is the case for most of its surrounding states, many practices and institutions in Lebanon were modeled on that of its former administrative authority. Under the League of Nations mandate system, Lebanon was part of the French Mandate for Syria and Lebanon from 1923 to 1946.¹² As a result, French civil law was heavily incorporated into the Lebanese legal system. Most of the neighboring states adopted

⁹ Makdisi, S., Kiwan, F. and Marktanner, M., *Lebanon: The constrained democracy and its national impact*. London Democracy in the Arab World: Explaining the Deficit, 2010, p. 115-130

¹⁰ Resolution adopted at the 4385th meeting of the Security Council, Resolution 1373 of September 28, 2001, and Security Council Resolution 1624 adopted at 5261st meeting of the Security Council on September 14, 2005

¹¹ NationMaster. Terrorism, Number of known Terrorist Organizations present: Countries Compared, Accessed on 22/4/17 <http://www.nationmaster.com/country-info/stats/Terrorism/Number-of-Known-Terrorist-Organizations-Present>

¹² *French Mandate for Syria and the Lebanon*, The American Journal of International Law, Vol. 17, No. 3, Supplement: Official Documents, Published by: American Society of International Law, p 177-182

the laws of their former colonial mandate, which in its basic systems was the French civil law. Later, other countries in the region combined its French based civil law system with Islamic sharia law.¹³ Generally, however, they shared an identical national security approach whereby alleged terrorists would be brought before exceptional courts.

Lebanon was part of the Ottoman Empire and was converted into a French mandate from 1918 until it gained independence in 1943. The Lebanese identity was formed based on religious or ethnical grounds, rather than a sense of national belonging or unity. This formation can be traced back to 1958, when the first spark of a major conflict was ignited between the Lebanese Christians and Muslims.¹⁴ An accumulation of incidents combined with a violent continuous power struggle between the two societies eventually led to the eruption of a civil war in 1975¹⁵. At this point, the conflict was not solely between Lebanese Muslims and Christians, as other sects also engaged in violence. Furthermore, it included direct military participation from Israel, Syria, and the Palestinian Liberation Organization (PLO).¹⁶ During this period, Lebanon gained fame internationally for being a main cookery and theatre for many terrorist-labeled organizations. Various actors using violent means found Lebanon to be an ideal launching pad for their international operations, including the hijacking of international flights and numerous massive terrorist attacks inside and outside of the country.¹⁷¹⁸ The civil war lasted until the signing of the Taif Accords in 1989, with some side clashes until 1991.¹⁹ Even after the civil war ended, the Lebanese territory remained under partial Israeli occupation in southern Lebanon²⁰. This situation persisted until 2000, when Israel withdrew its

¹³ “Sharia is a complementary source in the lack of Civil legislations in numerous Arabic countries”; see, Albarrawi.H.H *Effect of Islamic Sharia on Qatari Civil Law: Comparative Study*, International Review of Law, 2014, p. 3-5; source is in Arabic

¹⁴ Chamie Joseph, *The Lebanese Civil War: An investigation into the causes*, World Affairs 139, no. 3 (1976): 173-175. <http://www.jstor.org/stable/20671682>.

¹⁵ Chamie Joseph, *The Lebanese Civil War: An investigation into the causes*, World Affairs 139, no. 3 (1976): 175-177. <http://www.jstor.org/stable/20671682>

¹⁶ Ahmad, N., *The Palestine Liberation Organization*, Pakistan Horizon, Vol. 28, No. 4, Fourth Quarter, p.81-84

¹⁷ Hijacking of TWA Flight 847, accessed on 22/3/17, <https://www.fbi.gov/history/famous-cases/hijacking-of-twa-flight-847>

¹⁸ CIA, FLASHBACK: April 18, 1983: *U.S. Embassy Attacked in Beirut*. CIA. Historical Document, April 17, 2014 <https://www.cia.gov/news-information/featured-story-archive/2014-featured-story-archive/flashback-april-18-1983-u-s-embassy-bombed-in-beirut.html> Accessed on 22/03/17

¹⁹ “Lebanon profile timeline” BBC, April 30, 2017, accessed on 12/2/17, <http://www.bbc.com/news/world-middle-east-14649284>

²⁰ Mowles, C., *The Israeli Occupation of South Lebanon*, Third World Quarterly vol. 8, no. 4, 1986, p. 1351-1355

armed forces, with only a few areas still in dispute.²¹ The Syrian military presence controlled the rest of the Lebanese territory.²² This military presence remained until 2005, when Syria was forced to withdraw its forces following the assassination of the former Lebanese Prime Minister, Mr. Rafiq Al Hariri.^{23,24}

Both the civil war and the military occupation have profoundly impacted the Lebanese structure, system and rule of law in areas of national security and counter-terrorism. Many resistance and liberation movements were created as a result of the Israeli occupation. All of these, except Hezbollah, ceased to exist as armed parties when the military occupation ended.²⁵ Hezbollah is a Shia Islamist political, military, and social organization. Hezbollah started as a resistance movement, operating in the south of Lebanon. It had a heavily-armed military wing and continued to 'legitimately' exist as an armed liberation movement after the end of the Lebanese civil war. This non-state actor is currently labeled as a terrorist organization by the United States,²⁶ the Gulf Cooperation Council,²⁷ and also the Arab league.²⁸ Hezbollah is an active component of the Lebanese social fabric, and the organization has a significant political, social, and economic impact. Arguably, it exerts considerable control over Lebanese political life. The dominance and influence of this organization can be seen in numerous Lebanese security institutions, and it consequently operates as an entity parallel to the state. It exercises political control over the Ministry of Defense, as it has effectively gained veto pow-

²¹ Kaufman, A., *Who owns the Shebaa Farms? Chronicle of a territorial dispute*, The Middle East Journal, Vol. 56, no. 4, 2002, p. 576-579.

²² Youssef Bassil, *Syrian Hegemony over Lebanon*, Journal of Science (JOS) 136 Vol. 2, No. 3, 2012, World Science Publisher, United States

²³ Harris, W., *Bashar al-Assad's Lebanon gamble*, Middle East Quarterly vol. 12, 2005, p. 33-44

²⁴ UNSC Resolution 1559 (2004) called for the withdrawal of foreign forces, Syria didn't comply until International pressure to withdraw intensified and public opinion in Lebanon turned strongly against Syria, evidenced by mass demonstrations that were labeled the Cedar Revolution following the assassination of Rafiq Al Hariri on 14 February 2005. On April 26, 2005, after 29 years Syrian troops left Lebanon.

²⁵ Hezbollah by US National Counterterrorism Center accessed on 23/2/2017, <https://www.nctc.gov/site/groups/hizballah.html>

²⁶ Review Foreign Terrorist Organizations designated, date 10/8/97, accessed on 13/2/17 <https://www.state.gov/j/ct/rls/other/des/123085.htm>

²⁷ News report *GCC declares Lebanon's Hezbollah a 'terrorist' group*, accessed on 20/02/17 <http://www.aljazeera.com/news/2016/03/gcc-declares-lebanon-hezbollah-terrorist-group-160302090712744.html> accessed on 23/1/17

²⁸ News report *Arab League labels Hezbollah a 'terrorist' group*, accessed on 27/1/17 <http://www.aljazeera.com/news/2016/03/arab-league-labels-hezbollah-terrorist-group-160311173735737.html>

er in the cabinet after the events of May 2008.²⁹³⁰ The appointment of military judges under the influence of a non-state armed actor such as Hezbollah may then have direct ramifications for the composition and workings of the military courts. Ironically, Hezbollah, a movement that several regional powers have labeled a 'terrorist organization', can indirectly have an important say in the prosecution of alleged terrorist crimes in Lebanon.

Moreover, given the blurred boundaries between the executive and judiciary branch in military matters, along with the high rates of corruption prevailing in Lebanon, the ability of an exceptional court to uphold the rights of the accused and deliver a fair judgment can be questioned.³¹

Another element that makes Lebanon particularly unique is the existence of the Special Tribunal for Lebanon (the "STL").³² This mixed tribunal was established in order to prosecute the terrorist attack that claimed the life of the former Prime Minister. While its jurisdiction is limited to a single case,³³ it nevertheless hints at a profound lack of trust in the Lebanese legal system's ability to deal with the thorny issue on terrorism. STL was created by Security Council Resolution 1757, passed under Chapter VII in 2007, subsequent to the terrorist attack of the 14th of February 2005³⁴³⁵ The establishment of STL as the first international ad hoc tribunal with a jurisdiction over terrorism, could be seen as a result of a costly joint struggle

²⁹ Wiegand, K.E., *Reformation of a terrorist group: Hezbollah as a Lebanese political party*, Studies in Conflict & Terrorism, vol. 32, issue 8, 2009 p. 669-680.

³⁰ Knio, K., *Is Political Stability Sustainable in Post-'Cedar Revolution 'Lebanon? Profile*, Mediterranean Politics, 13(3), 2008, p. 445-45; see News Report: *Hezbollah takes over west Beirut Friday, 9 May 2008*, BBC news, Accessed on 23/5/17. <http://news.bbc.co.uk/2/hi/7391600.stm>

³¹ Ranked at 136 out of 176 corruption index, accessed on 16/2/17, <https://www.transparency.org/country/LBN>

³² STL who created the tribunal, accessed on 14/2/17, <https://www.stl-tsl.org/en/ask-the-tribunal/425-who-created-the-tribunal>

³³ Article 1 of the STL statute stipulates the following: " *The Special Tribunal shall have jurisdiction over persons responsible for the attack of 14 February 2005 resulting in the death of former Lebanese Prime Minister Rafik Hariri and in the death or injury of other persons. If the Tribunal finds that other attacks that occurred in Lebanon between 1 October 2004 and 12 December 2005, or any later date decided by the Parties and with the consent of the Security Council, are connected in accordance with the principles of criminal justice and are of a nature and gravity similar to the attack of 14 February 2005, it shall also have jurisdiction over persons responsible for such attacks*".

³⁴ Security Council Resolution 1757 <https://www.stl-tsl.org/en/documents/un-documents/un-security-council-resolutions/225-security-council-resolution-1757>; see also Sader, C., *A Lebanese Perspective on the Special Tribunal for Lebanon Hopes and Disillusions*, Journal of International Criminal Justice, 5(5), 2007, p.1083-1089

³⁵ Security Council Resolution 1757 <https://www.stl-tsl.org/en/documents/un-documents/un-security-council-resolutions/225-security-council-resolution-1757>

from the Lebanese community, the political opposition³⁶ in that period³⁷ and the international community attempting to bring those responsible for the terrorist bombing that killed Hariri to justice. The objective was to secure a neutral court, insulated from the Lebanese legal system for prosecution of terrorists into which political influence was seen as rampant. A potential prosecution for the murder of Prime Minister Rafiq Hariri was seen to expose the Lebanese legal system to a test it was not liable to pass. However, it does leave Lebanon with two parallel prosecutorial processes for acts of terrorism – a UN tribunal and an Exceptional Court.³⁸

As the allegation of terrorism is used against a myriad of acts, and it has a strong political dimension to it, it is commonly used to pressure political entities. This is especially true when numerous security agencies/ law enforcement actors operate according to a political agenda divided on a sectarian base. Hunting down political opponents as potential terrorists in order to present them to military justice, creates a convenient advantage for a political side while meeting an international demand on countering-terrorism in the Middle East. The risks of abuse of the system are therefore substantial.

Groups acting with a terrorist behavior are created and abolished routinely in Lebanon by internal and external political poles. They are selectively labeled or disregarded by political necessities, which is done without any notable respect for procedures, trials and judgments, with reference to the court's exceptional nature.

2 TERRORISM

From its very introduction with the French Revolution more than two centuries ago, the term “terrorism” has been used to express the threat of violent means towards achieving a political or an ideological advantage. Terrorism is a tactic which relies on the use of force, by non-state actors directed at civilians, unarmed targets or non-military governmental facilities to attain a state of public panic, fear and anxiety which can then be exploited for specific purposes.

The methods of terror have been actively used by different types of extremists. The *anarchists*³⁹ in the late 1800's, *zionists* in the 1940's⁴⁰, *nationalists* in Ireland, Palestine and Spain

³⁶ The March 14 coalition comprises an array of political parties, movements and individuals, mainly Sunni, Christian and Druze with a few Shia named after the mass anti-Syrian rally on that date in 2005.

³⁷ Knudsen, A., *Acquiescence to assassinations in post-civil war Lebanon?*, Mediterranean Politics, vol. 15(1), 2010, p. 5

³⁸ Before the Creation of the STL the case was referred to an exceptional Court the “Lebanese Judicial Council”; see heading 3.3.

³⁹ Amy Zalman, *History of Terrorism: Anarchism and Anarchist Terrorism*, September 30, 2016, accessed on 24/4/17

<https://www.thoughtco.com/anarchism-and-anarchist-terrorism-3209262>

⁴⁰ Peeke, J.L.. *Jewish--Zionist Terrorism and the Establishment of Israel*. Naval Postgraduate School Monterey CA, 1977, Thesis, p. 33-40

during the 70's and 80's, and the radical Islamic fundamentalist in the early 21st century. Formerly, the term terrorism was employed along with other incriminating terms such as sabotage acts.⁴¹ However, after the 9/11-attacks on the US in 2001, terrorism has become the primary dominating caption in legislation worldwide⁴². In fact it can be argued that in the 21st century this crime is the new *hosti humani generis* - enemy of all mankind⁴³.

This chapter will examine the different legal approaches of defining terrorism, and determine the material scope of the definition used in the Lebanese courts.

2.1 Terrorism under International Law

There is no global universal definition on terrorism. However, serious efforts have aimed at solving this conundrum. The growing threat of terrorism has crafted today's international law provisions in numerous international agreements⁴⁴. Some regional conventions have also addressed the matter⁴⁵.

Among the first conventions addressing the issue was The Convention on Offenses and Certain Other Acts Committed on Board Aircraft, adopted in Tokyo in 1963. Later it was followed by many other treaties during the 1970ies.⁴⁶ These conventions share many common features, such as addressing very specific types of terrorism or particular elements of the terrorist challenges. The most prominent examples, on this regard, are Terrorist bombings, taking of hostages, and acts on aircrafts and ships. These treaties list the acts that constitute terror, but without setting an abstract legal definition which may serve as an authoritative and general definition.⁴⁷ They establish the duty to criminalize behavior linked to the special topic of the convention under domestic legislations, urging and establishing the duty by states to

⁴¹ Jenkins, B.. *Future trends in international terrorism*. In *Current perspectives on international terrorism*, Palgrave Macmillan UK, 1988, p. 246-266

⁴² Rostow, N., *Before and after: The changed UN response to terrorism since September 11th*, Cornell International Law Journal, vol. 35, issue 3, 2001, p. 475

⁴³ *Flatow v. Islamic Republic of Iran*, U.S. District Court for the District of Columbia - 76 F. Supplement 2d 16 (D.D.C. 1999) December 10, 1999

⁴⁴ UN General Assembly, International Convention for the Suppression of the Financing of Terrorism no. 38349, December 9, 1999, Among UN General Assembly, International Convention against the Taking of Hostages no. 21931, November 17, 1979, UN General Assembly, International Convention for the Suppression of Terrorist Bombings, no. 37517, December 15, 1997

⁴⁵ Council of Europe European Convention on the Suppression of Terrorism, January 27, 1977, ETS no. 90, Organization of American States (OAS), Inter-American Convention Against Terrorism, March 6, 2002

⁴⁶ United Nations, Convention for the Suppression of Unlawful Seizure of Aircraft, December 16, 1970, UN Treaty Series 1973. UN General Assembly, Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, December 14, 1973, no. 15410

⁴⁷ O'Donnell, D., *International treaties against terrorism and the use of terrorism during armed conflict and by armed forces*. International Review of the Red Cross, 88(864), 2006, p. 853-880

prevent, prosecute and punish such conduct.⁴⁸ Furthermore, they set forth the inclusion of special clauses that deals with money laundering and financing terrorism, while establishing the duty of international cooperation and trans-border prosecutions. What is notable in the conventions is that terrorism is denied the nature of political crimes. Consequently, extraditing perpetrators is possible⁴⁹. It is explicitly stated that felons are not to be granted political asylum, nor enjoy the protection given under refugee status.⁵⁰ Finally, universal jurisdiction is established within the scope of each convention as a guarantee for enforcement, a guard against impunity and as a restriction on the free movements of terrorists.

Rather than a general convention on terrorism, the approach has been several conventions of limited scope and impact.⁵¹

International treaties that deal with terrorism offenses do not really touch on the definition of terrorism explicitly. It rather provides an avenue for how to suppress and prosecute acts along with a restatement of the state's responsibility to prevent it. Nevertheless, Article 2(b) of the International Convention for the Suppression of the Financing of Terrorism adopts a unique attempt of a wide scope, pointing to certain characteristics of terrorism. It stipulates that an act of terrorism is:

“Any act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.”(Emphasis added)⁵²

Although the article deals with the *mens rea* (the criminal intention) of the act, it nevertheless has interest as a more general definition. A fundamental element is that the violence must be directed at a civilian, or, in case of an armed conflict, a person who is not taking a direct part in hostilities (DPH). What persons may be DPH in a situation of an armed conflict is a subject

⁴⁸ United Nations. Security Council Resolution 1373, adopted by the Security Council at its 4385th meeting, on September 28, 2001

⁴⁹ The 1977 European Convention on the Suppression of Terrorism limited the scope of the political offense exception; in its first article, it provided a long list of offense which could not be regarded as political offense, including not just the traditional clause d'attentat, but also kidnapping, hostage taking, and the use of bombs and firearms where the use endangered civilians lives

⁵⁰ Article F (b) of the UN General Assembly, Convention Relating to the Status of Refugees, July 28, 1951, United Nations, Treaty Series, vol. 189, entry into force: April 22, 1954

⁵¹ UN General Assembly, Convention on the Physical Protection of Nuclear Material, October 26, 1979, no. 24631, in force: February, 8 1987, UN General Assembly, Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, March 10, 1988 no. 29004, Entry into force: March 1, 1992

⁵² UN General Assembly, International Convention for the Suppression of the Financing of Terrorism, December 9, 1999 no. 38349, entry into force: April 10, 2002

not authoritatively decided, but certain core elements are believed to be declaratory of custom⁵³. A challenge is that “civilian” is a term intrinsically linked to armed conflict. However, many terrorist acts are committed outside the scope of an armed conflict, such as the attacks that took place in Paris or Brussels in 2016.⁵⁴

In 2004, the Security Council drew on international conventions and protocols relating to terrorism, and on this basis, referred to terrorism as:

*“...criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act.”*⁵⁵

This definition was endorsed by the Secretary-General in his report of the High-level Panel on Threats, Challenges and Change the same year, providing that terrorism is:

*“...any action [...] that is intended to cause death or serious bodily harm to civilians or non-combatants, when the purpose of such an act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act.”*⁵⁶

Given the absence of an authoritative definition agreed upon by states expressed in treaties, customary law and jurisprudence becomes more important. The trial chambers of international ad hoc tribunals are crucial in developing a comprehensive interpretation of certain international crimes⁵⁷. The first case before an international tribunal involving terrorism was the case against General Galić at the International Criminal Tribunal for the former Yugoslavia. However, in this case terrorism was framed as a war crime and crimes against humanity. Accordingly, the Trial Chamber found the accused guilty of “acts of violence” the primary purpose of which is to spread terror among the civilian population, as set forth in Article 51 of Addi-

53 See ICRC Guidance on DPH, 2009; while several elements in the guidance have been met with protest and even disbelief, the core elements of DPH are less controversial

54 Brisard, J.C. and Jackson, K., The Islamic State’s External Operations and the French-Belgian Nexus, CTC Sentinel, Vol 9, Issue 11 November 10, 2016, p.11

55 UN Security Council Resolution 1566, 2004

56 Report of High-level Panel on Threats, Challenges and Change, 2004, paragraph 164, subparagraph (d)

57 Meron, T., *The continuing role of custom in the formation of international humanitarian law*, The American Journal of International Law, 90(2), 1996, p. .238-249

tional Protocol I, as a violation of the laws or customs of war under Article 3 of the Statute of the Tribunal”.⁵⁸ In addition, the chamber also found the accused guilty of crimes against humanity under Article 5 of the Statute.⁵⁹

The world’s first international tribunal with jurisdiction over the crime of terrorism not linked specifically to an armed conflict is the Special Tribunal for Lebanon.⁶⁰ The United Nations Security Council (the "UNSC") considered that the assassination of the former Lebanese Prime Minister Mr Rafiq Hariri⁶¹ was a terrorist act and constitutes a threat to international peace and security. Accordingly, the Security Council stated that “reaffirming its determination that this terrorist act and its implications constitute a threat to international peace and security”.⁶² But given that the crime of terrorism under the ICC Statute has not yet been defined, it does not fall within the jurisdiction of the International Criminal Court.⁶³ Consequently, the UNSC opted for a special international tribunal.⁶⁴ The scarcity of international jurisprudence makes the ad hoc tribunals essential for the development of international law in this respect.⁶⁵ The material definition of terrorism in the STL therefore is of particular interest.

The STL has the particular characteristics that it is a mixed tribunal in the sense that it draws in part on domestic Lebanese law and in part on international law, treaty and custom. “The Tribunal shall apply the Lebanese domestic crime of terrorism, interpreted, consonance with international conventional and customary law that is binding on Lebanon”⁶⁶. The STL Appeals Chamber has put forward a definition of terrorism, based on its review of state practice

⁵⁸ *Prosecutor v. Stanilav Galic (Trial Judgment and Opinion)*, IT-98-29-T, International Criminal Tribunal for the former Yugoslavia, December 5, 2003, paragraph 132

⁵⁹ *Prosecutor v. Stanilav Galic (Trial Judgment and Opinion)*, IT-98-29-T, International Criminal Tribunal for the former Yugoslavia, December 5, 2003, paragraph 151-155

⁶⁰ UN Security Council, Security Council resolution 1757, 2007 on the establishment of a Special Tribunal for Lebanon, May 30, 2007

⁶¹ Blanford, N., *Killing Mr Lebanon: the assassination of Rafiq Hariri and its impact on the Middle East*, IB Tauris, 2006

⁶² UN Security Council, Security Council resolution 1757, 2007 on the establishment of a Special Tribunal for Lebanon, May 30, 2007, S/RES/1757

⁶³ Arsanjani, M.H., *The Rome Statute of the International Criminal Court.*, The American Journal of International Law, 93(1), 1999, p. 22-43.

⁶⁴ STL who created the tribunal, accessed on 14/2/17, <https://www.stl-tsl.org/en/ask-the-tribunal/425-who-created-the-tribunal>

⁶⁵ Ventura, M.J., *Terrorism According to the STL's Interlocutory Decision on the Applicable Law A Defining Moment or a Moment of Defining?*, Journal of International Criminal Justice, 9(5), 2011, p. 1021-1042

⁶⁶ *Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging*, STL-11-01/1, Special Tribunal for Lebanon, February 16, 2011, p. 2; Article 2 (a) and (b) Applicable criminal law of the Statute of the Special Tribunal for Lebanon

and indicators of *opinio juris*, hence suggesting that there is a customary international law definition of terrorism. The STL Appeals Chamber has found that it consists of the following three elements:

(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.

Antonio Cassese, a renowned international lawyer, was presiding judge at the tribunal, and he wrote the definition prior to his death. This is the first time that a general definition of terrorism has been suggested by an international tribunal with some degree of authority under international law.

The STL's definition is hence likely to have important ramifications for attempts to arrive at a general definition of terrorism under international law more broadly. However, the definition is also heavily influenced by the Lebanese domestic definition.

2.2 Terrorism under Lebanese Domestic Law

Lebanon was amongst the pioneer countries to codify acts of terror in its Penal Code of March 1, 1943, was it the first law with such a provision, until the enactments of the January 11, 1958. The emphasis is on the intention and on the means used.

Article 314 of the Lebanese Penal Code defines terrorism as:

"...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."

The Lebanese definition lists the means liable to create a public danger. The Lebanese courts held that an attack was a terrorist attack if carried out by one of the enumerated means. On the one hand, this interpretation gave the definition a narrow scope. Limiting the term to the means listed entails that many tactics used or means fall outside the scope of that notion. While other similar definitions of terrorism tend to enumerate means as illustrative, the Lebanese provision was viewed as exhaustive.⁶⁷

⁶⁷ *Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging*, STL-11-01/1, Special Tribunal for Lebanon, February 16, 2011, p. 3 "[...] the Tribunal is justified in applying, at least in one respect, a construction of the Lebanese Criminal Code's definition of terrorism more extensive than suggested by Lebanese case law. While Lebanese courts have held that a terrorist attack must be carried out through one of the means enumerated in the Criminal Code"

On the other hand, if one of the means has been used, the requirement is met. “Violence” of the acts is not a required condition for causing a public danger, provided it is not connected to specific acts of a high gravity, such as the one enumerated in Article 314. In this respect therefore, the definition is overly broad, and may cover many acts that would normally not be associated with terrorism. Recent practice of a wide interpretation has led to an increase of labeling terrorists in the course of prosecutions carried out by the Military Courts in Lebanon. Under exceptional circumstances taking place in Lebanon, when political and sectarian tension was threatening the unity of Lebanon⁶⁸ a law was enacted on January 11, 1958 containing eight articles in which it suspends and replaces some of the articles of the Penal Code.⁶⁹⁷⁰ Exclusively articles on national security were enhanced, and the definition of terrorism was strengthened through being inclusive and acts are sanctioned by a higher penalty.⁷¹ Importantly, Article 8 of the law transferred primary jurisdiction over the crime of terrorism from civilian courts to military courts.⁷² The Lebanese notion on terrorism included: “[..]Any person, who commits, aids, leads, abets or conspires to an act of violence or attempted violence with intent either to provoke civil war or sectarian conflict by arming Lebanese citizens or urging them to take up arms against one another. Engagement in incitement to murder, pillage or vandalism, or leading an armed gang or occupies therein any function or leadership position of whatever nature for the purpose of invading a city or area, state-owned property or private property, or for the purpose of attacking or resisting the law enforcement authorities operating against the perpetrators of these offenses or any other offense against the State. Manufactures, obtains or has in his possession explosives or inflammable substances or toxic or incendiary products, or components or ingredients entering into the composition or manufacture of such products. An act results in the death of one or more individuals, the total or partial destruction of a building having one or more individuals inside it, the total or partial destruction of a pub-

⁶⁸ Gendzier, I.L., *Notes from the minefield: United States intervention in Lebanon and the Middle East, 1945-1958*, Columbia University Press, 2006

⁶⁹ Upon the creation of The United Arab Republic in 1958 between Syria and Egypt, the Lebanese Left wing along with Islamic parties aimed to join the unity; the Lebanese President demanded an American intervention to save Lebanon from separation.

⁷⁰ Law enacted on January 11, 1958 <https://www.stl-tsl.org/en/documents/relevant-law-and-case-law/applicable-lebanese-law/341-law-enacted-on-11-january-1958>

⁷¹United Nations Legislative Series, *National Laws and Regulations the Prevention and Suppression of International Terrorism*, 2002, p. 320 - 323

⁷² Article 8 - Military tribunals shall have jurisdiction for the offences set out in the preceding articles.

lic building, an industrial plant, a ship or other facilities, or disrupts the functioning of telecommunication or transport services”.⁷³

It is obvious that the Lebanese notion on terrorism became so much wider than what was provided with the original Article 314 of 1948, as the 1958 law lists wide acts, intentions, material used, and protects infrastructure and property. Moreover, Article 8 of the latter law granted Military Courts the primary jurisdiction over the crime of terrorism, therefore enabling Exceptional Courts to broadly interpret a blurred notion with unclearly limited scope. This resulted in the increase of labeling terrorists in the course of prosecutions, and exposing the accused to high penalties and further limitations of his/her fundamental rights.

Linking the wide interpretation of the definition to the Lebanese practice of prosecuting terrorists before military courts raises important concerns about legality, such as the principle *Nulla poena sine lege*. The lack of a modern text that defines Terrorism, offers the court the opportunity to adjudicate outside of a legal text. That is the case when courts designate a terrorist, for acts of support or sympathy to an organization that is not designated globally nor nationally in any official form. The combination of too narrow and too broad at the same time, leaves too much to the discretion of a military judge. One example of this practice and its result is the recent case of Fajer Faraj.⁷⁴ He was arrested while he was about to leave Lebanon to Turkey to later seek asylum in Germany. He was sentenced by the Military Court for terrorist offenses. His act was to have been formerly enlisted with Syrian opposition group The Free Syrian Army, an entity that is not a terrorist designated organization – neither by Lebanese authorities nor internationally.

To sum up, the Lebanese definition of terrorism was constructed and shaped during exceptional circumstances. Lingering through a situation of a looming civil war that later developed into an actual conflict and further transformed into a belligerent occupation.

Ultimately, this also reflects negatively on the definition adopted by the STL, which in part has been informed by Lebanese domestic law.⁷⁵

⁷³ Law enacted on January 11, 1958, Articles 2-7 <https://www.stl-tsl.org/en/documents/relevant-law-and-case-law/applicable-lebanese-law/341-law-enacted-on-11-january-1958>

⁷⁴ Military Prosecution FSA is a Terrorist Group. Youssef Diab, The Daily Start November 15, 2016, accessed on 24/4/17 <https://www.pressreader.com/lebanon/the-daily-star-lebanon/20161115/281578060243801>

⁷⁵ Scharf, P. Michael, *Special Tribunal for Lebanon Issues Landmark Ruling on Definition of Terrorism and Modes of Participation*, American Society of International Law, vol. 15, issue 6, March 4, 2011 <https://www.asil.org/insights/volume/15/issue/6/special-tribunal-lebanon-issues-landmark-ruling-definition-terrorism-and>

2.3 Regional Instruments

In addition to domestic and international law, developments at the regional level resonate strongly in Lebanon. The preamble of the Lebanese constitution asserts that: Lebanon has an Arab identity and belonging. It is a founding active member of the Arab League, committed to its Charter.⁷⁶

This paragraph confirms the formerly disputed identity of Lebanon,⁷⁷ insisting on the bond between Lebanon and other Arabic countries, sharing a mutual culture, language, traditions and struggle. Furthermore, it deals with the same challenges in regard to terrorism. For the conjoint purpose of suppressing terrorist offenses, the Arab League negotiated a convention on the Suppression of Terrorism in 1998 (the "**Convention**").⁷⁸ The Convention establishes definitions of terrorism and terrorist offenses, yet it circumscribes it with the right to struggle by whatever means against occupation, aggression, liberation and self-determination. As Lebanon has ratified the Convention, it thus adopts an additional complementary definition on Terrorism. Article 1(2) defines terrorism as:

*"...any act or threat of violence, whatever its motives or purposes, that occurs for the advancement of an individual or collective criminal agenda, causing terror among people, causing fear by harming them, or placing their lives, liberty or security in danger, or aiming to cause damage to the environment or to public or private installations or property or to occupy or to seize them, or aiming to jeopardize a national resource."*⁷⁹

The definition is extremely broad, fitting a wide interpretation and prone to abuse, as the acts are not defined nor limited. Thus, it wraps any act or threat without stating specifically that violence is not defined and does not require a specific degree. This broadens the scope of possible prosecutions under such unlimited definitions of acts or intent. An outcome of this approach introduces uncertainty on a number of levels. If a labor protest goes violent, can the protestors be held accountable for committing a terrorist act? This extremely wide notion

⁷⁶ Article B of the Lebanese Constitution's preamble, Amended on September 21, 1990

⁷⁷ Seale, P., *Review: Lebanon and Arabism: National Identity and State Formation*, Journal of Islamic Studies 16 (1): 114-117, 2005

⁷⁸The Arabic Convention on the Suppression of Terrorism, accessed on 27/4/17 https://www.unodc.org/tldb/pdf/conv_arab_terrorism.en.pdf

⁷⁹ League of Arab States, Arab Convention on the Suppression of Terrorism, April 22, 1998

shares many characteristics with the latest definition introduced in Egypt in 2015⁸⁰. For which Egypt has received intensive criticism⁸¹.

Furthermore, the Convention sets a list of acts in article 2(b), which are deprived from the nature of political crimes, without defining political crimes. Additionally, it insists on the righteous struggle by any means for “acts” for liberation, resistance of occupation and the right of self-determination as long as those acts are not committed towards an Arabic country. The combination of a presumption of extensive powers in the hands of the executive power, with a broad but tilted definition of terrorism, with no specific guarantees of judicial review leads to questions of legality. The Convention also includes wide extradition obligations where the rights of the individual have been sacrificed at the altar of the state’s need for harsh measures.

By and large, the Convention also does not make any reference to international human rights law while it does mention national laws of the states party to the Convention. This, however, does not have any decisive effect. The international standards of human rights law are of a global nature, some of which are deemed to be declaratory of custom.⁸² They will therefore take supremacy over domestic laws and regional agreements.⁸³ Thus the Convention cannot lower the standards promoted in international law, while paving the way for the regional parties to abuse such legislations. Consequently, Lebanon cannot rely on the regional framework for terrorism to free itself from obligations rising under treaties of international law.

2.4 Concluding remarks

In conclusion, well-crafted laws are the primary guarantee for countering-terrorism while preserving human rights. As the notion of terrorism lacks a stringent universally agreed definition in international law, more discretion is left to national authorities.

The current Lebanese notion on terrorism is extremely broad. It was established in response to a very threatening security situation in Lebanon, deemed to be a temporary amendment to

⁸⁰ Kelly Buchanan *FALQS: Egypt’s New Antiterrorism Law*, September 8, 2015, accessed on 27/4/17. <http://blogs.loc.gov/law/2015/09/falqs-egypts-new-antiterrorism-law/>

⁸¹ Human Rights Watch Report *Egypt: Counterterrorism Law Erodes Basic Rights Broad ‘Terrorist Acts’ List May Criminalize Civil Disobedience*, August 19, 2015, accessed on 3/4/17 <https://www.hrw.org/news/2015/08/19/egypt-counterterrorism-law-erodes-basic-rights>

⁸² The prohibition on torture has obtained a *jus cogens* status as or peremptory norm of general international law, moreover giving rise to the obligation *erga omnes* (owed to and by all States) to take action against those who torture.

⁸³ Article 2 of the Lebanese Code of Civil Procedure declares that International treaties, ratified by the Lebanese parliament, are part of the domestic legal system and according to, are given supremacy over the domestic laws.

cope with a fragile situation that threatened the very existence of a unified Lebanese republic. The exceptional situation occurring at the time the definition was introduced ceased a long time ago. Nevertheless, the broad definition has been kept despite the change in situation as the regional definition has served as an excuse for keeping the wide definition⁸⁴.

Hence effectively transforming into a *carte blanche* for prosecution of a broad range of political actors. While a definition in a regional instrument can not narrow the human rights obligation of an accused provided in international treaties due to the hierarchy of international rules over regional rules, the lack of a norm in international law effectively gives the regional definition a more prominent role.

The interpretation of notions by domestic courts should be narrow, restraining the possibilities of the text becoming a political tool. The Lebanese Courts have left the interpretation of the definition to the discretion of the competent judge.⁸⁵

The legal definition sets the main boundaries for the inclusion of certain acts that determine the modes of liability to the alleged behavior. Notions that are open to wide interpretations are easy to abuse, especially in the hands of oppressive regimes, where the corresponding procedural guarantees are often weak or absent, and the prospects of relying on a stringent process to limit excessive practices are dire. Attention therefore now turns to the procedural guarantees in the prosecution of alleged terrorist offenders in the Lebanese system.

3 PROSECUTING TERRORISM

In 1943, the Lebanese Republic gained its full independence and sovereignty. Lebanon actively participated in the 1945 San Francisco conference⁸⁶ as a founding member of the United Nations, abiding by its Charter and the Universal Declaration of Human Rights⁸⁷.

Paragraph C of the Lebanese constitution's preamble states that: "Lebanon is a parliamentary democratic republic based on respect for public liberties, especially the freedom of opinion

⁸⁴ As it was relied on by the STL to widen the scope of the notion "this interpretation is consistent with the offence as explicitly defined under Lebanese law; (i) it was accessible to the accused, especially given the publication of the Arab Convention and other international treaties ratified by Lebanon in the Official Gazette (none of which limits the means or implements by which terrorist acts may be performed); (ii) hence, it was reasonably foreseeable by the accused". *Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, STL-11-01/1, Special Tribunal for Lebanon*, February 16, 2011, p. 3-4

⁸⁵ see heading 3.4 on The Procedures and practices of the Military Court

⁸⁶1945: The San Francisco Conference, accessed on 14/3/17

<http://www.un.org/en/sections/history-united-nations-charter/1945-san-francisco-conference/>

⁸⁷See paragraph B of the Lebanese constitution's preamble

<http://www.presidency.gov.lb/English/LebaneseSystem/Documents/Lebanese%20Constitution.pdf>

and belief, and respect for social justice and equality of rights and duties among all citizens without discrimination”.⁸⁸ Article 20 of the constitution, which includes a comprehensive definition of the judicial power, was inserted in order to ensure the respect of the rights, liberties and duties under this constitutional obligation. As stated in this definition, the exercising of this power is privileged to courts of various degrees and jurisdictions. Decree Law No. 7855 of 1961, which is known as the Judicial Organization Law, governs the structure and function of the judiciary. While given that, judges shall be independent in exercising their duties. The principle of separation and balance between the judicial, legislative and executive powers is also introduced in the Lebanese constitution⁸⁹.

The Lebanese judiciary is divided into three categories: the ordinary Judicial Courts, the Administrative Courts, and the Exceptional Courts. For the purpose of the current research, the Administrative courts will not be discussed, with the focus instead being placed on the Judicial Criminal Courts and the Exceptional Criminal courts adjudicating the criminal conduct of terrorism.

3.1 Procedural guarantees in the context of prosecuting terrorists

International law stipulates a set of procedural guarantees which are intended to protect individuals facing prosecution and punishment against arbitrary treatment and abuse. These procedural guarantees are often referred to as the “right to a fair trial and due process.”

The right to a fair trial⁹⁰ is an ancient key element for a trial, and argued by many scholars to reflect either a general rule of law or *jus cogens*, which is a right that cannot be derogated from. It roots back to the *lex Duodecim Tabularum* - the law of the Twelve Tables in the Roman republic⁹¹. This right developed as custom in numerous legal systems and was later codified at the international level in international instruments. Lebanon has been a party to the International Covenant on Civil and Political Rights (“ICCPR”) since November 3, 1972. Article 14 (1) of the ICCPR stipulates the following:⁹²

⁸⁸See paragraph C of the Lebanese Constitution’s preamble

<http://www.presidency.gov.lb/English/LebaneseSystem/Documents/Lebanese%20Constitution.pdf>

⁸⁹See paragraph E of the Lebanese Constitution’s preamble

<http://www.presidency.gov.lb/English/LebaneseSystem/Documents/Lebanese%20Constitution.pdf>

⁹⁰ Harris, D., *The right to a fair trial in criminal proceedings as a human right* International and Comparative Law Quarterly, 16(02), 1967, p. 352-378.

⁹¹ Robinson, P., *The right to a fair trial in international law, with specific reference to the work of the ICTY*. Berkeley Journal of International Law Publicist, vol. 3, 2009, p.1.

⁹² UN General Assembly, *International Covenant on Civil and Political Rights*, December 16, 1966, United Nations, Treaty Series, vol. 999, p. 171. Entry into force in March 23, 1976, and was ratified by 167 States

“All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law”.

Article 10 of the Universal Declaration of Human Rights ("UDHR") expresses the core principle, by also stating that “ *[e]veryone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.*”

This right is also enshrined in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("ECHR"),⁹³ which states that:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”

The principles of fair trial and due process operate as a fundamental base to judicial guarantees. Other fundamental principles include the right to try a case before the courts, the right not be prosecuted twice for the same crime (double jeopardy), and the right to legal counsel. These principles and inherent rights are safeguards that are guaranteed in binding international agreements and national laws. In practice, the level of their application varies depending on the structure and type of the court that is prosecuting. The rights of the suspect during arrest and investigation are fundamental, but the individual’s rights during trial cannot be guaranteed until their rights during court proceedings, detention, and appeal are respected as well.⁹⁴ The rule of law along with the concept of fair trial is undermined if any violation took place through any phase of the trial. The logic of presumed innocence until proven guilty⁹⁵ is a main factor determining the direction of a trial. Since reversing this logic would lead the trials to lose their main purpose of achieving justice rather than indict on a pre-determined guilt.

Lebanon has a monist system and has incorporated the principles of fair trial and due process into its legislations.⁹⁶ It is reflected in the Lebanese Constitution, Article 8. The principle of non-retroactivity of laws⁹⁷, the right to be treated equally before the law and the court; non-

⁹³ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, as amended by Protocols Nos. 11 and 14, November 4, 1950, ETS 5; entry into force, September 3, 1953

⁹⁴ ICCPR, Article 14(5)

⁹⁵ UDHR Article 11(1)

⁹⁶ Lebanese Code of Civil Procedure, Articles 4(2), 376, and 484

⁹⁷ Lebanese Criminal Code, Articles 1 and 6

discrimination⁹⁸ are all reproduced and underpin criminal prosecution before the Lebanese courts.

The crime of terrorism is of a huge gravity and impact, and consequently the unconfined reaction of the public demanding security can be overwhelming and affects the pressure on the judiciary for punishment. In order to assist states in finding this delicate balance between public interests in tough measures and the overall public interest in a sound legal system for prosecution, the United Nations Counter-Terrorism Implementation Task Force has introduced a basic human rights reference guide, addressing the right to a fair trial and due process in the context of countering terrorism.⁹⁹ Since such trials are often conducted in an atmosphere of public outrage, trials may turn into shows of vengeance. The procedural safeguards set the border between the victim and the accused, ensuring that judgments effectively enforce the prohibition against terrorism and punish perpetrators. This also ensures the independence of the courts and prevents lasting damage to the judicial system, so that the prosecution of terrorists remains within the rule of law. This would effectively ensure the legality of the sentence,¹⁰⁰ while reserving the basic rights of the defendant during trial. Lebanese criminal justice practices have not been always consistent to the obligations set forth, especially in terms of exceptional justice. As adapting those rights to its special nature and formation are impossible because of its exceptional composition and regulations.

In the following, an overview will be given of the procedural guarantees provided for prosecutions of ordinary criminals in Lebanon. Subsequently it will be compared to the guarantees offered in cases of prosecution of terrorist offences, displaying the level of harmony between the procedural guarantees in the different courts

When mention is made to “principles of fair trial and due process”, this usually refers to the following 11 principles/rules of procedure.

- (i) independence and impartiality of the judges;
- (ii) no criminal punishment without law (the principle of legality);
- (iii) non retroactivity of legal provisions;
- (iv) non discrimination;
- (v) presumption of innocence;

⁹⁸ Lebanese Constitution, Article 7

⁹⁹ United Nations. Working Group on protecting human rights while countering terrorism, Right to a fair trial and due process in the context of countering terrorism, Counter-Terrorism Implementation Task Force, October 2014

¹⁰⁰ ICCPR, Article 14(1); Lebanese Constitution, Article 20

- (vi) right to not incriminate oneself;
- (vii) right to physical and mental integrity;
- (viii) right to counsel and adequate time to prepare for trial;
- (ix) warranted arrests and detention by authorized judicial authority;
- (x) proportional sentencing¹⁰¹; and
- (xi) finality of court decision^{102, 103}.

3.2 The Ordinary Criminal Courts

This section will examine the ordinary criminal judiciary court to determine how these principles are practiced in criminal trials. The objective is to provide a baseline for comparison with the exceptional courts where terrorist offences are tried in Lebanon.

Article 1 of the criminal procedure code organizes the criminal judiciary, defining its jurisdiction and procedure.¹⁰⁴ In theory, this court system and structure respects due process of law, and is overall consistent with the principles of fair trial.

Judges receive extensive trainings at the judicial institution¹⁰⁵, and a degree in law is a minimum requirement to qualify to the well-reputed institution. The independence and impartiality as required by the UN basic principles¹⁰⁶ of the judges are monitored and controlled by the Ministry of Justice through the “judicial inspection”.¹⁰⁷ Hearings and trials are commonly public.¹⁰⁸ Exceptions are allowed, for a “necessity justified by law” for reasons of public morality or public order, as well by the judge at his own discretion within the borders of law. The public prosecutor of every district orders the arrests or release to suspects. However, the procedure is slow,¹⁰⁹ potentially giving rise to prolonged detentions bordering on arbitrary detentions.¹¹⁰

¹⁰¹ ICCPR, Article 15(§1) 1966a:

¹⁰² ICCPR, Article 14(§7) 1966a

¹⁰³ ICCPR Article 14 of the on the right to a fair trial and equality before the courts and tribunals.

¹⁰⁴ Lebanese Code of Criminal Procedures, Issued as per Law no. 328 of August 7, 2001 and its amendments

¹⁰⁵ Law organizing Judiciary 389 September 16, 1989, amendment 145 October, 29, 1999

¹⁰⁶ UN General Assembly Resolution no. 40/32 of November 29, 1985 on *Basic Principles on the Independence of the Judiciary*

¹⁰⁷ The Judicial Inspection Authority tasks, accessed on 2/5/17 <http://www.justice.gov.lb/CP/viewpage.aspx?id=203&language=2>

¹⁰⁸ Code of Civil Procedure, Articles 376, 484

¹⁰⁹ According to Article 4(§2) of the Code of Civil Procedure, any unjustified delay by Judiciary can be considered a “denial of justice” and holds the State liable under articles 741 and above.

¹¹⁰ Alef Report on Arbitrary Detention Guilty until proven innocent, 2016, accessed on 24/3/17 <https://alefliban.org/wp-content/uploads/2016/10/ALEF-Arbitrary-Detention-2013.pdf>

The right to appeal, as stipulated in ICCPR 14(5),¹¹¹ is guaranteed within the structure of the Criminal Courts in Lebanon.

3.2.1 Criminal court adjudicating crimes

This court is composed of “assize courts” that consists of one of the chambers of the Court of Appeals in every province, it has a president judge and assisted by two consultants with jurisdiction over a territorial region.¹¹² Cases are reviewed by an investigating judge. Then it’s forwarded to the “chamber of accusation“, before its decided on by the assize court. Public prosecution is present during trials. The right to a counsel is also guaranteed by the court.¹¹³ Also the court may appoint a lawyer to defend the accused if the latter can not appoint one.

There are also separate criminal courts adjudicating misdemeanors and contraventions. These are referred to it by “Penal Single Judge Courts”, composed of a single judge with jurisdiction over cases in the district. Public prosecution is not represented in this court. The defendant can represent himself,¹¹⁴ or appoint a counsel¹¹⁵.

3.2.2 Court of Appeal

The court of appeal is the first appellate instance. It is composed of “*assize* courts” headed by a president judge and two counselors. It examines appeals submitted before it based on material and procedural merits, decided by the Courts of First Instance and it is expected to deliver a separate new judgment that is entirely independent of the former Court. The accused can request that a judge be replaced if there is confirmed doubt of his impartiality or if a relationship binds him to any of the sides.¹¹⁶ Public prosecution is present through out the trial.

3.2.3 Supreme Court

The Supreme Court is referred to as the “Penal Cassation Court”. It is the supreme court of the criminal judiciary power in Lebanon. It is composed of a president and heads of chambers with specialized jurisdiction. The court decides on violations of law, It does not determine factual issues. It also decides on the specializations and determines jurisdictions of courts. The Supreme Court is the last resort of appeal.¹¹⁷

¹¹¹ ICCPR, Article 14(§5) 1966a

¹¹² The Lebanese system is inspired by the French system, and terms are consequently derived from the French terminology

¹¹³ Lebanon, the right of the defense is recognized by the Supreme Criminal Court “Cassation”

¹¹⁴ Article 372 of the Code of Civil Procedure

¹¹⁵ Article 47 of Criminal Code of Procedure

¹¹⁶ Article 120 of the Code of Civil Procedure for judges

¹¹⁷ Criminal Code of Procedure articles 328-334

Criminal courts in Lebanon are usually politically neutral. Political actors are not a party to disputes, as the public prosecution represents the public. This structure of a multileveled court system is intended to guarantee the rights of the accused with a transparent, public trial. The civilian court system is the institutional enforcer of the Lebanese Penal Code, with the exception of the provisions on arms, ammunition and explosives. These provisions are under the jurisdiction of the military courts.¹¹⁸ Although the civilian criminal justice system is slow and the rights to physical and mental integrity is not always ensured by the law enforcement establishment, allegations of torture give grounds to appeal or disregard of the primary investigation.¹¹⁹ Consequently, in sum, the nature, structure and composition of the ordinary courts in Lebanon seems overall to comply with international standards of due process and fair trial.¹²⁰

3.3 The Exceptional Courts

As indicated by their label, these courts are out of the normal judiciary. They are assumed to be enforcing exceptional legislations,¹²¹ which are created for states (or circumstances) of emergency.¹²² One of the most notable characteristics of the exceptional courts in Lebanon is that they have transformed into permanent courts, adjudicating “permanent emergency”. An example of such paradox can be found in the “Permanent Military Courts”, where the oxymoron is evident. Exceptional conditions or a state of emergency may be claimed when circumstances threatening peace, security or disasters occur, in order to facilitate the role of authorities in protecting the state and its citizens.¹²³ Thus exceptional procedures, including forming and reliance on exceptional justice, should logically end after the exceptional circumstances have ceased to exist. Thus, any exceptional legal measures applied during periods short of emergency is a threat to public liberties, freedoms, and contradicts the international standard protecting the rights of the accused. Exceptional courts are dominating the Lebanese judicial regime in the area of prosecuting cases of national security and terrorism.

¹¹⁸ Law enacted on the January 11, 1958, accessed on 12/1/17 <https://www.stl-tsl.org/en/documents/relevant-law-and-case-law/applicable-lebanese-law/341-law-enacted-on-11-january-1958>

¹¹⁹ Interview with Judge Saab, Lawyer Halabi

¹²⁰ Universal Periodic Review, Lebanon 2015< Civil Society Reports, p. 60, <http://www.annd.org/data/item/pdf/139.pdf>

¹²¹ The legislation of necessity Law enacted on the January 11, 1958 <https://www.stl-tsl.org/en/documents/relevant-law-and-case-law/applicable-lebanese-law/341-law-enacted-on-11-january-1958>

¹²² Salina, K.S., *Cross Roads to civil war: Lebanon, 1958-1976*, Caravan Books; 3rd edition, June 1976, p. 26

¹²³ Ferejohn, J. and Pasquino, P., *The law of exception: a typology of emergency powers*, Int. J. Const. Law, 2004 2(2), p. 210

These exceptional courts do not derive their legality from the constitution, but rather from provisions of ordinary laws. They consequently do not fall under the judicial power as stipulated in Article 20 of the Constitution. These exceptional courts are instead linked to the executive power in their establishment and functions.

There are two Exceptional courts adjudicating acts of terror, namely, the Judiciary Counsel and the Military Courts.

3.3.1 The Judicial Council

The Judicial Council has primary jurisdiction over all internal and external crimes on national security, terrorism and some crimes dealing with public safety.¹²⁴ It was initially formed upon the approval of the Parliament in decree 1905, in May 1923, issued by the French mandate power over Mount Lebanon. The formation of the Council came in response to large scale sectarian conflicts in the province of Mount Lebanon. Later, in 1948, its jurisdiction was expanded to include crimes on national security.¹²⁵ Finally, in 1972 a decree included all crimes connected to weapons and military equipment under the Council's jurisdiction.¹²⁶ The special jurisdiction of the Council has been incorporated into the Lebanese Penal Code, articles 270-336.¹²⁷

Cases referred to the Council are of a high level of gravity, fragmenting peace between religious sects. Historically, it dealt with cases of assassinations on political figures.¹²⁸ The Council has a certain political edge, all the judicial posts within the Council are subjected to confessional allotment. This political edge was also evident by excluding the crimes investigated by this court from the general amnesty given to all combatants and participants of the Lebanese civil war.¹²⁹

The Council consists of a presiding judge from the Supreme Court, assisted by four other judges from the same court. Judges are appointed by a governmental decree based on the recommendations of the Minister of Justice. Public prosecution is represented by the public prosecutor of the Supreme Court.

¹²⁴ Chapter 5 of the Lebanese Criminal Procedure Code

¹²⁵ The Judicial Council- establishment, purpose and cases referred to it, Beirut Center for Research and Information, 2008, <http://beirutcenter.net/Default.asp?ContentID=621&menuID=89>, source in Arabic language

¹²⁶ Decree no.10 September 20, 1972

¹²⁷ Beirut Center for Research and Information, The Judicial Council, accessed on 10/03/17 <http://beirutcenter.net/Default.asp?ContentID=621&menuID=89>

¹²⁸ Knudsen, A., *Acquiescence to assassinations in post-civil war Lebanon?*, Mediterranean Politics, 15(1), 2010, p. 3-5

¹²⁹ General Amnesty Law in 1991 (Law 94/91)

What highlights this court's exceptional nature is the mechanism that triggers its jurisdiction. It cannot take the initiative, and its prosecutor may not take legal actions on his own initiative. The case must be submitted thereto pursuant to a decision by the executive power.¹³⁰ Moreover, judgments rendered by this court are final, and cannot be subject to appeal or review as its a one-degree court.¹³¹ This model hence deprives the accused from the right to appeal and the protection usually found in the regular three levels judiciary.

The Council has received critics describing it to be very slow in its procedures. In 2015 the Judicial Council sentenced 23 members of a designated terrorist organization, *Fateh al-Islam*,¹³² who had been detained in September 2007.¹³³ The Council is also empowered to give the severest penalty. Lebanese Criminal Code states that the death penalty shall be imposed for the "gravest of crimes". The 23 members of Fateh al-Islam were sentenced to capital punishment.¹³⁴ The fact that such severe punishment can be applied by an exceptional tribunal, makes it crucial to assess the status of procedural guarantees given by this court.

The Judicial Council explicitly violates the right to appeal by relying on only one trial, removing the process from the multilevel system ordinarily applied in Lebanon. The separation of powers between the judicial and executive authority is similarly undermined by this court, and by default it threatens the right to be tried by an impartial and independent court. The executive authority can employ this exceptional trial system to enforce its' political agenda and use it as a tool for political oppression against individual's rights. In this sense, the judicial council adds legitimacy to arbitrary actions.

In principle, the judge's neutrality and impartiality ensures equality between the litigants and also ensures neutrality during the court's proceedings. However, in 1997 the relativity of the Judicial Council impartiality was disclosed, when it was pressured by the Syrian tutorship to abstain from taking a decision regarding the confinement of Dr. Samir Geagea¹³⁵ in the Ministry of Defense.¹³⁶ The Ministry's prison had not yet been authorized¹³⁷, and while awaiting

¹³⁰ Activated upon a decree of law by the Council of Ministers

¹³¹ Article 366 Lebanese Code of Criminal Procedure

¹³² Terrorist organisation, Fateh al-Islam , <http://www.refworld.org/pdfid/4b6fe285b.pdf>

¹³³ Gade, T., *Fatah al-Islam in Lebanon: Between global and local jihad*, FFI/Report-2007/02727, p,18-20

¹³⁴ Alef Report on *The Right to Fair Trial in Lebanon A Position Paper on Guarantees during Court Proceedings, Detention and Appeal*, p.10 https://alefliban.org/wp-content/uploads/2016/10/PP2_v02_print.pdf

¹³⁵ Samir Geagea: A Lebanese politician and a former militia commander. He is the executive chairman of the Lebanese Forces since 1986, one of the largest Christian political parties in Lebanon. Known for opposing the Syrian presence in Lebanon

¹³⁶ El Khazen, F., *Lebanon—Independent No More*, Middle East Quarterly. Middle East Journal, 2001, p. 612-613

the endorsement of a special law thereto, the Council according to procedure should have transferred him to a public prison. Such public display of compromised neutrality of the Judicial Council has contributed to a common view among the public that the Council is a tool for politics rather than law.

Although the Council appears to be specialized in the prosecution of infractions linked to terrorism, the vast majority of cases concerning allegations of terrorism are handled by the Military Courts. The selective referral of cases by the executive authority hinders the Judicial Council from being the primary court dealing with crimes on national security and cases of terrorism. The Council hence plays a complementary role in adjudicating national security and terrorism in Lebanon.

3.3.2 The Military Courts

The Military Courts are exceptional judicial organs that are part of the Ministry of Defence rather than the Ministry of Justice, established under Article I of the decree No.24/68 of 13/4/1968, and falling outside the scope of ordinary law.¹³⁸ Articles 23-27 of the latter decree provides for conditions of *ratione personae* of the Military Courts. Proceedings are governed by the Code of Criminal Procedure and the Code of Military Justice of 1968.

The Military Courts enjoy wide jurisdiction as an exceptional court functioning in times of peace.¹³⁹ This wide jurisdiction can be attributed to the crimes it covers, as well as the broad definitions of such adjudicated crimes.¹⁴⁰ Spying, treason, and illegal connection with Israel by military personnel or civilians charged with espionage, weapons possession, treason, draft evasion cases, and any personal conflict between civilian and military personnel. All of the previously mentioned crimes fall under the jurisdiction of this Court.¹⁴¹ Article 8 of the law enacted on the 11th of January 1958 came to widen the jurisdiction of the Military Tribunals to include terrorism.¹⁴² As a response on the fragile security situation that threatened Lebanon's unity at that time. Although Article 1 of the latter law states that some of the articles in the Criminal Code shall be "temporarily suspended and replaced by the exceptional provi-

¹³⁷ The Ministry of defense detaining facility was used to display a political victory over Geagea.

¹³⁸ Decree no. 24/68 of April 13, 1968 amended by decree no. 1460 of July 8, 1971, 110 June 30, 1977 and 306 of April 3, 2001

¹³⁹ Virtue of Article 4 of its code of organization and jurisdiction stated by Law no 24/68, dated April 13, 1968.

¹⁴⁰ Article 24 of Decree No.24/68 April 13, 1968

¹⁴¹ Decree no.24/68 of April 13, 1968, Article 24; Criminal Law Articles 273-294; Military sentences law Article 50

¹⁴² Article 6 of the Law enacted on January 11, 1958, <https://www.stl-tsl.org/ar/documents/relevant-law-and-case-law/applicable-lebanese-law/341-law-enacted-on-11-january-1958>

sions”, this temporary amendments of the law are still enforced against any judicial logic until this day, 59 years later.

The Military Tribunals adjudicating offences are composed of an officer with a rank of a Colonel or higher, acting as the head of the tribunal, assisted by three other lower ranking officers and one judicial judge. In cases of misdemeanors, it is composed of a judge and an officer ranking Colonel or lower. The Government's Commissioner (judicial Judge) plays the role of military prosecutor¹⁴³.

The Military “Court of Cassation” has two benches each headed by a judge and an officer of a lower rank than a Colonel. A judge and four officers are required to adjudicate felonies, while misdemeanors require one judge and two officers. The majority vote determines the verdict, while primary investigations are conducted by a military officer with a legal background. The dominance of military officers over judges hailing from the judicial system is obvious, as the judge is bound by the decision of the military leadership, reducing his powers and independence from the military.

The Military Courts raise several alarming concerns in regard to the procedural guarantees of the accused. The right to a fair trial as understood under international law is impaired due to the fact that the military institution cannot be neutral, since it’s role is confused between being both a litigant and the court adjudicating the crime. The right to be tried before a competent, independent and impartial court established by the law and the right to a public hearing is similarly compromised.¹⁴⁴ Depending on the security measures, suspects of terrorism can be tried in secrecy. Explanation and justification of the Court’s decisions are not required, given the exceptional nature of proceedings. Unjustified verdicts do not allow a higher court to monitor them, and encourages arbitrary decisions.¹⁴⁵ Public access to legal documents within the tribunal is almost impossible, resulting in the lack of any monitoring mechanism protecting the rights of the accused. Military judges are exempt from acquiring a degree in law, and judgments are rendered on a printed questionnaire. High judicial posts are subject to confessional allotment, be it appointments in the military court.¹⁴⁶ Military judges composing the

¹⁴³ Article 34 Decree no.24/68 of April 13,1968

¹⁴⁴ Alef, *The Right to fair trial in Lebanon. A Position Paper on Exceptional Courts*, https://alefliban.org/wp-content/uploads/2016/10/PP3_v03_print.pdf, p. 9

¹⁴⁵ Myriam Mehanna, *Marshaling Justice in Lebanon: How Military Courts Violate the Conditions of a Fair Trial. Legal agenda*, accessed on 30-3-2017, <http://legal-agenda.com/en/article.php?id=3088>

¹⁴⁶ Lawyer Nabil Halabi states that S\since the year 2002, upon a political agreement, Hezbollah controls the appointment of the President Judge of the Permanent Military Court as part of the Shia “quota” of the Court

Military Courts are appointed by the Ministry of Defense upon recommendations of the Army's leadership to the Council of Ministers.¹⁴⁷ They are politically agreed on, while they remain subject to the military's hierarchy and under the authority of the Ministry of Defense. Consequently, they are far from being impartial or independent.^{148 149}

The right to a counsel is not secured, as the defense lawyer can be denied access to trial on a disciplinary basis, determined at the discretion of the military judge and not defined by a specific criterion. The accused can be appointed a military officer to defend him regardless the fact that officers are part of the army's hierarchy, and prima facie of a lower rank than judges of the court. Lawyers are not allowed into interrogations, and mostly not given sufficient time to meet and prepare the cases with their clients.¹⁵⁰ Lawyers cannot meet in private with detainees as they are under the supervision of military intelligence and separated by glass.¹⁵¹ Those who are "highly suspected" are subject to solitary confinements, and prolonged arbitrary detentions without facing charges, and prosecutions are often systemically delayed.¹⁵² Some detainees were not brought before any judge in years and yet they await to be sentenced.¹⁵³ Public access to case files within the court is restricted. Allegation of pragmatic speedy trials are selectively motivated under political pressure, while speedy verdicts also are evident per the printed questionnaire that doesn't exceed a couple of paragraphs.¹⁵⁴

As they are part of the army institutions, the Military Court reports to the Ministry of Defense, and therefore it uses different military facilities for secret interrogations, and investigations far from any legal assistance or monitoring mechanism. The accused is forced to sign what seems to be a template of allegations to stop the torture and to be referred to the Military Tribunals.¹⁵⁵ Furthermore, security agencies rely heavily on communication documents pro-

¹⁴⁷Elias Chalhoub, *Report on the State of the Judiciary in Lebanon*, Arab Center for the Development of the Rule of Law and Integrity, n.d., http://www.arabruleoflaw.org/Files/PDF/Judiciary/English/P2/Lebanon_FinalReportP2S2_En.pdf

¹⁴⁸ Mansour, M.W. and Daoud, C., *Lebanon The Independence and Impartiality of the Judiciary*, Euro Mediterranean Human Rights Network Report, 30. p 9

http://www.constitutionnet.org/sites/default/files/the_independence_and_impartiality_of_the_judiciary_in_lebanon.pdf

¹⁴⁹ Articles 13 and 14 of the law issued by virtue of Decree no. 1460/71

¹⁵⁰ The interviews are on file with the author and may be provided on request. Lawyer Halabi

¹⁵¹ Interview with Lawyer Halabi

¹⁵² Al Karama, *Lebanon: Respect UN Opinion, Release Nahr al Bared Detainees*, accessed 17/01/17, <http://en.alkarama.org/1955-lebanon-respect-un-opinion-release-nahr-al-bared-detainees>

¹⁵³ Interview with Judge Saab

¹⁵⁴ Interview with Judge Saab, Translated verdicts are on file with the author and may be provided on request.

¹⁵⁵ Interview with a former detainee at the Ministry of Defense prison, suspect of supporting a terrorist group;

vided by civilian informers, and claims of their illegality doesn't affect their replacement over evidence.¹⁵⁶

A strong indication that evidence is considered differently before the Military Court and the civilian courts is exemplified by the fate of under aged suspects.

In the course of prosecuting underage suspects, the Military Courts redirect the accused to the ordinary criminal courts that adjudicate minors.¹⁵⁷ In almost all of these cases, the judge has ordered the release of the accused, owing to insufficient evidence.¹⁵⁸

The right to appeal is in general not applicable, since no court of appeal is established within the structure of the Military Courts. However the Military Supreme Court does have a limited jurisdiction over these cases, looking into violations of law by verdicts issued by the Military Court.

Detainees accused of terrorism are usually held in military facilities or at the Ministry of Defense where they are often subject to torture.¹⁵⁹ There is a reported practice of forced signature of pre-written statements, while being blindfolded.¹⁶⁰ A report issued by the UN Commission against Torture in 2014, states that torture in Lebanon is a “pervasive practice that is routinely used by the armed forces”.¹⁶¹ Nonetheless, claims of torture¹⁶² and forced statements are not grounds to bring a claim to the Military Supreme Court, so the right to not incriminate oneself is also in question. The Military Courts do not rule for compensation for victims of miscarriage of justice nor for individuals suffering the damages of an attack, as this court is closed for public complains.¹⁶³ The Civil Courts should therefore await its verdict before a compensation is decided on.

¹⁵⁶Decree no 10 July 24, 2014 stopping the sole reliance on those documents in any court, accessed on 7/3/17 <http://www.legal-agenda.com/article.php?id=850&lang=ar>

¹⁵⁷ Decree number 1727 June 6, 2002 Minors not accompanied with parents shall be prosecuted by a Specialized Court

¹⁵⁸ Interview with lawyer Sabloun

¹⁵⁹ Human Rights Watch 2016 Report *Lengthy Pretrial Detention, Ill-Treatment, and Torture*, accessed on 12/4/17 <https://www.hrw.org/world-report/2016/country-chapters/lebanon>

¹⁶⁰ Interviews indicating such practices are on file with the author and may be provided on request.

¹⁶¹ United Nations Report of the Committee against Torture Fifty-first session (October 28–November 22 2013); Fifty-second session (April 28 –May 23 2014) General Assembly Official Records Sixty-ninth session Supplement No. 44 (A/69/44), accessed on 17/5/2017, p. 272 http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/1_Global/A_68_44_7094_E.pdf

¹⁶² Torture is a breach of Jus Cogens Prosecutor v. Anto Furundžija, Case no. IT-95-17/1-T, Judgment 144. 12/10/1998

¹⁶³ ICCPR, Article 14(6); Lebanese Criminal Code of Procedure, Article 276

3.4 The procedures and practices of the Military Courts

The Military Courts in Lebanon have been described by its defenders as pragmatic, fast and essential in a country that suffers political instability and a fragile security situation. However, under the guise of expediency and pressing needs to enforce the law, the extremely weak procedural guarantees in these processes seem to result in exactly the type of practice that such guarantees are intended to prevent. The Military Courts engage in many cases in arbitrary detentions, investigations carried out under torture,¹⁶⁴ and the unlawful reliance on communication documents.¹⁶⁵

Terrorism charges and national security threats have been frequently used as an alibi to deny access to public hearings, monitored investigations and any other substantial elements guaranteeing the rights of the accused into a fair trial and due process. In a recent case, the Military Court accepted the extradition request by Iraq of an Iraqi citizen.¹⁶⁶¹⁶⁷ Refugee Zeyad Al-Dolae fled Iraq in 2010, fearing persecution. He was arrested in Lebanon in January 2016, and subsequently sentenced by the Military Court under the pretext of “joining a terrorist group” on the sole basis of information provided by the Iraqi intelligence services. He was detained for a lengthy period of time pending the Lebanese authorities’ decision on an extradition request sent by Iraq.¹⁶⁸

Between 2012 and 2015 the Military Courts in Lebanon issued 400 sentences of terrorism.¹⁶⁹ These cases represented around 2% of the 21,000 cases it adjudicated under the chairmanship of the military judge Brigadier General Pilot Khalil Ibrahim, in which the court charged the accused with terrorism regularly under articles 314,355 Lebanese Penal Code and articles 4,

¹⁶⁴Haifa Zaiter, *Torture and Military Trials for Civilians: A Stain on Lebanon's Rights Record*, accessed on 16/2/17, <http://raseef22.com/en/politics/2017/02/02/torture-military-trials-civilians-stain-lebanons-rights-record/>

¹⁶⁵ Communication Documents: An information supplied by a civilian informer to a security agency. The Council of Ministers issued decree no 10 July 24, 2014 stopping the sole reliance on those documents in any court, accessed on 7/3/17 <http://www.legal-agenda.com/article.php?id=850&lang=ar>

¹⁶⁶ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 December 10, 1984, entry into force June 26, 1987 ("CAT") Article 3(1)

¹⁶⁷ On May 3, 2017, subject to The Arab League’s convention on the Suppression of Terrorism. Chapter II Extradition Article 5

¹⁶⁸ Lebanon: Iraqi Refugee extradited to his home country despite risk of torture and death sentence, accessed on 7/5/17, <https://www.alkarama.org/en/articles/lebanon-iraqi-refugee-extradited-his-home-country-despite-risk-torture-and-death-0>

¹⁶⁹ Claudette Sarkis, *The Military Courts completed indictments over 400 terrorism case,s* Alnahar Newspaper, 2015., accessed on 12/3/17, <https://www.annahar.com/article/286459-غلى-والجبل-اره-اب-مل-فان-في-حكم-400-اص-درت-ال-عس-كر-ي-ة-286459>, source in Arabic language,

5, and 6 of the law enacted on December 1, 1958.¹⁷⁰ Those verdicts indicted Lebanese, Syrian, Palestinian, and other Arab nationals with committing terrorist acts, and some trials were held in absentia. The statistics indicates that the real danger faced by Lebanon with terrorism is heterogeneous. It is linked the flow of terrorists from neighboring conflict zones and uncontrolled refugee camps, in addition to internal political violence.

The Military Courts have recently received a considerable amount of criticism over terrorism cases decided by it, raising questions regarding its impartiality and favoring a terrorist over another.¹⁷¹ The case of Michel Samaha in 2015 is a notable illustration of the Court's independence, double standard treatment of terrorists, and the deployment of political pressure in determining its verdicts.

The case of Samaha caused considerable controversy in the Lebanese society, among law scholars and politicians.¹⁷² Samaha is a former Lebanese Minister of Information, a political figure close to the Syrian regime and an advisor to the Syrian President Bashar al Assad.¹⁷³ He was indicted on charges of forming armed gangs, smuggling explosives from Syria into Lebanon with the intention of assassinating political opposition and religious figures.¹⁷⁴ Samaha was prosecuted under articles 335/200, 24/78, 76, 253,63, and 49 of the Lebanese Penal Code, in addition to terrorism charges regulated under articles 5 and 6 of the law enacted on 01/11/58. The accused declared that he was well treated, and was not subject to torture or degrading treatment. He had access to a team of lawyers, but had pleaded guilty of charges linked to the terrorist plot during primary interrogations. He was confronted with video/audio evidence recorded by a secret services informer, twenty five charges of smuggling of explosives along with 170 000 US dollars financing his plan, retrieved by the Lebanese Security Forces. Samaha was arrested in August 2012 but was scheduled to be released in December 2015 after serving most of his commuted sentence of four years and a half in prison with extra

¹⁷⁰ Interview with Judge Saab

¹⁷¹ Paul Cochrane, *ANALYSIS: Can growing pressure make Lebanon's army reform its military courts?* Middle East Eye Thursday, August 27, 2015, accessed on 13/5/17 <http://www.middleeasteye.net/news/analysis-can-growing-pressure-make-lebanon-s-army-reform-its-military-courts-1889516685>

¹⁷² Paul Cochrane, *ANALYSIS: Can growing pressure make Lebanon's army reform its military courts?* Middle East Eye Thursday, August 27, 2015, accessed on 13/5/17, <http://www.middleeasteye.net/news/analysis-can-growing-pressure-make-lebanon-s-army-reform-its-military-courts-1889516685>

¹⁷³ Bureau of Counterterrorism and countering violent extremism, December 17, 2012, Designations of Michel Samaha, accessed on 15/3/17, <https://www.state.gov/j/ct/rls/other/des/266586.htm>

¹⁷⁴ John Owens, Ex-minister's Trial Shines Spotlight on Lebanon's Military Court, accessed on 14/3/17 <http://www.voanews.com/a/lebanon-samaha-military-tribunal/3163095.html>

privileges over his inmates.¹⁷⁵ However, the Military Supreme Court “Cassation” approved an appeal requesting an early release and let him out on bail. The Supreme Military Courts usually does not grant appeal nor approve such requests over commuted verdicts. Against all the odds Samaha was nevertheless released. The common explanation is that this release resulted from the political pressure exerted on the Military Courts by Hezbollah and other political poles supporters of the Syrian regime.¹⁷⁶ Two high ranking Syrian officers were sentenced in absentia for their participation in the plot, yet no formal action has been taken between the two states in this regard. The release on bail was met with public and political outrage, pressuring the government commissioner at the Military Court of cassation to file for a revocation of the judgment, demanding a retrial. This came after the Security Chief responsible for detaining Samaha had been assassinated.¹⁷⁷ Political opposites resorted to protests and waived the referral to the Judicial Council. The rare practice of a retrial was provoked politically, and in the second round the accused Samaha was sentenced to thirteen years in prison.^{178 179} The secret investigation was intentionally leaked to the media by the security agency that captured the accused in order to create public outrage, pressuring the Military Supreme Court to strengthen the punishment of the accused. The final verdict of the case was published in media, contrary to all other terrorism verdicts by the Military Council, which are classified.

The case of Samaha demonstrates how political pressure influences the jurisprudence of the Military Courts, and how the prosecution of an alleged terrorist can be driven either towards impunity or towards strict punishment. The consequence is that the outcome of a terrorist procedure may ultimately depend on the political connections and the social standing of certain types of accused, while other cases remain in the dark of military secrecy and the exceptional

¹⁷⁵ Matthew Ayton, Michel Samaha and Syria's continued efforts to undermine Lebanese security, see Samaha's release, accessed on 14/3/17 <http://www.middleeasteye.net/columns/michel-samaha-and-syrias-continued-efforts-underline-lebanese-security-922600765>

¹⁷⁶ Michael Young January 20, 2016 Updated: January 21, 2016 05:06 PM Hezbollah's Plans are Unclear After Minister's Release, The National Opinion, accessed on 14/5/2017 <http://www.thenational.ae/opinion/comment/Hezbollahs-plans-are-unclear-after-ministers-release>

¹⁷⁷ Martin Chulov, Lebanon's great divide exposed by assassination of security chief, The Guardian, 2012, accessed 14/5/17 <https://www.theguardian.com/world/2012/oct/19/lebanon-divide-assassination-security-chief>

¹⁷⁸ The prison year in Lebanon is equal to nine months

¹⁷⁹ Jack Moore, Lebanon Sentences EX-Minister Michel Samaha to hard labor for plotting assassinations with Syrian Regime accessed on 12/3/17, <http://www.newsweek.com/lebanon-sentences-ex-minister-michel-samaha-hard-labor-plotting-assassinations-445566>

nature of the court. In principle, courts and judges cannot be pressured either positively or negatively. The case illustrates well the extent to which the independence, transparency and impartiality of the Military Courts falls short of international standards.

Since its creation in 1968, the Military Courts has been employed by different regimes as a political tool for overthrowing public opinion, and for the promotion of a police state. In the 1990's it was used to suppress those opposing the Syrian tutorship over Lebanon. But since the withdrawal of Syrian forces in 2005, Lebanon has been experiencing a leap in terrorism cases. ISIL (the so-called Islamic State in Iraq and the Levant) claim Lebanese territory to be part of its future state. It has threatened and carried out many atrocious attacks on Lebanese targets over the past years, resulting in the tightening of security measures.¹⁸⁰ Lately, the biggest terrorist threat is feared to be coming from the Syrian borders towards Lebanon, Syrian refugees have been the subject to many security operations under the suspicion of terrorism. In the sequence of this proclaimed proactive war on terror, arbitrary detentions without a detaining order are actively wide spread.¹⁸¹ Suspects disappear without any information given to their families or lawyers, in which most of the suspects suffered severe torture¹⁸² during the first three weeks of disappearance in military holding facilities, where their confessions are dictated and pulled out by force.¹⁸³ Those who are considered "dangerous" are redirected to the military tribunals, where the investigative judge largely rely both on the primary investigation¹⁸⁴, and the intelligence report filed by the secret services agencies, which lawyers have no access to.¹⁸⁵ Claims of physical abuse or torture do not affect reliance on primary testimonies.¹⁸⁶

¹⁸⁰ Saad, H. and Gladstone, R., *Border Fighting Intensifies between ISIS and Lebanon*, The New York Times, 2014, https://www.nytimes.com/2014/08/05/world/middleeast/isis-lebanon-syria.html?_r=0

¹⁸¹ Human Rights Watch Report *Its Not The Right Place For Us, The Trial of Civilians by Military Courts in Lebanon* January 2017, <https://www.hrw.org/report/2017/01/26/its-not-right-place-us/trial-civilians-military-courts-lebanon>

¹⁸² See paragraph Impunity for acts of torture. Joint shadow report Report submitted to the Committee against Torture in the context of the initial review of Lebanon ALEF – Act for Human Rights Alkarama for Research and Studies Ajem – Association of Justice and Mercy Insan Association Khiam Rehabilitation Center for Victims of Torture Proud Lebanon Restart Centre for Rehabilitation of Victims of Violence and Torture March 20, 2017, accessed on 18/4/2017 https://alefliban.org/wp-content/uploads/2017/03/NGO-coalition_CAT_LEB_ShadowReport_Final_20170320_EN.pdf

¹⁸³ Interview with Lawyer Sablough

¹⁸⁴ torture is a breach of Jus Cogens Prosecutor v. Anto Furundžija, Case no. IT-95-17/1-T, Judgment 144/12/10/1998

¹⁸⁵ Interview with Lawyer Sablough

¹⁸⁶ Interview with Judge Saab, and Lawyer Halabi

The lack of transparency does not serve to curb the security agencies in Lebanon, who have a reputation of tremendous corruption, and are subject to the sectarian distribution of posts.¹⁸⁷ Cases of rape in military facilities have been reported and victims received threats to be prosecuted before the Military Courts if spoken of, under the accusation contempt of the military institutions.¹⁸⁸

In sum, the procedures applied before the Military Courts are in breach of numerous obligations arising for Lebanon under international conventions.¹⁸⁹ International conventions have supremacy over the domestic legislations in Lebanon. By virtue of the combined application of the preamble of the Lebanese Constitution and Article 2 of the Code of Civil Procedure, which recognizes the supremacy of international treaties' provisions over those of ordinary law, international treaties ratified by Lebanon are applicable law upon publication in the Official Gazette. This is consequently the situation for the UDHR, ICCPR, CAT¹⁹⁰ and its Optional Protocol.¹⁹¹ The practice of prosecution of terrorist offences before military courts seems consequently to be infringing domestic legislations, violating the principle of separation of powers¹⁹², contradicting the preamble of the Lebanese Constitution¹⁹³ and the hierarchy of norms.¹⁹⁴ In the end, this is the legal quagmire resulting from temporary laws enacted for exceptional circumstances, which have persisted after security has been attained and extraordinary conditions cease to exist.

4 CONCLUSION

4.1 Is Lebanon Complying with the international standard?

Terrorism strikes at the core of human rights, democracy and the rule of law. States are expected to combat this threat with all necessary means, while protecting and ensuring the enjoyment of human rights, principally the rights to life, liberty and physical integrity.

States have the right and a duty to take effective counter-terrorism measures. Those measures must comply with the state's obligations under international law, in particular international

¹⁸⁷ Interview with Lawyer Nabil Halabi

¹⁸⁸ Human Rights Watch Report *Its Not The Right Place For Us, The Trial of Civilians by Military Courts in Lebanon* January 2017, <https://www.hrw.org/report/2017/01/26/its-not-right-place-us/trial-civilians-military-courts-lebanon>

¹⁸⁹ UDHR Article 9, CAT Articles 2(2)

¹⁹⁰ Violation of Articles 3,4,12,13,14 and 15

¹⁹¹ Articles 4 and 14 of the ICCPR

¹⁹² Charles-Louise de Secondat, Baron de Montesquieu: *La défense de 'Esprit des Lois*

¹⁹³ Preamble of the Lebanese Constitution, Part e

¹⁹⁴ Lebanese Law of Civil Procedures, Article 2

human rights and humanitarian law.¹⁹⁵ Human rights are universal morals and legal guarantees protecting individuals and groups against the conduct and omissions, principally by State agents that interfere with fundamental freedoms, entitlements and human dignity. Even though terrorists shock the conscience of humanity through their violent acts, the principle of non-discrimination must be respected as fundamental principle within human rights law.

Effective counter-terrorism measures and the protection of human rights must function in parallel to one another, as both elements are mutual and indispensable for the reinforcement of the states' objective and duty to protect individuals within its jurisdiction.

This thesis has shown that the Lebanese practice regarding prosecutions of alleged terrorists, fails to comply with the standards of international human rights law. Therefore Lebanon is in breach of its international law obligations in this regard.

The current Lebanese notion on terrorism is out-dated and broad. Thus, it is prone to abuse and likely to be employed as a political tool.

In theory, Lebanon holds a well-organized judiciary system, constructed upon basic international standards of justice. Yet, the way exceptional justice is structured, through the Judicial Council and Military Courts, threatens the basic principles of fair trial and due process.

Exceptional courts with expanded powers and jurisdiction, contradict international law principles of equality before the law and judicial independence. This also undermines the rule of law, the right to a fair trial and due process. This further encourages the miscarriage of justice, violations of human rights law and impunity. The Courts structural defects, out-dated legislation and the increased pressure on a previous war-ravaged country conclude the deformations leading to poor compliance.

Current domestic law and practice of prosecuting terrorist offenders in Lebanon under exceptional Military Courts violates numerous Lebanese treaty obligations under the ICCPR, the ICESCR and CAT. Furthermore, it violates the general principles of law and undermines the rule of law. Lebanon has signed the UN Declaration on the Basic Principles for the Judicial Power Independence, but its exceptional court system breaches some of its most important provisions. Lebanon has a duty to respect, protect and fulfill human rights. In its current system for prosecuting terrorism, it fails to do so.

¹⁹⁵ Resolution 60/288 of the United Nations Global Counter-Terrorism Strategy by the General Assembly, reaffirmed in Security Council resolution 1624 (2005).

Acts constituting human rights violations are committed regularly by organs or individuals on behalf of the State. However, the State may be responsible for the acts of private individuals that may constitute a violation of international human rights law. The Human Rights Committee has referred to the arbitrary deprivation of life, torture and inhuman and degrading treatment, collective punishment, arbitrary deprivation of liberty, and violations of certain due process rights as non-derogable.¹⁹⁶ Therefore, Lebanon should abide by its international commitments and obligations, while countering and prosecuting terrorism.

In conclusion, counter-terrorism measures pose serious challenges to the protection and promotion of human rights. The Lebanese example highlights a regional challenge, and affirms that poor compliance with international law impairs the democratic functioning of society. This contributes to the growth of terrorism in a fertile ground of political oppression and injustice. In particular, terrorism is promoted by the imperfections of state's practice, in regard to the rule of law, political oppression and the stiflings of liberties along with human rights.

4.2 Recommendations and alternative courts

In the following, a series of recommendations are presented to enable Lebanon to achieve better compliance with its international obligations, and for the sake of preserving the rule of law within the borders of democracy.

The Lebanese parliament is urged to amend, modify and add legislative safeguards in order to limit the excessive power enjoyed by the executive authority over judicial proceedings, under the excuse of national security and terrorism.

This will ensure a complete separation of powers, through modifications on the organisation of the judiciary and its functions, while also amending and strengthening several other articles in the Penal Code and the Code of Criminal Procedures.¹⁹⁷ Notably in a context that suffers stigmas of consecutive conflicts, and a geographical location in a region cursed with instability and violence.

The high number of terrorist prosecutions indicates that, terrorism is no longer a temporary or extraordinary threat to Lebanon. Indeed, the high abuse of such label encourages one to consider this conduct not to be falling outside the ordinary scope of criminal justice along with other serious crimes like murder, armed robberies, etc. Hence, giving the jurisdiction of na-

¹⁹⁶ Office of the United Nations High Commissioner for Human Rights, Terrorism and Counter-terrorism Fact Sheet no. 32 p. 8, accessed on 12/5/17 <http://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf>

¹⁹⁷ Amendments of the articles 32,47,107,108 Criminal Code of Procedures

tional security and terrorism cases to a specialized chamber falling under the hierarchy of the ordinary criminal courts, presiding in all the different provinces of the country. Capacity building should also be implemented, where judges of the specialized chamber must obtain specializations in terrorism legal studies and the prosecution thereof. The courts facilities should be accorded extra measures of security to guarantee its protection. The judicial police should be empowered to manage the threat of dangerous detainees, while all detention centres and prisons should be transferred to the management and monitoring¹⁹⁸ of the Ministry of Justice,¹⁹⁹ instead of both the ministries of Interior Security and Defence. Reforms are also necessary in reducing the authority and jurisdiction of exceptional courts; the Military Tribunal's jurisdiction should be strictly limited to adjudicate offenses or misconduct of military officers for military related cases only. Competence and impartiality is encouraged when judges appointed to Military Courts are educationally qualified and meet required specifications and aptitudes.²⁰⁰

For the sake of limiting the authority of the executive power over judiciary, the Judicial Council should either be abolished or its statute and jurisdiction should be heavily amended to allow appeals and revisions to its decisions. Military detention facilities should be exclusively restricted to military personnel. Under the ICCPR, State parties have the obligation to take positive measures to ensure that private persons or entities do not inflict torture, cruel, inhuman or degrading treatment and punishment on others under their power.

The out-dated definition of terrorism should be replaced with a modern, more constricted one that covers the acts, but should also be narrow enough that it would not be susceptible to wide interpretation. In addition, "innocent until proven guilty" principle should be included and codified, criminal files should be separated when committed with more than one person, and the detainees should be informed with regard to their rights and given the opportunity to contact a lawyer or family the moment they are in custody. A maximum period of pre-trial detention should also be codified, ensuring the separation of convicted detainees from pre-trial detainees as well as criminalizing arbitrary detentions. Procedural means should also be created to guarantee the respect to a fair trial throughout judicial proceedings and to sanction violations.

¹⁹⁸ Article 402 CCP

¹⁹⁹ Pursuant to 1964 Decree Law Number 17315

²⁰⁰ Lebanon has signed the UN Declaration on the basic principles for the judicial power independence, See Articles 10, 12 and 13

The Lebanese government should insure the implementation of international treaties, and establish commissions to review cases of torture, arbitrary detentions and denial of justice. It is also encouraged to follow guidelines provided by the CTITF Working Group on Promoting and Protecting Human Rights and the Rule of Law while Countering Terrorism. The European Neighbourhood policy should also be adopted, along with the EU-Lebanon action plan of January 2007.

Furthermore, the ratification of the Rome statute to join the International Criminal Court would encourage Lebanon to be committed to international justice, and cooperation.

International pressure is required for Lebanon to insure the fulfilment of its international contractual obligations, and the implementation of principles guaranteeing the rights of the accused. All together, this would achieve respect of international instruments in the course of terrorist prosecutions.

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Annex: the form used by the military courts to indict terrorists

**The Lebanese Republic
Ministry of Defense
the Military Court**

**Case Number: 868/2014
Judgment number: 1014/2016
DA number 2013/21384**

In The name of the Lebanese People

The Permanent Military tribunal in Beirut composed of:

The president: Brigadier General Pilot Khalil Ibrahim

The Civilian Consultant: Judge Layla Raidi

Consultant: Colonel: Emile Nakhle

Consultant: Lieutenant Colonel Elias Abu Rjaili

Consultant: Lieutenant Colonel Haitham Al Shaar

After going through the case of:

Mohammad Riad Youssef his mother, Taj born in 1995 Zaara Syria - Syrian

2- Khaled Ibrahim mohye el Deen his mother, Mariam born in 1985 Alkosir - Syrian

3 Abdul Rahman Mohammad Adla his mother, Farida born in 1994/ Zaraa -Syrian

4 Alaa hassan mishharani his mother Fatima, born in 1991/ Ras El Ein -Syrian his Attorney
Khaled Krideiah

5 Khaled Abdul Karim karakuz his mother Najah Born in 1971/Homs Syrian his Attorney
mohammad sablough

Accused in Aarsal (territory in Lebanon neighbouring Syria) **Date** 19/12/2013 **Committed** by
Accused number 4 and 6. Belonging to an armed group for the sake of committing terrorist
acts, and the (accused) 1st until the 5th resisted the army a negative resistance. Also the 1st,
2nd, 3rd and the 5th had possessed military equipment without a licence. the 1st, 2nd and the
3rd possessed hand grenades without licence while the 1st tried to throw grenades at the army
troops.

~~**After hearing the testimony according to the courts records for trial public**~~

After listening to the Governments commissioners seeking to: apply the accusation deci-
sion.

ص. ب. ج

الجمهورية اللبنانية
وزارة الدفاع الوطني
المحكمة العسكرية

رقم الدعوى: ٦٦٨ / ٢٠١٤
رقم الملف: ١٠٠٠
رقم التفتيش: ٥١٢ / ٢٠١٤

باسم الشعب اللبناني

ان المحكمة العسكرية الدائمة في بيروت والمؤلفة من:

الرئيس: السيد الركن الطيار فهد عبد الرحمن
المستشار المدني: العقيد نيل رعد
المستشار: العقيد الركن احمد حنا
المستشار المقدم الركن اسود صيد
المستشار المقدم هيثم لاشار

لدى التدقيق بغضبة المدعى محمد رياض يوسف والدته ساج عواليه ١٩٩٥ / الزراعة - سوريا -
١ - خالد ابراهيم محب الدين والدته ساج عواليه ١٩٨٥ / القلعة - سوريا .
٢ - عبدالرحمن محمد علاته والدته فريزة عواليه ١٩٩٤ / الزراعة - سوريا .
٣ - علاء الدين المشرف والدته فاطمة عواليه ١٩٩١ / رأس العين - سوريا .
٤ - وليد اسحاق عاله كبريت .
٥ - زكريا محمد عمار والدته من عواليه ١٩٩٤ / طرابلس - سوريا .
٦ - خالد عبد الكريم قراقرمز والدته ساج عواليه ١٩٧١ / طرابلس - سوريا .

ص. ب. ج

المستد التهم الترحم في عمارة
والاستمارة الكسليم مع ربه في اليوم اعمال الالهة سنة ١٩٨٥ / ١٩٨٥ / ١٩٨٥
تاريخه عند ربه سنة ١٩٨٥ / ١٩٨٥ / ١٩٨٥
تاريخه عند ربه سنة ١٩٨٥ / ١٩٨٥ / ١٩٨٥
تاريخه عند ربه سنة ١٩٨٥ / ١٩٨٥ / ١٩٨٥
تاريخه عند ربه سنة ١٩٨٥ / ١٩٨٥ / ١٩٨٥

وبعد الاضطلاع بالاشهاد على النحو المنصوص عليه في المادة ١٠٤ من قانون
بعد استماع مطالعة مفوض الحكومة الرامية الى:

ط. ب. ج. د. هـ

After hearing the defence of the accused seeking:

Lawyer Khaled Krideiah demanded “innocence” for his client Alaa Misharani for “strong doubts” and Lawyer Mohammad Sablough demanded “innocence” for his client Khaled Karakuz for “strong doubts and insufficient evidence” and for “claims of incompetency of the Military Courts to adjudicate the crimes based on the Syrian/Lebanese Bilateral Agreement. They both demanded that the expenses should be compensated by the state

The following questions were asked

First: blank

second that while in: Aarsal **Date:** 19/12/2013

1 The accused: Mohammad Riad Youssef

- A:** possessed hand grenades without a licence
- B:** possessed military equipment without licence
- C:** resisting and treating military negatively
- D:** attempted to throw the hand grenades on soldiers

2 The accused: Khaled Ibrahim Mohye El Deen

- A** possessed hand grenades without a licence
- B:** possessed military equipment without licence
- C:** resisting and treating military negatively

3 The accused: Abdul Rahman Mohammad adla

- A** possessed hand grenades without a licence
- B:** possessed military equipment without licence
- C:** resisting and treating military negatively

4The accused: Alaa hassan mishharani

- A:** Belonging to a terrorist organisation
- B:** possessing substances to use in a terrorist act
- C:** for committing terrorist acts
- D:** for committing the crime of armed resistance
- E:** possessed hand grenades without a licence

5The accused: Zakarya Mohammad Ammar

- A:** possessed military equipment without licence
- B:** resisting and treating military negatively

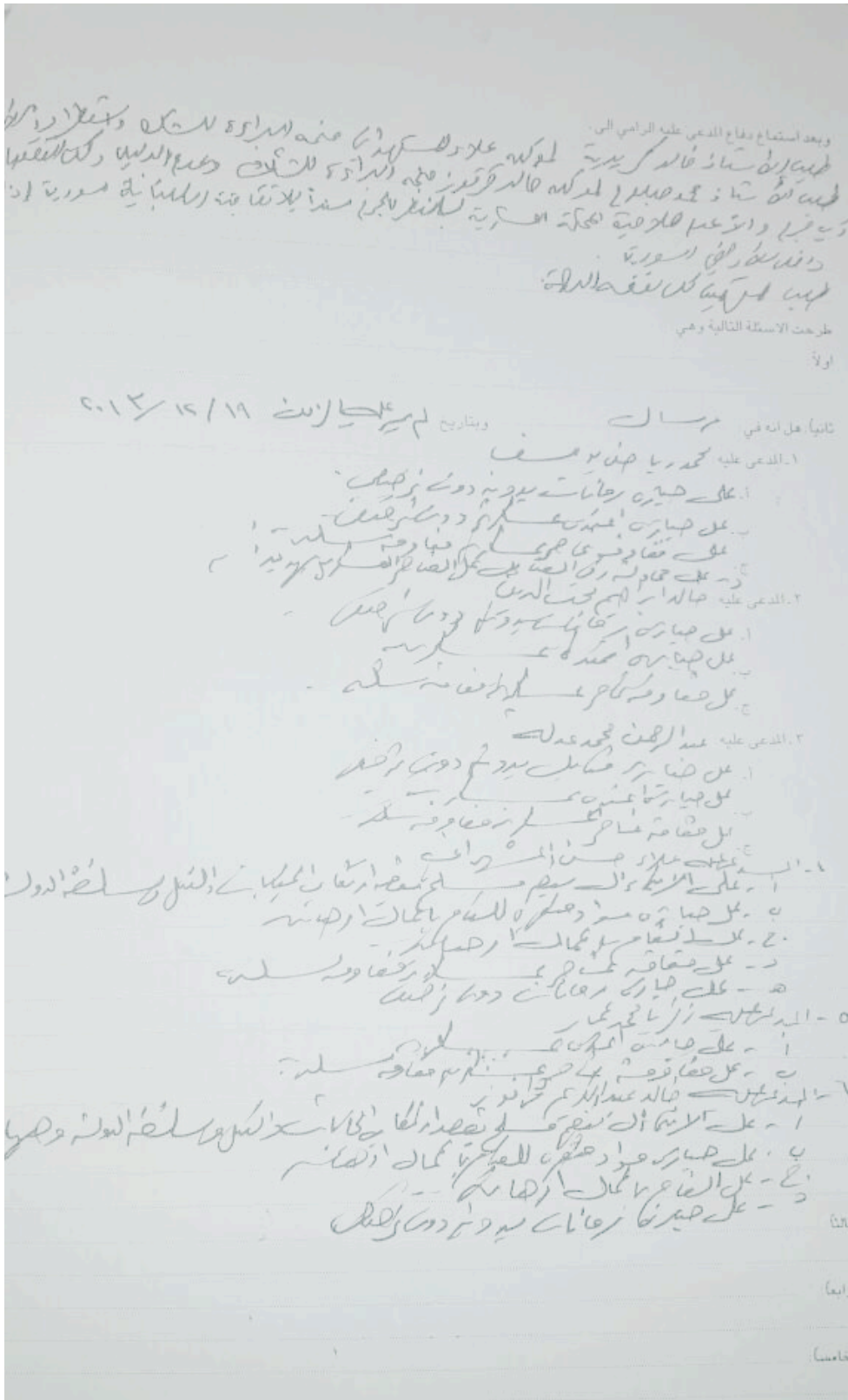
6: The Accused: Khaled Abdul Karim karakuz

- A:** Belonging to an armed group for the intention of committing crimes, killings, and crimes against the state
- B:** possessing substances to use in a terrorist act

C: for committing terrorist acts

D possessed hand grenades without a licence

Third: blank



6 is in the case reasons of justification:

7 is there in the case reasons for consideration:

8 is there reasons for strengthening the sentence:

9 is there reasons for lowering the sentence:

10 is there circumstances for a lower sentence:

And after answering the previous questions as it follows:

1 A Yes unanimously

B Yes unanimously

C Yes unanimously

D Yes unanimously

2 A Yes unanimously

B Yes unanimously

C Yes unanimously

3 A Yes unanimously

B Yes unanimously

C Yes unanimously

4 A Yes unanimously

B Yes unanimously

C Yes unanimously

D Yes unanimously

E Yes unanimously

5 A Yes unanimously

B Yes unanimously

6 A Yes unanimously

B Yes unanimously

C Yes unanimously

D Yes unanimously

Third question: blank

Fourth question: blank

Fifth question: blank

Sixth question: No unanimously

Seventh question: No unanimously

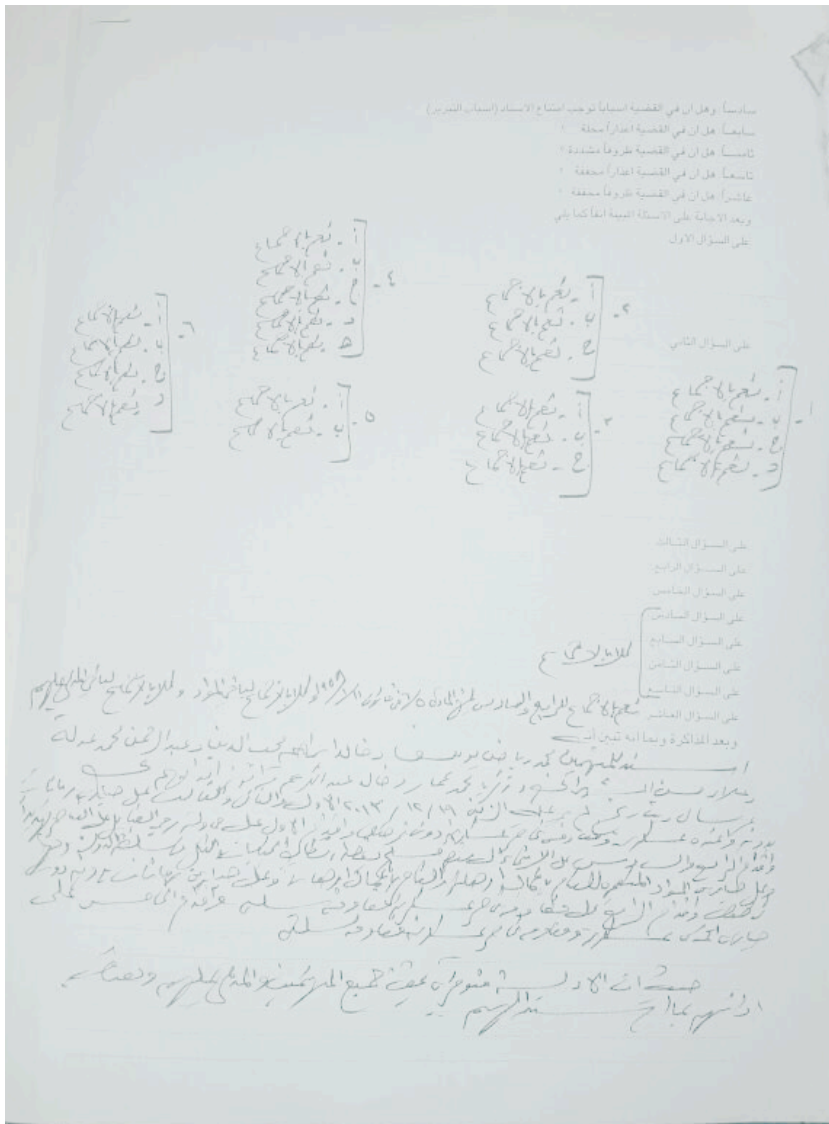
Eighth question: No unanimously

Ninth question: No unanimously

Tenth question: Yes unanimously, for the 4th and the 6th under article 5 and 6 of the 11/1/1958 Law and no unanimously for the rest of articles. and no unanimously for the rest of the accused ones.

After reviewing the case it turns out: That, the accused Mohammad Riad Youssef, Khaled Ibrahim Mohye El Deen, Abdul Rahman Mohammad adla, Alaa hassan mishharani , Zakarya Mohammad Ammar and Khaled Abdul Karim karakuz. They have committed in Arsal in 19/12/2013 the possession of hand grenades without license and other military equipment and that the first, the second and the third, threatening and attempted to throw grenades on soldiers. The fourth and the sixth for belonging to a terrorist group in order to commit crimes against the state, and the possession of grenades without license. And the fifth to possess military equipment and resisting the army negatively.

As the evidence is available to incriminate all the suspects, its decided to indict them with what they have been accused with.



Thus,

According to articles 335 of the LPC and Articles 5 and 6 of the 11/1/1958 Law and Articles 72 on Weapons, Article 144 Military Code, Articles, 380 LPC, 523 LPC, 253, 49, 63 LPC. The court have decided unanimously. 1 Mohammad Riad Youssef to be sentenced for a year and force him under article 72 weapons for confiscation, also a year and a month under Article 144 military, and confiscation. Another month under Article 280 LPC plus 6 month under Article 573 PLC and the joining of all sentences and penalties, so the sentence becomes a year and a month plus 100000 Lebanese pounds and confiscation of the materials.

2- sentencing both Khaled Ibrahim Mohye el Deen and Abdul Rahman Mohammad Adla to a year and a month in jail, under articles on weapons, and confiscation and a year and a month under Article 144 military, confiscation and a month in jail. plus 100000 Lebanese pounds under Article 380 LPC, joining the sentences it becomes a year and a month in jail and 100000 Lebanese pounds penalty and confiscation of the findings.

3 -Alaa hassan mishharani to be sentenced for hard labour for three years under article 335 LPC and a life in prison under articles 5,6 of the 11/1/1958 law, in addition to five years in hard labour and a month and (unclear) amount of money as penalty. under Article 380 LPC and a year under Article 72 weapons, and force him to give out a rifle. Joining all the judgments for him to serve five years in hard labor and 100000 Lebanese Pounds, and to give out a rifle and if not he will have to pay 1800000 Lebanese pounds.

4- Zakarya Mohammad Ammar a year and a month in jail under Article 144 Military code, confiscation and a month in jail under article 380 LPC and joining all the penalties to be a year and a month plus 100000 Lebanese pounds and confiscation of the material.

5 Khaled Abdul Karim karakuz to be sentenced for 3 years in hard labour under Article 335 LPC and a life in prison under Articles 5,6 of the 11/1/1958 law and 7 years in hard labour , a year under Article 72 weapons and force him into giving up a rifle. Joining the judgments will entitle him to seven years in hard labour and force him into giving up a rifle and if he does not he should be entitled to pay 1500000 Lebanese pounds.

The confiscation of the bail for the 1st, the 2nd and the third.

They are forced to pay all the **legal fees for of the Court.**

Judgment was taken in their attendance towards the 4th and the 6th, and its not subject to appeal towards all.

Sentenced publicly under the attendance of the Government's Commissioner, and the Registrar. and the accused Alaa mishharani and Khaled karakuz

With armed guards issued in 9/3/2016

signatories

President Consultant Consultant Consultant Consultant Registrar

Fees 16000 Lebanese pounds

Verdict: to be notified on 16/3/2016 for 1-2-3-5

For enforcing on 9/3/2016 for 4-6