


# Does the Special Court for Lebanon have jurisdiction over three attacks “connected” to the Hariri assassination?

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By: Dr Joseph Rikhof

Now that the Trial Chamber of the Special Court for Lebanon (STL) has issued its decision in its main case, the Ayyash et al. case about the assassination of Harari in 2005, (see for an analysis of the legal issues here while for an overview of the evidence adduced see here) and while the Trial Chamber is

deliberating the sentence for the only person convicted, Salim Jamil Ayyah (see prosecutions submissions here with the defence submissions here), attention has turned to the “another” Ayyash case. This second Ayyash case  involves charges, discussed below, related to three attacks against other Lebanese politicians, namely Marwan Hamade (injured in a car explosion on October 1, 2004 while his bodyguard was killed), George Hawi (killed in car explosion on June 21, 2005 while his driver was injured) and Elias El-Murr (injured in a car explosion on July 2005, in which another person was killed and 11 other injured). (see here for the general information about the attacks and here with respect to Ayyash specifically)

**Overview of the process**

According the Statute of the STL, its jurisdiction is set out in article 1 as follows:

“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 Rafiq 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. This connection includes but is not limited to a combination of the following elements: criminal intent (motive), the purpose behind the attacks, the nature of the victims targeted, the pattern of the attacks (modus operandi) and the perpetrators.” (see here)

The main Ayyash case was decided under the first sentence of this article while the second Ayyash case is under consideration pursuant to the second sentence. The three attacks mentioned above were found to be prima facie connected to Hariri attack on August 5, 2011 (see here, paragraph 16). On December 14, 2018 the Prosecutor submitted an indictment charging Ayyash with those three attacks, which was confirmed by the Pre-Trial Judge in two separate decisions on May 15 and June 19, 2019 here paragraph 17). On February 5, 2020, the Trial Chamber decided that the trial against Ayyash could proceed in absentia (here, paragraph 18).

On June 3, 2020, the defence filed a preliminary motion challenging the jurisdiction of the court indicating that these three attacks were not connected to the Hariri attack, to which the prosecution replied on June 24, 2020 (here, paragraphs 1, 2 and 21). The Pre-Trial Judge ruled that the attacks were connected on July 30, 2020. (see here) This decision was upheld on appeal by the Trial Chamber on September 10, 2020 (see here), which will be discussed below. The defence has appealed this decision to the Appeal Chamber. (see here, with a response by the Prosecutor here)

In the meantime, the defence had also filed another preliminary motion on July 21, 2020 challenging defects in the form of the indictment, to which the prosecutor responded on August 11, 2020; this motion was also rejected by the same Trial Chamber on September 28, 2020. (see here) It is likely that this decision will be appealed as well so that any trial in the second Ayyash case will not start until

next year.

**The decision re connectedness – general principles of interpretation**

Before addressing the substantive aspects of the parameters of connectedness in article 1 of its Statute, the Trial Chamber first set out some principles of interpretation, namely: (a) that a text should be interpreted along with the context in which they occur, (b) if the words make sense in their natural and ordinary meaning, there is no need for any further inquiry; (c) if such an inquiry reaches an absurd result, the object and purpose of the treaty can be used to determine what was meant. (here, paragraphs 87-88). All legitimate aids to interpretation can be used, including in the context of the STL's external circumstances as set out in the reports of the investigation commission, which preceded the establishment of the STL, as well as reports of the United Nations Secretary General related to the setting up of the STL. (paragraph 91)

On a less general level, any interpretation must be construed in accordance to the principles of criminal justice, which can be inferred thorough an assessment of the similar nature and gravity of attacks other than the Hariri attack as well as a combination of the five non-exhaustive indicators set out in article 1 of the STL Statute, namely criminal intent (motive), the purpose behind the attacks, the nature of the victims targeted, the pattern of the attacks (modus operandi) and the perpetrators. In addition, the temporal requirement in that same article (between October 1, 2004 and December 12, 2005) is also useful. (paragraphs 94-95)

Furthermore, the reason behind the notion of using the connection between cases to confer jurisdiction on the STL is threefold: the need to deal with cases involving the same perpetrators and/or implementing the same criminal purpose; the fact that it will reduce the risk of contradictory decisions; and ensuring that that the perception of selective justice is avoided. (paragraph 96)

In order to provide meaning to this notion, guidance can be found in both international and national sources. The sources important in the Harari and connected cases would be other provisions of the Lebanese Criminal Code, as well as French and Italian legislation (paragraphs 97-98). International law, which does not have any specific jurisprudence related to the concept of connected crimes, can still be useful when examining the concepts of common criminal plan, design or purpose. (paragraphs 98-99).

Lastly in terms of general interpretation, the criteria contained in article 1 can be used in combination as they overlap rather than create a cumulative test. (paragraphs 100-102)

Therefore, a starting point for a connection between the Hariri attack and the three other attacks are the following elements:

- the three attacks were aimed at carrying out political murders by detonation of car bombs in public streets in Beirut during daylight hours;
- the car bombs hit precise targets, but were also inherently indiscriminate resulting in collateral damage;

- by injuring or killing bystanders, the attacks caused panic and demoralized society for, an effect for which car bombs are eminently suitable;
- such a climate of fear had the potential to create chaos both in Lebanon and the surrounding area. (paragraph 103)

**The decision re connectedness – the specific elements**

With respect to the first criteria, the nature of the victims targeted, the Trial Chamber indicated that the victims targeted were linked by close relationships and were also prominent political figures in Lebanon who were opposed to Syria's presence in that country around the time of the attacks. (paragraphs 108-109)

The pattern of attacks was similar (as opposed to the defence's argument that they should be identical) in that they involved the use of linked covert networks for surveillance and communication by those involved in preparing and executing the attacks; they were carried out by means in explosive devices involving motor vehicles; and they were carried out on public streets in Beirut during daylight hours. (paragraphs 110-112)

The nature and gravity of the attacks were also similar (again, not identical as argued by the defence) to the Hariri attack for two reasons: all the attacks were violent, planned and executed in such a manner to attract public attention and contribute to a climate of insecurity, tension and intimidation and all three attacks involved the same criminal offences for which Ayyash had been convicted in the Hariri case, namely felonies in Lebanese criminal law with the highest penalties and commonalities in terms of the elements of the crimes. (paragraphs 113-117)

Since the indictment for the three attacks allege Ayyash and Badreddine were involved and since both were also charged in the Hariri attack, there was an overlap of perpetrators. (paragraph 118)

With respect to the purpose behind the attacks, this aspect had considerable overlap with the previous criteria in that there were a number of facts that show a common design with the Hariri attack, such as the nature of the victims, their close personal relationships, their political views (being opposed to the Syrian presence in Lebanon), the temporal nature of the attacks in that the three attacks and the Hariri attack all occurred within nine months of each other, the same perpetrators were alleged in all four attacks and the same pattern occurred in the four attacks. (paragraphs 119-120)

Lastly, the similarity of the criminal intent behind the three attacks, even though not essential for a finding of connectedness, was present and set out in the recital of elements of the offences charged in the indictment, namely: conspiring to commit a terrorist act, commission of a terrorist act, intentional homicide and attempted intentional homicide. (paragraphs 121-123)

**Conclusion**

Similar to the conclusion in the article in this Journal about the legal findings in the first Ayyash case (see here), the precedential value of this decision for other international tribunals and even domestic courts is low due to the unique nature in the founding document of the STL of the notion of connectedness. The oblique reference to International Criminal Tribunal for the former Yugoslavia jurisprudence with respect to the concept of joint criminal enterprise does not change this fact as it is not further developed in either the discussion of the law or the facts.

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