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The Cooperative Obligations Owed by Lebanon and Other States to the Special Tribunal for Lebanon

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CASE WESTERN RESERVE UNIVERSITY
SCHOOL OF LAW

MEMORANDUM FOR THE OFFICE OF THE PROSECUTOR
SPECIAL TRIBUNAL FOR LEBANON

Issue: The Cooperative Obligations Owed by Lebanon and Other States
to the Special Tribunal for Lebanon

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I. Introduction

A. Scope

The memorandum discusses whether Lebanon and other States are obligated under Chapter VII of the UN Security Council to cooperate with the Special Tribunal for Lebanon.* The memorandum approaches this question by first providing a factual and detailed background of STL's creation, its implementing Security Council Resolution, and applicable legal issues. Next, the memorandum analyzes the powers and limitations of the Security Council, and methods for interpreting Security Council Resolutions. The memorandum then interprets the text of Security Council Resolution 1757 to (1) determine the legal status of Resolution 1757's attached documents, and (2) address whether States are obligated to cooperate with the STL. Finally the memorandum examines Security Council Resolution 1373 and its impact on the obligations of States to the STL.

B. Summary of Conclusions

1. The STL Represents a Chapter VII Established International Tribunal.

The Security Council's Chapter VII powers have greatly expanded in the post-Cold War era. While the Security Council cannot violate general principles of international law or the UN Charter, the Security Council's are by and large unreviewable. By following past practice and not violating the UN Charter or international law, the STL represents a legitimate exercise of the Security Council's Chapter VII powers.

2. There Exist No Codified Rules to Guide the Interpretation of Security Council Resolutions.

While proposed methods to interpret Security Council resolutions have been given by the International Court of Justice, international tribunals, and international law experts, the rules of

Security Council Resolution interpretation remain unsettled. One interpretive approach that has emerged, however, is that—unlike treaties—the Council’s preparatory work (travaux) plays a primary role in interpreting the Security Council’s Chapter VII resolutions.

3. The STL Represents a Chapter VII Created Tribunal.

Similar to the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), the STL and its governing documents were established by the Security Council’s Chapter VII powers. While a competing establishment theory exists in the case of the STL, only direct Chapter VII establishment conforms to principles of international law. As such, the STL should not be viewed as a treaty-based tribunal, such as the Extraordinary Chambers in the Courts of Cambodia (ECCC) or the Special Court for Sierra Leone (SCSL).

4. Security Resolution 1757 Imposes an Obligation on Lebanon to Cooperate with the STL.

The Chapter VII Authority of Resolution 1757 carries over into its attached documents. Article 15 of the annexed agreement therefore obligates Lebanon to cooperate with the STL.

5. A Persuasive Argument Exists that Resolution 1757 Obligates Third Party States to Cooperate with the STL.

When viewed in conjunction with Security Council Resolution 1373, Security Council Resolution 1757 imposes an implied obligation for all States to cooperate with the STL. Resolution 1373 imposes a general obligation for states to cooperate with the prosecution of perpetrators of terrorist acts. Resolution 1757 triggers this obligation by (1) declaring a defined terrorist act and (2) establishing a clear method of justice to prosecute the perpetrators of the February 14, 2005 attacks. Admittedly, substantial grounds exist to challenge this contention.

First, uncertainty exists as to the legality of Resolution 1373 owing to its legislative nature. Second, Resolution 1757's travaux makes clear that Security Council members were not intending to relate the two resolutions. Finally, the generalized terms of Resolution 1373's obligations may be too vague to enforce. But these terms overlook (1) the binding nature of 1373 and (2) the clear relation between the two resolutions.

6. The ICTY's *Tadic* Decision Supports Interpretation of Resolution 1757 that Obligates Third Party Nations to Cooperate with the STL.

The 1995 *Tadic* Appeals Decision may play a significant role in settling the issue of third party cooperation to the STL. Since Chapter VII tribunals have the authority to interpret their own mandates, the STL will likely interpret the terms of Resolution 1757. The *Tadic* decision looked to both (1) the related documents of the ICTY's implementing security council resolution and (2) the ICTY's mandate in to interpret the jurisdictional limits of the ICTY. In *Tadic*, the two elements reinforced one another. In respect to third party cooperation, the contextual elements related to Resolution 1757 conflict. But, the STL's mission is clear: to bring justice to the perpetrators of the February 14, 2005 attacks. *Tadic* suggests that the STL Chambers may emphasize the STL's mission in interpreting the STL's governing documents, thereby favoring a decision that obligates third party nations to cooperate with the STL.

II. Background

Charged with the revolutionary mandate to prosecute those responsible for the February 14, 2005 terrorist attacks that killed former Lebanese Prime Minister Rafiq Hariri and 22 others,¹ the

* Question Posed by the Officer of the Prosecutor, STL: How does the STL's creation, pursuant to Chapter VII powers of the UN SC, affect (a) the obligations, respectively, of Lebanon and third states vis-à-vis the STL; and (b) the powers of the STL vis-à-vis Lebanon and third states? With regard to Lebanon, does the Chapter VII nature of UN SC resolution 1757 "attach" only to the text of the resolution itself or also to some or all of the language of the annexed documents (Agreement between the United Nations and Lebanon and Statute of the Tribunal)? For

STL's establishment followed an unusual trajectory. Originally, the Lebanon sought to conclude a treaty with the United Nations to establish the STL, similar to the Special Court for Sierra Leone.² In fact, both Lebanon and the United Nations had signed such a treaty by February 2007.³ But domestic politics within Lebanon stalled the treaty's ratification.⁴ The Security Council responded by adopting Resolution 1757 under its Chapter VII powers, which imposed a deadline on Lebanon to ratify the treaty, thereby establishing the STL.⁵ Thereafter, on June 11, 2007, since Lebanon failed to ratify the tribunal treaty in the time specified, the Secretary-General began to lay the groundwork for the STL's establishment pursuant to the Security Council's Chapter VII resolution.⁶ In the end, the Tribunal opened its doors on March 1, 2009.⁷

example, what is the impact of UN SC 1757 on Article 15 of the Agreement, and/or other key provisions of the Agreement and Statute?

¹ Choucri Sader, *A Lebanese Perspective on the Special Tribunal for Lebanon: Hopes and Delusions*, 5, 5 J. INT'L CRIM. JUST. 1083 (2007) [Reproduced in accompanying notebook at Tab 28].

² S.C. Res. 1664, U.N. Doc S/RES/1664 ¶ 8 (Mar. 29, 2006) (stating "Welcomes the report of the Secretary-General, and requests him to negotiate an agreement with the Government of Lebanon aimed at establishing a tribunal of an international character...") [Reproduced in accompanying notebook at Tab 9].

³ See Press Release, U.N. Secretary-General, United Nations Signs Agreement Establishing Special Tribunal for Lebanon, U.N. Doc SG/SM/10871 (Feb. 6, 2007) (stating "[o]n 6 February 2007, the United Nations signed the Agreement between the United Nations and the Lebanese Republic regarding the Establishment of a Special Tribunal for Lebanon") [Reproduced in accompanying notebook at Tab 1].

⁴ AMNESTY INTERNATIONAL, *LEBANON: THE SPECIAL TRIBUNAL FOR LEBANON 'SELECTIVE JUSTICE'* (2009) (stating "[t]he agreement was never ratified by the Lebanese parliament because of a deadlock between the two main opposing political blocs, the March 8 and March 14 coalitions, over the issue, leading Lebanese Prime Minister Fouad Siniora to request that the UN Security Council put the Tribunal into effect.") [Reproduced in accompanying notebook at Tab 35].

⁵ S.C. Res. 1757, U.N. Doc S/RES/1757 ¶ 1(a) (May 30, 2007) [Reproduced in accompanying notebook at Tab 10].

⁶ Bardo Fassbender, *Reflections on the International Legality of the Special Tribunal for Lebanon*, 5 J. CRIM. JUST. 1091, 1092 (2007) [Reproduced in accompanying notebook at Tab 24].

⁷ See *The Special Tribunal Opens its Doors*, THE HAGUE JUSTICE PORTAL (March 1, 2009), <http://www.haguejusticeportal.net/eCache/DEF/10/331.html> (stating "[o]n March 1, 2009, the Special Tribunal for Lebanon (STL), established to try those responsible for the killing of former Lebanese Prime Minister Rafiq Hariri began its operation") [Reproduced in accompanying notebook at Tab 33].

Yet critical differences, directly impacting the issue of State cooperation, separate the STL's governing documents from those of the ICTY and ICTR. First, the Security Council resolution attached two governing documents, the Proposed Agreement between Lebanon and the United Nations and an annexed Statute, to the resolution.⁸ Resolution 1757's unique attachments call into question the binding nature of these documents, clouding Lebanon's Chapter VII obligations to the STL. Second, unlike the ICTY and ICTR, the STL's governing documents do compel nations to cooperate with the STL. Thus, while created through the UN Security Council's Chapter VII powers, it remains unclear whether the STL must conclude independent cooperation agreements⁹ before requesting third party States cooperation with the Tribunal. Yet, a distinction should be made between a general mandate to cooperate and the mechanics of such cooperation. While the governing documents of the ICTY and ICTR compel all UN members to cooperate with their respective tribunals, the ICTY and ICTR have concluded agreements with nations to facilitate extradition and evidence exchange.¹⁰

Finally the precise method through which the Security Council established the STL is not initially clear. Did the Security Council use its Chapter VII powers merely create a treaty-based Tribunal similar to the SCSL, substituting for Lebanon's ratification of the Agreement between the UNSG and Lebanon? Or did Resolution 1757 establish a Chapter VII tribunal, similar to the ICTY and ICTR?

⁸ See S.C. Res. 1757, U.N. Doc S/RES/1757 (May 30, 2007) [Reproduced in accompanying notebook at Tab 10].

⁹ Bert Swart, *Cooperation Challenges for the Special Tribunal for Lebanon*, 5 J. INT'L CRIM. JUST. 1153, 1159-60 (noting that the STL must either conclude independent cooperation agreements with other nations or the Security Council must evoke its Chapter VII powers to compel a State or States to cooperate) (2007) [Reproduced in accompanying notebook at Tab 29].

¹⁰ See ICTY, *Member States Cooperation*, <http://www.icty.org/sections/LegalLibrary/MemberStatesCooperation> (last visited Nov. 19, 2010) (listing all implementing agreements between the ICTY and various UN member States) [Reproduced in accompanying notebook at Tab 36].

These theoretical questions have a direct and concrete effect on the ability of the STL to successfully perform its mandate. Divisive domestic politics threaten to undermine Lebanese cooperation with the STL.¹¹ Furthermore, in light of the alleged role of third party nationals may have played,¹² the cooperation of other States may hold the key to determining and successfully ending impunity for those perpetrators of the February 14, 2005 terrorist attacks.

III. The Scope and Interpretation of Security Council Resolutions.

A. The Powers of Chapter VII Security Council Resolutions.

1. Charter Articles.

The UN Charter offers only a vague outline of the specific powers granted to the Security Council. The UN Charter charges the United Security Council with the “maintenance of international peace and security,”¹³ allows it to determine what constitutes a threat to international peace,¹⁴ and permits the Security Council use military¹⁵ or non-military means¹⁶ to

¹¹ Zeina Karem, *Hezbollah, Syria Seek to Discredit Hariri Tribunal*, ASSOCIATED PRESS (Oct. 5, 2010), available at http://news.yahoo.com/s/ap/20101005/ap_on_re_mi_ea/lebanon_hariri_tribunal (stating “Hezbollah and its ally Syria are mounting a campaign to undermine the U.N. tribunal investigating the assassination of former Prime Minister Rafik Hariri by raising doubts about the court’s neutrality ahead of indictments expected to accuse members of the Shiite militant group in the killing.”) [Reproduced in accompanying notebook at Tab 34].

¹² *Id.* (stating “[s]uspicion fell on neighboring Syria, since Hariri had been seeking to weaken its domination of the country. Syria has denied having any role in the murder, but the killing galvanized opposition to Damascus.”).

¹³ UN Charter art. 24(1), 59 Stat. 1051, T.S. No 993 (stating “[i]n order ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.”) [Reproduced in accompanying notebook at Tab 13].

¹⁴ UN Charter art. 39 (stating “[t]he Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.”) [Reproduced in accompanying notebook at Tab 13].

¹⁵ UN Charter art. 40 (stating “[t]he Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to

accomplish these tasks. But when defining the types of possible Security Council enforcement the UN Charter focuses on providing examples of traditional military enforcement and embargoes.¹⁷ While there is no mention of a power to create tribunals, the Charter permits the Security Council to establish subsidiary organs.¹⁸

While the Security Council's powers appear wide-ranging and discretionary, the Charter provides no wiggle room with respect to States' obligations to the Security Council; they must "carry out the decisions of the Security Council."¹⁹ The Security Council's powers are not completely unfettered, however. The Charter enjoins the Security Council from acts that violate the principles of the Charter,²⁰ the "Principles of international justice and Purposes of the United Nations,"²¹ and "the Purposes and Principles of the United Nations."²² Hence, only clear

apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.") [Reproduced in accompanying notebook at Tab 13].

¹⁶ UN Charter art. 1 (stating "[t]he Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.") [Reproduced in accompanying notebook at Tab 13].

¹⁷ *Id.*

¹⁸ UN Charter at art. 29 (stating "[t]he Security Council may establish such subsidiary organs as it deems necessary for the performance of its functions.") [Reproduced in accompanying notebook at Tab 13].

¹⁹ UN Charter art. 25 (stating "[t]he Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.") [Reproduced in accompanying notebook at Tab 13].

²⁰ UN Charter art. 2(5) (stating "[a]ll Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter...") [Reproduced in accompanying notebook at Tab 13].

²¹ UN Charter at art. 24 [Reproduced in accompanying notebook at Tab 13].

²² UN Charter at art. 1(1) (stating that the UN will act "in conformity with the principles of justice and international law...") [Reproduced in accompanying notebook at Tab 13].

violations of customary international or the UN Charter would trigger a breach of the UNSC enforcement powers.

While the Charter suggests an outer limit to Security Council action, the Charter offers “no express power of judicial review” of Security Council resolutions by the International Court of Justice (ICJ) or other international chambers.²³ Though the International Court of Justice (ICJ) has analyzed and interpreted Security Council resolutions, in a variety of cases it has avoided opining on the legitimacy of Chapter VII resolutions.²⁴ Additionally, while the chambers of the ICTY and the ICTR have reviewed their powers under their implementing Chapter VII resolutions, they have, perhaps unsurprisingly, affirmed the authority of the Security Council to create ad hoc international criminal tribunals.²⁵

2. The International Court of Justice Decisions and the Powers of Security Council.

In the *Nambica* decision, the ICJ affirmed the Security Council’s wide-ranging authority to place obligations on States. Violating a general assembly and Security Council resolution, South Africa maintained a military presence in Nambica.²⁶ As a result, the Security Council called on UN member States to suspend diplomatic relations with South Africa in Resolution 276.²⁷ The UN Secretary-General then sought the ICJ’s view on what obligations the resolution

²³ Andrea Bianchi, *Assessing the Effectiveness of the UN Security Council’s Anti-terrorism Measures: The Quest for Legitimacy and Cohesion*, 17 No. 5 EJIL Vo. 17 881, 912 (2007) [Reproduced in accompanying notebook at Tab 22].

²⁴ *Id.* (stating “[t]his has not hampered the Court from exercising, at least incidentally , its judicial scrutiny over the acts of other UN organs. At times this has been done more or less explicitly, at other times the ICJ has acted somewhat surreptitiously...[when] upholding the legitimacy of resolutions of either the GA or the SC.”)

²⁵ *Id.* (citing *Prosecutor v. Tadic*, Case No.IT-94-I-AR, (Oct., 2 1995).

²⁶ S.C. Res. 276 ¶ 2, U.N. Doc S/9616 (Jan. 30, 1970) [Reproduced in accompanying notebook at Tab 3].

²⁷ *Id.* at ¶¶ 2-4.

imposed member States.²⁸ To answer this question, the ICJ first addressed the powers Security Council. In upholding the legality of Resolution 267,²⁹ the ICJ recognized that the Security Council held “general powers”:

“As to the legal basis of the resolution, Article 24 of the Charter vests in the Security Council the necessary authority to take action such as that taken in the present case. The reference in paragraph 2 of this Article to specific powers of the Security Council under certain chapter of the Charter does not exclude the existence of general powers to discharge the responsibilities conferred in paragraph 1.”³⁰

Thus, the ICJ upheld the Security Council’s authority to impose obligations on UN members beyond the UN Charter’s specific enumeration of Security Council powers.³¹ The Court only imposed one limit on the Security Council’s “general powers”: they must conform to the principles and purposes of the UN, listed in Charter Articles 1 and 2.³² Hence, the Court obligated to the Security Council to act in “conformity with the principles of justice and international law.”³³

The ICJ reaffirmed the Security Council’s general powers in its 1996 *Nuclear Weapons* decision. The Court assessed whether the World Health Organization (WHO), a subsidiary

²⁸ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)*, I.C.J. Reports, Adv. Op. (June 21, 1971) [Reproduced in accompanying notebook at Tab 15].

²⁹ *Id.* at page 54, ¶ 116.

³⁰ *Id.* at page 52, ¶ 110.

³¹ See DAVID SCHWEIGMAN, *THE AUTHORITY OF THE SECURITY COUNCIL UNDER CHAPTER VII OF THE UN CHARTER: LEGAL LIMITS AND THE ROLE OF THE INTERNATIONAL COURT OF JUSTICE* 29-30 (2001) [Reproduced in accompanying notebook at Tab 21].

³² *Nambia, supra* note 28, at 52, ¶ 100 [Reproduced in accompanying notebook at Tab 15].

³³ UN Charter, *supra* note 22, at art. 1(1) [Reproduced in accompanying notebook at Tab 13].

organ of the UN, had authority to address the legality of nuclear weapons use.³⁴ In rejecting the WHO's ability to access the legality of nuclear weapons use,³⁵ the ICJ discussed the implied powers of international organizations:

The powers conferred on international organizations are normally the subject of an express statement in their constituent instruments. Nevertheless, the necessities of international life may point to the need for organizations, in order to achieve their objectives, to possess subsidiary powers which are not expressly provided for in the basis instruments that govern their activities. It is generally accepted that international organizations can exercise such powers, known as "implied" powers.³⁶

While using the term "implied powers," the ICJ reaffirmed the ability of international organizations, like the Security Council, to exercise powers not superficially enumerated in their governing documents.

In both *Nambia* and, more recently, in *The Nuclear Weapons Case*, the ICJ has reaffirmed the wide-ranging scope of Security Council powers.

3. Past Practices of the UN Security Council.

Finally, past Chapter VII resolutions aid in accessing the scope of the Security Council powers. But the range of Chapter VII powers has expanded quickly, and with controversy,³⁷ since the end of the Cold War. The Cold War era, reflecting the divisive geo-politics of the time,

³⁴ *Legality of the Threat or Use of Nuclear Weapons* 68, ¶ 1, Adv. Op., I.C.J. Rep. (July 1996) (restating the question submitted to the ICJ by the U.N. Secretary-General) [Reproduced in accompanying notebook at Tab 16].

³⁵ *Id.* at 79, ¶ 25.

³⁶ *Id.* at 78, ¶ 25.

³⁷ See Bjorn Elberling, *The Ultra Vires Character of Legislative Actions by the Security Council*, 2 INT'L ORG. L. REV. 337 (2005) [Reproduced in accompanying notebook at Tab 23].

limited the exercise of Chapter VII powers.³⁸ But in the post-Cold War era, the Security Council has exercised its powers far more muscularly³⁹ and far more often.⁴⁰ But its powers, while apparently self-prescribed, still must conform to principles of international law and retain the confidence of UN member states.⁴¹

B. Interpreting of Security Council Resolutions

Four sources aid in the interpretation of Chapter VII Security Council resolutions, such as Resolution 1757. First, the Vienna Convention on the Law of Treaties (“VCLT”), which represents the codified customary international of interpreting treaty text, provides tools that can be applied to Security Council resolutions. Second, though not vested with judicial review of Security Council decisions, the ICJ’s *Nambica* decision offers its own interpretive guidelines. Third, the *Tadic* case offers a very relevant instance of an international tribunal interpreting its

³⁸ Matthew Happold, *Security Council Resolution 1373 and the Constitution of the United Nations*, 16 LEIDEN J. OF INT’L L. 593, 594 (2003) [Reproduced in accompanying notebook at Tab 25].

³⁹ See TAE JIN KAHNG, LAW, POLITICS, AND THE SECURITY COUNCIL: AN INQUIRY INTO THE HANDLING OF LEGAL QUESTIONS INVOLVED IN INTERNATIONAL DISPUTES AND SITUATIONS 32-39 and 77-80 (1964) (noting Members’ disagreements over whether the Security Council could act in response to situations in Spain and Palestine) [Reproduced in accompanying notebook at Tab 20]; See BARDO FASSBENDER, UN SECURITY COUNCIL REFORM AND THE RIGHT OF VETO 212-13 (stating “[t]he comprehensive task of safeguarding world peace, which was assigned to the Security Council, does not support an opinion according to which the Council, as a mere ‘policeman’ of the international community is only entitled to fight aggression and put an end to imminent threats to international peace and security. That the Council itself has adopted a broader view was vividly demonstrated by its various measures in the context of the Iraqi aggression against Kuwait, as well as by its establishing the War Crimes Tribunal for the Former Yugoslavia in 1993 and the International Tribunal for Rwanda in 1994. ”) (1998) [Reproduced in accompanying notebook at Tab 19].

⁴⁰ Patrick Johansson, *The Humdrum Use of Ultimate Authority: Defining and Analysing Chapter VII Resolutions*, 78 Nordic J. of Int’l L. 309, 326-327 (2009) (stating “The Security Council adopted 477 Chapter VII resolutions from 1946 through 2008...Of the 477 Chapter Resolutions, 21 were adopted during the Cold War and 456 have been adopted since it ended.”) [Reproduced in accompanying notebook at Tab 26].

⁴¹ Andrea Bianchi, *Assessing the Effectiveness of the UN Security Council’s Anti-terrorism Measures: The Quest for Legitimacy and Cohesion*, 17 No. 5 EJIL Vo. 17 881, 917 (2006) (stating “[i]n a self-contained, treaty-based system like the UN Charter that ultimately hinges on Members States’ consent...”) [Reproduced in accompanying notebook at Tab 22].

own Chapter VII governing documents. And finally, international law scholars provide other guidelines to interpreting Security Council Resolutions.

Three key guidelines for interpreting Chapter VII resolutions emerge from these sources: (1) adopt the plain meaning of the terms as they are understood by the Security Council, and (2) interpret the resolution consistent with the Security Council members' purpose and aim. But, unlike typical treaty interpretation, (3) travaux and other documents related to the negotiations and drafting record play a primary role in interpreting Chapter VII resolutions. Finally, it should be noted that international tribunals, themselves, will resolve opposing interpretations of its governing documents without deferral to the Security Council or other international bodies.⁴²

1. Principles of Treaty Interpretation Codified by the Vienna Convention on the Legality of Treaties.

Articles 31 and 32 of the VCLT lay out the codified customary law of treaty interpretation, though it should be noted that this treaty only applies to agreements between States. While not treaties, Security Council resolutions, adopted through a majority vote of the Security Council when not vetoed by a permanent member, are analogous to multilateral treaties. Article 31 lays down the first tool of treaty interpretation: examine "the ordinary meaning" of resolution's text, within the object and purpose of the resolution.⁴³ Article 31(2)⁴⁴ expands the text to include other agreements between the parties relating to the agreement, and any

⁴² Prosecutor v. Dusko Tadic, Appeals Chamber Decision on the Tadic Jurisdictional Motion ¶¶ 19-20, Case No. IT-94-1-AR72 (Oct. 2, 1995) (concluding that the Court had the power to review its own jurisdictional powers and giving itself the power to review Security Council Resolutions.) [Reproduced in accompanying notebook at Tab 17].

⁴³ Vienna Convention on the Law of Treaties art. 31, *entered into force* Jan. 27, 1980, S. TREATY DOC. NO. 912-12, 115 U.N.T.S. 331 [Reproduced in accompanying notebook at Tab 14].

⁴⁴ *Id.* at art. 31(2).

agreements related to the conclusion of the agreement. Article 31(3)⁴⁵ then permits subsequent agreements, practices or applicable principles of international law to guide in the interpretation of agreements. Finally, if these precepts create (1) a “manifestly absurd or unreasonable” result or (2) an “ambiguous or obscure” meaning, Article 32⁴⁶ permits parties to look to preparatory work to interpret the Agreement. Therefore, the negotiating record is a subsidiary, rather than primary vehicle for treaty interpretation. As discussed below, such an approach should not be adopted when interpreting Security Council resolutions.

2. The *Nambia* Decision.

While offering limited guidance, the ICJ suggests that the VCLT should not control the interpretation of Security Council resolutions. Sir Michael C. Wood, former legal assistant at the Foreign Commonwealth Office and currently a Senior Fellow for International Law at Cambridge University,⁴⁷ considers the ICJ’s *Nambia* decision to be the Court’s only substantial guidance on interpreting Security Council resolutions.⁴⁸ Wood emphasizes the *Nambia* decision’s brief interpretive discussion:

The language of a resolution of the Security Council should be carefully analysed before a conclusion can be made to its binding effect. In view of the nature of the powers under Article 25, the question whether they have been in fact exercised is to be determined in each case, having regard to the terms of the resolution to be interpreted, the discussions leading to it, the Charter provisions invoked and, in generally, all circumstances that

⁴⁵ *Id.* at art. 31(3).

⁴⁶ VCLT art. 32 [Reproduced in accompanying notebook at Tab 14].

⁴⁷ U.N. AUDIOVISUAL LIBRARY OF INT’L LAW, *M.C. Wood Biography* <http://untreaty.un.org/cod/avl/pdf/ha/notewriters/wood.pdf> (last visited Nov. 19, 2010) (providing a biography of Michael C. Wood) [Reproduced in accompanying notebook at Tab 38].

⁴⁸ M.C. Wood, *The Interpretation of Security Council Resolutions*, 2 MAX PLANCK YEARBOOK OF UNITED NATIONS LAW (1998) 73, 76 (stating “SCRs have of course been considered in other cases before the International Court, but in no other case has it explained its approach to interpretation.”) [Reproduced in accompanying notebook at Tab 31].

might assist in determining the legal consequences of the resolution of the Security Council.⁴⁹

Wood cautions that the language above related to specific resolutions and not Security Council resolutions in general,⁵⁰ but still emphasizes that the ICJ did not look to the VCLT.⁵¹ But this seems to be an understatement of the ICJ's ruling. The Court explicitly states that resolution's related discussions and circumstances should be used as primary tools of interpretation. Such an approach directly comes into conflict with the VCLT, which relegates preparatory work to a secondary tool of treaty interpretation. Therefore, the *Nambia* decision strongly suggests that simply applying VCLT principles fails to properly interpret Security Council resolutions.

3. The *Tadic* Decision.

In *Tadic*, the ICTY held itself competent to interpret its Chapter VII-established Statute when determining the ICTY's jurisdiction. In accessing the scope of and legality of its Statute, the Court interpreted the Statute through a literal reading,⁵² and then through a "teleological" approach that focused on the aims and purposes.⁵³ To determine the aims and purposes of the Statute, the Court analyzed resolutions leading up to the creation of the ICTY, the Secretary-General's report on the Statute, and Security Council member statements interpreting the ICTY's

⁴⁹ *Nambia*, *supra* note 28, at 53, ¶ 114 [Reproduced in accompanying notebook at Tab 15].

⁵⁰ *See* Wood at 75 (stating "the Court was not necessarily making a general statement about the interpretation of SCRs, but was dealing with the question whether particular SCRs had binding effect.") [Reproduced in accompanying notebook at Tab 31].

⁵¹ *Id.* (stating "[t]he Court did not here refer to the Vienna Convention on the Law of Treaties, adopted some two years earlier, though in other decisions—when considering treaties—it did rely upon that Convention's rules on interpretation as reflecting the rules of customary international law, as did other international tribunals.").

⁵² *See Tadic*, *supra* note 42, at ¶ 71 [Reproduced in accompanying notebook at Tab 17].

⁵³ *Id.* at ¶¶ 72-79.

Statute at the time of its adoption.⁵⁴ Not only did the Court veer away from using the VCLT to interpret its Resolution 827,⁵⁵ it delegated upon itself the power to interpret a Chapter VII Security Council resolution to determine the extent of its own mandate.⁵⁶ The ICJ decision suggests that a more comprehensive framework than that offered by the VLCT is required to properly interpret Security Council resolutions.

The Appeals Chamber also stressed the purpose of Resolution 827 when interpreting the ICTY's jurisdictional boundaries. In *Tadic*, the Court states "the Security Council established the International Tribunal with the stated purpose of bringing to justice persons responsible for serious violations of international humanitarian law in the former Yugoslavia, thereby deterring future violations and contributing to the re-establishment of peace and security in the region."⁵⁷ The Court identifies this clearly stated mission as evidence that Security Council did not wish to limit the ICTY's jurisdiction to war crimes within international conflicts.⁵⁸ But, significantly, the Court held that the ICTY's purpose conforms to the context of the resolution, i.e. the resolution's associated resolutions, documents, and Security Council member statements. Hence, the Court found two compelling arguments for a more expansive view of the ICTY's jurisdiction.

⁵⁴ *Id.* at ¶ 86-87.

⁵⁵ *See id.*; (Student) Efthymios Paptravidris, *Interpretation of Security Council Resolutions Under Chapter VII in the Aftermath of the Iraqi Crisis* 83, 91-92 ICLQ 56 (Jan. 2007) (stating "The Appeals Chamber...made no reference to the VCLT, which is more than telling in this regard.") [Reproduced in accompanying notebook at Tab 27].

⁵⁶ *See Tadic*, *supra* note 42, at ¶ 19 [Reproduced in accompanying notebook at Tab 17].

⁵⁷ *Id.* at ¶ 72.

⁵⁸ *Id.* at ¶ 74 (stating that "[t]he Security Council was clearly preoccupied with bringing to justice those responsible for these specifically condemned acts, regardless of context.").

A significant possibility arises when different circumstances are applied the context-purpose analysis of *Tadic*. For example, how would the outcome in *Tadic* change if the clear purpose of Resolution 827 had to be weighed against conflicting contextual elements?

Admittedly, no conclusive answer to this hypothetical can be given. But *Tadic* raises the possibility that a Chapter VII tribunal resolve an ambiguity by elevating their Statute's clear purpose over conflicting contextual evidence. This may prove significant to determining whether third party States are obligated to cooperate with the STL, and will be discussed further in Section IV(C)(2).

4. A Proposed Framework for Interpreting Security Council Resolutions

Efthymios Paptravidris, analyzing the interpretive sources described above, proposes a specific interpretative framework for Security Council Resolutions.⁵⁹ Using VLCT Articles 31 and 31 and 32 as a starting point,⁶⁰ Papatravdris states that the plain and ordinary meanings of a resolution's terms as the Security Council members understand them should be the first tool in interpretation.⁶¹ Second, he expands the context elements of Article 31(2) to include associated instruments, preambles, and annexes of a Security Council resolution.⁶² Third, the "object and purpose" of the resolution should be consulted, which may refer both to the intent of the Security Council members who voted on the resolution and the Security Council's duty to "preserve international peace and security."⁶³ Significantly this approach elevates travaux from a secondary

⁵⁹ See Paptravidris, *supra* note 55, at 99-101 [Reproduced in accompanying notebook at Tab 27].

⁶⁰ *Id.* at 100 (stating that while applying the principles of the VCLT to Security Council Resolution either by rule or by analogy "should not be endorsed," they "provid[e] the counter-paradigm against which the relevant principles and presumptions will be assessed.").

⁶¹ *Id.* at 101.

⁶² *Id.* at 101-02.

⁶³ *Id.* at 103.

tool of interpretation,⁶⁴ only resorted to when results are “ambiguous” or “manifestly absurd,”⁶⁵ to a primary source for discerning the object and purpose of a Security Council resolution.

Furthermore, Paptravidris’s interpretive framework applies three presumptions to guide the interpretation of Security Council resolutions. First, a resolution should be (1) interpreted strictly, meaning “there should be no additional burdens presumed for sovereign States except for these explicitly stated in the pertinent Resolution.”⁶⁶ Second, any interpretation must not violate (2) *jus cogens* and (3) principles of the UN Charter.⁶⁷

This memorandum will adopt Paptravidris’ approach to Security Council resolutions, as it offers a clear encapsulation of relevant methods by which to interpret Chapter VII Security Council Resolutions. But, it should be noted, Paptravidris’ approach requires one to accept that the Security Council may place general,⁶⁸ as well as situation-specific,⁶⁹ obligations on States. Such resolutions, often considered legislative in that they place indeterminate and general obligations on states, are considered illegitimate by some international law scholars.⁷⁰ While this

⁶⁴ *Id.* at 104.

⁶⁵ VCLT at art. 32 [Reproduced in accompanying notebook at Tab 14].

⁶⁶ Paptravidris, *supra* note 53, at 110 [Reproduced in accompanying notebook at Tab 27].

⁶⁷ *Id.*

⁶⁸ Paptravidris at 102 (stating “it (the object and purpose of the resolution) attains incremental importance in the context of interpretation of constituent instruments of international organizations and, of course in the realm of our enquiry, with regard to the interpretation of ‘legislative’ or ‘generic’ Resolutions of the Security Council...”), refer to note 53.

⁶⁹ *See* UN Charter art. 39 (the article’s text suggests that a breach to the peace must be a specific event that results in the Security Council crafting situation-specific obligations “to maintain or restore international peace and security.”) [Reproduced in accompanying notebook at Tab 13].

⁷⁰ Bjorn Elberling, *The Ultra Vires Character of Legislative Actions by the Security Council*, 2 INT’L ORG. L. REV. 337, 360 (2005) (stating “[t]he discharge of legislative powers by the Security Council violates the UN Charter.”) [Reproduced in accompanying notebook at Tab 23].

controversy does not impact Section IV's interpretation of Resolution 1757, it will be particularly relevant to the issue of third party cooperation with the STL discussed in Section V. Though not uncontroversial, applying Paptravidris' approach provides a well-defined framework that permits a thorough analysis States' obligations to the STL under Resolution 1757.

IV. Interpreting Resolution 1757 and its Attached Documents

A. The Security Council Established a Chapter VII International Tribunal by Adopting Resolution 1757.

The exact nature of Resolution 1757's Chapter VII powers is not explicitly defined within the resolution, the resolution's text, or clear from the resolution's purpose and aim. While these sources substantiate the Security Council's intent to create the STL,⁷¹ this does not answer how the Security Council's Chapter VII powers actually brought about the tribunal's creation. Indeed, two competing theories explain the STL's creation.⁷² One theory views Resolution 1757 as substituting for Lebanon's ratification on the Agreement establishing the STL.⁷³ Resolution 1757 would thereby establish a tribunal similar to the SCSL. Alternatively, the Security Council could have directly created the STL through Resolution 1757 through its Chapter VII powers, placing the STL within the same company as the ICTY and ICTR.⁷⁴

⁷¹ S.C. Res. 1757, U.N. Doc S/RES/1757 ¶1(a) (May 30, 2007) [Reproduced in accompanying notebook at Tab 210.

⁷² See Bardo Fassbender, *Reflections on the International Legality of the Special Tribunal for Lebanon*, 5 J. CRIM. JUST. 1091, 1096-97 (2007) [Reproduced in accompanying notebook at Tab 24].

⁷³ *Id.* at 1096 (stating "whether, by its decision, the Council intended to bring into force the Agreement...in its quality as an international treaty between the United Nations and Lebanon. In this case, the Council could be said to have substituted a binding decision made under Chapter VII of the UN Charter for the missing ratification of the Agreement by Lebanon.").

⁷⁴ *Id.* at 1097.

Under the first theory, Resolution 1757 in effect compelled⁷⁵ Lebanon to sign onto the Agreement that created the STL as a treaty-based Tribunal. Such a view follows the clear intent of Resolution 1757, as evidenced through 1757's perambulatory clauses and travaux: the Security Council wanted Lebanon to conclude an Agreement with the United Nations that established the STL.⁷⁶ This suggests Resolution 1757 acted as a substitute for Lebanon's missing ratification of the annexed Agreement. Hence, the Security Council used its Chapter VII powers in a limited fashion: merely establishing a Chapter VII tribunal through the resolution's text, thereby creating a treaty-based international tribunal.

Admittedly, ratification-substitute view of Resolution 1757, while an apparent act of coercion on the part of the Security Council, appears to conform to the VCLT. The VCLT contains two provisions that bar the use of certain types of coercion in concluding treaties.⁷⁷ And Resolution 1757 does not violate either of these VCLT prohibitions. First, Article 51 voids agreements "which have been procured by the coercion of the representative of that State...through acts or threats directed" against the coerced party.⁷⁸ While one may consider SCR 1757, which imposed a deadline on Lebanon to establish an international tribunal, Article

⁷⁵ *Id.* at 1096.

⁷⁶ See The Secretary-General, *Report of the Secretary-General on the Establishment of a Special Tribunal for Lebanon, delivered to the Security Council* ¶ 53, U.N. Doc. S/2006/893 (Nov. 15, 2006) (recommending that the Council explicitly compel third party nations to cooperate with the STL) [[Reproduced in accompanying notebook at Tab 12].; See S.C. 5658th mtg. (provisional) at 5, UN Doc. S/PV.5685 (May 30, 2007) (highlighting the focus of Security Council members on (1) whether terrorism constituted a valid international crime and (2) if the Security Council could compel Lebanon to conclude a treaty without ratification during Resolution 1757's adoption) [Reproduced in accompanying notebook at Tab 2].

⁷⁷ Vienna Convention on the Law of Treaties (VCLT) Arts. 51-52, *entered into force* Jan. 27, 1980, S. TREATY DOC. NO. 92-12, 1155 U.N.T.S. 331 [Reproduced in accompanying notebook at Tab 14].

⁷⁸ *Id.* at art. 51.

51 only covers acts or threats to the representative personally, such as threat to the representative's family or reputation.⁷⁹

Second, VCLT Article 52 prohibits the “threat or use of armed force in violation of the principles of international law.”⁸⁰ Applied to Security Council resolutions, Article 52 prohibits the United Nations from concluding a treaty through a threat or an exercise of armed force that violates with the UN Charter. Hence, two questions must be answered: (1) does threatening a country violate the UN Charter and (2) does placing a deadline on Lebanon to ratify a treaty constitute a threat under the VLCT? In regards to the first question, viewing Security Council resolutions as threats misrepresents the role of the Security Council. The Security Council does not coerce countries against their will, but rather ensures member states uphold their obligations under customary and positive international law. Second, even if one views Resolution 1757 as an act of coercion, it does not meet the threshold required by the VCLT.⁸¹ The International Law Commission, analyzing Article 52 of the VCLT, stated “the threshold necessary to assume a ‘threat or use of force’ is not reached” if the resolution merely “assists” a nation to fulfill domestic and international obligations.⁸² Resolution 1757, through its Chapter VII powers,

⁷⁹ Fassbender, *supra* note 72, at 1103 n. 45 (citing Yearbook of the International Law Commission, 1966 Vol. II. 246, stating “[t]his phrase [“through acts or threats directed against him personally”] is intended to cover any form of constraint of or threat against a representative affecting him as an individual and not as an organ of his State. It would therefore include not only a threat to his person, but a threat to ruin his career by exposing a private indiscretion, as also a threat to injury a member of the representative’s family with a view to coercing the representative.”) [Reproduced in accompanying notebook at Tab 24].

⁸⁰ VCLT art. 52 [Reproduced in accompanying notebook at Tab 14].

⁸¹ Fassbender, *supra* note 72, at 1103 (citing Yearbook of the Int’l L. Comm’n, 1982, Vol. II. 55.) [Reproduced in accompanying notebook at Tab 24].

⁸² *Id.* (stating “the threshold necessary to assume a ‘threat or use of force’ is not reached if the only disadvantage which is the object of the threat is the entry into force of a treaty, negotiated with and signed by the government of the respective state, which does not provide for a burden such as a loss of territory, or a grave economic disadvantage, but rather assists the government of the country in question in meeting its obligations under domestic and international law.”).

placed an international obligation on Lebanon to ratify the treaty creating the STL. The deadline, arguably an exercise of force, represented a tool through which the Security Council sought to assist Lebanon to fulfill this international obligation. Hence, Resolution 1757 does not violate either VLCT provision related to coercion.

But the VLCT also requires that parties consent to treaties, and Resolution 1757 fails to satisfy this requirement of customary international law. VCLT Article 2(1) requires a treaty to be approved by consenting parties.⁸³ While the VCLT does not define consent, individual states, including Lebanon, provide detailed ratification processes that signify their consent to a treaty. For Lebanon, treaty consent is signified by (1) the executive branch negotiating a treaty and (2) the Parliament approving the treaty.⁸⁴ Since the Lebanese parliament never ratified the Agreement, Lebanon never consented to Resolution 1757's annexed Agreement. While the Security Council has wide discretion in the exercise of its Chapter VII powers, the Council cannot violate "principles of justice and international law."⁸⁵ Since the VCLT represents codified principles of international law, Security Council actions must conform to the VCLT. Even if Council members intended to substitute Lebanon's ratification of the annexed Agreement with their Chapter VII powers, such an act violates Article 2(1) of the VCLT. Hence, a theory that considers the STL a treaty-based international tribunal violates international law.

⁸³ VCLT art. 2(1)(a) (stating that treaty "means an international agreement concluded between States..."); VCLT art. 2(1)(b) (stating "the international act so named whereby a State establishes...*its consent to be bound by a treaty*...")(emphasis added) [Reproduced in accompanying notebook at Tab 14].

⁸⁴ Constitution, art. 52 (1926) (Lebanon) (stating "[t]he President of the Republic negotiates international treaties in coordination with the Prime Minister. These treaties are not considered ratified except after agreement of the Council of Ministers. They are to be made known to the Chamber whenever the national interest and security of the state permit. However, treaties involving the finances of the state, commercial treaties, and in general treaties that cannot be renounced every year are not considered ratified until they have been approved by the Chamber.") [Reproduced in accompanying notebook at Tab 37].

⁸⁵ UN Charter, *supra* note 13, at art. 1 [Reproduced in accompanying notebook at Tab 13].

But this does suggest the Security Council was without means to establish the STL. The Security Council can directly establish international tribunals through its Chapter VII powers, as it did with the ICTY⁸⁶ and ICTR.⁸⁷ Indeed, this practice “is well established.”⁸⁸

Admittedly, there’s ample evidence to claim Security Council members intended Resolution 1757 to take the place of Lebanon’s ratification of a treaty to create the STL. And this intention violates international law, suggesting the STL is illegitimate. But the ICTY has held that Security Council actions enjoy a strong presumption of legality.⁸⁹ Admittedly, viewing the STL as a treaty-based tribunal appears loyal to Resolution 1747 travaux,⁹⁰ but Resolution 1757’s text does not explicitly state such an intent. Furthermore, viewing the STL as a Chapter VII international tribunal conforms to the Security Council’s mandate and the text of Resolution 1757. Therefore, Resolution 1757 must be interpreted as establishing the STL as a Chapter VII tribunal.

B. The Chapter VII Nature of Resolution 1757 Carries Over to the Annexed Agreement and Attached Statute.

If Resolution 1757 created Chapter VII international tribunal, what legal significance should be given to the resolution’s “annexed” Agreement and “attached” Statute? If the Chapter VII

⁸⁶ S.C. Res. 827, UN Doc of S/RES/827 (May 25, 1993) [Reproduced in accompanying notebook at Tab 4].

⁸⁷ S.C. Res. 955, UN Doc S/RES/955 (Nov. 8, 1994) [Reproduced in accompanying notebook at Tab 5].

⁸⁸ Fassbender, *supra* note 72, at 1097 (stating “[t]oday it is well established that the Council is entitled to establish international criminal jurisdictions having the power to prosecute individual persons.”).

⁸⁹ *Prosecutor v. Tadic*, ICTY Appeals Judgment ¶ 287, Case No. IT-94-1-A 128 (Jul 15, 1999) (stating “it must be presumed that the Security Council, where it did not explicitly or implicitly depart from general rules of international law, intended to remain within the confines of such rules.”) [Reproduced in accompanying notebook at Tab 18].

⁹⁰ See S.C. 5658th mtg. (provisional) at 5, UN Doc. S/PV.5685 (May, 30 2007) [Reproduced in accompanying notebook at Tab 2].

authority of Resolution 1757 only runs through the resolution's text, the terms of either attachment would not constitute Chapter VII obligations.

Admittedly, a key formatting difference exists between Resolution 1757 and Security Council Resolution 827 that established the ICTY. Whereas Resolutions 827 includes only an annexed Statute, Resolution 1757 has two attached documents: (1) an annexed Agreement and (2) an attached Agreement. But the resolutions respective texts, not their formatting should be followed when accessing the legal nature of their attached documents. The text of Resolution 827 makes clear that the Security Council, acting under its Chapter VII powers, adopts the annexed Statute. Likewise, Resolution 1757 states, in the event that Lebanon does not conclude a treaty establishing the STL, “[t]he provisions of the annexed documents, including its attachment...shall enter into force” on June 10, 2007.⁹¹ This text shows that the Security Council exercised its Chapter VII powers not only through Resolution 1757's text, but Resolution 1757's attachments as well. Hence, the obligations within the annexed Agreement and attached Statute represent binding Chapter VII obligations.⁹²

C. The Obligation of States to Cooperate with the STL Under Resolution 1757.

1. The Annexed Agreement Mandates Lebanese Cooperation with the Tribunal.

Article 15 of the Annexed Agreement obligates Lebanon to cooperate with the STL. First, as discussed above, the terms of the Annexed Agreement constitute binding Chapter VII obligations. Second, Article 15 mandates Lebanon to obey requests or orders by the STL's

⁹¹ S.C. Res. 1757 at 1(a) [Reproduced in accompanying notebook at Tab 10].

⁹² Bert Swart, *Cooperation Challenges for the Special Tribunal for Lebanon*, 5 J. Int'l Crim. Just. 1153, 1154 (2007) (stating “[t]he fact that the Security Council, acting under Chapter VII of the UN Charter, found it necessary to decide on the entry into force of the Agreement might perhaps mean that the obligations arising out of the Agreement for Lebanon have themselves become obligations under Chapter VII of the Charter.”) [Reproduced in accompanying notebook at Tab 29].

chambers, and cooperate with the defense and prosecution counsel.⁹³ Hence, Lebanon's cooperative obligation follows the plain reading of the annexed Agreement.

Yet there's a significant textual difference between the Chapter VII resolution creating the STL and the resolutions that created the ICTY and ICTR. While all three resolutions mandate cooperation within their Statutes, the ICTY and ICTR reiterates this binding decision within the text of the resolution itself. As stated above, Resolution 1757 omits any discussion on the obligations owed by Lebanon or other countries to cooperate with the STL.

While Resolution 1757 omits language on cooperation, accepted tools of Security Council resolution interpretation obligate Lebanon to cooperate with the STL. First, as discussed above, while the cooperation obligation is only stated in the annex, the annex was "entered into force" by Resolution 1757.⁹⁴ Therefore, similar to the ICTY and ICTR, the Chapter VII enforcement powers carry over into the annexed documents. Furthermore, any interpretation that eliminates Lebanon's obligation to cooperate would (1) violate the purposes and aims of the resolution and (2) impose an absurd result upon the Security Council's actions. First without mandating cooperation from Lebanon, the Court's mandate would be impossible to carry out given the political dynamics in Lebanon now, and most importantly, at the time the resolution was adopted. Resolution 1757, its precursors, and 1757's travaux make clear⁹⁵ the intent of the Security Council to assist Lebanon is prosecuting those responsible for the terrorist attacks of

⁹³ Agreement Between the United Nations and the Lebanese Republic on the Establishment of a Special Tribunal for Lebanon, S.C. Res. 1757 at 9 (stating "[t]he (Lebanese) Government shall cooperate with all organs of the Special Tribunal...") [Reproduced in accompanying notebook at Tab 10].

⁹⁴ S.C. Res. 1757 1(a) [Reproduced in accompanying notebook at Tab 10].

⁹⁵ See S.C. 5658th mtg. (provisional) at 5, UN Doc. S/PV.5685 (May 30, 2007) (noting that all co-sponsors of Resolution 1757 to bring justice to those responsible for the attacks of February 14, 2005.) [Reproduced in accompanying notebook at Tab 2].

February 14, 2005. Facing a deadlocked Parliament,⁹⁶ the Security Council assisted by mandating the creation of a special tribunal that requires cooperation to succeed.

Furthermore, any argument against Lebanon's obligation to cooperate with the STL suggests that the STL operates only with Lebanon's consent. Such a position assumes the STL represents a treaty-based tribunal, a position that has been refuted in Section IV(A) above. Therefore, Resolution 1757 obligates Lebanon to cooperate with the STL. In fact, "there is an all-compassing and unconditional obligation for Lebanon to cooperate with the STL."⁹⁷

2. Resolution 1757 Nor Its Attached Documents Mandate Nations Other Than Lebanon to Cooperate with the Tribunal

Unlike the analysis of Lebanon's obligations towards the STL, third party cooperation finds little support in Resolution 1757's text, attached documents or travaux. Whereas the STL has been charged to find those responsible for terrorist attacks of February 15, 2005, Resolution 1757's perambulatory language explicitly links the resolution with efforts to negotiate the creation of a tribunal with Lebanon. While this agreement may never have been successfully concluded, it suggests that the Security Council sought to obligate only Lebanon through Resolution 1757 and its attached documents. By only mandating Lebanon to cooperate with the STL, the Security Council may have hampered the STL's ability to bring to prosecute the

⁹⁶ See Bardo Fassbender, *supra* note 72, at 1093-94 (stating "the Council, in fact sided politically with the Lebanese Government, which had many times declared that it wished to see the Special Tribunal installed at the earliest possible time, notwithstanding the objections of Parliament or at least a significant part of its membership.") [Reproduced in accompanying notebook at Tab 24].

⁹⁷ Swart, *supra* 92, at 1155 [Reproduced in accompanying notebook at Tab 29].

perpetrators of the February 2005 terrorist attack. But Security Council is not obligated to establish all Chapter VII tribunals with uniform powers nor seek comprehensive justice.⁹⁸

One could argue that all Chapter VII resolutions are binding on all members states and, therefore, that Lebanon's duty to cooperate carries to all UN member States. Admittedly the UN Charter mandates UN member states to "accept and carry out the decisions of the Security Council in accordance with the present Charter."⁹⁹ But such an argument, based solely on Resolution 1757 and its supporting documents, violates a plain reading of the Charter. First, the tribunal made no "decision" as to the third party cooperation. Second, Security Council obligations must flow from their resolutions text, aims, and purposes, and then be weighed against the sovereignty of UN members.¹⁰⁰ In Resolution 1757, the Security Council specifically limits the sovereign rights of Lebanon by obligating Lebanon to cooperate with the STL. Imputing the same obligations onto other nations without a similarly clear resolution violates sovereign equality. Therefore, third party nations appear to fulfill their obligations to the STL as long as they refrain from actively undermining the STL.

Finally, the travaux of Resolution 1757 suggests that third party obligations were purposively omitted by the Security Council. Before adopting Resolution 1757, the Secretary-General presented to the Security Council a progress report on negotiations with Lebanon to create the STL. Within the report, the Secretary-General explicitly suggested that the Security

⁹⁸ See *Nambia*, *supra* note 28, at 55, ¶ 120 (stating "[t]he precise determination of the acts permitted or allowed—what measures are available and practicable, which of them should be selected, what scope they should be given and by whom they should be applied—is a matter which lies within the competence of the appropriate political organs of the United Nations acting within their authority under the Charter.") [Reproduced in accompanying notebook at Tab 15].

⁹⁹ UN Charter art. 25 [Reproduced in accompanying notebook at Tab 13].

¹⁰⁰ UN Charter art. 2(1) (stating "[t]he Organization is based on the principle of the sovereign equality of all its Members.") [Reproduced in accompanying notebook at Tab 13].

Council consider obligating all UN members to cooperate with the tribunal.¹⁰¹ Admittedly, the statements of Security Council members at the time of Resolution 1757's adoption failed to address third party cooperation.¹⁰² But by omitting the Secretary-General's recommended language, it appears clear that the drafters of Resolution 1757 deliberately decided against obligating third party nations to cooperate with the STL.

V. Interpreting Resolution 1757 in Conjunctions With Resolution 1373 Obligates Third Party Nations to Cooperate with the STL.

A strong case can be made, however, that Resolution 1757, when viewed in conjunction with the Chapter VII Security Council Resolution 1373, obligates all States to cooperate with the STL. Resolution 1373, adopted in 2001, imposes general obligations on member States relating to international terrorism. Three issues are discussed to conclude that Resolution 1373 obligates all member States cooperate with the STL. First, while Resolution 1373's legislative nature raises doubts among some scholars as to its legitimacy, Resolution 1373 still constitutes a binding Chapter VII resolution. Second, Resolution 1757 particularizes Resolution 1373's obligation that States bring perpetrators of terrorist acts to justice, which requires third party States to cooperate with the STL. Finally, interpreting Resolution 1757 in conjunction with Resolution 1373 follows the interpretive guidelines laid out in Section III. Therefore, Resolution 1757, when viewed in conjunction with Resolution 1373, obligates third party nations to cooperate with the STL.

A. The Legislative Nature of Resolution 1373.

¹⁰¹ The Secretary-General, *Report of the Secretary-General on the Establishment of a Special Tribunal for Lebanon, delivered to the Security Council*, ¶ 53, U.N. Doc. S/2006/893 (Nov. 15, 2006) [Reproduced in accompanying notebook at Tab 12].

¹⁰² See S.C. 5658th mtg. (provisional) at 5, UN Doc. S/PV.5685 (May 30, 2007) [Reproduced in accompanying notebook at Tab 2].

Resolution 1373,¹⁰³ adopted less than three weeks after the attacks of September 11th, 2001 represented a significant change to the traditional scope of Chapter VII Security Council resolutions.¹⁰⁴ First, it did not seek to respond to a concrete situation endangering international peace and security, but to combat international terrorism more generally.¹⁰⁵ Whereas in the past, the extent and duration of the Council's binding decisions were limited to a specific event or series of events. Second from this nebulous situation, the Security Council imposed general obligations on all member states.¹⁰⁶ These two characteristics of the resolution have led some commentators to consider this a legislative¹⁰⁷ act by the Security Council that establishes new, seemingly permanent, obligations on States.

But one must be cautious when identifying obligations within Resolution 1373 through Resolution 1757 for two reasons. First, it has been noted that while the Security Council adopted the resolution, it is suspected that many members of the Security Council did not consent to its terms and have misgiving about Resolution 1373's implementation.¹⁰⁸ Furthermore, much

¹⁰³ S.C. 1373, U.N. Doc S/RES/1373 (Sept. 28, 2001) [Reproduced in accompanying notebook at Tab 6].

¹⁰⁴ See Elberling, *supra* note 37, at 338 (reviewing the impact of Resolution 1373 on the Security Council's Chapter VII powers) [Reproduced in accompanying notebook at Tab 23].

¹⁰⁵ See *id.* (reviewing that the Security Council determination that terrorism in the abstract as a threat to international peace and security).

¹⁰⁶ *Id.*

¹⁰⁷ See *id.* at 339 (stating "[t]hese resolutions (Resolutions 1373 and 1540) represent an unprecedented development: The Council has started legislating for the entire international community."), refer to note 36; see Matthew Happold, *Security Council Resolution 1373 and the Constitution of the United Nations*, 16 LEIDEN J. OF INT'L L. 593, 600 (stating "the real issue is whether Resolution 1373 will serve as a precedent for future Security Council legislation.") (2003) [Reproduced in accompanying notebook at Tab 25].

¹⁰⁸ See Andrea Bianchi, *Assessing the Effectiveness of the UN Security Council's Anti-terrorism Measures: The Quest for Legitimacy and Cohesion*, 17 No. 5 EJIL Vo. 17 881, 917 (2007) (stating "[I]t is remarkable that states have manifested no over opposition to SC Resolution 1373 and its alleged law-making character. The emotional shock subsequent to the 9/11 terrorist attacks may well explain the reluctance of states to voice abstract concerns about the exercise of normative powers of a general character by the SC.") [Reproduced in accompanying notebook at Tab 22].

scholarly criticism has been directed towards resolution 1373.¹⁰⁹ In fact, one scholar goes as far to state “the discharge of legislative powers by the Security Council violates the UN Charter.”¹¹⁰

While not without its supporters,¹¹¹ Resolution 1373’s authority rests on shaky ground.

Yet, Resolution 1373 still constitutes a Chapter VII resolution adopted by the Security Council. Therefore whatever its flaws, it still possesses binding authority. Furthermore, if a subsequent Security Council resolution defines and particularizes a Resolution 1373 obligation, the concerns discussed above become moot.

B. Resolution 1373 Obligates States to Cooperate with the STL

1. Resolutions 1757 and 1373 Impose an Obligation on Third Party States to Cooperate with the STL.

Resolution 1373 contains two relevant provisions that relate back to the STL. Resolution 1373(2) specifically obligates States to:

(d) Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and secure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts;

(f) Afford one another the greatest measure of assistance in connection with criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings;¹¹²

¹⁰⁹ Happold, *supra* note 107, at 607 (stating “[r]esolution 1373 purports to create a series of general and temporally undefined obligations binding the member states. In this it goes beyond the limits of the Security Council’s powers.”), refer to note 101; Bjorn Elberling at 348 (stating “[o]ne may question whether the Council is suitable for the exercise of legislative functions....First, the Council, is not a very transparent organ, as shown by the process leading to the adoption of Resolutions 1373 and 1540, which consisted largely of secret negotiations among the permanent members.”) [Reproduced in accompanying notebook at Tab 25].

¹¹⁰ See Elberling, *supra* note 37, at 337 [Reproduced in accompanying notebook at Tab 23].

¹¹¹ See Stefan Talmon, *The Security Council as World Legislature*, 99 No. 1 Am. J. Int’l L. Vol. 175, 181-82, 192-93 (arguing that the Charter permits the UN Security Council to impose general and abstract obligations on States, but accessing Resolution 1373 as nothing “binding as regards [its] aims but leave to the member states the choice of ways and means of reaching these aims.”) [Reproduced in accompanying notebook at Tab 30].

Taken together these sections place an affirmative duty on States to (1) bring justice to those responsible for terrorist acts and (2) afford each other assistance in criminal proceedings involving acts of terrorism. The STL is specifically charged to “prosecute persons responsible for the attack of 14 February 2005” which the Security Council characterized as a “terrorist crime.”¹¹³ As such, Resolution 1757 could activate the Chapter VII obligations contained in Resolution 1373 and obligate third party States to cooperate with the STL.

Yet, two sets of objections must be overcome before successfully finding a Chapter VII obligation that third party States cooperate with the STL. First, Resolution 1373’s obligations have been portrayed as (1) failing to create any obligations regarding how States should combat terrorism or (2) creating obligations that do not apply to the STL. Stefan Talmon, a professor of public international law at Oxford, argues that Resolution 1373 imposes only its aims on States, and not mandating the “ways and means of reaching these aims.”¹¹⁴ But, in reaching this conclusion, the author does not address Resolution 1757, the STL, or the key language of Resolution 1373 quotes above.¹¹⁵ As such, this analysis fails to consider whether Resolution 1757 represents a defined “ways and means” of combating terrorism that States are not obligated to support. Hence, Talmon analysis does not address whether a subsequent Chapter VII Security Council resolution can define and trigger Resolution 1373 obligations.

¹¹² S.C. Res. 1373 ¶2, UN Doc S/RES/1373 (Sept. 28, 2001) [Reproduced in accompanying notebook at Tab 6].

¹¹³ S.C. Res. 1757 Preamble ¶ 4, UN DOC S/RES/1757 (May 30, 2007) [Reproduced in accompanying notebook at Tab 10].

¹¹⁴ Talmon, *supra* note 111, at 181-82, 192-93 [Reproduced in accompanying notebook at Tab 30].

¹¹⁵ *See id.*

Bert Swart, professor of international criminal law at the University of Amsterdam, offers a more precise critique of applying Resolution 1373 to Resolution 1757. While finding that Resolution 1373 does impose obligations that relate to State cooperation in cases of international terrorism, Swart concludes that these obligations do not apply to the STL. Hence, Resolution 1757 does not trigger a third party obligation to cooperate with the STL through Resolution 1373. Swart only finds three limited ways that Resolution 1373 encourages cooperation between States in cases of international terrorism.¹¹⁶ First, according to Swart, Resolution 1373 indirectly fosters cooperation between States seeking to prosecute terrorist crimes by (1) mandating all states criminalize terrorism and (2) prohibiting States from refusing to cooperate simply by claiming the requesting State is motivated by political calculations.¹¹⁷ These two obligations may it more likely that States will enter cooperation agreements related to investigations of international terrorism. Second, Resolution 1373 mandates States (1) prosecute or (2) extradite any person involved in terrorist acts, which encourages state cooperation but by no means requires it.¹¹⁸ Significantly, both these incentives for cooperation cannot apply to the STL. Swart, adopting a strict reading of Section 1(f) of Resolution 1373, argues that these obligations only arise between States. Hence, these obligations would only become binding when (1) a State investigates a terrorist crime and (2) requests cooperation from another State. As a non-state actor, these obligations of Resolution 1373 cannot used by the STL.

Finally, Swart claims that even the “autonomous” cooperation obligations of Resolution 1373, i.e. obligations that do not require a State request to be activated, do not apply to the STL.

¹¹⁶ See Swart, *supra* note 92, at 1158 [Reproduced in accompanying notebook at Tab 29].

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 1158-1159.

These “autonomous” obligations include (1) the duty to freeze assets of alleged terrorists, (2) prevent terrorist attacks, and (3) engage in information sharing.¹¹⁹ But, as the author clearly states, these “autonomous” obligations do not (1) an “unconditional obligation for parties to extradite” nor (2) apply to the relationship between States and non-State entities, like the STL.¹²⁰ While these obligations are always binding on States,¹²¹ they do not relate to cooperating with the STL or any international tribunal. Therefore, Swart’s analysis suggests that Resolution 1373 fails to obligate third party States to cooperate with the STL.

But Swart’s analysis does not present a comprehensive interpretation of Resolution 1373. Even the author concedes that his observations do not “analyze in detail” resolution 1373.¹²² Swart omits any discussion of Resolution 1373’s blanket obligation on all States to bring those responsible for terrorist acts to justice.¹²³ Admittedly, when viewed alone, this obligation appears too vague to form a particular obligation on a State. The resolution fails to define either what constitutes (1) justice or (2) terrorist acts. But these difficulties are eliminated when Resolution 1373 is viewed in conjunction with Resolution 1757.

Resolution 1757 particularizes the obligations of Resolution 1373 by giving clear meaning to what constitutes justice and terrorist acts. Resolution 1757 perambulatory text

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ UN Charter art. 25 (stating “[t]he Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.”) [Reproduced in accompanying notebook at Tab 13].

¹²² Swart, *supra* note 92, at 1158 (stating “[w]hile it cannot be the aim of this article to analyse in details these or other general resolutions adopted by the Security Council in the matter of terrorism...” [Reproduced in accompanying notebook at Tab 29].

¹²³ S.C. Res. 1373, *supra* note 112, at ¶ 1(d) [Reproduced in accompanying notebook at Tab 6].

identifies the February 14, 2005 attack a terrorist act.¹²⁴ Indeed, the Security Council referred to the February 14, 2005 attack as a “terrorist” act in an operative provision of an earlier resolution established the commission charged with assisting Lebanon to investigate the terrorist bombing.¹²⁵ Therefore, Resolution 1757 defines the attacks of February 14, 2005 as terrorist acts. Second, Resolution defines “justice”. Resolution 1757 seeks to bring justice to “those involved in the terrorist attack” by creating the STL. Resolution 1757 turns Resolution 1373’s abstract mandate into a particularized obligation. Since Resolution 1373’s obligation is binding on all States, third party States have an obligation to cooperate with the STL.

However valid critiques of Resolution 1373 may be, they do not apply to third party cooperation towards the STL. Matthew Happold attacks the legality of Resolution 1373 because it “create[s] a series of general and temporally undefined obligations binding the member states.” But Resolution 1757 refines these “general and temporally undefined obligations” into particularized and concrete obligations.

Therefore, Resolutions 1373 and 1757, when analyzed in conjunction, place an obligation on third party States to cooperate with the STL. But, does this interpretation of Resolution 1757 conform to applicable rules of Security Council resolution interpretation?

2. The Obligation of Third Party States to Cooperate with the STL Obeys the Rules for Interpreting Security Council Resolutions.

¹²⁴ S.C. Res. 1757, *supra* note 113, at Preamble ¶ 2 (stating “[r]eaffirming its strongest condemnation of the 14 February 2005 terrorist bombings...”); S.C. Res. 1852, U.N. Doc S/RES/1852 (reaffirming the Security Council’s “strongest condemnation of the 14 February 2005 terrorist bombing...”; S.C. Res. Referring to the 14 February attacks as a “terrorist bombing.”) [Reproduced in accompanying notebook at Tab 10].

¹²⁵ S.C. Res. 1595(1), S/RES/1595 (2005) (stating “[d]ecides...to establish an international independent investigation Commission (“the Commission”) based in Lebanon to assist the Lebanese authorities in their investigation of all aspects of this terrorist act ...”) [Reproduced in accompanying notebook at Tab 7].

An interpretation of Resolutions 1757 and 1373 that obligates third party States to cooperate with the STL follows Paptravidris' rules of interpretation discussed in Section III B(4). First, this interpretation of 1757 does not violate the plain reading of Resolution 1757. In fact, the interpretation attempts to gap-fill Resolution's 1757 silence on the duties of third party States to the STL.

Second, an obligation of third party States to cooperate with the STL does not violate the context of either Resolution 1757 and 1373. Admittedly, the conscious omission¹²⁶ of third party cooperation from Resolution 1757 suggests the Council did not wish to obligate third party States to cooperate with the STL. But this omission must be weighed against Resolution 1757's clear relation to Resolution 1373. The text of Resolution 1757 gives concrete meaning to Resolution 1373's mandate that all countries bring those responsible for terrorist acts to justice. Furthermore, Resolution 1757's perambulatory language links Resolutions 1757 and 1373. Resolution 1757's preamble cites Resolution 1636, a Chapter VII resolution bolstering the investigation of the February 14, 2005 attacks by the UN-created International Independent Investigation Commission (IIC).¹²⁷ Significantly, Resolution 1636's preamble links a State's obligation to cooperate with the IIC with Resolution 1373's obligation that States cooperate with the proceedings and investigations of terrorist acts taken by other States.¹²⁸ Hence, it seems clear that the 1373 obligation of cooperation in proceedings related to international terrorism expands to those conducted by States and legitimate international bodies like the IIC

¹²⁶ See The Secretary General, *supra* note 101, at ¶ 53 [Reproduced in accompanying notebook at Tab 12].

¹²⁷ S.C. Res.1636 Preamble ¶ 8, S/RES/1636 (2005) [Reproduced in accompanying notebook at Tab 8].

¹²⁸ *Id.* at Preamble ¶ 8 (stating "a;; States are required to afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to terrorist acts...").

or the STL. Therefore, the context element clearly favors an interpretation that obligates third party States to cooperate with the STL.

Third, the interpretation above follows the “object and purpose” element of Paptravidris’ interpretative framework that looks to (1) the intent of the Security Council Members and (2) the duty of the Security Council to “preserve international peace and security.”¹²⁹ First, as discussed above, the intent of the drafters offers little assistance in accessing questions of third party cooperation. When voting on the resolution, the Security Council members were not occupied by Resolution 1373’s impact on Resolution 1757. Instead, Security Council members’ concerns focused on (1) Chapter VII powers could create an international court that prosecuted a crime outside the recognizes international crimes of war crimes, genocide, and crimes against humanity,¹³⁰ and (2) the legality of enforcing the annexed Agreement without Lebanon’s consent.¹³¹ Hence, the relevant question becomes not what the Security Council members intended, but whether obligating third States to cooperate with the STL violates the Security Council’s duty to preserve international peace and security. An obligation that third party States cooperate with the STL makes it more likely that the perpetrators of the February 14, 2005 attacks are brought to justice. Therefore, the obligation of third party States to cooperate with the STL follows Papstravidris’ “object and purpose” interpretive requirement.

¹²⁹ See *id.*; (Student) Efthymios Paptravidris, *Interpretation of Security Council Resolutions Under Chapter VII in the Aftermath of the Iraqi Crisis* 83, 101-02 ICLQ 56 (Jan. 2007) [Reproduced in accompanying notebook at Tab 27].

¹³⁰ See S.C. 5658th mtg. (provisional), *supra* note 102, at 5 (noting Russia’s objection to establishing an international tribunal through Chapter VII that does not deal with the recognized international crimes of genocide, crimes against humanity, and war crimes.) [Reproduced in accompanying notebook at Tab 2].

¹³¹ *Id.* at 4 (stating and China’s objection to “overrid[ing] Lebanon’s legislative organs by arbitrarily deciding on the date of the entry into force of the draft statue.”).

Finally, interpreting Resolution 1757 in conjunction with 1373 also follows Paptravidris' three interpretive presumptions. A finding that third party States are obligated to cooperate with the STL does not (1) violate the principles of the UN Charter nor (2) violate jus cogens.¹³² And, most significantly, the interpretation still follows Paptravidris' presumption that resolutions be interpreted strictly.¹³³ Given the complicated process used to justify an obligation on third party States to cooperate with the STL, such a claim may appear surprising. But such complication does not result from expansively viewing the resolutions or their terms. Instead, the complication arises from Resolution 1757's failure to discuss third party cooperation in its text or attached documents.¹³⁴ The memorandum advocates only that Resolution 1373 obligations are triggered by Resolution 1757 since the STL represents an international tribunal (1) established by the Security Council's Chapter VII powers; (2) that possesses a clearly defined and limited mandate; and, finally, (3) prosecutes only those connected to an event the Security Council defined as a terrorist act. Therefore, the obligation of third party States to cooperate with the STL constitutes a narrow interpretation of Resolution 1373.

Resolution 1373 obligates States to bring perpetrators of terrorist acts to justice. Resolution 1757 particularizes and thereby activates these obligations. Finally, interpreting Resolutions 1757 and 1373 in conjunction follows the rules of interpretation for Security Council resolutions. Therefore, Resolution 1757 obligates third party States to cooperate with the STL.

C. The *Tadic* Decision Suggests That the Chambers of the STL Will Hold that Resolution 1757 Obligates Third Party Nations to Cooperate with the STL.

¹³² See Paptravidris, *supra* 129, at 110 (stating "...there should be no additional burdens presumed for sovereign States except for these explicitly stated in the pertinent Resolution.") [Reproduced in accompanying notebook at Tab 27].

¹³³ See *id.*

¹³⁴ See The Secretary-General, *supra* note 101, at ¶ 53 [Reproduced in accompanying notebook at Tab 12].

Any judgment on whether Resolution 1757 obligates third party nations to cooperate with the STL must consider how the STL chambers may address the question. As stated in Section III B(4), the chambers of the STL, barring a definitive statement from the Security Council, would likely decide if third party nations are obligated to cooperate with the STL.¹³⁵ In this regard, the *Tadic* decision on jurisdiction¹³⁶ may play an important role for two reasons. First, the case specifically dealt with a court resolving an ambiguity within its own Chapter VII-infused governing documents. Second, this decision may have particular resonance to the current chambers of the STL: the STL's current president and presiding judge,¹³⁷ Judge Antonio Cassese, also presided over the *Tadic* decision.¹³⁸

As III B(4) discusses, the *Tadic* decision offers further support for interpreting Resolution 1757 in conjunction with Resolution 1373. In *Tadic*, the Court weighed both the (1) purpose of the ICTY's implementing resolution and (2) the context behind the resolution's adoption. In respect to the STL, Resolution 1757's context offers conflicting evidence regarding the obligation of third party to cooperate with the STL. And while a persuasive argument can be made for emphasizing the contextual elements that favor third party cooperation, it admittedly relies in establishing a clear link between Resolutions 1757 and 1373. But Resolution 1757 places a clear mandate on the STL to prosecute perpetrators of the 2005 terrorist bombing. Hence, if third party cooperation is (1) favored by Resolution's 1757's purpose and (2) not disfavored from the resolution's context, a balancing test would favor third party cooperation.

¹³⁵ See Prosecutor v. Dusko Tadic, Appeals Chamber Decision on the Tadic Jurisdictional Motion, ¶ 19, Case No. IT-94-1-AR72 (Oct. 2, 1995) [Reproduced in accompanying notebook at Tab 17].

¹³⁶ See *id.*

¹³⁷ *The Judges of the Special Tribunal for Lebanon*, THE SPECIAL TRIBUNAL FOR LEBANON, <http://www.stl-tsl.org/sid/142> (last visited Nov. 19, 2010) [Reproduced in accompanying notebook at Tab 32].

¹³⁸ See Prosecutor v. Dusko Tadic, *supra* note 135 [Reproduced in accompanying notebook at Tab 17].

Hence, if critical to fulfilling the STL's purpose, the *Tadic* decision supports an interpretation of Resolution 1757 that obligates third party States to cooperate with the STL.

VI. Conclusion

Resolution 1757 obligates Lebanon and third party States to cooperate with the STL. The Security Council's Chapter VII powers follow through the STL's implementing resolution, Resolution 1757, and its attached texts. A plain reading of these documents obligates Lebanon to cooperate with the STL. Furthermore, Resolution 1757 activates the responsibility of all UN members to bring perpetrators of terrorist acts to justice under Resolution 1373. Resolution 1757, when viewed in conjunction with Resolution 1373, thereby obligates third party States to cooperate with the STL. Therefore, while political challenges undoubtedly lay before the tribunal, the STL possesses the necessary legal authority to prevent Lebanon or other nations from frustrating its mandate.

The STL represents a Chapter VII established international tribunal. While originally intended to follow the treaty-based approach of the SCSL, Lebanon's failure to conclude a treaty with the UN paved the way for a full-fledged international tribunal. And like the ICTY and ICTR, the Chapter VII powers that established the STL also carried over into Resolution 1757's two attached documents. As such, any obligations within these three documents constitute binding obligations on the States they apply to.

The STL's governing documents obligate Lebanon to cooperate with the STL. Article 15 of the Annexed Agreement compels Lebanon to support and assist the STL. Therefore, whether or not Lebanon consents to such assistance is irrelevant; the Chapter VII authority of the Security Council requires Lebanon to cooperate with the STL.

Third party nations also have a duty to cooperate with the STL, though this argument rests on murkier foundations. Third party cooperation depends on viewing Resolutions 1757 and 1373 in conjunction. Resolution 1373 imposed a general obligation on all UN members States to combat international terrorism and bring perpetrators of terrorist acts to justice. The Security Council triggered these obligations through Resolution 1757 by (1) determining an act of terrorism occurred and (2) establishing a clear venue through which justice may be reached. Therefore, Resolution 1757 also obligates third party nations to cooperate.

Admittedly, obligating third party States to cooperate with the STL appears to run directly against the intent of Security Council members when adopting Resolution 1757. Yet, three factors weigh against emphasizing this circumstance. First, if the Security Council's intent controlled the interpretation of Resolution 1757, the STL would represent an illegal treaty-based tribunal. Second, the Security Council failed to consider Resolution 1373 obligations when adopting Resolution 1757. And, finally, the plain reading of both resolutions shows that Resolution 1757 particularizes the binding obligations of Resolution 1373.

Finally, the STL, like the ICTY in *Tadic*, will interpret its own governing documents. As such, the chambers of the STL, looking to reasoning of *Tadic*, may resolve Resolution 1757's conflicting context regarding third party cooperation by emphasizing the STL's mandate to bring justice the perpetrators of the 2005 terrorist bombing. Therefore, if third party cooperation proves critical to the STL fulfilling its mission, the Chambers will likely interpret Resolution 1757 as obligating third party nations to cooperate with the STL.