

**BEFORE THE TRIAL CHAMBER**  
**SPECIAL TRIBUNAL FOR LEBANON**

**Case No.:** STL-11-01/PT/TC

**Before:** Judge Robert Roth, Presiding  
Judge Micheline Braidy  
Judge David Re  
Judge Janet Nosworthy, Alternate Judge  
Judge Walid Akoum, Alternate Judge

**Registrar:** Mr Herman von Hebel

**Date:** 9 May 2012

**Filing entity:** Defence of Mr Mustafa Amine Badreddine

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**THE PROSECUTOR**  
v.  
**SALIM JAMIL AYYASH,  
MUSTAFA AMINE BADREDDINE,  
HUSSEIN HASSAN ONEISSI &  
ASSAD HASSAN SABRA**

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**ANNEX H**

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**Office of the Prosecutor:**  
Mr Norman Farrell

**Counsel for Mr Salim Jamil Ayyash:**  
Mr Eugene O'Sullivan  
Mr Emile Aoun

**The Head of Defence Office:**  
Mr François Roux,

**Counsel for Mr Mustafa Amine Badreddine**  
Mr Antoine Korkmaz  
Mr John Jones

**Counsel for Mr Hussein Hassan Oneissi**  
Mr Vincent Courcelle-Labrousse  
Mr Yasser Hassan

**Counsel for Mr Assad Hassan Sabra**  
Mr David Young  
Mr Guénaél Mettraux



**Extracts from Documents Cited in the Preliminary Motion Challenging Jurisdiction of the Special Tribunal for Lebanon filed by the Defence of Mr Badreddine**

**Extract H-1:** ICTY, *Prosecutor v. Tadić*, Case No. IT-94-I-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, para. 4:

*“... if the International Tribunal were not validly constituted, it would lack the legitimate power to decide in time or space or over any person or subject-matter. The plea based on the invalidity of constitution of the International Tribunal goes to the very essence of jurisdiction as a power to exercise the judicial function within any ambit. It is more radical than, in the sense that it goes beyond and subsumes, all the other pleas concerning the scope of jurisdiction. This issue is a preliminary to and conditions all other aspects of jurisdiction.”*

**Extract H-2:** ICTY, Rules of Procedure and Evidence, Rule 72 (D)

*“... a motion challenging jurisdiction refers exclusively to a motion which challenges an indictment on the ground that it does not relate to: (i) any of the persons indicated in Articles 1, 6, 7 and 9 of the Statute; (ii) the territories indicated in Articles 1, 8 and 9 of the Statute; (iii) the period indicated in Articles 1, 8 and 9 of the Statute; (iv) any of the violations indicated in Articles 2, 3, 4, 5 and 7 of the Statute.”*

**Extract H-3:** 5685<sup>th</sup> Meeting of the United Nations Security Council, S/PV.5685, 30 May 2007

p.2: For Qatar, “the draft resolution before the Council now entails legal encroachments known to all.”

p.3: Indonesia explicitly regretted intervention in the internal affairs of Lebanon and notably stated that “[t]here are no legal grounds for the Security Council to take over an issue that is domestic in nature.”

p.4: For South Africa, “The Security Council is mandated to act with impartiality and without bias. It cannot be seen to be taking sides in internal Lebanese politics.”

p.4, 5: The Representative of China stated that “[t]his move will give rise to a series of political and legal problems that are likely to add to the uncertainty surrounding the already turbulent

political and security situation in Lebanon and create a precedent of Security Council interference in the domestic affairs and legislative independence of a sovereign State.”

p.5: Finally, for the Russian Federation, “[t]he arrangement chosen [...] is dubious from the point of view of international law. [...] The constituent documents for the Tribunal, imposed by a unilateral decision of a United Nations body – that is, a Security Council resolution – essentially represent an encroachment upon the sovereignty of Lebanon.” The Russian Federation also distinguishes the envisaged Tribunal from its predecessors – the International Criminal Tribunals – by noting that their substantive jurisdiction was limited to international crimes. For the Russian Federation, in the case of Lebanon, “[t]here is no basis for a reference to Chapter VII in the draft resolution.”

**Extract H-4:** Article 52 of the Lebanese Constitution:

*“The 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.”*

**Extract H-5:** Vienna Conventions on the Law of Treaties, 23 May 1969 and 21 March 1986, Article 49:

*“If a State has been induced to conclude a treaty by the fraudulent conduct of another negotiating State, the State may invoke the fraud as invalidating its consent to be bound by the treaty.”*

**Extract H-6:** S. Sur, Relations internationales, Paris, Montchrestien, 2009, p.459:

*“[TRANSLATION] The Council implements a motion. There is, however, one limitation from a legal standpoint: in principle it shall only take provisional and revocable measures which may not definitively modify the state of the law, and, if it adopts individual measures, it does not have legislative power”.*

