

Special Tribunal for Lebanon: Either Peace or Justice?



Photo: peaceworker46 (flickr).

Poster of Saad Hariri and Rafik Hariri.

On 14 February 2005, former Prime Minister Rafik Hariri and 22 members of his staff and security detail were killed by a massive bomb in downtown Beirut. The murder gave rise to the “Cedar Revolution,” the largest demonstrations ever in Lebanon, demanding justice. Local demands were echoed in the region, and supported by USA, England and France. The Special Tribunal for Lebanon, set up in 2007, could prove to be the stiffest challenge yet to international prosecution. Will international pressure, regional tug-of-war and a high conflict potential force Lebanon to choose between peace and justice?

The UN criminal investigation into Hariri’s murder was the largest and most sophisticated in the country’s history and was followed by an international tribunal, the Special Tribunal for Lebanon (STL, hereafter the Tribunal), set up in 2007 under UN auspices to try those involved in the murder. Could the Tribunal end Lebanon’s state-sanctioned impunity? Or could the Tribunal drag Lebanon back into violent conflict? Must Lebanon choose either peace or justice? This brief provides an overview of the conditions that led to

the establishment of the Tribunal, the political, legal and constitutional aspects of setting it up and finally, the attempts to end Lebanon’s co-operation with the Tribunal leading to the deepest governance crisis since 2005.



المحكمة الخاصة بلبنان
SPECIAL TRIBUNAL FOR LEBANON
TRIBUNAL SPÉCIAL POUR LE LIBAN

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IMPUNITY

Lebanon has one of the highest numbers of political assassinations in the Middle East. Since the 1950s, two presidents, three prime ministers, several ministers, MPs, politicians, clerics, intellectuals and journalists have been assassinated. Only a few of these murders were properly investigated, even fewer went to trial and almost none led to credible convictions. Unable to hold perpetrators accountable, Lebanon legitimises state-sanctioned impunity. Why didn't Rafik Hariri's assassination meet the same fate? Hariri was a statesman of international stature with strong personal connections to political leaders in USA, UK and France. Hariri was also an Arab leader with close ties to Saudi

Arabia, a key ally of the US. Hariri's international standing was the main reason why his murder brought the three permanent members of the UN Security Council – USA, UK and France – together in an alliance to investigate and later to prosecute his murder. At the time, there was also increasing weariness in the US over Syria's role in the region with attempts to reign in Syria, a "rogue state" as it were. At the time of Hariri's murder new instruments for international prosecution had been established, namely so-called "internationalized tribunals". Thus, by the time of Hariri's murder three criteria for international prosecution were fulfilled: a victim of international stature (Hariri), a culprit targeted by Western countries (Syria) and legal instruments for international prosecution ("internationalized tribunals"). These three factors were all necessary for the UN Security Council's decision to intervene in a sovereign country such as Lebanon.

INVESTIGATION

The murder of Rafik Hariri created a political earthquake and was termed a "terrorist bombing" by the President of the UN Security Council. In order to investigate the murder the UN dispatched a fact-finding mission to Beirut. Despite the very short time at the mission's disposal the investigation report concluded that Hariri was the victim of a co-ordinated attack and that, crucially, the Lebanese judiciary lacked the capability to investigate the murder. The report recommended that the UN established an investigative commission that would lay the basis for prosecuting those responsible. On the basis of these recommendations, the UN Security Council, calling on all member states to collaborate with it, established the United Nations International Independent Investigation Commission (UNIIC) in April 2005. The first UNIIC report was issued in October 2005. It implicated Lebanese and Syrian military intelligence in the assassination and accused Syrian officials of misleading the investigation. During its five year of operation (2005–09), UNIIC issued a

total of eleven reports providing information on the investigation. While early reports were charged with "targeting Syria", the later reports were criticised for "placating Syria" which was emerging from international isolation.

PROSECUTION

Based on UNIIC's findings, the UN Security Council concurred that the assassination of Rafik Hariri was a threat to international peace and security, but did not qualify as a "crime against humanity", hence could not be prosecuted by the International Criminal Court (ICC). The solution was to set up an "international tribunal", the Special Tribunal for Lebanon (STL). Unlike other "hybrid tribunals" which mix international and national law, the Special Tribunal for Lebanon is based only on Lebanese criminal law as well as the Lebanese definition of "terrorism" as defined in Article 314 of the penal code. The Tribunal does not have jurisdiction over any international crime. The only "international" feature of the

Key facts

The Special Tribunal for Lebanon (STL) is an international court set up to prosecute those involved in the assassination of former Prime Minister Rafik Hariri on 14th February 2005. The Tribunal was established by the UN Security Council following a [fact-finding mission](#) and an international criminal investigation (UNIIC). UNIIC was set up by the UN Security Council resolution [1595](#) on 7 April 2005 and submitted a total of [eleven reports](#) giving details of the investigation. From 1 March 2009, UNIIC was subsumed under the Special Tribunal for Lebanon (STL). The UN Security Council established the Tribunal on 30th May 2007 with the adoption of resolution [1757](#), which included the [Statutes of the Tribunal](#) as an annex. The resolution passed the Security Council with a very slight margin and with five member states abstaining (China, Indonesia, Qatar, Russia and South Africa).

The Tribunal began operations on 1 March 2009 and is the first example of international prosecution of a "terrorist crime" as defined by domestic, Lebanese law. The Tribunal is the first to allow trials *in absentia*. Only Lebanon is obliged to collaborate with the Tribunal. The maximum penalty is life imprisonment. The Tribunal is based in Leidschendam, a suburb of The Hague. The location was chosen to protect witnesses and staff. The Tribunal's funding is shared between the UN (51 percent) and Lebanon (49 percent). The annual budget in 2009 was about US\$ 51 million and the projected budget for 2011 is US\$ 66 million.

Tribunal is the use of international judges and prosecutor and being located in a third country (the Netherlands). The Tribunal could hence more aptly be described as an "internationalized tribunal".

RATIFICATION

The Tribunal was set up by an agreement between the UN and the government of Lebanon in 2007. The ratification was divisive and nearly led to the government's collapse. Because the Lebanese government was unable

to ratify it, the UN Security Council in the end ratified the agreement unilaterally on 1st June 2007. Although established by a UN Security Council resolution (under Section VII in the UN Charter), only Lebanon is obliged to cooperate with the Tribunal, as are the courts of Lebanon. Other states are not obliged to cooperate with the Tribunal but the Tribunal can seek their cooperation on a voluntary basis. Due to the potential threat to the Tribunal, staff, plaintiffs and defendants, the Tribunal is located outside Lebanon, in Leidschendam, a suburb of The Hague in the Netherlands. While this is a security measure to protect witnesses and staff, the distance from Lebanon is a problem both for the judicial process and its legitimacy at home in Lebanon.

MANDATE

The mandate of the Tribunal sets it apart from all other “internationalised tribunals”. First, the mandate is by far the narrowest of any international tribunal. It only seeks the perpetrators of Hariri’s assassination. Because of this limitation in its mandate, the Tribunal’s jurisdiction is narrowly bracketed in time; from 1 October 2004 until 12 December 2005, a period that saw a surge of deadly attacks on politicians and journalists. Only if those murders and attacks can be linked to Hariri’s assassination, is the Tribunal empowered to rule in the case. As new attacks reverberated throughout Beirut, the time frame of the investigations has been extended and now ends in 2008. Secondly, unlike other tribunals set up under international law, the Special Tribunal for Lebanon does not contain provisions that limit the immunity of heads of state. Unless there are sufficient grounds for lifting this amnesty, the Tribunal will not be able to try heads of state. Finally, the mandate only obliges Lebanon to collaborate with the Tribunal. This is probably one reason why the Tribunal allows trials *in absentia* in line with Lebanese law. Professional jurists suspect that these provisions limiting the STL’s mandate are not the result of a judicial oversight but, quite the contrary, inscribed to cripple the Tribunal’s effectiveness.

POLITICISATION

Since its inception in 2009, the Tribunal’s legitimacy, objectivity and independence have been challenged. Several of the Tribunal’s top officials and senior staff have resigned, fuelling rumours that they quit over attempts to influence the Tribunal’s work. The Tribunal has rejected all claims to a politicisation of the inquiry, but many Lebanese still see it as tool to impose a Western agenda on Lebanon. This was inevitable as the Tribunal is seeking justice for one victim who was close to Western allies. To the Tribunal’s critics, politicisation means that its ultimate purpose is not to prosecute Hariri’s assassins but to pressure Hizbollah, blackmail Syria and weaken Israel’s enemies. The claim to “politicisation” brings the Tribunal into conflict with Lebanon’s foremost politico-military movement, Hizbollah (Party of God). In late May 2009 an article in the German magazine



Der Spiegel claimed that Hizbollah was behind Hariri’s murder. The claim made international headlines but was not corroborated by other sources. Yet, the charge of involvement was rekindled during spring 2010 when 18 Hizbollah members were summoned for questioning by Tribunal investigators in Beirut. Hizbollah’s leader, Hassan Nasrallah, rejected all charges of involvement but promised to cooperate with the inquiry as long as it was not “politicised”.

Chief Prosecutor
Daniel Bellemare
Photo: UN Photo

INDICTMENT LEAKS

In mid-2010, the Hizbollah’s leader Hassan Nasrallah announced that he had information that the Tribunal would indict “rogue” Hizbollah members on involvement in Hariri’s assassination. This made the Hizbollah-led coalition step-up the political pressure to abolish Lebanon’s obligations vis-à-vis the Tribunal and targeted the funding, challenged the evidence (“false witnesses”) and sought to withdraw the four Lebanese judges serving on the Tribunal. The Tribunal, Hizbollah claimed, was an “Israeli project” and used by Western powers to target the movement. The growing tensions over the Tribunal fuelled fears that the announcement of indictments could lead to civil unrest. Moreover, there were damaging media leaks claiming to be details of the execution of the attack on Rafik Hariri (using mobile phones), the suspects (Hizbollah members) and the circumstantial evidence (telephone logs) that will form the basis of the prosecutor’s case. Unauthorised media leaks also included taped interviews between Tribunal investigators and the former Premier Saad Hariri. The media leaks were condemned by the Tribunal, but could force the Office of the Prosecutor to review evidence and witness protection as well as added to the urgency of finalising the indictments.

GOVERNANCE CRISIS

From the end of 2010, the potential implication of Hizbollah-members in Hariri’s murder made the looming Tribunal indictments a ticking bomb. Trying to defuse the crisis, there was intense mediation efforts by Saudi Arabia and Syria seeking a compromise that would distance Lebanon from the Tribunal. The failure of these

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initiatives led to the collapse of the (Saad) Hariri-cabinet on 12 January 2011, when eleven ministers submitted their resignation. On 25 January, a slim parliamentary majority elected Najib Mikati as new Prime Minister, followed soon after by street protests, road blocks and clashes by enraged Sunnis. The protesters view Mikati's election as a coup to oust Hariri and end Lebanese cooperation with the Tribunal. Lebanon now faces its most critical governance crisis since 2005. The Hariri-coalition insists on full cooperation with the Tribunal and refuse to take part in any government not fully committed towards this goal. The Hizbollah-led coalition, likewise, insists on ending Lebanon's cooperation with the Tribunal. Neither side is likely to compromise on this issue in the short term. The appointment of a new Prime Minister has stemmed but not solved the governance crisis and heralds a period of political instability, sectarian tensions and international mediation with the Tribunal at its centre.

INDICTMENTS AND TRIAL

On 17 January 2011, the Chief Prosecutor Daniel Bellemare handed the indictment over for review to the Tribunal's pre-trial judge. The indictment will not become public ("operative") until confirmed at a later date. It is expected that the "operative" indictments will detail the identity of the accused, a brief description of their crime and an outline of the main evidence. The subsequent trial is expected to take a long time, maybe even years, especially in the case of *in absentia* trials. Due to the complexity of the trial, the mass of evidence, the need for witness protection and as well as to ensure transparency of the court proceedings, the trial will take place in a specially designed "high-tech" courtroom. The trial will be broadcast as TV-screenings, video and audio feeds (time delayed by 30-minutes), and transcripts and pictures will be provided to accredited journalists by the Tribunal's Media Centre. The general public will also be able to follow the proceedings through (edited) video feeds broadcast on the internet.

CONCLUSION

The political costs of the Special Tribunal for Lebanon are not only formidable, but could in the end prove insurmountable. The Tribunal's independence has been questioned amidst attempts to end Lebanon's commitments towards it, leading to a governance crisis. There is apprehension that the release of

the indictments detailing the identity of the accused could entrench local divisions and lead to civil strife. Yet, the costs of not prosecuting Hariri's murder are also daunting. It would be interpreted as a green light for retributive justice and state-sanctioned impunity. The Special Tribunal for Lebanon could prove to be the stiffest challenge yet to international prosecution, due to the regional power-play, the local tug-of-war and the very high conflict potential in Lebanon. Rather than the Tribunal deterring new attacks, the Tribunal could be deterred from reaching its objectives due to the strong polarization in Lebanon, the international community's rapprochement with Syria and the relentless attacks on the Tribunal's credibility. Should the Tribunal fail to reach any verdicts, it would deal a formidable blow to the reputation of international tribunals. Thus, there is apprehension that Lebanon cannot have peace and justice but forced to choose either.

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