

Lebanon and the United Nations Special Tribunal: Between (Un)Accountability and (In)Stability?

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In January 2014, nearly nine years after the February 14, 2005 assassination of twice Lebanese Prime Minister Rafiq Hariri, the United Nations Special Tribunal for Lebanon (STL) – the ad hoc hybrid criminal court established to investigate and prosecute the assassination – formally began the trial. The timing is particularly interesting, as Lebanon currently finds itself in an especially difficult predicament, with a new and fragile government emerging after a long period of political paralysis and with a general state of internal instability due to the domestic impact of the Syrian civil war.

Since its creation in 2009, the STL has always been a very controversial and divisive issue within Lebanon, with pro- and anti-STL camps reflecting larger and deeper internal political cleavages. Because of the tribunal's disputed status and due to its long and troubled history, the current trial represents both a long-awaited opportunity for advancing justice as well as a potential threat to an already fragile internal equilibrium.

This article examines the STL's current role and future potential by addressing its disputed beginnings and contested history, and then analyzing the current developments in the Hariri investigation and the domestic reactions to the trial within Lebanon.

A Brief History of the STL: Obstacles, Shortcomings, and Achievements

The opening of the Hariri trial takes on particular significance given the STL's tortuous history, as well as the numerous obstacles faced by the Hariri investigation over the past nine years.

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The political assassination of self-made billionaire, twice Prime Minister, and “larger-than-life” political leader Rafiq Hariri represented an historical watershed in Lebanese history, spurring the creation of a cross-sectarian civil society and political opposition movement demanding justice for the assassination. This large coalition became the driving domestic force behind the 2005 “Independence Intifada,” the popular mobilization that, assisted by strong international pressure, successfully fought against the Syrian presence in Lebanon, itself a legacy of the post-civil war period.

Indeed, with the end of the bloody civil war that raged in Lebanon between 1975 and 1989, Syria became the “official guarantor of the peace,” a status that resulted in the Syrian regime assuming de facto political and military control of Lebanon and in effect earning international acceptance for its limited hegemony over its western neighbor. The challenge to that status, both within Lebanon and internationally, began following the death of Hafez al-Assad in 2000 and the rise to power of his son Bashar. In tandem, Syria came under closer international scrutiny, first after 9/11, and then following the 2003 US invasion of Iraq, due to its initial backing of the anti-American insurgency.¹ The culmination of this process resulted in UN Security Council

Despite its delays, setbacks, and problematic record, the STL trial holds potential, and ensuring justice for the Hariri assassination would be of historical significance for Lebanon, while promoting transitional justice, accountability, and the rule of law.

Resolution 1559, passed in September 2004, calling for all foreign forces to withdraw from Lebanon and demanding an end to foreign political interference.² In parallel, Syria’s status within Lebanon also grew increasingly contested, as Damascus’s relations with Rafiq Hariri in his second term as Prime Minister between 2000 and 2004 were severely strained, due to heightened Syrian meddling into Lebanese domestic affairs, especially following Damascus’s pressure to extend pro-Syrian President Emile Lahoud’s term after its official expiration in 2004, a move that led to Hariri’s resignation as Prime Minister in October 2004.³

Following his resignation, Hariri seemed the most likely candidate to assume the leadership of the emerging cross-sectarian anti-Syrian camp, a process that brusquely came to a halt with his assassination in February 2005. In the context of this charged political environment, the Hariri attack fueled both domestic as well as international calls against the Syrian presence in Lebanon, with countries such as the United States and France

indirectly linking the assassination to Damascus and immediately demanding Syria's full withdrawal from Lebanon. These same anti-Syrian forces, both international as well as domestic, played a key role in demanding the creation of an international mechanism to investigate the Hariri assassination.

The political divisions surrounding the motives and legitimacy of international involvement in the Hariri investigation represented the first monumental obstacle to the creation of the STL. In other words, even before its actual creation, the STL embodied an extremely divisive issue, with the domestic anti-Syrian March 14 coalition, backed by countries like the US and France, fully supporting the tribunal, and with the local pro-Syrian March 8 camp led by Hizbollah firmly rejecting it. Indeed, for those domestic forces that had been supportive of Syria's extensive role in Lebanon, the international investigation appeared early on as merely a political tool designed to undermine Syria and its allies.

Shortly after the February 2005 attack, the UN Security Council authorized an independent fact-finding mission.⁴ Their report, detailing the shortcomings of the Lebanese security and judicial sectors in terms of impartiality, commitment, and capabilities, served as a basis for UN Security Council Resolution 1595 (April 2005) setting up the International Independent Investigation Commission (UNIIC), an ad hoc body created to provide assistance to the Lebanese investigations.⁵ Some months after the creation of the UNIIC, Prime Minister and March 14 political leader Fouad Siniora asked the Security Council to increase the level of international involvement in the Hariri investigation by both setting up a tribunal and extending the Commission's mandate to review political assassinations that appeared to be connected to the Hariri case.⁶ Within Lebanon, pro-Syrian parties Hizbollah and Amal protested the request by boycotting the cabinet for two months, showing that the battle to set up the STL had just begun.⁷

The culmination of this internal clash came in November 2006, when the government attempted to hold a vote in the executive cabinet to approve a draft protocol sent by the UN and laying the framework for the creation of the STL as a "hybrid tribunal."⁸ The announced vote led to the resignation of the six Hizbollah and Amal ministers, which in turn resulted in a complete paralysis of the political system.⁹ With the resignations of the Shiite ministers, the opposition held the March 14 government illegitimate on the grounds that not all major sectarian groups were represented in the cabinet as required by the Constitution. Eventually this sparked an 18-month political boycott, propelling Lebanon into prolonged crisis. In this context, PM Siniora sought

to overcome the impasse by asking the UN to set up the tribunal unilaterally, thus avoiding having to hold a cabinet and parliamentary domestic vote on the STL. The UNSC proceeded accordingly and, with Resolution 1757 of May 2007, established the STL under Chapter VII of the UN Charter.¹⁰

Predictably, the bypass of the paralyzed political system only contributed to make the STL more controversial domestically, with the March 8 opposition camp arguing the tribunal had been set by an illegitimate government through illegitimate, *ultra vires* means. However, on legal grounds the creation of the STL was sound, as the UNSC, through Resolution 1757, did not impose unratified treaty obligations on Lebanon (which indeed would have been *ultra vires*), but rather incorporated such agreement and made it binding through a Chapter VII resolution that established the STL as an independent UN body. Yet domestically, the *sui generis* process behind the creation of the tribunal only increased domestic tensions.

Understanding the political context and history behind the creation of the STL can help convey its divisive nature. Similarly, taking a look at the UNIIIC's and STL's record can also contribute to a better assessment of the tribunal's potential for achieving justice and promoting the rule of law within Lebanon, a country with a long history of internal political violence and with a general tendency toward promoting amnesia as opposed to accountability. Indeed, the STL has been able to advance an internal debate regarding both transitional justice and reconciliation, while also expanding the scope of its investigations to a number of cases apparently connected to the Hariri assassination.¹¹

Still, the actual STL performance has come under heavy scrutiny, first and foremost by the March 8 camp, whose criticism has cast the tribunal as "serving foreign interests" and as an Israeli-American plot. The Hizbollah campaign against the STL escalated following leaks in 2009 regarding upcoming indictments against members of the organization: at that point Hizbollah launched direct vitriolic attacks against the tribunal, while also claiming to possess evidence implicating Israel in the Hariri assassination.¹²

Another significant problem with the tribunal's actual performance has been the slow pace of the investigations – often cited as one of the main downsides of international criminal tribunals in general¹³ – as well as its notable setbacks. The biggest setback to date was the arrest (in August 2005) and subsequent release (in April 2009) of four high level pro-Syrian generals originally deemed connected to the assassination.¹⁴ Whereas the initial arrests had boosted the UNIIIC's reputation for effectiveness, the

subsequent release of the first set of suspects planted doubts regarding the international investigation and its potential to reveal the truth behind the Hariri assassination.

In addition, the arrest and release of the four generals became strong ammunition used by the anti-STL camp to question the tribunal, with the Hizbollah-led opposition launching a campaign in the fall of 2010 to demand the creation of an ad hoc political commission to investigate the issue of the “false witnesses” that had allegedly tampered with evidence later used to arrest the suspects. When the March 14 forces refused to concede on this point, fearing the commission would become a ploy to delegitimize the STL, a political crisis ensued, resulting in the collapse of the Saad Hariri government in January 2011.

A major breakthrough in the investigations followed in the summer of 2011, when the STL finally issued its first set of indictments against four members of Hizbollah; an additional suspect was indicted in October 2013.¹⁵ Yet while this development boosted the tribunal’s record, it still provided only a partial picture of the actors and interests behind the Hariri assassination: the indictments neither clarified the relations between the list of four (later extended to five) suspects and Hizbollah itself, nor explained the level of Syrian involvement in the plot. Equally significant was that the STL has not been able to apprehend (or even get in touch with) the suspects, meaning that the trial of *Prosecutor v. Ayyash, Badreddine, Oneissi, and Sabra* began in absentia.¹⁶ The STL is the only modern international criminal tribunal (excluding the Nuremberg trials) to allow the trial to proceed without the accused present, an issue that has been used to question the STL and its capacity to guarantee a fair trial for the accused.¹⁷

The STL Today: Developments, Domestic Reactions, Future Impact

Nine years after a bombing attack killed former Prime Minister Hariri, and following a string of later political assassinations that targeted predominantly journalists, politicians, and members of the security sector either close to the March 14 anti-Syrian forces or involved in investigating the Hariri case (or both), the STL trial finally began in January 2014.

Perhaps ironically, the public hearings in Leidschendam, a suburb of The Hague, started only a few weeks following the December 27, 2013 assassination of former Finance Minister and Hariri advisor Mohamad Chatah,¹⁸ an event that was a powerful reminder of the urgent need to promote justice and accountability in Lebanon. The trial also began during

one of the most complex and fragile periods in recent Lebanese post-civil war history, with the country ever-more polarized between pro- and anti-Syrian supporters due to the preexisting political and increasingly sectarian cleavage made more prominent by the ongoing civil war in neighboring Syria. In turn, the growing internal tensions enhanced by the Syrian conflict resulted in both a long and painful political paralysis, as well as the steady rise in internal violence, boosting domestic Salafi-jihadist groups and overall leading to renewed political and societal instability. Adding to the complexity of the current situation, the ongoing Syrian conflict has put further pressure on Lebanon through the steady influx of Syrian refugees, numbering one million by late 2013 – more than 20 percent of Lebanon’s total population – and expected to rise to 1.5 million by the end of 2014.¹⁹

In this charged political environment, the first set of public STL hearings held between January 16 and February 26, 2014 attracted intense scrutiny within Lebanon. The hearings were suspended in late February, with the STL in recess at least until mid-May 2014 to allow for the defense team of the fifth accused individual to prepare adequately and thus allow the cases to be heard together.²⁰

The opening weeks of the trial, publicly broadcast on the STL website, served as the first opportunity for the general public to hear the arguments of both the prosecution and the defense.²¹ The prosecution’s case is strongly based on telecommunications evidence, tracking the activities of a complex network of cellular phones, some of which were allegedly connected to the accused and, in the period between December 2004 and the assassination, used consistently in the vicinity of PM Hariri, revealing a pattern of close surveillance.²² In its opening statement, the prosecution stated that the attack had been carefully planned and that it seemed to involve a minimum of 19 people actively tracking the former Prime Minister since October 2004, with six present on the day of the crime (including a suicide bomber who allegedly drove an explosives-laden truck in downtown Beirut).²³

The defense team stated its intention to deconstruct, piece-by-piece, the entire evidentiary apparatus built by the prosecution, starting with the notion that the assassination was perpetrated by a suicide bomber driving an explosives-laden truck (and instead resurrecting an earlier theory concerning a possible underground bomb).²⁴ In addition, the defense presented the possibility of the attack having been planned by a cell of radical Islamists linked to al-Qaeda. This claim revived an investigative lead initially pursued by the prosecution, but later abandoned after concluding

that the initial jihadist video sent to al-Jazeera on the day of the bombing was in fact an attempt to derail the investigations, with the “confession” itself having been coerced from an individual allegedly recruited by one of the Hizbollah accused.²⁵ Most significantly the defense, referring to the prosecution’s case as “absurd,”²⁶ claimed that the telecom surveillance data alone was insufficient to prove that the suspects were plotting to kill the Prime Minister, and added that the prosecution had failed to provide a solid and credible motive for the Hariri assassination.²⁷

The STL trial represented a chance to begin hearing the testimonies of those close to the twenty-one victims killed in the assassination, as well as those who survived the attack.²⁸ Furthermore, the opening of the STL trial proved noteworthy for the reactions it elicited within Lebanon and regionally. The event was celebrated by the March 14 camp in general and by Hariri’s party, the Future Movement, in particular. Saad Hariri, son of Rafiq and party leader, attended the opening hearing and openly urged the Lebanese government to cooperate fully with the UN tribunal.²⁹ Later, on the anniversary of his father’s death, Saad Hariri gave another powerful speech emphasizing the importance of the trial to Lebanon’s future, while stressing his intention to return to Lebanon after a self-imposed exile deemed necessary for security reasons.³⁰ Hariri’s return stands to be especially meaningful, as 2014 is scheduled to be a year of both presidential as well as general parliamentary elections within Lebanon.

The main opponents of the STL, headed by the Hizbollah-led March 8 coalition, have generally kept a low profile, with the Nasrallah-led organization suspiciously silent on the trial. Early in 2014, Syrian President Assad too spoke against the STL, dismissing the trial while noting:

Every accusation was made for political reasons. Even in the past few days, we have not seen any tangible proof put forward against the parties involved in the case....I believe that the whole thing is politicized and is intended to put pressure on Hezbollah in Lebanon in the same way that it aimed at putting pressure on Syria in the beginning, immediately after al-Hariri’s assassination.³¹

Within Lebanon as a whole, however, and although the opening of the trial was covered widely and analyzed in the local press, the country has primarily remained preoccupied with its own internal crisis. More specifically, Lebanon has been beset by an eleven-month political paralysis during which designated Prime Minister Tammam Salam struggled to

overcome the antagonism between the two main political blocs and form a national unity government. That impasse was finally broken on February 15, 2014, with the Prime Minister announcing the establishment of a new executive cabinet based on a much debated 8-8-8 formula under which both March 14 and March 8 would be awarded eight ministerial posts, with the remaining eight seats assigned by the Prime Minister along with President Suleiman (but with at least two of these centrist candidates closely affiliated with March 14 and March 8, meaning that de facto, both blocs will have veto power).³² The distribution of the ministerial posts has itself also been significant, especially with an eye on the STL and Lebanon's future relationship with the tribunal: the ministries that are most closely expected to cooperate with the STL, the Ministries of Justice and the Interior, have been awarded to the March 14 camp.³³

Looking ahead, the new government's stability will be determined by the cabinet's ability to resolve a number of urgent and thorny issues, from crafting a joint programmatic statement, to reforming the electoral law in preparation for the November 2014 parliamentary elections and holding presidential elections, as well as dealing with the rising internal violence and discussing Hizbollah's involvement in the Syrian civil war. In this context, cooperation with the STL will continue to be a potentially divisive issue, with both political camps likely to rely on the findings and evidence disclosed during the trial as ammunition in their ongoing political war.

The STL Going Forward: Adjusting Expectations to Reality

The political context behind the STL and the difficult process of the institutional design and birth of the tribunal have made the Hariri investigation an inherently politically charged and divisive issue within Lebanon. Furthermore, the slow pace of the investigation and its repeated setbacks have contributed to an overall decline in the general level of popular enthusiasm and support for the tribunal. This has especially been the case as the STL began its public hearing during a particularly troubled time for Lebanon. Indeed when the STL trial officially began on January 16, 2014, Lebanon found itself in a state of deep political paralysis, rising societal tensions, and growing polarization and violence. With the country deeply destabilized since the beginning of the bloody civil war in neighboring Syria, it is no surprise that the STL trial was unable to capture the full attention of Lebanese society.

And yet, despite its delays, setbacks, and problematic record, the STL trial holds potential. Indeed, given the ongoing campaign of political intimidation and assassinations still occurring in Lebanon, and considering the painful domestic legacy of amnesia with respect to internal violence, ensuring justice for the Hariri assassination would be of historical significance for Lebanon, while promoting transitional justice, accountability, and the rule of law. As Peter Haynes, the lead legal representative of the victims in the STL trial, eloquently stated in his initial statement: “Our clients are temporary victims, but their cause is eternal. The purpose of tribunal is to put end to impunity and bring justice to the victims’ families....By ending impunity and restoring basic human rights to people of Lebanon, by applying principles of international justice, this tribunal can change history.”³⁴

Nonetheless, in the short to medium term the tribunal will likely continue to be a divisive and potentially destabilizing issue for the new government, with the STL findings used by the competing political camps against each other. In the longer term, the tribunal’s potential to make a strong local and regional impact will depend on its ability to adopt a broader perspective and address the question of who commissioned the Hariri assassination and which political leaders and authorities contributed to the heinous crime.

Although the trial now rests, political events both within Lebanon and the region will not do the same. The trial, which is expected to be both long and slow, and its outcome will be a test not just for Lebanon but for international criminal justice as well.

Notes

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- 6 UNSC Resolution 1644 (2005), December 15, 2005, S/RES/1644 (2005), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/647/20/PDF/N0564720.pdf?OpenElement>.

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- 16 To date the suspects are: Mustafa Badreddine, Salim Ayyash, Hussein Oneissi, Assad Sabra, and, since October 2013, Hassan Habib Merhi.
- 17 Paola Gaeta, "To Be (Present) or Not To Be (Present)," *Journal of International Criminal Justice* 5 (2007): 1165-66.
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