

The Special Tribunal for Lebanon

Promoting justice or prolonging conflict?

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The Special Tribunal for Lebanon (STL) was created as an internationalised criminal court to investigate the politically-charged assassination of former Prime Minister Rafiq al-Hariri in February 2005, after an international inquiry assessed that the Lebanese judiciary would need significant international assistance to investigate, and the 14 March-led government of Lebanon requested the creation of an internationalised tribunal. Its advocates have suggested that as a court with international participation, it could serve a symbolic and exemplary function to promote the rule of law domestically, as is commonly expected of international and internationalised trials. Enhancing the rule of law is in turn expected to support wider changes in the justice and security environment.

However, Lebanon's tribunal, like its transition from conflict, is unique. Its operation to date has prompted cabinet crises and exacerbated political divides. Two decades after the end of the civil war in Lebanon, is the STL likely to contribute to peace or risk promoting conflict should any prosecutions go forward?

Establishment of the STL: aims and mission

Following Hariri's assassination the UN Security Council established the mandate of an International Independent Investigative Commission (IIIC) in April 2005. The IIIC concluded that the assassination was carried out by a group with "extensive organisation" and indicated that some evidence pointed to both Lebanese and Syrian involvement. It transmitted evidence to Lebanese judicial authorities and stated that further investigations be undertaken by domestic judicial and security forces.

The IIIC pointed to weaknesses in Lebanon's judiciary. Not only was the post-war Lebanese judiciary technically

incapable of handling alone such an inquiry, it remained highly politicised and sensitive to Syrian influence as well as to instrumentalisation by pro-Syrian constituencies in Lebanon. This was especially apparent after the IIIC named Syrian officials among the alleged sponsors of the crime and recommended the arrest in August 2005 of four Lebanese generals suspected to be involved. Neither the Lebanese judiciary nor the 14 March-led government, formed after an electoral deal with Hezbollah in the Legislative election of May 2005, was able to impose a Lebanese criminal court.

The UN Secretary-General's report of 21 March 2006 (S/2006/1636) advocated a mixed Lebanese-international tribunal as necessary due to bias and corruption in the domestic judiciary. On 29 March UN Security Council Resolution 1664 called for the Secretary-General to negotiate an agreement with the Lebanese government aimed at establishing a mixed criminal tribunal to prosecute individuals responsible for the Hariri assassination and 22 related killings – directly, or as accomplices, contributors or superiors.

Advocates of the STL emphasise their hopes for a wider legacy for domestic rule of law. For instance the International Center for Transitional Justice in 2008 expressed the hope that the fact that the tribunal would apply international standards of due process and would respect the rights of defendants more generally had the potential to enhance domestic rule of law in Lebanon by demonstration. These arguments have been echoed by the 14 March alliance.

Some argue that the tribunal could serve as an example of impartial justice in operation, and could result in justice for

political crimes, both rarities in Lebanon. Advocates of this position point to the case of the four Lebanese generals, imprisoned for four years by the Lebanese government on behalf of the tribunal, and released when the prosecutor indicated they were not of interest following the revelation of false witness statements.

Legal Status

Domestic legal status: the constitutional issues

Under the Lebanese constitution, parliamentary approval was needed for the creation of the STL. However, due to opposition by the 8 March Alliance, the parliament did not vote to ratify the agreement. Instead the UN Security Council passed resolution 1757 on 30 May 2007 decreeing that the agreement, included as an annex, would enter into force. The Council sought to bypass the need for parliamentary approval by invoking Chapter VII of the UN Charter, albeit with the reassurance of the government that a majority in parliament backed the tribunal, as 72 of Lebanon's 128 MPs belonged to the 14 March Alliance. The STL officially began functioning in March 2009 and the trial chamber presented a first series of indictments in June 2011.

Nonetheless, while 14 March strongly supported the STL, Hezbollah and its 8 March allies strongly opposed it, triggering parliamentary and cabinet crises and several months of hostile popular protest in front of the Prime Minister's office when in November 2006 Shiite members of the cabinet suspended participation to protest the government bypassing the parliamentary blockade and its signature of the draft agreement. Today, legal scholars remain divided as to the constitutionality of the tribunal.

International legal status: the creation of what?

The mode of creation of the tribunal meant its legal status is also murky internationally. Despite the absence of parliamentary approval, Security Council Resolution 1757 purported to simply give effect to the agreement to establish the STL. The Council could have created a tribunal exercising its Chapter VII powers, as it had done with the International Criminal Tribunals for the former Yugoslavia and Rwanda. It did not do this in Lebanon, however. In fact, the 14 March majority opposed such a choice for fear of undermining its commitment to national sovereignty. The Council is not empowered to compel any state to accept a treaty obligation.

The STL's international legal status is disputed in another way: it is often referred to as an internationalised or hybrid criminal tribunal, in that it employs a mixture of domestic and international judges and staff, is internationally-mandated and in part supported financially by the international community. Generally, hybrid tribunals share

a number of common features: they are located in the country affected by the violence or conflict to be addressed; they use international and domestic judges, lawyers and other court staff; and they prosecute international crimes, but may also include some domestic crimes within their remit. Initially, the STL shared few of these characteristics: it was supposed to apply domestic law pertaining to domestic crimes of terrorism and murder, rather than international law crimes such as crimes against humanity or war crimes; and it is located outside Lebanon, close to The Hague and other international criminal tribunals such as the International Criminal Court and the ad hoc tribunals for the former Yugoslavia and Rwanda.

A ruling in January 2011 by the appeals chamber of the STL that domestic Lebanese law on terrorism should be interpreted alongside Lebanese obligations with respect to terrorism in international law means that the tribunal now applies international law, contrary to the facial terms of its mandate. Finally, distinct from other internationalised criminal tribunals and potentially in conflict with international human rights standards, the tribunal can try accused *in absentia* if they refuse to appear and cannot be arrested, which will most probably be the case.

Indictments and political divisions

Many countries emerging from war have sought to try individuals for serious violations of international law, or have used other measures such as vetting, commissions of inquiry, reparations and memorials. In Lebanon, prosecuting disappearances, crimes against humanity or war crimes is impossible because Lebanon's Amnesty Law of 1991 (law 94/91) includes all crimes except political assassination. The tribunal is controversial because it is only designed to address a limited set of crimes, even though numerous other assassinations occurred both during and after the end of the civil war. Some civil society and human rights activists also see the tribunal as politicised and unable to deliver accountability; others that promote the idea of some form of transitional justice or reckoning with the past do not support the tribunal because of its limited scope.

The tribunal has been divisive politically. Since 2006 it has been the main bone of contention between the 14 March alliance, which wants to see the murderers of Rafiq al-Hariri discovered and sentenced, and the 8 March, for whom it serves the goals of Saad al-Hariri, Rafiq's son and heir, and is intended primarily to isolate Syria and Hezbollah on the international scene.

While Syrian officials close to Bashar al-Assad were at the forefront of the pending accusation until 2008, intense domestic political tension including Sunni-Shia fighting in



Saad al-Hariri (centre) arrives in downtown Beirut to mark the third anniversary of the assassination of his father, Prime Minister Rafiq al-Hariri, 14 February 2008 // © Marwan Naamani/AFP/Getty Images

the streets of Beirut in May 2008 raised speculation about possible political compromise by Hariri, either requesting the closure of the tribunal or distancing the government from the tribunal without closing it.

In June 2011 four individuals linked to Hezbollah were indicted by the tribunal and the Lebanese justice system was given 30 days to execute arrest warrants. Reaction to the indictment was divided along political lines; 14 March politicians, including Hariri, called on Hezbollah to cooperate with the tribunal; Hezbollah leader Hassan Nasrallah claimed the indictment included no real proof of Hezbollah involvement, launching violent accusations against alleged Israeli collaborators among Lebanese security forces and asserting in July 2011 that the 'Party of God' was "prepared to confront the issue of the Tribunal".

Cooperation by the Lebanese judiciary with the STL has been further jeopardised since the change of government in June 2011. Hezbollah and Michel Aoun's Free Patriotic Movement, who are members of the 8 March government of Najib Mikati, advocate boycotting the STL and refusing any renewal of its mandate. In November 2011, in a creative compromise, Mikati resolved neither to confirm nor comment on the renewal of the STL mandate, but to comply with international resolutions. He arranged for Lebanon's annual share of the STL budget to be paid through the Higher Relief Committee attached to the PM's office. Then in March 2012, the STL mandate was renewed for another three years according to Security Council resolution 1757, after minimal consultation with the Lebanese government. It remains that nothing consistent has emerged from the international inquiry or the STL after six years of intense domestic and international strife.

Conclusion

The STL remains controversial for political and legal reasons. In a country that has experienced serious human

rights abuses, disappearances and assassinations both during and after the civil war for which very few have been held accountable, and also suffers a wider culture of impunity and weak rule of law, the very existence of the STL might be hailed as a symbolic victory, one which might help promote wider accountability and discussion of the legacy of the past.

However, the tribunal has provoked political and legal disputes – internal, regional and international – over its creation, constitutionality and place amongst internationalised criminal tribunals globally, which have meant that any positive impact on impunity in Lebanon has so far been muted at best. At the same time, the operation of the tribunal has been politically destabilising, generating parliamentary stand-offs and government collapse.

Despite its superficial resemblance to a common transitional justice mechanism, the internationalised criminal tribunal, the STL is unique, and not evidently designed to enable a transitional process which confronts the legacy of the civil war. Indeed, the effect of the STL has been not to promote reconciliation but to generate political instability, all before the formal initiation of any trials. It remains to be seen what will happen once trials begin, either with the defendants present at the trials or *in absentia*.

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