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The Special Tribunal for Lebanon: The UN on Trial?

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Summary

- The Special Tribunal for Lebanon has been created in response to demands for 'The Truth' following the assassination of Rafic Hariri. This represents a new departure for a country which previously employed a 'forgive and forget' formula of conflict resolution.
- The Tribunal joins a growing number of courts and tribunals with international features, but it is unprecedented in the manner of its creation and in its nature.
- The UN Security Council has intervened despite strong opposition on legal and political grounds. It has also overridden Lebanese constitutional procedures, but in so doing it has provided a possible solution to a difficult political situation in Lebanon and laid a claim for the rule of law to prevail over violence.
- There are high stakes for the UN in Lebanon. The UN was seen to have failed to protect Lebanon in the 2006 conflict between Israel and Hizbullah. The Tribunal is part of extensive UN involvement in Lebanon which is viewed by some as welcome protection and by others as part of a conspiracy against Syria and Iran.
- The creation of the Tribunal may have significant consequences for Lebanon and the international community. There could be further terrorist attacks and assassinations in Lebanon and confrontation with Syria.
- Failing to set up the Tribunal would have been interpreted as a green light for assassinations and terrorism to continue with impunity in Lebanon. Any political cost involved in setting up the Tribunal will be offset by the higher cost of not doing so.

Introduction

After months of political stalemate in Lebanon, the adoption of UN Security Council resolution 1757(2007) has led to the establishment of the Special Tribunal to try those responsible for the assassination of Rafiq Hariri and other connected terrorist acts. Criticized by Syria on the ground that it would lead to further unrest and by the Russians and Chinese on the ground that it encroached on the sovereignty of Lebanon, resolution 1757 was adopted at the request of the Lebanese government and was welcomed by the Lebanese, or most of them, with relief. The Security Council's intervention has overridden Lebanese constitutional procedures but in so doing it has provided a solution for an impossible political situation and laid a claim for the rule of law to prevail over violence. The assassination of a Beirut MP, Walid Eido, on 13 June 2007 shows that the threat has not been removed but only serves to highlight the importance of UN intervention to bring accountability for these crimes.

The creation of the Special Tribunal in this way is unprecedented. In order to explain why a court of an international character has been set up to try crimes under national law and why its establishment has been surrounded by both political and legal controversy, it is necessary to understand the context and the background. This paper is accordingly divided into three main sections: the first and third examine the Tribunal from the political and historical perspectives and consider its place within the major international effort being expended on Lebanon; the second provides a critique of the Tribunal, mainly from the legal perspective, setting the Tribunal within the context of international courts and tribunals. Each section helps in an understanding of the complexities of the other.

I. The Tribunal and Lebanon: protection or intervention?

Lebanon has been divided over the question of the Tribunal. There are those who saw it as a political instrument of international intervention to implement a US agenda against Syria and Iran. Others saw it as international protection, mainly from Syria and Iran, and as part of an international effort to help the country. The roots of this division go back to the conception of the state in which international protection was seen as one of the pillars of Lebanese security.

Weak state

Lebanon has always been vulnerable to external intervention; this is due to the make-up of the

Lebanese political system. The power-sharing formula, promulgated in the Lebanese constitution of 1926, the National Pact of 1943 and the Ta'if Agreement of 1989, is designed to protect minorities; it thus has in-built checks and balances that prevent any party taking over completely. The President served for one term only, in contrast to the ruling dynasties in the region. This resulted in a weak state structure, allowing the freedom and *laissez-faire* that led to the prosperity of the pre-civil war era. When there are fundamental disagreements, the country grinds to a halt and paralysis sets in, until either a new compromise is reached or, as has happened before, the system breaks down into civil war.

Power-sharing and international protection

The roots of this power-sharing system date from late Ottoman times when, in agreement between the Ottoman state and European powers, Mount Lebanon was given a certain autonomy and protection. It had a Christian Ottoman governor assisted by an administrative council composed of representatives of the various communities and ethnic groups. In Lebanese political memory this came to be perceived as a golden age and was labelled 'The Long Peace' by historians.¹ Another inspiration was Alexandria, where many Lebanese took refuge during the First World War. The cosmopolitan atmosphere of a city which also enjoyed autonomy under European protection and prosperity as a meeting of East and West was an example to be followed. Thus autonomy, coexistence, power-sharing among the communities and Western protection became essential components of a model that was to form the modern state of Lebanon. During the Second World War, with the decline of Britain and France, the US was cultivated as the main protecting power.

Regional balance

In the 1950s the rise of Arab nationalism and the popularity of President Gamal Abdel Nasser of Egypt created division in Lebanon between those who wanted to join the Arab struggle and those who wanted to remain isolated from regional problems. The resulting crisis in 1958 prompted US intervention and almost led to a civil war. This added another important regional dimension to the formula as it became apparent that Western protection was not enough to ensure the internal stability of a divided country. Almost immediately after the 1958 crisis, Lebanese President Fouad Chehab agreed a pact with Nasser, which was at the same time a way of neutralizing the threat and of bypassing its internal dimensions. Egyptian influence was counterbalanced by other regional forces, including Saudi Arabia, Syria, Iraq and Jordan.²

Thus there emerged a Lebanese security doctrine that relied on diplomacy instead of military power. An army was considered a threat to internal stability in a region where military coups were becoming fashionable. The Lebanese security doctrine was a balancing act between two policies: the first relied on Western protection and the second on a pact aimed at balancing the main regional threat at any given time with other Arab regional powers. This formula allowed the country to remain on the sidelines of the main conflicts of the region and to pursue its cosmopolitan agenda.

At different times, Saudi Arabia, Iraq, the Palestine Liberation Organization (PLO) and Syria each became the main Lebanese partner in the region. Lebanon prospered in the 1950s and 1960s by benefiting from the influx of regional elites who were fleeing a troubled region: Palestine in 1948, Egypt in 1952 and 1956, Iraq in 1958 and Syria in the early 1960s. Lebanon managed to avoid participating in the Arab–Israeli wars of 1956, 1967 and 1973. This again created division in the country over its regional and Arab role and over the presence of the PLO, which made its main base in Lebanon after being expelled from Jordan in 1970. Some parties wanted to join regional and Arab struggles and others wanted to remain isolated from them. This finally led to a breakdown which resulted in civil war from 1975 to 1990.

Western protection started showing cracks but survived the beginning of the civil war until the end of 1983 with the ‘redeployment’ of the US troops and the Multinational Forces from Beirut following the attack on the US Marines’ barracks in Beirut. This redeployment reflected the failure of a US policy that, in conjunction with the Israeli invasion of 1982, aimed to remove the PLO and to create a strong Lebanese state that could sign a separate peace treaty with Israel. This led to the failure and abandonment of Western protection that had been a more or less constant feature since Lebanese independence.

Pax Syriana

The vacuum created by the collapse of this agenda was eventually filled by Syria. The history of the last years of the civil war was dominated by the role played by regional powers, including Iraq, Jordan and Saudi Arabia, in counterbalancing the inevitable outcome of complete Syrian hegemony over Lebanon. This culminated in the dominance of Syria during the first Gulf war, when the power of Iraq, a major player against Syria on the Lebanese scene, was neutralized and Saudi Arabia and the international community needed Syria to join the Gulf war coalition. Syria was probably the greatest winner of the first Gulf war. From then on, Lebanon was under a *Pax Syriana* and

lost its strategic relevance.

Syrian control over Lebanon was effected through its military presence and the security services, but most of all by taking over Lebanese institutions through a system of patronage co-opting many Lebanese allies. The Ta’if Agreement of 1989 installed a very complex system of checks and balances, most notably between the three main positions in the country: the President of the Republic (who must be Maronite), the President of the Council of Ministers (Prime Minister) (Sunni Muslim) and the Speaker of Parliament (Shi’a Muslim). Agreement between the three is needed to move forward on even the smallest matter and each one of them has the power of veto over the other two. This was initially designed to favour compromise and discourage the hegemony of one group over the other. It also means that if the holders of the three major political posts are on the same side, or are in agreement, then there is a danger of that side having a monopoly of power. The Syrians maintained control by ensuring that these three posts were filled by loyal supporters. Syria also gradually replaced the top army officers, the heads of the security services and some key posts in the judiciary. Coercion meant that those who did not join in either went into exile or to jail, or died.

Through this system of control, Syria also had influence over elections. Lebanon’s electoral law favoured large constituencies, to encourage candidates who needed the support of voters outside their immediate parochial, family or sectarian constituencies, thus promoting those with cross-sectarian appeal. By encouraging the formation of what became known as ‘Bulldozer Lists’ (a list on which opposing groups join forces), the joint list became impregnable and anybody on the list had a guaranteed seat in parliament.

Lebanon thus came under the control of the same web of security services that ruled Syria and it became even more difficult to disentangle the two systems without complete change, not only at the top but also in the middle and lower ranks. This also meant that dismantling one part of the web would endanger the whole structure; hence the Syrian regime considers its loss of control in Lebanon to be a danger to its own security.

International protection restored

Syrian hegemony lasted until once again the formula of Western protection was revived, largely through the role of former Prime Minister Rafiq Hariri, whose close ties with the US, France and Saudi Arabia led to the adoption of UN Security Council resolution 1559 of 2 September 2004. Hariri aimed to re-establish Beirut as a cosmopolitan centre for the region, to restore internal coexistence and reconciliation and to revive

the security doctrine of Western protection with a regional balance of powers that had collapsed in 1983.

Resolution 1559 restored external protection and ended the period in which Syria had absolute control over Lebanon with international blessing. Saudi Arabia was to become the main regional partner instead of Syria and its ally, the Islamic Republic of Iran. The Saudis have been in competition with Iran over influence in Lebanon since the 1980s, the Saudis exerting influence through their relationship with Hariri, the Iranians through Hizbullah.

Hariri's assassination and UNIIC

In order to resist mounting Western pressure to end its rule over Lebanon, Syria tightened its grip over the country and put pressure on Lebanese parliamentarians to amend the constitution and extend the term of office of its ally, President Emile Lahoud, on 3 September 2004. Twenty-nine members of parliament opposed the extension; central to this opposition was the parliamentary bloc of the Druze leader Walid Jumblatt. In October 2004, a prominent member of the bloc, MP Marwan Hamade, survived when his car was blown up. This assassination attempt was attributed to Syria. The opposition to Syria was preparing for elections in the spring and it was rumoured that Rafiq Hariri, who had resigned as Prime Minister after Lahoud's extension, would join it. Syrian pressure increased and so did threats to the opposition.

This tension culminated in the assassination of Hariri and 22 others on 14 February 2005. The shock of the assassination triggered mass anti-Syrian demonstrations calling for Syria's withdrawal and for an international tribunal to judge those responsible for the murders. One of the results of that shock was that the system of control lost one of its major pillars, which relied on fear of the security services. The slogans in the demonstrations were not just against Syria but also against that system. Samir Kassir, who was later assassinated, argued that the system of security services control could only be dismantled if it were carried out in both countries simultaneously. As a consequence of these demonstrations and of mounting external pressure Syria withdrew its army in April 2005, ending almost thirty years of military presence in Lebanon.

Meanwhile, a UN fact-finding mission was despatched to Lebanon to look into the circumstances, causes and consequences of the assassinations. It was recognized that the Lebanese justice system would not be able to deal with the investigation and trial of those responsible for the murders. After years of civil war and Syrian domination, Lebanon's judicial, security and investigative institutions were ineffective

and unable to function independently and with political impartiality. The fact-finding mission concluded that the 'Lebanese investigation process suffers from serious flaws and has neither the capacity nor the commitment to reach a satisfactory and credible conclusion.'³

As a result, and with the approval of the Lebanese government,⁴ the UN Security Council created a commission of investigation. Established under Council resolution 1595 of 7 April 2005, the UN International Independent Investigation Commission, often called by its acronym UNIIC, was to assist the Lebanese authorities in their own investigation; the authorities in their turn were required to give it their full cooperation. The Commission delivered its reports to the Security Council, first under Detlev Mehlis, a senior German Prosecutor, later under Serge Brammertz, a Deputy Prosecutor of the International Criminal Court. (See Box 1 for the history of the investigations.)

Election victory

Anti-Syrian candidates won a sweeping victory in the elections in May 2005. A coalition composed of the 'Future Movement' of former PM Hariri, the 'Lebanese Forces' whose leader Dr Samir Geagea had been released after eleven years in prison, the Phalange party and the 'Progressive Socialist Party' of Walid Jumblatt gained 72 seats out of the 128-member parliament. Amal and Hizbullah, Syria's allies who formed a Resistance and Development bloc, gained 35 seats. The Free Patriotic movement of General Michel Aoun, who had returned from exile after the Syrian withdrawal, won 21 seats. Many allies of Syria lost their seats, including Suleiman Frangieh, a Maronite leader in the north of Lebanon. A 24-member government was formed which for the first time included two members of Hizbullah under the banner of National Unity but which excluded the bloc of General Aoun.

For the first time in Lebanese history, a single bloc (the Hariri coalition) held an absolute majority in the Lebanese parliament. If a Hariri coalition candidate could win and replace the pro-Syrian President Emile Lahoud, the coalition would gain control of parliament, the cabinet and the presidency, and most of the checks and balances built into the power-sharing system would fail. This could then lead to a gradual dismantling of the pro-Syrian elements throughout the administration. Thus the Lebanese opposition had to resort to actions outside the constitutional framework to preserve its political presence; this resulted in the constitutional crisis that Lebanon is currently experiencing.

BOX 1: BACKGROUND TO THE INVESTIGATION

1. UNIIC's first report, issued on 19 October 2005, was hard-hitting. It criticized the Lebanese authorities for errors in the national investigation. While emphasizing that it was not yet possible to determine responsibility for the assassinations, the report included a finding that there was 'probable cause to believe that the decision to assassinate former Prime Minister Rafiq Hariri could not have been taken without the approval of top-ranked Syrian security officials and could not have been further organized without the collusion of their counterparts in the Lebanese security services'. The assassination 'was carried out by a group with an extensive organization and considerable resources and capabilities'. An electronic version of the report identified Maher Assad, brother of the Syrian president Bashar al-Assad, and their brother-in-law Asef Shawkat, the chief of military intelligence, along with three others, as the main alleged conspirators; the names were omitted from the final version of the report. On the recommendation of the Commission that there was probable cause to arrest them for conspiracy to murder, four generals were arrested by the Lebanese in August 2005 and remain in detention. Syria denies involvement in the crimes.

2. UNIIC's report recorded the opening of the international investigation, giving its first conclusions on lines of inquiry which were later to be followed up by subsequent reports; these included the political context of the assassinations, the identity of Abu Adass who had made a videotape claiming responsibility, the nature and location of the explosion, the involvement of a Mitsubishi truck, the analysis of unidentified human remains, the use of communications prior to the blast, and the motive for the assassinations.

3. This report and the subsequent one, which reinforced its conclusions, were criticized in some quarters on the ground that there was insufficient evidence to link the assassinations to the alleged suspects. Zuhair Saddiq, who provided some of the information, is himself under house arrest in France after admitting a part in the planning the killing. Another witness, Hussam Taher Hussam, retracted his evidence although, according to UNIIC, this was done because he was 'being manipulated by the Syrian authorities'.

4. While the Lebanese authorities assisted UNIIC under the terms of a Memorandum of Understanding negotiated with the UN, the Syrian Government did not give the Commission the help they sought in the first months of the investigation – according to Mehlis their lack of cooperation had impeded the investigation. The Security Council accordingly adopted a resolution under Chapter VII of the UN Charter requiring Syria to cooperate. Resolution 1636 noted that although there had been some degree of cooperation with the Commission, 'several Syrian officials have tried to mislead the investigation by giving false or inaccurate statements'. The resolution required the authorities to give the Commission full cooperation, including access to any documents or other evidence in their possession that the Commission considered relevant, to allow the Commission to interview officials and other persons in Syria and, finally, to detain Syrian officials or individuals whom the Commission suspected of involvement in the assassinations and to make them fully available to the Commission. A failure by Syria to cooperate could lead to

'further action'. This implied the threat of economic sanctions, although some Council members would not agree to a specific reference to sanctions in the resolution while the investigation was still under way. All countries were required to freeze the assets of suspects and impose travel bans on them if the Council's sanctions committee so decided. In a later resolution, 1644, the Council reiterated Syria's obligations to cooperate.

5. Relations between the Commission and Syria were difficult. The demands on Syria imposed by resolution 1636 were criticized since, unlike the requirements laid on Lebanon in resolution 1595, there was no reference to the need for the Commission to take into account local law and judicial procedures or to consult with the domestic authorities on the mechanics for the Commission to operate. There was no provision for safeguarding the rights of suspects. The subsequent establishment by Syria of its own 'judicial commission' to investigate the February assassinations could be seen either as a provocation to the Commission or as an attempt to cooperate with the international inquiry but in accordance with Syrian procedures.

6. Nevertheless, resolution 1636 – and the strong statements made by Foreign Ministers at the Council meeting at which it was adopted – had an effect. In its second report the Commission recorded that Syria had finally agreed to the questioning of five senior officials in Vienna, although only after 'arduous discussions and considerable delay'.

7. Mehlis resigned, and with the advent of the second Commissioner, Serge Brammertz (a former Deputy Prosecutor at the International Criminal Court), relations with Syria became smoother, for whatever reason. The Commission and Syria reached 'a common understanding on the legal framework and certain practical modalities for cooperation' and in the later reports of the Commission Syria's level of cooperation with the Commission was consistently described as 'generally satisfactory'.

8. The Commission continued its lines of inquiry under Brammertz. He was more reticent about making public the details of his work, an approach more suited to a criminal investigation. The mandate of the Commission was widened to assist the Lebanese authorities in the investigation of 14 other terrorist attacks committed in Lebanon since October 2004, and of the assassination of the Minister for Industry, Pierre Gemayel, on 21 November 2006 and the Ain Alaq bombings of 13 February 2007. As well as investigating each attack, the Commission established possible linkages between them and the Hariri assassination. As a result of the 2006 conflict, the Commission relocated itself in Cyprus for a two-and-a-half-month period but it was able to continue its work and the Commission reported that the dislocation had 'minimal impact' on the work. The Commission's mandate has now been extended to June 2008.

9. As regards the assassination of Hariri, the working hypothesis of the Commission appears to be that one male detonated the bomb and was himself killed; from his DNA he appears not to have spent his early life in Lebanon. A wider group was involved in planning and directing the explosion.

After the elections and throughout the rest of 2005, a series of assassinations and attempted assassinations of anti-Syrian opposition figures followed. These targeted prominent figures including Samir Kassir, journalist with *An-Nahar*; the former head of the Lebanese Communist Party, Georges Hawi; Elias el Murr, the Minister of Defence; May Chidiac, LBC TV presenter, and Gibran Tueni, MP and Editor in Chief of *An-Nahar*. There were also several explosions throughout the country, which caused little damage but which, together with the assassinations, contributed to the belief within the country that Syria wanted to restore terror. In addition there were rumours of infiltration by Syrian security services agents and armed elements into groups based in the Palestinian refugee camps in Lebanon. These include the Popular Front for the Liberation of Palestine – General Command (PFLP–GC) and Fateh al Intifada, a pro-Syrian Palestinian group that splintered from the PLO in the 1980s, as well as other groups in refugee camps such as Fateh al Islam, which included fundamentalist elements close to Al-Qaeda and returnees from Iraq and Afghanistan.

II. The Special Tribunal for Lebanon

It was in this atmosphere that the request for the creation of an international tribunal was sent to the UN by the Lebanese government, the day after the assassination of Tueni. A request was also made that the mandate of UNIIIC be extended to include all assassinations and explosions since 1 October 2004.⁵ On 13 December 2005 Amal and Hizbullah ministers withdrew temporarily from the government, largely as a protest against Prime Minister Siniora's putting the request for a tribunal to a vote – a vote which they lost because three ministers who were assumed to be loyal to President Lahoud supported it. This was the start of the governmental crisis in which the opposition sought to have those ministers replaced in order to have a veto power in cabinet decisions. The assassination of Pierre Gemayel on 21 November 2006 meant that if the government lost two more ministers it would collapse. Since then most ministers have been sleeping at the Grand Serail, the seat of government.

The agreement between the UN and Lebanon

In March 2006 the UN Secretariat drew up a report⁶ on the scope and nature of a tribunal and the Security Council unanimously requested the Secretary-General to negotiate an agreement with the Government of Lebanon establishing a tribunal 'of an international character'.⁷ The members of the Security Council were consulted on the draft. Particularly active in seeking changes to the provisions was Russia, presumed to be acting in Syria's interests.

In Lebanon the issue of whether an international tribunal should be established resulted in a complete paralysis in the functioning of government. On 12 November 2006 six pro-Syrian ministers resigned from the Council of Ministers. This development represented a significant threat to the continued existence of the government, which would have had to resign if it had lost more than one-third of its members.

The draft agreement negotiated between the UN and Lebanon was approved by the Council of Ministers following the resignations, but President Lahoud made clear his opposition on the ground that the approval was contrary to the National Pact of 1943 which calls for power-sharing among the communities. That did not prevent the UN Secretary-General from submitting the agreement with its accompanying Statute for the Tribunal to the Security Council; and Council members declared themselves satisfied with the terms of the Statute as finally drafted.⁸ The Council asked the Secretary-General to finalize the agreement; the Lebanese government signed it on 23 January 2007 and passed it to parliament. The United Nations signed it on 6 February 2007.

Security Council resolution 1757(2007)

However, the refusal of the Speaker of Parliament, Nabih Berri, to call a session of parliament to ratify the agreement meant that it could not enter into force. The Tribunal remained entirely theoretical. In the light of the impasse, Prime Minister Siniora wrote to the UN Secretary-General asking that the Security Council put the Tribunal into effect.⁹ A petition by 70 Members of Parliament made the same request. A visit from the UN Legal Counsel, Nicholas Michel, failed to resolve the impasse and UN Secretary-General, Ban Ki-Moon, reached the view that 'regrettably, all domestic options for the ratification of the Special Tribunal now appear to be exhausted, although it would have been preferable had the Lebanese parties been able to resolve this issue among themselves based on a national consensus'.¹⁰

Against this background, France, the UK and the US presented a draft resolution to Security Council members in May, proposing to bring the agreement between the UN and Lebanon into force. Hizbullah leader Hassan Nasrallah rejected the possibility of an international tribunal without Lebanon's approval. President Assad of Syria ruled out cooperating with the Tribunal if it compromised Syria's sovereignty and independence.

Nevertheless, resolution 1757 was adopted on 30 May 2007 by a positive vote of ten members. This was only one vote more than the minimum required, and there were five abstentions (China, Indonesia, Qatar, Russia and South Africa). The resolution does not itself set up the Tribunal, but brings into force the

agreement which does. The principal operative paragraph of the resolution, adopted under Chapter VII of the Charter, reads: 'The provisions of the annexed document, including its attachment, on the establishment of a Special Tribunal for Lebanon shall enter into force on 10 June 2007, unless the Government of Lebanon has provided notification' that the Lebanese constitutional procedures have been met (in which case the agreement would have entered into force without the Council resolution).¹¹

The resolution attached the UN/Lebanon Agreement and the Statute of the Tribunal. Since the Speaker of Parliament has not changed his position, the agreement is now in force by virtue of the resolution.

Before the adoption of resolution 1757, the five abstaining Council members explained their problems with it. Qatar did not want the resolution to go beyond endorsing the establishment of the Tribunal and so did not agree with the Chapter VII reference – Qatar would continue to support the internal constitutional process; Indonesia disapproved of the 'forceful interference by the Security Council in the national constitutional process'; South Africa considered it was not appropriate for the Council to bypass national procedures by imposing a Tribunal; China objected to interference in Lebanese internal affairs and Russia considered the whole arrangement dubious under international law.¹² The Lebanese acting Foreign Minister, on the other hand, declared that the Special Tribunal would act as a deterrent to terrorist activities, and the resolution would 'therefore serve to protect the Lebanese people, enhance our freedom, allow us to rid ourselves of such threats, and thus move forward ... Justice is the victor.'¹³

A unique process and a unique court

The Special Tribunal joins a growing number of courts and tribunals which are either international or have a hybrid international/national character. For example, the Tribunals for the former Yugoslavia and for Rwanda were set up under Chapter VII of the Charter as organs of the Security Council following the incidence of widespread atrocities in the course of armed conflict. The Special Court for Sierra Leone, currently trying ex-President Taylor of Liberia, was established at the conclusion of a particularly bloody conflict in which multiple war crimes were committed. It was set up by an agreement between Sierra Leone and the UN, negotiated at the request of the Security Council. It is not a subsidiary organ of the Security Council nor a part of the domestic legal system, but a separate international institution. The atrocities of the Khmer Rouge in Cambodia in the 1970s were to have been addressed by a similar formula; however,

negotiations on establishing a tribunal broke down and Cambodia insisted on a domestic solution. Unlike the Special Court for Sierra Leone, the Extraordinary Chambers of Cambodia, constituted in accordance with an agreement with the UN, will form part of Cambodia's domestic system and apply national law; the international judges will be in the minority. Finally, there is the new International Criminal Court. Although the Court was created by treaty, the Security Council made use of it when it sent the situation in Darfur to the Court,¹⁴ against the wishes of the government of Sudan which was not a party to the Court's Statute.

Although the Statute for the Lebanon Tribunal draws on aspects from these courts – in particular that for Sierra Leone, there is one respect in which it differs from all of them. These courts have jurisdiction over one or more international crimes – that is, war crimes, crimes against humanity and genocide, which all have international law origins. The Lebanon Tribunal will be the first to try only crimes under national law. While there was a proposal to describe the assassinations in Lebanon as 'crimes against humanity', it was dropped because of the view of some members of the Council that the term was not appropriate. 'Crimes against humanity' includes crimes such as murder 'committed as part of a widespread or systematic attack directed against any civilian population', according to the definition in the Statute of the International Criminal Court. It might have been difficult to squeeze the assassinations in Lebanon within that definition and would certainly have made the Prosecutor's task more onerous.

The Tribunal has a large number of international elements. It is established not under Lebanese law but by international agreement brought into force by resolution 1757; its judges include international as well as Lebanese judges, with the international judges in the majority; its standards of justice, including principles of fair trial, are, generally speaking, those applicable in international criminal courts; its rules of procedure and evidence are to be inspired by international procedures and some of its substantive law is drawn from international precedents. It will not be part of the Lebanese court system and will sit outside Lebanon. But the Tribunal also has strong national elements: it will be trying Lebanese crimes under Lebanese law; and its decisions will probably have a direct effect in Lebanese law, since Lebanon has a 'monist' legal system under which treaties are part of national law without the need for new legislation.

The Tribunal has also been created by a unique process. Unlike the Tribunals for former Yugoslavia and Rwanda, it is not a Security Council Tribunal, and there are no obligations on other states to cooperate with it. The Tribunal is essentially as described in the

agreement between the Lebanese Government and the UN; it is not established by the Council, although without the Council it would not have come into existence.

The Tribunal will operate under the Statute annexed to the agreement between Lebanon and the UN (see Box 2). Resolution 1757 has not changed any substantive provision of the Statute or of the agreement.¹⁵

The Tribunal's jurisdiction is limited to the crimes described in the Statute:

- (1) it will be able to try persons responsible for the attack of 14 February 2005;
- (2) if it finds that other attacks in Lebanon between 1 October 2004 (the date of the attempted killing of Marwan Hamadeh and the death of his bodyguard) and 12 December 2005 are connected with, and are of similar nature and gravity to, the February attack, its jurisdiction will extend to those crimes;
- (3) the UN and the Government of Lebanon with the approval of the Security Council can decide to fix a date later than 12 December 2005, thus extending the Tribunal's jurisdiction to other 'connected' crimes (for example, the assassination of Gemayel, the Ain Alaq bus bombings and the assassination on 13 June of Walid Eido).

The crimes which the Tribunal will try are crimes under the Lebanese Criminal Code relating to terrorism, and 'offences against life and personal integrity, illicit associations and failure to report crimes and offences'.¹⁶ Crimes against humanity are not included.

Criticisms: the Tribunal on trial

The intervention of the UN to facilitate the creation of a tribunal has been controversial from the start. The criticisms relate to both law and politics.

The legal debate

- *Is the Tribunal any more than a political body?*

The Security Council is a political organ and its actions are motivated by political considerations. But the courts it has established, the Tribunals for the former Yugoslavia and for Rwanda, are legally independent and their judgments are respected; they have added enormously to the corpus of international criminal law. In the *Tadic* case, the Yugoslav Tribunal confirmed that the Council was within its powers to set up a judicial body, as an instrument for the exercise of its own function of maintaining peace and security.¹⁷ Similarly, the Special Tribunal's judgments will be dependent on the quality of the judiciary and its other legal staff, not on the political nature of the body which created them.

- *The jurisdiction given to the Tribunal is very selective; it includes a beginning and end date, and that end date is subject to variation on political grounds. Should not the war crimes committed during the 2006 conflict have been included?*

International or 'hybrid' courts created with the assistance of the international community are inevitably selective in their jurisdiction. They are not established to take over the whole of the responsibilities of national courts. As regards the choice of crimes to be covered, there were similarly difficult arguments when the Tribunal for Rwanda and the Special Court for Sierra Leone were being created, as to how far back in time they should go in the long cycle of killings by one side and the other.

- *The Security Council has brought into existence a Tribunal whose function is simply to try crimes under national law. With no jurisdiction over international crimes, why should this court be the business of the United Nations? In particular, Chapter VII resolutions in this context have been used in the past only for the trial of international crimes.*

But terrorism is a concern of the United Nations and has been addressed by numerous resolutions of the General Assembly and the Security Council, both before 9/11 and after. The Security Council has declared terrorism in general, and these acts of terrorism in particular, to constitute a threat to international peace and security. That brings the matter within the responsibilities of the Council. Criticism of the use of Chapter VII in resolution 1757 is misconceived. Contrary to popular myth, the fact that the resolution is adopted under Chapter VII does not mean that it authorizes the use of military force to enforce its provisions. If the Council wishes to authorize a military operation to enforce the provisions of a Chapter VII resolution, it must say so in the resolution. The controversy surrounding the arguments of the US and the UK that they were authorized to start the conflict in Iraq under the terms of Council resolutions has made it quite clear that the international community does not accept any doctrine of implied authorization to use force. Secondly, unlike the resolutions relating to the UNIIIC, resolution 1757 does not impose any obligation on any state to cooperate with the Tribunal. Lebanon has accepted certain obligations with regard to the Tribunal under the agreement which the resolution brings into force. But there is nothing in the resolution itself which the Council would be able to enforce even if it wished to do so. As the UK Ambassador said on the adoption of resolution 1757, 'The use of Chapter VII carries no connotation other than that it makes this resolution binding.'¹⁸

- *Is it appropriate that the Council should be involved in the establishment of a court in these circumstances? Is the Council competent to set up international courts for any act of terrorism? If the Lebanese justice system could not deal with these crimes, could not the government have invited international collaboration, changing the national law as necessary to accommodate international judges?*
- *Does it not go beyond the Council's powers to overrule the provisions of a treaty negotiated by a state and to bring an agreement into force contrary to its own provisions on entry into force?¹⁹ Further, is it legally possible for the Council to override a country's own constitutional provisions in the way resolution 1757 does?*

The Charter does not allow the UN to interfere in a country's internal affairs but there is no such constraint where the Security Council acts under Chapter VII.²⁰ Nevertheless, there does seem to be a particular difficulty in justifying a resolution which directly subverts the democratically agreed procedures laid down in a country's constitution. 'Never before has the Security Council ratified agreements on behalf of a parliament of a foreign country,' the Russian Ambassador to the UN is reported to have said.²¹ And the Chinese complained that it 'will create a precedent of Security Council interference in the domestic affairs and legislative independence of a sovereign state'.²²

While the Lebanese Special Tribunal is unprecedented, there are other Council resolutions that provide useful comparisons. An analogy, though an inexact one, can be drawn from the Council resolutions that followed the Lockerbie bombing in 1988. The Council had required from Libya the surrender of two suspects and had imposed economic sanctions when Libya refused. A solution was reached by a special arrangement for the criminal proceedings: the court, prosecution and applicable law were all Scottish, but the court sat in a neutral venue in the Netherlands. Scottish law had to be amended to allow the Scottish court to sit abroad without a jury; an agreement had to be concluded between the United Kingdom and the Netherlands. The indictment was, in the end, confined to charges of murder. The Security Council, by a resolution adopted under Chapter VII,²³ called on the UK to set up the necessary arrangements and required Libya to hand over the suspects. This resolution enabled the UK government to put in place the arrangements for the Lockerbie court without introducing primary legislation in parliament as would otherwise have been required: as with the Lebanese Tribunal, this was done at the request of the UK government, though without the opposition that the Lebanese government faced.

Another example of the Council's disregard of a country's constitutional or legislative arrangements is to be found in the little-noticed resolutions regarding Côte d'Ivoire.²⁴ By these resolutions the Council has strengthened the powers of the prime minister as against the extensive powers given to the president in the national constitution.

The fact is that any criticism with regard to the legality or constitutional propriety of the Security Council's action may be countered by the argument that the Council has the responsibility to maintain international peace and security and it may do this in any way which is compatible with the Charter and with certain fundamental human rights. The Council had already decided that the Hariri assassination was a terrorist act which threatened peace and security. It was within the Council's powers to decide that it was necessary to deal with the threat by bringing into force the agreement which established the Tribunal. Under Article 103 of the UN Charter, states have agreed that their Charter obligations trump any other international agreement. Some of the Council members abstaining in the vote on the resolution may have overstated the gravity of the constitutional interference: the other view is that it was the minimum interference necessary to move the process forward. After all, had the agreement been put to the vote following a properly convened session of the Lebanese parliament, the necessary majority would have been forthcoming to ratify the agreement.

Nevertheless, there is some justice in the criticisms, although not from a strictly legal point of view. Even if it can be argued that the Security Council can do *anything* in the interests of international peace and security, whether that be interference in negotiated treaties or intervention in domestic affairs, the Council risks undermining its own authority if it encroaches too far into areas of state sovereignty.

The political debate

- *Would it not further complicate the internal crisis and create instability if the Tribunal is brought into effect without an internal consensus in Lebanon?*

'Definitely, this is something that goes against the interests of the Lebanese people and Lebanon as a whole,' said the Syrian Ambassador to the UN after the adoption of resolution 1757.²⁵ The other view is that decoupling the issue of the Tribunal from the political crisis will facilitate the resolution of other issues and put an end to the deadlock.²⁶ There have been indications that opportunities for internal agreement have indeed increased after the adoption of resolution 1757. While elements of the opposition were constrained by their political allegiances from

BOX 2: THE SPECIAL TRIBUNAL

1. The rules governing the composition of the Tribunal and the way in which it will operate are set out in the Agreement between the United Nations and Lebanon, and the Statute of the Tribunal which is annexed to that Agreement.^a

2. *Composition.* The Tribunal will have both Lebanese and international judges. The pre-trial chamber will have one judge, who will be international; the Trial Chamber will have one Lebanese and two international judges; the Appeals Chamber will have two Lebanese and three international judges. Two alternate judges, one Lebanese and one international, will be provided to sit in addition to or as replacements for the other judges. The judges are to be appointed by the UN Secretary-General after consultations with the Lebanese government and on the recommendation of a selection panel consisting of two judges from international tribunals and a representative of the Secretary-General: the Lebanese judges will be drawn from a list of twelve persons suggested by the government on the proposal of the Lebanese Supreme Council of the Judiciary, and the international judges will be drawn from nominations by states and from other competent persons. The Prosecutor, who will be independent of any government, will also be appointed by the Secretary-General, following consultations with the government and on the recommendation of a similar selection panel. There is to be a Lebanese Deputy Prosecutor and such Lebanese and international staff as are necessary.

3. *Relationship with national courts.* For matters coming within its own jurisdiction, the Tribunal will have primacy over the national courts of Lebanon; when requested by the Tribunal, the national courts will therefore have to hand over cases to the Tribunal. The agreement prohibits the government from granting an amnesty to any one for any crime within the jurisdiction of the Tribunal; if any amnesties have been granted they will not be a bar to prosecution. A person who has been tried by a national court may be tried again by the Tribunal if the national proceedings 'were not impartial or independent, were designed to shield the accused from criminal responsibility ... or the case was not diligently prosecuted' (Art. 5.2, Statute).

4. *Law to be applied.* The law applicable to the crimes within the Tribunal's jurisdiction is:

- '(a) The provisions of the Lebanese Criminal Code relating to the prosecution and punishment of acts of terrorism, crimes and offences against life and personal integrity, illicit associations and failure to report crimes and offences, including the rules regarding the material elements of a crime, criminal participation and conspiracy; and
- (b) Articles 6 and 7 of the Lebanese law of 11 January 1958 on 'Increasing the penalties for sedition, civil war and interfaith struggle' (Art. 2, Statute).

Article 314 of the Lebanese Criminal Code provides:

'The term "acts of terrorism" includes all acts that are intended to cause a state of alarm and have been committed by means such as explosive devices, inflammable substances, toxic or corrosive products or infectious or microbial agents that are liable to pose a public threat.' The inclusion of the reference to the 1958 penalties law is puzzling since that law provides for the death penalty and for hard labour; neither of these can be awarded by the Tribunal under its Statute, to which national law is subject.

5. *Other provisions of criminal law.* In addition to these provisions under the Lebanese Criminal Code, the Tribunal will apply the Statute which includes a few provisions of substantive criminal law. For example, the Statute provides that a person with subordinates under his or her effective authority and control is criminally responsible for crimes committed by them as a result of his or her failure to exercise control over them properly, where:

- '(a) the superior either knew, or consciously disregarded information that clearly indicated that the subordinates were committing or about to commit such crimes;
- (b) the crimes concerned activities that were within the effective responsibility and control of the superior; and
- (c) the superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution' (Art.3.2, Statute).

6. *Rights for suspects and accused.* The Statute sets out certain basic rights for suspects, such as the right to remain silent and to have legal assistance, and rights for the accused, such as the presumption of innocence until proved guilty beyond reasonable doubt, the right to be tried 'without undue delay', and, with some exceptions, to be tried in his or her presence. Trial in the absence of the accused is possible, however, if he or she has waived the right to be present or has absconded or cannot be found, or if the state concerned has not handed him or her over to the Tribunal. For such trials *in absentia*, the accused will have defence counsel. There is a right to a retrial if the accused does eventually appear.

7. *Procedural rules and penalties.* The Tribunal will apply Rules of Procedure and Evidence which are to be drawn up by the judges themselves; in this they will be guided by the Lebanese Code of Criminal Procedure and other sources reflecting the highest standards of international criminal procedure. The death sentence will not apply; the penalties will be life imprisonment or for a fixed term. Imprisonment will be served in a state designated by the President of the Tribunal from states which have offered their prisons. There can be no pardon or commutation of sentence unless the President of the Tribunal agrees.

^a All of these may be found on <http://daccessdds.un.org/doc/UNDOC/GEN/N07/363/57/PDF/N0736357.pdf?OpenElement>.

being able to contribute positively to the process of endorsing the Tribunal, they seem to have accepted it as a *fait accompli* now that the resolution is adopted.

- *Will not further terror attacks, assassinations and instability occur in Lebanon as a result of the Tribunal's existence?*

Insofar as this concern was interpreted as a threat, it was taken seriously in Lebanon. Indeed, after the draft resolution concerning the establishment of the Tribunal was presented to Security Council members there were clashes in northern Lebanon and a series of terrorist attacks in Beirut. Three days after the resolution came into effect on 10 June, anti-Syrian MP Walid Eido was assassinated by a bomb in Beirut. Threats and violence such as this gave rise to the saying: 'PM Hariri sacrificed his life for Lebanon, so Lebanon should not be sacrificed for PM Hariri'. The other point of view was that it was precisely because Lebanon needed protection from these threats that the Tribunal should be established. To give in to the threats would allow them to materialize with impunity. Any political cost involved in setting up the Tribunal would thus be offset by the higher cost of not doing so.

- *Will the Tribunal be allowed to proceed if it causes a threat to the stability of the regime in Syria?*

This is another valid concern. There is speculation that the West will reach a political compromise preventing the full implementation of the Tribunal's task if the latter would lead to a collapse of the Syrian regime. Instability in Syria could result in an Iraq-style chaos or lead to fundamentalist elements taking power in the country. Essentially, as explained in Part III, the concern is that the West will again make a deal at Lebanon's expense and hand control of the country back to Syria. The question remains open.

The future of the Tribunal

The Tribunal will not start its work until a date chosen by the UN Secretary-General in consultation with the Lebanese government. He will need to consider whether the Tribunal is adequately funded as well as the progress of UNIIIC's work. At present the Commission is still in operation; it will have to be closed once the investigations are concluded and its work handed over to a new Prosecutor for the Tribunal. A Prosecutor will have to be appointed. Brammertz would be the obvious choice if he were willing, but is he? The judges will be appointed, and they will need to draw up the rules of procedure and evidence under which the Tribunal will operate. A location for the Tribunal will be chosen and arrangements agreed with the host state. All of this

will take some time – perhaps from one to two years.

The evidence collected during the investigations will form the basis of the prosecution case. Once the Prosecutor takes up his or her position, the investigating magistrate for the cases involving the assassination of Hariri will hand over authority to the Tribunal and give it all records; persons in detention will be passed to the custody of the Tribunal. When the Tribunal so requests, the same will be done for the other cases within the remit of the Tribunal.

If the Commission's reported suspicions are confirmed, the charges brought before the Tribunal in relation to the assassinations of Hariri and others will be against the organizers and conspirators; the person actually detonating the explosion is presumed dead. The legal position under the Tribunal's Statute is that anyone who organizes the commission of a terrorist act can be found guilty of the act though committed by others; and under the principle of command or superior responsibility, anyone whose failure to control his subordinates results in the commission of such an act with his knowledge is also guilty (see Box 2).

As regards the other terrorist killings which have been investigated by the Commission, the Prosecutor will have to prove that they are 'connected in accordance with the principles of criminal justice and are of a nature and gravity similar' to the earlier assassinations. The Tribunal will be able to look at connecting factors such as the motive and purpose behind the attacks, the victims targeted, whether there was a pattern to the attacks and the identity of the suspects.

Rights of accused, security of witnesses

A mark of the Tribunal's success will be whether it is able to deliver fair trials in a secure environment, where the rights of the accused will be assured and where witnesses can be confident of their safety. Once the Tribunal gets to work, it will put an end to what many have seen as a major breach of human rights in that the persons already in detention in Lebanon as a result of the Commission investigations have had no recourse to a court. Although they were detained under Lebanese law and with a Lebanese examining magistrate, there has been no real possibility for them to challenge their detention.

The Tribunal will have its seat in a place to be 'determined having due regard to considerations of justice and fairness as well as security and administrative efficiency, including the rights of victims and access to witnesses'.²⁷ A location outside Lebanon has the benefit of achieving a secure environment for the trials. The disadvantages, as is clear from the existing international experience, include added expense, and a decrease in local

participation – the trials will take place far from where the crimes were committed.

Holding the trials in a secure environment is not enough to achieve security for victims and witnesses. The Tribunal will not succeed unless witnesses are satisfied that they will not suffer from their disclosures. It is not clear that any arrangements have been made so far for witness protection.

Arrest of suspects

Will the Tribunal get its suspects, whoever they are? The agreement between the UN and Lebanon requires the Lebanese government to comply with any request for assistance by the Tribunal, including by arresting suspects and transferring accused persons to the Tribunal. If the persons already in detention in Lebanon are charged, there ought to be no difficulty in making them available to the Tribunal. The obligations on Lebanon are likely to have a direct effect in its domestic law. But there is no obligation on any other country to hand over suspects. If, before finishing its work, UNIIC requests the transfer of suspects from the Syrian government, that government has an obligation (under resolution 1636, also made under Chapter VII) to arrest and hand them to the Commission. But there is no equivalent obligation to hand over persons to the Tribunal.

The example of ex-President Taylor of Liberia is relevant. He was accused of crimes against humanity and war crimes by the Special Court for Sierra Leone, a court which, as mentioned above, was established by agreement with the UN, like the Lebanese Tribunal. The Court confirmed that the government of Ghana, where Taylor was visiting, had no obligation to hand him over to the Court since it had not been established under Chapter VII of the Charter. Neither has the Lebanon Tribunal, and resolution 1757 imposes no obligation on any state to comply with the Tribunal's requests. That could be done only by a further resolution just as, in the case of UNIIC, reports of Syrian non-cooperation with the Commission led to the adoption of resolutions 1636 and 1644 under Chapter VII, laying down obligations of cooperation.

Trials *in absentia* may be held under certain conditions (see Box 2), so if suspects do not voluntarily appear for trial, or are not transferred to the Tribunal by the country concerned, the Tribunal may try them in their absence. There is an obvious difficulty with such trials; many legal systems of the world do not permit them, although the Lebanese legal system does. It is easy to see them as no more than show trials, which cannot properly try the absent suspects.

There is the possibility that a country other than Lebanon may decide to put suspects on trial in its national system, rather than transferring them to the

Tribunal. If the suspects are given a trial which the Tribunal later decides is a sham, the Tribunal will have the right to try them again.

State immunity?

Will state immunity apply to protect foreign government ministers and officials from prosecution before the Tribunal? Under international law, senior officials and ministers from foreign countries are normally accorded immunity for acts committed in the course of their official duties; foreign heads of state enjoy complete immunity. Interestingly, the Tribunal's Statute does not contain a provision which takes away the immunity of ministers and heads of state on trial. The Statutes of international courts do. For example, 'the official position of any accused persons, whether as Head of State or Government or as a responsible government official' will not shield a person on trial before the Sierra Leone Special Court.²⁸ The matter will be left to the Lebanon Tribunal to decide for itself. Although international law has recently developed to cut down immunity in respect of international crimes in national and international courts (for example, ex-President Pinochet in the UK courts, and ex-President Taylor in the Sierra Leone Special Court), these precedents may not apply to a case of terrorism before a court which has even less claim than the Sierra Leone Special Court does to be termed 'international'. Any suspects who only enjoy immunity for their official acts, however, are unlikely to be successful in making a claim that assassination can be regarded as an official act.

Prospects

Judging by the experience of existing international courts, the first period of the Tribunal's work is likely to be taken up with procedural matters, as well as legal challenges to its process and even its existence. The International Criminal Court, admittedly with a much wider jurisdiction and far more personnel, has been in existence for five years and has yet to begin its first trial. The prospects for the Special Tribunal must be looked at in the long term. The challenges it will face are likely to include the following.

- It is by no means certain that the evidence secured by UNIIC is sufficient to produce convictions. An additional difficulty for the Prosecutor, as regards the crimes other than the assassinations of February 2005, is that he or she will have to prove not only the facts (and the law) relating to each case, but also that the crimes are connected to the Hariri assassination.
- There may be opportunities for the opposition in Lebanon to exercise a blocking power if they wish.

- The Tribunal may need the assistance of other countries in obtaining evidence and in surrendering suspects, but, as explained above, no state other than Lebanon has an obligation to accede to the Tribunal's requests. Depending upon the outcome of the investigations, there may be the need for further Security Council resolutions to require other countries concerned to cooperate with the Tribunal if trials are to be held other than of absent persons. The Council required Syria to cooperate with UNIIIC, under Chapter VII resolutions, but will the Council be ready to impose obligations to cooperate with the Tribunal, and to remove any immunities that may be enjoyed by suspects?

- The financing of international tribunals is frequently a problem. At least 51% of the annual budget of the Tribunal will have to be sought from voluntary contributions.

III The Tribunal and international intervention

The Tribunal has been born in the midst of a constitutional crisis where one side is trying to prevent the other from achieving hegemony under the guise of dismantling the Syrian apparatus in Lebanon. Every step in the path towards the Tribunal has been accompanied by a terror attack or other incident that created serious instability in the country (see chronology on page 16). Another aspect of the crisis over the Tribunal is a fundamental disagreement over foreign policy and the overall orientation of the country – in other words the old division between those who want a strong state, to be part of regional struggles, namely in alliance with Iran and Syria; and those who want a weak state under Western protection and in isolation from regional problems.²⁹ By adopting resolution 1757, the UN Security Council has revived an old system of protection that is one of the most contested pillars of the Lebanese political system.

International intervention in Lebanon is in the nature of a tug of war with Syria, with the international community trying to extract Lebanon from Syrian influence while Syria tries to maintain and regain its influence. The adoption of Security Council resolution 1559 was followed, in 2004, 2005, 2006 and 2007, by an unprecedented number of Security Council resolutions on Lebanon (see chronology).

The creation of the Tribunal is one of three UN-sponsored processes whose implementation should have as a side effect the rehabilitation of the country's institutions. *UNIIIC* will not only carry out the

investigation but also help with Lebanese security sector reform. *The Tribunal* will put the Lebanese judiciary under scrutiny and assist in its reform. The expanded *UNIFIL* should help to establish sovereignty and the rule of law in what were previously no-go areas for the Lebanese army. It will also help control arms smuggling from Syria and resolve outstanding issues such as the Chebaa farms³⁰ and prisoners in Israel.³¹

Another multilateral initiative was the Paris III meeting in January 2007 when 37 countries and international institutions pledged and contributed over \$7 billion in aid. In order to fulfil the conditions to receive this aid, extensive public-sector and fiscal reforms would have to be accomplished.

In Lebanon there is debate about the credibility of this international intervention, especially after the 2006 conflict. One concern is about the effectiveness of the UN-sponsored processes. At best, the US, UN, EC and Arab countries failed to protect Lebanon from the 2006 conflict and to declare a ceasefire; the concern is that the international community may make a deal with Syria and restore its control over Lebanon. On the other side there is outright hostility towards the US and suspicion of the UN as an instrument of US policy. There is a belief that the US was part and parcel of the Israeli attack – that the Bush administration had planned the war with Israel months in advance as part of a plan to attack Iran later.³² The UN investigation into the Hariri assassination and the international tribunal are also seen as instruments of political pressure on Syria and Iran and as part of the regional clash between the US and Iran and their allies.

Conclusions

The assassination of another anti-Syrian MP, Walid Eido, on 13 June 2007, preceded by several bomb blasts in different parts of the country, and the attack on UNIFIL troops, all show that the threat of terrorism still hangs over Lebanon. And ongoing violence involving Fateh al Islam based in the Palestinian camp outside Tripoli, as well as explosions in Beirut and other parts of the country, have been understood as indicating the reality of threats of instability if the Tribunal goes ahead.

Resolution 1757 forms part of the UN policy in the Middle East region as a whole. While on one view this international action is a form of welcome protection, on another it is part of a conspiracy against Syria and Iran led by the US and France. The dilemma in Lebanon is similar to that faced by the US and the international community in Palestine and Iraq. The

question is whether to engage with Syria in the hope of drawing upon its influence in all the conflicts in the region, or to confront it.³³

As to the internal difficulties in Lebanon, whatever the criticisms that may be made of the Security Council's intervention in the country's constitutional processes there seemed to be no alternative if the political deadlock was to be brought to an end. Removing the question of the Tribunal from the internal political equation in Lebanon should take away the main hurdle in resolving the governmental crisis. Continuation of the situation would have challenged the credibility of the Security Council and of the UN's commitment to Lebanon.

Whether or not the inevitably lengthy and complex procedures of the Tribunal will result in convictions, the establishment of the Tribunal will reinforce the principle that there should be accountability for acts of terrorism. If the perpetrators

are brought to justice it will show that the rule of law has returned to Lebanon. It may also have the benefit of throwing open the Lebanese judicial system to scrutiny and consequent reform.

The establishment of the Tribunal is a response to the call for 'The Truth' made during the massive demonstrations that followed the Hariri assassination. This was a departure from the 'forgive and forget' formula of conflict resolution in Lebanon where many crimes were ignored because the truth was too difficult to handle. When confronted with the question of the instability that can result from the Tribunal, the Lebanese Minister of Culture and acting Foreign Minister argued on his return from the Security Council vote that sacrificing justice for the sake of stability was the wrong choice to have to make: such a sacrifice never leads to stability in the long term.³⁴

Endnotes

¹ Engin Akarli, *The Long Peace: Ottoman Lebanon, 1861–1920* (London, I B Tauris, 1993).

² For more on this see Nasser M. Kalawoun, *The Struggle for Lebanon: A Modern History of Lebanese-Egyptian Relations* (London and New York: I B Tauris, 2000).

³ UN Doc. S/2005/203 of 24 March 2005.

⁴ Letter of 29 March 2005, UN Doc. S/2005/208.

⁵ UN Doc. S/2005/783 of 13 December 2005.

⁶ UN Doc. S/2006/176 of 21 March 2006.

⁷ In resolution 1664(2006).

⁸ Letter dated 21 November 2006 from the President of the Security Council to the Secretary-General; UN Doc. S/2006/911.

⁹ Letter of the Prime Minister of Lebanon to the Secretary-General of the United Nations, UN Doc. S/2007/281.

¹⁰ Letter of 16 May 2007, UN Doc. S/2007/281.

¹¹ Resolution 1757(2007), para. 1(a).

¹² Security Council meeting of 30 May 2007, S/PV. 5685.

¹³ Ibid.

¹⁴ By resolution 1593(2005).

¹⁵ It has, however, changed the 'entry into force' provision of the agreement. It also allows that the headquarters agreement with the state where the Tribunal is to sit may be concluded between that state and the UN, if Lebanon cannot participate, as required by the Tribunal agreement – presumably for the same reason that prevented the agreement itself from being concluded. The resolution also provides that if 49% of the expenses of the Tribunal cannot be provided by Lebanon, as required by the agreement, the shortfall can be made up by voluntary contributions from states.

¹⁶ Statute, Art. 2(a).

¹⁷ *Prosecutor v. Tadić* Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction 2.10.1995 IT-94-1-AR72. In this case, the defence claimed that the Tribunal had not been validly constituted, since the Security Council had acted contrary to the UN Charter and the Tribunal was not 'established by law' as human rights treaties require. These arguments were rejected by the Appeal Chamber of the Tribunal.

¹⁸ Security Council meeting of 30 May 2007, S/PV. 5685.

¹⁹ See Art.19 of the Agreement between the UN and Lebanon. The Council has previously been criticized for interfering with freely negotiated treaties; for example, resolutions 1422(2002) and 1487(2003) were said to be contrary to the provisions of the International Criminal Court Statute.

²⁰ Art. 2(7), UN Charter.

²¹ http://yalibnan.com/site/archives/2007/05/un_vote_for_tri.php.

²² Security Council meeting of 30 May 2007, S/PV. 5685.

²³ Resolution 1192(1998).

²⁴ See resolutions 1721(2006) and 1633(2005).

²⁵ http://news.bbc.co.uk/2/hi/middle_east/6703587.stm.

²⁶ See International Crisis Group, 'Lebanon at a Tripwire', Middle East Briefing No. 20, 21 December 2006.

²⁷ Art. 8, Agreement between UN and Lebanon.

²⁸ Art. 6(2), Statute of the Special Court for Sierra Leone.

²⁹ See Nadim Shehadi, 'Riviera vs. Citadel: the battle for Lebanon', in OpenDemocracy.net, 22 August 2006.

³⁰ The dispute over the Chebaa farms relates to a contested strip of territory taken from Syria by Israel in 1967, which Hizbullah regard as occupied Lebanese territory and thus justifying their continued resistance against occupation.

³¹ In January 2004 Hizbullah conducted a prisoner-swap with Israel via German mediation, but three Lebanese prisoners remained in Israeli jails.

³² This theory is articulated by Seymour Hersh, 'Watching Lebanon', *New Yorker*, 21 August 2006.

³³ See Robert Malley, 'Forget Pelosi – What about Syria?', *Los Angeles Times*, 11 April 2006. For further discussion of Syria's role in the region, see Rime Allaf, *Open for Business: Syria's Quest for a Political Deal*, Chatham House Briefing Paper, July 2007.

³⁴ Dr Tarek Mitri, in interview with May Chidiac for LBC, 5 June 2007.

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16 The Special Tribunal for Lebanon: The UN on Trial?

UN timeline

2004

02/09 UN Security Council resolution 1559(2004) [calling for Syria to cease its interference in Lebanon's affairs]

2005

24/03 The report of the UN Fact-finding Mission to Lebanon recommends the formation of an independent international investigation

29/03 Lebanese government approves creation of UNIIIC

07/04 UN Security Council resolution 1595(2005) [establishing UNIIIC]

13/06 Signing of MoU between Lebanese Government and UN regarding the procedures for cooperating with UNIIIC

19/10 First UNIIIC report submitted by Mehlis

31/10 Security Council resolution 1636(2005) under Chapter VII [demanding Syrian government's full and unconditional cooperation with UNIIIC]

10/12 Second UNIIIC report submitted by Mehlis

13/12 Lebanese government requests formation of Special Tribunal and the extension of UNIIIC mandate to include assassinations and terror attacks since 01/10/04

15/12 Security Council resolution 1644(2005) under Chapter VII [extending UNIIIC mandate until 15/06/06 and widening it to include attacks since 01/10/04; demanding that Syria comply with UNIIIC's requests]

2006

14/03 Third UNIIIC report submitted by Brammertz

29/03 UN Security Council resolution 1664(2006) [requesting the Secretary-General to negotiate an agreement with the Government of Lebanon aimed at establishing an international tribunal]

17/05 UN Security Council resolution 1680(2006) [encouraging Syria to delineate borders and establish diplomatic relations with Lebanon]

10/06 Fourth UNIIIC report submitted by Brammertz

15/06 UN Security Council resolution 1686(2006) [extending UNIIIC mandate until 15/06/07]

11/08 UN Security Council resolution 1701(2006) [calling for a cessation of hostilities between Israel and Lebanon]

25/09 Fifth UNIIIC report submitted by Brammertz

15/11 Report of the UN Secretary-General on the establishment of a special tribunal for Lebanon

21/11 President of the Security Council writes to the UN Secretary-General, approving draft agreement and Statute, and inviting him to proceed with the final steps for the conclusion of the agreement

12/12 Sixth UNIIIC report submitted by Brammertz

2007

23/01 Lebanese government approves Tribunal agreement and Statute, and passes them to parliament for a vote.

15/03 Seventh UNIIIC report submitted by Brammertz

27/03 UN Security Council resolution 1748(2007) [extending UNIIIC mandate until 15/06/08]
UN Secretary-General writes to Security Council, concurring that all domestic options for the ratification of the agreement have been exhausted and calling for Security Council action.

30/05 UN Security Council resolution 1757(2007) [bringing into operation agreement establishing Tribunal with effect from 10/06/07]

10/06 UN Security Council resolution 1757(2007) comes into effect

Lebanon timeline

2004

02/09 Mandate of President Emile Lahoud extended by an amendment of the constitution
01/10 Attempted assassination of Minister Marwan Hamadeh

2005

14/02 Assassination of PM Rafik Hariri and 22 others

27/02 Anti-Syrian demonstrations: government resigns

08/03 Mass pro-Syrian demonstration by Hezbollah

14/03 Mass anti-Syrian demonstration: Cedar Revolution

19/03 Bomb in New Jdeideh suburb of Beirut: 11 wounded

23/03 Bomb in Alta Vista shopping centre, Beirut: 3 killed, 7 injured

26/03 Bomb in Boushrieh, NE Beirut: 6 wounded

01/04 Bomb in Broumana, NE Beirut: 9 wounded

26/04 Syrian army and main intelligence service leave Lebanon

06/05 Bomb at 'Voice of Charity' radio station: 11 wounded

29/05 First round of parliamentary elections in Lebanon

02/06 Assassination of journalist Samir Kassir, Beirut

19/06 Fourth round of parliamentary elections: 14 March coalition wins majority in parliament

21/06 Assassination of George Haoui, ex-Secretary-General of the Lebanese communist party

12/07 Attempted assassination of Minister of Defence Elias Al-Murr: 1 killed, 3 injured

22/07 Bomb in Beirut nightclub: 13 wounded

22/08 Bomb in Zalka, Beirut: 11 wounded

16/09 Bomb in Ashrafieh, Beirut: 1 fatality, 10 injured

25/09 May Chidiac, TV presenter, survives assassination attempt

12/12 Assassination of MP and newspaper editor Gebran Tueni in the east of Beirut

13/12 Pro-Syrian ministers boycott Council of Ministers

2006

02/03 Start of National Dialogue talks

11/07 Hezbollah abducts two Israeli soldiers

12/07 Israel launches military campaign against Lebanon

14/08 Truce agreed between Hezbollah and Israel; UN peacekeeping force begins to deploy along border with Israel

12/11 Hezbollah, Amal and pro-Lahoud ministers resign from government

21/11 Assassination of Pierre Gemayel, Minister of Industry

01/12 Lebanese opposition launches mass protest calling for resignation of Siniora cabinet

2007

23/01 Lebanese opposition parties sponsor riots and general strike to topple the government

25/01 Fierce fighting between students escalates into clashes between pro-government and pro-opposition supporters in Beirut

13/02 Ain Alaq bus bombings east of Beirut

20/05 The Lebanese army besieges the Nahr al-Bared refugee camp near Tripoli after clashes with Fateh al-Islam militants; bomb in Ashrafieh in Beirut wounds 10

21/05 Bomb in Verdun in west Beirut

23/05 Bomb in Aley, east of Beirut

03/06 Violence spreads to Ain al-Helweh camp

04/06 Bomb in east Beirut

13/06 Bomb in Manara neighbourhood: anti-Syrian MP Walid Eido killed with son and 10 others