

The failures of the Special Tribunal for Lebanon are lessons to be learned

Abandonment not an option, but open court necessary to bring killers to justice

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That the Special Tribunal on Lebanon (STL) has been a failure is a gross understatement. We need to salvage it, if necessary, against its own incompetence. This argument is validated by the immense yearning for justice in Lebanon and elsewhere in the Middle East. The Cedar Revolution was defined, from its earliest days, by its call for truth and justice. Four years later, we have grown ever more distant from both.

And yet what was the choice? We, who made the Revolution, called for an international tribunal because of the structural inadequacy of the Lebanese judiciary. Lebanese judges on their own were and continue to be unable to deal with the massive criminal conspiracy that killed our former prime minister, and the continued pattern of assassinations that followed.

Since most Lebanese believed (and continue to believe) that the Syrian leadership was responsible for the assassination, the alternative was to threaten military hostilities, at worst, and to cut Lebanon's relations with Syria, at least.

It is the fundamental role of a government to protect its people, and retaliation is in the order of things indeed permitted by international law and the right of self-defense under Article 51 of the UN Charter. The Lebanese government has done nothing so far. Even perfunctory measures such as limiting trade relations with Syria could not or were not taken. Considering the impotence of the government, we decided to go for the STL.

What is the choice now? The Special Tribunal on Lebanon failed because of the lack of professionalism amongst the prosecutors and their staff, including press secretaries whose main task seemed to stifle our criticism of their bosses.

The current prosecutor, Daniel Bellemare, has carried on with the mute and unprofessional work of his predecessor, Serge Brammertz. We hear nothing from them, except that we should not trust other sources, like the press, who are doing their job in their stead. Four Lebanese generals were apprehended, then released, and we know officially nothing of the reasons behind their long arrest, or their release.

I am not impressed by the tantrum of Jamil Sayyed, who oversaw one of the worst moments for Lebanese civil liberties in recent history, including when he brazenly shadowed journalist Samir Kassir for weeks on end just because of Kassir's courageous criticism of the police state Sayyed was putting in place. Yet the generals are entitled, as we are, to an explanation, and to compensation if they were thrown in

jail for two years without cause. More purposefully, what are the investigators/prosecutors doing? What are they being paid for?

Then again, what is the choice now? To abandon the STL altogether is not an option, despite its dramatic shortcomings. To abandon the STL would be a direct appeal for people to take justice in their own hands, and they will. We should not have a shred of a doubt about this, except to remind ourselves against that temptation: when people take justice in their hands, oftentimes the innocent die instead of the guilty.

So we need to salvage the STL on the basis of fundamental human rights principles. The first principle is the reason the STL was established in the first place: to end impunity. The killers are still on the loose. For Hariri and the other two hundred victims killed or wounded in a pattern that started in October 2004, we were right to ask for truth and justice. We need to continue putting pressure on the STL to perform, and to tell us what they are doing, indeed to start opening up their files to the victims' families, or else for the prosecutor to resign.

If the STL indicts people, whoever they are, they need to be tried. The leading judges on the STL are respected international figures, and they will have to perform in accordance with international human rights standards, lest their reputation is ruined. If the Der Spiegel-rumored involvement of Hizbullah is confirmed; alternatively and additionally, if the STL does find clues involving the Syrian leaders, there is no other attitude to take but the request to see those formally accused or indicted tried. No amount of rapprochement with Damascus and Hizbullah within a national unity government can change that basic fact, that the killers should be surrendered to the tribunal for a proper trial.

The second principle is the protection of justice against politics. Like all international tribunals, the STL is "political," in the sense that its establishment needed to go through a political process, in this case the UN Security Council. This is in the nature of the beast. But it is necessary to minimize the impact of politics on the STL. The four generals' fate provides a useful example in this regard.

Despite the accusation of a politicized STL, they were released. If the STL was indeed political, they would still be in jail in the Hague. We also need to insist, against the detractors of the STL, that the importance of a tribunal comes from its holding its session in open court, and unfettered access of the accused to their lawyers, and for the victims to the investigation files. The victims' families should be more proactive in this request, and not allow the tribunal to be dominantly guided by Saad Hariri and other politicians.

The third principle is to widen the call for justice, not to narrow it. Amnesty International has underlined the need to address the large swathe of unpunished crimes in Lebanon, of which Rafik Hariri's murder is only one. I have advocated, and continue to advocate, that a serious process address all the innocent victims of the many Lebanese wars, for the silence that descended on the country in 1990 has simply failed to bring peace. The families of the victims can simply not be silenced. Like Hariri's family they have a right to know.

Likewise, the kidnapping by Moammar Gadhafi of Mussa al-Sadr requires an international mechanism that proves effective for his family and those of Abbas Badreddin and Muhammad Ya'qub, who "disappeared" on an official visit to Libya in 1978. Gadhafi and several co-conspirators were indicted in Lebanon in an important decision in 2008, and arrest warrants issued. They need to be made effective worldwide, and the UN is a good place to start.

Those three lessons of the STL are true also on a regional and international level. It is already happening, and the Pakistani government has asked for an international enquiry into the assassination of former Prime Minister Benazir Bhutto. Last Sunday at the Fête de l'Humanité in Paris, I saw Palestinian activists and their French supporters advocating a Special Tribunal for Gaza.

Their requests are now bolstered by the important conclusions of the Goldstone-led UN investigation, excerpted on this page. From a practical point of view, the Commission is advocating, in case impunity continues within Gaza and Israel for those accused of war crimes and crimes against humanity, that the Security Council transfers the file to the International Criminal Court (ICC). This may be a significant development in international law generally, and in the Middle East in particular. What it also provides is a possibly more solid judicial remedy than the STL, which is the ICC.

Indeed, the emergence of the ICC resulted from the proliferation of special tribunals. International human rights organizations, along with key governments, decided in the mid 1990s that one international criminal court was better than several ad-hoc tribunals. We should start considering the transfer of the STL and its incorporation into the ICC.

In addition to the prosecution of the Sudanese president before the ICC for the atrocities committed in Darfur, three other major investigations and eventual trials are afoot: in Gaza, where the possibility of the ICC prosecutor to act is now bolstered by the call of the Goldstone-led UN mission's specific recommendation; in Lebanon, where the continued ineffectiveness of the prosecutor will push for a more serious professional body to take the matter up; and in Iraq, where a call of the government for an investigation and a Special Tribunal for the continuing atrocities of foreign-supported bombers in Iraq has come to a head. There, the lesson is particularly clear: the Iraqi government should join the ICC and refer the file of continued mass murder to the ICC Prosecutor.

International criminal justice is a new concept in the world. It is unfortunate that a couple of prosecutors in the STL have failed to discharge their duties, but the basic lesson learnt from the STL is the need for more justice, not less.

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