

The Special Tribunal for Lebanon, the staring abyss and what must be done about it
the STL, the UN and Lebanon must all contribute to avert an explosive situation in the country

By Chibli Mallat

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Lebanon is back on the brink. The highly charged atmosphere has been steadily building up again around the Special Tribunal for Lebanon (STL), which was established for “truth and justice” after the assassination of former Prime Minister Rafik Hariri five years ago with little to show to date.

Diagnosing the crisis

The build-up of hatred and mistrust in Lebanon needs to be better understood in legal and political terms for a diagnosis that could pull the country away from the abyss. Nothing short of a carefully thought out action by the parties who want to avoid it, and an international understanding that closely accompanies it, will avoid the catastrophe staring us in the eye.

How did we get here? Best for understanding to start from the end. A relentless rumor in Beirut is that the STL has found enough evidence to incriminate Hizbullah members for the Hariri assassination. Hizbullah is fighting back by rejecting the entire judicial process as an international plot designed to destroy it, and by offering an alternative theory in Hariri’s assassination implicating the Israelis. In a joint effort with Hizbullah and Syria, four generals who spent almost four years in prison question the STL’s integrity in refusing to bring to trial those witnesses whose false testimonies they believe led to their incarceration, and to the finger pointed then at the Syrian government.

Large-scale violence is round the corner, and sectarian Sunni-Shiite street confrontations are becoming a recurrent and spiraling pattern in Beirut and other Lebanese cities. We have reached a point where the country is damned if it will, and damned if it won’t. If the STL is dismantled, the main reason for its establishment in the first place, to prevent the victims from taking the law into their own hands, will vanish. The street will inevitably take over the yearning for justice in bouts of spiraling revenge. If the STL indicts members of pro-Syrian factions, they will resist it in any way they can, and already threaten large-scale violence. With regional deadlocks around Iran and the Arab-Israeli conflict persistent and growing, Lebanon will again offer its citizens as fodder to internal and regional contradictions.

Meanwhile, the STL remains mum, and the prosecutor gives no indication of the nature of the work achieved, the timetable expected, or the direction of the investigation. After five years of expensive enquiries, and a pattern of targeted assassinations that claimed over 100 innocent victims and passersby, the STL has little to show. No one was arrested or indicted, and those who were arrested have been released. In an effort to salvage the STL, its president Antonio

Cassese declared in May that “there are indications the Prosecutor might submit an indictment by December 2010.” In the latest interview, given to Now Lebanon on August 31, the prosecutor, Daniel Bellemare, has continued his predecessor’s stubborn silence with the promise of progress no one can see, while belying the STL president’s statements. One admission fused inadvertently, fueling more criticism, when he indirectly admitted that the four generals were imprisoned on trumped up evidence.

The Syrian government and its allies are therefore claiming to be right in their expressed caution, then outright rejection, of the STL. Not a single accusation has held, despite a finding of two consecutive prosecutors that the “Syrian-Lebanese security order” was key to understanding the assassination of Hariri. Worse, whatever justice associated with the STL unraveled since it ordered the release of the four generals on April 29 2009.

In their distrust or fear of the STL, the Syrian government and its Lebanese allies now openly demand that it be dismantled. To press their case, a common position has emerged amongst them politically and legally.

In political terms, Hizbullah and its allies are threatening the downfall of the national unity government, and to resort to the streets to achieve it if the resignation of their members from government is insufficient. By setting the STL at the heart of any government business, the paralysis of the country is assured for months on end.

In legal terms, two measures have been taken to stop the STL work: 1) pressure on the Lebanese government to deny the funds that it contributes to process, amounting to half of the expenses under STL statutes; and 2) initiation of judicial action in Syria with a set of retaliatory measures, including arrest warrants for leading Lebanese and international figures issued at the end of last week. The arrest warrants were issued against 33 persons; most are open critics of the Syrian government.

Alternatively, the STL critics would like the prosecutor to shelve its rumored upcoming indictment against Hizbullah members. This is not possible in practice because the tribunal, any tribunal, would destroy its legitimacy by declaring a suspect is off the hook sine die.

Politically, Lebanon is threatened again with the paralysis and violence of a failed state. The Hizbullah-led factions in Parliament do not have the majority for a new government, and even if they do, it will be hard to find a Sunni leader who will confront the anger of the street if Hariri is forcibly removed from power.

Legally, the UN Secretary General is obligated to find STL funds denied by the Lebanese government elsewhere. As for the arrest warrants, they will in all likelihood boomerang. When the Syrian government conducted its own attempt to investigate the Hariri case with a view to short-circuiting the work of the investigators five years ago, the investigators accused them of obstructing justice.

To recap: the diagnosis just offered underlines the STL's professional shortcomings and the attempts of the Syrian government and its allies in Lebanon to build on these shortcomings to dismantle it.

The deadlock will therefore persist unless measures that respond to the legitimate criticism of the STL transform the entire scene, flawed as it is with the tragic failure of the STL in fulfilling its missions five years after an assassination that wrecked Lebanon and the region.

The crisis has now escalated in such proportions that leading Lebanese prosecutors, and two German investigators, are now under arrest warrants issued by the Syrian authorities. This brings the Hariri and related assassinations squarely back to the lap of the UN.

Correctives: the STL, Lebanon, and the UN

While parties are digging down their heels, is a compromise possible? I am skeptical, so deadlocked is the situation domestically and regionally, but one should try nonetheless. Political developments depend on the nature and speed of the simmering sectarian violence in the country. The conclusions here are exclusively legal-judicial.

To avert the legal-judicial crisis as it takes the country into the abyss, a game-change is needed by three protagonists: the STL, the UN, and the Lebanese government.

The STL

First, what should the STL do? It must simply perform. So far it has nothing to show.

The first corrective is to show that justice is actively sought through finding and arresting the killers. The central problem, uncovering the cold-blooded murder of so many innocent people, requires a courage and professionalism that vanished since the appointment of Serge Brammertz in 2005. Brammertz relinquished his professional duty by doing effectively nothing for three years, at a time when assassinations were persisting in a clear pattern targeting anti-Syrian Lebanese personalities, and while four accused generals and a few lesser acolytes were languishing in prison without trial.

There are at present several competing public theories: one places the Syrian government at the centre, alternatively Hizbullah; the second, recently advanced by Hizbullah, accuses the Israeli government; the third, which has been the mainstay of the generals and their allies for the past five years, is the allegedly Islamist Sunni suicide bomber, Ahmad Abu Ads, whose tape was aired the day after the assassination of Hariri.

How should the STL proceed? It has now been five years of bungling and silence, and the argument for the secrecy of the investigation has worn out dramatically.

If Hizbullah is saying that the Israeli government is responsible, why doesn't prosecutor Bellemare interview Israeli officials, and say it has? Conversely, a large number of Lebanese, including most of the victims' families, and the two first UN investigators, are persuaded that

high officials in Syria were involved: why are the 19 suspects identified by Mehlis in his second report not being questioned? If they were, who were they and what did they say? One of the most stunning findings in that investigation is the telephone call from a low level Islamist activist to the private cellphone of the former president of the Republic, who had used the personal intervention of the Syrian president to force an extension of his mandate on Hariri. Why did this man call the president's personal phone a few minutes after the blast? There are numerous contradictory explanations floating in Beirut, but the international investigation, which exposed the troubling fact has never taken the trouble of explaining why this track has gone cold. And the thesis of the Sunni Islamist plot around Abu Ads, what came of it? What about the 14 other bombs and assassinations that formed, according to the UN investigation, a "pattern"? If Hariri's death is so difficult to unravel, are all the other killings as intractable? There are myriads of other questions left unanswered, including leaks to journalists who trumpet news that the STL then refuses to comment on.

The second corrective is to confront the false witnesses. They cannot remain at large, and must be called in by the STL even if they are a sideshow that does not go to the heart of the issue. Perhaps the first two investigators were wrong in pointing the finger to the Syrian government, but this mistake needs to be squarely addressed by the STL. The murder of Hariri and the suffering of a hundred victims and their families in crimes unresolved, remain the central issue. The file of the false witnesses is a disturbing but relatively marginal concern that nonetheless needs to be fully clarified by the STL. If the fabricated evidence is not marginal, as Hizbullah and its allies contend, only a full explanation of the STL can allay the doubts triggered by a manifestly false imprisonment that lasted three and a half years.

The third corrective is about the style of communication chosen by the STL. Despite the clear mission it offers to the public on its official site, any substantive information the Lebanese receive is from some obscure journalist in this or that foreign newspaper. The STL has even abdicated the role assigned to it by the UNSC to brief the Council regularly. Since Brammertz took over, all the reports have been empty apart from bureaucratic drivel.

The continued silence of the STL on any matter of substance, with the pretense that the slightest explanation jeopardizes the investigation, is key to understanding the present crisis. Nature abhors the void, and victims and the public at large are left to glean stories from journalistic sources. It is not sufficient for the STL to keep repeating that people should be patient and that an indictment will be handed down some day, when nothing appears to be happening, especially when the country is on the verge of large-scale violence. By keeping silent despite its own contradictory stances, the STL forgets the foremost rule that lawyers learn in the first year of law school the world over. Not only must justice be done, it must be seen to be done.

The Lebanese actors

Second, what should the main Lebanese protagonists do?

Hizbullah and his allies are asking for the STL to be dismantled. This cannot happen, and even if the whole Lebanese government requests it, which is unlikely, the STL, like the International Criminal Tribunal for the former Yugoslavia and others, is an international mechanism that

cannot be dismantled or stopped in the foreseeable future. A different approach altogether is necessary.

The groundwork has been done, with various Lebanese factions united in the current government around expanding justice, not stifling it. The relevant quote of the official governmental platform, reached after months of wrangling, is worth reproducing in full. In Section 13, on the STL, “the government affirms its respect for international law and the commitment agreed in the National Dialogue to cooperate with the STL, which was established by Security Council Resolution 1757, to unveil the truth in the murder of martyred Prime Minister Rafik Hariri, his companions and the victims of other assassinations, to establish justice, and to deter criminals.”

This was immediately followed by another section, on a case of national and international importance that had until then been all but neglected by the Lebanese political leaders and the international community.

Section 14 reads: “The government will multiply its efforts in following up the case of Imam Musa al-Sadr’s disappearance with his two companions Sheikh Muhammad Yaaqoub and journalist Abbas Badreddin in Libya, in order to find out what effectively happened, to free them and to punish those Libyan and non-Libyan nationals responsible for their disappearance, as well as the executors and all those involved, on the basis of the official accusation issued by the General Prosecutor on August 2, 2004, and of the indictment decided by the investigative judge of the Judicial Council [Lebanon’s highest court] on August 21, 2008. The government further insists on the need for the Judicial Council to speed up its work and take the national and international measures required by law.”

This platform has become a defining matter for Lebanon’s future in the light of this national unity program, which demands persistence and effective results in two defining crimes of the country’s traumatic history: the assassination of Hariri and 22 other innocent Lebanese in February 2005, and the abduction by Libyan leader Moammar Ghadafi of Sadr and his two companions in August 1978.

This will not deter the suspicion of Hizbullah towards the STL, or its fear of the persistent rumors about the involvement of its cadres in the assassination of Hariri. Nor will it lessen its animosity towards an international justice that remains highly selective. Still, together with the arrest and investigation of the false witnesses, it will show that the international community is not out to just get a particular Lebanese community, and that justice is a far more universal proposal with which all Lebanese can identify. The full government must take the lead, especially on the international level, to make effective the indictment of Ghadafi and the arrest warrants issued by the Lebanese judiciary.

The UN

Last and not least, what should the UN do?

The Office of the Secretary General has already reacted negatively to the attacks against the STL, and reiterated its support for its work. This was inevitable, but it is far from sufficient, and all the steps suggested above must be met, embraced and encouraged in the UN, especially in the Security Council. In addition the Secretary General should request results from the STL in closed and open sessions on the contradictions left in five years of justice delayed.

The Security Council's role in support of the STL has been time and again doubted and undermined by the Syrian government and its Lebanese allies. Flouting the UN is, however, not exceptional, and UNSC resolutions are violated every single day at great expense to peace and stability in the world.

The case of the STL is different, however, because this is an international tribunal that is being threatened in its very existence, and it is hard to accept either the UN Secretariat or the main Western capitals yielding in New York to pressure. In this particular case, action in favor of justice in the Imam Sadr case can be accommodated by the open and effective support of European countries and the United States, within the Security Council and beyond.

All these remedies appear to be a distant shot, for intellectual and legal leadership is simply not there. We would not be staring into the abyss if such leadership hadn't been so patently absent since more than half the people of Lebanon marched in Beirut for truth and justice in the Spring of 2005 and several times since. They deserve better.

Still, either the Lebanese retreat and condemn international justice as politically biased and hopeless, leaving the scene to chaos decided by arms, or the writ of justice is expanded as much as possible, in Lebanon and elsewhere. Abandoning the STL will leave raw violence as guide, domestically and regionally. So dramatic is the tension in the Middle East that no one will be spared, with sectarian violence bound to spread to the street in Damascus, and a failed state in Lebanon drawing in Israel and Iran into direct confrontation.

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