

**TRIAL BY FIRE: THE POLITICS OF THE SPECIAL
TRIBUNAL FOR LEBANON**

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TRIAL BY FIRE: THE POLITICS OF THE SPECIAL TRIBUNAL FOR LEBANON

EXECUTIVE SUMMARY

It is hard to see who can emerge victorious in Lebanon's latest crisis. The Special Tribunal for Lebanon (STL) dealing with the 2005 assassination of former Prime Minister Rafic Hariri soon will issue its first indictments. As speculation grows that its members will be named, Hizbollah has warned of firm action if the government, now led by the victim's son, Saad Hariri, fails to denounce the tribunal. If the prime minister complies, he and his partisans would suffer a devastating political blow. If he does not, consequences for them and the country could be more ruinous still. If Hizbollah does not live up to its threats, it will lose face. If it does, its image as a resistance movement may be further sullied. There are no good options, but the best of bad ones is to find an inter-Lebanese compromise that, by distancing Lebanon somewhat from the STL, preserves the country's balance of power without wholly undermining the work the tribunal has done so far. Saudi Arabia and Syria reportedly are working on such a scheme. It would be prudent for others to support such efforts and suggest their own ideas. The alternative is to either wake up to a solution they dislike or try to upset the only credible chance for a peaceful outcome.

Hope that the STL might become a significant precedent for international justice region-wide dissipated as the probe became enmeshed in, and contaminated by, a vicious local and regional tug of war. From inception, the international investigation was promoted by an assortment of Lebanese and non-Lebanese players pursuing a variety of goals. Some sought revenge and accountability, others to deter future political assassinations and bolster Lebanon's sovereignty. A few (notably France and the U.S.) saw an opportunity to promote a lasting political realignment in Beirut by strengthening a pro-Western alliance, dramatically lessen Syria's and its allies' influence there or even – a goal nurtured more in Washington than in Paris – destabilise the Syrian regime. There was, too, hope of a breakthrough in the Arab world for international justice principles and an end to the culture of impunity. The result was a remarkably wide consensus among actors who converged on a narrowly defined judicial process,

resting on the assumption that Syria was guilty, and that its guilt could and would be established beyond doubt.

To invest such high expectations in the investigation was both slightly unfair and exceedingly optimistic. They rested on a series of misjudgements – about the effective balance of power in Lebanon; about Syria's ability to withstand pressure and isolation; and about the probe's capacity to deter future assassinations, which continued unabated. Nor did the international inquiry's promoters appear to fully take account of the time lag between their hurried political objectives and the tribunal's far slower pace.

In the years between Hariri's assassination and the moment the tribunal came to life, the Lebanese and regional contexts changed in dramatic fashion. Syria withdrew from Lebanon and, far from being ostracised, was being courted again, notably by France but also, to a lesser degree, the U.S. The 2006 war plainly established Hizbollah's military potential, deepened Lebanon's internal rifts and damaged the West's Arab allies. Hizbollah's brief May 2008 takeover of Beirut, followed by the Doha accord between duelling Lebanese camps, ratified a new domestic balance of power, ushered in a national unity government and hastened the fragmentation of the pro-Western, anti-Syrian coalition led by Saad Hariri and known as March 14. Following Saudi Arabia's footsteps, Hariri himself achieved a measure of reconciliation with Damascus.

Something else changed in the intervening period – the identity of the presumed culprit. As recent media leaks suggest and as Hizbollah's own statements confirm, operatives belonging to the Shiite movement are now widely anticipated to be the first indictees. For March 14, the STL once more turned into a precious instrument in the domestic confrontation and, for its foreign backers, a tool with which to curb the Shiite movement. For Hizbollah, the tribunal became a matter of life-and-death, seen as another in its foes' serial attempts to defeat it: accusations accepted as legitimate in Lebanon and the region could seriously damage its reputation, liken it to a mere (albeit

powerful) sectarian militia, revive perilous sectarian tensions and rekindle efforts to disarm it.

Thus began an intensive, relentless campaign by Hizbollah and its allies to discredit the tribunal and intimidate those who might support it. Aided by some of the probe's initial missteps, the Shiite movement successfully polarised and politicised the situation so that, even before indictments have been handed down, public opinion in Lebanon and the Arab world already has made up its mind: there are those who are convinced the STL is a blatantly political instrument doing Israel's and the West's bidding, and there are those who are persuaded of Hizbollah's guilt. However credible or thorough the indictments, they are unlikely to change this much. Hizbollah threats to take unspecified action also loom large.

Nothing good can come of this. Some within March 14 and its backers believe the Shiite movement is bluffing, that it cannot afford to provoke a confrontation lest it bolster the very image of itself as a sectarian militia it fears the indictments will promote. Hizbollah and its supporters seem to think, conversely, that Hariri will cave in to pressure, cut all ties to the STL and denounce its allegedly political agenda. Both scenarios are theoretically plausible, neither is likely. The Shiite movement, having warned of catastrophe, can ill afford to do nothing; Hariri, having taken the helm of the Sunni community, would pay a heavy price for turning his back on the murder of the man who was both his father and that community's pre-eminent leader. Banking on Hizbollah's tameness or Hariri's capitulation will only encourage the two sides to stick to uncompromising positions that could push Lebanon to the brink.

Riyadh and Damascus are said to be working on a compromise. Details remain murky, but one imagines possible scenarios. Lebanon could request the Security Council to halt STL activities once indictments have been issued, for the sake of domestic stability. It could condition further cooperation with the tribunal on its taking certain steps (eg, foregoing the option of trials in absentia; agreeing to look into the so-called false witnesses affair). Or cooperation could continue even as Lebanon expressed serious doubts as to the basis of its findings. A compromise should be accompanied by a collective agreement to allow the prime minister to govern more effectively – something he systematically has been prevented from doing.

Such a deal would not be neat, and it would not be pretty. Hizbollah would not get all its wants. But for Hariri to surrender could be political suicide and, by weakening the community's leader, might pave the way for violent action by Sunni groups angered at the denial of justice. March 14 would not be satisfied either, having to accept real limitations on the STL's work. But for it or its allies to stand in the way would risk provoking the very out-

come about which they fret, namely more aggressive Hizbollah action leading it to greater, not lesser, political clout. What, then, would March 14's foreign allies do?

Hizbollah's reputation has been tarnished, and it is unlikely soon to be restored. March 14 once more is showing its fecklessness and the huge imbalance of power from which it suffers on the ground; that too will not soon be remedied. The tribunal will not achieve the loftier goals many projected onto it. No winner will come out of the current battle. What is necessary is to ensure the Lebanese people do not emerge as the biggest losers of all.

Beirut/Brussels, 2 December 2010

TRIAL BY FIRE: THE POLITICS OF THE SPECIAL TRIBUNAL FOR LEBANON

I. INTRODUCTION

The 14 February 2005 murder of former Prime Minister Rafic Hariri in a massive bomb-attack brought to a head a simmering conflict over the presence of Syrian troops in Lebanon and Hizbollah's armed status. It also set off a long, seemingly unending sequence of dangerous aftershocks. Lebanon experienced a wave of political assassinations. In 2006, after a Hizbollah cross-border operation, Israel launched a major, devastating but ultimately inconclusive offensive. Small-scale sectarian incidents occurred with worrying regularity. A governmental crisis fed into a presidential one, and, after the parliament ceased to convene, the political system faced near-total paralysis. Opposition forces took to the streets on several occasions, most spectacularly in a May 2008 Hizbollah-led takeover of key Beirut neighbourhoods, forcing a beleaguered majority to accept a power-sharing agreement brokered in Doha.

While the struggle for power unfolded, so too did a judicial process established by the UN Security Council in the immediate aftermath of Hariri's death. From the outset, the two tracks inescapably were intertwined. The UN-led probe into the assassination and the 2007 creation of a Special Tribunal for Lebanon (STL) both derived from and fed an intense tug of war between competing Lebanese camps, which itself was tied to far larger regional issues such as the Arab-Israeli conflict, an aggressive U.S. policy symbolised by the occupation of Iraq, Iran's growing assertiveness, mounting sectarian tensions, Syria's support for a variety of militant groups and a deepening intra-Arab Cold War.

Although the Doha accords ushered in a period of relative calm, turbulence resumed as reports surfaced that the STL was about to issue its indictments, and speculation mounted that individuals affiliated with Hizbollah were to be the first targets. The so-called majority, also described as March 14 in reference to the massive anti-Syrian rally held in 2005, and opposition (alternatively known as March 8, the date of a large-scale Hizbollah-led demonstration expressing gratitude to Damascus that same year) still are part of a national unity government, but they have adopted increasingly irreconcilable positions vis-à-vis the

tribunal. Hizbollah categorically rejects any suggestion of involvement in the murder and is demanding that the government distance itself from the STL. Prime Minister Saad Hariri, Rafic's son and a leading March 14 figure, is loath to undermine a judicial process in which he has considerable personal and political stakes.

In the absence of a compromise between the two sides, a new governmental crisis and period of wholesale institutional paralysis is almost certain. But those are among the least worrying outcomes. On all sides, more ominous scenarios are evoked. These include renewed political assassinations, all-out sectarian strife, attempts by Hizbollah to assert greater political or military control domestically, or even another war between Israel and Hizbollah, which the former fears the Shiite movement might provoke to shift attention from the indictments and the latter claims Jerusalem might wage to take advantage of Hizbollah's momentary vulnerability.

The fears might well be exaggerated, though none is entirely without foundation. Each of these occurrences has happened, in one form or another, during the many phases of this ongoing struggle. In this sense, the impending indictments are but the latest manifestation of a crisis that has evolved but has yet to be solved.

Crisis Group takes no position as to the accuracy and credibility of the forthcoming indictments. Rather, this report examines the political context within which they will be issued and analyses various parties' current and possible future actions in light of their now widely shared assumption that Hizbollah members will be implicated.

II. THE POLITICS OF THE INTERNATIONAL INVESTIGATION

A. THE MURDER'S AFTERMATH

Rafic Hariri's murder, in a blast that killed another two dozen individuals, wounded over 100 and gutted several buildings, took place in an already highly charged domestic, regional and wider international context. By 2004, a growing number of Lebanese resented Syria's heavy-handed military presence and political interference.¹ The murder also occurred at a time of increasingly antagonistic relations between Damascus and the three capitals that historically had either endorsed or underwritten its domination over its neighbour – Washington, Paris and Riyadh.²

President George W. Bush's administration distrusted Syria and hoped for regime-change, accusing it of assisting foreign militants in Iraq, armed Palestinian groups and Hizbollah. President Jacques Chirac had believed he could take Syria's young president, Bashar Assad, under his wing, but he grew disillusioned. Promised domestic changes did not materialise. Most upsetting was Syria's policy toward Lebanon, given France's historical interest, strong connection to several Lebanese communities and Chirac's personal ties to Hariri. Hariri's relationship with Damascus, which had begun to sour in the late 1990s,³ worsened in 2004 as a result of Syria's efforts to amend Lebanon's constitution and prolong its president's term. For Chirac, finding common cause with Washington against Syria was an added, non-negligible incentive in the wake of the tensions provoked by France's opposition to the Iraq war.⁴ Saudi Arabia was inclined to side with Hariri, its principal Lebanese ally, in his intensifying struggle

with Damascus.⁵ Added to the mix was Israeli worry about Hizbollah's expanding military arsenal.

These converging concerns found their expression in UN Security Council Resolution 1559, which was prepared by the U.S. and France, purportedly with Hariri's help, and adopted on 2 September 2004. Its key provisions called for the withdrawal of "all remaining foreign forces" (a reference to Syrian troops), the disarmament of "all Lebanese and non-Lebanese militias" (an allusion to Hizbollah and small pro-Syrian Palestinian factions), the restoration of the country's "territorial integrity, full sovereignty, and political independence" (in effect, calling for a dramatic redefinition of Syria's role) and presidential elections "according to Lebanese constitutional rules devised without foreign interference or influence" (a clear warning against Syrian efforts to extend President Emile Lahoud's mandate). Ignoring the writing on the wall, Syria engineered the extension of Lahoud's mandate the very next day, thus further deepening the crisis.⁶ In response, Hariri resigned as prime minister on 21 October and joined the Lebanese opposition, which he sought to organise.

The bombing four months later that took Hariri's life occurred against this backdrop. Many in the international community as well as in Lebanon immediately concluded that Damascus was the culprit, both because of its tense relationship with the slain prime minister and because of the widespread conviction that an attack of such magnitude was unthinkable without, at a minimum, the foreknowledge and acquiescence of the omnipresent Syrian intelligence services.⁷ A French official neatly summed up his conviction of Syrian guilt: "no evidence, no doubt".⁸ On 15 February, the day after the murder, the U.S. recalled its ambassador from Damascus, implicitly blaming Syria for the attack⁹ and challenging the rationale

¹ Syria had maintained troops in Lebanon almost since the outset of the Lebanese civil war (1975-1990). In 1976, they entered to back Christian parties against Palestinian armed groups supported by their local left-wing allies. In 1990, Syria defeated General Michel Aoun, the acting president, whose loyalists were fighting a last-ditch battle against the Taef Accord, the agreement reached in 1989 to end the civil war. With the consent of key international stakeholders, Syria maintained its presence in the name of Lebanese stability. Its intelligence services tightly controlled political life. Day-to-day interaction between Syrian personnel and Lebanese civilians was marked by aggressive behaviour, bullying and extortion.

² See Crisis Group Middle East Reports N°39, *Syria After Lebanon, Lebanon After Syria*, 12 April 2005; and N°96, *Lebanon's Politics: The Sunni Community and Hariri's Future Current*, 26 May 2010.

³ See Crisis Group Report, *Lebanon's Politics*, op. cit.

⁴ See Vincent Nouzille, *Dans le Secret des Présidents* (Paris, 2010), pp. 455-456; Crisis Group Report, *Syria After Lebanon*, op. cit.

⁵ See Crisis Group Report, *Lebanon's Politics*, op. cit.

⁶ See Crisis Group Report, *Syria After Lebanon*, op. cit.

⁷ At the time, French and U.S. officials considered "Syria's high-level involvement to be the 'natural' hypothesis, with (or perhaps even without) the direct participation of Lebanese security services". France's ambassador to Lebanon, quoted in Nouzille, op. cit., p. 464. Senior U.S. officials harboured no doubt as to Syrian culpability. Ibid. Chirac himself reportedly said, "the decision was taken by President Assad. No other hypothesis makes sense". Quoted in *ibid.*, p. 455.

⁸ Crisis Group interview, Paris, June 2006.

⁹ A State Department spokesperson said, "we have not made any determination of responsibility in this particular incident, the assassination We and others in the international community will be following very carefully to see whether there is a thorough investigation to see what information can be found to indicate responsibility". Quoted in www.america.gov/st/washfile-english/2005/February/20050215171946cpataruk0.1498377.html#ixzz16JTbjgIy. Privately, however, administra-

for its presence in Lebanon. Others followed suit, pressing for implementation of 1559.¹⁰

On 16 February, hundreds of thousands of Lebanese poured into the streets of downtown Beirut to bid an emotional farewell to the former prime minister. The movement quickly gathered steam and included many who previously had been close to the Syrian regime.¹¹ Demonstrators brought to the surface years of pent up frustration at what they experienced as a foreign occupation.¹²

Leading the international charge, Paris and Washington shared several specific objectives even as their broader approach differed slightly. For Chirac, the priority was to avenge the loss of a close friend, restore Lebanon's sovereignty and deter Syria from any future interference – in effect shielding Lebanon from subsequent Syrian-inspired attacks. In his view, that meant avoiding full-scale confrontation or seeking rapid regime-change, both of which risked being counterproductive. Rather, pressure should intensify through renewed calls for Syria's withdrawal in conformity with Resolution 1559 and the establishment of an international commission of inquiry into the murder. France saw this latter goal as critical to deterring further Syrian interference in a "sanctuarised" Lebanon.¹³ In its reading, Lebanese sovereignty and stability entailed accommodating Hizbollah to some degree, insofar as it represented an important local constituency. France, in other words, looked at Syria through a Lebanese lens.

The U.S., in contrast, perceived Lebanon essentially through a Syrian lens: its primary aspiration was to weaken the regime, end its hostile regional policies (regarding Iraq and Palestinian groups in particular) and precipitate its collapse. This entailed an aggressive posture toward Damascus but also toward Hizbollah, as well as the more ambitious objective of squarely placing Lebanon in a pro-Western orbit.¹⁴ In other words, far from seeking to insulate Lebanon from broader dynamics, Washington saw it

as a key battleground in a much larger tug-of-war with stakes as far afield as Palestine, Iraq and Iran.¹⁵

Still, at this stage at least, Washington's and Paris's approaches joined on several specific objectives. Of these, the two most notable were to build greater pressure on Syria to withdraw from Lebanon and an international inquiry into the assassination.¹⁶ These were believed sufficient, at a minimum, to significantly weaken the Syrian regime, curtail its influence over its neighbour and bolster the West's Lebanese allies. Indeed, faced with mounting international isolation and massive Lebanese disapproval, Assad soon announced his country's intention to withdraw its troops. By 26 April 2005, Syria had formally completed the pullout of its military and security assets; a UN verification mission confirmed this on 23 May.

As for the inquiry, in response to a Security Council request the day following the car bomb, Secretary-General Kofi Annan appointed a fact-finding mission led by Peter FitzGerald, a deputy commissioner of the Irish police.¹⁷ His report, delivered on 24 March, concluded that Syria bore "primary responsibility for the political tension that preceded the assassination of the former Prime Minister" and for lax security measures, and recommended establishment of an international investigation to redress "serious flaws" in the way Lebanese institutions had conducted their own probe. The FitzGerald report also called for an overhaul of the Lebanese security apparatus, which had long operated under Syrian control and allegedly both failed to take basic steps to investigate the murder and attempted to cover up potential evidence.¹⁸

tion officials spoke a different language, and its posture toward Syria suggested it held the regime responsible.

¹⁰ See Crisis Group Report, *Syria After Lebanon*, op. cit.

¹¹ They include: Nayla Moawad, former minister and member of parliament; Misbah Al-Ahdab, former parliament member; and Georges Hawi, former Communist Party leader.

¹² The rallies soon came to be known as the Cedar Revolution, a term coined by the U.S. administration in an attempt to draw a questionable parallel with recent popular movements in Georgia and Ukraine. See *The Washington Post*, 3 March 2005. The Lebanese initially had referred to it as an "intifada", or uprising.

¹³ Crisis Group interviews, Paris and Beirut, 2006-2007.

¹⁴ See Crisis Group Middle East Report N°83, *Engaging Syria? U.S. Constraints and Opportunities*, 11 February 2009.

¹⁵ See Crisis Group Middle East Report N°48, *Lebanon: Managing the Gathering Storm*, 5 December 2005.

¹⁶ Although France did not go as far as the U.S. in aspiring for regime-change, the difference in the two countries' position in fact was more nuanced. Chirac repeatedly told his U.S. counterpart that by compelling Syria's withdrawal from Lebanon, they would in effect cause the regime's collapse. Chirac, quoted in Nouzille, op. cit., p. 468.

¹⁷ On 15 February 2005, the Security Council requested the Secretary-General to "report urgently on the circumstances, causes and consequences of this terrorist attack". See UN press release, 15 February 2005, at www.un.org/News/Press/docs/2005/sc8310.doc.htm. Ten days later, the UN fact-finding mission arrived in Beirut to commence its month-long investigation. See *Irish Times*, 24 February 2005.

¹⁸ Lebanese authorities initially were in charge of the criminal investigation. On 21 February, the government declared the crime an act of terrorism targeting the Republic and transferred the case to the Judicial Council. The domestic probe identified several suspects, including Ahmad Abu Adas, a Palestinian refugee in Lebanon who claimed responsibility for the assassination in a videotape broadcast on Al Jazeera the day of the attack. Days after the assassination, General Jamil Sayyed – then director of general security – wrote that Adas was "clearly a definite

On 7 April, on the basis of these findings, the Security Council unanimously adopted Resolution 1595 establishing an “international independent investigation Commission ... to assist the Lebanese authorities in their investigation of all aspects of this terrorist act, including to help identify its perpetrators, sponsors, organisers and accomplices”. The Security Council requested this Commission “to complete its work within three months of the date on which it commenced full operations”.¹⁹ The Secretary-General was authorised to extend the commission’s mandate for a period not exceeding three months.

B. THE UN PROBE

From the outset, the investigation was invested with ample political objectives by its promoters in the international community and Lebanon. As seen, the U.S. and France hoped that, by quickly establishing Syrian culpability, the probe would destabilise the regime in Damascus, consolidate their Lebanese allies and deter further politically-motivated assassinations.

Among Hariri’s relatives and followers, the international investigation held both those promises. Many Lebanese citizens saw the possibility of turning a page in Syria’s relations with Lebanon and exacting revenge for its legacy of arbitrary arrests, petty humiliations and pervasive

corruption. For the heterogeneous March 14 leadership²⁰ that initially coalesced around a broad and largely spontaneous anti-Syrian reaction, the probe was a tool that could further its many, diverse aims: emancipating Lebanon from its hegemonic neighbour; weakening the Syrian regime if not hastening its collapse;²¹ disarming Hizbollah; mobilising domestic and international support against its local foes; and implementing its vision of an economically liberal and politically pro-Western state.

Arab states such as Egypt and Saudi Arabia initially appeared more ambivalent. Although they shared the view that Damascus was behind the killing,²² wished to teach Syria a lesson and sensed an opportunity to loosen its ties to Tehran, they also wanted to keep the door open for a negotiated solution. According to numerous unconfirmed reports, several Arab leaders dangled the prospect of immunity for President Assad and family members as part of various package deals.²³

Egyptian and Saudi positions vis-à-vis Syria hardened after the 2006 war opposing Israel and Hizbollah. The Shiite movement’s military performance caused substantial anxiety among pro-Western Sunni leaders by boosting the so-called resistance camp; worse, Assad’s victory speech – delivered even though Syria had remained on the sidelines throughout the conflict – berated other Arab leaders as “half-men”. From then on, the investigation into Hariri’s murder increasingly became an instrument in a worsening intra-Arab fight.²⁴

participant in the assassination”. (In October 2005, the international commission found that Abu Adas “was detained in Syria and forced at gunpoint to record the video tape”). The Lebanese investigation also identified a suspect Mitsubishi Canter pickup truck that it believed to have been involved in the explosion. Later, the UN Fact Finding mission “accept[ed] the theory of this truck having been involved in the assassination as a credible one ... however, the investigation into this aspect of the case ... has been critically and fundamentally damaged owing to the actions and inactions of the security forces”. See Peter FitzGerald, “Report on the Mission of Inquiry into the Circumstances, Causes and Consequences of the 14 February Beirut Bombing”, UN Doc. S/2005/203, 24 March 2005, at <http://unispal.un.org/UNISPAL.NSF/0/79CD8AAA858FDD2D85256FD500536047>. The October 2005 report by the international commission led by Detlev Mehlis lamented the early work, as a result of which “the perpetrators and their accomplices have had plenty of time to destroy evidence and/or to collude with each other, the ability to recall of potential witnesses has been diminished, and previous omissions and inadvertent or deliberate loss and destruction of evidence could not be undone”. See Report of the Fact-finding Mission to Lebanon (25 February-24 March 2005). See Detlev Mehlis, UNIIC Commissioner, “Report of the International Investigation Commission Established Pursuant to Security Council Resolution 1595” (2005), UN Doc. S/2005/662, 20 October 2005 at www.un.org/News/dh/docs/mehlisreport.

¹⁹ See UNSC Resolution 1595 (2007).

²⁰ The coalition brought together Sunnis, principally the Future Current established by Rafic Hariri; members of the Druze community led by Walid Jumblatt; Christians, notably the Lebanese Forces, the Phalangist Party and the Union of Qurnet Shehwan; in addition to other anti-Syrian figures.

²¹ A Lebanese Forces official argued for “isolating Syria, imposing sanctions and pushing the war on terror to its logical conclusion. International justice is the vector for this policy which we should pursue to the end”. Crisis Group interview, July 2007.

²² A senior Saudi security official referred to Syria’s attitude toward the tribunal and to the spate of politically-motivated killings that occurred in Lebanon in the wake of Hariri’s murder, saying, “if Syria is not guilty, why is it acting as if it has so much to hide?” Crisis Group interview, July 2007.

²³ Arab officials from several countries mentioned their pursuit of such deals. Crisis Group interviews, Saudi official, Riyadh, August 2007; senior Egyptian security official, Cairo, January 2008; senior Jordanian official, Amman, March 2008. According to a French official, Saudi Arabia’s proposal focused on Syria distancing itself from Iran in exchange for neutralising the tribunal. Crisis Group interview, Paris, May 2007.

²⁴ An Egyptian official said: “Our rift with Syria did not occur in 2005, but the seeds already were being sown. By late 2005-early 2006 we were trying to protect the Syrians from the Bush administration’s policies and entice them to cooperate with the

Finally, some saw this unusual extension of international criminal justice to a political crime in the Arab world as a potentially important precedent, ending a long era of impunity not only in Lebanon but also throughout the region.²⁵ The reverse also was held to be true; as a prominent Arab analyst put it, “if the investigation is halted, it will send a profoundly negative message throughout the Arab world and put an end to any notion of accountability for political crimes”.²⁶

A remarkably large consensus thus emerged among actors who could coalesce around a narrowly defined judicial process, resting on the assumption that Syria was the culprit and eventually would be proven guilty, and on the conviction that such a process would prompt widespread shifts in the domestic Lebanese and broader regional landscape.

It was never entirely clear, nevertheless, how the international probe could produce such results. By proceeding quickly, pursuing any potential Syrian lead, publicly naming suspects, arresting four key Lebanese generals who had enjoyed close ties to Damascus and summoning senior Syrian officials for interrogation, the first head of the International Commission, Detlev Mehlis, appeared to be moving in the direction contemplated by those who had promoted the investigation. Notably, Mehlis’s first report, on 19 October 2005, concluded that “there is converging evidence pointing at both Lebanese and Syrian involvement in this terrorist act” and that several Syrian

officials had sought to mislead the Commission though false or inaccurate information.²⁷

But the commissioner’s aggressive approach exposed the first problems flowing from the interplay between political objectives on the one hand and the legal mechanism designed to pursue them on the other. Mehlis’s extensive use of the media, his apparent haste in reaching definitive conclusions, together with serious questions surrounding several key witnesses undercut the Commission’s credibility, polarising Lebanon far more than it bolstered March 14.²⁸

By contrast, Mehlis’s successor, Serge Brammertz, who took over in January 2006, operated more discreetly and cautiously. The process entered a less public phase, marked principally by successive reports describing in dry, technical terms the Commission’s work.²⁹ Although this approach was better suited to bolster the Commission’s credibility as a judicial instrument, and thus to validate its eventual conclusions, Brammertz’s pace and posture were at odds with the initial political rationale of building up rapid momentum to squeeze Syria and shift the Lebanese balance of power. March 14, for whom the investigation was seen as a master card, was left with little to hold on to, while Syrian officials visibly relaxed.³⁰ Meanwhile, the political stalemate deepened in Beirut, where politically-motivated assassinations – which, given the victims’ strong criticism of Syrian policies, many blamed on Damascus – continued apace, putting the lie to the notion that the probe would serve as a powerful deterrent.³¹

investigation. They had withdrawn from Lebanon, which we saw as a positive move. But then they set on a course of their own. The rift decisively opened up in summer 2006, the war being a turning point”. Crisis Group interview, Damascus, February 2010.

²⁵ The STL pointed this out: “We are keenly aware of the challenges and the major hurdles we are and will be facing. In particular, the Tribunal must meet two formidable challenges. One is that the Tribunal is the first international judicial institution to adjudicate responsibility for terrorism as a distinct crime The second major challenge is that the Tribunal is the first international criminal court operating within the Arab world. So far, many Arab countries have shown scant interest in, and in some instances have even cast a suspicious glance at, supranational criminal justice. To make them fully amenable to this judicial system one must show beyond any reasonable doubt that international justice can be impartial, fair and immune from any political or ideological bias By doing so we might set the stage for future and broader resort to international criminal institutions to fend off terrorism We are also so ambitious as to hope to set a precedent for efficient and inexpensive international justice”. “The STL Six Months On: A Bird’s Eye View”, Special Tribunal for Lebanon, 9 September 2009.

²⁶ Crisis Group interview, April 2006.

²⁷ At www.un.org/News/dh/docs/mehlisreport/. In October 2005, Chirac told U.S. Secretary of State Condoleezza Rice that “the German judge has become the embodiment of justice and democracy in Lebanon. He has made up his mind (“*sa religion est faite*”) regarding Syria”. Quoted in Nouzille, op. cit., p. 472.

²⁸ See Crisis Group Report, *Managing the Gathering Storm*, op. cit.

²⁹ In November 2007, Brammertz was succeeded by Daniel Bellemare who also conducted his work extremely discreetly. At the time Bellemare was named commissioner, he also was appointed as prosecutor for the Special Tribunal for Lebanon (see below), those duties to commence at a later date.

³⁰ See Crisis Group Report, *Engaging Syria? U.S. Constraints and Opportunities*, op. cit.

³¹ Victims of political assassinations following Hariri’s murder included: Samir Kassir, an anti-Syrian journalist, and Georges Hawi, former Communist Party secretary-general, both killed in June 2005 in Beirut by car bombs; Gibran Tuani, parliament member and anti-Syrian journalist, in a car bomb near Beirut in December; Pierre Gemayel, Lebanon’s industry minister and son of the Phalange leader Amin Gemayel, shot dead in Jdeide in November 2006; Walid Eido, a Sunni MP of the ruling March 14 coalition, killed by a car bomb in Beirut in June 2007; Antoine Ghanem, a parliamentarian from the March 14 bloc, killed in similar fashion in September 2007; Brigadier-General Francois al-Hajj, yet another victim of a car bomb in

The investigation entered a new phase when, prospects for a Lebanese trial having been all but discarded by March 14 and their allies due to concerns over the poor state of the domestic judicial system³² and risks of violent intimidation, Prime Minister Fouad Siniora requested the creation of an international tribunal.³³ On 29 March 2006, the Security Council mandated the Secretary-General to negotiate with the Lebanese government to establish such a tribunal. The draft agreement they reached in November 2006 was vigorously challenged by Hizbollah and Syria. Their criticism focused in particular on a clause pursuant to which any superior was to be held “criminally responsible” for the acts of a subordinate. This, they claimed, would permit the tribunal to target higher-level officials even in the absence of solid evidence.³⁴

In response to the government’s swift ratification of the agreement, all Shiite ministers suspended their participa-

tion in the cabinet.³⁵ Beyond the expression of dissent, the move aimed at blocking any further progress on the tribunal on the basis of two clauses of the Lebanese constitution. First, its preamble denies legitimacy to any authority which “contradicts the pact of communal coexistence”, a vaguely termed principle which stands at the heart of the country’s consociational political system and inter-communitarian balance.³⁶ Secondly Article 52 states that treaties must be negotiated by the president and, in the case of “treaties involving the finances of the state, commercial treaties, and in general treaties that cannot be renounced every year”, approved by the parliament³⁷ – in effect giving veto power to Lahoud and the speaker of Parliament, another Syrian ally.

With parliament paralysed, Siniora took another route. On 14 May 2007, he informed the Secretary-General that “for all practical purposes the domestic route to ratification had reached a dead end, with no prospect for a meeting of parliament to complete formal ratification”. As a result, the government requested that the Tribunal “as a matter of urgency ... be put into effect” by the Security Council. It asserted that:

[a] binding decision regarding the Tribunal on the part of the Security Council will be fully consistent with the importance the United Nations has attached to this matter from the outset. Further delays in setting up the tribunal would be most detrimental to Lebanon’s stability, to the cause of justice, to the credibility of the United Nations itself and to peace and security in the region.³⁸

December 2007; and Captain Wissam Eid, who was investigating previous assassinations in Lebanon, killed in a car bomb the following month. There were failed attempts against Elias Murr, the defence minister, in July 2005; May Chidiac, a journalist, in September 2005; and Lieutenant-Colonel Samir Shehadeh, an official linked to the Hariri inquiry, in September 2006.

³² Led by an ally of President Lahoud, the justice ministry failed to file a single court case, issue an indictment or order an arrest in connection with the series of killings that occurred in 2005. See Crisis Group Report, *Lebanon: Managing the Gathering Storm*, op. cit.

³³ On 13 December 2005, the Lebanese government requested the Security Council to establish “a tribunal of an international character” to try those suspected of involvement in Rafic Hariri’s assassination. The letter also asked the Security Council to expand the International Independent Investigation Commission’s mandate to investigate related attacks that occurred since October 1, 2004, the date of the attempted assassination of Minister Marwan Hamade. See Letter dated 13 December 2005 from the Chargé d’Affaires of the Lebanese Mission to the UN addressed to the Secretary-General, at www.un.org/News/Press/docs/2006/sc8677.doc.htm.

³⁴ See Crisis Group Middle East Briefing N°20, *Lebanon at a Tripwire*, 21 December 2006. Article 3.2 of the tribunal’s statutes states that “a superior shall be criminally responsible for any of the crimes set forth in article 2 of this Statute committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates” before describing a wide range of circumstances falling under this definition. At www.stl-tsl.org/x/file/TheRegistry/Library/BackgroundDocuments/Statutes/Resolution%201757-Agreement-Statue-EN.pdf. A Syrian official commented: “The statutes of the tribunal are designed to turn it into a political tool and damage whomever they want as a result. As is, it would hardly take more than a car involved in the plot to have driven through the Southern suburb [Hizbollah’s stronghold in Beirut] to indict Nasrallah”. Crisis Group interview, Syrian official, February 2007.

³⁵ See Crisis Group Briefing, *Lebanon at a Tripwire*, op. cit. Shiite ministers boycotted cabinet meetings in protest against governmental approval of the establishment of the international tribunal and the broadening of its mandate to look into other attacks on Lebanese.

³⁶ The Lebanese political system is based on a so-called consensual (or consociationalist) power-sharing between the country’s different communities rather than pure majority rule. First articulated in the 1943 National Pact, the principle was reaffirmed in the Taef Accord and the Lebanese constitution as amended in 1995. The opposition criticised Prime Minister Fouad Siniora for circumventing the (Christian) president of the Republic and (Shiite) parliament speaker, which, in a system founded on sectarian apportionment, they saw as tantamount to unilateral Sunni rule.

³⁷ At www.presidency.gov.lb.

³⁸ UNSC, S/2007/281. President Lahoud forcefully criticised Siniora’s action in his own letter to the Secretary-General in which he accused the government of lacking legitimacy and argued that Lebanon’s constitutional mechanism had been ignored insofar as the president had been bypassed. UNSC, S/2007/286. That view was echoed by a Qatari official who said, “the Tribunal resolution ignored the views of some important parties in Lebanon and threatens to set a precedent by

On 30 May 2007, the Security Council adopted Resolution 1757 under Chapter VII of the Charter,³⁹ reaffirming that Hariri's assassination "and its implications constitute a threat to international peace and security" and "establishing a Special Tribunal for Lebanon" [STL].⁴⁰

C. THE TRIBUNAL ON AUTO-PILOT

The rationale behind the STL was plain: to set up a judicial mechanism impervious to developments on the ground and in particular to attempts to stall its proceedings or torpedo it in its entirety. In the process, however, a body which had come about through a clear political decision taken by specific political actors with well-defined political goals acquired a life of its own. And its relatively slow and deliberate pace could not keep up with the rapid political developments affecting Lebanon and the region as a whole.

From 2005 onwards, Lebanon experienced different phases of a crisis whose immediate stakes shifted over time – alternatively involving the nature of Syrian-Lebanese relations, the fate of the armed resistance, the government's composition and program, the selection of a new president, the electoral law and the international tribunal – but at the core of which was a power struggle between March 14, the Hizbollah-led opposition and their respective foreign backers.

The first phase was marked by the December 2005 decision by Shiite ministers to boycott cabinet sessions. With the July 2006 war and its aftermath, the conflict entered its next stage, which saw intensified polarisation (as one camp claimed vindication of the need for the armed resistance and the other denounced Hizbollah's reckless decision-making) and heightened realisation of the Shiite movement's armed potential. In December 2006, the Hizbollah-led opposition shifted to street politics, organising a sit-in in the centre of Beirut. That stage reached its high point with Hizbollah's May 2008 takeover of large areas of the capital in reaction to cabinet decisions aimed at undermining its operational capacity. The episode, during which

the majority stood helpless, proved beyond doubt both the size of the domestic military mismatch and the ineffectiveness of March 14's foreign supporters.

During the subsequent Doha negotiations, March 14 accepted virtually all the opposition's demands. A new national unity cabinet led by Saad Hariri – son of the slain Sunni leader – was formed in which the opposition held veto power. The events simultaneously showcased the dramatic evolution in the regional and international landscape. Unlike in 2005, when the U.S., France and their Arab allies had placed Syria on the defensive and looked forward to the destabilisation of the regime, this time – faced with a forceful military takeover by a Syrian ally and amid calls for help – March 14's allies watched passively from the sidelines.

Thereafter, France, crediting Syria with having allowed the election of a new Lebanese president, rapidly normalised relations with Damascus. The U.S. began to shift its stance, softening its pressure on the regime and disengaging somewhat from Lebanon.⁴¹ Barack Obama's election further bolstered the impression among March 14 leaders that the U.S. would soon improve relations with Syria and could no longer be counted upon as an unconditional ally. The Saudi-Syrian rapprochement, coming after a tense period of estrangement and pointed accusations, significantly altered the regional context as well, heightening pressure on Lebanon's new prime minister to initiate his own normalisation with Damascus. This process found its sharpest expression in Hariri's 6 September 2010 statement to the effect that it was a mistake to accuse Syria of his father's murder. "This was a political accusation", he said, "and this political accusation has finished".⁴²

In other words, the May 2008 showdown enshrined a political-military balance that neither Lebanon nor the outside world could ignore. For all its imperfections, and although it had not addressed any of Lebanon's underlying

brushing aside Lebanon's present constitution". Crisis Group interview, June 2007.

³⁹ Chapter VII authorises the Security Council to take coercive measures "to maintain or restore international peace and security" in response to "the existence of any threat to the peace, breach of the peace, or act of aggression". Such measures are legally binding on all UN member states. See www.un-documents.net/ch-07.htm.

⁴⁰ UNSC Resolution 1757 (2007). After the UN's deadline for ratification of its agreement with Lebanon by parliament passed, the Security Council invoked its powers under Chapter VII to pass Resolution 1757, thereby circumventing the need for such ratification

⁴¹ A former U.S. official, who was in the administration at the time, acknowledged: "There was nothing we could do once Hizbollah threw down the military gauntlet. March 14 concluded that they were basically on their own. They were right". Crisis Group interview, Washington, November 2010.

⁴² Some of Hariri's advisers and foreign supporters are quick to point out that the statement did not absolve Syria of responsibility for the murder; rather, it acknowledged that the accusation, coming before any evidence had been produced, was political in nature. In other words, they say, this does not prejudge what the STL might find regarding any Syrian role. Crisis Group interview, Hariri adviser, Beirut, November 2010; European diplomat, Beirut, November 2010.

problems,⁴³ the Doha accords ushered in a period of relative calm after years of violent turbulence.

Yet, even as the political trajectory had completed a cycle and given shape to a new balance of power, the judicial process had barely begun. The probe had been launched at a given time, in pursuit of specific objectives (to undermine the Syrian regime and its role in Lebanon), based on certain assumptions (Syrian guilt), reflecting a certain balance of power in Lebanon, the region and the broader international community which all have fundamentally changed – the latter very much to the detriment of the tribunal's initial sponsors.⁴⁴ Proceeding very much out of the public eye since its statutes were adopted and largely impervious to the shifting landscape, the tribunal resurfaced only three years later as rumours spread that the issuance of indictments was imminent and the principal suspect no longer was Syria, but Hizbollah members. Today, it has landed in the laps of actors, both Lebanese and non-Lebanese, who can neither ignore it nor reshape it to suit their evolving calculations. Instead they must adapt to a process that has acquired a life of its own, at times very difficult to reconcile with its sponsors' original aims. Indeed, had the tribunal been an instrument entirely governed by its creators, they almost certainly would have pushed for more rapid tangible results.⁴⁵ The irony is that actors who created the judicial instrument to promote their policies must now adjust their policies to that instrument's actions without fully knowing what those actions will be nor when they might occur.

III. POLITICS AND THE INTERNATIONAL TRIBUNAL

One of the STL's priorities has been to rebuff any accusation of politicisation by establishing its professionalism and independence and demonstrating that its decisions are taken based on judicial considerations alone. It has sought to keep a low media profile, avoiding the over-exposure from which Mehlis had suffered and which, it feared, would drag it into intra-Lebanese fights and come at its reputation's expense.

Its first noteworthy decision, taken soon after it was formally inaugurated on 1 March 2009 set the tone. On 29 April, the STL ordered the release of the four senior Lebanese security officials (Raymond Azar, Mustafa Hamdan, Ali Hajj and Jamil Sayyed) who had been arrested in 2005 on Mehlis's recommendation and detained without charge. That this was done on the eve of critical Lebanese parliamentary elections, and even as many March 14 supporters feared the move could undermine their standing, symbolised the tribunal's independence.⁴⁶ Likewise, on the matter of when indictments will be issued and what they will contain, the STL's prosecutor has made clear that decisions will strictly reflect judicial considerations, and the tribunal's prerogatives will be jealously protected, notwithstanding the wishes of key international actors.⁴⁷

Still, its efforts notwithstanding, the attempt to immunise the international probe and the tribunal from their political surroundings and protect them from perceptions of politicisation was at best an uphill battle, at worst an impossible task. Their very genesis – as the outcome of a Security Council resolution, pushed by two Western powers with clear strategic objectives – shaped its character from the outset; matters were only made worse by the international inquiry's first steps, in particular the legacy of Mehlis's initial hurried pace and conclusory determinations. A trail of suspicious witnesses, the detention

⁴³ See Crisis Group Middle East Report N°87, *Lebanon's Elections: Avoiding a New Cycle of Confrontation*, 4 June 2009.

⁴⁴ A senior March 14 official said, "I wouldn't like to be a witness now. The ones who offered their testimony in 2005 will have to repeat what they told the investigators but in an entirely different context. At the time, Syria had just been forced to withdraw, and freedom was in the air. They could not have suspected what the situation would be today". Crisis Group interview, Beirut, November 2010.

⁴⁵ The gap between the short-term timeframe imagined by its proponents and the far more drawn-out one characteristic of any judicial process was made plain by a billboard campaign launched by Hariri supporters: large three-digit electronic clocks were erected in parts of Beirut to mark the passage of time since the killing, with the words "The Truth" serving as a caption. As the number of days reached into the hundreds, the message appeared self-defeating, suggesting not that the truth was on its way but rather that it might never be known. In fact, according to a UN Office of Legal Affairs official, no international tribunal has ever been established more quickly than the STL. Crisis Group interview, New York, April 2008.

⁴⁶ A UN official was not shy in conveying his fears regarding the impact of the officials' release, which, he remarked, could inflict a damaging blow on March 14 and bolster its adversaries. He hoped the STL could be brought to delay the decision until after the vote. Crisis Group interview, New York, March 2009. However, a colleague took an opposite view: "Any interference with the tribunal over this would be very damaging. The timing might well be unfortunate, but in any event, the tribunal would resist any call to delay its decision on political grounds". Crisis Group interview, Washington, March 2009.

⁴⁷ A Lebanese diplomat commented: "When the statutes were being discussed, Syria floated the idea of including a mechanism that would place the judicial process under a political umbrella, as a way of preserving room for political deal-making. But there is no such mechanism. The tribunal's sponsors created an animal which they don't control". Crisis Group interview, November 2010.

without charge of the security officials, the uncovering by Lebanese authorities of an Israeli spy ring that had infiltrated the telecommunications sector – even as the investigation reportedly relied heavily on telephone data – and Hizbollah’s claim the investigation deliberately ignored any possible Israeli involvement in the assassination further undermined credibility in the eyes of many, despite the different tack of Mehlis’s successors and notwithstanding creation of a new body, the STL.⁴⁸

Nor has it been possible to inoculate the STL against its critics’ charges. As they see and portray it, the STL was established at the request of a government deemed illegitimate by broad swathes of its own nation, and it claims autonomy vis-à-vis states that originally defined its mandate⁴⁹ and could – through a future Security Council resolution or by withholding funding – change its scope of action or simply bring it to an end.⁵⁰

The tribunal’s sui generis nature is another bone of contention. STL detractors point to the fact that there is no precedent for a tribunal being set up to prosecute a politically-motivated killing, and, in all likelihood, there will be no successor either. March 14 figures themselves point to its unique nature:

⁴⁸ According to a Hizbollah official, “the investigation showed that the tribunal is not honest. The separation between the investigation and the tribunal is only technical. The general prosecutor himself used to be the general investigator. We consider the tribunal a mere extension of the investigation”. Crisis Group interview, Beirut, September 2010.

⁴⁹ The tribunal’s mandate is to prosecute those responsible for the 14 February 2005 attack that resulted in the death of Rafic Hariri and 22 others. Its jurisdiction could be extended to other attacks that occurred in Lebanon between 1 October 2004 and 12 December 2005 (although assassinations continued during 2006 and 2007), if those attacks are determined to be connected to and of similar nature and gravity to the Hariri assassination. See www.stl-tsl.org/section/AbouttheSTL. In contrast to previous international courts, which were established to investigate massive human rights violations, the STL’s mandate was remarkably narrow, focused chiefly on investigating and prosecuting a single attack. For a discussion of the Tribunal’s unique mandate, see Melia Amal Bouhabib, “Power and Perception: The Special Tribunal for Lebanon”, 2009, at http://works.bepress.com/melia_bouhabib/1/.

⁵⁰ Hizbollah officials repeatedly make this argument: “We base our judgment on previous experiences. We have studied closely different international probes and tribunals. It is clear to us that they are subject to political pressure. Any judicial process occurs within a certain political system. In the case of international tribunals, the reference is the international political system, itself dominated by the Security Council, which is a politicised body controlled by our enemies. So we don’t doubt the fact that STL judges are subject to pressure. The question is how much pressure can a prosecutor handle or resist?” Crisis Group interview, Hizbollah official, Beirut, September 2010.

The Tribunal has become a major global governance issue. Dealing with a string of assassinations is an unusual step in the field of international justice. This is neither genocide nor a war crime. It is not an international peace and security issue. The only justification is in stretching the envelope on international governance. This is significant. Any failure or retreat is also very significant.⁵¹

More to the point, critics of the STL look to the long list of political assassinations in Lebanon that have taken the lives of countless prominent figures⁵² and for which there has been no investigation – let alone accountability – in order to question the premise of a non-political instrument designed to end the era of impunity. The perception of a highly selective form of international justice was heightened in the aftermath of the December 2007 murder of Pakistan’s former Prime Minister Benazir Bhutto. Occurring in circumstances at least equally threatening to international peace and security and with strong suspicions of official Pakistani involvement, the assassination nevertheless did not trigger anything like the strong push for an international investigation produced by Hariri’s murder. Lebanon opposition members also point to the assassination of Palestinian leaders who, although considered terrorists by Israel and some in the West, are viewed very differently by their constituents and many throughout the world.

Valid or not, such arguments strike a powerful chord among many Lebanese and others throughout the region who – the credibility of the investigation and solidity of its conclusions notwithstanding – are unlikely to interpret the STL’s actions as other than those of a biased political instrument.

More broadly, the legal process essentially is inseparable from the conflict that spawned it and seen as such by backers and critics alike. The reputation and professionalism of its staff aside, the STL inevitably was and remains part and parcel of a struggle for power in Lebanon and the Middle East that is both ongoing and far from resolution. At various moments over the past five years, the tribunal has emerged as a primary trigger for hostilities between

⁵¹ Crisis Group interview, March 14 official, Beirut, November 2010.

⁵² Lebanon has a tragic history of assassinated leaders, during the civil war in particular. They include Kamal Jumblatt (assassinated in 1977), the national Druze leader and father of Walid; Antoine Frangieh (1978), commander of the Marada Brigade; Bachir Gemayel (1982), president-elect and leader of the Phalange party; Prime Minister Rashid Karami (1987); Hassan Khaled (1989), Mufti of the Republic; Nazem al-Qadri (1989), member of parliament; President René Moawad (1989); Dany Chamoun (1990), son of former President Camille Chamoun; Elie Hobeika (2002), Lebanese Phalangist and Lebanese Forces commander.

the March 14 coalition on the one hand and Syria and Hizbollah on the other – the former viewing it as a means to curtail Damascus’s influence in Lebanon; the latter perceiving it as their foes’ instrument of choice with which to pressure the Syrian regime and seek to disarm the Shiite movement. In similar fashion, the tribunal has played a part in the regional tug-of-war opposing at different times Syria, Egypt, Saudi Arabia and Iran. In short, however much it seeks to isolate itself from local or regional dynamics, it automatically feeds into them.

In this spirit, the tribunal’s every utterance is immediately interpreted and exploited for political ends by one side or the other, as are its silences. It faces a catch-22: should it choose to engage in a public debate with its critics, it would only further fuel accusations that it is acting politically; should it opt to remain silent, it would leave the arena essentially to its foes. At the same time, leaks, whether genuine or fabricated, tell a story the tribunal itself cannot.⁵³

The converse is equally true: in a region where all issues appear increasingly intertwined, the most disparate events play into perceptions of the tribunal. When Israel or its media address the question, it immediately confirms in the eyes of many suspicions of an Israeli ploy. The October visit to Lebanon of Iran’s president, Mahmoud Ahmadinejad, was widely seen as aiming to bolster Hizbollah’s position in the debate surrounding the STL; the revival of the International Atomic Energy Agency (IAEA) probe into an alleged nuclear facility in Syria was read as a U.S. attempt to dissuade Damascus from standing too close to its Lebanese ally and so forth. A Hariri adviser explained:

One cannot ignore the regional political implications. The tribunal involves multiple things, issues, players – the role of the international community in the region, Syria’s place, Iran’s assertiveness, the Shiite/Sunni fault line, etc. This is a focal point for any number of conflicts. How it will unfold, how it is shaped by the

region and how in turn it will impact the region are all big questions.⁵⁴

Little wonder then that, notwithstanding the STL’s best efforts to downplay the importance of the indictments – to argue that they are the beginning of a process not its end and that all suspects enjoy a presumption of innocence – they already are playing a critical role in the Lebanese and regional power struggle. Explanations about the legal significance of the indictments are technically correct. They also are wholly irrelevant in the face of a vicious political struggle the mere prospect of indictments has unleashed.

⁵³ On 28 April 2005, the Kuwaiti newspaper *al-Siyasa* identified Jamil Sayyed and others as complicit in the assassination. On 19 August 2006, days after the war ended, the French newspaper *Le Figaro* reported that intercepted telecommunications suggested individuals with ties to Hizbollah were implicated. On 23 May 2009, Germany’s *Der Spiegel* provided further information to bolster this theory; a 15 February article in *Le Monde* did likewise. On 7 June 2010, Israel’s state-run television channel named a Hizbollah operative as the main suspect. On 8 November 2010, the *Wall Street Journal* reported that the STL would indict between two and six Hizbollah members before the end of the year, referring to sources allegedly briefed on the tribunal’s work. Finally, on 21 November 2010, the Canadian Broadcasting Corporation claimed, based on confidential UN documents, that Hizbollah members were behind the assassination.

⁵⁴ Crisis Group interview, Beirut, November 2010.

IV. THE TRIBUNAL IN A SHIFTING LANDSCAPE

A. TARGET: HIZBOLLAH?

On 31 March 2010, Hassan Nasrallah, Hizbollah's secretary general, confirmed in a televised interview that the tribunal had questioned twelve movement members and sympathisers as witnesses. He added his belief that indictments implicating the movement were forthcoming and conditioned his willingness to cooperate on the investigation not following the path suggested in the media.⁵⁵ Indeed, almost a year earlier, on 23 May 2009, a *Der Spiegel* article had provided the names of alleged culprits and contended, based on information acquired "from sources close to the tribunal and verified by examining internal documents", that the case was predicated on a vast amount of Lebanese telephone records linking a network of mobile phones belonging to Hizbollah operatives to the crime.⁵⁶ Adding to the atmosphere of feverish speculation, in May 2010 the STL president suggested indictments could be issued before year's end.⁵⁷

Statements delivered in rapid succession by Nasrallah illustrated the movement's mounting concern. On 16 July, he spoke at length about a previously uncovered Israeli spy ring that purportedly had infiltrated the telecommunications sector,⁵⁸ thus pre-emptively seeking to undermine any indictment based on such data and, for the first time,

tarring the STL with an Israeli brush.⁵⁹ On 22 July, he claimed in a video press conference that Saad Hariri had privately informed him in May 2010 that the tribunal would indict Hizbollah members and suggested they could be considered rogue elements, thus not implicating the movement as a whole, as a way to defuse the crisis. Nasrallah said the movement would never hand over one of its own; presumably, Hizbollah feared that would weaken its cohesion and tarnish its disciplined reputation. The deal also risked becoming a slippery slope as accusations gradually could lead the tribunal up the chain of command.⁶⁰ In August, he presented "indicative evidence" purportedly suggesting Israel had a hand in the killing and demanded the tribunal investigate.⁶¹

The shift of focus from Damascus to Hizbollah came into even sharper relief in September when, as noted, Hariri said that his earlier charges against Syria had been "errors" and "political accusations", while simultaneously defending the tribunal itself against allegations of politicisation.⁶²

That this was not where the tribunal's proponents had expected it to go is plain. In the period immediately following the assassination, France sought to placate Hizbollah, going so far as to seek to convince it to distance itself from Syria.⁶³ Likewise, Paris sought to moderate Washington's anti-Hizbollah rhetoric, leading the two to put the question of Hizbollah's future on the back burner, albeit in different tones and with differing degrees of conviction. Hariri's family even is said to have sought Hizbollah's cooperation in the investigation of Rafic's murder.⁶⁴

⁵⁵ *Al-Manar*, 31 March 2010.

⁵⁶ See www.spiegel.de/international/world/0,1518,626412,00.html. As early as February 2009, a French official had indicated such a shift was under way. Asked whether he was concerned the tribunal might eventually disrupt Franco-Syrian relations, the official said, "not at all. The tribunal won't have a thing on Syria. If it digs anything up, it will be on Hizbollah". Crisis Group interview, Paris, February 2009. More recently, the Canadian Broadcast Corporation claimed that the UN investigation had tied Hizbollah to the murder through "an elaborate examination of Lebanese phone records". *The Washington Post*, 22 November 2010.

⁵⁷ *The Daily Star*, 17 May 2010; *Naharnet*, 19 May 2010.

⁵⁸ In April 2009, Lebanese authorities launched a crackdown on the spy network. By August 2010, the justice minister – who was close to March 14 – announced that some 150 cases of Israeli-linked espionage had been uncovered. In September, the government submitted a formal complaint against Israel to the UN Security Council. Among those detained were members of the armed forces and other officials. See *An-Nahar*, 2 September 2010; *Al-Mustaqbal*, 9 August 2010; *Naharnet*, 2 August 2010. In mid-2010, Lebanese authorities apprehended four individuals in the telecommunications sector on suspicion of spying for Israel. Three were employed by the state-owned mobile telephone company, Alfa; a fourth worked for the land-line company, Ogero. The latter was later released for "lack of evidence". See Agence France-Presse, 16 July 2010; *Al-Mustaqbal*, 9 August 2010; *An-Nahar*, 2 September 2010; *Naharnet*, 12 November 2010.

⁵⁹ See *Al-Manar*, 16 July 2010.

⁶⁰ See *Al-Manar*, 22 July 2010. A French official commented: "France and others were hoping that Hizbollah would agree to distance itself from certain individuals who might be indicted, but Nasrallah's reaction precludes that from happening". Crisis Group interview, New York, November 2010. According to a Lebanese diplomat, "when Hariri first raised the issue of upcoming indictments with Nasrallah, he told him he would be willing to speak out, as son of the victim and prime minister, and announce that the operation had been carried by stray elements for which no one could be held accountable. Nasrallah rejected this outright and publicly because he feared any admission of guilt would only fuel a dangerous process rather than make it go away". Crisis Group interview, August 2010. A U.S. official gave support to Hizbollah's apparent fear: "My understanding is that the STL wanted to proceed in tranches, starting with low-level suspects and then go further up the chain". Crisis Group interview, Washington, November 2010.

⁶¹ *Al-Manar*, 9 August 2010.

⁶² *Al-Sharq al-Awsat*, 6 September 2010.

⁶³ France's ambassador to Lebanon, Bernard Emié, reportedly held a secret meeting with Nasrallah on 16 April 2005 to that end. See Nouzille, op. cit., p. 469.

⁶⁴ See Hassan Nasrallah's speech on 9 August 2010, at www.nowlebanon.com/NewsArchiveDetails.aspx?ID=192808.

B. THE STAKES

The prospect of imminent indictments targeting Hizbollah members – assuming the accuracy of reports to that effect – means the tribunal as well as various Lebanese and international parties have reached a critical juncture. Nasrallah's repeated pronouncements are only one among several indications of the seriousness with which the movement now sees the tribunal. It was not always so. Until recently, the movement's position was cautious, sceptical even, but not aggressively hostile. In its February 2006 memorandum of understanding with Christian leader Michel Aoun, Hizbollah called for a depoliticised investigation in the name of coexistence and accountability.⁶⁵ It did not reject the principle of the STL, but expressed its strong preference for a domestic rather than international judicial process⁶⁶ and justified steps aimed at derailing the tribunal by claiming it was politicised.

As the prospect of indictments against Hizbollah members became clearer, however, the movement shifted its approach. Several outside actors – France in particular – have sought to mollify it, arguing that the STL would not fundamentally affect it.⁶⁷ The same sentiment apparently was behind Saad Hariri's efforts to shift the blame to so-called rogue elements.

But such calculations denote a misreading of Hizbollah, its self-image and perceived self-interest. Its fears do not relate to the more practical aspects of the judicial process – indictments or even convictions of Hizbollah members – insofar as it remains highly improbable that suspects will be arrested or sentences carried out. Indeed, most observers believe for that reason that any trial would take place in absentia.⁶⁸ Rather, Hizbollah is above all concerned

about the impact indictments might have on the local and regional balance of power. For it to be accused of assassinating a key Lebanese Sunni figure – whether of its own volition or at the behest of its Syrian or Iranian ally – would be wholly at odds with the image of a non-sectarian resistance movement it painstakingly has sought to nurture (and which already has suffered, notably as a result of the May 2008 events). Given strong sectarian polarisation throughout the region, this would make its struggle for Arab public opinion even more challenging.⁶⁹

As Hizbollah sees it, the STL forms part of a broader strategy and is, in this sense, fundamentally indistinguishable from prior attempts at weakening it – whether UN Security Council Resolution 1559 calling for its disarmament, the 2006 war or the 2008 Lebanese government decisions targeting its internal communication system.⁷⁰ Having defined its struggle as one against supposed U.S. and Israeli hegemonic designs, it comes as no surprise that it reads all actions affecting it through that prism. The tribunal, in its eyes, risks not only spoiling its reputation in the short term but also – and perhaps more importantly – unleashing a process that could imperil it over time. In this context, Hizbollah officials raise the spectre of Sunni retaliation against Shiites in the wake of an indictment, leading to uncontrollable dynamics. In the words of a senior figure:

The tribunal and the way it is handled are yet another step taken against the resistance, following the failure of earlier efforts. The idea is to plant the notion among Sunnis that we killed their leader and thus to heighten sectarian tensions. The result could be domestic strife that might weaken or distract the resistance, possibly paving the way for another war with Israel. But we won't let any of this happen.⁷¹

⁶⁵ At www.tayyar.org/NR/rdonlyres/FC03642C-AF93-4A07-BF30-0E871CAAFD09/0/fpm_hezbollah.pdf. Aoun initially was very supportive of tribunal, even arguing he could push that agenda as president. Crisis Group interview, Aoun adviser, Beirut, November 2007.

⁶⁶ See Crisis Group Report, *Lebanon, Managing the Gathering Storm*, op. cit.

⁶⁷ Crisis Group interview, French official, Paris, November 2010.

⁶⁸ An STL official said, "there is a very high chance that most trials will take place in absentia, as no one really expects Hizbollah indictees to be arrested". Crisis Group interview, October 2010. Another explained: "Once an indictment is issued, technically speaking, the government of Lebanon has a legal obligation to cooperate. Of course, if it cannot locate the suspects, it's another story". Crisis Group interview, September 2010. In November 2010, the STL adopted "a number of rule changes that will enhance the efficiency, effectiveness and integrity of the Tribunal's proceedings Amongst the most important were changes to the rules governing the service of an indictment by detailing the practical steps that must be taken

after the confirmation of an indictment, in particular regarding the start of in absentia proceedings". See www.stl-tsl.org/sid/214.

⁶⁹ A Hizbollah official said, "the danger for us is not a material one. The tribunal will not affect our capacities. But Sunni-Shiite discord and confrontation is a real threat. Today, we hardly can master the consequence of sectarian speeches. During the 2009 electoral campaign, we saw sectarianism at its worst, more dangerous even than during the civil war". Crisis Group interview, Beirut, September 2010.

⁷⁰ For background, see Crisis Group Middle East Briefing, *Hizbollah's Weapons Turn Inward*, 15 May 2008. In his 11 November speech, Nasrallah pointedly described the tribunal as the fifth stage of a campaign against the resistance which has unfolded over several decades. *Al-Manar*, 11 November 2010.

⁷¹ Crisis Group interview, Hizbollah official, Beirut, November 2010. A Lebanese figure with close ties to Hizbollah alleged that "this entire process was designed to lead the country where it now is, on the verge of civil war, in order to divert Hizbollah from the path of resistance and toward *fitna* [intra-Muslim strife]. When that happens, the question of Hizbollah's weapons and resistance will be back on the table. Israel will not even

Seen in this light, the mere issuance of indictments could help reframe the internal Lebanese power struggle and endanger the fragile *modus vivendi* reached in Doha. A Lebanese figure with close opposition ties said:

Lebanon operates under a government of national understanding, but it remains divided between two camps. One believes in resistance, the other not. Both have connections with outside players, and both have strong popular backing. Judging by the latest elections, the country is more or less split down the middle. And the situation is similarly polarised throughout the region. This amounts to an explosive situation. The indictments would only add to this. With them, instead of having two opposing camps, one becomes an assassin, the other his victim. How can you have coexistence in that context?⁷²

Whether and when the indictments are issued, how they are perceived in Lebanon and the broader region and how Lebanese institutions react are thus very much at the heart of Hizbollah's current battle and, as discussed below, the movement has invested mightily in various forums to ensure it minimises any damage.

For other Lebanese actors too, stakes are high. On the heels of five years of struggle during which they suffered painful setbacks, March 14 leaders view the indictments as of momentous consequence – an opportunity to recalibrate a balance of power that has shifted markedly against their side. Though the tribunal originally had been viewed as an instrument to undermine Syria, diminishing Hizbollah's stature and influence holds significant benefits as well. A March 14 cabinet member explained:

We have experienced three distinct phases. After the trauma of 2005, we backed the judicial process as a way of achieving justice, turning a page on Syrian domination, weakening Damascus and putting an end to impunity. However, this phase came to a close as we lost our momentum; political assassinations continued unabated, and so we lost faith in the investigation's ability to deter. Now, we have entered a third phase, sparked by the tribunal's renewed activism, our sense that it is making progress and that indictments are

imminent. So we've started believing again that it could serve its purpose and help us in our domestic fight.⁷³

Conversely, of course, a deal to stop the tribunal, postpone its indictments or otherwise undermine its progress would be experienced by March 14 as a serious blow, further demonstrating not only the military but also political mismatch between it and its March 8 opponents.⁷⁴

For Lebanese political leaders who have sought to stake out a neutral position, the indictments present perils of a different sort. The current "consensus president", Michel Sleiman, could be forced to take sides – by either accepting the indictments or denouncing them. Walid Jumblatt, the Druze leader who was once a core March 14 leader but subsequently shifted his stance and mended fences with Syria, already has made clear that, were indictments to provoke a serious crisis, he would have to support the opposition: "In the worst case scenario, I will have to choose. If the government does not disavow the indictments and Hizbollah resigns from the cabinet together with other opposition members, I would have to go along. I must secure my position: in the event of a Sunni-Shiite clash, the Druze community and I sit smack in the middle. We have no other option".⁷⁵

Finally, the first indictments represent a critical moment for the STL itself. After years of mostly private investigation and public speculation during which it made some important missteps while coming under serious attack, they offer the opportunity of a clean break.⁷⁶ There thus is every reason to expect the indictments to be accompanied by substantial evidence, as the STL seeks to both win a public opinion battle in which it will engage belatedly and protect itself as much as possible – which means very little, in reality – from accusations of bias or politicisation.

⁷³ Crisis Group interview, Beirut, November 2010.

⁷⁴ Crisis Group interview, March 14 leader, Beirut, November 2010.

⁷⁵ Crisis Group interview, Beirut, November 2010. Ever since rumours suggesting the indictments would target Hizbollah began to surface, Jumblatt has voiced deep concerns. In September 2009, he told Crisis Group: "God knows where the tribunal ultimately will lead. To massacres? When we first supported it, we were under the spell of all these political killings. But unwittingly we created a time-bomb". Crisis Group interview, Beirut, September 2009. A Hizbollah official commented: "March 14 claims they will not make use of the tribunal domestically. But they have used it against Syria, and we suspect they will do as much with us. They neither rejected nor endorsed the *Der Spiegel* story [linking Hizbollah to the murder], keeping the option of exploiting it later. Walid Jumblatt alone appeared to understand the dangers contained in such allegations". Crisis Group interview, Beirut, December 2009.

⁷⁶ A British diplomat said, "the tribunal's credibility now lies in the quality of the indictments". Crisis Group interview, Beirut, November 2010.

have had to intervene directly". Crisis Group interview, Beirut, November 2010. A senior Syrian security official echoed this view: "The concept as I see it is to push for a new stage in the struggle over Lebanon: after the Christian-Muslim and Arab-Israeli stages, an intra-Muslim war today might be seen in Israel as the best way of dealing with Hizbollah". Crisis Group interview, Damascus, November 2010.

⁷² Crisis Group interview, Beirut, November 2010.

V. THE BATTLE OVER INDICTMENTS

Although the timing of the indictments remains unknown – to Crisis Group as much as to the various Lebanese and non-Lebanese actors – the sense of foreboding has risen noticeably over the past several months. Hizbollah has suggested in various ways that it would not remain passive should its members be indicted, making clear not only that it would not turn over a single suspect but also that it equated any form of cooperation with the STL to treason. In October 2010, against the backdrop of an attempt by STL investigators to visit the office of a South Beirut gynaecologist and examine the records of some fourteen people who had frequented the clinic since 2003,⁷⁷ Nasrallah gave a speech full of moral outrage, calling upon all Lebanese to boycott the tribunal and castigating any who disobeyed as Israeli collaborators and enemies of the resistance.⁷⁸

Speculation has mounted as to what the movement might actually do should members be indicted and the government not disavow the tribunal – including obstructing STL activities in Lebanon, paralysing the nation's institutions, resigning from the cabinet and thus preventing it from functioning, seeking to change the government or even taking action on the street. It appears, however, that few outside its leadership are in the know. Asked about

this, a senior Hizbollah leader said, “the leadership has taken the decision not to reveal what it intends to do”.⁷⁹

Until now, Hizbollah and its allies, both domestic and regional, have been banking on several possibilities: halting or slowing down the tribunal through a joint Syrian/Saudi effort; politicising and polarising the situation to minimise the indictments' credibility and impact; and pressuring the Lebanese government to denounce the tribunal's findings in order to neutralise its domestic impact.

A. THE SYRIAN-SAUDI TANDEM

Hizbollah's first, preferred option, was to either bring the tribunal to a halt or postpone issuance of indictments to create additional space for a negotiated solution. In this, it was joined by Damascus, whose concerns – albeit somewhat alleviated – were far from over and, more unexpectedly, by Riyadh. Indeed, the most notable regional feature of the current iteration of the Lebanese crisis is the Syrian-Saudi effort to contain any escalation and work out a durable compromise.

Initially, when it was the focus, Syria's stated policy vis-à-vis the tribunal was that it would try any purported culprits at home. As reports surfaced that the indictments would target Hizbollah instead, regime policy appears to have been dictated by two key principles: first, the need to protect its interests in Lebanon, which to a large extent means protecting its main ally there; and secondly, the belief that the investigation will steer back in its direction at a later stage. A Syrian official said, “of course, Syria's turn will come, if it is viewed as not having helped enough. Help with what? With getting Hizbollah onto its knees”.⁸⁰ Saudi Arabia's calculation was very different – premised on the need to maintain the political status quo and avoid

⁷⁷ The clinic reportedly was frequented by the wives of Hizbollah officials. The attempt led to a scuffle after tens of women stormed the clinic and stole a briefcase from the STL investigators. According to Iman Charara, who runs the clinic, the investigators had requested the telephone numbers of up to seventeen patients who had visited the clinic since 2003. The investigators' visit was presented as an unacceptable invasion of women's privacy, hitting a particularly sensitive nerve among conservative Shiites. Hizbollah immediately capitalised on what many saw as a clear cultural blunder. The movement's television station described the visit to the clinic as a “moral scandal”, and Nasrallah declared: “We have reached a sensitive point, which is related to our honour and dignity, the thing that requires us to have a different stance”. He also used the opportunity to discourage support for the STL, saying, “I call on all officials to do what their conscience and honour tell them”. See Hizbollah website, <http://english.moqawama.org/essaydetailsf.php?eid=12500&fid=11> 28 October 2010; *Al-Manar*, 27 October 2010; www.ynetnews.com/articles/0,7340,L-3975987,00.html. The STL described calls to boycott the tribunal “a deliberate attempt to obstruct justice”. *The New York Times*, 29 October 2010.

⁷⁸ Hassan Nasrallah declared: “Enough violations. Everything they [the investigators] obtain makes its way to the Israelis. It's enough Anyone who cooperates with the investigators of the international tribunal is collaborating with Israel and is contributing to the assault on the resistance”. *Al-Manar*, 28 October 2010.

⁷⁹ Crisis Group interview, Beirut, November 2010.

⁸⁰ Crisis Group interview, Damascus, November 2010. Another Syrian official said, “the tribunal is a tool, an instrument. First Syria was accused, and now it is Hizbollah. This shift begs the question: who comes next and according to what calculations?” Crisis Group interview, Damascus, October 2010. Some European diplomats thought that the shift of focus toward Hizbollah might create a rift between the two allies; Damascus, under this theory, would distance itself from Hizbollah as a means of protecting its improved international standing and, besides, would see some benefit in cutting a powerful ally down to size. This appears to have been based on a fundamental misread of the situation. As a Lebanese politician with close ties to Syria asserted, “there is absolutely no risk of this, if only because all signs suggest that the judicial process ultimately will pursue both of them”. Crisis Group interview, Beirut, November 2010.

anything that could endanger Lebanon's stability – but appears to have led to a relative convergence of views.⁸¹

The rapprochement took many by surprise, given the depth of personal animosity and King Abdallah's purported conviction that Syria was behind Hariri's assassination. Indeed, in October 2008, a senior Syrian official commented that there was "virtually no relationship whatsoever between the two of us" and predicted that, because the hostility was "personal", this would not change for a long time.⁸²

Explanations for the shift are not self-evident; Saudi decision-making is notoriously murky, even to close allies. If only for that reason, Saudi-Syrian efforts have provoked confusion and anxiety among many, notably in Washington, Paris and Cairo. All three admit to having only very limited insight into what their traditional ally is seeking to achieve or prepared to do, and each fears the possibility of a deal regarding the tribunal to which they would be privy only once it was consummated.⁸³ U.S. officials in particular express considerable frustration:

One of the most striking aspects of this whole affair is our virtually total lack of serious communication with Saudi Arabia. For a long time, our bilateral relationship was based on one man – [former Ambassador to the U.S.] Prince Bandar. With him gone, we no longer have a clear window into Saudi thinking. We have no connection to the King's son [Abdul Aziz], we don't know what they are up to in Lebanon, and at times it is hard even to get them to respond to our queries.⁸⁴

The situation is made all the more complex by the state of Saudi politics. By most accounts, the Syrian and Lebanese files primarily are handled by the King (whose declining health further diminishes outsiders' ability to grasp his thinking) and his son, Abdul Aziz (who by and large is unknown to the outside world). But others – perhaps a majority – in key positions are said to hold a different

view and, with an impending succession, it is unclear how solid or sustainable the new policy is.⁸⁵ According to a Lebanese politician with close ties to Syria:

There are several lines of thought in Saudi Arabia, and the battle for succession already has begun. It is hard to anticipate where things might be headed, because the King is not the only one who is old – all his potential successors are as well. All in all, we can't figure out what Saudi Arabia wants; we can't figure out who wants what; and we can't figure out whether anyone can actually achieve what he might want!⁸⁶

Still, several factors appear to be behind the King's approach. First, he seems to have reached the conclusion that the prior policy of pressuring and isolating Syria had failed and that perpetuating it would backfire. The realisation likely came into sharper focus both during the May 2008 Beirut crisis – when neither March 14 nor its allies could stop Hizbollah – and during the December 2008-January 2009 Gaza war, which exposed so-called moderate Arab states to sharp criticism. A Lebanese diplomat said:

The Saudis undertook a 180-degree turn in May 2008, when their Lebanese dreams fell apart. They realised they might as well protect their assets and investments in Lebanon through accommodation rather than confrontation with Syria. The Lebanese Sunnis feel they were not even consulted. The initial basis of the Syrian-Saudi deal was threefold: peaceful parliamentary elections without outside interference; a national unity

⁸¹ A senior Egyptian official commented: "The Saudis are well intentioned in Lebanon. Basically they are trying to stabilise the country. You can agree or disagree. But we never doubt their intentions. Their actions are geared toward that goal". Crisis Group interview, Cairo, November 2010.

⁸² Crisis Group interview, Damascus, October 2008.

⁸³ Crisis Group interviews, U.S., Egyptian and French officials, Washington, Cairo and Beirut, November 2010.

⁸⁴ He added: "It is a Lebanon problem, but it goes beyond Lebanon. They are not satisfied with us right now: they are extremely angry about Iraq, given their strong hostility toward [Prime Minister] Maliki; they are not happy about the peace process, and they are making us feel it. Sure, there is the \$60 billion arms deal, but they are giving us the money so it is not as if they feel they owe us for this one". Crisis Group interview, Washington, November 2010.

⁸⁵ Reports of rifts within the royal family regarding policy toward Syria and Lebanon are legion, albeit unsubstantiated. According to most, the King's rapprochement with Syria and pressure on Hariri are viewed with disfavour by other important members of the family. Crisis Group interviews, Lebanese officials, Arab analysts, Beirut, November 2010.

⁸⁶ Crisis Group interview, Beirut, November 2010. A Syrian official said, "schematically, the Saudis have two approaches, the King's and the others'. Saudi Arabia is like the U.S. The King is full of goodwill, but he faces resistance from within, just like Obama. That said, those complexities do not affect our relations. We all know the limits of our partnership". Crisis Group interview, Damascus, October 2010. Perhaps hoping that Riyadh was losing faith in Damascus and that the King's perspective would shift, a Lebanese Forces official with close ties to Riyadh said, "Saudi Arabia isn't happy with the state of their relationship with Syria. They are frustrated with the results of their joint efforts in both Iraq and Lebanon. In Iraq, they believe the Syrians were helpful at the outset in pushing Iyad Allawi's candidacy as prime minister but that they then switched to Iran's candidate, Nuri al-Maliki. In Lebanon, they say: 'Syria was helpful in Doha, during the 2009 elections and in allowing Hariri to become prime minister, but since then it has become an obstacle'. The Saudis believe Syria can put more pressure on Hizbollah but that, instead, they want all the pressure to be on Hariri". Crisis Group interview, Beirut, November 2010.

government led by Hariri; and a judicial process that proceeds calmly. We are reaching the third stage.⁸⁷

Abdallah's and Abdul Aziz's relationship with Syria also is believed to be determined by both their personal inclination⁸⁸ and what is described as their more "Arabist" outlook.⁸⁹ An Egyptian official suggested that confusion regarding current U.S. policy may have contributed to the shift:

U.S. policy is not clear to the Saudis. They have lost their traditional reference points and feel a sense of uncertainty. That, combined with the complexity and magnitude of current regional issues, creates pressure on them to take some action, to do something.⁹⁰

Although the gradual warming of relations between Damascus and Riyadh can be traced back to early 2009,⁹¹ its most striking materialisation to date arguably was the 30 July 2010 Beirut summit between Assad and King Abdallah. The unscheduled and unprecedented joint visit clearly conveyed the two leaders' concern and willingness to defuse the crisis. They reportedly agreed on the need to preserve Lebanon's stability, maintain its existing government, restrain their respective allies and attempt to postpone the indictments in order to allow more time for a negotiated solution.⁹² According to several accounts,

Saudi Arabia was entrusted with responsibility for seeking the delay, given the kingdom's relations with France and the U.S.⁹³ The request having been rejected, first in Paris⁹⁴ then in Washington,⁹⁵ the search for an international solution essentially was over. In response, Saudi Arabia and Syria shifted their efforts to Lebanon itself.

How far cooperation between the two countries can go and how aligned they are in their objectives remains open to doubt – if only because of the fogginess surrounding both Saudi policy and the kingdom's interaction with Syria. Questions are raised on both sides of the Lebanese spectrum. According to an official with close ties to Hariri, "Saudi Arabia and Syria have agreed to agree even when they disagree. In other words, although many differences still divide them, they do not want this to lead to a conflict. They want to preserve a form of truce".⁹⁶ An opposition figure said, "I think the Syrian-Saudi relationship has reached its limits. The line of communication will stay open, and there is a degree of trust at the leadership level. But in my view the Syrians have reached the conclusion this will not yield the desired results".⁹⁷ Reflecting the prevailing climate of uncertainty and confusion, others with equally good access to Syrian decision-making circles were far more upbeat.

⁸⁷ Crisis Group interview, August 2010. An Arab analyst added: "Abdallah concluded that Saudi foreign policy had reached an impasse: outmanoeuvred in Iraq; unable to shape events in Lebanon; embarrassed in Yemen; and seen at best as impotent, at worse as complicit during the 2006 Lebanon war and 2008 Gaza war. Shifting policies toward Syria and working with Damascus was one way to seek to stem the tide". Crisis Group interview, October 2010.

⁸⁸ By all accounts, Abdul Aziz enjoys friendly ties to the Syrian president, resting in part on the close personal relationship that existed between their fathers.

⁸⁹ That, at least, is a common Syrian perception. "Abdallah and Abdul Aziz represent what is left of an Arabist trend in Saudi Arabia. To put it simply, they think in terms of what is good for Saudi Arabia. Others within the establishment ask themselves what they must do to keep the West satisfied". Crisis Group interview, senior security official, Damascus, November 2010.

⁹⁰ Crisis Group interview, Cairo, November 2010.

⁹¹ The first signs came at the January 2009 Arab summit in Kuwait, where King Abdallah and President Assad met. In September 2009, the Syrian president visited Saudi Arabia; this was followed two weeks later by a reciprocal visit from the Saudi monarch. See Al Jazeera, 20 January 2009; www.alarabiya.net/views/2009/10/09/87510.html.

⁹² Justifying the need for a postponement, a Syrian official said, "the basic agreement with Saudi Arabia was to calm things down – even Nasrallah toned down his language, at our request – and to reframe the tribunal question like this: although it is a fact of life which will not go away, certain issues remain that deserve consideration. Indictments will make the situation in Lebanon highly volatile. Before they are issued, the tribunal

should examine the possibility of Israeli culpability, which cannot be preemptorily dismissed. Of course, I don't believe it will be pursued in earnest by the tribunal. But if the leads we and Hizbollah provided are ignored, then the court's legitimacy will come under question, at least in the eyes of regional public opinion. You also have the issue of the false witnesses [witnesses whose testimony served as a basis for the Mehlis reports]. If the tribunal fails to investigate this, its bias will become apparent to all". Crisis Group interview, Damascus, September 2010.

⁹³ Crisis Group interview, Lebanese diplomat, August 2010.

⁹⁴ France reportedly told the Saudi envoy that Washington was the appropriate address for this issue. Crisis Group interview, French official, Paris, September 2010.

⁹⁵ In the wake of the failed effort, a Syrian official said, "Our agreement with Saudi Arabia was on the need to postpone the indictments, tone down the rhetoric and give everyone time to think things over calmly. That didn't work. During our meetings in New York [at the September UN General Assembly], it became quite clear that nobody would agree to postpone the moment of truth". Crisis Group interview, Damascus, October 2010. Another Syrian official commented: "The tribunal is a fact of life. It won't go away. The best one could have hoped for, realistically, was to freeze it temporarily. Even that would have required some goodwill on the part of those capable of influencing the tribunal's decisions. But there is no such thing". Crisis Group interview, November 2010. It is, of course, far from clear that the STL would have responded affirmatively to such a request regardless of who made it, given its eagerness to prove it is impervious to political pressure. Only a new Security Council resolution could guarantee the outcome.

⁹⁶ Crisis Group interview, Beirut, November 2010.

⁹⁷ Crisis Group interview, Beirut, November 2010.

B. POLITICISATION, POLARISATION, INTIMIDATION

Throughout this period, Hizbollah has been waging an intensive campaign in coordination with its Lebanese allies to win over as much of domestic and regional public opinion as possible.⁹⁸ In the event it would not be possible to stop the tribunal from issuing the indictments, the goal is to minimise their impact. As a senior movement official said, “assuming the U.S. and France don’t change their stance, our best option is a stillborn indictment, one that cannot be carried out practically or exploited politically. Our objective becomes the most robust denunciation of the tribunal as possible”.⁹⁹ Persuading March 14 sympathisers of the STL’s inherent bias and lack of credibility might be unachievable, but limiting damage to Hizbollah’s standing and galvanising its supporters is another matter.¹⁰⁰

To that end, the movement has sought to pre-emptively discredit the indictments, addressing and attacking their expected content before release and tarnishing the STL’s credibility by raising a host of issues intended to muddy the waters.¹⁰¹ The goal, in other words, has been to politi-

cise the issue even at the cost of further polarising the country between those who will automatically dismiss the indictments and those who will reflexively endorse them. The indictments, in this sense, will be viewed as new political tools in an ongoing political battle rather than as legal evidence in a juridical one. A senior Hizbollah official put it as follows: “It has become apparent to all that the tribunal is a political, not a judicial body, which places us in a good position to win over public opinion. We will rally a majority, and we will be able to treat the tribunal’s decision as we do any other political decision”.¹⁰²

Two of the principal arguments Hizbollah and its allies have deployed to sow doubt about the tribunal have been the so-called false witnesses – the claim that, early in the process, the probe relied on individuals who subsequently modified or retracted their testimony¹⁰³ – and the Israeli spy rings – the Lebanese government’s assertion that

⁹⁸ In this, Hizbollah has been fully backed by Michel Aoun. Although Aoun was an early and strong defender of the international probe, he has joined the Shiite movement in expressing doubts about its credibility. He told Crisis Group: “I still am an STL supporter, but not an unconditional one. We don’t want to eliminate the tribunal but to re-examine some aspects of the investigation. If procedural faults were committed, if the investigation strayed from the path of justice, I will not remain silent. I stand for justice, and justice in this case has been tarnished by the modalities of the investigation. The tribunal should be a means to reach justice, not an end in itself”. Crisis Group interview, Rabieh, November 2010. Jumblatt has taken a similar view: “This tribunal is aimed at destabilising Lebanon rather than rendering justice It would be appropriate at this time for the cabinet to meet and unanimously denounce the tribunal and its [upcoming] verdict”. *Al-Nahar*, 24 November 2010.

⁹⁹ Crisis Group interview, Beirut, November 2010.

¹⁰⁰ A senior Hizbollah official said, “our hope is not to convince our enemies but rather to make inroads among those who are in the centre”. Crisis Group interview, Beirut, November 2010. Conversely, a Lebanese Forces official framed the challenge as follows: “Hizbollah now enjoys the support of roughly 20 to 25 per cent of the Sunnis and a substantial number of Christians. The impact of the indictments will be measured on how those constituencies – not Hizbollah’s traditional base – react. The indictment could also undermine Hizbollah’s image in the Arab and Muslim worlds”. Crisis Group interview, Mirab, November 2010.

¹⁰¹ A Hizbollah official said, “through Nasrallah’s speeches, Hizbollah is preparing the public even before indictments have been issued. Public opinion is evolving in a very positive way. Many, both in Lebanon and in the Arab world, haven’t completely made up their minds yet and don’t have clear convictions about the tribunal. We can still affect their thinking”. Crisis

Group interview, Beirut, September 2010. A March 14 official described the Shiite movement’s approach as follows: “They launched a pre-emptive attack on the tribunal through a series of speeches that we read as a systematic, dynamic plan unfolding as events happened and designed to neuter the tribunal, make it irrelevant. It is not an easy thing to do, because the actors are so numerous, because the process derives from a Security Council resolution, because it is backed by the international community and because of the domestic risks entailed by pushing too hard”. Crisis Group interview, Beirut, November 2010.

¹⁰² Crisis Group interview, senior Hizbollah official, Beirut, November 2010.

¹⁰³ In particular, in 2005 Muhammad Zuhair Saddik testified to the international commission that the preliminary planning stages of the attack were carried out in secret meetings between Lebanese and Syrian officials from July to December 2004. Hussam Taher Hussam claimed that the final planning stages took place in the Syrian presidential palace, the office of General Assef Shawkat and the Meridian Hotel in Damascus, and implicated by name several individuals including the four detained Lebanese generals. The October 2005 Mehlis report relied heavily on Hussam’s and Saddik’s testimony in concluding that “there is now converging evidence pointing at both Lebanese and Syrian involvement in this terrorist act”, despite the report’s acknowledgement that “a certain amount of information given by Mr Saddik cannot be confirmed through other evidence”. An official copy of Detlev Mehlis’s report is available at www.un.org/News/dh/docs/mehlisreport. Hussam later retracted his statement and boasted about his ability to mislead the investigators. In October 2010, Syria issued 33 arrest warrants against alleged Lebanese, Arab and foreign false witnesses, including senior individuals close to Hariri. The file currently is in the hands of the Lebanese judiciary. STL officials dispute the phrase “false witnesses” insofar as – the trial not having yet commenced – no witness has yet testified before the tribunal. Moreover, the fact that certain witnesses might have offered inaccurate testimony should have no effect on the credibility of the indictments if such testimony had no bearing on the indictments themselves. Crisis Group interviews, October–November 2010.

Israeli agents had infiltrated the telecommunications sector, thus vitiating the reliability of any phone-based evidence.¹⁰⁴

By evoking the former, Hizbollah seeks to demonstrate that the investigation was contaminated from the outset¹⁰⁵ and cast March 14 as conspirators bent on twisting the truth rather than victims solely seeking to bring it out.¹⁰⁶ Indeed, the opposition claims to have evidence implicating March 14 officials in the production of misleading testimony and has been calling for the case to be taken up by either the STL or the Judicial Council, the Lebanese jurisdiction established to prosecute certain “grave crimes” and matters of state security.¹⁰⁷ The opposition also appears to be trying to use the purported scandal – and March 14’s assumed involvement – as leverage to extract concessions regarding the tribunal. Finally, by insisting that the case be examined by Lebanon’s highest court, it is

hoping (wrongly, it would appear) that the STL will have to suspend its proceedings as it awaits conclusion of the Lebanese process.

Raising the issue of the spy ring serves a different, albeit related purpose: tying the tribunal to the Arab-Israeli conflict and evoking suspicion about the integrity of the telephone-based evidence upon which the STL purportedly has heavily relied. Tellingly, on 28 November, Nasrallah stressed that Israel’s “invasion” of the telecommunications sector completely undermined any alleged evidence relying on mobile telephone communications.¹⁰⁸

The STL may have sound reason not to look into either of these two issues; still, that decision – whose legal foundation is lost on most ordinary Lebanese – cannot but play into Hizbollah’s hands. STL detractors have the ability to saturate the media and public space with their arguments, while March 14 essentially relies on the tribunal, which understandably has kept its public response to a minimum pending issuance of the indictments.¹⁰⁹ The opposition – most prominently Hizbollah and the Aounist movement¹¹⁰ – has been most successful in exploiting the “false witnesses” affair, pointing to it as evidence of the STL’s unreliability and refusing to attend cabinet meetings unless and until it votes on whether to transfer the case to the Judicial Council.

For the tribunal and outside observers alike, this must appear as much ado about nothing: a five year-old story which, one presumes, has had no impact on the current investigation and forthcoming indictments. It is highly instructive nonetheless, embodying several key lessons: that the judicial process will continue to be haunted by its past; that Hizbollah’s strategy of refocusing the struggle away from the tribunal can be effective, at least to some extent; and that there is no escaping the realm of politics, even for an institution that is desperate to do so.¹¹¹ A senior March 14 official lamented: “The opposition is trying to make a huge issue out of the so-called false witnesses affair.

¹⁰⁴ In a November 2010 joint press conference, Hasan Fadlallah, a Hizbollah parliamentarian, and Telecommunications Minister Charbel Nahhas detailed results of an investigation which purportedly showed that Israel had been able to use the mobile phone lines of Hizbollah members without their knowledge. See Agence France-Presse, 24 November 2010.

¹⁰⁵ Jamil Sayyed, one of the four generals arrested in 2005, said, “what is the false witnesses matter? All told, it constitutes proof of the partiality of international justice. If you look deep into the circumstances of 2005, the conclusion is that this was a conspiracy”. Crisis Group interview, Beirut, November 2010.

¹⁰⁶ According to a Hizbollah official, “investigating the ‘false witnesses’ file means in effect ending the investigation and the tribunal. People very close to Hariri are involved in this affair, which means that they are the ones who benefited from accusations against Syria and Hizbollah and tried to falsify the truth”. Crisis Group interview, Beirut, November 2010. A UN official acknowledged that some of the initial witnesses were aided and abetted by March 14 leaders in a variety of ways and conceded the damage wrought by the issue: “Digging into the false witnesses issue could reveal that March 14 was deeply involved”. Crisis Group interview, UN official, Beirut, November 2010.

¹⁰⁷ March 8 wants the Judicial Council, as opposed to an ordinary court, to try the alleged false witnesses. It expects the Judicial Council to ask the STL to hand over statements, documents and accompanying material to the Lebanese judicial system and, perhaps, to request a freeze in the tribunal’s work pending its own investigation. Perhaps more to the point, the process would entail trying, in Lebanon’s highest criminal court, senior figures of Hariri’s entourage, further damaging the STL’s Lebanese supporters. See *The Daily Star*, 3 November 2010. In a report published in October, Justice Minister Ibrahim Najjar (reputed to be close to the Lebanese Forces) concluded that the Judicial Council lacks jurisdiction over the false witnesses file insofar as its role “is restricted to crimes committed against state security, spying activities, murders that relate to international law and undermining the state’s authority”. In response, the opposition argues that the “false witnesses” case is a by-product of the Hariri case, which was transferred to the Judicial Council prior to being brought before the STL. See *Al Manar*, 12 November 2010.

¹⁰⁸ *Naharnet*, 28 November 2010. Nasrallah also produced what he claimed was evidence of possible Israeli implication in the assassination. In response, the prosecutor’s office said he had reviewed the material and concluded it was incomplete. See www.reuters.com/article/idUSTRE67O1QV20100825.

¹⁰⁹ A senior STL official expressed frustration at this situation, even as he stressed that it was key to preserving the institution’s credibility. Crisis Group interview, October 2010.

¹¹⁰ For background on the Aounist movement, see Crisis Group Middle East Report N°78, *The New Lebanese Equation: The Christians’ Central Role*, 15 July 2008.

¹¹¹ More broadly, reliance on false testimony, at whatever stage of the proceedings, is seen by some to be relevant to the issue of the prosecution’s credibility and gullibility and therefore is inherently damaging to the whole process.

One is almost brought to ask himself: what is the essential problem, these false witnesses or Rafic Hariri's murder?"¹¹²

Politicisation and polarisation aside, Hizbollah also clearly has attempted to intimidate March 14 through vague, albeit typically ominous statements about its intentions should indictments be issued without government condemnation.

Although Hizbollah can claim to have succeeded in many respects, it also appears to have added to its own problems in the process. Its public campaign arguably convinces both its sympathisers (that it is innocent) and its detractors (that it has something to hide).¹¹³ Its relentless attacks on the STL, which has been loath to respond through the media, likely bolsters the odds that it will feel the need to do so indirectly and at great length in the indictments themselves; in other words, the more the movement attempts to damage the tribunal, the more it can expect the latter to hurt it in return, by substantiating the indictments beyond usual requirements.

Likewise, Hizbollah's threats of escalation potentially could lead to a compromise solution, but they also could place before the movement the uncomfortable choice of either doing something spectacular if March 14 rejects a deal or losing face and credibility. Pressing its maximalist demands – that Hariri denounce the accusations outright – also risks making it impossible for the prime minister to agree, not least because his allies, fearing he might cave in, will intensify their own countervailing pressure. If Hariri were to acquiesce, on the other hand, militant Sunni groups might seek to take justice into their own hands, leading to a vicious cycle of sectarian killings. In the same vein, Hizbollah's attacks against pre-eminent Sunni figures – notably former Prime Minister Siniora – exacerbate the very sectarian tensions it feared in the first place.

Hizbollah's standard reply is that it simply could not remain passive and thus give the tribunal and its supporters more room to manoeuvre. Instead, by taking a firm, unyielding stance and signalling that all options are on the table – and that its ultimate response depends entirely on what March 14 will do – the movement is hoping to deter its opponents from taking advantage of the situation,¹¹⁴ thereby compelling them to compromise.¹¹⁵

¹¹² Crisis Group interview, Beirut, November 2010.

¹¹³ A senior March 14 official commented: "Hizbollah's aggressive reaction has convinced some Lebanese of the importance of being firm on the tribunal. It was very counter-productive on their part. In their shoes, I wouldn't have overdone it as they did". Crisis Group interview, Beirut, November 2010.

¹¹⁴ A Hizbollah official stressed that the movement had been successful in preventing, at a minimum, the waves of political

C. ALL EYES ON HARIRI

Having failed to achieve one objective (freezing the tribunal) and partially succeeded in achieving another (diminishing its credibility and thus impact), Hizbollah and its allies have focused their energy on a third: building a firewall between the tribunal and Lebanon by ensuring the government denounce its findings and cease all cooperation. Although such steps would not necessarily persuade anyone not already convinced that the STL is untrustworthy, they likely would have a devastating impact on the tribunal, as it is difficult to see even its staunchest international backers insist on pursuing the trial against the government's express wishes. They would have substantial political consequences as well.

The focal point is Hariri. He is the victim's son, which would give maximal weight to any disavowal he uttered and make it difficult for others –including relatives of other victims of political assassinations, many of whom were prominent March 14 figures¹¹⁶ – to fight for an institution on which he had turned his back. Moreover, as head of the national unity government, his position rests on the Doha *modus vivendi*, which arguably makes him more amenable to compromise than other March 14 leaders. Because Hizbollah is persuaded he played a key role in the "false witnesses" affair, it believes he is eager to see it go away and thus might be open to a deal. Lastly, as one who has close ties to Saudi Arabia and has benefited substantially from its support, he presumably would be most responsive to pressure from Riyadh. A U.S. official said, "Hariri is a Saudi citizen. He has important financial interests in Saudi Arabia. The government he's heading was formed thanks to Saudi support. Even his relations with Syria were pushed by the Saudis. That suggests the degree to which he is sensitive to Saudi views".¹¹⁷

In sum, as a French diplomat said:

For Hizbollah and its allies, the key is what Hariri will say and do. There is no substitute. No other leader carries his weight. If he is prepared to turn the page, then everybody should be able to; conversely, if he refuses

attacks which Syria had had to endure in 2005. Crisis Group interview, Beirut, November 2010.

¹¹⁵ A senior Hizbollah official said, "there are various hypothesis and scenarios to take into account, ranging from calm to a conflagration. Our objective was to clarify that these various possibilities exist and prepare the public for all of them. But the keys to the future are not in our hands; we will respond to events". Crisis Group interview, Beirut, November 2010.

¹¹⁶ Druze minister Marwan Hamadeh is the uncle of Gebran Tueni, who was assassinated in December 2005. The son of Amine Gemayel, leader of the Christian Kataeb party, was killed in November 2006.

¹¹⁷ Crisis Group interview, November 2010.

to denounce the tribunal, no Sunni leader could do so and hope to retain any credibility. That's why Hizbollah and Syria want Hariri to remain in power and to discredit the STL; the last thing they want is for him to be in the opposition defending it.¹¹⁸

As a result, current efforts by the opposition appear to be focused to varying degrees on persuading Hariri to distance himself from the tribunal and in particular from any accusation targeting the Shiite movement.¹¹⁹ Reportedly, this also forms part of the Saudi-Syrian effort. What precisely the King and Abdul Aziz are suggesting (or will suggest) to Hariri remains unknown; in mid-November rumours circulated that the monarch's son had told Hariri he had to denounce the tribunal, though the prime minister denied it, and there has been no evidence to confirm this was the case.¹²⁰

Damascus, which has come under U.S. pressure to "rein in" its Lebanese allies,¹²¹ takes the view that it neither can nor will simply ask Hizbollah to accept the indictments. It insists on a solution that meets its ally's concerns – in other words, a solution whereby Lebanon formally dissociates itself from the tribunal. A Syrian with close ties to decision-making circles said, "when the indictments are issued, Hariri will have to declare that the whole process was politicised and therefore its conclusions are unacceptable. His only alternatives are disorder – from which he will be unable to find a dignified exit – or confrontation – in which he cannot prevail".¹²² At this writing, however,

¹¹⁸ Crisis Group interview, Paris, November 2010.

¹¹⁹ Crisis Group interviews, Syrian and Lebanese officials, Damascus/Beirut, October and November 2010. A front page article in a pro-opposition newspaper suggested precisely what Hariri should say: "Saad Hariri should take a stance against the STL and announce his position that a direct or indirect indictment of Hizbollah or any of its members in the STL would indicate that the STL is politicised". *Al-Akhbar*, 27 September 2010.

¹²⁰ Both a UN and a U.S. official confirmed the rumour but acknowledged they could not verify it – an indication of how closely Riyadh is holding its cards. According to the U.S. official, the prime minister denied having received such a proposal. Crisis Group interviews, Washington, November 2010.

¹²¹ Crisis Group interview, U.S. official, Washington, November 2010.

¹²² He added: "Sunnis from Beirut remember their May 2008 humiliation; those in the South are encircled; that leaves the usual suspects in the North, which of course is of concern to Syria. But if serious clashes were to erupt, everyone would rush to seek our intervention". Crisis Group interview, Damascus, October 2010. A Syrian official put it bluntly: "In our reading, the tribunal is now a fait accompli and it won't even be possible to postpone the moment of truth. So it is now up to Lebanon to assume its responsibilities. The crux of the matter is that Hariri must deliver. He's done nothing to calm things down and stabilise the situation in Lebanon. He comes and goes, says nice

no such solution has been reached; nor was it clear what exactly – beyond preserving the status quo – Hariri or his allies would achieve from that outcome.¹²³

D. MARCH 14 AND SAAD HARIRI'S PREDICAMENT

At the centre of what many have dubbed a Shakespearean or Greek tragedy stands Saad Hariri – son of the slain prime minister; head of a coalition that has lost many other leaders to political violence and which for the most part has taken an uncompromising view on the tribunal; prime minister of a national unity government whose stability depends on Hizbollah's cooperation; pro-Western ally whose confidence in the West has been shaken; and staunch partner of the Saudi kingdom whose wishes he would be extremely wary to ignore or defy.

For Hariri, this context has created strong and oftentimes conflicting pressures particularly as the issuance of indictments has approached. As seen, he took an important – and, among his followers, highly controversial – step by apologising for his earlier "political" accusations against Syria.¹²⁴ Now, he is being asked to go further and de-

things, ostensibly seeks Syria's blessing, yet all the while he sticks to his old ideas. Meanwhile, things are getting more dangerous by the day". Crisis Group interview, Damascus, October 2010.

¹²³ According to a U.S. official, Hariri has demanded, as part of any deal, the disarmament of Palestinian refugee camps. Crisis Group interview, Washington, November 2010. In mid-November, Walid Jumblatt, who has sought to play a mediating role in this crisis, told Crisis Group: "The Syrians are still discussing with the Saudis a formula pursuant to which Saad Hariri would say: 'whatever the allegations against Hizbollah, we are against them', but the formula is not yet ready". Crisis Group interview, Beirut, November 2010. Several press reports have purported to divulge the content of the Saudi-Syrian proposal, though there is reason to doubt their accuracy. A daily detailed a five-point deal pursuant to which Hariri would reject the indictments after their publication. *Al-Safir*, 15 November 2010. Alternatively, according to a pro-opposition paper, the proposal involves parliamentary disavowal of the tribunal with the prime minister's tacit assent. *Al-Akhbar*, 19 November 2010.

¹²⁴ An adviser to Hariri described the rationale behind the prime minister's statement: "We knew we could not do everything all at once: take on Hizbollah, confront Syria, keep the indictments and preserve stability. So the idea was to set the Syrians aside, stay firm on the indictments and preserve stability. This is when the *Al-Sharq al-Awsat* idea came up". Crisis Group interview, Beirut, November 2010. Hizbollah officials have raised doubts as to the sincerity of Hariri's statement. One said, "his declaration wasn't positive. He admits that the accusation was political and, although it has already caused great damage, he would like to just close the file without any further investigation". Crisis Group interview, Beirut, October 2010. A journalist with the Future Current's *al-Mustaqbal* newspaper lamented:

nounce not just an earlier political charge but a forthcoming legal one.

Any break with a tribunal set up to bring his father's murderers to justice inevitably would come at a huge personal cost, one with which, according to some of his advisers, he simply could not live.¹²⁵ But there are political considerations as well. What inevitably would be seen by his social base as betraying the memory of the Sunni community's foremost figure would undermine, perhaps fatally, his credibility and claim to leadership. Opposition leaders are quick to point out that others have shifted their stance without jeopardising their position, notably Jumblatt, whose about-face regarding Syria was nothing short of breathtaking.¹²⁶ But the comparison is misleading. Whereas Jumblatt for all practical purposes turned his back on March 14 in order to refocus on his Druze community, the prime minister is being asked to cut his ties to his natural constituency and hope to survive as a national figure – a far more difficult and riskier move.

More broadly, for Hariri to yield to Hizbollah's demands could endanger the cohesion of the March 14 coalition, prompt local Sunni leaders to challenge his role, alienate some of his regional and international allies and decisively tilt the balance of power in the opposition's favour. A Lebanese diplomat went further, speculating that, his

U-turn accomplished, the prime minister would lose his utility in opposition eyes:

Maybe Hariri is prevaricating precisely for fear that, once he denounces the tribunal, he will lose much of his relevance. Once he has torpedoed the tribunal, he might become expendable in the eyes of Syria and Hizbollah.¹²⁷

Scepticism among March 14 regarding Syrian and opposition intentions was bolstered by their reaction when Hariri recanted his accusations against Damascus. Whereas the prime minister's followers saw it as an extremely significant step, the payback ultimately was minor and – they fear – the episode might have convinced Syria that he would do anything to overcome this crisis.¹²⁸

Some of Hariri's March 14 allies reject any notion of disavowing the tribunal on several grounds. To do so, they argue, would be dealing the search for justice a fatal blow and hand Hizbollah too great a victory with dangerous repercussions down the road. In the words of a Hariri adviser:

Despite all the problems we are facing, our strategy is based on clarity of vision and resolve, on calm and patience, on firmness in defence of the principles for which we have fought. We want this to be a country of democracy, openness and tolerance. These are the critical values we strive for. The tribunal is one of the tools to ensure this country stays as such. The opposition is pushing us to trade justice for stability. But we

“Each time Hariri makes a concession, his opponents ask for more. We don't know how far they will go”. Crisis Group interview, Beirut, September-October 2010.

¹²⁵“Denouncing the tribunal is something he simply could not do for personal reasons. He would rather resign”. Crisis Group interview, Beirut, November 2010.

¹²⁶Shortly after Hizbollah's takeover of parts of Beirut in May 2008, Jumblatt began softening his position toward the Shiite movement and its Syrian ally. In a 27 July 2008 interview with a Lebanese television channel, he said, “we ... focused on taking revenge under the slogan of justice, and this ... led us to isolation”. Interview on New TV. Soon after the June 2009 parliamentary elections, Jumblatt withdrew from the March 14 coalition. He then offered Syria a virtual apology, saying: “my remarks [against Syria and Bashar Assad] were indecent, out of context ... can [President Assad] rise above this issue? I simply ask for this Yes, I want to turn the page”. Al Jazeera, 14 March 2010. A couple of weeks later, the Druze leader visited Syria and met with President Assad for the first time in five years. Jumblatt's moves essentially were motivated by communal and political considerations. The May 2008 clashes convinced him that core Druze interests were under threat, and he feared that sectarian conflicts could present his community with “the risk of extinction”. Crisis Group interview, Walid Jumblatt, Beirut, 10 August 2009. Moreover, March 14 had been substantially weakened, forced to accept most of the opposition's demands in Doha. Jumblatt also saw France, the U.S. and Saudi Arabia all shifting their policy toward Syria. See Crisis Group Report, *Lebanon's Politics*, op. cit.

¹²⁷Crisis Group interview, November 2010. This fear is compounded by the strong belief among Hariri's advisers that the opposition systematically has been bent on sapping his authority from the outset. One said, “ever since the national unity government was formed, the opposition has attempted to expand its control and reduce space for those who might seek to challenge this. They strove to weaken Saad's leadership by attacking his allies and close advisers. They tried to tarnish the image of [former Prime Minister] Siniora. The attacks were relentless and unrelated to anything Hariri or Siniora did or didn't do. They just wanted to squeeze someone they saw as a young politician. They also tried to revive alternative Sunni leaders. This was happening even before the tribunal became the big issue”. Crisis Group interview, Beirut, November 2010. An Arab analyst disagreed, arguing that, having come to Hizbollah's rescue on the tribunal issue, Hariri would be in a far stronger position vis-à-vis the Shiite movement which, in a way, would be in his debt. Crisis Group interview, Washington, November 2010.

¹²⁸Pressure on Hariri did not ease after his statement. A Hariri adviser said, “it seems as if the Syrians are over-interpreting some of the prime minister's moves. They came to believe he was willing to go all the way if required to stabilise the situation. Whether they misinterpreted the situation or were misled by Saudi Arabia, I don't know”. Crisis Group interview, Beirut, November 2010.

don't need to make that choice. We want both. Security is unsustainable without justice.¹²⁹

Another adviser said that any approach other than steadfastness would amount to a severe and consequential defeat:

We have three options: (1) To remain steadfast; (2) to give in and resign, which this time would mean leaving politics for good, and offering the country to Iran; and (3) to engage in a wholly unequal confrontation in the streets, which also amounts to handing the country over to Iran on a silver platter.¹³⁰

Samir Geagea, leader of the Lebanese Forces (a Christian component of March 14), claims he told the prime minister that "doing Hizbollah's bidding would be like having someone come to shoot you in the foot and, in reaction, shooting yourself in the head".¹³¹ Importantly, many are quick to downplay the likely consequences of standing firm and thus to dismiss the Shiite movement's threats. As they see it, Syria has no interest in a confrontation that could cost it dearly; in contrast to May 2008, Damascus now has much more to lose. An official with close ties to the prime minister commented: "At that time, Syria was completely isolated. It has since made progress it will be loath to jeopardise: it has renewed ties with Saudi Arabia, it has better relations with Europe – mainly France – and it wants to keep doors open to the U.S."¹³²

As for Hizbollah, they maintain, provoking clashes on the streets would serve no purpose: it would not erase the reputational damage wrought by the indictments, but only further validate the view held by its detractors that it has become a sectarian militia more prone to fire at fellow Lebanese than at Israel. In other words, why not call its bluff? According to a Hariri adviser, "they don't want to risk their cause. They haven't reached the level of desperation that would lead them to do something reckless".¹³³

¹²⁹ Crisis Group interview, Beirut, November 2010. A senior March 14 official put it as follows: "We are not the ones fighting for something. Hizbollah is. We are simply holding our ground". Crisis Group interview, Beirut, November 2010.

¹³⁰ Crisis Group interview, Beirut, November 2010.

¹³¹ Crisis Group interview, Mirab, November 2010. Many among March 14 Christian leaders fear a Syrian-Saudi rapprochement could come at their expense. They have in mind that, after the civil war, the Syrian and Saudi-brokered Taef Accord deprived the president (a position reserved to Maronite Christians) of important prerogatives. Most Christian leaders subsequently were forced into exile, imprisoned or marginalised. Moreover, any agreement between Saad Hariri and Hizbollah presumably would help the latter's Christian ally, Michel Aoun. See Crisis Group Report, *The New Lebanese Equation*, op. cit.

¹³² Crisis Group interview, Beirut, November 2010.

¹³³ Crisis Group interview, Beirut, November 2010. An official with the Lebanese Forces concurred: "If Hariri accepts the conclusions of the investigation, nothing much will happen in

Hizbollah's and the opposition's most likely reaction, in this camp's view, would be to paralyse national institutions, provoke political gridlock and, perhaps, once more resign from the cabinet – all of which leads to a shoulder shrug. Another Hariri adviser commented:

What can they do? Exert pressure on the government? Set an ultimatum? Resign? So what? Our institutions already are blocked. We will have a caretaker government that can function for years. At the end, they will have to come and sit at the same table and reach a compromise – but not the one they have in mind today.¹³⁴

Faced with pressure from others to compromise for the sake of Lebanon's stability and well aware of the military mismatch, Hariri, for now, appears to be playing for time, avoiding provocative statements, making the case that the STL's fate is beyond his control and pledging to do all he can to maintain calm.¹³⁵ An adviser paraphrased the prime minister's governing principle: "I won't let the blood of my father be the reason for more blood being spilled". Tellingly, he added that, this time, March 14 knew it could not rely on its foreign backers, regardless of their professions of support:

We've been there before. We were the ones who were on the ground on 7 May [2008], when [Hariri's palace in] Qoraitem was under siege. We were calling people in the U.S. and elsewhere and they weren't answering their phone. Now we will do what we think best for Lebanon. We cannot subcontract this to others.¹³⁶

practice. Hizbollah realizes that they can't do much to stop the tribunal from continuing its work. There will be friction, more hatred between Sunnis and Shiites, but it will be contained. The Sunnis are not ready for revenge, and the main Sunni regional power, Saudi Arabia, currently has no interest in a confrontation". Crisis Group interview, Mirab, May 2010. Few appear to fear the prospect – raised by Hizbollah – of spontaneous sectarian clashes in the wake of indictments. "People will not spontaneously jump and kill each other. Nothing right now – in terms of mobilisation or preparation – indicates that people are waiting for indictments to go to the street". Crisis Group interview, March 14 official, Beirut, November 2010.

¹³⁴ Crisis Group interview, Beirut, November 2010.

¹³⁵ An adviser said, "Hariri has adopted a defensive policy. He is not trying to achieve anything. He lays down certain principles. He tells people he will not attempt to kill the tribunal or stop the indictments. At the same time he won't let anyone attack Hizbollah or the Shiites. He will stop his people from doing so". Crisis Group interview, Beirut, November 2010.

¹³⁶ Crisis Group interview, Beirut, November 2010. Asked about this statement, a former U.S. official quipped: "He is wrong. We did answer the phones. But we told them there was nothing we could do". Crisis Group interview, Washington, November 2010.

In this spirit, as seen, Hariri reportedly has told Nasrallah he was prepared to absolve the movement per se, even if individual members were found guilty; likewise, he is said to have proposed that the two leaders meet immediately after indictments have been issued and agree on steps to maintain calm.¹³⁷ While a more forward-leaning compromise might well be necessary to avoid another government crisis, Hariri purportedly would prefer to enter into that negotiation with the indictments behind him – thereby enjoying a stronger hand. An adviser explained: “We know we will need to reach a compromise at some point. But after the indictments have been issued, we will be in a better position to do so. We are not prepared to negotiate with a gun to our heads”.¹³⁸

Few March 14 officials are prepared to look beyond the indictments and suggest a possible compromise. One of Hariri’s advisers did, however, citing a range of possible options:

At one end of the spectrum, at a minimum, he could be silent and silence his media. He would not press the government to fund the tribunal (which would take a majority which isn’t there). At the other extreme, he could say this is a charge against Hizbollah that we cannot accept. There are ideas to be explored between these two options. Perhaps there are things we can agree on now but only express them publicly after the indictments.¹³⁹

E. OTHER INTERNATIONAL ACTORS

To date, the Syrian-Saudi track has been the only active and relevant mediation attempt. All other significant outsiders have yet to play such a part – either because they believe Hariri should not compromise on the STL or because they believe it would be wrong for them to be involved in negotiations that would affect the tribunal.

France, traditionally a pivotal actor in Lebanon, has appeared torn between its strong support for the international probe, its ties to March 14 leaders, the value it places on its newfound relationship with Syria and its longstanding preoccupation with Lebanese stability. Not all these concerns are weighed equally by various French officials,¹⁴⁰

but the result has been a series of aspirations that are both in tension with one another and hard to put into practice: hoping the STL can proceed without denunciation from the Lebanese government; that Hizbollah can come to the realisation the judicial process will cause it only minimal damage; and that Syria’s behaviour – and thus the bilateral relationship – will not be affected by the tribunal’s fate. As a French official put it:

The tribunal must carry on – we are uncompromising on that point. But it is not the end of the world for anyone. It is a serious institution that will finger individuals, not a movement or a state. Of course, there will be a lot of noise surrounding the indictments, but everyone fears a violent confrontation, and life will carry on as before. As for our American friends who are asking us to be tougher on Syria, our answer is: we tried that, all of us. Were we happy with the results?¹⁴¹

Within the U.S. administration, interest in Lebanon came back to the fore after a period during which it had appeared to be on the back burner. Several events contributed to this reawakening: President Ahmadinejad’s visit and the reminder it provided of Iran’s regional assertiveness; Hizbollah’s increasingly explicit threats to take action in Lebanon should indictments name its members; and reports of Saudi-Syrian pressure on Hariri to compromise. Together, these painted an ominous picture for Washington’s traditional Lebanese allies, leaving the impression they were on their own in facing their foes. For the administration, therefore, the first priority was to demonstrate its presence and interest, shore up Hariri’s position as well as that of March 14 and warn their foes – notably Hizbollah and Syria – against any action that might destabilise Lebanon. In particular, the U.S. was wary of a deal on the tribunal that, in its eyes, would thoroughly humiliate and discredit the prime minister. In the words of an official, “were this to happen, he would be in power in name only”.¹⁴²

Several steps taken in rapid succession were designed to achieve those goals. The U.S. announced additional funding for the STL,¹⁴³ Assistant Secretary Jeffrey Feltman – a former ambassador to Lebanon viewed by March 14 as a strong supporter and by Syria and the Lebanese opposi-

¹³⁷ Crisis Group interview, Hariri adviser, Beirut, November 2010.

¹³⁸ Crisis Group interview, Beirut, November 2010.

¹³⁹ Crisis Group interview, Beirut, November 2010.

¹⁴⁰ For background on French policy, see Crisis Group Middle East Briefing N°27, *Engaging Syria? Lessons from the French Experience*, 15 January 2009. Whereas the Elysée places a premium on engagement with Damascus and on maintaining what the president considers a productive, working bilateral relationship, other officials insist on the importance of the STL for Lebanon’s future. “We ought not lose sight of what is at

stake: Lebanon’s future and its character. Our goal must be a democratic and sovereign Lebanon free from the threat of Hizbollah’s weapons”. Crisis Group interview, French official, November 2010.

¹⁴¹ Crisis Group interview, French official, Paris, November 2010.

¹⁴² Crisis Group interview, Washington, November 2010.

¹⁴³ On 3 November, the U.S. ambassador to the UN, Susan Rice, announced an additional \$10 million for the STL, bringing total US funding to \$30 million. See USUN press release, 3 November 2010, at <http://usun.state.gov/briefing/statements/2010/150341.htm>.

tion as an inveterate foe – was dispatched to Beirut on 16 October; in the weeks following Ahmadinejad’s visit, Secretary of State Hillary Clinton called both the prime minister and the president; a number of officials sharply criticised Syria for all manner of misdeeds, including interfering in Lebanese affairs¹⁴⁴ and – in what hardly could be viewed as a coincidence – raised the issue of Syrian non-compliance with the IAEA investigation surrounding its alleged nuclear program. A U.S. official said:

We had reports – accurate or not – that Saudi Arabia was pressing Hariri to denounce the tribunal, and that is when we decided to buck him up. The Secretary’s phone calls, our public statements, Feltman’s visit: all these were designed to bolster him and tell him to resist cutting a deal. I think he was grateful for our renewed activism. He gained confidence and was able to withstand what had been intensifying domestic and regional pressure so as to maintain his current strategy: to gain time and get past the indictments.¹⁴⁵

Having achieved that objective, the administration was confronted with a more vexing problem: now what? All in all, rather than having a Lebanon policy of which the STL is a part, the U.S. appears to have been forced by events to adopt an STL policy of which Lebanon is a mere afterthought.

Officials concede that, beyond the recitation of broad principles – “supporting the tribunal and rejecting any compromise; preventing Hizbollah from gaining greater influence in the government or in Lebanon generally; and keeping Hariri and his government in place”¹⁴⁶ – the U.S. lacks a coherent, practical strategy to achieve them and, more broadly, the capacity to affect the situation on the ground. Its objectives themselves might well be inconsistent: rejecting any compromise and concession on the STL might trigger military or political action by Hizbollah which, in turn, could increase its influence over the country and/or prevent the Hariri-led government from functioning.¹⁴⁷

Nor does Washington have good answers to basic questions: how its Lebanese allies could possibly prevail in a confrontation were it to come that; what Washington

could do to help them; whether the current power-sharing agreement can and should be preserved; and what kind of ultimate settlement would be acceptable.¹⁴⁸ Memories of May 2008, when a more aggressive U.S. administration stood still in the face of Hizbollah’s military activity, loom large, not only in Beirut but in Washington as well.¹⁴⁹ The danger is double: the U.S. risks encouraging its Lebanese allies to head into a clash in which they would be vastly overmatched, as occurred in May 2008,¹⁵⁰ or, precisely because they vividly recall that precedent, its allies might give in, leaving Washington out in the cold.

Acknowledging the dilemma, a U.S. official said:

We began with an absolutist position of no compromise and, officially, that still is where we are. But in recent days we’ve started an initial conversation about where this might be heading and what we could do when the situation reaches crunch time. What does it mean to say no compromise, or no concession? Are there steps that Hariri can take that fall short of giving in to Hizbollah’s demands but nonetheless are accepted? Are there things he could ask for in return?

¹⁴⁸ “Our goal is to get the truth out; but that likely will be done once indictments are out. The question then becomes: how much do we lose if Hariri strikes a deal that involves taking some distance from STL? What are our redlines and why? How much is it worth to us that Hariri not disown the STL? This is just being debated”. Ibid.

¹⁴⁹ “The last thing we want is to push Hariri toward confrontation and then leave him hanging when things get messy”. Ibid. For background, see Crisis Group Briefing, *Hizbollah’s Weapons Turn Inward*, op. cit. A Lebanese Forces official stressed: “The question is what the U.S. actually is willing to do. Our problem is not the degree of popular support or even international support we enjoy, nor is it with what Lebanese institutions will do. Our only problem is the threat that Hizbollah might take to the streets. May 2008 was a tactical move on Hizbollah’s part. This time, it would be a strategic one. How would the U.S. respond?” Crisis Group interview, Mirab, November 2010. One of the more moderate March 14 figures said, “some within March 14 appear reinvigorated by renewed U.S. signs of interest: Feltman’s visit, Clinton’s calls, criticism of Syria, and so forth. Personally, I had no complaints about their loss of interest, which helped diminish Lebanon’s role as an arena in an international struggle. It’s today that I am worried. I can’t discern a clear U.S. policy beyond agitating for the tribunal and responding to Ahmadinejad’s trip”. Crisis Group interview, Beirut, November 2010.

¹⁵⁰ Although some U.S. and March 14 officials speculate that the Lebanese Armed Forces would take action to curb Hizbollah. Crisis Group interviews, Washington, Beirut, November 2010. There is little reason to believe its behaviour would be significantly different from May 2008 – ie, watching from the sidelines for fear of jeopardising its own internal cohesion.

¹⁴⁴ On 28 October, Susan Rice, the U.S. ambassador to the UN, accused Syria of displaying “flagrant disregard” for Lebanon’s sovereignty and political independence. See Associated Press, 28 October 2010.

¹⁴⁵ Crisis Group interview, Washington, November 2010.

¹⁴⁶ Crisis Group interview, U.S. official, Washington, November 2010.

¹⁴⁷ Referring to the three above-mentioned objectives, a U.S. official commented: “Whether we can actually promote all three, or whether we need to consider trade-offs, is a good question with which we are only beginning to grapple”. Crisis Group interview, Washington, November 2010.

Frankly, we don't know. But, at least, we have begun to pose the questions.¹⁵¹

Even so, the U.S. is highly unlikely to directly intervene for fear of appearing to be bartering over the principle of international justice. A different U.S. policy in this sense might not be publicly visible – it would remain strongly supportive of the STL and strongly critical of attempts to dilute it – but rather express itself through private communications to Hariri and Saudi Arabia, indicating what kind of compromise might or might not be workable.

Among other actors, Egypt has been most forceful in backing March 14 – a policy some say stems chiefly from hostility toward Syria and Hizbollah and opposition to Iranian regional influence. As a European official put it, “Egypt’s policy is more anti-Syrian than it is pro-Lebanese”.¹⁵² A senior Egyptian official explained why Hizbollah should not be protected:

True, it can be very damaging if the tribunal accuses a certain group of people who would then want to see it disappear. But the damage will be greater still if these people draw the conclusion that they can get away with this. Hizbollah’s behaviour will only grow worse if the international community does not stand up to its bullying.¹⁵³

What action Cairo has taken in support of its approach is a matter of debate, with unconfirmed reports suggesting steps ranging from logistical backing to the Christian Lebanese Forces’ paramilitary to financial aid for Sunni armed groups in Tripoli.¹⁵⁴

At the other end of the spectrum, Iran clearly has backed Hizbollah’s position¹⁵⁵ and asserted its growing influence in Lebanon. President Ahmadinejad landed in Beirut on 13 October to a triumphant popular welcome, undertaking what officially was dubbed a “state visit” but in reality was almost entirely orchestrated, on the Lebanese side,

by Hizbollah. Shiites turned out *en masse* to express gratitude for Tehran’s political support and material assistance, notably in helping rebuild areas destroyed by Israel during the 2006 war. Ahmadinejad paid due respect to Lebanese protocol and institutions, attempted to reach out to other Lebanese constituencies and refrained from overly provocative statements. Still, his trip conveyed an unmistakable message of absolute support for Hizbollah and total commitment to its cause, coupled with a less explicit claim to regional ascendancy.¹⁵⁶

Finally, Israel has been both an invisible and omnipresent actor – refraining from saying much, at Washington’s urging,¹⁵⁷ yet constantly being brought up by Hizbollah and its allies as a potential culprit in Hariri’s murder and as a certain co-conspirator in efforts to undermine the resistance. Media coverage of the STL in the Israeli press, and any public statement by senior officials,¹⁵⁸ are immediately seized upon to validate Hizbollah’s theory of a plot.¹⁵⁹ More significantly, the uncovering by the Lebanese government of several Israeli spy rings in 2009 fuelled the opposition’s case, while offering a rare look into Israel’s extensive intelligence efforts in the country.

Beyond that, Israeli officials appear highly interested in the tribunal and the damage it might cause Hizbollah, all the while dismissing the notion that they might be tempted to seize the opportunity to launch another offensive against the movement and assessing the risk of a takeover by the Shiite movement.¹⁶⁰ An official said, “there is no appetite

¹⁵¹ Crisis Group interview, Washington, November 2010.

¹⁵² Crisis Group interview, November 2010.

¹⁵³ Crisis Group interview, Cairo, November 2010.

¹⁵⁴ A March 8 political leader asserted: “Egypt cannot hope to prevail in a head-on confrontation, but they can stir things up between Sunnis and Shiites”. Crisis Group interview, Beirut, November 2010. Another Lebanese politician claimed that Egyptian intelligence operatives were active but without offering proof. Crisis Group interview, Beirut, November 2010. A Western intelligence officer claimed that Egypt had distributed funds to salafi groups in Northern Lebanon. Crisis Group interview, Beirut, November 2010. Crisis Group could not independently corroborate any of these allegations.

¹⁵⁵ During his October visit to Lebanon, Ahmadinejad said, “we see how news is fabricated to direct accusations at the remaining friends in an effort to reach worthless aims by sowing seeds of division”. *Al-Sharq al-Awsat*, 16 October 2010.

¹⁵⁶ A Hariri adviser said, “Ahmadinejad didn’t come to talk to us. He came to address the international community and declare victory”. Crisis Group interview, Beirut, November 2010.

¹⁵⁷ “We have told Israel that whatever they say or do will only bolster Hizbollah’s claim of an Israeli conspiracy. So far, they have more or less taken our advice to heart”. Crisis Group interview, U.S. official, Washington, November 2010.

¹⁵⁸ Chief of General Staff Ashkenazi reportedly warned that the indictments “could destabilise Lebanon and be used as an excuse by Hizbollah to complete its takeover over the entire country”. *Jerusalem Post*, 11 July 2010.

¹⁵⁹ In response to Ashkenazi’s reported statement, Hizbollah pointedly noted: “Although the date of issuing the indictments has not been set yet, Ashkenazi predicted it will be in September and insinuated that it will implicate Hizbollah”. *Al Manar*, 8 July 2010. In reaction to an Israeli press report suggesting the indictment of a Syrian official along with Hizbollah members, Michel Aoun said, “now even *Yediot Ahronot* reveals the content of the indictments. What kind of international justice is this? Syria was virtually acquitted and now, according to this article, it is back among the suspects, along with Iran. Israel is preparing for a war against all three. The tribunal is the equivalent of the weapons of mass destruction Bush invented to attack Iraq”. Crisis Group interview, Rabieh, November 2010.

¹⁶⁰ As recently as 24 November, Prime Minister Benjamin Netanyahu reportedly convened his inner Forum of Seven ministers to discuss the possibility that Hizbollah might attempt a

in Israel for another Lebanon War. Of course, we will react to any provocation. But we have no interest in an escalation, and I believe the probability of another significant round of violence is low".¹⁶¹

All in all, the international landscape differs markedly from the one that prevailed in 2005, when a broad and cohesive front had coalesced against Syria and its Lebanese allies. Today, discrepancies abound among those who traditionally back March 14, which must adapt to inconsistent if not conflicting signals. In contrast, Hizbollah appears able to rely on the constant and relatively coherent support of its own outside sponsors.¹⁶²

To a large extent this solidarity derives from a collective perception that they are all targets of the STL. Although the first indictments might well focus on Hizbollah members, the movement does not operate in a vacuum. A U.S. official expressed a view shared by many: "My own sense is that STL has strong evidence that Hizbollah carried out the bomb attack; it has indications that Iran provided operational support; and it has indications that Syria either asked Hizbollah to do it or politically backed its decision".¹⁶³ In other words, while the STL could start with Hizbollah, there is no telling where it might end.

coup in Lebanon in response to the indictments. See *Haaretz*, 24 November 2010.

¹⁶¹ Crisis Group interview, Israeli foreign ministry official, Jerusalem, November 2010. A defence ministry official said, "our concern is that various Lebanese groups tend to raise Israel as a tool in their domestic conflict. Notably, Hizbollah always accuses us and blames us for all problems. There is risk in this respect that Hizbollah might want to provoke us into a confrontation to shift focus away from the STL. This is precisely why we are following this closely". Crisis Group interview, Jerusalem, November 2010. A senior Syrian security official commented: "I personally don't believe Israel wants a war right now. They're in an ideal position. The Palestinians are devastated. The Arabs are divided and inward-looking. The U.S. is subdued. We don't even need to mention the Europeans. Why would Israel risk all this by wagering on an unpredictable confrontation?" Crisis Group interview, Damascus, November 2010. On the background to a possible showdown, see Crisis Group Middle East Report N°97, *Drums of War: Israel and the "Axis of Resistance"*, 2 August 2010.

¹⁶² "In tactical decisions and political manoeuvres, there are differences between the Syrians and Hizbollah. For example, during the Lebanese parliamentary elections they were each pushing their own allies. But on core issues like the tribunal and how to deal with indictments, they share the same views and work in close coordination". Crisis Group interview, senior March 14 official, November 2010.

¹⁶³ Crisis Group interview, Washington, November 2010. A senior UN official made a similar contention: "I strongly believe [STL prosecutor Daniel] Bellemare has a case that implicates Hizbollah, Syria and Iran in Hariri's murder. The most compelling evidence right now is against Hizbollah, but Syria

VI. CONCLUSION: WHAT WAY FORWARD?

The unfolding struggle over the STL's forthcoming indictments is only the latest manifestation of an ongoing Lebanese crisis that, over the years, has experienced moments of high drama as well as moments of reprieve but has yet to approach resolution. The current battle might not be the most dangerous and, so far, it is not the most violent. But because of the interplay of legal and political issues, and because of its apparent zero-sum nature, it could well be one of the more difficult to overcome.

Not all agree. Many in both Lebanon and abroad make a strong case that March 14 already has extracted as much benefit as it can expect from the indictments and that, in like manner, Hizbollah has limited the damage it will suffer as much as it reasonably could hope. Under this view, because the debate raging in Lebanon has taken as its starting point that Hizbollah members will be indicted, the STL's announcement will not significantly affect the equation: the Shiite movement already is considered guilty by its Lebanese and regional opponents and, as a result of Hizbollah's intensive and effective public campaign, the STL already is viewed as hopelessly politicised by others. In short, the indictments will harden current views rather than change them. A Lebanese analyst defended this viewpoint:

One could argue in hindsight that establishing the tribunal was a mistake, that it dangerously polarised Lebanon and deepened existing divides. Perhaps. But whatever harm it could do has been done. The indictments will change nothing – they are expected, and the opposing parties already have acted in anticipation of them.¹⁶⁴

The possibility of sectarian violence resulting from the indictments also is dismissed by some who make the case, first, that the balance of power on the ground is so decisively in Hizbollah's favour that Sunnis would not risk provoking a battle and, secondly, that Hizbollah has more to lose than to gain from a confrontation. Indeed, if Hizbollah fears that the indictments will spoil its reputation, resorting to violence would only compound the harm.¹⁶⁵

is by no means off the hook". Crisis Group interview, New York, October 2010.

¹⁶⁴ Crisis Group interview, November 2010.

¹⁶⁵ Defending this view, a U.S. official said, "given Hizbollah's current position, and the fact that it has succeeded in getting most Lebanese to either distrust the STL or fear its consequences, why would it take the risk of resorting to violence?" Crisis Group interview, Washington, November 2010.

The logical conclusion flowing from these arguments is to allow the tribunal to proceed and resist any efforts to neutralise its impact in Lebanon. It is not without merit.

But it also is not without serious risk. Hizbollah, it is true, already has received a blow, its image having been tarnished in Lebanon and beyond,¹⁶⁶ likewise it largely has succeeded in sowing real doubt among many regarding the credibility and legitimacy of the tribunal and thus of its pronouncements. But it also has made clear that the indictments and, more precisely, the government's reaction to them are redlines and promised a swift reaction should the government not dissociate itself from the STL. For an organisation that prides itself on saying what it will do and doing what it has said, not taking such action could carry highly negative consequences, discrediting the movement and leading it to lose face. In the zero-sum game that is Lebanese politics, moreover, such an outcome automatically would strengthen its foes. In other words, even if undertaking dramatic action of one kind or another might damage Hizbollah, the fact that it has pledged to do so suggests not taking such action could damage it more.

This does not mean Hariri need or should capitulate to Hizbollah's threats and demands. Nor does it mean that indictments should not be issued. It means, rather, that one ought to undertake a sober assessment of what the international probe already has achieved and what more still can and cannot be gained from the tribunal, what ought to be avoided, what key interests are at stake and how to promote them, before deciding on a way forward and determining whether a compromise makes sense and, if so, what kind.

1. Assessing the Tribunal

Indictments will be issued, but, beyond that, many of the loftier goals initially associated with the judicial process – justice; an end to impunity; deterring future political assassinations; shoring up Lebanese sovereignty; tilting the balance of forces in Lebanon and destabilising Syria – are unattainable in practice or would come at too great a cost were they pursued in earnest. The STL will not enjoy support from Lebanon as a whole; striving for Lebanese

buy-in would do little more than mount one half of the country against the other and further embroil the tribunal in a political confrontation it does not and cannot control. Likewise, it is virtually certain that suspects will not be brought to trial; chances of meting out justice – in the narrow sense of putting individuals on trial in court and carrying out a sentence – are thus very low. The international investigation's effectiveness in deterring political assassinations appears questionable, at best. Indeed, it has proceeded hand in hand with a series of politically-motivated attacks.

Firming up Lebanese sovereignty also is asking far too much of the STL. To the contrary: the struggle over the tribunal has played its part in the internationalisation of Lebanon's crisis, heightening outside interference on behalf of both camps. As a general matter, the game of power-politics in Lebanon has tended to play to Hizbollah's and Syria's advantage. Whatever normalisation occurred between Beirut and Damascus took place only with the lessening of tensions following the Doha accord and was wholly disconnected from the tribunal. Other impediments to full Lebanese sovereignty – Hizbollah's armed status and Israel's interference – will remain untouched by the tribunal. Notwithstanding U.S. assertions that the STL sends a "clear signal that Lebanon's sovereignty is non-negotiable",¹⁶⁷ it is hard to see how that is the case.

At a more abstract level, the goal of expanding the reach of international justice, by setting a precedent in the novel field of political assassinations, is equally unlikely to be achieved. The lessons drawn from the Lebanese model probably will discourage similar attempts in the foreseeable future. The STL could well become a one-off experiment even its sponsors will be happy not to see repeated any time soon.

2. Dangerous Options

To assume Hizbollah will remain passive for lack of more palatable options is as foolhardy as to presume that Hariri is prepared to publicly absolve those the tribunal ultimately identifies as his father's murderers. While neither of those outcomes is impossible, both are the equivalent of giant throws of the dice; outside parties encouraging Hizbollah to stick to maximalist demands or pushing Hariri to be uncompromising are playing with fire.

As seen, for all the perils associated with an aggressive response, Hizbollah might well assess these as less serious than those entailed by a passive one. The scope of its possible reactions is far from limited; these could be ha-

¹⁶⁶One of March 14's more moderate Christian leaders expressed his disappointment in this regard: "The sad story is Hizbollah's evolution in all this. I once told an official from the movement that I respected it as the embodiment of resistance against Israel and of a spiritual rather than sectarian conception of Shiism. Now it hardly resists in any way and has turned its sights inward. I told him they had put off many of their friends. He answered bluntly: 'We don't have a choice; when we're attacked, we must respond'". Crisis Group interview, Beirut, November 2010.

¹⁶⁷U.S. mission to the UN Press Release, 3 November 2010, at www.america.gov/st/texttrans-english/2010/November/20101103123147su0.7953411.html?CP.rss=true.

zardous for Lebanon's stability or for tribunal personnel. More broadly, the judicial process holds virtually no chance of tilting the power balance appreciably in March 14's favour. In the absence of a compromise acceptable to Hizbollah, indictments could well push the Shiite movement to take action that would consolidate its influence, thus undercutting an important objective of STL proponents among March 14 and its foreign backers. Hizbollah's image would be spoiled, but it likely would increase, not diminish, its role in Lebanon, bringing its political clout more in line with its military one. The government would have firmly defended the STL but would find governing harder. March 14 would be further debilitated, its Western supporters once more having proved themselves powerless. Pushing Hizbollah to the brink probably would hurt the movement, but likely its opponents even more.

By the same token, there is danger in seeking Hariri's total surrender and pressing him to carry the full weight of a denunciation of the STL. As this report has shown, such an outcome would come at extraordinary personal and political cost, in effect asking him to pay yet another price for the tragic loss of his father. Moreover, one ought not to exclude the very real possibility that Sunni groups – thirsting for revenge and frustrated at what they would perceive as a denial of justice – might retaliate. A Lebanese analyst put it as follows: "My deepest worry is that in the Middle East, the alternative to justice is not peace. It is revenge".¹⁶⁸ In short, a weakened and debilitated prime minister is as problematic as a Shiite movement with its back against the wall.

3. Saudi-Syrian Mediation

For lack of an alternative, the best hope for a soft landing, today, lies with the Saudi-Syrian mediation. This is far from ideal. A more authentically Lebanese formula, hammered out by the opposing camps, arguably would be more sustainable and better for the country than a deal concocted in Riyadh and Damascus. Likewise, Saudi Arabia and Syria appear excessively focused on Hariri himself, a highly personalised approach that reflects their mutual lack of interest in the country's institutions.

For now, however, there simply is no alternative. A solution made in Lebanon is almost entirely unrealistic given relations between March 14 and March 8 and given their respective strong reliance on Riyadh and Damascus.¹⁶⁹ What precisely their mediation will produce, if anything,

remains unclear as of this writing – but, rather than obstruct it, outside and Lebanese actors would be wise to seek to influence and shape it.

4. Contours of a Possible Deal

The more practical objectives should boil down to issuance of the indictments and preservation of stability and the current balance of power in Lebanon, avoiding a tilt toward March 8 or March 14 as a result of either a lopsided confrontation or an inequitable compromise. Various formulas reflecting these principles can be envisaged:

- ❑ Closest to Hizbollah's demands but stopping short of a humiliating statement by Hariri himself, the Lebanese government or parliament could request the Security Council to bring the STL's work to a close once indictments have been issued, invoking the need to preserve domestic tranquility and peace – although it would be hard for March 14 to go this far.
- ❑ Under a slightly less dramatic approach, the government could decide, or parliament could vote, to cease cooperating with the tribunal, again for the sake of national stability.
- ❑ The government or parliament could condition future cooperation with the STL on changes to its mode of operation. Of these, the most important might be to forsake the possibility of conducting trials in absentia – a procedure that, in any event, would have the demerit of indefinitely dragging on the process without hope of closure or genuine accountability. The STL also might be asked to look at the possible impact of the so-called false witnesses issues as well as alleged Israeli infiltration of the telecommunications sector.
- ❑ Alternatively, Lebanon could formally raise doubts regarding the indictments and freeze its cooperation with the STL pending completion of its own investigation into such matters.
- ❑ Closest to March 14 positions, Lebanon could continue cooperating with the tribunal while expressing serious misgivings regarding the basis of some of its findings – a solution that probably is a non-starter for Hizbollah.
- ❑ Under any of these scenarios, Saad Hariri and Hassan Nasrallah would hold a meeting explicitly designed to contain any fallout from the indictments, concluding with a call for calm to their respective supporters; and both would ensure that their entourages and allies refrain from verbal escalation in the media.¹⁷⁰

¹⁶⁸ Crisis Group interview, November 2010.

¹⁶⁹ The level of mistrust was palpable in the words of a Hariri adviser: "This is not just a compromise to be reached between us and Hizbollah. There must be a regional context. They very rarely speak the truth, so we can't talk to them alone". Crisis Group interview, Beirut, November 2010.

¹⁷⁰ When presented with variants of these proposals, members of both March 14 and March 8 expressed interest, albeit neither

In essence, any formula along these lines would place the indictments in the public domain; seek to preserve Hariri's credibility and legitimacy without provoking Hizbollah; and perpetuate the truce negotiated in Doha.

Practically, the work of the STL would either wind down, given the implausibility of the international community continuing to fund and support an institution after its intended government beneficiary in effect had asked it to stop, or continue on a more sustainable basis, having acquired stronger Lebanese buy-in by addressing some issues raised by the opposition. In the case of a ban on trials in absentia, the tribunal potentially could maintain residual jurisdiction to hold trials in the unlikely event that indictees were arrested, thus justifying maintenance of minimal staff, such as a part time registrar.

Given the institutional paralysis that prevailed in Lebanon even before the tribunal became a hot issue,¹⁷¹ such an agreement ideally would be complemented by reciprocal commitments regarding governance and political rules of the game. The opposition, in other words, should allow Hariri to genuinely operate and rule as prime minister. Indeed, if he chooses the difficult path of being a statesman rather than a confessional leader, it would only be fair that he be given the chance.

Beirut/Brussels, 2 December 2010

was prepared to endorse them. Crisis Group interviews, Beirut, November 2010.

¹⁷¹ "The president's role is significantly constrained. The cabinet cannot function. It's a national unity government, but still our parliament is working very slowly". Crisis Group interview, presidential adviser, Baabda, November 2010. "When cabinet meetings were held before the tribunal issue came to the fore, nothing happened anyway. Let's face it: we couldn't agree on a garbage collection contract! The budget was submitted four or five months ago and still it has not been passed, even though much of the money is slated to go to opposition-controlled ministries". Crisis Group interview, Hariri adviser, Beirut, November 2010.

APPENDIX A

MAP OF LEBANON



APPENDIX B

ABOUT THE INTERNATIONAL CRISIS GROUP

The International Crisis Group (Crisis Group) is an independent, non-profit, non-governmental organisation, with some 130 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international decision-takers. Crisis Group also publishes *CrisisWatch*, a twelve-page monthly bulletin, providing a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world.

Crisis Group's reports and briefing papers are distributed widely by email and made available simultaneously on the website, www.crisisgroup.org. Crisis Group works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The Crisis Group Board – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring the reports and recommendations to the attention of senior policy-makers around the world. Crisis Group is co-chaired by the former European Commissioner for External Relations Christopher Patten and former U.S. Ambassador Thomas Pickering. Its President and Chief Executive since July 2009 has been Louise Arbour, former UN High Commissioner for Human Rights and Chief Prosecutor for the International Criminal Tribunals for the former Yugoslavia and for Rwanda.

Crisis Group's international headquarters are in Brussels, with major advocacy offices in Washington DC (where it is based as a legal entity) and New York, a smaller one in London and liaison presences in Moscow and Beijing. The organisation currently operates nine regional offices (in Bishkek, Bogotá, Dakar, Islamabad, Istanbul, Jakarta, Nairobi, Pristina and Tbilisi) and has local field representation in fourteen additional locations (Baku, Bangkok, Beirut, Bujumbura, Damascus, Dili, Jerusalem, Kabul, Kathmandu, Kinshasa, Port-au-Prince, Pretoria, Sarajevo and Seoul). Crisis Group currently covers some 60 areas of actual or potential conflict across four continents. In Africa, this includes Burundi, Cameroon, Central African Republic, Chad, Côte d'Ivoire, Democratic Republic of the Congo, Eritrea, Ethiopia, Guinea, Guinea-Bissau, Kenya, Liberia, Madagascar, Nigeria, Rwanda, Sierra Leone, Somalia, Sudan, Uganda and Zimbabwe; in Asia, Afghanistan, Bangladesh,

Burma/Myanmar, Indonesia, Kashmir, Kazakhstan, Kyrgyzstan, Nepal, North Korea, Pakistan, Philippines, Sri Lanka, Taiwan Strait, Tajikistan, Thailand, Timor-Leste, Turkmenistan and Uzbekistan; in Europe, Armenia, Azerbaijan, Bosnia and Herzegovina, Cyprus, Georgia, Kosovo, Macedonia, Russia (North Caucasus), Serbia and Turkey; in the Middle East and North Africa, Algeria, Egypt, Gulf States, Iran, Iraq, Israel-Palestine, Lebanon, Morocco, Saudi Arabia, Syria and Yemen; and in Latin America and the Caribbean, Bolivia, Colombia, Ecuador, Guatemala, Haiti and Venezuela.

Crisis Group receives financial support from a wide range of governments, institutional foundations, and private sources. The following governmental departments and agencies have provided funding in recent years: Australian Agency for International Development, Australian Department of Foreign Affairs and Trade, Austrian Development Agency, Belgian Ministry of Foreign Affairs, Canadian International Development Agency, Canadian International Development and Research Centre, Foreign Affairs and International Trade Canada, Czech Ministry of Foreign Affairs, Royal Danish Ministry of Foreign Affairs, Dutch Ministry of Foreign Affairs, European Commission, Finnish Ministry of Foreign Affairs, French Ministry of Foreign Affairs, German Federal Foreign Office, Irish Aid, Japan International Cooperation Agency, Principality of Liechtenstein, Luxembourg Ministry of Foreign Affairs, New Zealand Agency for International Development, Royal Norwegian Ministry of Foreign Affairs, Slovenian Ministry of Foreign Affairs, Swedish International Development Agency, Swedish Ministry for Foreign Affairs, Swiss Federal Department of Foreign Affairs, Turkish Ministry of Foreign Affairs, United Arab Emirates Ministry of Foreign Affairs, United Kingdom Department for International Development, United Kingdom Economic and Social Research Council, U.S. Agency for International Development.

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December 2010

APPENDIX C

CRISIS GROUP REPORTS AND BRIEFINGS ON THE MIDDLE EAST AND NORTH AFRICA SINCE 2007

Arab-Israeli Conflict

After Mecca: Engaging Hamas, Middle East Report N°62, 28 February 2007 (also available in Arabic).

Restarting Israeli-Syrian Negotiations, Middle East Report N°63, 10 April 2007 (also available in Arabic).

After Gaza, Middle East Report N°68, 2 August 2007 (also available in Arabic).

Hizbollah and the Lebanese Crisis, Middle East Report N°69, 10 October 2007 (also available in Arabic and French).

The Israeli-Palestinian Conflict: Annapolis and After, Middle East Briefing N°22, 20 November 2007 (also available in Arabic).

Inside Gaza: The Challenge of Clans and Families, Middle East Report N°71, 20 December 2007.

Ruling Palestine I: Gaza Under Hamas, Middle East Report N°73, 19 March 2008 (also available in Arabic).

Lebanon: Hizbollah's Weapons Turn Inward, Middle East Briefing N°23, 15 May 2008 (also available in Arabic).

The New Lebanese Equation: The Christians' Central Role, Middle East Report N°78, 15 July 2008 (also available in French).

Ruling Palestine II: The West Bank Model?, Middle East Report N°79, 17 July 2008 (also available in Arabic).

Round Two in Gaza, Middle East Briefing N°24, 11 September 2008 (also available in Arabic).

Palestine Divided, Middle East Briefing N°25, 17 December 2008 (also available in Arabic).

Ending the War in Gaza, Middle East Briefing N°26, 05 January 2009 (also available in Arabic and Hebrew).

Engaging Syria? Lessons from the French Experience, Middle East Briefing N°27, 15 January 2009 (also available in Arabic and French).

Engaging Syria? U.S. Constraints and Opportunities, Middle East Report N°83, 11 February 2009 (also available in Arabic).

Nurturing Instability: Lebanon's Palestinian Refugee Camps, Middle East Report N°84, 19 February 2009 (also available in Arabic and Hebrew).

Gaza's Unfinished Business, Middle East Report N°85, 23 April 2009 (also available in Hebrew and Arabic).

Lebanon's Elections: Avoiding a New Cycle of Confrontation, Middle East Report N°87, 4 June 2009 (also available in French).

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