

Special Tribunal for Lebanon (STL): Impartial or Imposed International Justice?

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Abstract: The Special Tribunal for Lebanon (STL) was set up in 2007, under UN auspices to try those involved in the murder of former Prime Minister Rafik Hariri in 2005. The Tribunal seeks the perpetrators not of mass murder or crimes against humanity but of a single assassination termed a “heinous terrorist act”. The Tribunal has generated unprecedented tension, mistrust and prolonged crises in government ever since its controversial ratification by the UN Security Council in 2007. It has emerged as one of the most divisive issues in post-civil war Lebanon. This article argues that the Tribunal is an internationalisation of a domestic political conflict in a deeply divided country, whose judiciary is unable to hold perpetrators accountable; too divided to conduct an impartial inquiry; and too weak to reach credible verdicts. The criminal inquiry was instigated by a local call for justice, pursued by regional hegemony (the USA, the UK and France) and imposed by the international community (the UN, the EU and the Quartet) in an attempt to end impunity. The troubled judicial process was supported by sections of civil society; yet once established, the Tribunal was driven by international actors and, owing to its apparent politicisation, the role of local actors was weakened.

Key words: Deeply Divided Societies; Human Rights; Hybrid Tribunals; International Criminal Prosecution; Lebanon; Political Assassinations; Special Tribunal for Lebanon (STL); Transitional Justice

I. Introduction¹

On 14 February 2005, former Prime Minister Rafik Hariri was killed by a massive car bomb in downtown Beirut.² Hariri was Lebanon’s most prominent politi-

1 We would like to thank the editors and the external reviewers, Nefissa Naguib, Naomi Roht-Arriaza and Eric Wiebelhaus-Brahm, for detailed comments and suggestions to earlier drafts. Any remaining errors are the authors’ responsibility.

2 Nicolas Blanford, *Killing Mr Lebanon: the Assassination of Rafik Hariri and its Impact on the Middle East* (I B Tauris 2009); Michael Young, *The Ghosts of Martyrs Square: An Eyewitness Account of Lebanon’s Life Struggle* (Simon and Schuster 2010).

cian and longest serving prime minister: he won three consecutive parliamentary elections (1992, 1996 and 2000) and was slated to win again in 2005. A key to his longevity as premier was steering a course that found support in Syria, which, since the end of the Lebanese civil war (1975–90), retained a political hegemony over the country. When the international community challenged Syria's hegemony, Hariri supported UN Security Council Resolution 1559 that sought to end Syrian tutelage and troop presence.³ This led to a full confrontation with Syria's President Bashar al-Assad. The stormy meeting between the two on 26 August 2004 — the details of which remain in dispute — led to Hariri's resignation as prime minister and to the fateful motorcade tour through central Beirut whereupon he was assassinated. His murder gave rise to the largest demonstrations ever seen in Lebanon, the "Cedar Revolution", calling for an end to Syrian troop deployment and "the truth" (*al haqiqa*), behind his murder and that of the many others killed and injured in the attack.⁴

The "Cedar Revolution" meant that Hariri's murder could not be left unexamined. Demands for justice were local, regional and, importantly, also international: with France, the United Kingdom (UK) and the United States (US) jointly pursuing a UN Security Council inquiry. The UN criminal investigation into the murder was the largest and most sophisticated one in the country's history and was succeeded by the establishment of an international tribunal: the Special Tribunal for Lebanon (STL, hereafter the known as the Tribunal) was set up in 2007 under UN auspices to try those involved in the murder. The tribunal seeks the perpetrators, not of mass murder or crimes against humanity, but of a single assassination termed a "terrorist act". The major goal of the Tribunal is to bring the perpetrators to justice and thereby deter new attacks of a similar type. The Tribunal is the first example of international criminal prosecution in the Middle East.⁵ It is also the first international tribunal to use national (ie, Lebanese) law as the basis for prosecution. The Tribunal has generated unprecedented tension, mistrust and prolonged crises in government ever since its controversial

3 UNSC Res 1559 (2 September 2004) UN Doc S/Res/1559.

4 Twenty-one persons in Hariri's security escort were killed and more than 300 bystanders injured, see Peter Fitzgerald, *Report of the Fact-Finding Mission to Lebanon Inquiring into the Causes, Circumstances and Consequences of the Assassination of Former Prime Minister Rafik Hariri*, Report New York, UN Doc S/2005/203 (24 March 2005) <<http://unispal.un.org/UNISPAL.NSF/0/79CD8AAA858FDD2D85256FD500536047>> accessed 21 January 2013 ('Fitzgerald Report').

5 Belinda Cooper, 'The Limits of International Justice' (2009) 26 *World Policy Journal* 91; Pierre Hazan, *Judging War, Judging History: Behind Truth and Reconciliation* (Stanford University Press 2010).

ratification by the UN Security Council in 2007; and has emerged as one of the most divisive issues in post-civil war Lebanon.

The Tribunal's detractors have cast it, not as an impartial justice process, but rather as an imposed western agenda targeting Lebanon's foremost political party: Hizbollah (Party of God). In mid-2011, the Tribunal charged four Hizbollah members with involvement in Hariri's assassination. Hizbollah denounced the charges and the accused have not been apprehended; the Tribunal is expected to begin *in absentia* trials in spring 2013. This provides an opportunity to study the "drivers" of international prosecution in a deeply divided society, a field where transitional justice literature is lacking (*see* Introduction in this issue). To this end, this article examines the international; regional; national; and local actors sparring over the Tribunal, with special reference to their strategies; agendas; and capabilities, from the Tribunal's ratification to the pre-trial stage (2012). This article is based on multi-sited fieldwork in Lebanon (Beirut) and the Netherlands (The Hague), as well as interviews with civil society groups, analysts and officials from 2010–12. Additionally, this article builds on two surveys conducted in Lebanon as part of this study: a survey of transitional justice projects (1991–2011); and one of the local press coverage of the Tribunal (2009–11).

Based on these findings, we argue that international criminal prosecution of Hariri's assassination is linked to the country's civil war heritage and thereby better understood in terms of an internationalisation of domestic political conflict in a deeply divided country (whose judiciary has been unable and unwilling to hold perpetrators accountable; too divided to conduct an impartial inquiry; and too weak to reach credible verdicts). The criminal inquiry was instigated by a local call for justice, pursued by regional hegemons (the USA, the UK and France) and imposed by the international community (the UN, the EU and the Quartet) in an attempt to end impunity.⁶ The troubled judicial process was supported by sections of the civil society who called for justice; and opposed by those perceiving it to amount to foreign intervention in a sovereign country. In order to ameliorate the divisive impact of the Tribunal, several Transitional Justice (TJ) initiatives followed in the wake of the Tribunal. However, these were too small, too scattered and simply too inconsequential to have any effect on the populace at large or, indeed, to set a "justice cascade" in

6 The Quartet ('Quartet on the Middle East') was established in 2002 and includes the UN, EU, US and Russia. Since 2007, former British Prime Minister, Tony Blair, has been the Quartet's Special Envoy.

motion.⁷ Once established, the tribunal was driven by the international community and, due to its (apparent) politicisation; the role of local actors was weakened.

II. Lebanon's Civil War Heritage

International criminal courts and tribunals have increasingly been utilised and applied in situations following mass violence in states emerging from conflict, where domestic institutions are unable, or unwilling, to prosecute those responsible for violations and war crimes. Although ostensibly focused on the legal dimensions of prosecution and accountability, with the laudable goals of ending impunity for past offences and promoting future peace, international courts are also prone to politicisation.⁸ The politicisation of international criminal justice in Lebanon, reflected in the operation and initial impact of the Tribunal, is expressed in its domestic politics and the external linkage politics that each Lebanese party has with regional and international sponsors. Historically, politics in Lebanon have been marked by instability and third party intervention. Political power is shared along confessional lines according to a model of consociational power-sharing between religious sects, divided into equally large parliamentary blocs (Muslim and non-Muslim).⁹

Lebanon is a multi-religious state and home to eighteen different denominations, as well as about 300,000 Palestinian refugees. For much of its short history as an independent country, Lebanon has been politically unstable and has only recently emerged from a devastating civil war that left the country in ruins; the economy in shambles; and the populace traumatised. The fifteen-year long civil war (1975–90) was extremely bloody with atrocities and massacres committed by all sides in the conflict.¹⁰ The war inflicted physical damages estimated to amount to \$ 25 billion USD; reduced the GDP by half; and caused massive human suffering, including an estimated 150,000 deaths (about 5 % of the population). Furthermore, some 800,000 people were displaced and the already

7 Kathryn Sikkink, *The Justice Cascade: How Human Rights Prosecutions are Changing World Politics* (W W Norton & Company 2011).

8 James Cockayne, 'Hybrids of Mongrels? Internationalized War Crimes Trials as Unsuccessful Degradation Ceremonies' (2005) 4 *Journal of Human Rights* 455.

9 Michael Kerr, *Imposing Power Sharing: Conflict and Coexistence in Northern Ireland and Lebanon* (Irish Academic Press 2005).

10 Samir Khalaf, *Civil and Uncivil Violence in Lebanon: A History of the Internationalization of Communal Conflict* (Columbia University Press 2002).

large emigration flows from the country were accelerated. The war was also very complex, involving many state and non-state actors that shifted their allegiance many times during the course of the war. The war ‘came to an end in a state of nearly universal defeat and bitterness’.¹¹ What was ‘missing in the transition from war to peace was national reconciliation’.¹² In the absence of both formal and grassroots reconciliation, sectarian tensions remained and could be exploited for political ends.

The civil war included a long list of gross human-rights violations and brutal massacres of Christians, Muslims and Palestinian civilians.¹³ Yet there was never any criminal investigation of these violations, nor were any of those responsible brought to trial. In 1991, the Lebanese parliamentarians passed the General Amnesty Law (Law 94/91), which granted a blanket amnesty for all crimes committed by Lebanese militias and armed groups prior to 28 March 1991.¹⁴ The law excluded amnesty for political murders and assassinations, even though they were ‘of lesser gravity than many other mass crimes perpetrated during the conflict’.¹⁵ The law effectively stopped legal action against war crimes and war criminals, and opened up for militia leaders to assume minister posts, for their militias to be turned into parties and cadre to be employed in military, police and administrative apparatus. The General Amnesty Law has therefore been described as a ‘disaster’: it prevented the country from confronting its war-time record; punishing human-rights violations; and bringing those responsible to trial.¹⁶

Despite the fact that more than twenty years have passed since the end of the civil war, Lebanon remains a deeply divided “post-war” country. The national reconciliation document that ended the war (better known as the Taif Agree-

11 Elizabeth Picard, *Lebanon – A Shattered Country: Myths and Realities about the Wars in Lebanon* (Holmes and Meier 2002) 153.

12 Farid El Khazen, ‘The Postwar Political Process: Authoritarianism by Diffusion’ in Theodor Hanf and Nawaf Salam (eds), *Lebanon in Limbo: Postwar Society in an Uncertain Regional Environment* (Nomos Verlagsgesellschaft, 2003) 59.

13 Robert Fisk, *Pity the Nation: Lebanon at War* (Oxford University Press 1992).

14 However, the law (article 3) does not provide amnesty for ‘crimes of assassination or attempted assassination of religious figures, political leaders, and foreign or Arab diplomats’ AI 2004. Lebanon – Samir Gea'gea' and Jirjis al-Khourri: ‘Torture and unfair trial’. (*Amnesty International Online Documentation Archive*, 23 November 2005). The amnesty excluded non-nationals such as the Palestinians.

15 Marieke Wierda, Habib Nassar and Lynn Maalouf, ‘Early Reflections on Local Perceptions, Legitimacy and Legacy of the Special Tribunal for Lebanon’ (2007) 5 *Journal of International Criminal Justice* 1065.

16 Interview with Lebanese policy analyst (Beirut 5 May 2005).

ment) reconciled Lebanon's traditional elites more than it did its people.¹⁷ More than twenty years after the civil war's end, it remains a sensitive and contested topic. Instead of strident prosecution, Lebanon's political tradition of "no victors, no vanquished" and "forgive and forget" have served to eviscerate concepts of accountability and silenced contested accounts of the civil war. It is only recently that this state sponsored amnesia has eased.¹⁸ Nevertheless, the Tribunal has been criticised for pursuing selective justice, disregarding the fate of the more than 17,000 people listed as missing during the civil war, and the many individuals since murdered in other targeted attacks.¹⁹ The fate of these victims of the war has only recently been highlighted via public protests and campaigns from relatives and families.²⁰ The Tribunal's exclusive mandate — that is, prosecuting a single murder case — has eroded its legitimacy among the general public.

III. Homage to Hariri

Lebanon has some of the highest numbers of political assassinations in the Middle East. Only a few of these murders have been properly investigated, even fewer have gone to trial, and almost none have led to credible convictions.²¹ The weak and politicised justice sector is unable to hold perpetrators accountable,²² serving to legitimise state-sanctioned impunity. Why didn't Rafik Hariri's assassination meet the same fate? In this case, the identity of the victim was paramount, as was the potential Syrian involvement in his murder and the public demand for "the truth" (*al-haqiqa*).

Rafik Hariri, a self-made businessman and billionaire, was not tainted by a wartime record, although he had been accused of funding rival militias.²³ Hariri

17 Faten Ghosn and Amal Khoury, 'Lebanon after the Civil War: Peace or the Illusion of Peace?' (2011) 65 *The Middle East Journal* 381.

18 Sune Haugbolle, *War and Memory in Lebanon* (Cambridge University Press 2010).

19 Iolanda Jaquetmet, 'Fighting Amnesia: Ways to Uncover the Truth about Lebanon's Missing' (2009) 3 *International Journal of Transitional Justice* 69.

20 Michael Humphrey and Maroun Kisirwan, 'Impunity, Nationalism and Transnationalism: The Recovery of the "Disappeared" of Lebanon' (2001) 3 *Bulletin of the Royal Institute of Inter-Faith Studies* 113.

21 Are Knudsen, 'Acquiescence to Assassinations in Post-Civil War Lebanon?' (2010) 15 *Mediterranean Politics* 1.

22 Suleiman Takieddine, 'An Independent Judiciary for a Better Justice' in NA Salam (ed), *Options for Lebanon* (I B Tauris 2004).

23 *Blanford* (n 2).

was a statesman of international stature with strong personal connections to political leaders in France, the UK and the US.²⁴ Hariri was also an Arab leader with close ties to Saudi Arabia, a key ally of the US. Hariri's international standing was the main reason his murder united the three permanent members of the UN Security Council – namely, France, the UK and the US – in an alliance to investigate, and later prosecute, his murder through the UN Security Council.

However still, why would the international community authorise a UN investigation and seek international prosecution of a single assassination, termed a “terrorist act” of a former prime minister? The Tribunal was established during what could be termed the “anti-realist” phase of US foreign policy that sought to effect regime change in countries like Afghanistan (2001); Iraq (2003); and Syria (2003) under the so-called “Bush Doctrine”. This doctrine, *inter alia*, authorised deposing foreign regimes that could threaten the security of the US. In 2003, the US Congress passed a law aimed at curtailing Syria's hegemony over Lebanon.²⁵ A year later, the UN Security Council followed suit and passed Resolution 1559, which demanded the withdrawal of non-state forces (Syria) and demobilisation of non-state militias (Hizbollah) from Lebanon.²⁶ The aim was to establish a new political order by targeting Syria and its Lebanese “proxy”, Hizbollah. The resolutions reflected increasing US weariness over Syria's role in the region, and were an attempt to reign in a “rogue state”. It was widely believed that Hariri had been a key force behind fielding UN Security Council resolution 1559; this made him a political target. Hariri was summoned to Syria and threatened by the Syrian president, Bashar al-Assad.²⁷ Hariri's murder shortly thereafter was followed by new UN Security Council resolutions that established UN-assisted fact-finding; investigation; and prosecution mechanisms, designed to end Syrian tutelage; enforce the Rule of Law; and end widespread impunity.

The Tribunal came into existence within the realm of what has been termed a ‘judicialisation of international relations’, whereby international criminal law and courts are used to manage political crises.²⁸ This is a form of legal globalisation that seeks to resolve political emergencies by judicial means. Underlying this is

24 Ibid.

25 US Congress, ‘Syria Accountability and Lebanese Sovereignty Restoration Act (Pl 108-175)’, 108th Congress, 1st Session, House of Representatives, Washington DC 12 December 2003 <www.lgic.org/en/help_act.php> accessed 21 January 2013.

26 UNSC Res 1559.

27 *Blanford* (n 2).

28 Michael Humphrey, ‘The Special Tribunal for Lebanon: Emergency Law, Trauma and Justice’ (2011) 31 *Arab Studies Quarterly* 4.

the extension of universal human rights protection to victims, and new forms of transnational governance that legitimise intervention in post-colonial states. In this context, international criminal law has become an autonomous judicial field, with its own case law, legal specialists and courts. This notwithstanding, the field of international justice has struggled to establish its legal authority outside the circle of victims and is opposed by those targeted as partisan, biased and politicised. Attempting to rehabilitate the country's flawed criminal justice by imposing the "rule of law" is premised on a "transnational governmentality" that justifies intervention in failed or failing states such as Lebanon.

We argue that four conditions not only made international criminal prosecution of Hariri's murder possible but also made it mandatory:

1. A victim of international stature (Hariri);
2. A culprit targeted by western countries (Syria);
3. Novel instruments for international prosecution (internationalised tribunals) situated within a globalised legal culture; and
4. An interventionist political climate (the "Bush doctrine").

As we will show, these factors were all necessary for the UN Security Council's decision to intervene in a sovereign country such as Lebanon.

IV. Investigating and Prosecuting a "Terrorist Act"

The murder of Rafik Hariri resulted in international condemnation and was termed a 'heinous terrorist act' by the President of the UN Security Council.²⁹ In order to investigate the murder, the Council dispatched a fact-finding mission to Beirut.³⁰ Despite the very short time at the mission's disposal, the investigation report concluded that Hariri was the victim of a terrorist attack and that the Lebanese police and judiciary lacked the will and capability to investigate the murder. The report recommended that the UN establish an investigative commission that would lay the basis for prosecuting those responsible. On the basis of these recommendations, the United Nations International Independent Investigation Commission (UNIIC, also known as 3IC) was established in April 2005 by the UN Security Council, calling on all member states to collaborate with it accord-

29 UNSC Presidential Statement (15 February 2005) UN Doc S/PRST/2005/4.

30 Fitzgerald Report.

ing to Chapter VII, the UN Charter's strongest sanction.³¹ The first UNIIC Report was issued in October 2005.³² It implicated Lebanese and Syrian military intelligence in the assassination, and accused Syrian officials — including the Foreign Minister, Walid Moallem — of misleading the investigation.³³ During its five years of operation (2005–09), UNIIC issued a total of eleven progress reports on the investigation.³⁴ The investigation took place in the context of an on-going political conflict and this made collecting evidence challenging and put the staff at risk.³⁵ While early reports were charged with “targeting Syria”, later reports were criticised for “placating Syria”, which, since 2009, was emerging from international isolation with the help of France (due to its geostrategic importance: bordering Israel and Iraq).

Based on UNIIC's findings, the UN Security Council concurred that the assassination of Rafik Hariri was a threat to international peace and security, but did not qualify as a crime against humanity, hence could not be prosecuted by the International Criminal Court (ICC).³⁶ The solution was to establish an “international tribunal”. Unlike other hybrid tribunals, which mix international and national law, the Special Tribunal for Lebanon (STL) is based exclusively on Lebanese criminal law. Without a legally binding international definition of terrorism, the subject matter jurisdiction is based on the Lebanese Criminal Code (article 314).³⁷ The Tribunal does not have jurisdiction over any international crime.

31 UNSC Res 1559.

32 UNIIC, ‘Report of the International Independent Investigation Commission established pursuant to Security Council resolution 1595’ (Detlev Mehlis, Commissioner 2005) <<http://www.stl-tsl.org/en/documents/un-documents/reports-of-the-uniic/report-of-the-international-independent-investigation-commission-established-pursuant-to-security-council-resolution>> accessed 14 December 2012.

33 A leaked, unedited version of the first UNIIC report (also known as the ‘Mehlis-report’) implicated two Syrian officials as being involved in Hariri's murder: Maher al-Assad (Bashar al-Assad's brother), head of Syria's Republican Guard; and Asef Shawkat (Bashar al-Assad's brother-in-law), former head of the Syrian military and Deputy Minister of Defence (killed in a bomb attack, 18 July 2012) <<http://www.merip.org/mero/mero111805>> accessed 14 December 2012.

34 The UNIIC reports (1–11) can be downloaded from the website of the Special Tribunal for Lebanon <<http://www.stl-tsl.org/en/documents/un-documents/reports-of-the-uniic>> accessed 20 January 2013.

35 Interview with Lebanese TJ-specialist (Beirut 9 May 2012).

36 Samar El-Masri, ‘The Hariri Tribunal: Politics and international law’ (2008) 15 Middle East Policy 80.

37 Lebanese Criminal Code: Selected Articles, STL Official English Translation, 6 July 2010 <http://www.stl-tsl.org/index.php?option=com_k2&view=item&task=download&id=350_e9d04b9a9f4e6b7a3f8d1d6d550c8450> accessed 17 March 2013.

The only international features of the Tribunal are the appointment of international judges and prosecutors, and its location in a third country (the Netherlands). The Tribunal could therefore more aptly be described as an “internationalised tribunal”.

The Tribunal was initiated by an agreement between the UN and the government of Lebanon in 2007. The ratification proved divisive and nearly led to the government’s collapse. The murder of Hariri had sharply increased political divisions and led to the formation of two opposing political blocs formed around Hariri’s Future Movement (known as 14 March) and Hizbollah’s Loyalty to the Resistance (known as 8 March). These blocs took their names from the dates of the huge demonstrations following Hariri’s murder: Hizbollah’s show of force on 8 March was followed by even bigger public protests on 14 March by pro-Hariri supporters. The 2005 parliamentary elections temporarily glossed over these political divisions, but the controversy over the tribunal caused them to reappear.³⁸

The ratification of the Tribunal led to a governance crisis when put before the “unity cabinet” led by the Prime Minister, Fuad Siniora, which, for the first time, included Hizbollah and Amal ministers. Opposed to establishing a tribunal, the Hizbollah and Amal ministers withdrew and later resigned from their posts. When the draft agreement between the UN and the Government of Lebanon was put up for vote in the cabinet, another six ministers that were loyal to Hizbollah resigned. After another round of negotiations, the finalised agreement was signed by the minority cabinet on 23 January 2007, and by the UN a few days later. Hizbollah decried the ratification process as unconstitutional and Members of Parliament (MPs) loyal to Hizbollah stayed away from the parliament which could not then put the ratification up for vote as parliament numbers were below the constitutional limit for representation.³⁹ Despite bypassing the parliament and the (pro-Syrian) President Emile Lahoud, the minority cabinet petitioned the UN Security Council to ratify the agreement unilaterally. On 30 May 2007, the Council rati-

38 Nadim Shehadi and Elizabeth Wilmshurst, ‘The Special Tribunal for Lebanon: The UN on Trial?’ International Law Briefing Paper, MEP/IL BP 07/01, London, Chatham House Middle East (2007) <www.chathamhouse.org.uk/publications/papers/download/-/id/512/file/10088_bp0707lebanon.pdf> accessed 5 January 2013.

39 The governance crisis lasted eighteen months and did not end until late May 2008, when a new ‘unity cabinet’ was formed following the Doha Accords. In order to rejoin the new cabinet, Hizbollah demanded one-third of the cabinet seats: a new power-sharing mechanism known as a ‘blocking third’, giving the minority veto power. See Are Knudsen and Michael Kerr, ‘Introduction: The Cedar Revolution and Beyond’ in A Knudsen and M Kerr (eds), *Lebanon: After the Cedar Revolution* (Hurst 2012).

fied the agreement with the adoption of resolution 1757, which included the Statutes of the Tribunal as an annex.⁴⁰ The resolution passed the Security Council with a very slight margin and five member states abstained (China, Indonesia, Qatar, Russia, and South Africa), citing infringement on Lebanon's sovereignty.⁴¹

Although the Tribunal was established by a UN Security Council resolution (under Section VII in the UN Charter), only Lebanon is obliged to cooperate with it (as are the courts of Lebanon). Other states need not cooperate with the Tribunal, although it can seek their cooperation on a voluntary basis. Put bluntly, UN member states other than Lebanon can ignore the Tribunal at their will.⁴² This means that a country like Syria need not co-operate with the Tribunal even though it was obliged to co-operate with the UNIIIC investigation, whereby the Security Council invoked Chapter VII to make all states and parties fully cooperate with the Commission. Syria opposes the Tribunal and will not extradite Syrians if indicted by the Tribunal.⁴³ Owing to the potential threat to the Tribunal staff; plaintiffs; and defendants, the Tribunal is located in the Netherlands. This security measure (the distance from Lebanon) proves problematic: both for the judicial process and its legitimacy at home.

V. The Problem of a Narrow Mandate

The mandate of the Tribunal sets it apart from all other “internationalised tribunals”. First, the mandate is by far the narrowest of any international tribunal. It only seeks the perpetrators of Hariri's assassination. Due to this limitation in its mandate, the Tribunal's jurisdiction is severely restricted time-wise, from 1 October 2004 until 12 December 2005, a period that saw a surge of deadly attacks on politicians and journalists. The tribunal is only empowered to rule in the case if those murders and attacks can be linked to Hariri's assassination.⁴⁴

40 UNSC Res 1559.

41 *Shehadi and Wilmshurst* (n 38).

42 However, the tribunal could ask the UN Security Council to intervene and use Chapter VII to force a member state to co-operate with the tribunal or extradite persons indicted by it.

43 Meeting with Walid Moallem, Syrian Foreign Minister, hosted by the Norwegian Ministry of Foreign Affairs (MFA) (Oslo 9 March 2010).

44 If the tribunal is able to solve a murder case but unable to establish a link to Hariri's murder, it can neither punish those responsible nor refer the case to Lebanese courts; see Björn Eberling, ‘The Next Step in History-Writing through Criminal Law: Exactly How Tailor-Made is the Special Tribunal for Lebanon?’ (2008) 21 *Leiden Journal of International Law* 529.

As new attacks reverberated throughout Beirut, the time-frame of the investigations was extended to 2008. Furthermore, unlike other tribunals set up under international law, the Special Tribunal for Lebanon does not contain provisions that limit the immunity of heads of state. Unless there are sufficient grounds for lifting this amnesty, the Tribunal will not be able to try them.⁴⁵ Finally, the mandate only obliges Lebanon to collaborate with the Tribunal, a possible reason why the Tribunal permits trials *in absentia*, in line with Lebanese civil law tradition. Professional jurists suspect that these provisions that limit the Tribunal's mandate are not the result of a judicial oversight but, quite the contrary, inscribed to cripple the Tribunal's effectiveness by limiting its jurisdiction only to those carrying out the attack and not those ordering it, thereby avoiding a region-wide confrontation with Syria and its allies (Iran and Hizbollah).

The Tribunal has generated a spate of research by professional jurists and legal scholars, addressing its international character; legality; legitimacy; jurisdiction; trials *in absentia*; and cooperation challenges.⁴⁶ In particular, jurists have criticised the Tribunal for being biased and the mandate for being engineered to frame Syria as the alleged mastermind behind the attack on Hariri.⁴⁷ Others have taken the opposite stance, arguing that the Tribunal's mandate has been fine-tuned to limit its scope and effect. By excluding heads of state from its jurisdiction and relying solely on domestic (rather than international) law, the Tribunal has been a 'cripple from birth' unable to indict those who had 'command responsibility'.⁴⁸

International prosecution tends to be costly, lengthy and limited in terms of its ability to heal or reconcile.⁴⁹ Recent research, in particular, questions the heal-

45 ICTJ, 'Handbook on The Special Tribunal for Lebanon', The International Center for Transitional Justice (ICTJ) Prosecutions Program New York (2008) <<http://ictj.org/sites/default/files/ICTJ-Lebanon-STL-Handbook-2008-English.pdf>> accessed 5 January 2011.

46 Bert Swart, 'Cooperation Challenges for the Special Tribunal for Lebanon' (2007) 5 *Journal of International Criminal Justice* 1153; Nidal N Jurdi, 'The Subject-Matter Jurisdiction of the Special Tribunal for Lebanon' (2007) 5 *Journal of International Criminal Justice* 1125; Paola Gaeta, 'To Be (Present) or Not To Be (Present): Trials In Absentia before the Special Tribunal for Lebanon' (2007) 5 *Journal of International Criminal Justice* 1165; William A Schabas, 'The Special Tribunal for Lebanon: Is a "Tribunal of an International Character" Equivalent to an "International Criminal Court"?' (2008) 21 *Leiden Journal of International Law* 513; Bardo Fassbender, 'Reflections on the International Legality of the Special Tribunal for Lebanon' (2007) 5 *Journal of International Criminal Justice* 1091; *Wierda, Nassar and Maalouf* (n 15).

47 *Eberling* (n 44).

48 James Cockayne, 'Foreword' (2007) 5 *Journal of International Criminal Justice* 1061.

49 Lilian A Barria and Steven D Roper, 'How Effective are International Criminal Tribunals? An Analysis of the ICTY and the ICTR' (2005) 9 *International Journal of Human Rights* 349.

ing effect of international tribunals in the aftermath of war.⁵⁰ The Special Tribunal's narrow mandate neglects an array of other crimes and violations,⁵¹ and, even if the Tribunal results in convictions, it is unlikely to instill a more general 'culture of accountability'.⁵² Moreover, the long-term impact of international tribunals has been questioned, especially when the court, as in this case, is located in a third country. Whereas attention to outreach can mitigate some of this,⁵³ there are limits to what distant international justice can achieve.⁵⁴ The Tribunal's Outreach Office in Beirut has given priority to briefing Lebanese journalists, media outlets and lawyers about the Tribunal's role, all of which are seen as key target groups for disseminating factual information to the general public about the Tribunal's scope, mandate and objectives.⁵⁵ Nonetheless, misconceptions about the Tribunal's work abound, fuelled by biased media reports and news coverage. The fact that the majority of the media outlets have close links to political parties, limits the scope for objective reporting.⁵⁶

VI. Political Meddling

Since its inception in 2009, the Tribunal's legitimacy, objectivity and independence have been challenged and several of the Tribunal's top officials and senior staff have resigned, fuelling rumors that they quit over attempts to influence the Tribunal's work; a charge denied by Tribunal staff.⁵⁷ The long list of resignations raised doubts about its leadership and caused analysts to claim that the Tribunal had been told by UN officials to delay investigations; water down findings; and be reticent about the commission's progress.⁵⁸ The reason ascribed to such prac-

50 Harvey M Weinstein, 'Editorial Note: The Myth of Closure, the Illusion of Reconciliation: Final Thoughts on Five Years as Co-Editor-in-Chief' (2011) 5 *International Journal of Transitional Justice* 1.

51 Cecilie Aptel, 'Some Innovations in the Statute of the Special Tribunal for Lebanon' (2007) 5 *Journal of International Criminal Justice* 1107.

52 *Wierda, Nassar and Maalouf* (n 15).

53 Janine N Clark, 'International War Crimes Tribunals and the Challenge of Outreach' (2009) 9 *International Criminal Law Review* 99.

54 Belinda Cooper, 'The Limits of International Justice' (2009) 26 *World Policy Journal* 91.

55 Interview with STL official (Beirut 2 May 2012).

56 Sari Hanafi and Are Knudsen, 'Biased or Balanced? Analysing the Media Coverage of the Special Tribunal for Lebanon (STL)' (forthcoming 2013).

57 Interviews with STL officials (The Hague 29 June 2012).

58 Michael Young, 'By the Way, the Hariri Tribunal is Dying' *Daily Star* (Beirut 14 January 2010).

tice was the UN's policy of engagement vis-à-vis Syria, to which the Tribunal at that time, was subservient. From 2009, Syria's emergence from international isolation had, it was claimed, put the Tribunal a track towards oblivion.

Although the Tribunal has rejected all claims of a politicisation of the inquiry, many Lebanese still see it as a tool to impose a western agenda on Lebanon. This was inevitable as the Tribunal is seeking justice for one victim who was close to western allies. To the Tribunal's critics, politicisation means that its ultimate purpose is not to prosecute Hariri's assassins but to pressure Hizbollah; blackmail Syria; and weaken Israel's enemies. The claim of "politicisation" brought the Tribunal into conflict with Lebanon's foremost politico-military movement, Hizbollah. In late May 2009, an article in the German magazine *Der Spiegel* claimed that Hizbollah was behind Hariri's murder.⁵⁹ The allegation made international headlines but was not corroborated by other sources.

Hizbollah's leader, Hassan Nasrallah, rejected all charges of involvement but promised to cooperate with the inquiry as long as it was not 'politicised'.⁶⁰ By 2010, it looked as though the Tribunal could be deterred from reaching its goals owing to the polarisation in Lebanon; the international community's rapprochement with Syria; and the relentless attacks on the Tribunal's credibility. It is a measure of the changes in the regional *realpolitik* taking place since 2005 that one of Saad Hariri's first official duties as prime minister was travelling to Damascus to greet President Bashar al-Assad. Soon after, Hariri announced that he regretted charging Syria with responsibility for his late father's murder, having been misled by 'false witnesses'.⁶¹

In mid-2010 the Hizbollah's leader, Hassan Nasrallah, announced that he had received information that the Tribunal would indict 'rogue' Hizbollah members on charges of involvement in Hariri's assassination.⁶² The disclosure was critical enough to warrant an unprecedented visit by the Heads of State of Saudi Arabia and Syria to defuse tensions. Soon after, the Hizbollah-led coalition stepped-up the political pressure to abolish Lebanon's obligations vis-à-vis the Tribunal, by

59 Eric Follath, 'Breakthrough in Tribunal Investigation: New evidence points to Hizbollah in Hariri murder' *Der Spiegel: Spiegel Online International* (23 May 2009) <www.spiegel.de/international/world/0,1518,626412,00.html> accessed 5 January 2011.

60 -----, 'Leaders Praise Nasrallah's "Calm" Response to STL Questioning' *Daily Star* (Beirut 2 April 2010).

61 -----, 'Hizbullah, Syria Welcome Hariri's Change of Heart on Accusations' *Daily Star* (Beirut 8 September 2010).

62 -----, 'Justice Minister Stresses STL will not be Politicized' *Daily Star* (Beirut 20 August 2010).

freezing the funding; challenging the evidence (“false witnesses”); and seeking to withdraw the four Lebanese judges serving on the Tribunal. The Tribunal, Hizbollah claimed, was an “Israeli project” and was followed by video footage meant to corroborate Israeli involvement in Hariri’s assassination. At the same time, the Tribunal investigation stepped up a notch, with 3D modelling of the crime scene in Beirut; a full-scale re-enactment of the underground explosion at a French Army base; and a request to Hizbollah to hand over all evidence that could link Israel to Hariri’s assassination.

Pressure also mounted on Prime Minister Hariri to charge Israel with responsibility for his father’s assassination.⁶³ The numerous attacks on the Tribunal’s credibility were followed by a spate of arrests of Israeli “spies”, some were employees at the Alfa mobile network. This was particularly sensitive because telephone logs from this company are believed to constitute the key circumstantial evidence on which the Tribunal prosecutor was expected to base his case. Other lines of attack on the Tribunal targeted the controversial ratification process (which bypassed the president and the parliament) and aimed to stop the funding of the Tribunal shared between Lebanon (49 %) and the UN (51 %).

Towards the end of 2010, the simmering tensions over the Tribunal raised fears that the announcement of indictments could lead to civil unrest. Additionally, sensational media reports claiming to leak investigation details of the attack on Rafik Hariri (using mobile phones), the suspects (Hizbollah members) and the circumstantial evidence (telephone logs) were broadcast on television.⁶⁴ Unauthorised media leaks also targeted Saad Hariri, when confidential audiotapes from his meetings with UNIIIC-investigators were aired on a local television channel. In the leaked tapes, Hariri named Syrian leaders and officials who masterminded his father’s assassination. The media leaks were condemned by the Tribunal,⁶⁵ but were a reminder of similar leaks some months earlier, when the draft indictments against four Hizbollah members were leaked ahead of their publication, and meant to delegitimise the Tribunal.⁶⁶

63 -----, ‘Hariri Vows No Turning Back on Support for Tribunal’ *Daily Star* (Beirut 21 September 2010).

64 Neil Macdonald, ‘Special Report: Who Killed Lebanon’s Rafik Hariri?’ *CBC News* (Online 21 November 2010) <<http://www.cbc.ca/world/story/2010/11/19/f-rfa-macdonald-lebanon-hariri.html>> accessed 14 December 2012.

65 STL, ‘Unlawful Broadcasts of Confidential Information under Investigation’, Special Tribunal for Lebanon, The Hague (18 January 2011) <<http://www.stl-tsl.org/en/media/press-releases/unlawful-broadcasts-of-confidential-information-under-investigation>> accessed 14 December 2012.

66 Interview with Lebanese TJ specialist (Beirut 9 May 2012).

VII. Governance Crisis

By the end of 2010, the potential implication of Hizbollah-members in Hariri's murder made the looming Tribunal indictments a ticking bomb. A mid-October visit to Lebanon by the Iranian President Mahmoud Ahmadinejad backed a 'united Lebanon', but, if anything, escalated sectarian tensions.⁶⁷ In an attempt to defuse the crisis, intense mediation efforts by Saudi Arabia and Syria arose, seeking a compromise that would distance Lebanon from the Tribunal. The options tabled ranged from renouncing the Tribunal to outright rejection and non-cooperation. The latter was spelled out in a speech by Hassan Nasrallah and included demands to withdraw the four Lebanese judges serving on the Tribunal; halt its funding; and, by implication, annul the controversial Memorandum of Understanding (MoU) that ratified it.⁶⁸ This would free Lebanese institutions from any legal obligations vis-à-vis the Tribunal, such as carrying out arrest warrants, leaving this to agencies such as INTERPOL. In the end, the Saudi-Syria deal faltered and a last-minute attempt at mediation by Turkey and Qatar was also left stranded. Not only were the political and personal costs of compromise over the Tribunal too high for Saad Hariri and the Future Movement, but the US also rejected it.⁶⁹

The failure of these initiatives led to the collapse of the (Saad) Hariri-cabinet on 12 January 2011, whereby eleven ministers loyal to Hizbollah submitted their resignation. On 25 January, a slim parliamentary majority elected Najib Mikati as new Prime Minister; this was swiftly followed by street protests, road-blocks and riots by enraged Sunnis. The protesters viewed Mikati's election as a coup to oust Hariri and end Lebanese cooperation with the Tribunal. Lebanon now faced its most critical governance crisis since 2005. The Hariri-coalition insisted on full cooperation with the Tribunal and refused to take part in any government that was not fully committed towards this goal. The Hizbollah-led coalition insisted on ending Lebanon's cooperation with the Tribunal. Neither side would compromise on this issue in the short term. The appointment of a new Prime Minister stemmed, but did not

67 -----, 'Iran's Mahmoud Ahmadinejad "Backs United Lebanon"' *BBC News* (London 13 October 2010) <<http://www.bbc.co.uk/news/world-middle-east-11526143>> accessed 14 December 2012.

68 Hassan Nasrallah, 'The Developments following the Resignation of the Ministers and the Toppling of the Lebanese Government', Speech by Hezbollah Secretary General Sayyed Hassan Nasrallah, English Transcript, Al Manar TV Channel (Beirut 16 January 2011).

69 Unconfirmed reports claim that Hizbollah rejected a US offer to shelve the tribunal, provided that, in return, Hizbollah disarmed its militant wing.

resolve, the governance crisis and heralded a period of political instability, sectarian tensions and international mediation, with the Tribunal at its centre.

On 17 January 2011, the Chief Prosecutor Daniel Bellemare handed the indictment over for review to the Tribunal's pre-trial judge. The finalised (operative) indictment was not confirmed until five months later, on 28 June, and four Hizbollah-members were charged with responsibility for the attack on Hariri.⁷⁰ The publication of the indictment coincided with the Assad regime's brutal clampdown on civil unrest in Syria, in the wake of the Arab Spring. The timing of the indictment could indicate that the Tribunal had been waiting for an opportune moment to publicise it: charging Hizbollah-members with responsibility heaped even more pressure on the beleaguered Syrian regime. In Lebanon, however, the indictment was received with a mixture of relief and indifference, neither giving rise to sectarian violence nor public protests. It is likely that Hizbollah's pre-emptive attack on the Tribunal and disclosure of the charges against four of its members had defused the indictment's explosive potential. Adding to this, none of the accused could be apprehended, forcing the Tribunal to begin preparations for trials *in absentia*. Finally, the new Premier, Najib Mikati, had reassured the UN since taking office that his cabinet would honour all of Lebanon's international commitments, including the Tribunal's funding. After five months of cabinet wrangling, Mikati finally transferred Lebanon's share of the Tribunal's funding (\$ 35 million USD) from the prime minister's own budget. Hizbollah opposed the transfer but did not stop it. It is likely that Syria agreed to the procedure to avoid the fall of the cabinet.

VIII. Witling Away

Unable to apprehend and extradite the four suspects, the Tribunal began preparations for a trial *in absentia*. The trial could take several years to complete, due to the absence of the accused; the magnitude of the evidence; and the need for witness protection.⁷¹ In order to ensure the transparency of the court proceedings, the trial will take place in a specially designed high-tech courtroom. The Tribu-

70 STL, 'Ayyash et al. (STL-11-01): Indictment (Public Redacted Version)' The Hague: Special Tribunal for Lebanon 2011 <<http://www.stl-tsl.org/en/the-cases/stl-11-01/main/filings/indictments/f0007>> accessed 21 January 2013.

71 Should the accused, at a later date, be extradited or give themselves up and appear before the court, they are entitled to a retrial.

nal's media centre will broadcast the trial as TV-screenings; video and audio feeds (with a time delay of 30-minutes); and transcripts and pictures will be provided to accredited journalists. The general public will also be able to follow the proceedings through (edited) video feeds broadcast on the internet.⁷² Yet, has this costly technical wizardry been in vain?

Almost seven years after the criminal investigations began under UNIIC, the Tribunal has evolved into a complex organisation with a staff of almost 400 professionals working in the Tribunal's four units (organs), headed by the President; the Prosecutor General; the Head of Defence; and the Registrar.⁷³ Additionally, the tribunal has added a Victims Representation Unit (VRU), representing 67 victims who will testify before the court but cannot seek redress for loss or injury.⁷⁴ Housed in the former office building of the Netherlands' General Intelligence Agency, the Tribunal's office maintains a high level of security to provide adequate protection to its international staff, visitors and officials visiting the building. Although the premises have been provided free of charge by The Netherlands, the Tribunal still struggles with its finances and must literally beg for donations among UN member states. This situation is made worse by the government of Lebanon's attempt to withhold its share of the funding.⁷⁵ The Tribunal's budget for 2011 was about \$ 66 million USD. Considering the many political murders that have not been investigated, the costs for prosecuting Hariri's murder are staggering and, some argue, could be better spent on reforming the country's ailing justice sector.⁷⁶ There is also the risk that the Tribunal could be a costly 'in-and-out' injection of justice with no lasting impact on the justice sector.⁷⁷

The tribunal had, by January 2013, indicted four men and announced that more indictments could follow. However, it had been unable to arrest and extradite the suspects. The statutes of the Tribunal authorise trials *in absentia*, yet resting the case on this option weakens the Tribunal's 'demonstration effect',⁷⁸ and the

72 Interview with STL spokesperson (The Hague 29 June 2012).

73 The four organs of the STL are the Office of the Prosecutor (OTP); the Chambers; the Registry; and the Defence Office. The Registry coordinates the tribunal's administration and operations and is led by the Registrar, functioning as its chief executive.

74 STL, 'Information Guide on Victim Participation in the Proceedings of The Special Tribunal for Lebanon', The Hague, STL Chambers 2010.

75 Interview with STL official D (The Hague 29 June 2012).

76 Interview with Lebanese lawyer (Beirut 5 May 2010).

77 Chatham House, 'The Special Tribunal for Lebanon and the Quest for Truth, Justice and Stability' Chatham House Meeting Report (London 2010) <http://www.chathamhouse.org/sites/default/files/public/Research/Middle%20East/1210_stl.pdf> accessed 14 December 2012.

78 Wierda, *Nassar and Maalouf* (n 15).

prosecution prefers to have the accused testify before court.⁷⁹ Tribunal staffs are hopeful that the higher standards of justice provided by the Tribunal will improve the legal culture in Lebanon, as well as promote the rule of law in the country.⁸⁰ Procedurally, the Tribunal could also have an impact on Lebanon, although there is consensus that the tribunal can neither deter future attacks, nor end the country's impunity. Such goals are simply unrealistic and beyond the Tribunal's limited scope. Being dependent on third countries for economic support and domestic compliance with the investigation and funding (as spelled out in the Memorandum of Understanding: MoU) means that the Tribunal carries a higher risk of failure than other international courts do.⁸¹ Indeed, the Tribunal's defence attorneys' first motion was to challenge the legality of the Tribunal, this was followed shortly after by charges of political interference by the US Treasury Department.

Despite trenchant criticism of the Tribunal's lack of legitimacy, the UN Security Council, the EU and the Quartet have pledged support for the Tribunal and for the prosecution to proceed. This means that the judicial process cannot be substituted for a local compromise, even though this has been advocated as the only feasible solution to avoid a domestic security crisis.⁸² The Tribunal has made criminal liability a legal question, a matter to be decided by the court rather than — as is usual in Lebanon — a question to be settled politically out-of-court by reverting to the time-tested 'Lebanese solution': 'elite deals, amnesty, and amnesia'.⁸³ This renders the tribunal a threat and prone to allegations of being a political tool rather than a legal body.

IX. Challenges of Deeply Divided Societies

The prosecution of Hariri by the STL is the first time a politically motivated murder has come under international investigation, prosecution and (at some point in the future) trial. The formation of an internationalised tribunal promises professional investigation, impartial prosecution and credible convictions. The internationalisation of the Hague-based trial meant that prosecution could ide-

79 Interview with STL official B (The Hague 29 June 2012).

80 Interview with STL official D (The Hague 29 June 2012).

81 Interview with STL official A (The Hague 29 June 2012).

82 International Crisis Group, 'Trial by Fire: The Politics of the Special Tribunal for Lebanon' ICG Middle East Report No. 100 (2 December 2010).

83 Michael Humphrey, 'The Special Tribunal for Lebanon: Emergency Law, Trauma and Justice' (2011) 31 *Arab Studies Quarterly* 4.

ally neither be influenced by local compromise nor external pressure. Unlike domestic prosecution, which has failed due to lack of evidence, political meddling or third-party pressure, the Tribunal is expected to prosecute offenders to the full extent of its mandate.

As we have shown, setting up the Tribunal was dependent on a number of contextual factors that brought three countries (France, the UK and the US) together in an inter-continental alliance to prosecute the murder.⁸⁴ As permanent members of the UN Security Council, they used the UN Charter's strongest sanction (Section VII), to establish criminal investigation (the UNIIC) and, later, an international court: the Special Tribunal for Lebanon. The stated goals were to find the truth behind the murder; prosecute those responsible; and contribute to the rule of law in Lebanon. The costs were divided between the UN (member states) and Lebanon, with the Netherlands hosting the Tribunal and subsidising its running expenses. Thus the Tribunal exemplifies a new system of 'transnational governance' being implemented in postcolonial states like Lebanon, and represents an expansion of international criminal law.⁸⁵ Such a combination of factors is unlikely to be repeated, and the Tribunal's endeavours have damaged prospects for similar tribunals in the future.

Since it began operations in 2009, the Tribunal's legitimacy, objectivity and independence have been challenged and its troubled judicial process provides numerous examples of political meddling, non-compliance and obstruction of justice. The Tribunal has become a battleground for opposing interests and interest groups seeking control of the Lebanese state and subservient to regional and international agendas. It is cast as a type of foreign intervention,⁸⁶ common in Lebanon, which subverts the country's sovereignty to foreign interests tied to domestic actors. Owing to the high stakes, controlling the state becomes important because this provides the hands-on control needed to either "magnify or nullify" the Tribunal's domestic impact.

International tribunals are often established in the presence of hostile governments that are otherwise unwilling to cooperate with tribunals in effectively conducting trials.⁸⁷ Lebanon is an exceptional case because the country is deeply

84 Sami E Baroudi and Imad Salamey, 'US-French Collaboration on Lebanon: How Syria's Role in Lebanon and the Middle East Contributed to a US-French Convergence' (2011) 65 *The Middle East Journal* 398–425.

85 *Humphrey* (n 83).

86 Seminar with Presentation by Nadim Shehadi (Bergen 24 September 2010).

87 *Barria and Roper* (n 49); Lara J Nettelield, *Courting Democracy in Bosnia and Herzegovina: the Hague Tribunal's Impact in a Postwar State* (Cambridge University Press 2010).

divided over the Tribunal. One section of society, the so-called 14 March coalition, helped establish the Tribunal; extends full cooperation with the Tribunal; and sees it as a tool for strengthening the state at the expense of non-state actors, in particular the main opponent, Hizbollah. Hizbollah and its domestic political allies, the 8 March coalition, by contrast, see the Tribunal as a political conspiracy unfairly targeting the movement. They have branded those who collaborate with it “traitors” and vowed to use force to prevent the extradition of suspects. They want to end Lebanese cooperation with the Tribunal, withdraw the Lebanese judges, and withhold funding. Both factions have prominent foreign allies — namely the US and Iran (with Saudi Arabia and Syria in tow) — and the Tribunal amounts to a regional policy issue in the tug-of-war between them.

The Quartet has also come out in support of the Tribunal, further underlining its regional significance. Suspected of having planned the attack on Hariri, Syria has rejected any involvement (“command responsibility”), discredited the charges against it, and been unwilling to cooperate with the criminal investigation (UNIIC). From 2009, Hizbollah used its geo-strategic position (bordering Israel and Iraq and a key to solve the Arab-Israeli conflict), to extricate itself from diplomatic isolation and re-emerge on the international scene, with the help of France. From mid-2011, the Syrian revolt has turned the tide in the Tribunal’s favour and could lead to future indictment of members of the ailing Assad-regime.

The two political blocs formed after 2005 are either strongly in favour or strongly opposed to the Tribunal. Due to the international character of the Tribunal, their respective strategies differ. The 14 March movement called for establishing the Tribunal, petitioned the UN to ratify it, and has since facilitated its work and defended its legality “tooth and nail”. The 8 March coalition cannot annul the agreement establishing the Tribunal and, unable to revoke it, uses constitutional means (withdrawing ministers and MPs, withholding the Tribunal’s funding) and unconstitutional means (threat of force, intimidation, non-compliance) to discredit, delegitimise and, ultimately, to disengage Lebanon from its obligations vis-à-vis the Tribunal as spelled out in the MoU. This creates a polarised situation, where the country is split down the middle. Adding to this, regional and international actors pile atop the country’s internal divisions, straining the confessional political system and leading to periodic outbursts of protests, street-based violence and governance crises.⁸⁸

88 Knudsen and Kerr (n 39).

The judicial process has been cast as “politicised” and part of a hegemonic western agenda targeting Hizbollah and the so-called “Axis of Resistance” (Iran, Syria and Hizbollah). The regional players aligned with domestic actors have a vested interest in either supporting the Tribunal (Saudi Arabia) or blocking it (Syria and Iran), thereby reinforcing the domestic divide. Additionally, emerging regional powers (Turkey) and brokers (Qatar), seek to insert themselves as impartial interlocutors in the conflict in order to increase their regional standing.⁸⁹

Claims relating to the politicisation of the Tribunal carry high stakes: threatening to ignite violent conflict beyond mere resistance to the extradition of those indicted. This has made the judicial process costly, both in economic and political terms, and turned it into a battleground between opposing parties. The political fall-out has been severe, leading to an in-country multiplier effect, whereby parties, their main constituencies (Shias and Sunnis), state departments and agencies (security, police and intelligence) are locked in an existential battle over the Tribunal.⁹⁰ The conflict over the Tribunal has expanded victim and perpetrator categories from “individuals” to “sects” and therefore magnified Sunni-Shia tensions. While the ‘either peace or justice’ dichotomy is simplistic,⁹¹ the tensions over the tribunal have raised the prospect of armed confrontation. The Tribunal has, from the start, been interpreted in sectarian terms, unlike the grassroots campaign to uncover the elusive truth of the civil war, which came to be seen as a national rather than a sectarian issue.⁹² The Tribunal has not lead to a so-called ‘justice cascade’,⁹³ but instead entrenched conflict and divisions and, as such, it constitutes a missed point of entry for more encompassing TJ processes in Lebanon.⁹⁴

89 For Qatar, see, David B Roberts, ‘Understanding Qatar's Foreign Policy Objectives’ (2012) 17 *Mediterranean Politics* 233.

90 Only the Lebanese Army has remained impartial, which is why the former Army General Michel Suleiman could be elected President following the Doha Accords in 2008.

91 Are Knudsen, ‘Special Tribunal for Lebanon: Either Peace or Justice?’ CMI Brief 10, (2011) 4 <www.cmi.no/publications/file/3970-special-tribunal-for-lebanon.pdf> accessed 14 December 2012.

92 Interview with Anne Massagee, Deputy Director, ICTJ MENA Program (Beirut 10 May 2012).

93 *Sikkink* (n 7).

94 Interview with Anne Massagee, Deputy Director, ICTJ MENA Program (Beirut 10 May 2012).

X. Civil Society Actors

As shown in the previous sections, the Tribunal is illustrative of the problems inherent in instituting an international criminal prosecution in a deeply divided country. To make matters worse, misconceptions about the Tribunal's work abound, fuelled by one-sided media reports and coverage that has failed to generate a rational public debate over the Tribunal. Our survey of the media coverage of the Tribunal in five major newspapers in Lebanon (n=232) found a high volume of news reporting which — according to agenda setting theory — indicates a higher public interest in this issue.⁹⁵ Of the articles surveyed, only a few were written by academics and lawyers and the large majority by staff journalists (86 %) and editors (10 %). This suggests a very low involvement of academics, writers and other civil society actors and an overall absence of a “rational public sphere”. In general, the English and French-language newspapers (*Daily Star* and *Orient de Jour*) were more favourable towards the Tribunal, while Arab-language publications (*Al Safir* and *Al Akhbar*) were more critical.⁹⁶ Their position vis-à-vis the Tribunal corresponds to their political/ideological orientation and reflects the views of the political group that owns or funds it. Typically, the news coverage of the Tribunal is used as a proxy for deep-seated political differences (eg the Arab-Israeli conflict, western conspiracies, disarmament of Hizbollah) that resonate with what has been termed “reductive reporting”, in order to frame viewpoints in narrative strands accessible for the target audience.⁹⁷

Transitional justice encompasses a broad range of social and institutional mechanisms, including trials; truth commissions; and public acknowledgement of the past through memorialisation, compensation and apology.⁹⁸ Our preliminary inventory of transitional justice initiatives and projects in Lebanon from 1991 to 2011 (n=72) found that the major actors of transitional justice in Lebanon are the non-governmental organisations (NGOs) (58 %) and international NGOs (33 %). The fact that the International Centre for Transitional Justice (ICTJ) has an office in Beirut is one reason why many projects related to transitional justice have been conducted. There is a preponderance of memory projects

95 Roy L Behr and Shanto Iyengar, ‘Television News, Real-World Cues, and Changes in the Public Agenda’ (1985) 49 *Public Opinion Quarterly* 38.

96 *Hanafi and Knudsen* (n 56).

97 Baldwin van Gorp, ‘The Constructionist Approach to Framing: Bringing Culture Back In’ (2007) 57 *Journal of Communication* 60.

98 Ruti G Teitel, *Transitional justice* (Oxford University Press 2000).

among civil society organisations and artists. About one third of these cultural projects target the Lebanese middle class. There are also many dialogue projects targeting antagonistic groups, including between Palestinian refugees and the Lebanese. Only a few projects have dealt with reparation, prosecution and vetting. The majority of the projects focused on the post-civil war period (60 %), a minority with the civil war (40 %). A quarter of the projects began in 2005, and a new peak came in 2010, with around 20 % of the projects.

The TJ initiatives in Lebanon are donor-driven and funded mainly by European governments and international organisations. The International Development Research Center (Canada) has subsidised many projects; the Scandinavian embassies have been particularly generous donors for transitional justice projects. Only in a few cases have the Lebanese government subsidised or sponsored events and projects. The TJ projects tend to target specific groups, such as youth (15 %) and professionals (22 %); only about 10 % target the Lebanese population as a whole. Most projects are based in the capital, Beirut; only a few target the North or South. The projects are disseminated largely through the internet/website (43 %) and some through reports, publication or the media. Less than 20 % of the projects, however, have generated public debate.

XI. Conclusions

The above discussion brings us to the final point, namely the virtual absence of civil society actors in the post-2005 period. While the Tribunal was set in motion by public demand for justice for Hariri, the 2005 “Beirut Spring”, civil society activism later disintegrated into accusations and acrimony. This absence can be explained by the polarisation of the Lebanese public, which preceded the Tribunal and, from 2005, divided the country into two major political blocs. The Tribunal ratification in 2007 entrenched the bloc-like divisions that, over time, took on sectarian overtones (Shias versus Sunnis). The politicisation of the Tribunal has continued and prevented any meaningful public action or activism, as the process was almost exclusively the domain of political actors and not civil society ones. The judicialisation of the criminal prosecution was devised to insulate it from the domestic divisions and ensure that the Tribunal would proceed, even when resisted locally. The proliferation of TJ projects after 2005 was probably intended to help reduce, and possibly heal, internal divisions over the Tribunal yet the affluent, urban-based middle class was predominantly targeted. Among

the wider society, the divisions over the Tribunal remained. The media coverage underlined existing political divisions over the Tribunal and neither attracted wider public debate nor opened a new public space for “rational discourse”, as imagined by Habermas. From the start, the Tribunal was internationalised, underscored by the Tribunal’s location in the Netherlands and attempt to impose justice from afar. To the Lebanese, the main demand was ‘the truth’ behind Hariri’s murder, not international justice.⁹⁹ This can explain the irrelevance of local TJ projects, the general public’s preoccupation with the indictments, and indifference regarding the lengthy legal proceedings that (at the time of writing) has reached only the pre-trial stage.

In conclusion, STL internationalised a domestic political conflict in a deeply divided country, which was unable to hold perpetrators accountable, too divided to conduct an impartial inquiry and too weak to reach credible verdicts. The criminal inquiry was instigated by a local call for justice, pursued by regional hegemons, and imposed by international actors in an attempt to end impunity. The troubled judicial process was supported by sections of civil society, but, once established, the Tribunal was mainly driven by the international community. Due to its apparent politicisation, the role of local actors was weakened. One-sided media reports and news coverage underscored existing political divisions and failed to generate a rational public debate over the Tribunal, further limiting the role of civil society. In order to ameliorate the divisive impact of the Tribunal, several TJ initiatives followed in its wake, but these were too small, too scattered and too inconsequential to have any effect on the populace at large or, indeed, to set in motion a “justice cascade”.

99 Interview with Lebanese academic (Beirut 3 May 2012).