

Nº 64 - JANUARY 2011

The Special Tribunal for Lebanon: Trigger for new civil unrest?

Hélène Michou

»» Rumours abound that the Special Tribunal for Lebanon (STL) may be about to report. Its ruling could upset the precarious balance that has been reached in Lebanese politics in recent years. Indictments may even trigger a new bout of violence across a taut Shia-Sunni fault line. This is due partly to the complex makeup of Lebanon's national unity government, partly to pre-existing sectarian tensions and partly to the vested interests of regional patrons.

Prime Minister Saad Hariri and the international community face an unenviable choice. Son of the assassinated former president Rafiq Hariri, Saad must decide whether to implement potential indictments which are commonly expected against Hezbollah. If he does so, he risks retaliation from this Syria-backed and Iran-funded resistance group. The alternative is to denounce the Tribunal and abandon the search for his father's killers.

Similarly, the EU is stuck between recognising a verdict with the risk of unsettling political consequences or ignoring an institution of international justice in order to support a discreet compromise between Hariri and Hezbollah. The EU would do best to eschew excessive finger-pointing and encourage a conciliatory atmosphere. By supporting a more informal and consensual process of mediation, it may just help Lebanon avoid descent into another civil war.

PATRONS AND PROXIES

The tension of Lebanon's political situation means that attempts at justice are often inseparable from the conflicts which spawn them. The Special Tribunal is seen by at least some parties as a politically-manipulated

HIGHLIGHTS

- Rumours have steadily grown that the Tribunal set up to investigate the assassination of former Prime Minister Rafiq Hariri may be about to indict.
- The likely culprit, Hezbollah, has warned of 'firm action' if the Lebanese government does not distance itself from the Tribunal.
- As one of the Tribunal's funders, the EU faces a difficult choice: support a verdict that may unleash political unrest in fragile Lebanon; or back a more informal compromise between the factions.

»»»»» tool. As much as it seeks to rise above politics, the Tribunal finds itself enmeshed in intra-Arab and international politics. Hariri is prime minister of a national unity government in which Hezbollah has veto power and heads a coalition whose 'neutral' players are inclined to switch sides (namely the Druze leader Walid Jumblatt). This means he is lobbied furiously by actors from Syria to Saudi Arabia, all with vested interests.

Hezbollah has steadfastly maintained that there is an Israeli hand pulling strings behind the tribunal. In a series of fiery speeches, the movement's leader Hassan Nasrallah has claimed that the judges have been handpicked, the witnesses fabricated, and the entire process disingenuously concocted simply to curb Hezbollah's military and political influence. His claims were boosted when the Lebanese government uncovered Israeli infiltration of the telecommunications network, thus vitiating much STL evidence based on phone records.

Syria has sided with Hezbollah in querying the Tribunal's legitimacy and neutrality – although it has simultaneously sought diplomatic rapprochement with Hariri's government. For his part, the Lebanese premier has also tried to patch things up, through a public formal apology to Syrian President Bashar al-Assad for erroneous accusations; a state visit to Damascus; and the opening of respective embassies. The Syrian regime knows that any indictments against its proxy are tantamount to accusations against its actions.

Also joining the fray is Iran. President Ahmedinejad's visit to Beirut, tour of southern border towns and close relationship with Nasrallah have raised eyebrows not only in the West but also amongst some predominantly Sunni Arab states. Indicting members of a Shiite group for the murder of a Sunni prime minister would invariably contribute to regional tensions - when a sectarian cauldron is already dangerously close to boiling over in Iraq.

Saudi Arabia is pressuring Hariri not to let Hezbollah grow too big for its boots. The Kingdom's recent coordination with Damascus to preserve the status quo comes as a surprise following King

Abdullah's purported conviction that Syria was to blame for Hariri's assassination. Saudi Arabia and Syria backed opposing factions in Beirut's street battles of 2008. But they came together to end the deadlock, leading the way to the formation of Lebanon's national unity government a year later. The Saudis have strong ties with Lebanon's Sunni community and its current ruler. Saudi's shift towards Syria suggests that it has failed in its attempts to persuade Western states to postpone indictments. In an attempt to reach a consensus, the ailing King Abdullah attended a summit in Beirut in July 2010. What will give out first: his health or his patience?

Meanwhile Turkey is also looking to get involved, another sign of its new found appetite to play mediator in the turbulent region. Turkey's role in previous regional disputes and its policy of active mediation is one factor tilting the balance towards informal dialogue as opposed to formal justice.

THE EU ROLE

Apart from the complexity of operating in an undeniably political environment, the STL's significance lies in the precedent it may set for ending impunity in a region where supranational justice is sorely missed. Amnesty International criticises the Tribunal's narrow mandate - it is investigating a single murder, but is silent on the hundreds of thousands of deaths from the 1975-1990 civil war. But others highlight its positive symbolism as the first international court to operate in the Arab world.

In supporting informal mediation between the parties involved, the EU should emphasise that justice and stability are not diametrically opposed in Lebanon. The complexity of the situation does not allow for a completely 'either/or' solution. It would do well to echo the UN's institutional éloignement from the Tribunal. Granting the Tribunal its own independent legal identity reflected the UN's unease over claims of bogey witnesses and the sheer lack of progress made by the Tribunal to date. The admittance of fabricated witness-

es, trumped up arrests and manipulated evidence came from Saad Hariri himself in his December 2009 visit to Damascus.

Yet as one of the main collective funders of the Tribunal, the EU cannot easily encourage its member states completely to withdraw their support. Altogether 24 countries (half of which are EU member states) pay voluntary contributions totalling 51 per cent of the Tribunal's budget. The remaining 49 per cent is covered by Lebanon. Individual member states have refrained from querying the reliability of evidence or protesting the speed of jurisprudence. Britain, France

and other key EU players have recently renewed their annual contributions to the Tribunal, above and beyond the €1.5 million donated by the European Commission.

The EU would do best to encourage a conciliatory atmosphere

The European emphasis on the rule of law makes it difficult for the EU to join those openly doubting the neutrality of the Tribunal. Despite admission of earlier bungling under UN Commissioners Mehlis and Brammertz, for the EU to call for the Tribunal's disbandment would complicate Lebanon's European Neighbourhood Policy (ENP) Action Plan. It would raise serious questions about what was done with the €2.3 million the EU gave between 2007 and 2009 for the 'Amélioration de l'enquête criminelle'. Although the EU's role as Lebanon's primary trading partner is unlikely to be affected by Tribunal decisions, projects ranging from intercommunity dialogue to mine clearance in the south of Lebanon would suffer if Hezbollah sticks to its word of rejecting potential indictments.

The US has provided \$30 million to the investigation and has used the court as a pressure point against Syria. In turning the accusatory spotlight onto Hezbollah, the US seeks concessions from the resistance group, the self-declared defender of Lebanese civilians against Israel. The US reasons

that if three years of pressure culminated in the withdrawal of Syrian troops from Lebanese soil in April 2005, then a further couple of years of pressure, this time against Hezbollah, may well achieve disarmament and disbandment of its military wing.

OPTIONS

The first scenario is that the STL indicts Hezbollah. Whether the STL indicts rogue elements of the Shiite group or rebukes the movement as a whole, finger-pointing at Hezbollah would be potentially destabilising. A recent *Crisis Group* report argues that Hezbollah would be damaged, but its opponents even more so. The group's reaction risks destabilising the national unity government, paralysing parliament and ridiculing Hariri's Western supporters as powerless. If Nasrallah stays true to his word, this could lead to events similar to those of May 2008, when gunmen belonging to Hezbollah besieged parts of the Lebanese capital and sectarian tensions spilled onto the streets.

Hezbollah's armed wing wields more power than the Lebanese Armed Forces (LAF). Should the STL attempt to enforce indictments militarily (as would be allowed by its Chapter 7 mandate), it is unlikely that the LAF (made up largely of Shiites) would march south against their kin to carry out raids on Hezbollah homes. If the government tasks the remaining Christian and Sunni soldiers to do the job, the LAF faces a dangerous split within its ranks. A subsequent spark could easily ignite another civil war.

A formal indictment of Hezbollah would in effect absolve Syria of guilt - although not necessarily of patronage. It would give the EU as a whole reason to join the US, Canada, Israel, Australia, Egypt and the UK in classifying Hezbollah - whether the organisation as a whole or only its military wing - as a terrorist organisation. At the same time, the EU should try to remain the voice of moderation in a highly polarised debate. In supporting behind-the-scenes negotiations, the EU would distance itself from an overly politicised process whilst not leaving the quest for justice entirely to one side.

»»»»» As a key actor on the Lebanese political scene, and as an entity with the ears of Syria and Iran, Hezbollah has to be taken seriously. The Tribunal should demonstrate greater willingness to listen to its allegations against Israel. The EU should convince Chief Prosecutor Bellemare that his investigation's legitimacy will be boosted in the Arab world if he considers – at least formally – both sides of the coin.

A second scenario is that the STL indicts Syria.

A formal indictment of Syria would vindicate the first Chief Prosecutor, Detlev Meless, who rapidly concluded that Syria was to blame for contracting agents to carry out the 2005 assassination. It would cause the EU to re-evaluate its relations with a country which has recently sought rapprochement.

Following Saad Hariri's public admission that previous accusations against Syria were politically motivated, such a dramatic volte face would lack credibility. The mild warming of relations between Lebanon and Syria after Saad's public apology saw the two countries re-establish diplomatic relations and open embassies in their respective capitals. Cooperating with Damascus could be a way for Hariri to protect himself from Hezbollah. It may also prove to be instrumental in supporting and indeed shaping a Syrian-Saudi mediated deal.

Before the Tribunal reaches the stage of issuing formal indictments, and in order to avoid a further distancing from such a key Middle Eastern player, the EU should encourage the process of informal mediation launched last summer between the three incumbents, King Abdullah, Bashar al-Assad and Saad Hariri, along with Hassan Nasrallah. The EU must ensure that justice is not overlooked. But the methods of achieving it will have to reflect the complexities of the regional situation.

This leads us to the **third** possibility, namely that **the Lebanese government and Hezbollah reach a compromise**. Not wanting to risk engaging Hezbollah in an armed conflict which would shatter what the Taif Accords of 1989 sought to patch up, Hariri's personal and political quandary may lead him to reach for compromise. Should Nasral-

lah exchange fiery rhetoric for acquiescence, he may do so on condition that Hezbollah's seats in Lebanon's national unity government are increased. This is needed to bring the distribution of seats more into line with today's population ratios than that of the hopelessly outdated census of 1932. Any significant increase in Shiite numbers in government would eventually mean a Shiite government, a turn of affairs which the Americans will be keen to avoid after their bungled attempts in Iraq.

The EU should counsel flexibility from both sides. For Hariri to expect Hezbollah to acquiesce is unrealistic, just as Hezbollah cannot be allowed to increase its parliamentary representation through blackmail. The EU should recall that the Tribunal's plodding pace has failed to keep up with developments on the ground, and that its bungled collection of evidence has sapped its legitimacy. The STL's aims should be retained; but quieter mediation may be the more productive route to their attainment.

It is important that the Tribunal does not stall outright, but that its aims are achieved in a more consensual way. Before the EU's long term policy instruments can take effect in Lebanon, its shorter term Instrument for Stability (which initially helped fund the Tribunal) must achieve its goal of shoring up political stabilisation. The EU's Association Agreement and ENP Action Plan, which aim at reconstructing and reinvigorating Lebanon, must not be allowed to suffer as a consequence of judicial stalling. For example, work aimed at modernising the Lebanese judiciary cannot be held hostage to the rulings of a single case.

As coordinator of international donors and UN agencies in the country, the EU delegation should remind its partners that all programmes benefit from a stable domestic political situation and an entente cordiale of sorts between Hariri and Nasrallah. As Lebanon's main donor, the EU should equally warn that in return for aid in the form of landmine clearance, business start ups, infrastructure provision, scholarships and multiple reform programmes, it expects a cooperative political environment in which to channel resources.

CONCLUSION

Moderation is urgently called for in Lebanon. Syrians and Iranians now gloat at renewed impugning of the Special Tribunal. The US intones its importance as an instrument of justice, reconciliation and transparency. The Israelis continue to flex their muscles across the border. The Saudis debate whether mediation is more important to their national interest than the health of ailing ruling family members. The Turks look for relevance. Against this backdrop, the EU should rise above the fray as the voice of moderation. It needs to look beyond proverbial finger-pointing.

The EU should not dismiss the Tribunal outright, as this serves as an important basis for justice and reconciliation. But it should encourage a more informal process of mediation between the parties involved, in an effort to mitigate the SLT. Hariri faces options that are all unappealing, ranging from giving up on the Tribunal investigating his father's death to endorsing indictments against a group key to the stability of his national unity government. The situation is rendered more precarious by the political patrons and proxies manoeuvring behind the scenes of a fraught Sunni-Shia regional stage. The danger of the Tribunal dragging its feet for a further couple of years should not be underestimated. By pointing to the potentially incendiary nature of developments on the ground compared to the juridical plodding of the STL, the EU will make its case for reaching an alternative consensus.

Hélène Michou is junior researcher at FRIDE.