



INSS Insight No. 239, January 25, 2011

A Guide to the Special Tribunal for Lebanon

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Beyond the political and strategic ramifications of the Special Tribunal for Lebanon (STL), there are important legal issues that may also have an impact on Lebanon's future and regional security.

The Tribunal came into being through the adoption of UN Security Council Resolution 1757 on May 30, 2007, which attached both a putative agreement between the Lebanese government and the UN and the "statute" that set out the basic terms for the Tribunal. Later, the STL judges adopted Rules of Procedure and Evidence (RPE). On January 17, 2011, Daniel Bellemare, the STL independent prosecutor, submitted an indictment in the murder of former Lebanese prime minister Rafiq Hariri. A basic familiarity with the Tribunal's legal dynamics can add to an understanding of the story that will develop in the coming weeks and months. The points below are based on provisions of the statute and the RPE.

The STL's Pre-Trial Procedure

- **Confirmation of the Indictment by the Pre-Trial Judge:** Daniel Fransen, the STL's "pre-trial judge," must review the indictment (and "supporting materials"). Specifically, he must determine whether the indictment presents a "prima facie case" that the suspect(s) committed the crime(s) alleged.

Once he has reviewed the indictment, Judge Fransen must decide whether to confirm or dismiss the counts, or confirm only some of them, or request or permit more supporting material from the prosecution. He must then "provide reasons for his decision."

While Judge Fransen "shall notify the Prosecutor of the date of the review of the indictment," no date need be disclosed to the public, and the timing is fully at Judge Fransen's discretion. As with many legal processes, this one too moves at its own pace. STL officials have said that the review will likely take at least six to ten weeks, but this is an estimate only.

- **Publication of the Indictment:** Upon confirmation, the STL procedural rules require that the indictment "shall be made public," although the "supporting materials," the evidence supporting the indictment, need not be publicized. The lack of publication before confirmation can be seen as protecting the rights of the suspects: their names are not made public until a neutral judge has reviewed the prosecutor's work. In "exceptional circumstances" and "in the interests of justice," Judge Fransen can agree to a request that he conceal some or all of the materials from the public. Barring such circumstances, at the time of confirmation the international and Lebanese publics will learn the names of those indicted, the crimes with which they are charged, and basic facts about the case. Beforehand, the public might glean some information about the case from hearings held by the "appeals chamber," if Judge Fransen decides to submit legal questions for it to answer.

- **Arrest Warrants:** At the same time as he confirms an indictment, Judge Fransen can issue an arrest warrant for an accused. He can do so at the prosecution's request if the accused might flee, might obstruct the investigation or court proceedings, or might commit a crime similar to that accused. The arrest warrant may then be transmitted to relevant state(s) or INTERPOL.

What Happens if Lebanon Does Not Cooperate?

- **Cooperation by Lebanon and Other States:** As with other aspects of the STL process, arresting the accused would require cooperation by Lebanon and/or other states. The terms of the STL – made effective by a binding UN Security Council resolution – require that the Lebanese government cooperate with the Tribunal. Should Lebanon not do so within 30 days – for example, due to a new political order in Beirut – then Judge Fransen can make a finding to that effect. The STL's president then must hold consultations with the Lebanese government with a view to enabling cooperation. Should the consultations fail (without a "satisfactory response" in a "reasonable timeframe") then the STL's president can refer the matter to the Security Council. The Security Council could then take action against Lebanon for violating the binding terms of its Resolution 1757, which established the STL. Of course, such action would be subject to the usual Security Council politics and procedure (including the possibility of a veto).

Unlike the statutes of some international tribunals, the founding documents of the STL do not require cooperation from states other than Lebanon. The STL's procedural rules do set out a process for making a request of a third state, but without enforcement. Cooperation from Iran and Syria will likely not be forthcoming.

- **Trial in Absentia:** Finally, the STL could go forward with trials in absentia. At such a trial, the accused could appoint defense counsel or defense counsel could be appointed for him/her. Therefore, even if suspects cannot be taken into custody (for example, because of non-cooperation by Lebanon or other states), the legal process still moves forward.

- **Independence from Lebanese Politics:** For most observers, the fundamental fact of the STL is that in principle it operates independently of Lebanese politics.

First, the timing of submission and confirmation of indictments is controlled by a Canadian prosecutor and Belgian judge, not by Lebanese powerbrokers. So, too, with the timing of publication of information about the case; so, too, would the pace of trials, appeals, sentencing, and so forth be controlled by the Tribunal if the STL moves forward.

Second, while Lebanon's government can impede the Tribunal's work (by refusing to hand over the accused or by denying funding), the Lebanese government may well not be able on its own actually to stop the Tribunal. If Lebanon refuses to hand over an accused, a trial can take place in absentia. If the Lebanese government withholds its contribution to the Tribunal's funding, then other money can be found. Resignation of Lebanese judges from the Tribunal (or their refusal to take office) could wreak havoc, but at least under the founding documents of the STL, those judges themselves would need to initiate their own resignations or refusals. (Assassinations, though, pose a real risk.)

The UN Security Council passed a resolution setting up the Tribunal, and reversing course might well require a Security Council vote. Hassan Nasrallah, Bashar Asad, and Ayatollah Ali Khamenei face the risk that ultimately they may not control this legal process. That fact provides leverage for supporters of the Tribunal's work. It may be exactly what Nasrallah and his allies so fear about the STL.