



CHATHAM HOUSE

Chatham House, 10 St James's Square, London SW1Y 4LE
T: +44 (0)20 7957 5700 E: contact@chathamhouse.org.uk
F: +44 (0)20 7957 5710 www.chathamhouse.org.uk
Charity Registration Number: 208223

**International Law Middle East and North Africa Programmes:
Meeting Report**

The Special Tribunal for Lebanon and the Quest for Truth, Justice and Stability

December 2010

The views expressed in this document are the sole responsibility of the author(s) and do not necessarily reflect the view of Chatham House, its staff, associates or Council. Chatham House is independent and owes no allegiance to any government or to any political body. It does not take institutional positions on policy issues. This document is issued on the understanding that if any extract is used, the author(s) and Chatham House should be credited, preferably with the date of the publication. Where this document refers to or reports statements made by speakers at an event every effort has been made to provide a fair representation of their views and opinions, but the ultimate responsibility for accuracy lies with this document's author(s).

Introduction

The STL from a distance

This report is a summary of the main points and ideas exchanged during a meeting on the Special Tribunal for Lebanon (STL) organized by the International Law Programme and the Middle East and North Africa Programme at Chatham House in November 2010.

The meeting is part of a longer-term project that will accompany developments in Lebanon and in the STL. The objective is to raise and maintain awareness of the Special Tribunal for Lebanon, and explore its impact on Lebanon and the wider region and its contribution to international criminal justice. It seeks to provide a continuing analysis of the work of the Tribunal as the latest in a succession of criminal courts and tribunals which have been established with the help of the international community. The project will stimulate debate, share expertise and support the Tribunal's work.

The twenty-six participants included experts in fields such as other international tribunals and in Lebanese and International law; and political analysts and policy practitioners from Lebanon and other countries concerned with the issue. The meeting was held under the Chatham House Rule and participants were there in their personal capacity and not as representatives of institutions, parties or governments. The meeting was held in consultation with the International Centre for Transitional Justice (ICTJ) and the STL and with their participation.

This report does not aim to give a comprehensive account of the meeting; rather it is an *aide-mémoire* and a way of sharing the main points with a wider public. The annex to the report describes aspects of the Tribunal's procedure which the participants considered deserved to be widely known. In this report there is no intention of reflecting any consensus emanating from the meeting. Because of the nature of the meeting and the diversity among participants it is only natural that each will benefit in a different manner – legal experts came out with better understanding of the political context and vice versa. Discussions were held under three broad headings, starting with the big picture of the STL in the context of international criminal justice, together with the regional and international political setting and moved to more specific issues related to the functioning of the STL and internal politics in Lebanon.

Given the complexity of the situation and its internal and external linkages, the conclusions are presented in terms of an agenda for further discussion. Many of the dilemmas, such as debates on peace versus justice debate, truth

and reconciliation versus forgive and forget, are inherent in every conflict situation. At the same time, many of the questions that are raised about the STL and Lebanon now were discussed by policy-makers before the vote on UNSCR 1757 in May 2007¹. Three years later, while the issue may remain the same, the picture is clearer *vis-à-vis* the relative impact and importance of these issues. One of the main questions that emerged is how to define success in such a situation. A special section of this report is devoted to it.

The meeting was held at a time of heightened tension and anxiety, in anticipation of an imminent delivery of an indictment by the STL prosecutor and the expectation that this may cause problems in Lebanon and the region. These are not ideal circumstances for a wise and detached debate but certainly contributed to the importance of the meeting.

¹ Many of the arguments are summarized in a Chatham House briefing paper by Nadim Shehadi and Elizabeth Wilmshurst, *The Special Tribunal for Lebanon: The UN on Trial*, July 2007, http://www.chathamhouse.org.uk/research/middle_east/papers/view/-/id/512/

I. The STL and international criminal justice

The mandate of the Special Tribunal for Lebanon is to prosecute those persons responsible for the attack of 14 February 2005 which resulted in the death of former Prime Minister Rafiq Hariri and in the death or injury of other persons. The Tribunal's jurisdiction may be extended if the Tribunal finds that other attacks that occurred in Lebanon between 1 October 2004 and 12 December 2005 are connected with, and are of a nature and gravity similar to, the 2005 attack. Crimes that occurred after 12 December 2005 may be included in the STL's jurisdiction under the same criteria if so decided by the Government of Lebanon and the United Nations, with the consent of the Security Council.

The peace versus justice debate

International criminal justice can play an essential role in enabling a country to move from violence to peace. Without some form of judicial accountability, peaceful settlement or transition to democracy may not be sustainable.

More specifically, judicial accountability may contribute to establishing a lasting peace and ending political violence by creating an impartial historical record based on evidence which has been tested in a court of law, establishing individual responsibility for crimes (rather than collective group-based responsibility) and thus promoting unity rather than division along sectarian lines within a state, ending impunity for those crimes, removing those responsible from positions of influence within the country, and creating an environment in which reconciliation, both collective and individual, becomes a possibility.

But where the consequences of an insistence on accountability are seen to conflict with the goal of promoting peace and stability in a country, the role of international criminal justice becomes more controversial. This has proven so far to be one of the main challenges in the case of Lebanon.

In such cases, it is claimed that an insistence on retributive justice can represent an obstacle to peace and may do more to destabilize a state which is already vulnerable as a result of a delicate balance of power. This is often particularly relevant where those alleged to be responsible for serious crimes continue to exercise political power and influence either from within the state or from a third state.

This debate about the role of international criminal justice is often referred to as the 'peace versus justice' dilemma and it has been hotly debated throughout the work of every international tribunal including, for example, with regards to the International Criminal Court (ICC) in relation to Darfur and Uganda; the arrest of Charles Taylor by the Special Court for Sierra Leone (SCSL); the prosecution of Slobodan Milosevic before the International Criminal Tribunal for the former Yugoslavia and most recently the work of the Special Tribunal for Lebanon (STL).

The moment of truth

After a comprehensive investigation into the assassination of Rafiq Hariri in February 2005, it is anticipated that STL indictments will be ready for the process of confirmation by the Pre-Trial Judge. There is concern about the possibility of destabilizing consequences if arrest warrants are issued. If the international community can be credited with a collective view, that view has been that transitional justice makes a fundamental contribution to the establishment of a lasting peace in a state which has suffered a violent past. The current situation in Lebanon forces consideration of what price, if any, should be paid in terms of short-term destabilization versus longer-term benefits brought about as a result of the Tribunal's achieving its mandate.

Is there a tension here between peace and justice? One view contends that it is the assassinations that have a destabilizing effect, not the existence of the Tribunal. The current crisis is symptomatic of the pre-existing tensions between differing political groups within Lebanon, rather than a direct result of the STL. Another view sees further actions by the Tribunal leading to consequences that adversely affect not only the precarious stability within Lebanon but also wider geopolitical relations within the Arab world, as discussed below.

The legal basis and legitimacy of the STL

As with other international tribunals, the legal basis of the court is likely to be among the first challenges it will be asked to rule upon. The matter has been extensively discussed both in the press and by legal commentators. It had been envisaged that the Tribunal would be established by agreement between the state of Lebanon and the UN Secretary-General (similar to the agreement on the Sierra Leone Special Court between Sierra Leone and the United Nations). When the Speaker of the Lebanese Parliament failed to convene it so that the Agreement could be ratified in compliance with

domestic constitutional procedures, the UN Security Council, following representations by the Lebanese Government and petition by Lebanese parliamentarians, adopted a resolution under Chapter VII of the Charter giving legal effect to the Agreement.

It is frequently argued that the STL lacks 'legitimacy', not simply because of the way in which it was established but also because of its narrow mandate. Other existing international tribunals (the ad hoc Tribunals, the Special Court for Sierra Leone², the Extraordinary Chambers for Cambodia and the ICC) have been given responsibility to prosecute the most serious violations of international criminal law that are of concern to the international community: generally, war crimes, crimes against humanity and genocide. Further, they were part of a response to widespread atrocities committed during specific armed conflicts in the former Yugoslavia, Rwanda and Sierra Leone, for example, or past brutal regimes such as the former regime in Cambodia. They were responsible for prosecuting offences with a significant victim base and for offences which were of great concern to the international community as a whole. Thus the tribunals conveyed a perception that they were responsible to the wider international community.

The STL, on the other hand, is unique in that it is the first international tribunal with subject-matter jurisdiction extending only to criminal offences defined by reference to domestic law. It has jurisdiction over one criminal act of terror in Lebanon which resulted in the death Rafiq Hariri and 22 others, with the possibility of extending to other connected attacks. It can thus be said that the Tribunal's jurisdiction is very narrow and is inconsistent with the reality of Lebanon's recent history, which is littered with war crimes, crimes against humanity and very serious human rights violations. The Tribunal adopts an extreme form of selectivity, with its jurisdiction limited to so few of the crimes in Lebanese history which have gone unpunished. The problem of selectivity, with its inherent unfairness to both victims and perpetrators, is unfortunately endemic in international criminal justice, and can be ameliorated only with an increase in the universality of accountability mechanisms.

Although this narrow focus may lead to the view that the Tribunal represents a missed opportunity for a more comprehensive justice, it nevertheless provides Lebanon with an important chance to use an independent criminal justice mechanism to challenge the tradition of political violence in Lebanon. Political assassinations have been pervasive in Lebanon and throughout the

² [The Special Court also has jurisdiction over a few offences under Sierra Leonean law.](#)

Middle East, and the STL presents an important opportunity to counter impunity for such crimes.

An opportunity for substantive developments in international criminal justice?

International criminal law is relatively new and is evolving. Each new tribunal provides an opportunity to build on the best practice of previous tribunals, but also possesses unique powers and structures which make it more effective for the characteristics of the situation it is addressing. Each tribunal thus possesses an opportunity to make a unique contribution to both the substantive aspects of international criminal justice and to the procedural framework in which it operates.

The STL is the first international tribunal with jurisdiction over offences of terrorism, even though terrorist offences under domestic law. In the same way that the Yugoslav and Rwanda Tribunals reignited the international community's interest in a permanent court with jurisdiction over international crimes, expectations arise as to whether the work of the STL could encourage the inclusion of terrorist offences within the jurisdiction of international criminal courts or further developments towards a comprehensive international treaty on terrorism.

Any expectations should, however, be tempered by current practice in individual states. There remain very strong interests for states to maintain their own jurisdiction over terrorist offences. The approach adopted by the Security Council in its resolutions addressing terrorism generally appears to encourage a state-centric approach which provides states with an obligation themselves either to prosecute or to extradite.

The nature of the evidence

The work of the UN International Independent Investigation Commission (UNIIC) was subjected to criticism and there are doubts about some of its investigations. There are concerns about whether evidence could have been destroyed, tainted or rendered unreliable during the initial stage of the investigations, carried out by Lebanese institutions for a few months before the establishment of UNIIC by the Security Council. Throughout the course of the investigations there have been allegations of false testimony. The defence are likely to challenge the evidence provided to UNIIC and subsequently to the Prosecutor. Witness protection is likely to be needed. If witnesses' identities are kept from the parties it may be alleged that proceedings against

particular accused are thereby rendered unfair. Witness protection, however, is a frequent necessity in both national and international courts, as illustrated at present in the International Criminal Court, and the rules of the STL lay down strict conditions to be met in such circumstances.

The Prosecutor is responsible for prosecuting a very complex crime, which may have involved a number of participants with varying degrees of criminal liability. If it turns out that all the evidence is of a circumstantial nature, this does not invalidate it: all kinds of courts are familiar with the need to receive exclusively circumstantial evidence in certain cases. Those who executed the crime are likely to be different from those who planned or ordered it, and different kinds of evidence will be needed to go up the chain of command.

Time-scales and funding

The investigations have been proceeding for more than five years without an indictment. The delays have caused concern and have not helped the way in which the Tribunal is regarded in Lebanon. It is unlikely that the Tribunal will have completed its mandate by March 2012, which is the first date for termination of the agreement setting up the Tribunal. Indeed the STL is likely to be in the middle of proceedings, either at first instance or on appeal. In these circumstances the agreement provides that 'it shall be extended to allow the Tribunal to complete its work' for a period or periods to be decided by the UN Secretary-General after consulting the Government of Lebanon and the Security Council.

A practical obstacle to the future of the STL beyond March 2012 may lie in the funding. The Government of Lebanon provides 49% of the Tribunal's annual budget, with the remainder coming from voluntary contributions from the international community. But if there is a shortfall from Lebanon, the UN Secretary-General may accept voluntary contributions from states or explore alternative means to cover the gap in the expenses. The cooperation of the government on this point is therefore not essential.

Procedural challenges

Once an indictment is confirmed by the Pre-Trial Chamber, it will, according to normal process, be transmitted to the Lebanese authorities for service on the accused. An arrest warrant may be issued. There may of course be problems in enforcing such a warrant. In such circumstances, what will be the next steps for the Tribunal?

The Statute of the Tribunal allows the possibility of holding trials in the absence of the accused – trials *in absentia* – in a way that is not possible in any of the international tribunals. Safeguards are provided to ensure that the accused has been notified of the indictment, and has either designated a defence counsel or had one assigned by the Tribunal; nevertheless such trials are controversial.

Trials *in absentia* were contemplated from the start as a practical necessity where it was not possible for arrest warrants to be executed, either in Lebanon or in a third country. Unlike the situation with regard to UNIIIC, the Security Council has laid no obligation on any state other than Lebanon to cooperate with the Tribunal, either by handing over suspects or by providing evidence. Is the Security Council likely to take any action to impose such obligations if they would render the work of the Tribunal more effective?

Victims have certain rights to participate in the proceedings, as with some other international tribunals, and there is a Victims Participation Unit to assist them. One problem is whether the lapse of time since the assassinations will have affected levels of victim participation.

Putting the record straight about the Tribunal

Perceptions about the STL do not always correspond with reality. The STL is independent and does not take instructions about its work from any government. Nor can any one government terminate its work.

Partly in response to a campaign to discredit the Tribunal, the STL has set up an Outreach Programme Unit with the role of disseminating accurate and timely information to the public, particularly in Lebanon, about its general role and functioning, but it cannot respond to political attacks. A relevant question is what more can be done by the STL or by others to correct some of the misconceptions of its work and its role.

Domestic impact

One objective of international tribunals is to create a context in which the rule of law within a country is strengthened, and to increase the capacity of the existing judicial mechanisms which themselves have often been severely undermined by the conflict.

What will be the impact of the STL on the Lebanese criminal justice system? Thus far there has been no effect-by-example on two controversial issues of

Lebanese law: the death penalty and periods of unlimited custody. Participation by Lebanese judges and lawyers is provided for in the Statute of the STL, and this mix of judges and lawyers from different jurisdictions will ensure an exchange of knowledge between professionals. But will the Tribunal contribute to the substantive case law relating to the Articles of the Lebanese Penal Code which are within the jurisdiction of the STL? The concern is that the STL may be solely an 'in-and-out' injection of justice without any long-term impact. It should, however, be noted that the impact of the other international judicial institutions has at times been very positive though quite unforeseen (the Yugoslav tribunal is a good example).

Faith in the system is an important factor in the success or failure of international justice. Acceptance and belief in a court's impartiality and results will also affect its impact.

II Law and politics: The meaning of success

There has been a great deal of change in the political landscape – internationally, regionally and domestically – since the assassination of Prime Minister Rafiq Hariri more than five years ago. These changes in the political dynamics prompt the question of whether it would be possible to create such a tribunal under current circumstances. The principal players within the international community have changed. Some consider that the legacy of Presidents Bush and Chirac, who were both influential in the international community's participation in the establishment of UNIIIC and the Tribunal, has been displaced by a very different approach by their successors.

The Tribunal was established at the height of an era in which the international community promoted a policy of intervention, battling against political violence, serious violations of international law and human rights abuses. Judicial intervention played a role in this policy. The current mood is very different and there is a return to a realist approach in international relations. This is also a result of changes in the international balance of power, the impact of the global economic crisis, US disengagement from Iraq and the policy of engagement with some of the regional players who were being isolated.

There have also been a number of developments in the region which have dramatically altered the political landscape. The conflict of 2006 between Israel and Hizbollah, fought in Lebanon, ended with claims of victory for Hizbollah and greater perceived legitimacy for the party that claimed to be the only Lebanese resistance movement that the Lebanese population could rely upon to confront military attacks by Israel. Operation Cast Lead in the Gaza Strip at the end of 2008 and early 2009 again provided an opportunity for an organization, this time Hamas, to demonstrate an increasing level of military capability in confrontation with a national army. Faith in the international community's ability to deliver protection was shaken by these events.

Significantly there has also been a shift towards regional reconciliation led by Saudi Arabia, which has brought an end to Syria's regional isolation since 2005. The governments of Turkey, Iran, Syria, Saudi Arabia and Israel are all watching the situation, with their own interests to promote. Many have engaged in negotiations with the main political parties in Lebanon to help find a formula to avoid violence. The threat of violence also has a regional dimension and risks exacerbating the Sunni-Shi'a divide, with potential repercussions in Iraq and other countries.

The possible role of the United Nations is also a factor. Although the Security Council was previously regarded as a partner in working towards a solution for Lebanon and the region, there are questions about its current ability to act. For example, it did not even issue a formal condemnation of the incident on 28 October when members of the Tribunal were assaulted in Lebanon.

How can success be defined?

There is a difference between a definition of success in judicial terms and a goal that we can call success from the point of view of policy-makers and diplomats. In a conversation that includes jurists, human rights advocates, politicians and policy-makers, their perspectives may be quite far apart.

From the point of view of international criminal justice, the obvious benchmark of success will be a fair and effective trial or trials, with the guilty convicted. Will this objective be served if solely those low in the command chain are prosecuted? Unlike some other international tribunals³, the STL has neither a legal requirement nor a policy to try only those 'most responsible' for the crimes within its jurisdiction.

It may well be that the only way of securing any trials is by use of the rules of the Tribunal for trials in absentia. The execution of arrest warrants may prove too risky or impossible. The use of in absentia trials is infrequent in common law countries, although possible under certain conditions, and it is permissible in many other legal systems. Its use should not be regarded as invalidating the success of the Tribunal.⁴

Wider objectives of the STL include ending impunity and creating a culture of accountability. For these wider objectives, conviction is not the only criterion for success. There are examples where a court did not reach a guilty verdict, but the impact of the proceedings was nevertheless significant. The proceedings against General Pinochet in the United Kingdom represented a huge step towards bringing accountability for leaders, although at the end he was allowed home to Chile. Milosevic was prosecuted by the International Criminal Tribunal for the former Yugoslavia (ICTY) and, although his trial ended with his death in custody, the trial was perceived as a significant achievement for international justice.

³ The International Criminal Court has such a policy. While the Yugoslav Tribunal now has such a policy, it began by trying those lower down the chain of command.

⁴ Trials *in absentia* were not considered as contrary to the principle of a fair trial by the European Court of Human Rights, provided that some guarantees are available, including a new trial if the convicted person is arrested. The guarantees required by the European Court appear to be present in the STL Statute and rules.

A related measure of the Tribunal's success is its ability to meet the popular demand for the truth. Five years ago a quarter of the population in Lebanon took to the streets and called for the truth concerning the assassination of Rafiq Hariri. One view is that the truth in Lebanon has for too long been the casualty of political compromise. In the wake of the end of the civil war, the Lebanese parliament passed a general amnesty law which provided immunity from prosecution for those responsible for the many widespread and grave human rights abuses during the civil war without imposing on them a requirement to admit their guilt. Those who are keen to see a time when Lebanon can collectively start to investigate what happened during its civil war and more recent conflicts see the work of the Tribunal as having the potential to provide a framework in which such analysis can start to happen.

The measure of success?

These criteria for the success of the Tribunal are offered by those who emphasize the demands of international criminal justice and of the victims, and underline the need to take Lebanon out of a cycle of violence which keeps the country from functioning as a stable democracy. But there are other voices in the discussion about what constitutes success – policy-makers whose primary interest is the preservation of peace and stability. They emphasize Lebanon's ability to survive by reaching political compromise and consensus: 'truth versus survivability'. Rather than risk the violence (anything from a civil war in the streets of Beirut to full-blown regional war) which they believe may result from prosecutions by the Tribunal all the way up the chain of command, they look for a compromise and the best possible combination of the imperatives of justice and stability.

This is linked to the question of whether the Tribunal can deliver the whole truth. The legal process produces only partial truth because by its nature it deals solely with the criminal responsibility of individuals and not with the whole context, including the causes of the murders. A further question is whether the whole truth is necessary. The way some describe the situation is that the Lebanese have no choice but to live with each other, but they do have a choice about wanting the full truth and deciding whether they can then live with it. The Tribunal itself can provide the benchmark and be the arbiter for the truth. But can there still be space for a political compromise or does the Tribunal get in the way of such a solution?

In one view, success is measured by the amount of truth that is compatible with the ability to continue living together, since coexistence is the only choice

available and desirable in the case of Lebanon, a country based on a culture of compromise and coexistence.

Truth and justice can be regarded as absolute quantities, where only full truth can constitute full justice. One of the questions raised is whether there can be a measure that would determine a 'half-truth with half-justice' scenario that would be universally acceptable and avoid any outbreak of violence. Such an exercise would include a matrix with one axis that measures justice and the lesser or smallest achievement of the Tribunal would be 'small fish' being tried in absentia. The whole gradation with the full chain of command would be displayed along the x-axis, with the commander who gave the order at the other end of the scale. The y-axis would show the various parameters related to stability, graded from the lowest – 'no threats, no civil war, no freeze of government activity, institutions are working' – up to civil war and then regional war. Such a chart could help determine what a feasible compromise would look like.

There is also a view that compromise, in the current conditions, is being sought under the threat of violence, with one side using violence and the threat of violence as a means of pressure; this amounts to extortion. This view says that yielding to blackmail will only raise the threat of violence and result in further and further compromise and that in the end this makes compromise impossible.

The morning after

Another perspective is that all these dilemmas would look very different after an indictment is issued. Various actors will then position themselves differently and the situation will enter a new phase. In the previous phase the focus was on allowing or preventing the indictment to be issued. In the next phase, an indictment represents the beginning of the road rather than the end of it. It is possible that after an indictment is issued, those who are threatening instability will be the ones seeking it and wishing to minimize the cost. Seen from that angle, the threat of instability can be a wilfully created condition in order to give the illusion that there is choice – a zero-sum game – between justice and peace. It is possible that after an indictment the tables will be turned and it will be in everybody's interest to promote stability, as long as there is no perception that the indictment itself will be used as a mechanism to alter the political landscape of Lebanon and the Middle East. This is where the regional or global dimension of the issue becomes relevant.

Whether a Lebanese Solution – that is, a compromise – is possible will be determined in part by regional and global interests as well as by the Lebanese dimension. But local players such as Hizbollah and the March 14 coalition may become tools of regional and international players. The STL may be perceived as a means to advance one agenda or another. And there may be a conflict of interest between local, regional and international players with the Lebanese asked to pay a high price for regional stability.

Success as failure

Throughout the history of Lebanon, stability has been secured through intense negotiations and concessions that have developed into what some perceive as a culture of consensus and compromise. This is due to the complex power-sharing arrangements that have been a feature of the Lebanese state and society, helping to maintain coexistence between the diverse components of the Lebanese population.

Developments since 2005 have called into question this culture of compromise, of brushing things under the carpet, and the associated corruption in the political process in Lebanon and general lack of accountability. It is argued on the one hand that the system is not viable in the long term and its periodic breakdown has resulted in the recurrence of violence, the collapse of civil order and the repetition of serious crimes. Thus success in finding a temporary compromise may be a useful tool for handling a crisis but it also prevents the examination of longer-term problems in Lebanon. Such a form of success is therefore at the same time a failure.

On the other hand it is argued that the existence of the STL puts the country in a position where it will have to comply with norms that are beyond its capacity. If arrest warrants are issued against members of Hizballah, the argument goes, the state will not be able to effect these arrests and will fail in its obligations under the agreement with the UN. Thus the Lebanese system of compromise is being set against the international community, although this system is the cornerstone of Lebanese democracy and coexistence. The STL, instead of consolidating these principles, would expose their failure.

The STL is currently the only mechanism that can promote a system of accountability in Lebanon. Lebanon has the opportunity to use the Tribunal as a mechanism for change and for the emergence of a new culture of accountability. But the STL also risks putting Lebanon in crisis. By using norms from outside the system, the STL also inserts parameters into the equation that the system cannot handle without outside assistance. The STL

thus goes hand in hand with international protection: such an instrument cannot be installed and then have the country left to its own devices. What if this is an instance where a compromise through internal negotiations cannot be reached?

The dilemma for international policy-makers is to assess how far their intervention in support of the STL is helpful and whether an internal compromise would be prevented by such an intervention, i.e. whether investment in the STL, both political and financial, would be rendered redundant if and when a compromise is reached. This again is not dissimilar to choices that have been faced in other instances of the application of international criminal justice when those indicted are at the same time expected to join a peace process.

Do we already have success?

On a final note, there are those who say that the mere existence of the Tribunal has already produced positive results for Lebanon and is in itself a success that has prevented violence and preserved stability. The popular request for the Tribunal and the belief that it will deliver protection and justice discourages people from taking justice in their own hands. If the STL did not exist or if circumstances were to lead either to its demise or to its being discredited, then revenge might be the only option for the victims. This would create a situation where the country reverts to a cycle of violence. The STL is thus an instrument that has already delivered stability.

The existence of the Tribunal has also paved the way for the resumption of normal political relations between parties within Lebanon and between Lebanon and Syria, by taking the assassinations out of the equation and relegating them to the Tribunal. Faith in international justice and the STL were translated in a positive manner in Lebanon when what were defined as 'political accusations' against Syria were retracted because the STL could be relied upon to deliver the truth. By the same token, it was declared that even when indictments are issued the accused would be presumed innocent until proven guilty and would even then be seen as 'rogue' individuals, not representing any collective guilt on the part of either their sectarian or political affiliations. This culture of individual and not collective responsibility is promoted by the STL.

Since 2008 there have been no political assassinations in Lebanon. It is notoriously difficult to measure the deterrent effect of international criminal

justice, and there can be no proof of a connection, but if true this is indeed a claim to success.

III. Next Steps

The need for a more systemic approach

The Chatham House discussions highlighted the importance of the STL at many levels and also the need to approach the issue through its various dimensions. The STL lies along the fault lines of local, regional, international and legal dimensions; hence the need for a systemic approach that will lead to better understanding of its implications.

At the local level, there needs to be a discussion between the various parties in Lebanon about the future of the country and the viability of its system. In a way this discussion is ongoing in the country and has intensified with the current crisis. There is room for promoting such a debate by detaching it from the current crisis.

At the international level, there needs to be a policy discussion about Lebanon and also about the region. Many of the problems that the STL highlights in Lebanon have an important regional dimension involving even broader international issues. The success or failure of the STL will certainly affect developments beyond Lebanon's borders. There is a need for policy-makers to understand these issues and their implications. From the point of view of international criminal justice, there are many lessons to be learned about the interface between politics and the law. The STL provides a perfect example, and a discussion of this, from a comparative perspective, could help an understanding of the system as a whole.

The need for a strategic communications approach

Some of the problems of the STL are due to difficulties in communications. The STL itself has limitations in its communications capabilities because it cannot interfere in or contribute to political or international policy discussions. A mechanism whereby meetings are held under the Chatham House Rule with the involvement of the STL is therefore useful as a means of informal communication.

Communications and policy discussions are necessary along a timeline which is divided according to the progress of the STL process: before an indictment is issued, at the time of an indictment and during the trials. It is important to understand the dynamics that affect each actor at different stages of the process.

ANNEX

Selected aspects of the procedure of the Special Tribunal for Lebanon

Confirmation of Charges and Pre-Trial Proceedings

- Once the Prosecutor is satisfied that a suspect has committed a crime in the jurisdiction of the Tribunal, he will submit an indictment to be filed with the Registry for confirmation by the Pre-Trial Judge. A single indictment may apply to more than one suspect.
- The indictment will include the suspect's name, a brief statement of the facts of the case, and any crime with which the suspect is charged. The indictment also includes supporting material, which may be documents, reports or other material.
- The Pre-Trial Judge then reviews each count of the indictment to determine whether the Prosecutor's evidence presents a *prima facie* case against the suspect. The Pre-Trial Judge must notify the Prosecutor of the date of this review.
- If the Pre-Trial Judge has questions on the interpretation of applicable laws that must be answered in order to rule on the indictment, he may submit these preliminary questions to the Appeals Chamber. The Appeals Chamber will rule on these questions following a public hearing.
- The Prosecutor may request that the submission and details of the indictment remain confidential during the confirmation process. However, if the Pre-Trial Judge submits preliminary questions to the Appeals Chamber, the existence of a submitted indictment will be disclosed by virtue of the scheduling of a public hearing. This would not affect the confidential nature of the details of the indictment or the supporting materials accompanying the indictment.
- The Prosecutor may amend an indictment at any time before its confirmation without leave of the Pre-Trial Judge, and may withdraw an indictment or charges in an indictment at any time before its confirmation, without leave.
- The Pre-Trial Judge may request additional information from the Prosecutor related to any count included in the indictment. He may confirm or dismiss one or more counts and must provide reasons for his decision. If the Pre-Trial Judge dismisses any count in the indictment, the Prosecutor may resubmit that count

for future confirmation in an amended indictment or in an indictment with new supporting material.

- The Pre-Trial Judge must provide reasons for his decision to confirm (or not) the indictment.

After confirmation of an indictment

- Once the indictment is confirmed, it is termed the operative indictment, and the Registrar prepares certified copies, including a copy translated into the language of an indicted suspect.
- An indicted suspect will then have the status of an accused and the Pre-Trial Judge may issue a summons to appear or an arrest warrant. The certified indictment is also formally provided to the applicable state authorities for personal service on the accused.
- The operative indictment will be public unless the Pre-Trial Judge determines that it should remain undisclosed in exceptional circumstances until further order.
- Within 30 days of an indictment, a summons to appear or an arrest warrant being provided to the national authorities of Lebanon or any other state which has agreed to cooperate with the Tribunal, the state must inform the Tribunal President of all measures taken in relation to its receipt. If an indictment, summons to appear or arrest warrant relates to an individual living a state other than Lebanon which has not agreed to cooperate with the Tribunal, the Registrar will submit a request for cooperation to the authorities of that state.
- If reasonable attempts to personally serve the indictment, summons to appear or arrest warrant are unsuccessful, the President may, after consultation with the Pre-Trial Judge, order alternative avenues of service, such as public advertisement. This may include placement in newspapers, on television, and on the internet.
- If Lebanese authorities fail to comply with a summons to appear, arrest warrant or any order for cooperation from the Tribunal, the Pre-Trial Judge or Trial Chamber may make a judicial finding to this effect. Upon the basis of this finding, the President may enter into consultations with the Lebanese authorities concerned, and if applicable, inform the Security Council.

- In response to a summons to appear or arrest warrant, the accused shall be brought before the Trial Chamber or a Judge designated by the President. The Trial Chamber or Judge's responsibilities at this initial appearance of the accused include ensuring that the accused has exercised his right to counsel (or assigning him counsel), reading the indictment to the accused in a language that he understands, soliciting a plea of guilty or not guilty from the accused (or deciding on his behalf if he does not enter a plea), and setting a date for trial.
- During the course of the trial, there may be further amendments to the indictment owing to the availability of evidence and witnesses or other factors. If this occurs, the amended indictment then becomes the new operative indictment.
- Should the Prosecutor wish to withdraw an indictment or charges in an indictment between its confirmation and the assignment of the case to the Trial Chamber, he must provide to the Pre-Trial Judge, in open court, a statement of the reasons for the withdrawal. After assignment of the case to the Trial Chamber, the Prosecutor would be required to file a motion before the Trial Chamber requesting that he be permitted to withdraw an indictment or charges in an indictment.

Trial Phase

General Rules

- Unless otherwise decided by the Trial Chamber, all proceedings will be held in public. Sessions may be closed to the public and media for reasons of public order or morality, security, a state's national security interests, non-disclosure of a victim's or witness's identity, or the interests of justice.
- In order to reach a guilty verdict, a majority of the Trial Chamber must be satisfied that guilt has been proven beyond a reasonable doubt.
- The judgment of the Tribunal shall be pronounced in public and will include a reasoned opinion, in writing.

Trials in Absentia

- If the accused is not under the Tribunal's authority within 30 calendar days after public advertisements have been placed – whether because he has waived his

right to be present, has not been handed over to the Tribunal by the relevant state authorities, or cannot be found – the Pre-Trial Judge shall ask the Trial Chamber to initiate proceedings *in absentia*.

- In the event of a trial *in absentia*, the Head of Defence Office will assign counsel to the accused and proceedings will proceed according to the rules on pre-trial, trial and appellate proceedings.
- If the accused appears before the Tribunal in the course of *in absentia* proceedings, the Tribunal will terminate the proceedings and begin a new trial. The Trial Chamber may decide that some parts of the *in absentia* proceedings be used in the new trial. This decision is reviewable by the Appeals Chamber.
- If the accused appears before the Tribunal after being convicted *in absentia* by the trial or appeals chamber, he may accept the judgment and sentence, accept the judgment and request a new sentence hearing, or request a retrial (or appeal).

Witnesses

- At any stage of the proceedings, if revealing the identity of a witness would lead to threats of grave physical or mental harm or a risk to national security, the witness may be questioned by the Pre-Trial Judge in the absence of the parties or their legal representatives upon their request. Parties to the proceedings can submit questions for the witness to the Pre-Trial Judge and will receive transcripts of the witness's answers, redacted as necessary to protect the witness's identity. A conviction may not rest solely, or to a decisive extent, on the statement of an anonymous witness.
- Under certain conditions, the Trial Chamber may admit written statements in lieu of oral testimony. If the evidence is of a matter other than the act charged in the indictment, the Trial Chamber may determine whether the interests of justice and a fair and expeditious trial require the witness to appear for cross-examination. If the evidence goes to proof of the act charged in the indictment, the written submission may only be accepted if the witness is present in court, is available for cross-examination, and attests that the written statement is an accurate reflection of what he would say if examined.

Appellate Proceedings

- An appeal may be lodged alleging an 'error of law invalidating the decision' or an 'error of fact that has occasioned a miscarriage of justice.'