

THE HARIRI TRIBUNAL: POLITICS AND INTERNATIONAL LAW

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On February 14, 2005, a car bomb shook Beirut, taking the life of former Lebanese Prime Minister Rafiq Hariri. Soon afterward, a series of events unfolded leading to a near-total political paralysis in Lebanon¹: a vacant presidential seat, a government whose constitutionality was doubted by a considerable part of the population, and a parliament that failed even to convene. In the middle of the turmoil, the Lebanese government's proposals to establish an international commission to investigate the Hariri assassination and later a "Tribunal of International Character" to try those accused found an open ear in the UN Security Council, which decided to endorse them under Chapter VII of the UN Charter. But while the Security Council seems determined to push on with the tribunal, many Lebanese — reflecting the views of many of their political leaders — consider the process a serious threat to Lebanon's sovereignty, question its legitimacy, or are actively working to impede it. However, political viewpoints such as these reflect a denial or a lack of understanding of the

constraining influence of international law. Before any position can be taken, therefore, it is important to fully understand the meaning and implications of the Hariri tribunal. The aim of this article is to show that no future Lebanese government or parliament, regardless of its form or the composition of its membership, and no effort by any Lebanese political group, can change or abrogate unilaterally the agreements that were made between the United Nations and the Lebanese government. This is so because of the applicability of the Laws of Treaties under international law and the various UN Chapter VII resolutions that were passed to back up these agreements.

EVOLUTION OF INTERNATIONAL CRIMINAL LAW

Following the end of the World War II, in 1945, the international community took measures to ensure that a similar war would never take place. Two measures were most important: the establishment of an international organization to guarantee international peace and security by collectively confronting any "threat to the peace,

breach of peace or act of aggression,"² and the establishment of a legal framework to ensure that the horrific crimes committed during the war would not go unpunished. The United Nations was established in the place of its predecessor, the League of Nations, and international tribunals were established in Germany and Japan to try war criminals. For the first time ever, individuals became subjects rather than mere objects of international law.³ Henceforth states were to be treated not as legal abstractions, but as institutions run by individuals who could be held ultimately responsible for their wrongful acts, even if these were done in the name of the state.⁴

Hence, the Nuremberg Tribunal for Germany and the International Military Tribunal in Tokyo for the Far East were authorized and empowered to individually try the high-ranking German and Japanese officials charged with crimes against peace, crimes against humanity, and war crimes.⁵ The two major shortcomings of these courts, however, were that their jurisdiction only covered crimes that were committed during wartime (1939-45) by persons who held governmental posts (civilian or military). These shortcomings were later addressed by a second major development in international criminal law: the Convention against Genocide of 1948, which broadened the limits set previously to include any individual who commits an act of genocide⁶ in peace or in wartime, regardless of whether he or she is a government job-holder.⁷

A third important development in international criminal law was the establishment by the Security Council of international courts to punish crimes committed in the former Yugoslavia (Resolution 808/1993) and Rwanda (Resolution 955/1994).⁸ This step gave international law jurisdiction

inside the boundaries of the nation-state itself,⁹ for now individuals who committed crimes against their own countrymen in their own country also fell under the eye of the international community. In 1998, in response to a growing international consensus that the world should not have to wait for a decision from the Security Council every time a crime against peace or humanity or an act of genocide or aggression happens, the Rome Statute was signed. It established a permanent court, the International Criminal Court (ICC), which came into force in July 2000. The ICC cannot investigate crimes against peace (aggression), because the signatories were unable to agree on a common definition for it. It can, however, look into the other crimes mentioned above, whether they happened within a state or outside it, and whether a state is a member of the ICC or not, although in the latter case a Chapter VII resolution from the Security Council is needed.¹⁰

In addition to the international courts, various regional courts were established in accordance with Security Council resolutions in order to punish violators in internal wars as well. One of these, like that in Sierra Leone,¹¹ became an example of mixed courts,¹² whose composition is jointly determined by the country concerned and the Security Council and whose decisions are guided by international as well as local constitutional law.¹³

Today, international criminal law not only presents an efficient legal means of punishing the perpetrators of serious crimes but also forms a deterrent that may prevent the repetition of these crimes in the future.¹⁴ This is reinforced by the fact that no defendant found guilty by the ICC can be pardoned by any party or state other than the court itself, as stated in Article 29 of the ICC statute.¹⁵

HARIRI TRIBUNAL

Political Context

Ever since its inception, Lebanon has been a unique demographic mosaic of Muslims and Christians, interacting with each other and sharing a common land but never reaching a point of fusion. While this makes Lebanon unique, it is also the cause of its misfortunes. There are 18 official religious groups in the country, each with its own agenda, political support, external allies and even its own definition of who is a Lebanese patriot and who is not.¹⁶ Perhaps the widest divide has been that between the Christians who fought for a totally independent Lebanon and the Muslims who insisted on looking upon Lebanon as a part of Greater Syria. Today, despite numerous crises and one civil war, these two visions are as vivid as ever, with one group still insisting on an independent Lebanon and beseeching the West for help to achieve this goal, and the other group still determined to keep Lebanon attached to Syria and the Arab cause generally. In practice, this has meant resisting Israel militarily even when other Arabs decide to walk the negotiations path. What has changed, however, is that the Muslims (particularly the Shia, who are numerically the largest group) have found a powerful new ally in Iran. The great divide is no longer as clearly religious as it once was, but rather political,¹⁷ with each of the two major groups consisting of both Christians and Muslims.

It was clear after Hariri's assassination that the Lebanese were far from united in their perception of the act or the best course of action to solve it. The two groups that battled for power after the assassination were the March 14 group and the March 8 group. The former — named for

the date of their huge public rally and demonstration in Beirut — consisted of the Hariri family, influential Druze leader Walid Jumblat, and most Sunni and Christian leaders. They stood in firm opposition to Syria's presence in Lebanon, demanding that the pro-Syrian government of Prime Minister Omar Karami and President Emile Lahoud resign. They also demanded that an international tribunal be appointed to try the accused in the Hariri murder, maintaining that it was necessary to bring justice in this case, as the Lebanese justice system had failed to put those responsible for assassinating politicians behind bars¹⁸ and the Lebanese government would be unable to protect the accused, the witnesses or the judges. Despite their clashing viewpoints, the two groups became nominal partners in a new coalition government formed under the premiership of Fouad Siniora of the March 14 group, following the resignation of the Karami government and the withdrawal of Syrian troops from Lebanon. Their coalition was inherently unstable, however, and soon broke down when the March 8 participants withdrew.

The March 14 group also lost the support of a very influential Christian leader, General Michel Aoun. Aoun had spent years in exile in France working to expel Syria from Lebanon, but soon after his return to Lebanon joined forces with the March 8 group, named for the date of their mass demonstration to honor and thank Syria for all its help in Lebanon. This group was composed of Hezbollah, Amal,¹⁹ a few Druze and Christian leaders, and — recently — Aoun's party. Its position may be summarized as one of backing Syria, defending the right of Hezbollah to keep their arms — something the other group opposes — and calling for the establishment of a local court to look into the Hariri assassination. The March 8 group

continues to reject any criticism directed at Syria for its alleged involvement in the assassination and adamantly denies that the international court is the appropriate body to deal with it.

After the murder of Hariri, the Security Council issued a presidential statement requesting that the Lebanese government arrest the suspects, planners and financiers of the crime and bring them to court. This statement also labeled the crime a “terrorist act” and reminded Lebanon and its neighbors countries of their commitments under its Chapter VII resolutions 1373/2001 and 1566/2004 concerning terrorism. Soon afterward, based on a formal request by the Lebanese government, the Council established the International Independent Investigation Commission, whose work and jurisdiction were specified in a bilateral agreement signed by the Lebanese minister of justice and the UN representative in June 2005. This agreement gave the commission considerable autonomy, allowing it to specify its own procedures, to collect any information and evidence related to the case, to request any legal procedure it deems necessary, and to participate in any investigation related to the case, including giving recommendations and guidance to the appropriate authorities concerning any tasks it requires for the investigation. Under the terms of the bilateral agreement, the commission’s autonomy was guaranteed by the Lebanese government. Two years later, in 2007, the Council issued yet another decision to establish the long-awaited Tribunal of International Character under Chapter VII.

All of these UN decisions drew mixed responses from Lebanese political leaders. This was evident in the different ways the UN efforts were covered by the Lebanese newspapers, which mostly follow the lead of different leaders and groups in the country.

While the opposition (March 8 group) newspapers *Al-Akhbar*, *Al-Safir* and *Al-Diyyar* looked at the UN decisions as a source of more division in Lebanon, the loyalist (March 14 group) newspapers *Al-Mustaqbal* and *Al-Nahar* viewed these same UN decisions with enthusiasm, considering them a major blow to terrorism and the best means to establish sovereignty and regain independence for Lebanon.²⁰ The leaders themselves were not reluctant to state their positions on the court: the March 14 leaders, including Saad al-Hariri, Walid Jumblat and Samir Geagea, saw in the UN resolutions a great triumph and a valuable lesson directed against Syria and its supporters. The March 8 leaders, such as those representing Hezbollah, took the opposite line, questioning the independence of the court, seeing in it a threat to Lebanon’s sovereignty and a door through which the Western powers could enter. After the Chapter VII resolution was issued, Hezbollah immediately condemned the proposed international court as nothing but a “flagrant violation that makes the resolution illegal and illegitimate at the national and international level” and places Lebanon under “international tutelage, without decision making and sovereignty in an unprecedented development in the history of sovereign states.”²¹ This position led them to withdraw from the Lebanese government in objection to its endorsement of the Security Council decisions and to pressure the Siniora government to resign.²²

The antagonism between the March 14 and the March 8 groups was further aggravated by the Hezbollah-led armed uprising against the Siniora government in May 2008 (“Hezbollah’s coup attempt”), in objection to the government’s decisions to investigate Hezbollah’s phone network and to transfer an airport security chief with an alleged

link to Hezbollah from his position.²³ The result of this uprising was not only the killing and injuring of dozens of Lebanese citizens from all groups, but also deeper distrust between the March 14 and the March 8 groups, in general, and the Sunnis and Shias, in particular.²⁴ The political fallout was also significant.

Two weeks after the hostilities began, under the auspices of the Arab League, the Lebanese leaders signed an agreement in Doha that required them to elect General Michael Suleiman as the new president, to give the opposition (March 8) enough seats in the new cabinet to amount to a veto, to pass a new electoral law to divide the country into smaller electoral districts in preparation for the upcoming 2009 parliamentary elections, to agree not to resort to violence again, and to facilitate Lebanese army control over all Lebanese soil.²⁵ Hours after the Doha agreement was announced, the opposition ended their 18-month sit-in in downtown Beirut.²⁶ This does not mean that the tension, especially between the Sunnis and the Shias, is something in the past, as is evident from the recurrent skirmishes that continue to take place between the two groups in various parts of Lebanon.

In the new cabinet, though once again headed by Fouad Siniora, a stronger role is expected for the March 8 group, because it will have the power to veto any proposed governmental measures that do not suit its purposes. This does not mean that this change will lead to undoing commitments previously made under international law. Regardless of the March 8 group's position with respect to the tribunal, and regardless of the form of any future cabinet or parliament in Lebanon, the international judicial process that has been put in place is irrevocable and legally binding on

Lebanon. It is important for all parties to understand the reasons for this and the implications of violating international agreements before taking any decision or proposing or endorsing any solution.

Legal Context

The murder of Rafiq Hariri reminded the world once again of the importance and necessity of international criminal law, especially when a government is convinced that it cannot guarantee the safety and integrity of a trial on its territory. But the process of establishing suitable instruments of international justice is long, especially when no trial can take place until the completion of a deep and thorough investigation of the crime and the circumstances that led to it. For this reason, a brief discussion of the International Independent Investigation Commission (IIIC) is necessary before discussing the Hariri Tribunal and its implications.

The first reaction of the international community to the Hariri murder came the following day in a presidential statement by the Security Council requesting that the Lebanese government show due diligence. But, more important, the statement considered the assassination a "terrorist act." Thus, it was to be dealt with by Lebanon in light of previous Security Council resolutions under Chapter VII, namely resolutions 1373/2001 and 1566/2004. But before discussing the implications of these resolutions for the Hariri case, one should ask why the murder was considered a terrorist act in the first place. This question cannot be answered without a clear definition of terrorism, a definition that has proved to be extremely difficult because of the inability of nation-states to agree on one.²⁷

In 1994, the General Assembly became the first international authority to propose

an acceptable definition of terrorism when it adopted Resolution 49/60 entitled “Measures to Eliminate International Terrorism.” The document describes terrorism as criminal acts “intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes [that] are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them.” Two years later, the General Assembly established an Ad Hoc Committee that was successful in producing the texts of two adopted treaties, the International Convention for the Suppression of Terrorist Bombings (1997) and the International Convention for the Suppression of the Financing of Terrorism (1999), which defined a terrorist as any person who delivers, places, discharges or detonates an explosive in a public place with the intent of causing death or bodily injury or causing extensive destruction to the targeted place for the purpose of producing major economic loss.²⁸

The events of September 11, 2001, pushed the issue of terrorism to the top of the agenda of the United Nations. Resolution 1373 established a Counter-terrorism Committee²⁹ and the General Assembly called upon states to refrain from providing any form of support — active or passive — to entities or persons involved in terrorist acts; to deny any safe haven to the violators, who should be brought to justice instantly; and to extend all assistance to one another in connection with criminal investigations or proceedings, while preventing the movement of terrorists and terrorist groups among the states.³⁰ However, this resolution did not attempt to offer a clear definition of terrorism, stating instead the duties, powers and obligations

of the Council and the nation-states on this front. In 2004, the Security Council found itself once again facing a gruesome terrorist act, this one involving the murder of 338 individuals, most of them children, in an attack on a school in Beslan, Russia. The UN response was Resolution 1566/2004, which restated the actions considered offenses under current international conventions.³¹ In this resolution, a terrorist act is defined as any act against civilians and civilian institutions for the purpose of killing or injuring civilians or taking some as hostages for the purpose of instituting a state of chaos and fear and forcing the government or an international organization to commit (or not) a certain act.

One may recognize three elements that these conventions, General Assembly decisions and Security Council resolutions agree on: a terrorist act aims at spreading terror in the hearts of the public or one of its groups; it is fueled by political intentions; and it involves acts, like murdering and kidnapping, that are criminal in all national legal systems.³²

In the Hariri case, the Security Council found that the act fits these criteria not only because it involved the murder of Hariri and many civilians and was intended to implant terror in the hearts of the public,³³ but also because it was fueled by political interests and intentions, something that the independent investigation later confirmed. The Security Council definitely considered the Hariri murder a terrorist act that should be dealt with instantly and effectively. Thus, upon the request of the Lebanese government,³⁴ the Council issued its Resolution 1595/2005 forming the IIIC to help investigate all facets of the crime, while requesting all necessary help and cooperation from neighboring states.

The commission's work has been ongoing since then, reporting its findings periodically to the Council. However, because its investigation is done for the purpose of collecting evidence against suspects accused of committing the Hariri crime and presenting it to a court of law, the question that follows is this: what kind of court should conduct the trials?

It did not take long for the Lebanese government to realize that any local Lebanese court would face tremendous challenges in dealing with a case of this kind. With assassinations of March 14 officials continuing unchecked, the government lacked adequate means to guarantee the safety of witnesses, judges and lawyers. Thus, it did not hesitate to submit a second request to the Security Council, this time to establish a Tribunal of International Character. Lebanese political leaders could not agree on a purely international court, however, and after much internal negotiation, they settled for a mixed court that, it was hoped, would reflect a real partnership between Lebanon and the international community. This meant appointing a few Lebanese judges along with international ones, and giving due consideration to Lebanon's constitutional law while respecting the rules and principles of international law.³⁵ The Security Council accepted that request through Resolution 1644, adopted in December 2005 under Chapter VII of the UN Charter. The resolution clearly states that the Security Council

acknowledges the Lebanese Government's request that those eventually charged with involvement in this terrorist attack be tried by a tribunal of an international character, and ... authorizes the Commission, following the request of the Lebanese

Government, to extend its technical assistance as appropriate to the Lebanese authorities with regard to their investigations of the terrorist attacks perpetrated in Lebanon since October 1, 2004, and *requests* the Secretary-General in consultations with the Commission and the Lebanese Government to present recommendations to expand the mandate of the Commission to include investigations of those other attacks.³⁶

Perhaps it was this wide jurisdiction and privilege that had initially been given to the Commission and the subsequent instituting of a tribunal under Chapter VII of the Charter that implanted uneasiness in the minds of many Lebanese leaders. Despite their uneasiness — which, as we will see later, is unfounded — the bilateral agreements between Lebanon and the United Nations were duly signed and are binding under international law.

Legal Implications of UN Chapter VII

When the original founders established the United Nations, they were determined to give it the teeth its predecessor, the League of Nations, never had. For this reason, they assigned the Security Council the major task of protecting international peace and security by first responding to any "threat to the peace, breach of peace or act of aggression" through peaceful means, as outlined in Chapter VI of the UN Charter, and then resorting to coercive measures if necessary, as described in Chapter VII. What is more important is that they made the member states promise, by signing the Charter, to implement Chapter VII resolutions whether they liked them or not. In the end, their implementation was required for the greater good of mankind. a

word of caution is needed here: Issuing a Chapter VII resolution does not mean instant armed attack against the violators, who are given several chances to reverse their course of action and may be subjected to a variety of other measures, including the rupture of diplomatic relations and the imposition economic sanctions, in order to reach the desired outcome. However, Chapter VII resolutions threaten the targeted states with eventual use of force if they fail to comply with the international decision. The seriousness of these resolutions — which pass only if none of the five permanent members exercises its veto — makes the Security Council persistent in upholding all Chapter VII resolutions, which are never revoked or abrogated. From here, it is safe to say that, in the case of Lebanon, the principle of the Tribunal instituted by the Security Council under Chapter VII is irrevocable, and thus the court has to be established soon after the commission finishes its investigation.³⁷ This was further insisted upon and armored by Security Council Resolution 1636/2005, which clearly describes the act in question as a “terrorist” one, forming a serious violation to Resolutions 1373 and 1566. On March 11, 2008, UN Secretary-General Ban Ki-moon appointed Robin Vincent as the registrar of the Tribunal, which will be composed of 11 judges, four of whom are to be Lebanese, and which will be based in The Hague.³⁸

No Violation of Sovereignty

The right to independence is one of the basic rights of states, according them full authority to manage their external and internal affairs as they see fit.³⁹ For this reason, when the Security Council issued the Chapter VII resolutions to institute the Commission and the Court, some Lebanese leaders objected, or at least expressed their

fear that this step represented a violation of the principle of sovereignty. However, this argument has no legal basis in international law.⁴⁰ Although Article 2 (section 7) of the UN Charter prohibits the United Nations from interfering in the internal affairs of states, it adds that this “shall not prejudice the application of enforcement measures under Chapter VII.”⁴¹ In simple terms, any member state that signs the Charter gives its implied acceptance of any Security Council intervention in its affairs when actions on its territory constitute threats to the peace, breaches of the peace or acts of aggression. Moreover, Article 103 of the Charter clearly states that, whenever another state’s obligation contradicts its obligations to the United Nations, it is the latter that prevails.⁴² This is also reinforced in Article 19 of the final draft of the International Law Commission, entitled “International Crime and International Delicts,” which seeks to bolster the criminal responsibility of states. This article clearly states that every decision taken by a state in violation of an international obligation is a wrongful act under international law, regardless of the context of the violated international obligation.⁴³ In Lebanon, yet another element contributes to invalidating the accusation of sovereignty violation: the presence of bilateral agreements between the Lebanese government and the United Nations.

Treaty Laws and the Hariri Case

International law is based on the principle of *pacta sunt servanda* (pacts or agreements should be respected). States are presumed to form treaties out of their own free will; if treaties are signed under duress, they shall be considered invalid according to international law.⁴⁴ For this reason, a treaty is legally binding on the parties who ratify it,⁴⁵

and under no circumstance can they terminate it whenever they please. This principle is contained in Article 26 of the Vienna Convention on the Law of Treaties⁴⁶ and recognized in its Preamble as “universally recognized.”

The agreement that was signed between the United Nations and the Lebanese government must be considered in this context. Thus, neither the Security Council nor a Lebanese government, present or future, can unilaterally change or abrogate their agreements respecting the Commission or the Tribunal. Any violation of this self-binding obligation is contrary to the Laws of Treaties in international law.⁴⁸

THE TRIBUNAL IN PRACTICE

The tribunal that the Lebanese requested was established by the Security Council in the most authoritative possible manner when the decision to implement it was issued under Chapter VII. The next step is activating the tribunal.

In March 2006, the secretary-general decided to issue his recommendations for activating the proposed tribunal.⁴⁹ In a report to the Security Council, he restated his position favoring the establishment of a mixed rather than a purely international court in accordance with the bilateral agreement between the Lebanese government and the United Nations to clarify and agree on all aspects of the court, while leaving to the Lebanese side the freedom to introduce any legislation necessary to implement the agreement and ultimately activate the court. But the secretary-general was very quick to add that this should not prevent the Security Council from taking any decision to establish and maintain this court under Chapter VII. This meant that in the partnership agreement

between the United Nations and Lebanon, the Security Council held the upper hand through its potentially coercive role under Chapter VII. Thus, the Tribunal of International Character is expected to make use of the procedures, principles and tools that are followed in other international courts, while at the same time allowing the Lebanese access to it through the appointment of Lebanese judges and by respecting the Lebanese legal culture and criminal law. However, this partnership will not prevent the Security Council from taking any procedure it deems necessary to activate the court if the Lebanese side fails to deliver on its promises.

As for the jurisdiction of the court, the report was clear in limiting it to the case of Hariri and the 22 others who were killed with him, with the possibility of extending it to include all the assassinations that occurred in Lebanon after October 1, 2004, that are shown to be related to the Hariri assassination.⁵⁰ The adjudication process, however, should not be hurried, according to the secretary-general, who advised the Council not to predetermine the timing of the tribunal but establish it at an appropriate time and through a smooth transition between the investigation and the future judicial mechanism.⁵¹ After studying the report, the Security Council adopted it through issuing Resolution 1664⁵² under Chapter VII. This had the effect of making the report a legally binding document in accordance with Article 25 of the UN Charter. In this resolution, the council gave the secretary-general the green light to negotiate an agreement with the Lebanese government to establish the tribunal and requested his periodic updates on the matter, especially concerning options for a funding mechanism.

Despite the formal request by the Lebanese government to establish the tribunal and its bilateral agreement with the United Nations in this regard, it failed to move on with the process. It was unable to get the required ratification from a parliament that, due to political deadlock, was unable even to convene⁵³ (a situation that changed only after the Doha agreement was signed in 2008). This placed the Security Council in a rather difficult situation. It could not wait for the Lebanese parliament indefinitely; something had to be done to ensure the continuity of a process that had the backing of Chapter VII resolutions. International criminal law offered the Security Council various alternatives.⁵⁴ It could establish a purely international court like that of former Yugoslavia (Resolution 808/1993) and Rwanda (Resolution 955/1994) under Chapter VII.⁵⁵ In this case, this court would no longer be bound by any Lebanese participation or preconditions, and it would have no obligation to consult with or operate within the Lebanese legal culture. Another alternative was to submit this case to the International Criminal Court (ICC), but that would require first a Security Council Chapter VII resolution to extend the definition of “crimes against humanity” — one of the crimes that the ICC has jurisdiction over⁵⁶ — to include terrorism.⁵⁷ In the Hariri case, if the international investigation proved that there was indeed a connection between the Hariri murder and the other terrorist acts committed in Lebanon before and after that crime, the Council could then argue more than ever that the Hariri murder was a part of a comprehensive planned attack with prior knowledge, design and implementation. Other alternatives included submitting the

case to courts that are local or at least not purely international, as in the Lockerbie case, or establishing a court outside Lebanon — for security reasons — while insisting that all countries cooperate with it.⁵⁸

Finally, the Security Council could base its alternative on the bilateral agreements that it had signed with the Lebanese government and decide to activate the agreement that specifies the by-laws of the Court. This action would be based on the Security Council Report of December 12, 2006, which reiterated the Council’s full support for the democratic government of Lebanon, reaffirming the importance of respecting Lebanon’s democratic institutions in accordance with its constitution and condemning any act that might threaten its stability. It would also be based on the periodic notifications by Lebanon that a majority of the Lebanese parliament approved of the agreement but was unable to act because of internal political complications. In these circumstances, the Council could unilaterally apply the agreement since it is based on Chapter VII.

In March 2007, the Security Council decided to take the last alternative when it adopted Resolution 1757, under Chapter VII, to activate the bilateral agreement between Lebanon and the United Nations starting on June 10, 2007. Although this meant that the long-awaited Lebanese parliamentary ratification became irrelevant, it cannot be regarded as an offensive step against Lebanon. A bilateral agreement exists between the two sides, and the Lebanese government has made repeated requests to the Security Council to act quickly on the matter. Add to this the fact that the resolution re-emphasized the importance of the UN partnership with Lebanon and the necessity of respecting

Lebanon's sovereignty and independence.

The path towards establishing a court to try the accused in the Hariri case has been long and hard, facing obstacles every step of the way. However, progress has been recorded, and the Tribunal of International Character did eventually see the light of day in March 2008. It has not yet convened, but when it does, a major new landmark in the development of international criminal law will be established. The tribunal will be the first international legal mechanism to put terrorists on trial, and in this capacity it might eventually become the standard by which future terrorist trials will be conducted in other places.⁵⁹ Many Lebanese have their doubts about this whole process, but one should differentiate politics and political convictions from international law and legal considerations

and obligations. The decision taken to establish the court was and is irrevocable. The government of Lebanon signed binding agreements with the United Nations, and various Security Council resolutions were issued under Chapter VII to implement them. In the midst of all this, no decision or action was taken to threaten the sovereignty of Lebanon. As a member of the United Nations in good standing, Lebanon has already given its implied consent for the Council to apply any of its decisions taken in the light of Chapter VII. All the member-states of the United Nations accepted this principle as necessary to the fulfillment of the goal of safeguarding international peace and security when they signed the UN Charter. On this obligation rests the very idea of having the United Nations.

¹ The event that started the process was a massive pouring of people into downtown Beirut to take part in the mourning. Accusations were quickly directed against Syria. On March 8, an enormous demonstration was staged by Hezbollah to counter these anti-Syrian sentiments. This in turn prompted a counterdemonstration on March 14 staged by anti-Syrian groups and the supporters of Hariri. This was more or less instrumental in bringing about the withdrawal of the Syrian forces from Lebanon in May and the fall of the pro-Syrian government that was in place at that time. Negotiations between the various Lebanese parties resulted in a shaky new coalition government headed by Fouad Siniora, a pro-Hariri, anti-Syrian Sunni, with the participation of the two major pro-Syrian Shiite parties, namely Hezbollah and Amal. It soon fell into disarray and paralysis when Hezbollah and Amal withdrew their support in objection to the government's endorsement of the "Tribunal of International Character" project. Thereafter they considered the government unconstitutional and obstructed all proposals that were put before the parliament. Their supporters, meanwhile, organized a massive encampment and sit-in that paralyzed the commercial core of Beirut. Roger Hardy, "The Lebanese Crisis Explained," BBC World (online) May 27, 2007 [cited January 2007]; available from http://news.bbc.co.uk/2/hi/middle_east/6173322.stm.

² Chapter VII, Article 39. See "United Nations Charter." *United Nations Organization* [UN online] January 2007 [cited January 2007]; available from <http://www.un.org/aboutun/charter/>.

³ Until this point, international law dealt with individuals indirectly and only through their states. Individuals could not sue a foreign state, for example, without giving his/her own state "imputability." In simple words, only states could sue states. For more information see Gerhard Von Glahn and James Larry Taulbee, *Law Among Nations: An Introduction to Public International Law* (Pearson Education, 2007), pp. 663-664.

⁴ The statute of the Nuremberg Tribunal stated that "crimes against international law are committed by men not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced."

⁵ See Ian Brownlie, *Principles of Public International Law* (Oxford University Press, 1998), p. 565.

⁶ The crime of genocide is similar to crimes against humanity but with one difference: the first one is specific to an ethnic community while the second is not.

⁷ Gerhard von Glahn. *Law Among Nations*, p. 285.

⁸ These resolutions created the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia (1993), and the International Tribunal for Rwanda (1994). See Brownlie, *Principles of Public International Law*, p. 567.

⁹ International law consists mainly of rules and principles governing relations between states whose sovereignty is highly guarded. In fact, Article 2 of the UN Charter clearly declares it as one of the states' basic rights.

¹⁰ Von Glahn and Larry Taulbee, *Law Among Nations*, pp. 689-692.

¹¹ The Security Council established the Sierra Leone Court through Resolution 1315/2000, as well as other resolutions to affirm this decision, including 1400/2002 based on Chapter VII, and 1436/2002.

¹² Von Glahn and Taulbee, *Law Among Nations*, pp. 664, 689.

¹³ The jurisdiction of the court involves various kinds of crimes, including crimes against humanity, war crimes, and other serious violations of international law and the law of Sierra Leone.

¹⁴ Shafic El-Masri, *Loubnan wa Al-Sharia Al-Dowaliya (Lebanon and International legality)* (Beirut, Dar Al-Ilm Lil Malayeen, 2008), p. 128.

¹⁵ "The Rome Statute," *United Nations Organization* [online] July 1999 [cited January 2007]; available from <http://www.un.org/law/icc/statute/romefra.htm>.

¹⁶ See Kamal Salibi, *A House of Many Mansions* (I.B. Tauris, 2005), pp. 1-5.

¹⁷ Kim Ghattas, "Showdown Time in Lebanon," BBC (online) November 25, 2006 (cited January 2008); available from http://news.bbc.co.uk/2/hi/programmes/from_our_own_correspondent/6180634.stm.

¹⁸ The common belief is that this did not happen except when Syria gave the green light to this step.

¹⁹ The other Shiite party, headed by Speaker of the House Nabih Berri.

²⁰ "Press Divided on Hariri Tribunal," BBC news (online) May 31, 2007 (cited Jan 2007) available from http://news.bbc.co.uk/2/hi/middle_east/6708587.stm.

²¹ "Syria, Hezbollah Decry Proposed Hariri Tribunal," BNET (online) June 1, 2007 (cited January 2008); available from http://findarticles.com/p/articles/mi_qn4176/is_20070601/ai_n19204434.

²² "Timeline: Lebanon," BBC (online), January 15, 2008 (cited January 2008); available from http://news.bbc.co.uk/2/hi/middle_east/country_profiles/819200.stm.

²³ "Lebanon Revokes Hezbollah Curbs," BBC (online) 14 May, 2008 (cited June 2008); available from http://news.bbc.co.uk/2/hi/middle_east/7400342.stm.

²⁴ Although the mountains, the Shuf, the Biqaa, and Northern Lebanon had their share of fierce fighting between the opposition and the loyalists (March 8 and March 14 supporters), most of the fighting happened in Beirut, specifically between the Sunnis and the Shia.

²⁵ "Lebanon Rivals Agree Crisis Deal," BBC (online) May 21, 2008 (cited June 2008); available from http://news.bbc.co.uk/2/hi/middle_east/7411835.stm.

²⁶ See note 1.

²⁷ Von Glahn and Taulbee, *Law Among Nations*, p. 276.

²⁸ *Ibid*, pp. 518-519.

²⁹ One of the major functions of this committee is to work with states in order to upgrade their legislation and capacities to implement this resolution.

³⁰ See the full resolution in Von Glahn and Taulbee, *Law Among Nations*, pp. 610-613.

³¹ *Ibid*, p. 520.

³² A. Cassese, *International Law* (Oxford University Press, 2002), p. 258. Also see Von Glahn, *Law Among Nations*, p. 277.

³³ After the assassination of Hariri, numerous reports were broadcast by several Lebanese TV stations, especially Future TV, which continued for several weeks showing programs not only of Hariri and his legacy, but also of Lebanese popular reactions, even providing the help of psychologists and psychiatrists to help viewers deal with the situation.

³⁴ The Lebanese prime minister sent the UN Secretary-General this request on the March 29, 2005.

³⁵ In fact, all these elements were mentioned in the final draft of the agreement between Lebanon and the United Nations concerning the Court.

³⁶ "Security Council, SC/8587," *United Nations Organization* [UN online] December 15, 2005 [cited January 2007]; available from <http://www.un.org/News/Press/docs/2005/sc8587.doc.htm>.

³⁷ El-Masri, *Loubnan wa Al-Sharia Al-Dowaliya*, p. 136.

³⁸ “UN “completes” formation of Hariri Tribunal,” *The Daily Star* (online) April 1, 2008 (cited June 2008); available from http://www.dailystar.com.lb/article.asp?edition_id=1&categ_id=2&article_id=90479.

³⁹ I.A. Shearer, *Starke’s International Law* (Butterworths, 1994), p. 184.

⁴⁰ See El-Masri, *Loubnan wa Al-Sharia Al-Dowaliya*, p. 137.

⁴¹ “United Nations Charter,” *United Nations Organization* [UN online] January 2007 [cited January 2007]; available from <http://www.un.org/aboutun/charter/>.

⁴² Article 103 states that “in the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other agreement, their obligations under the present Charter shall prevail.” “United Nations Charter,” *United Nations Organization* [UN online] January 2007 [cited January 2007]; available from <http://www.un.org/aboutun/charter/>.

⁴³ Mohr, “The ILC’s Distinction between International Crimes and International Delicts and Its Implications,” *United Nations Codification of State Responsibility*, ed. Marina Spinedi, Bruno Simma (New Oceana Publications, 1987), pp. 117-118.

⁴⁴ Wendy Lacey, “The Law of Treaties,” *Public International Law: An Australian Perspective*, ed. Sam Blay, Byszard Piotrowicz, and Martin Tsamenyi (Oxford University Press, 2005), p. 103.

⁴⁵ If a treaty is a *jus cogens*, or if it involves a universal principle in international law, such as not committing the act of genocide, ratification is not even needed. In other words, even if states are not party to the Convention Against Genocide, they will be held accountable if they commit this crime.

⁴⁶ The Convention states that “a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”

⁴⁷ Blay, Piotrowicz, and Tsamenyi, *Public International Law*, p. 99.

⁴⁸ Shearer, *Starke’s International law*, pp. 397, 269.

⁴⁹ “Report of the Secretary-General pursuant to paragraph 6 of Resolution 1644/2005,” *United Nations Organizations* [online] March 21, 2006 [cited January 2007]; available from <http://daccessdds.un.org/doc/UNDOC/GEN/N06/277/44/PDF/N0627744.pdf?OpenElement>.

⁵⁰ This is a possibility since all the Chapter VII resolutions relating to terrorism are applied to these assassinations as well, since the Security Council clearly described them as “terrorist” acts. See El-Masri, *Loubnan wa Al-Sharia Al-Dowaliya*, p. 140.

⁵¹ “Report of the Secretary-General pursuant to paragraph 6 of Resolution 1644/2005,” *United Nations Organizations* [online] March 21, 2006 [cited January 2007]; available from <http://daccessdds.un.org/doc/UNDOC/GEN/N06/277/44/PDF/N0627744.pdf?OpenElement>.

⁵² For the full text of the resolution, see “Security Council requests establishment of international tribunal for killing of former Lebanese Prime Minister Hariri,” *United Nations Organizations* [online] March 29, 2006 [cited January 2008]; available from <http://www.un.org/News/Press/docs/2006/sc8677.doc.htm>.

⁵³ As mentioned before, this is a violation to Article 26 and 27 of the Vienna Convention of the Law of Treaties which required states to ensure the activation of treaties they have signed. Obviously, no state should sign a treaty if it lacks the capacity or will to implement it.

⁵⁴ El-Masri, *Loubnan wa Al-Sharia Al-Dowaliya*, pp. 143-149.

⁵⁵ Since the Hariri murder was described as a “terrorist” act, and since terrorism tops the list of threats to international peace and security that must be fought by the Security Council, the latter has full authority to establish similar courts to ensure that these acts are punished.

⁵⁶ According to the Rome Statute the ICC has jurisdiction over four crimes: crimes against humanity, crimes of aggression, genocide, and war crimes.

⁵⁷ Crimes against humanity were defined loosely in the Rome Statute to cover acts “committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.” These include everything from murder and enslavement to persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, or gender grounds, committing other inhumane acts of a similar character, and intentionally causing great suffering or serious injury to a person’s mental or physical health.

⁵⁸ See El-Masri, *Loubnan wa Al-Sharia Al-Dowaliya*, pp. 143-149.

⁵⁹ *Ibid.*