

Justice or Peace? The Hariri Assassination and the Special Tribunal for Lebanon

by **Maria-Rita Kassis**

Abstract

The assassination of former Lebanese Prime Minister Rafik Hariri represented a turning point in the modern history of Lebanon. The death of the tycoon, who reshaped Beirut following years of internal strife, has resulted in a major uprising that changed the face of Lebanon and rewrote its history. To many, his death remains a mystery which is expected to be solved by the UN-sponsored International Tribunal in charge of probing the Feb. 14, 2005, murder. Lebanon, a country overwhelmed by its ongoing political crises, is in tension again in anticipation of the expected indictment. This article explores the main conspiracy theories regarding the background of the assassination. After presenting a number of uncontested facts, the article explores three scenarios which attribute responsibility respectively to Syria, Hezbollah and Israel.

Introduction

On 14 February 2005, Lebanon's Prime Minister Rafik Hariri was assassinated. Lebanon has a history of political murder; powerful figures, either politically savvy or economically influential, have been killed by guns, bombs or in car "accidents." Appealing to foreign powers for help has been a historical given among Lebanese political parties searching to re-balance internal power disparities. To follow religious and ethnic leaders almost blindly is a third constant in Lebanon's turbulent history. What happened in the aftermath of February 14, 2005, was yet another confluence of these traditional patterns of Lebanese political history. Yet the stakes seem even higher this time than in the past - the United Nations Security Council became involved, a Special International Tribunal was established and the spectre of a resurgence of the civil war looms on the horizon. It could have all turned out so differently. Until February 14, 2005, the country offered a semblance of stability. Once more it rose from the ashes to regain its position as the hub for financial services in the Middle East. Once again, it was ready to become a favorite destination for Arab tourism as well as a political safe haven in a turbulent region.

The nation's initial reactions to the murder of Hariri were feelings of shock, anger and vengeance. Most Lebanese directly blamed Syria, its constantly interfering neighbor, for the foul deed. The emotional popular reaction led to a massive peaceful demonstration. For a brief moment Lebanese from all sects, religions and parties joined hands to show unconditional

support for the nation in what became known as the Cedar Revolution. By this “revolution” of March 14, 2005, and by subsequent political developments, Syrian troops were forced to leave Lebanese territory. Yet after a brief interval, diplomatic relations with Syria were restored. It looked as if the “big brother” relationship between the two countries had finally come to an end. The direct reaction to the assassination had been one of unity. The answer to the question, “Who killed Hariri?” seemed obvious. Yet over time, as investigations progressed, there was a shift in the focus of most accusations and Syria was no longer on top of the list of likely culprits. Since then the search for the conspiracy behind the murder Hariri has made clear that there is a price to be paid to unravel and accept the truth. It is not certain that Lebanon can pay that price without falling back into civil war. The truth could even destabilize the whole Near East. “Let the facts speak for themselves”, is easier said than done. There are a few uncontested facts. Beyond that there are highly contested facts that fit into one of three conspiracy theories of which probably only two can coexist. In the following, we will look at the uncontested facts and the “facts” linked to three conspiracy theories and the possible motives behind them.

Uncontested Facts

Prime Minister Hariri died with 22 others, while more than 200 people were injured in the explosion that shook downtown Beirut on that fateful 14 February, 2005. The destruction on the crime scene was massive with debris and remains of human bodies dispersed along the St. George coast. Cell phones jammed, networks closed, TV stations reported the scene, schools were evacuated, roads closed, the Lebanese stock market tumbled - the whole country came to a halt. It was not the first high-profile murder that the Lebanese witnessed, but it was the first time that it unleashed such widespread dreadful emotions of anger and despair. Rafik Hariri was a powerful politician but also a business man who considered politics a means to an economically prosperous end. He was also the uncontested Sunni leader. This gave him unprecedented power on the Muslim front and made him the object of a personality cult; Sunnis referred to him at all times and he grew in power through them. Lebanon’s political life is famous for sectarian allegiances, clientele networks and foreign alliances. All that came together in Hariri - politics, economics and religion.

The event caused an international reaction; on February 15, 2005, the United Nations Security Council issued a presidential statement condemning the assassination as a “terrorist act” [1] that is, not just a threat to the stability of Lebanon, but a threat to international peace and security, which, according to Chapter VII of the UN Charter, falls under the mandate of the Security Council. Following the blast, the United Nations’ Secretary-General dispatched a Fact-Finding Mission to Beirut to investigate who was behind the assassination. It gathered evidence, interviewed witnesses, met with politicians - always in close cooperation with the Lebanese authorities. According to Peter Fitzgerald, Head of the UN Fact-Finding Mission in Lebanon, the

responsibility for the assassination could only be established by court but the circumstances and means could be investigated right away. His report was divided into three sections covering causes, circumstances and consequences of the murder. It noted that, “it is clear that the assassination took place in a political and security context marked by an acute polarization around the Syrian influence in Lebanon and a failure of the Lebanese State to provide adequate protection for its citizens.”[2] The Fitzgerald report also noted a certain lack of commitment and credibility in the local investigation of the crime. The Lebanese authorities’ failure to take adequate steps and provide security diminished its popular support.

An international tribunal became a ‘must’ for Lebanon, not only to find the culprits behind the assassination but to ensure the kind of transparency and accountability that the Lebanese government itself could not provide. The day after Hariri’s assassination, the UN Security Council had issued a Presidential Statement. It urged all states “in accordance with its resolutions 1566 (2004) and 1373 (2001), to cooperate fully in the fight against terrorism.” On April 7, 2005, the Security Council adopted resolution 1595[3], establishing the UN International Independent Investigation Commission (UNIIC). Its main task was to assist the Lebanese authorities in their investigations. A bilateral memorandum of understanding involving a contractual obligation between Lebanon and the UN, was signed on June 13, 2005, giving UNIIC the authority to investigate the circumstances of the murder in a completely independent way, free of any interference [4]. UNSC Resolution 1636 (2005) is based on Chapter VII of the UN Charter, which makes its implementation mandatory for all UN Member States, obliging all UN member states, including Syria, to provide full cooperation to UNIIC.

Realizing the political and technical implications that might emerge from the establishment of a Lebanese tribunal to look into the case, the Lebanese government requested the creation of a tribunal of international character in which Lebanon would take part. As a consequence, UNSC Resolution 1644 (2005)[5] (also passed under Chapter VII of the UN Charter) came as an official acknowledgment of Lebanon’s request that “those eventually charged with involvement in this terrorist attack be tried by a tribunal of an international character.” Dr. Masri, an expert on international law, emphasized in a conversation with the author of this article that a party to the tribunal cannot unilaterally withdraw and that Lebanon has committed itself to accept and obey the relevant UN resolutions. In other words, Lebanon is obliged to observe and implement the UNSC resolutions which are binding. On top of that, the Lebanese constitution contains a provision stating that Lebanon commits itself to implement and obey all UN resolutions, which makes it also a constitutional matter. UNSC Resolution 1757 (2007)[6], also passed under Chapter VII, established the Special Tribunal for Lebanon (STL). It entered into force on June 10, 2007; thus bringing the investigation and trial regarding the Hariri assassination under international jurisdiction, superseding Lebanese law, both regarding its decisions and the investigation before it. The statute of the court also notes that the Lebanese judicial authorities

should refrain from undertaking any further investigation of the Hariri assassination on their own, making the international tribunal the sole authority. These facts are uncontested. The facts and what they speak for in the following scenarios are not subscribed to by all parties.

Scenario # 1: Syria is Responsible for Hariri's Assassination

In 2002, Lebanon received a considerable sum of money - \$4.4 billion - from the Paris II Conference and other agencies.[7] The allocated funds were meant to support Lebanon's financial recovery after the civil war. By then Lebanon's economy was already showing signs of recovery. Hariri proved to be the economically and politically influential figure with international connections who was able to overrule special religious and, at times, political interests. He was surrounded by great economists, among them Bassel Fleihan who was also killed in the same explosion. The economic expansion plan that Hariri had prepared for Lebanon was, however, not compatible with the continued Syrian presence in Lebanon. This brought the two countries on a collision course. It has been suggested that Hariri might have exerted pressure, through his international connections, to push for UNSC Resolution 1559 which called for an end of the Syrian occupation and the disarmament of Lebanon's militias. While this might be true, it took place behind the scenes. In his declaratory policy, Hariri seemed keen on maintaining a positive relationship with Syria; he continued to consult with Syria on internal affairs as he had always done.

The behind the scenes antagonism between Hariri and Syria made the 'big brother' country with its occupation force the first suspect regarding the assassination. Syria had its intelligence services on the ground and a military presence everywhere. The immediate popular reaction called for the resignation of former Prime Minister Omar Karame's cabinet and the implementation of UNSC Resolution 1559 which had requested for the withdrawal of Syrian troops[8]. Saad Hariri, one of the sons of the slain prime minister, was the first to point the accusing finger towards Syria, right on the crime scene. Further direct accusations were made by various other politicians known to belong to the 14 March political Bloc. In an interview with German news magazine *Der Spiegel* in 2006, Saad Hariri said: "I'm telling you: Assad is responsible. Or let me put it this way: Based on everything I know, he bears at least some of the responsibility." [9] In his report Fitzgerald did not accuse Syria directly. Yet he stated that the atmosphere created by the constant Syrian presence and interference in the country's domestic affairs and governance resulted in a political polarization providing the necessary backdrop for the assassination of Rafik Hariri.

Tensions started to mount the day the UN decided to send a fact-finding mission. Expectations about some denouement rose with the presence of the investigation led by Detlev Mehlis, the Commissioner of the UN International Independent Investigation Commission (UNIIC). Most

Lebanese assumed that Mehlis was here to piece together a puzzle that would in the end reveal Syria's involvement. Politically speaking, the US had great interest in having the evidence point to Syria, since it would provide Washington with a justification to impose sanctions that were long overdue. The Bush administration was also concerned about terrorists passing through Syria to reach the Iraqi theatre of war.[10] Syrians, in turn, denied such allegations and put the blame on its own enemies who wanted to accelerate the demise of its influence in Lebanon or even push for a 'regime change' inside Syria itself. [11] So much for the first contested scenario.

Scenario # 2. Hezbollah is Responsible for Hariri's Assassination

In the midst of waves of accusations fuelling political tensions, proof had to be gathered and a preliminary judicial decision had to be made. The polarization manifest in the political debate divided the country into two Blocs: the March 14 Bloc - a Future Movement-led anti-Syrian Bloc and, opposed to it, a Hezbollah-led, pro-Syrian Bloc. When former Prime Minister Fouad Siniora's cabinet first requested the international tribunal, Hezbollah was first opposed to it. Eventually it accepted its establishment, to show its willingness to find the perpetrators behind the assassination. In most UN resolutions pertaining to the Hariri case, reference was made to the cooperation that the Lebanese Government would provide throughout the investigation and trial. Hezbollah is part of the government and thereby under a constitutional obligation to provide cooperation and support for the Special Tribunal for Lebanon (STL); anything less would constitute an obstruction of justice. However, threats were made by Hezbollah's leader Sayyed Hassan Nasrallah that the country should withdraw the financial budget for the tribunal. Lebanon had committed itself to pay 49% of the tribunal's expenses. However, the UN General Assembly is entitled to collect donations from Member States in order to cover, if necessary, the tribunal's total expenditures, thereby ensuring the continuation of the tribunal irrespective of the Lebanese's government's political will to do so.

Hezbollah's opposition to the tribunal is well known. An escalation of tension by the party began after leaks indicated that some of its members were implicated in the murder and that they might be indicted in a preliminary court decision. This propelled Hezbollah's leader, Sayyed Nasrallah, to accuse UNIIIC of being linked to Israeli intelligence and of basing its investigation on the testimonies of false witnesses. Ever since, Hezbollah has tried to discredit the tribunal, its findings and the future trials. Again, Lebanon was moving towards the brink of civil war as more details about the role of Hezbollah became emerged.

According to the German news magazine *Der Spiegel*, new evidence uncovered by the STL pointed to the existence of an operative cell of Hezbollah which had planned and carried out the "diabolical attack." [12] The article by Eric Folath described in detail the intelligence path that

led to focus suspicion towards Hezbollah. Folath revealed that a special unit of the Lebanese security forces, headed by intelligence expert Captain Wissam Eid, identified eight cell phone numbers that were present on the scene on the day of the explosion as well as days before; they were referred to as “the first circle of hell.” Purchased at the same store and activated six weeks before the assassination, the owners of these cell phones only communicated with each other, thus creating a closed network. The one person who might have been able to identify the buyer of the mobile phones was a store keeper. This witness died in a car “accident” after news about the network of “the first circle of hell” had surfaced. Beyond this circle network, there was a “second circle of hell,” composed of 20 phone numbers. It drew the attention of Captain Eid due to their close geographical proximity to the first eight and their presence on the site of the attack. According to sources in the Lebanese security forces, all of the numbers involved apparently belong to the ‘operational arm’ of Hezbollah. These “hot phones” as Folath refers to them, again formed a closed network. Yet the anonymity of this circle was blown when one of the phone users also made a private call. This one-time breach of security was enough to identify the person as Abd al-Majid Ghamlush, a Hezbollah member. While his whereabouts are unknown, he could be identified as the one who bought the phones. Traces caused by the breach of security led to another Hezbollah member, Hajj Salim. He is the suspected “mastermind of the terrorist attack.” According to Folath, Salim's secret "Special Operational Unit" apparently reported directly to Hezbollah's Secretary General. Captain Eid, who had made these breakthrough discoveries in the investigation, was killed in an explosion on January 25, 2008. There can be little doubt that his murder is directly related to his findings. He had been on a hot trail and had to be silenced before he would find a smoking gun leading directly to the perpetrators and their masters.

Following these events, due to tighter security, little more was leaked to the public. The possible issuance of indictments against members of Hezbollah led to an escalation of tensions, further deepening internal division in Lebanon. In recent speeches, Sayyed Nasrallah repeatedly accused STL of being an Israeli-backed tribunal. In order to shift the blame to Israel, in a speech held in August 2010, Hezbollah's leader released filmed aerial footage of Lebanon, particularly of Beirut, purported to come from intercepted Israeli surveillance. It showed the route, together with alternative back routes, which Hariri habitually used when traveling in the city. The video footage was a manifestation of Hezbollah's capabilities to intercept Israeli intelligence from Israeli unmanned aerial vehicles (UAV). However, as Sami Gemayel, an MP from the March 14 Bloc noted, the footage shown was dating back to 1997 while the murder took place in 2005.[13] In the same video, Sayyed Nasrallah claimed, “We have evidence that Ghassan al-Jidd [a retired Lebanese army Brig. Gen.] was present at the Rafik Hariri crime scene.” He went on to assert that this fact and his name were communicated to the authorities. Nevertheless Al-Jidd was able to leave the country for Paris before an arrest warrant could be issued. It was also claimed that the “military intelligence gathered information related to telephone calls that indicated Al-Jidd's involvement in spying for Israel.” The *Al-Akhbar* newspaper, labeling Al-Jidd an “executive spy,” asserted that “he used to plant dead mail in rough and smooth terrains. He used to place

explosives, cash, and communication devices for other spies to collect. He also used to buy prepaid mobile cards and send them to his Israeli operators. Al-Jidd took part several times in transporting Israeli officers from the seashore into Lebanon; a point that Hezbollah chief Sayyed Hassan Nasrallah emphasized on during his press conference, reminding that Al-Jidd was in the Saint George area the day before PM Rafik Hariri was assassinated in the same location.”[14] When answering questions to journalists, he justified the presence of a Hezbollah security network around the crime scene by implying that they were tracking down an Israeli spy. Sayyed Nasrallah’s speech was followed by a wave of intelligence investigations that led to two employees working for Alfa, one of the biggest telephone network companies. Both employees were arrested and charged for spying for Israel. His speech was not discredited by the March 14 Bloc. However, the Bloc suggested the investigation should be handled by the STL.[15] Some March 14 Bloc members expressed suspicion, others called for clarification, but they all shared the same view: the evidence needs to be studied and taken into consideration. In this way Israel also became a potential perpetrator.

Events continued to take an unclear turn for Hezbollah. On October 27, 2010 two STL investigators walked in a gynecology clinic in Beirut to get information about 17 women. The clinic, owned by a doctor who treats the wives of high ranking officials in Hezbollah, must have informed the party about the arrival of the STL investigators. Soon after they had arrived some 30 burka-clad ‘women’ came to the scene. According to a soldier guarding the UN investigators who came under attack on the premises of the clinic, the hands of the burka-clad fighters were more those of men than women. The UN investigators were accused of violating the honour of women by going to the clinic. [16] Sayyed Nasrallah used this staged clash to voice further threats to the STL. In a speech on *Al-Manar* television, he said that “from now on, any co-operation with the international investigators will be (considered as) helping them to attack [Hezbollah].”[17] The incident has been hardly noticed by the Western media, but it caused apprehension on the Lebanese political scene, for it was seen as proof that the STL was testing the waters with Hezbollah. So much for facts supporting the second scenario.

Scenario # 3: Israel is Responsible for Hariri’s Assassination

Despite Hezbollah’s contested political strategies, the party had gained wide popularity in 2006, following the Israeli war on Lebanon. The asymmetry of forces in the struggle between Israel and Hezbollah made most Lebanese forget about Hezbollah’s abduction of an Israeli soldier which had triggered the war; in the end Hezbollah looked, in the public perception, more like David successfully standing up to Goliath. Today, Hezbollah is acting on the streets of Beirut with the clear intention to discredit the STL. However, in doing so it is in fact discrediting Sayyed Nasrallah’s claims that Hezbollah had no part in the assassination. Sayyed Nasrallah is famous for his political stance of patience; a statement that he uses again and again in his

speeches is “let’s wait and see”. However, this time his party is no longer waiting but acting in a pre-emptive way as if in an exercise of damage control. It began by using its governmental powers and by withdrawing from parliamentary sessions whenever it was in opposition on some policy issue. It then escalated by offensive TV appearances and speeches as well as in demonstrations on the streets where Hezbollah supporters were mobilized to voice protest in the name of the party. *Foreign Policy* quoted Lebanese Deputy House Speaker, Farid Makari, as saying that the “increasing use of ‘civilians’ in violent attacks is a ‘Hezbollah trademark’ and a sign of the ‘total war’ launched by Hezbollah and its allies against the STL.”[18] Yet if Hezbollah believes that indictments against some of its members are not based on credible evidence, it should use its right of appeal and should cooperate with the STL to clear their name. Why then such an upheaval? The consequence of having a few members from the party indicted could be seen as proof that they were undisciplined members, not necessarily that the party itself ordered the assassination.

If the claims of Sayyed Nasrallah have merit, then with the evidence that he presented, Al-Jidd’s potential arrest and further investigations by the Information Department, the potential names of accused Hezbollah, could be cleared. Why then are Hezbollah’s actions and threats escalating? If they were truly following Al-Jidd, then their security apparatus had successfully located and tracked down a spy. The latter should be a successful intelligence operation, worth praising right away, not something to be delayed in its public announcement. The above list of ‘facts’ also lead to the question: why did Al-Jidd not flee the country directly after Hariri’s assassination? Why did he departure only at a later stage? Why was he, to begin with, roaming around the area?

After discussing these circumstances with Hussein Abdallah, a media analyst and former journalist at Beirut’s *The Daily Star*, the question has been asked: What if Al-Jidd was not spying but was given orders to simply roam around? This could possibly explain his delay in fleeing the country, the presence of the 20 SIM cards, and the lack of evidence leading to him. In this interpretation, he was not the perpetrator but the prey, placed there to keep Hezbollah busy while other agents carried out the terrorist act. Such a conclusion could point to Israel as the perpetrator, thus uniting all Lebanese around a truth that they could more readily accept. Abdallah’s scenario would explain Sayyed Nasrallah’s delay in exposing the evidence, for it would recognize the failure of the party’s intelligence agents to tell a hoax from a real threat. How likely and how strong this scenario is, only further investigations can tell.

Preliminary Conclusion and Outlook to the Future

It is obvious that the March 14 Bloc is rallying behind the STL. With Saad Hariri as the Prime Minister, the Bloc has been showing unanimous support for the UN-led investigation. In unison,

the Bloc has, in the past, accused Syria of Hariri's assassination. Yet more recently, the Bloc's political position has undergone 180 degrees shift. The more the Special Tribunal investigates the matter, the more the limelight has shifted away from Syria. In an interview with the Saudi newspaper *Asharq al-Awsat* [19] Saad Hariri recognized that accusing Syria was a mistake. Walid Jumblatt, "a fierce critic of Syria and Hezbollah following Hariri's murder,"[20] also changed his anti-Syrian position. In a TV interview he apologised for using harsh words about Assad. On September 16, 2010, in *Kalam el Nass*, a political show on LBC [a Lebanese TV station], Jumblatt even went further, warning against accusing Hezbollah for the murder of Hariri and calling for the cancellation of the STL in order to avoid internal strife in Lebanon.

This political U-turn is not unexpected; since 2005 the political scene has changed and so have the expected outcomes of the investigation and the likely findings of the STL. Saudi Arabia and France are on a path of rapprochement with Syria and Washington has embarked upon a hesitant re-engagement with Damascus.[21] The March 14 Bloc is following its allies in these political twists. The Cedar Revolution was a welcome political opportunity to implement an already existing UNSC Resolution to push Syrian troops from Lebanon's land. Karim Makdisi, a political science professor at the American University of Beirut, in an interview with AFP said that "All you have to do is read the history of Lebanon to understand that there are no solutions in Lebanon without Syria. (...) Officials in Lebanon cannot be against Syria. That is just not an option, and Hariri has realized that." [22]

In the beginning all allegations pointed towards Syria, politicians led anti-Syrian campaigns, the US apparently wanted to push Syria even closer into the arms of Iran, thereby creating a justification for a sanction regime. Today, the focus is on Hezbollah; the STL's investigations point to certain Hezbollah members who were present on the crime scene. The third scenario points to Israel, which is being accused by Hezbollah. So far the STL has not provided any accusations in that direction. The instigator behind the Hariri murder might be Syria avenging its political humiliation. It might be Hezbollah trying to stop a growing Sunni community in Lebanon. It might be Syria and Hezbollah working together. It might, as some argue, even be Israel, trying to safeguard its borders by breaking up Lebanon from within. Maybe more conspiracy theories will emerge, involving ever more intricate scenarios.

Although at the moment of this writing (Dec. 2010) the situation seems to be contained by a Saudi-Syrian understanding and by efforts of the Iranian ambassador in Beirut, Lebanon is still under great tensions. This was heightened by a recent development in Saudi Arabia. The Saudi King went to the United States for medical treatment and had temporarily assigned his powers to Crown Prince Sultan, who is known for not being keen on maintaining good relations with Syria. The situation became even more "explosive" when the Canadian Broadcasting Company (CBC) completed a documentary, apparently based on the UN inquiry and STL documents, in which it

identified the perpetrators as members of Hezbollah. The CBC documentary created a further surge of political tensions. It was countered by a press conference held by the Lebanese communications minister, Charbel Nahhas, who claimed that Israel had penetrated Lebanon's telephone networks. This disclosure might fend off the possible indictment of Hezbollah members and thus offer a semblance of proof for Hezbollah's theory that Israel was, after all, somehow responsible.[23] In all likelihood, the ultimate outcome involves more than one party and quite possibly elements from more than one scenario sketched here.

Will the Hariri assassination be yet another unsolved chapter in Lebanon's long history of slain political figures? The indictment and the STL will undoubtedly provide some answers, but, depending on the outcome, the country might be in turmoil again with a coup d'état by Hezbollah followed by Israeli, Syrian or perhaps even Saudi armed intervention as worst possible outcomes. The outcome of the STL investigation is likely to lead to a result greater than the country can handle, making Lebanon once more dependent on regional and international support for its survival. Will the Special Tribunal for Lebanon bring justice to the country at the price of peace? Or will the main political players opt for peace at the price of justice?

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Notes:

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