

**SPECIAL COURT FOR SIERRA LEONE  
OUTREACH AND PUBLIC AFFAIRS OFFICE**



**PRESS CLIPPINGS**

**Enclosed are clippings of local and international press on the Special Court and related issues obtained by the Outreach and Public Affairs Office**

**as at:**

**Friday, 3 December 2010**

Press clips are produced Monday through Friday.  
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# Sudan Tribune

Thursday, 2 December 2010

## ICC urged to defer arrest warrant against Sudan's president by African Union

By Tesfa-Alem Tekle

December 2, 2010 (ADDIS ABABA) – The Peace and Security Council of the African Union (PSC) has urged the International Criminal Court (ICC) defer its arrest warrant against Sudanese President Omar Hassan al-Bashir.



**Luis Moreno Ocampo (Reuters)**

The AU on Tuesday received briefing on the situation of Sudan and the activities of the AU High Level Implementation of Panel (AUHIP) at its 250th meeting held in Tripoli, Libya, an AU statement said.

The union's council has called the international community to exert collective support to Sudan by deferring the process initiated by the International Criminal Court ahead of an important independence vote in Sudan's south due to take place in January. The meetings final communiqué also indicated a need to lift imposed sanctions against Africa's largest country.

Earlier this year the International Criminal Court (ICC) added the charge of genocide to a 2008 arrest warrant for Bashir on charges of war crimes and crimes against humanity in Darfur. He always denied the charges claiming that the death toll in the conflict has been exaggerated for political reasons. The UN estimates that 300,000 people have died, whereas Bashir has put the figure at around 10,000.

The arrest warrant was the first ever to be by the ICC against a sitting head of state.

In January Sudan's south is expected to vote to secede from the north in a referendum in January. But negotiations over a separate plebiscite to resolve the future of the border region of Abyei have remain deadlocked with only five weeks left until the vote begins on January 9.

Peace and Security Council of African Union welcomed commitment of the Sudanese Parties, and encouraged them to pursue their efforts towards the implementation of the 2005 Comprehensive Peace Agreement (CPA).

The Council assured the Sudanese Parties of Africa's full solidarity and support. It expressed its full support to the AUHIP, and encouraged it to pursue and intensify its efforts in accordance with the decision adopted by the 207th meeting of the Peace and Security Council held in Abuja on 29 October 2009.

It has also welcomed the communiqué of the IGAD 16th Extraordinary Session of the Assembly of Heads of State and Government held in Addis Ababa, on 23 November 2010, and commended IGAD for its commitment to peace and security in Sudan.

The Council expressed AU's confidence in the leadership of President Bashir and First Vice President Salva Kiir Mayardit, who is also the President of South Sudan to lead the country into a new era of peace, regardless of the outcome of the self determination referendum.

On Wednesday judges of the International Criminal Court (ICC) issued an order today asking the government of the Central African Republic to arrest the Sudanese President if he attended the country's Golden Jubilee Independence Day celebrations. Bashir decided not to attend the event but did not give a reason.

This follows Libya asking Bashir to stay away from a summit between the African Union with the European Union in Tripoli to avoid a mass walkout by EU members.

Voice of America

Thursday, 2 December 2010

## International Pressure Mounts for Sudanese President's Arrest

Anne Look



Photo: AP

*Sudan's President Omar al-Bashir (file)*

Sudanese President Omar al-Bashir did not appear at independence day celebrations in the Central African Republic, where he faced the possibility of arrest and transfer to the International Criminal Court. Amnesty International says it is only a matter of time before he is brought to justice.

Sudanese President Omar al-Bashir is wanted by the International Criminal Court on charges of genocide, crimes against humanity and war crimes for his role in the conflict in Darfur.

Central African Republic invited the Sudanese president to attend a ceremony Wednesday in its capital, Bangui, to commemorate its 50th anniversary of independence.

No official reason was offered for Mr. Bashir's absence, but sources said mounting international pressure for his arrest played a role.

The International Criminal Court had called on the Central African Republic to arrest Mr. Bashir, if he showed up, and transfer him to the court. International human rights groups, like Human Rights Watch and Amnesty International, had criticized CAR's invitation to Mr. Bashir and urged the country to deliver him to justice.

Amnesty International's senior legal advisor, Christopher Keith Hall, says it is only a matter of time.

"These are crimes which have no statute of limitations," Hall said. "Once the arrest

warrant has been issued, that will be there for as long as it takes for justice to be done."

Since the International Criminal Court issued the arrest warrants for Mr. Bashir in March 2009 and July 2010, he has refused to surrender to the court and has traveled on the continent without arrest.

Amnesty International said Central African Republic had an obligation to arrest Mr. Bashir under the Rome Statute of the International Criminal Court, which it ratified in November 2006.

The government of Kenya, also a signatory of the Rome Statute, had refused to arrest the Sudanese president earlier this year when he visited.

Amnesty legal advisor, Christopher Hall, said countries should not protect Mr. Bashir.

"It would send exactly the same sort of message that the international community has been sending since Nuremberg, and that is if you commit a crime against humanity or a war crime or genocide, no matter what your rank, you will eventually face justice," Hall said. "This is exactly what happened to President Milosevic and President Charles Taylor, both of whom thought they had complete impunity from arrest. They both found out to their sorrow that justice caught up with them."

The independence day celebration in CAR was Mr. Bashir's second missed appearance this week. He was supposed to attend a European Union-Africa Union summit in Libya earlier this week.

Amnesty International says since the conflict in Darfur started in 2003, more than 300,000 people have been killed, thousands raped, and millions forcibly displaced.

## KPFA News

Thursday, 2 December 2010

### KPFA News: Kagame wants Professor Peter Erlinder "dead or alive"

By Ann Garrison

On Saturday, November 27th, KPFA News reported that Minnesota law professor and international criminal defense attorney Peter Erlinder had informed the State Dept. that high level Rwandan officials reported Rwandan President Paul Kagame's order that he be brought back to Rwanda "dead or alive." Erlinder traveled to Rwanda, in May this year, to defend opposition leader Victoire Ingabire Umuhoya. He was arrested within a week but released in June on medical grounds. Ingabire herself is now in prison.



*Law Professor Peter Erlinder, with his Kenyan lawyer Kennedy Ogetto, who is also one of his fellow criminal defense attorneys at the Interational Criminal Tribunal on Rwanda. Erlinder wears the pink prison garb of Rwandan prisoners that Victoire Ingabire Umuhoya, whom he had traveled to Rwanda to defend, wears now.*

#### Transcript:

##### **KPFA Weekend News Host David Rosenberg:**

Minnesota William and Mitchell Law Professor and International Criminal Tribunal on Rwanda Defense lawyer Peter Erlinder has issued a press release stating that, according to high-level Rwandan officials present at a meeting in Rwanda's capitol Kigali in mid-October, Rwandan President Paul Kagame ordered that he, Erlinder, be brought back to Rwanda "dead or alive." KPFA's Ann Garrison has the story.

**KPFA/Ann Garrison:** Law Professor Peter Erlinder says that former members of the Rwandan government, now in exile, report that Rwandan President Kagame said "Erlinder's release was a mistake" and that he and Paul Rusesabagina, the author of "An Ordinary Man," the book that the film Hotel Rwanda was based on, were responsible for drawing worldwide attention to the detailed 600-page UN report released Oct. 1, that exposes the role of Kagame's Rwandan Patriotic Front and its army in war crimes, crimes against humanity, and massacres of Hutu civilians.

Erlinder says that he has notified federal and local law enforcement officials and the U.S. State Department of the danger, and requested protection both for himself and for his confidential source. Speaking to KPFA today, from his home in St. Paul-Minneapolis, he explained why he will not be returning to Rwanda:

**Law Professor Peter Erlinder:**

On Oct. 6, the UN Tribunal for Rwanda issued a decision in which it said that the prosecution against me was illegal under UN immunity rules. As a result I have no obligation to answer to an illegal prosecution in Rwanda. And since that time, UN reports of the mass murders by the Kagame regime in Rwanda and in the Congo make it clear that returning to Rwanda would be suicide for anyone that Kagame considers a threat to his absolute power, and my returning to Rwanda is out of the question at this point."

**KPFA/Ann Garrison:**

What do you think about Kagame's growing enemy list?

**Peter Erlinder:**

Well, within the last several months, of course, nearly all of Kagame's opponents and journalists in the independent press have either been arrested or killed. The government newspaper has reported that Paul Rusesabagina of Hotel Rwanda's foundation is part of an Obama Administration/UN conspiracy to discredit the Kagame regime. And Rwanda's Ambassador to the U.S. has actually accused the former U.S. Ambassador to Rwanda, Robert Flatten, of being a gun runner. And as the enemies' list grows, this desperation only makes the regime more dangerous anywhere in the world, and I must take seriously the death threats that have been reported to me.

UN documents that are in evidence at the UN Tribunal, which of course are the reason for the charges against me in Rwanda, show that Kagame is responsible for the Rwanda Genocide already. And RPF culpability for the six million deaths in the Congo, reported in the UN Report that was made public October 1st, is in the public record too.

And a regime capable of these crimes is capable of eliminating its opponents anywhere it can reach them.

**KPFA/Ann Garrison:**

Has anyone from the State Department responded to the information that you gave them?

**Peter Erlinder:**

I haven't heard back from the State Department in any official way.

**KPFA/Ann Garrison:**

For more coverage of Peter Erlinder's case and related news reported from East/Central Africa, Europe, and the U.S., see the website of the San Francisco Bay View Newspaper, [www.sfbayview.com](http://www.sfbayview.com). For Pacifica, KPFA Radio, I'm Ann Garrison.



## TamilNet

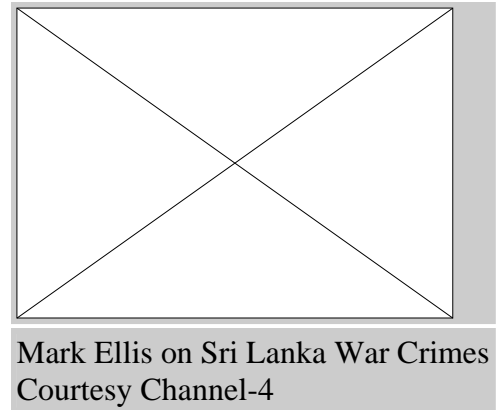
Friday, 3 December 2010

### Sri Lanka video contains evidence of war crimes, says ICTY legal expert

"This is a very disturbing video and clearly, on the face of it, shows war crimes have been committed and perhaps crimes against humanity, depending on who the group targeted was," said Mark Ellis, Executive Director of the International Bar Association (IBA), after reviewing the execution video broadcast by Channel-4, and added "[t]here is no question that this video is prima facie evidence that these crimes were committed. And therefore there's a responsibility on the part of the international community to push for an investigation and prosecution."

Ellis further said: "International law is very clear. This does not stop with the soldier. It must move up through command - so cases can be made at the individuals whose faces are shown but also possibly at their commanders if they are military forces."

"Ellis's characterization of Sri Lanka's crimes as possibly constituting crimes against humanity is indeed a welcome commentary, as Tamil people have long known the infliction of such systematic aggrievous crimes by successive Sinhala Governments on Tamil people to subdue the Tamils to a second class status. It appears that finally, albeit with delay as is expected under the authoritarian rule in Sri Lanka, clear and convincing evidence of grievous crimes committed in violation of international law are surfacing," said spokesperson for Tamils Against Genocide (TAG), a US-based activist group.



Mark Ellis on Sri Lanka War Crimes  
Courtesy Channel-4

Crimes against humanity, as defined by the Rome Statute of the International Criminal Court Explanatory Memorandum, "are particularly odious offences in that they constitute a serious attack on human dignity or grave humiliation or a degradation of one or more human beings. They are not isolated or sporadic events, but are part either of a government policy (although the perpetrators need not identify themselves with this policy) or of a wide practice of atrocities tolerated or condoned by a government or a de facto authority. Murder; extermination; torture; rape, political, racial, or religious persecution and other inhumane acts reach the threshold of crimes against humanity only if they are part of a widespread or systematic practice. Isolated inhumane acts of this nature may constitute grave infringements of human rights, or depending on the circumstances, war crimes, but may fall short of falling into the category of crimes under discussion."

In 1999, Mr. Ellis was appointed Legal Advisor to the Independent International Commission on Kosovo, chaired by Justice Richard J. Goldstone. In 2003, he was appointed by OSCE to advise on the creation of Serbia's War Crimes Tribunal. He is presently a member of the Advisory Panel to the Defense Counsel for the International Criminal Tribunal for Yugoslavia (ICTY).

The International Bar Association (IBA), established in 1947, is the world's leading organisation of international legal practitioners, bar associations and law societies.

## Sri Lanka Guardian

Sunday, 28 November 2010

<http://www.srilankaguardian.org/2010/11/war-crimes.html>

### War Crimes

By Maithri Wickremesinghe



Ordinarily a state exercises criminal jurisdiction only over offences which occur within its geographical boundaries. However, since the Nazi atrocities and the Nuremberg trials, international law recognises a number of offences such as war crime, torture, genocide, and crime against humanity as being international crimes. Individual states have taken jurisdiction to try these international crimes even in cases where such crimes were not committed within the geographical boundaries of such states. This jurisdiction is

sometimes referred to as universal jurisdiction. There are several statutory provisions in Britain that create a modified version of universal jurisdiction in respect of international crimes. Section 1 of the Geneva Conventions Act 1957 (war crime), Section 1 of the Taking of Hostages Act 1982 (hostage taking), Section 134 of the Criminal Justice Act 1988 (torture) and Part 5 of the International Criminal Court Act 2001 (genocide, crime against humanity and war crime) are some of the principle statutory provisions in this regard.

In December 2009 a British Magistrate, on the application of some of the Palestinian victims of the fighting issued an arrest warrant for Israel's former foreign minister Tzipi Livni over war crimes allegedly committed in Gaza that year. Ms. Livni cancelled her visit to Britain. Less than three months earlier a similar application was made by Palestinians for an arrest warrant against Ehud Barak who was the Deputy Prime Minister of Israel and its Defence Minister. He was in London and scheduled to meet the then Prime Minister, Gordon Brown and the then Foreign Secretary, David Miliband. The court refused to issue an arrest warrant observing that allegations of war crimes had been well documented, but that it was "satisfied that under customary international law Mr. Barak had immunity from prosecution as he would not be able to perform his functions efficiently if he were the subject of criminal proceeding" in Britain. In 2005 an arrest warrant was issued against a retired Major General of the Israeli Army on the application of victims in Gaza for his alleged violation of Article 147 of the Fourth Geneva Convention 1949 relative to the Protection of Civilian Persons in Time of War, a criminal offence in Britain under the Geneva Conventions Act 1957. Major General (retired) Doron Almog presumably fearing arrest, did not disembark from the airplane he had arrived in at Heathrow Airport in London.

### **The arrest of Senator Pinochet, the former Head of State of Chile.**

The arrest of Senator Pinochet in London is the best known instance of an arrest in Britain of a foreign national for alleged war crimes committed outside Britain. The resulting litigation (indeed there were three separate applications to the House of Lords) laid down the law of England on the issue of an arrest warrant on a Head of State.

On 11th September 1973 a right wing coup evicted the left wing regime of President Allende of Chile. The coup was led by Senator (then General) Pinochet. At some stage Pinochet became Head of State and remained so until 11th March 1990. In 1998 while Senator Pinochet was in Britain for medical treatment, a Spanish Court invoking principles of universal jurisdiction issued two international arrest warrants for several crimes allegedly committed by Pinochet primarily in Chile during his tenure as Head of State. Acting on these international arrest warrants, a British Magistrates Court issued two provisional arrest warrants. On the application of Pinochet, the High Court in London by a unanimous decision quashed both warrants holding that Pinochet (as former Head of State) was entitled to state immunity in respect of the acts with which he was charged. The decision of the High Court to quash the warrants was appealed to the House of Lords. Submissions were made on behalf of several parties including Amnesty International and Human Rights Watch. By a 3 to 2 majority (with Lord Hoffmann in the majority) the House of Lords in this first Pinochet case allowed the appeal and held that Senator Pinochet was not entitled to immunity. Shortly thereafter Pinochet's lawyers brought it to the attention of the House of Lords that Lord Hoffmann was connected with Amnesty International Charitable Trust albeit in an honorary capacity and that his wife was employed by Amnesty International. The House of Lords then reviewed the matter in a second Pinochet case and held that although there was no suggestion that Lord Hoffmann was actually biased against Senator Pinochet, he had "an interest in the outcome of the proceedings", was "in effect, acting as a judge in his own cause" and that "public confidence in the integrity of the administration of justice would be shaken if his decision were allowed to stand". The House of Lords ordered a fresh hearing.

### **Immunity available to a serving foreign head of state and a former foreign head of state.**

The opinion of the House of Lords in the fresh hearing in the third Pinochet case held by a majority of 6 to 1 that the arrest warrant was validly issued. In doing so they drew a distinction between the immunity available to a serving head of state on the one hand and a former head of state on the other. Customary international law conferred on a serving head of state immunity *ratione personae*. A person who has immunity *ratione personae* enjoys immunity by reason of his person and such immunity is absolute and inviolable by another State. Immunity *ratione personae* the House of Lords determined is confined to serving heads of state and heads of Diplomatic Missions, their families and servants. According to the House of Lords it is not available to serving heads of government who are not also heads of state, military commanders and those in charge of the security forces or their subordinates. It would therefore have been available to Hitler but not to Mussolini or Tojo.

Former heads of state such as Senator Pinochet, according to the House of Lords enjoyed immunity *ratione materiae*. A person entitled to immunity *ratione materiae* does not enjoy absolute immunity. His immunity must be referable to his official acts on behalf of the State while in office. In other words, he cannot be charged by a foreign state for any official act he engaged in while he was Head of State. The House of Lords held that commissions of acts of torture alleged to have been committed by Pinochet infringed *jus cogens* (a crime that infringed the principles of international law from which no derogation is permitted) which could not be an official act of a head of state and therefore the immunity to which Senator Pinochet is entitled to as a former head of state did not arise.

The House of Lords held unanimously that the position would have been different if Pinochet was a serving head of state. In the words of Lord Millet:

"The immunity of a serving head of state is enjoyed by reason of a special status as the holder of his state's highest office. He is regarded as the personal embodiment of the state itself. It would be an affront to the dignity and sovereignty of the state which he personifies and a denial of equality of sovereign states to subject him to the jurisdiction of the municipal courts of another state whether in respect of his public acts or private affairs. His person is inviolable; he is not liable to be arrested or detained on any ground whatsoever."

The Law Lords however went on to hold that while a serving head of state may not be charged in a court of another State, he may be liable to be charged by an international tribunal if the instruments creating such tribunal makes express provisions to this effect. So for example, even a serving head of state was liable to be tried in terms of the Nuremberg Charter which provides that

"The official position of defendants, whether as head of state or responsible officials in Government Departments shall not be considered as freeing them from responsibility or mitigating punishment."

Similar provisions are contained in Tokyo Charter of 1946, the Statute of Tribunal for the Former Yugoslavia, the Statute of the Tribunal for Rwanda and the Statute of the International Criminal Court.

### **The decision of the International Court of Justice in Congo v Belgium.**

Absolute immunity enjoyed by a serving head of state from courts of another State was confirmed in emphatic terms by the International Court of Justice (ICJ) in the Democratic Republic of the Congo v the Kingdom of Belgium.

Belgium issued an arrest warrant for Congo's Minister of Foreign Affairs, Aboulaye Yerodia Ndombasi for crimes against humanity. Congo made an application to the ICJ claiming that Mr. Yerodia as its incumbent Minister of Foreign Affairs enjoyed absolute immunity before Belgium courts and that the warrant violated such immunity. In its judgment on 14 February 2002 the ICJ emphatically held that

"in International Law it is firmly established that, as also diplomatic consular agents, certain holders of high - ranking office in a state, such as Head of State, Head of Government and Minister of Foreign Affairs, enjoy immunities from jurisdiction in other States both civil and criminal."

The ICJ went on to hold that if a minister for Foreign Affairs is arrested in another State on a criminal charge, he or she is clearly thereby prevented from exercising the functions of his or her office. The consequences of such impediment to the exercise of those official functions are equally serious, regardless of whether the minister for Foreign Affairs was, at the time of arrest, present in the territory of the arresting State on an 'official' visit or a 'private' visit."

Accordingly the ICJ held that whether on a private visit or an official visit a serving minister of foreign affairs and a fortiori a serving head of state is entitled to absolute immunity from arrest by a foreign state. The ICJ held that the warrant was unlawful and that Belgium must cancel the warrant and inform the authorities to whom it was circulated.

The ICJ like the House of Lords held that this immunity from arrest may not be available in respect of warrants issued by certain international criminal courts such as the International Criminal Tribunal for former Yugoslavia and the International Criminal Court where they have jurisdiction.

### **Arrest and prosecution in Britain of a foreign Head of State in the exercise of universal jurisdiction**

Prosecutions in Britain of international crimes under its statutes creating universal jurisdiction require the consent of the Attorney-General. No private individual can institute any such prosecution without such consent. Needless to say in view of international law, whatever are the merits of the matter, it is inconceivable that the Attorney General of Britain would grant approval for the prosecution of a serving foreign head of state, and even if he did, such head of state will enjoy immunity *ratione personae*.

However, no consent of the Attorney-General is required to obtain an arrest warrant in view of section 25 of the Prosecution of Offences Act 1985. It is this provision that is used by private individuals to obtain arrest warrants in cases involving alleged war crimes, the prosecution of which necessarily requires the consent of the Attorney-General. Although a prosecution of such crimes cannot be successfully maintained without the consent of the Attorney-General, an arrest warrant may be obtained pending the grant or refusal of consent to prosecute, on the basis that there is no time to obtain such consent before the suspect leaves the territory of Britain. However, in the case of a serving head of state customary international law would preclude the issue of even an arrest warrant.

### **Can a foreign Head of State visiting the United Kingdom be arrested on an International Warrant issued by the International Criminal Court?**

An instance in which a serving head of state of another State may be lawfully arrested in Britain is where the International Criminal Court (ICC) issues an International Warrant for his arrest and surrender alleging that he has committed an ICC crime, or been convicted by the ICC. Part 2 of the International Criminal Court Act 2001 (ICC Act) makes such warrant executable in Britain. In terms of the ICC Act (Section 23) if the warrant is with regard to a head of state of a state which is a party to the Statute of the International Criminal Court 1998 (Rome Statute) no immunity would attach to such Head of State but a head of state of a state which is not a state party to the Rome Statute will have immunity unless a waiver of immunity is obtained by the ICC in relation to a request for the surrender of such Head of State. In effect then, while the Head of State of a state party to the Rome Statute may be arrested in Britain on an International Warrant issued by the ICC, the Head of State of a non State Party to the Rome Statute such as the President of the USA, India, Russia or Sri Lanka cannot be so arrested unless a waiver of immunity has been obtained by the ICC.

*The writer is a practicing Attorney-at-Law and a Fellow of the Chartered Institute of Management Accountants of the UK. He has previously lectured at the Faculty of Laws of the University of Colombo and at the Kotalawela*

Emg.rs

Thursday, 2 December 2010

<http://www.emg.rs/en/news/serbia/140316.html>

### **ICTY chief prosecutor to present his report December 6**

Serbia is cooperating with the ICTY, but the government needs to do better than just state that it is willing to find and arrest Mladic and Hadzic - it has to show some tangible results of those efforts, according to the report, which was obtained by Tanjug.

International Criminal Tribunal for the former Yugoslavia (ICTY) Chief Prosecutor Serge Brammertz will present his regular 6-month report to the UN Security Council on December 6, which will include his opinion on Serbia's cooperation with the ICTY, chief prosecutor's spokesperson Aleksandar Kontic told a news conference on Wednesday.

The report will also include an evaluation of Serbia's search for the two remaining ICTY fugitives, Ratko Mladic and Goran Hadzic.

Serbia is cooperating with the ICTY, but the government needs to do better than just state that it is willing to find and arrest Mladic and Hadzic - it has to show some tangible results of those efforts, according to the report, which was obtained by Tanjug.

During his stay in New York, Brammertz will meet with permanent representatives of member states, top officials of the UN Secretariat and leading non-governmental organizations, Kontic noted.

The meetings will focus on progress in ongoing trials, appeals, cooperation with other countries and ICTY budget, said Kontic.

Brammertz will also attend a meeting of the Security Council working group on the ICTY residual mechanism, which means the creation of a new institution that would take over some of the functions of the tribunal after it is shut down.

## International Crisis Group

Thursday, 2 December 2010

### **Trial by Fire: The Politics of the Special Tribunal for Lebanon**

Middle East Report N°100 2 Dec 2010

#### EXECUTIVE SUMMARY

It is hard to see who can emerge victorious in Lebanon's latest crisis. The Special Tribunal for Lebanon (STL) dealing with the 2005 assassination of former Prime Minister Rafic Hariri soon will issue its first indictments. As speculation grows that its members will be named, Hizbollah has warned of firm action if the government, now led by the victim's son, Saad Hariri, fails to denounce the tribunal. If the prime minister complies, he and his partisans would suffer a devastating political blow. If he does not, consequences for them and the country could be more ruinous still. If Hizbollah does not live up to its threats, it will lose face. If it does, its image as a resistance movement may be further sullied. There are no good options, but the best of bad ones is to find an inter-Lebanese compromise that, by distancing Lebanon somewhat from the STL, preserves the country's balance of power without wholly undermining the work the tribunal has done so far. Saudi Arabia and Syria reportedly are working on such a scheme. It would be prudent for others to support such efforts and suggest their own ideas. The alternative is to either wake up to a solution they dislike or try to upset the only credible chance for a peaceful outcome.

Hope that the STL might become a significant precedent for international justice region-wide dissipated as the probe became enmeshed in, and contaminated by, a vicious local and regional tug of war. From inception, the international investigation was promoted by an assortment of Lebanese and non-Lebanese players pursuing a variety of goals. Some sought revenge and accountability, others to deter future political assassinations and bolster Lebanon's sovereignty. A few (notably France and the U.S.) saw an opportunity to promote a lasting political realignment in Beirut by strengthening a pro-Western alliance, dramatically lessen Syria's and its allies' influence there or even – a goal nurtured more in Washington than in Paris – destabilise the Syrian regime. There was, too, hope of a breakthrough in the Arab world for international justice principles and an end to the culture of impunity. The result was a remarkably wide consensus among actors who converged on a narrowly defined judicial process, resting on the assumption that Syria was guilty, and that its guilt could and would be established beyond doubt.

To invest such high expectations in the investigation was both slightly unfair and exceedingly optimistic. They rested on a series of misjudgements – about the effective balance of power in Lebanon; about Syria's ability to withstand pressure and isolation; and about the probe's capacity to deter future assassinations, which continued unabated. Nor did the international inquiry's promoters appear to fully take account of the time lag between their hurried political objectives and the tribunal's far slower pace.

In the years between Hariri's assassination and the moment the tribunal came to life, the Lebanese and regional contexts changed in dramatic fashion. Syria withdrew from Lebanon and, far from being ostracised, was being courted again, notably by France but also, to a lesser degree, the U.S. The 2006 war plainly established Hizbollah's military potential, deepened Lebanon's internal rifts and damaged the West's Arab allies. Hizbollah's brief May 2008 takeover of Beirut, followed by the Doha accord between duelling Lebanese camps, ratified a new domestic balance of power, ushered in a national unity government and hastened the fragmentation of the pro-Western, anti-Syrian coalition led by Saad Hariri and known as March 14. Following Saudi Arabia's footsteps, Hariri himself achieved a measure of reconciliation with Damascus.

Something else changed in the intervening period – the identity of the presumed culprit. As recent media leaks suggest and as Hizbollah’s own statements confirm, operatives belonging to the Shiite movement are now widely anticipated to be the first indictees. For March 14, the STL once more turned into a precious instrument in the domestic confrontation and, for its foreign backers, a tool with which to curb the Shiite movement. For Hizbollah, the tribunal became a matter of life-and-death, seen as another in its foes’ serial attempts to defeat it: accusations accepted as legitimate in Lebanon and the region could seriously damage its reputation, liken it to a mere (albeit powerful) sectarian militia, revive perilous sectarian tensions and rekindle efforts to disarm it.

Thus began an intensive, relentless campaign by Hizbollah and its allies to discredit the tribunal and intimidate those who might support it. Aided by some of the probe’s initial missteps, the Shiite movement successfully polarised and politicised the situation so that, even before indictments have been handed down, public opinion in Lebanon and the Arab world already has made up its mind: there are those who are convinced the STL is a blatantly political instrument doing Israel’s and the West’s bidding, and there are those who are persuaded of Hizbollah’s guilt. However credible or thorough the indictments, they are unlikely to change this much. Hizbollah threats to take unspecified action also loom large.

Nothing good can come of this. Some within March 14 and its backers believe the Shiite movement is bluffing, that it cannot afford to provoke a confrontation lest it bolster the very image of itself as a sectarian militia it fears the indictments will promote. Hizbollah and its supporters seem to think, conversely, that Hariri will cave in to pressure, cut all ties to the STL and denounce its allegedly political agenda. Both scenarios are theoretically plausible, neither is likely. The Shiite movement, having warned of catastrophe, can ill afford to do nothing; Hariri, having taken the helm of the Sunni community, would pay a heavy price for turning his back on the murder of the man who was both his father and that community’s pre-eminent leader. Banking on Hizbollah’s tameness or Hariri’s capitulation will only encourage the two sides to stick to uncompromising positions that could push Lebanon to the brink.

Riyadh and Damascus are said to be working on a compromise. Details remain murky, but one imagines possible scenarios. Lebanon could request the Security Council to halt STL activities once indictments have been issued, for the sake of domestic stability. It could condition further cooperation with the tribunal on its taking certain steps (eg, foregoing the option of trials in absentia; agreeing to look into the so-called false witnesses affair). Or cooperation could continue even as Lebanon expressed serious doubts as to the basis of its findings. A compromise should be accompanied by a collective agreement to allow the prime minister to govern more effectively – something he systematically has been prevented from doing.

Such a deal would not be neat, and it would not be pretty. Hizbollah would not get all its wants. But for Hariri to surrender could be political suicide and, by weakening the community’s leader, might pave the way for violent action by Sunni groups angered at the denial of justice. March 14 would not be satisfied either, having to accept real limitations on the STL’s work. But for it or its allies to stand in the way would risk provoking the very outcome about which they fret, namely more aggressive Hizbollah action leading it to greater, not lesser, political clout. What, then, would March 14’s foreign allies do?

Hizbollah’s reputation has been tarnished, and it is unlikely soon to be restored. March 14 once more is showing its fecklessness and the huge imbalance of power from which it suffers on the ground; that too will not soon be remedied. The tribunal will not achieve the loftier goals many projected onto it. No winner will come out of the current battle. What is necessary is to ensure the Lebanese people do not emerge as the biggest losers of all.