In recent weeks, over-determination of regional events has been plain in Lebanon. The war between Israel and Hizbullah, which was also a war between Lebanon and Israel, a war between Iran and Israel, between Syria and Iran, arguably a proto-war between Iran and the United States, brought back the worst possible nightmare to Lebanon as the playground, sometimes directly, more generally by proxies, of a regional and planetary fight. Like the Korean situation, where a half century after the peninsula was divided, matters have continued unsolved and world threatening; except that Lebanon did not even jell into a stable polarized hatred as happened in Korea. Killings continue, both in the form of individual assassinations and community- and state-based collective bloodletting. The threat to the world is clear and always present.

A few days before the war started on July 12, I had an occasion to express my concerns that the regional deadlocks were weighing heavily on the country.\(^1\) It was not possible to know that violence would take the tragic form it has, but large-scale violence was evident. It resulted in the renewed devastation of Lebanon because of the callous, illegal adventurism of Hizbullah and the brutal overreach of Israel coupled with the ineffective diplomacy of its American supporter. With the war predictably ending in stalemate, regional tensions are translating into prodromes of civil war inside Lebanon. One knows the country and the Middle East enough to expect that something must let go, and that it will take again the usual shape of immense violence. We can fairly predict that regional, and now straight international over-determination, will continue and intensify in Lebanon as the new fracture point between East and West, Islam and Christianity, Arabs and Jews, Shi’is and Sunnis. As a privileged locus of a strange but real third world war, a war officially described in Washington as ‘global war against terrorism’, GWAT, Lebanon will compete with other such Middle Eastern places where the fracture is gravest: Iraq, the Sudan, Palestine. Nor are other countries immune, including Western countries which are the inevitable place of regular outbursts of violence. New York, Madrid and London have offered dire foretastes of such predictable and hard to prevent outbursts.

Against this persistent over-determination, I have offered two priorities in the shape of the persistent request for accountability, both political and legal. In earnest, I believe that pressing ahead with those two issues may prevent Lebanon blowing up again because of the regional and overall determination. And it may not prevent mayhem, but in that case, I would at least hope that the prescribed course of action will lay the ground for Lebanese democrats regaining the initiative again at a later stage. We know the costs and difficulties will then be higher, but we shall at least have tried, once again.

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\(^1\) ‘Lebanon and Middle East flashpoints: An analytical list’. Mallat on regional deadlock, presentation at CIEL, St Joseph’s University, 31 May 2006.
I. Political accountability: the presidency

In Lebanese internal politics, accountability means presidential change: so far, we have failed to remove Mr Lahoud, but his legitimacy has been all but removed internationally. On that level, he has been reduced to meeting only with the other presidential pariahs of the world. Even in the Arab world, he is unwelcome, and his weak position makes a visit to Damascus or Tehran, his staunchest allies, presently inconceivable. Domestically also, he is heavily constrained: in the so-called national dialogue which brought together a number of leaders, the president, who is the head of the executive as well as the nominal political representative of Lebanese Christians, was not invited to attend. Unlikely as it is, changing the president remains in my view possible, legitimate, and imperative.

Possible: because of the idiosyncratic Lebanese political and constitutional system, it was always difficult to operate non-violent change at the top, but the means are there constitutionally ever since proof came of the now infamous meeting between our then Prime Minister, Mr Hariri, and the current Syrian president, Mr Asad, on 26 August 2004, a meeting document by the United Nations in which Asad threatened Hariri into submitting to Lahoud’s extension. As a matter of law, Lahoud’s extended term is unconstitutional, and Parliament can and should meet as soon as possible to remedy this grave violation of both the constitutional order of Lebanon, and to Security Council Resolution 1559 which required, a day before the coercive extension took place, that presidential elections in Lebanon be ‘free and fair… without foreing interference or influence’.

Legitimate: the Lebanese Cedar Revolution is first and foremost a democratic revolution. The Lebanese could not accept that their presidency resemble the lifelong, son-prolonged dictatorships which mark the Arab system with the hallmark of a persistent and self-reproducing nightmare. Lebanese women and men fought and continue to fight for alternation at the top, and the battle will unravel again in the course of 2007, when the extension forced on the country in 2004 comes formally to an end. One can fairly predict, here also, that regional and international interference in the process will be as thick as a brick. Still, the change is expected, and only a coup of tragic proportions by Syria and its allies will derail the process. We should expect it, prevent it if we can, but also win it when it is attempted.

By next year this time, Mr Lahoud will have become a dark past moment in Lebanese history, but we should not take this for granted. That battle for democracy will not be won until a new president is elected. My own effort to bring to the people of Lebanon an open presidential contest was conceived first and foremost as a competitive, democratic campaign for an institutional replacement of a failed dictator. Simply put, the campaign was a response to the democratic call of our revolution.

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Imperative: as regional and international over-determination continues, Lebanon will remain in the eye of the storm. It is headless, and unbalanced domestically. We cannot not have a functioning head of executive power, and we cannot not have a representative of the Christian community in power in a sectarian-based constitutional system like Lebanon’s. A new president is an imperative request for order, domestic and international.

II. Judicial accountability: the court

In the regional and international realm, there is an additional, judicial accountability to the political call for alternation at the top across the Middle East, from the young King of Morocco to the military dictator of Pakistan – and one hopes that the Afghani president goes home at the end of his current mandate. Accountability here is judicial. It has emerged through efforts to set up an international court to respond to the assassination of our former Prime Minister. I suggest we call it the International Court for Lebanon, ICL. We fought hard, and continue to fight hard, for the ICL Day by day, relentlessly. The Court, as an institutional response, is the prolongation of the principle that government is a government of laws, not a government of men. Here again, the Lebanese Revolution underlines with a message of unique civility its collective response to an age-old conundrum. How as victim do you respond to a policy of targeted assassinations against the political leadership of your country without launching a war, or without political counter-assassinations?

Law is the only response, and international law takes the form of retribution by an internationally sanctioned court to address effectively such an over-determined regional and international context playing itself out in Lebanon.

Let me develop some of the presidential campaign’s specific contributions to this formulation. Some are constitutive of a context, a background, including an active participation in the Indict movement, which I founded with leading Iraqi, British and American colleagues in London in 1996 to bring Saddam Hussein and his aides to trial; the case against Ariel Sharon and other Israeli and Lebanese commanders responsible for the Sabra and Shatila massacres, with a unique victory before the Supreme Court of Belgium on 12 February 2003, an important contribution despite the political reversal of this victory by unprecedented retroactive legislation which stopped the case in September of that year; and my active involvement as lawyer for the Musa Sadr family leading to the Lebanese chief prosecutor’s indictment of Mu’ammar Qaddafi and seventeen other conspirators and false witnesses in the summer of 2004.

This web of cases, to which must be added the extraordinary advances of international criminal law with Pinochet, Milosevic, Habre, the ICC and now so many other outlets, has created a culture in the Middle East which jelled upon Hariri’s assassination in the tribunal decided by the Security Council, and which is about to be set up against continued resistance from those who either participated, or aided and abetted the murders carried out since October 1, 2004. That day, former Minister Marwan Hamade was gravely wounded in a car bomb which took the life of his driver sitting next to him. I was
in New York when news came of Hamadeh’s assassination attempt, and it was clear that
the attack was a response to his stance and that of Rafic Hariri and Walid Jumblatt
against the coercive extension of Emile Lahoud’s mandate. Since this was an
international matter, flowing from Resolution 1559 about the need for fair and free
presidential elections, I expressed to contacts in the UN the need to have an international
investigation. This did not happen then, but the culture of accountability started to oil the
future court’s wheels, and when Mr Hariri was killed three and a half months later, the
idea of judicial accountability had taken root in those circles. The day after Hariri’s
assassination, the French government put forward the idea which eventually developed
into the so-called Fitzgerald, Mehlis and now Brammertz investigations and reports. A
natural legal consequence was the tribunal, and a Security Council draft resolution which
I proposed on the day following Hariri’s death included the need for the tribunal, which
would have spared Lebanon many ongoing disputes on establishment, nature,
competence, and related complications. Most importantly, it would have started to act as
a potential deterrent to future assassinations, and, if not, as an expectation which the
families of the victims would see as a tangible response to their suffering.

Legally, a number of related questions were bound to arise, for instance how to qualify
the killing of Mr Hariri. On the basis of Amnesty International’s qualifications of
bombings, suicidal or not, that claim lives indiscriminately, I preferred the qualification
of crime against humanity, and I have been on record time and again as a critic of the
concept of terrorism, whether for the 11 September massacre, or for such acts as the
Hariri assassination. In due course, that problem emerged vividly, and the draft statutes
of the Hariri tribunal included the crime against humanity category. Resistance from
those who oppose the ICL forced the corresponding article in the draft statutes out, but
it’s also true that the assassination of Hariri was early on described by the Security
Council as ‘an act of terror’. In the end, it might not matter that much for the Tribunal.
Far more important is the issue of other assassinations, from the attempt against Marwan
Hamadeh on October 1, 2004, to the bomb that targeted a leading Lebanese investigator
and killed four of his aides on September 5, 2006. I am afraid there will be more
attempts, and it is important that the ICL anticipate any further such crimes.

The presidential campaign developed a full International Court for Lebanon project, to
include as a matter of coherence and deterrence all 15 attempts since October 1, 2004. I
believe we are almost there, but we cannot let our guard down. And if we need to stand
up to the Russians and other authoritarian governments who try to undermine this
fundamental request for their own cynical calculations, we shall. The ICL is a moral
argument that has won the day, and it should not be allowed to stumble on technicalities
put forward by this or that Security Council member to advance its own political
priorities. The emergence of the ICL is imminent, however, its statutes approved in New

3 Mallat, “September 11 and the Middle East: Footnote or watershed in world history?”, Crimes of War
Project, September 2002 (Special issue on September 11, a year after), www.crimesofwar.org; “The
original sin: ‘Terrorism’ or ‘crime against humanity’?”, Case Western Journal of International Law, 34,
4 See extensive documentation, prepared by Dr Nisreen Abyad, on mallatforpresident.com.
York and Beirut, and it is difficult to see how its emergence in the coming few weeks can be prevented.

I am far more concerned by the legal performance of the current investigator, Mr Serge Brammertz. This is another occasion for me to put it on record that serious questions raised by his pusillanimity, lack of professionalism, absence of common sense and want of legal leadership.\(^5\) Pusillanimity was manifest again in his latest report on September 25, 2006, when he passed under total silence the attempt against the life of his Lebanese counterpart in the investigation and the killing of his four aides on September 5, only twenty days earlier.\(^6\) Brammertz’s lack of professionalism appears in the prolonged detention of a number of accused without adding a shred of evidence why they should be kept in jail without trial. The lack of legal leadership is apparent in the shocking vacuity of his conclusions throughout the three reports he has delivered over the course of a full year, in contrast with the advances made by his two predecessors.\(^7\) As for common sense, how does Brammertz expect for any conclusive results he may one day finally present to a court after over a year of absolute silence coupled with the tabula rasa he made of the important conclusions reached by his two predecessors? This brings me to the grave following conclusion, which I reached together with other expert colleagues like Prof. Duraid Bsherrawi, from Strasburg University.\(^8\) When the ICL is set up, a different type of prosecutor is needed. The case is too important for the Middle East to allow the appointment of a prosecutor with the checkered performance of the current investigator. This is a pivotal position for accountability, for which far more important skills and courage are needed on all four scores where I believe Mr Brammertz has failed justice: common sense, leadership, professionalism, and virtue, if not plain integrity.

There is a further, important horizon for justice in Lebanon to impose accountability as a central mode of public operation in the Middle East. To protect and reinforce the revolutionary message of non-violence associated with the trial, I repeat the need for the ICL to be competent for all the assassination attempts since 2004, and the future ones also, whether they are perpetrated by the Syrian government, Islamic extremists, Israeli services, or any party indeed that uses violence against Lebanese citizens. But we shall work to widen the competence temporally to include all leadership assassinations, since Mustafa Saad and Kamal Jumblatt to Bashir Gemayel, Mufti Hasan Khaled, Rashid Karame and Elie Hobeika, including also, importantly, the disappearing in Libya by


\(^6\) Attempt to kill investigator Colonel Samir Shehadeh, in a car bomb that leads to the death of four men in his security apparatus. Note the fact that Serge Brammertz does not even mention this fresh, dramatic episode in paragraphs 95, 96 of the Fifth report, dealing with the security of the investigation.

\(^7\) See the detailed analysis of Professor Dureid Bsherrawi (Doreid Becheraoui), ‘*Brammertz a’ada al-tahiq ila niqtat al-sifr*’. Brammertz sets back investigation to starting point’, *al-Siyasa* newspaper, 26-27 September 2006.

\(^8\) Correspondence with Dureid Bsherrawi, 3-4 November 2006.
Mu‘ammar Qaddafi of Imam Musa Sadr and his two companions. Here is a clear pattern of the regional meddling by various Middle East governments using Lebanon as the playground in which they settled their own accounts and promoted their violent policies.

In law, such coverage is possible in so far as most of those cases have remained open in Lebanese law under the category ‘judicial council cases’, which is a tribunal that includes the senior judges of the Republic, set up precisely for crimes that undermine the stability of the country. Owing to the proven or suspected involvement of foreign parties, usually governments, which have contributed to the regional over-determination of Lebanon, it is time that all Lebanese come together on the need to make foreign criminal meddlers accountable. With the possible exception of the Karame case, these murders and disappearances have remained untried, and their commandeering foreign assassins remain at large.

It is true that such a policy of justice requires a leadership in Lebanon and the UN which may not be available immediately. But we should persist. We seem to have succeeded in bringing the ICL to life, and to enlarge its competence to cover the 14 or 15 murders which have been identified with the same pattern of regional involvement. We must hold on tight to the bar of accountability as key for the future of Lebanon, and there is no reason why our democratic, non-violent Revolution, should not prevail.