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Syrian Assassination & The Special Lebanon Tribunal: Political Necessity and the Filtering of Justice

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INTRODUCTION:

On February 14, 2005, Rafik Hariri and 21 others were killed when a massive car bomb exploded outside the once-great St. George Hotel in Beirut, Lebanon. The highly-proficient assassination reeked of state sponsorship in general, and of Syrian involvement in particular. That said, as political realities regarding Syria’s role in current international security initiatives (e.g., the countering of Iran’s nuclear program) emerged, the integrity of the United Nations’ International Independent Investigation Commission (I.I.I.C.) was diluted. In light of the possible collapse of the Syrian regime (amongst other concerns) given an indictment of President Bashar al-Assad, many, including members of the U.N. Commission itself, have speculated as to what exactly the investigation will be allowed to conclude.\(^1\) Below, I discuss both the competing political-judicial concerns involved and the ramifications of such decisions.

\(^1\) Hammer, Joshua: “Getting Away with Murder” The Atlantic December 2008 p.71
DEATH OF THE NATIONAL PACT: BIRTH OF SYRIAN HEGEMONY

In 1943, as the march towards independence from France quickened pace, the Lebanese found themselves in need of a framework by which to self-govern a tricky mix of Shia, Sunni, Druze, Isma’ilite, Alawite, Maronite, Greek Orthodox, Melkite Catholic, Armenian Orthodox, Syrian Catholic, Armenian Catholic, Chaldean, Assyrian, and Coptic Protestants.\(^2\) That framework, The National Pact, would allocate power, both in percentage terms and in specific awards of office, amongst Christians and Muslims proportionate to their respective sizes as determined by the 1932 census. That census read as follows: 51% Christian (Maronites alone consisted of 29% of the population); 49% Muslim (22% Sunni, 20% Shiite)\(^3\). In line with those numbers, the office of the President was given to the Maronite “confessional”, the Premiership was awarded to the Sunni confessional, and the Speaker of the Parliament was guaranteed to the Shiites.\(^4\)

The National Pact worked well for a time, but an ever-expanding Muslim population soon began to resent their minority status. Subsequent calls for an adjustment to the census numbers were particularly appealing in Muslim quarters in the 1950’s given growing Islamic/Arab nationalism in the region, and in Syria and Egypt in particular. Christians were, understandably, reluctant to allow amendments to the ’32 census in fear of losing both their personal power and their secular governmental structures.

\(^2\) CIA Factbook
\(^4\) Lecture Notes: taken by the author during a Shari’a lecture given by Professor Russell Powell at Bahcesehir University (Istanbul, Turkey) in 2007
By 1975, 400,000 majority Sunni Palestinians—thousands of whom were Palestinian Liberation Organization (PLO) fighters—crowded into the cities of Lebanon.\(^5\) This large influx not only threatened many in the Christian community, it also exacerbated a downturn in the Lebanese economy.\(^6\) The result: inter-confessional relations reached the breaking point, and civil war began in April of 1975. The Phalange party, a consortium of Christian militias headed by Pierre Gemayel, and the National Movement, a Muslim coalition headed by Kamal Jumblatt, entered into all-out combat in the urban sprawl of Beirut and beyond.\(^7\)

Throughout the fighting, potential benefactors looked on with varying degrees of interest. The French and Israelis, for example, though reluctant to commit troops, were ill prepared to see the badly bruised Phalange defeated outright. The Syrians on the other hand, were determined to do almost anything to prevent a full-scale Israeli invasion, and to return Lebanon to the Syrian sphere. “Lebanon was an aberration, they argued, a result of Maronite particularism and French indulgence that was not even accepted initially by many of its citizens.”\(^8\) Enter Pax Syriana. With the approval of the United States, Lebanon, and Israel,\(^9\) Hafez al-Assad marched into Lebanon in 1976. Syrian military victory was achieved as early as October of the same year, but true consolidation of power wasn’t realized until Syria effectuated the assassinations of Kamal Jumblatt and Pierre Gemayel in 1977 and 1982 respectively.\(^10\)

As Alawite occupier, the Syrian regime didn’t take kindly to the billion dollar Sunni threat that emerged in the form of a flamboyant Lebanese developer named Rafik Hariri. After

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\(^6\) Id.
\(^7\) Id.
\(^8\) Id. at p. 20
\(^9\) Id.
\(^10\) Id. at p.21 and 23
all, Syria is nearly 75% Sunni, while the Alawites account for less than 15% of the population.\textsuperscript{11}

Note: the Syria of which I speak here is not that of the ‘Lion of Damascus’—who had a lucrative, albeit guarded, relationship with Hariri—but that of the lion cub, Assad’s son Bashar.

Bashar’s new regime roster read as follows: Assef Shawkat (Deputy head of military intelligence, and husband of Bashar’s sister Bushra), Maher al-Assad (Assad’s brother and head of the Presidential Guard)\textsuperscript{12}, Mohammed Nassif (eventual Deputy Director of the General Security Department), Adnan Makhlouf (then-head of the Syrian Republican Guard), Rami Makhlouf (Adnan’s son, Bashar’s cousin, and an extremely powerful Syrian businessman), Zualhema Shaleesh (a controversial general in the Republican Guard), Ali Arslan (Syrian chief of staff, and Bashar’s brother-in-law), Bahjat Suleiman (head of the Internal Security Section of the General Security Department), Jamil Sayyed (head of the Lebanese Surete Generale, and the gloved fist of Emile Lahoud), and most importantly, the Maronite general himself, Emile Lahoud (one time head of the Lebanese military, and eventual multi-term President of Lebanon).\textsuperscript{13}

Hariri was also a man with his own network of powerful sponsors, chief among them were French President Jacques Chirac, and Saudi King Fahd. In fact, it was to the Saudis that Hariri owed his substantial wealth. Ironically, the nucleus of that fortune, the money with which Hariri sought to rebuild Lebanon, was earned by the rush-construction of a hotel in the city of Ta’if\textsuperscript{14}. I use the term ironic here for it was in this same city that Lebanon’s “Cheque Book”

\textsuperscript{11} CIA Factbook: \url{https://www.cia.gov/library/publications/the-world-factbook/print/le.html}

\textsuperscript{12} Hammer, Joshua: “Getting Away with Murder?” The Atlantic December 2008 p.74


\textsuperscript{14} Id. at p.18
[sic]\(^{15}\), as he was sometimes called, would witness, with the signing of the Ta’if Accord, the plundering of his country’s sovereignty.

The Accord, endorsed by the Lebanese National Assembly in 1989, called for the “establishment of a joint Syrian-Lebanese mechanism for making future decisions about the positioning and functions of Syrian troops.”\(^{16}\) By requiring formal Syrian acquiescence regarding the presence of its own soldiers, this agreement, in effect, all but ensured that Syria would never leave. In fact, it would take the Syria Accountability Act—calling for a Syrian “commitment to completely withdraw its armed forces…and security forces from Lebanon”\(^{17}\), National Security Council Resolution 1559—noting the importance of “the withdrawal of all non-Lebanese forces from Lebanon”, and the full force of the ‘Cedar Revolution’ to disgorge the Syrian security apparatus from its hub in the Bekaa Valley.

If as a private citizen Hariri’s personal wealth and rolodex threatened Bashar, his management style and efficacy as Prime Minister must have terrified the new Alawite faction in Syria. Samir Atallah, of the Ash-Sharq al-Awsat, described the ‘Hariri Experience’ as follows:

>This is…the first time since independence that everything—from the state of the local currency, to the economy in general, reconstruction, the standard of living, electricity,  


\(^{16}\) Konrad Adenauer Stiftung

\(^{17}\) Thomas Legislative Information via Library of Congress:
water and telephones—is linked to the prime ministry, which in turn is linked to Rafik Hariri.18

“Suddenly, here was someone who could steer Lebanon safely with international guarantees and without the Syrians.”19

If that weren’t threatening enough to the Syrian regime, Hariri was involved in a very public snub of President Lahoud. Not only did Hariri fail to attend the annual Independence Day parade in Martyr’s Square in honor of both the nation and the president at its helm, the Prime Minister refused to send even a representative.20 Damascus viewed this as an unacceptable challenge to its authority and as a personal slight to their president. After all, Bashar al-Assad is noted as having said “I am Lahoud and Lahoud is me.”21

Nonetheless, this affront might have been forgiven, or at least forgotten, if Hariri had retired from Lebanese politics once and for all after being removed from office in October of 2004. But, that was not to be the case. Hariri stayed engaged, and in the run-up to the 2005 elections his appeal only grew, thus provoking the Syrians further. In fact, Hariri’s voter-base had extended both north and south of Beirut into Shia dominated areas that had once been bastions of Syrian power. Hariri had even agreed to a deal with Hizbullah, whereby Hassan Nasrallah convinced Hariri to endorse a Hizbullah candidate.22 It seemed as if the only parties with whom Hariri failed to deal were those with whom he chose not to deal, namely those

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20 Id.
21 Id. at p.100
22 Id. at p.125
controlled by pro-Syrian MPs (a.k.a. “back-stabbers”\textsuperscript{23}). Ultimately, Hariri proved to be too dangerous for Damascus. And, when a Syrian sponsored change in Lebanese electoral law—a blatant attempt at gerrymandering in favor of the Shiite vote—failed to slow Hariri’s push, his fate was sealed.

VALENTINE’S SPARK & THE BEGINNING OF INQUIRY:

On Monday, February 14\textsuperscript{th}, 2005, Harari’s six car security team raced along the Beirut seafront. A Toyota Land Cruiser, designed to provide front-end muscle/clearing power in the case of roadblocks or other obstructions, lead the convoy. It was followed closely by car two, a Mercedes S-500; both vehicles full of security personnel.\textsuperscript{24} The third car, an armor-plated Mercedes S-600, was driven by Hariri himself—as was his preference.\textsuperscript{25} Cars four and five, like car two, were Mercedes S-500s equipped with 4 gigabyte jammers designed to counter any cell-phone triggered bombs en route.\textsuperscript{26} Lastly, the car in the sixth position, a heavily modified Chevrolet, acted as Mr. Hariri’s personal ambulance.\textsuperscript{27}

Unbeknownst to Hariri’s chief of security, Yehya Arab (a.k.a. Abu Tarek)\textsuperscript{28}, the convoy was being tracked by a sophisticated set of operatives. Scouts relayed the convoy’s movements to an awaiting ambush using “throw away phones” (i.e. one-time-use prepaid cell-phones).\textsuperscript{29} One such phone belonged to a man sitting in a white Mitsubishi van parked in front of the once-

\textsuperscript{23} Id. at p.9  
\textsuperscript{25} Id.  
\textsuperscript{26} Id. at p.3  
\textsuperscript{27} Id. at p.10  
\textsuperscript{28} Id. at p.2  
\textsuperscript{29} Id. at p.11
great St. George Hotel. As the convoy passed his position at 12:55, the driver of the van—stolen off the streets of Japan months earlier—detonated its payload. The 2,200 pounds of explosives left a 30 foot crater, killing Rafik Hariri and 21 others.

Some speculated, initially, that Hizballah was to blame. And, admittedly, the Hariri-Nasrallah relationship was a rocky one in its earlier days. But, towards the end of Hariri’s life, that relationship warmed dramatically. In fact, beyond the above-mentioned Hariri endorsement, his twice-weekly meetings with Nasrallah appeared so cozy that the Amal Movement—Hizballah’s chief competitor for Shia votes—launched an attack during municipal elections in an attempt to discredit/disrupt this budding political alliance.

Regardless, some continue to point to Hizballah’s strange behavior post-assassination, and to its refusal to cooperate with the United Nations International Independent Investigation Commission (I.I.I.C.) as proof positive of involvement. French paper Le Monde, for example, claimed that Hizballah members were caught photographing the Special Tribunal’s building. Guilt is then further implied as the paper continues on to quote the Tribunal’s Registrar, Robin Vincent, as having said “Deduce the political conclusions you want.” Now, one could indeed deduce that such behavior implies guilt, but guilt of what? As a rule, Foreign Terrorist

\[\text{Id.}\]
\[\text{Id. at p.12}\]
\[\text{Hammer, Joshua: “Getting Away with Murder?” The Atlantic December 2008 p.70}\]
\[\text{Id.}\]
Organization (FTOs)\textsuperscript{37} tend to operate in secrecy. That said, is Hizballah’s reluctance to cooperate with a criminal investigation a sign of culpability in the Hariri assassination, or simply an attempt to avoid the “accidental” unearthing of other illicit activities that the organization is assuredly involved in?

Instead, your author would suggest that if Syria—a State Sponsor of Terrorism since December of 1979\textsuperscript{38}—colluded with any organization outside of the Syrian-Lebanese security apparatus, it would have been the Amal Movement. After all, and in addition to the Amal-inspired attack mentioned supra, it was Nabih Berri, the organization’s leader, that delivered the Syrian order demanding that Hariri step down as Prime Minister.\textsuperscript{39} As such, Berri found himself in the unenviable position of being at odds with a man that would soon retake the Premiership. Furthermore, Hariri had clearly chosen to support Hizballah over Amal, and openly regarded Berri as “irredeemably corrupt and unreliable.”\textsuperscript{40} Lastly, if one examines the results of the election that took place following Hariri’s murder, the Development and Resistance Bloc—which includes Berri’s Amal Movement—somehow gained 15 seats\textsuperscript{41}: this, despite a vote trend that favored Hizballah before the murder. Did the removal of one of Hizballah’s most visible associates contribute to this success? And would that be enough of an incentive to participate in such a high-level assassination?

Whatever the answer, for Syria, the plot has, for now anyway, backfired. Rafik Hariri’s son, Sa’ad, led his father’s Future Movement Bloc to victory—ultimately taking 36 seats in

\textsuperscript{37} As designated by the United States government
\textsuperscript{38} U.S. Department of State: \url{http://www.state.gov/s/ct/c14151.htm} (accessed 3/9/2009)
\textsuperscript{40} Id. at p.118
\textsuperscript{41} CIA Factbook: \url{https://www.cia.gov/library/publications/the-world-factbook/print/le.html}
Parliament\textsuperscript{42}, and immutable popular outcry put an end to a 30 year Syrian veto on Lebanese sovereignty. International condemnation followed, a U.N. sponsored investigation was begun, and arrests were made. The first head of the I.I.I.C., Detlev Mehlis, implicated Asef Shawkhat and Maher al-Assad, in his preliminary report.\textsuperscript{43} And, though their attorney, Akram Azuri, is said to be “extremely optimistic” about the possibility of release once transferred to Scheveningen Detention Center in The Hague, generals Jamil Sayyed and Ali Hajj remain (as of the writing of this article) in custody.\textsuperscript{44}

If found guilty, one might be tempted to dismiss the doings of General Jamil Sayyed as the biddings of President Lahoud, rather than of Syria. But, that would be a much tougher argument to make in the case of General Ali Hajj. Hajj was once a close aide to then-Prime Minister Hariri, that is, until he was fired after being discovered as a spy for Syrian military intelligence.\textsuperscript{45} For his troubles, the Syrians installed him as the Director-General of the Internal Security Forces (ISF), where he immediately reduced the size of the Prime Minister’s ISF protection detail from 40 officers to just 8.\textsuperscript{46} A decision made out of spite, or a decision made in preparation for events to follow?

Now, even if these generals are convicted, and even if their actions are attributed to the Syrians, one has to ask what next? Sadly, your author believes that the Tribunal would then stall. For even if one assumes that Jamil Sayyed took his orders directly from President Lahoud, who-whom would you suppose Lahoud took his orders from? The answer to that question, given

\textsuperscript{42} CIA Factbook: https://www.cia.gov/library/publications/the-world-factbook/print/le.html
\textsuperscript{43} Hammer, Joshua: “Getting Away with Murder” The Atlantic December 2008 p.72
\textsuperscript{44} Daily Star (Beirut): http://dailystart.com.lb/article.asp?edition_id=1&categ_id=2&article_id=99761
\textsuperscript{46} Id. at p.116
the power structure and dictatorial ruling style of the Alawite faction in Damascus, leads straight to the Assad regime, if not to Bashar al-Assad himself. And, this is precisely the problem. Finger-pointing at that level would have dramatic consequences on current international security initiatives that require Syrian cooperation, cooperation that would likely be premised upon the filtering of any findings that result from this investigation and/or trial series. As Joshua Hammer writes in his excellent article in The Atlantic magazine:

An indictment of members of the Assad family and their closest allies, all members of Syria’s minority Alawite sect, could scuttle negotiations for a comprehensive peace deal between Syria and Israel. It could drive Assad further into the arms of Iran. It could even lead to a palace coup, or stir the country’s disenfranchised Sunni majority to revolt.47

POLITICAL FILTERS:

In a March 2nd, 2009 Daily Star article, U.S. Department of State spokesman Robert Wood is quoted as having said that “the court [is] a clear sign that Lebanon’s sovereignty is non-negotiable.”48 The question remains, however, as to the negotiability of the judicial product that emerges. And, perhaps political filtering is unavoidable given the international nature of the court. Gideon Rachman, chief foreign-affairs columnist at the Financial Times, wrote that international agreements are so perplexing due to the fact that “those agreements have to be sold

47 Hammer, Joshua: “Getting Away with Murder?” The Atlantic December 2008 pp.71 and 72
in individual nations—where conceptions of identity and interests remain stubbornly local.”

Your author would argue that international law; nothing more than a product of international agreement, is no different. As an illustration, I cite various reactions regarding the International Criminal Court’s (ICC) recent issuance of an arrest warrant for Sudanese president Omar Bashir. The remarks that follow seem to beg for the filtering of justice based on individual perceptions of political necessity.

Despite ICC investigations in Uganda, the Democratic Republic of Congo, and the Central African Republic (i.e., all non-Arab countries), Nadim Hasbani, Senior Arab Media Analyst for the International Crisis Group, points out that “91% of the Arab public believes that the ICC’s prosecutions are politically motivated.”

The Guardian reports that the Egyptian government is “greatly disturbed” by the warrant.

Mikhail Margelov, Russian special envoy to Sudan, said that the ICC decision to issue an arrest warrant “will create a dangerous precedent…and could negatively affect the situation both inside Sudan and the overall situation in the region.”

Liu Guijin, China’s special envoy to Darfur, said that “[justice] should not be acquired at the cost of peaceful process in the region.”

China’s Xinhua news service reported that the African Union “is mulling a collective walkout from the ICC.” And lastly, Hamas (i.e. 49 Rachman Gideon: “A Bad Year for Diplomats” Economist Magazine: The World in 2009  p.74
52 Id.
54 Id.
Syria), perhaps fearing future arrest warrants that would hit closer to home, issued a statement claiming that the ICC decision was “unjust and political”.\footnote{The Guardian: (accessed 3/4/2009) \url{http://www.guardian.co.uk/world/2009/mar/04/sudan-demonstrators-support-bashir}}

As for a potential case against Syria, perceptions of political necessity are equally as prevalent and arguably more dire. As such, we have already seen a softening of policy from Washington, with March of 2009 representing “the first high-level diplomatic contacts between the U.S. and Syria since the Bush administration cut off relations four years ago in response to the assassination of…Rafik Hariri.”\footnote{NBC News: (accessed 3/7/2009) \url{http://worldblog.msnbc.msn.com/archive/2009/03/07/1825499.aspx}} In July of 2008, French President Nicholas Sarkozy invited Bashar al-Assad to Paris.\footnote{Hammer, Joshua: “Getting Away with Murder” The Atlantic December 2008 p.76} King Abdullah II of Jordan is reportedly brokering “the most astounding plea bargain of all time”\footnote{Id.}, as Senator Arlen Specter puts it, whereby Bashar would be granted “immunity from prosecution in exchange for a pledge to rein in Hezbollah and Hamas.”\footnote{Id.} In addition, U.S. allies Egypt and Saudi Arabia have also moved forward with Syrian détente. Hosni Mubarak and King Abdullah are both slated to meet with Assad later in March, presumably to come to an understanding on Iran, and to put behind them the differences that arose regarding Israel’s latest Gaza incursion which resulted in the deaths of 1,300\footnote{BBC News: (accessed 3/11/2009) \url{http://news.bbc.co.uk/2/hi/middle_east/7934607.stm}} Palestinians. In that attack, “Saudi Arabia and Egypt sided with Palestinian Authority President Mahmoud Abbas…who blamed Hamas for provoking the Israeli bombardment.”\footnote{Id.}

With regards to Syria and Iraq, political necessity is pretty straightforward i.e., stop the flow of terrorists and matériel to and from Syrian territory. The difficult task of finding and...
engaging Iraqi insurgents becomes exponentially more so when such fighters have the ability to cross into Syria to hide and heal. It has been rumored for some time now that U.S. Special Forces have tired of such games and have conducted operations in Syrian territory. Perhaps the most publicized of such occurrences is alleged to have taken place in October of 2008. “Syrian state television said American helicopters raided the village of Sukariya, which lies 550km northeast of Damascus, before flying back towards Iraqi territory.”

With regards to Syria and Iran, political necessities become a bit murky with the entrance of multiple stakeholders. That said, as most now agree that a cessation of the Iranian nuclear program cannot be achieved militarily, Syria-tract pressure (i.e. pulling Syria, one of Iran’s closest allies, away from Iran and into the “Western” sphere, thus further isolating the Islamic Republic) has become much more attractive. Here, however, we must pause for a dose of reality. Your author believes it will prove to be rather difficult to convince a state that had/has its own covert nuclear weapons program to act against an ally with the same. In September of 2007, Israeli aircraft destroyed a gas-graphite nuclear reactor—Al-Kibar—in Eastern Syria, just the other side of the Syria-Turkey border.

To further complicate matters, Syrian ties to Iran have deep historical and religious precedent. In the historical context, Syria and Iran have a long tradition of military cooperation. In fact, to the chagrin of the Arab world, Syria supported Iran in the Iran-Iraq war.

In the religious context, Syrian-Iranian commonality is present at the highest echelons of power in both countries. In the Islamic Republic of Iran, clearly, Shia clerics govern. In Syria,

though technically a secular government, the regime is dominated by Alawis, and Alawis claim to be Shia-esque Muslims.\[^{64}\] Note: though I recognize that there is some dispute over just how comparable Alawi beliefs are to their more traditional Shia brethren in Iran, the fact that many Sunni Muslims pejoratively refer to Alawis as “Mutazila” (Secessionists)\[^{65}\] provides incentive enough both for Alawites to proclaim, and for your author to recognize, Shia ties.

My skepticism aside, there is a sound argument to be made for drawing Syria away from Iran. “Such a strategic realignment would weaken Iran’s influence in the region, reduce external support for both Hamas and Hezbollah, and improve the prospects for stability in Lebanon.”\[^{66}\]

As an interesting caveat, Professor Michael Oren, of Georgetown University, argues that Iran is unlikely to accept such isolation without a fight, and might even turn against Syria for such perceived disloyalty. In a piece he wrote for the *Wall Street Journal*, Professor Oren wrote that “Rather than submit to such seclusion, Iran [might]…arrange an “accident” for Bashar al-Assad similar to the one that killed his brother.”\[^{67}\]

Whether Iranian authored, in line with Professor Oren’s intimation, or whether Syrian born, threats to the Syrian regime from within its own borders present yet another variable to consider in this discussion of political necessity. Would a finding that the Assad regime sponsored Hariri’s murder destabilize Syria from within? Syria’s internal security is by no means a foregone conclusion. To illustrate, I cite the following: 1. In August of 2008, a Syrian general was assassinated; 2. In September of 2008, a car bomb exploded in Damascus outside a

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\[^{64}\] Global Security Org. (accessed 3/6/2009)  
http://www.globalsecurity.org/military/intro/islam-alawi.htm  
http://www.globalsecurity.org/military/intro/islam-alawi.htm  
\[^{66}\] Id.  
Syrian intelligence installation; 3. In October of 2008, Syrian security forces responding to an uprising at the Yarmouk refugee camp outside Damascus ultimately shot and killed 3 terrorist suspects.  

In the regional context, Syria’s security paradigm doesn’t look much better, for Syrian enmity runs deep and long. Many Arabs continue to blame Syria for instigating the Six-Day War in 1967, “and then sitting back while Egypt and Jordan suffered Israel’s wrath.”  

In 1970, Syria itself invaded Jordan. The 1976 invasion of Lebanon was seen by many that were pro-National Movement as an attempt to aid the Maronites. In February of 1982, Syrian troops killed as many as 25,000 people while putting down a Muslim Brotherhood rally. Throughout the 1980s, Hafez al-Assad supported Iran in the Iran-Iraq War. Against the wishes of Turkey—a NATO member, Syria provided succor to PKK terrorist Abdullah Ocalan until the late ‘90s. And, in 2005, many (including your author) blamed Syria for having assassinated Rafik Hariri—a self-proclaimed “Arab nationalist” with Saudi backing and solid Islamic credentials.

Question: will the Sunni Muslim world tolerate the killing of one of their own by a minority “Islamic” sect with such a controversial record in the Middle East? Given the above-mentioned meetings scheduled for later in March between Syria, Saudi Arabia, and Egypt, the answer appears, for now anyway, to be yes. But, would that prognosis change with official

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68 U.S. Department of State: (accessed 3/6/2009)  
http://travel.state.gov/travel/cis_pa_tw/tw/tw_3036.html  
70 Id.  
71 Id.  
international condemnation of Syria? Would that prognosis *have to* change in order for Saudi Arabia and Egypt to preserve their own status in the Middle East, and to appease their own potentially explosive populations? The answer to those questions would also appear to be yes, for rumors, even amongst the members of the U.N. commission itself, have begun to circulate with regards to what the investigation will be *allowed* to conclude.\(^74\)

Bottom line: despite Thomas Barnett’s supposition that “Operation Iraqi Freedom was a message to the region as a whole, not just Iraq…[and that] it targets Bashir [sic] Assad’s regime in Syria, letting him know that our patience with his slow pace of reform is finite...”\(^75\), regime change in Syria, given the political variables above, is simply unacceptable. This is not due to some deep-seated affinity for Bashar al-Assad, but because the alternatives, believe it or not, are even darker: think Afghanistan under the Taliban. Worse still; think Gaza under Hamas, where an armed Islamist militia gained power through free and fair elections in January of 2006. Elections, by the way, that were forced onto the region via the Bush administration’s so called “Freedom Agenda”—a blatantly hypocritical policy that forces elections in some Middle Eastern countries while sparing our allies in the Middle East (e.g. Saudi Arabia and Egypt) of the same.

Some, including your author, argue for the scrapping of the Freedom Agenda entirely. Others, however, like Richard Haas—President of the Council on Foreign Relations—and Martin Indyk—Director of the Saban Center for Middle East Policy at the Brookings Institute, call instead for a strategic reworking of the program. Haas and Indyk write that the answer lies in a “gradual, evolutionary process of liberalization…, one that emphasizes the building of civil society, the opening up of political space, and the strengthening of democratic values, including

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\(^74\) Hammer, Joshua: “Getting Away with Murder” The Atlantic December 2008 p.71  
the rule of law, [and] judicial independence…”76 How ironic then, that the corruption of an established judicial independence and rule of law (i.e. that of the United Nations Special Tribunal) may here be, dare I say, required in order to achieve this gradualized liberalization in Syria.

We may, in fact, be witnessing that corruption (a.k.a. filtering) even now in the complications that have arisen in the investigative process. When the U.N. Security Council’s I.I.I.C. first began, it was touted as “one of the most ambitious criminal inquiries in history: UN investigators from 17 countries fanned out across the Middle East and Europe, took 244 witness statements, seized 453 pieces of evidence, and gathered 16,711 pages of documents.”77 The sheer scope of investigation, and the enthusiasm of its head, Detlev Mehlis, caught the attention of more than just the “bad guys”. In 2006, citing “security reasons”78, the United Nations ordered Mehlis to leave Beirut.

Ultimately, Mehlis was replaced by the Belgium lawyer Serge Brammertz. Once in charge, Brammertz immediately cut off the media79, slowed down the investigation, and classified Mehlis as having been “carried away by anti-Syrian sentiment”80. But, after eliminating al-Qaeda as a suspect and tracing a number of damning cell phone conversations to fairly senior individuals81 himself, he too would be replaced. And, in 2008, Canadian Daniel

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76 Hass, Richard; Indyk, Martin: “Beyond Iraq: a New U.S. Strategy for the Middle East” Foreign Affairs Magazine January/February 2009 Volume 88 Number 1 p.44
77 Hammer, Joshua: “Getting Away with Murder?” The Atlantic December 2008 p.72
78 Id. at p.74
79 Id. at p.76
80 Id. at p.74
81 Id. at p.76
Bellemare took over the investigation under the mandate to “conclude the investigation and carry through as chief prosecutor...”\textsuperscript{82}

Sa’ad Hariri, perhaps the one who has lost the most in this whole process, has expressed his faith in both the Tribunal and in Mr. Bellemare. And, ultimately, though I’ve expressed my reservations above, I too have faith that a semblance of justice will prevail. It’s just that I recognize that political necessity might require, for better or worse, the dilution of that judicial product.

In the end, this is a damned-if-we-do, damned-if-we-don’t scenario. Honest inquiry would inevitably indict the Assad regime. Such an indictment, however, would push Syria further into the arms of the ultimate pariah state, Iran, and might even lead to the collapse of the Syrian regime. On the other hand, “Lebanon’s pro-Western, anti-Hezbollah constituency would regard anything less…as a whitewash; that could plunge the country back into another round of sectarian violence, and send a message that the Middle East’s pattern of impunity remains unchanged.”\textsuperscript{83}

\textsuperscript{82} Id.
\textsuperscript{83} Hammer, Joshua: “Getting Away with Murder?” The Atlantic December 2008 p.77