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Unfinished Business: Peacebuilding, Accountability, and Rule of Law in Lebanon*

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Introduction

Much of the time, transitional justice measures are developed alongside the implementation of peace agreements and peacebuilding efforts, and are expected by their framers and advocates to contribute to peace. The claim is that accountability measures can help to deter future violence and prevent revenge attacks, demonstrate and help to reinstall the rule of law and democracy, and contribute in so doing to longer-term stability. And indeed, transitional justice measures are expected to work alongside specific measures of peacebuilding, such as rule of law promotion, security sector reform, and disarmament, demobilization, and reintegration of excombatants, and increasingly those developing such measures of peacebuilding are expected to take transitional justice measures into account.¹ What happens, however, when a transitional justice measure is developed decades after the end of the conflict, where such standard measures of peacebuilding were not pursued, or are incomplete? Can a transitional justice mechanism have the desired effects? And what if that

* *This is a draft paper.*

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¹ *Guidance Note of the Secretary-General. United Nations Approach to Transitional Justice* (March 2010) at

http://www.unrol.org/files/TJ_Guidance_Note_March_2010FINAL.pdf.

mechanism is not designed to address the wide range of past crimes, but a more recent subset?

This chapter considers the prospects for the Special Tribunal for Lebanon (STL) to have any serious impact on the country itself, against the backdrop of long-term, but unconsolidated, peacebuilding or reconstruction efforts. It argues that while Lebanon has undergone extensive reconstruction since the end of its brutal civil war, no serious peacebuilding efforts were undertaken, meaning that many of the changes a post-conflict society is expected to undergo, arising from demobilization of large numbers of fighters, reform of the justice and security sector, did not take place. In this context, accountability for the abuses of the war and in the 15 years after it in which the country was under Syrian occupation has yet to take place and seems unlikely. The STL is nonetheless often expected to operate as a mechanism analogous to ordinary transitional justice mechanisms, yet it does not have the remit to address the legacy of conflict and occupation, but rather only the assassination of former Prime Minister Rafik Hariri and related assassinations. It seems unlikely that it can have the effect expected of transitional justice mechanisms and ascribed by its advocates to it as well, of promoting human rights and accountability, and even peacebuilding, in the affected country. Rather, after two decades of reconstruction, the tribunal is unlikely to contribute to peace, and may run the risk of promoting conflict should it try defendants, whether in person or *in absentia*.

Background: the conflict and its termination

Lebanon experienced a brutal civil war from 1975-1990, and a brief resurgence of violence following the assassination of former Prime Minister Rafik Hariri in 2005. The conflict was based on sectarian violence amongst militias and between the militia and the government, with significant regional dimensions. In 1976 Syria invaded Lebanon, which it would later recast as an Arab Deterrent Force, or a peacekeeping force, and remained an occupying power. Israel also invaded southern Lebanon and put in place a 'buffer zone' which remains today. The UN Interim Force in Lebanon peacekeeping force was put in place in Southern Lebanon in 1978 to monitor Israeli withdrawal, and remains in place today.

Official estimates of deaths during the civil war are of about 145,000 deaths of which some 90% were civilians, 185,000 wounded, 2000 women killed for having been raped, and 800,000 displaced. In addition to Lebanese

This is a draft paper.

citizens killed and displaced during the conflict, many disappeared, and their numbers and fate have still not been determined, although official estimates stand at about 17,000.² Others disappeared or have been held in Syrian prisons, many as political prisoners, although this is a charge Syria denies.³

In 1989, the Ta'if agreement was negotiated by surviving members of the pre-war Parliament, with brokerage by regional states, which proposed to heal national rifts and promote reconciliation (it was also titled the Charter of National Reconciliation), develop administrative and political reforms, disarm militias, reaffirm sovereignty, and engage in "Lebanonization". While it reinforced the need for Israeli withdrawal, it emphasized the importance of Syrian-Lebanon relations. Lebanon remained, following the end of the conflict, under heavy Syrian influence. While under the Taif agreement Syrian troops, then at a strength of 40,000, were to be redeployed to the Bekaa valley and removed, they remained in the country, and were only fully removed in 2005 under heavy international pressure (UNSC resolution 1559).

The Hezbollah militia continues to maintain significant control in southern Lebanon and poor suburbs of Beirut, and has not demobilized. In 2006, a short war between Israel and Hezbollah militants operating in southern Lebanon further devastated the country.

Meanwhile, the politics are shaped not only by confessionalism, discussed further below, but by rivalries between the March 8th and March 14th coalitions. These coalitions are particularly split over the creation and operation of the Special Tribunal. The March 8th coalition, comprised of the Shiite parties Amal and Hezbollah, allied with the Free Patriotic movement, refers to the date of a rally organized in 2005 to thank Syria for its involvement in the country. They view the creation of the tribunal as external interference in Lebanon. The March 14th coalition refers to the date in 2005 in which 1 million Lebanese protested in the streets, calling for Syrian withdrawal and an international investigation of the Hariri assassination. The coalition comprises the largely Sunni Future Movement founded by Hariri, several Christian parties, the Lebanese Forces (formerly

² Marieke Wierda, Habib Nassar, and Lynn Maalouf, "Early reflections on local perceptions, legitimacy and legacy of the Special Tribunal for Lebanon," *Journal of International Criminal Justice* volume 5 (2007), pp. 1065-81, at 1068; Iolanda Jaquemet, "Fighting Amnesia: Ways to Uncover the Truth about Lebanon's Missing," *International Journal of Transitional Justice* vol. 3, issue 1 (2008), pp. 1-18, at 1.

³ Author's interview with observer who requested anonymity (Beirut, September 2009).

a militia within the (Christian-dominated Lebanese Front, now a political party), and the Progressive Socialist Party, and supports the tribunal and rejects Syrian involvement in Lebanon.⁴

Peacebuilding?

The situation in Lebanon was somewhat unique in that much of the primary post-conflict economic reconstruction activities were not only internationally, but also internally generated and regionally-supported, particularly with the support of wealthy Prime Minister Rafik Hariri, who was able to obtain a mix of grants and loans from oil-rich gulf states alongside western donors. The emphasis, however, has been less on peacebuilding and more on physical reconstruction, with gulf donors and Hariri emphasizing physical reconstruction projects and Western donors emphasizing technical support to governance reform.⁵ If it is difficult, approximately 20 years after the Taif agreement, to characterize most activities seeking to rebuild Lebanon as peacebuilding rather than reconstruction, this may be in significant part due to the environment in which any peacebuilding might be attempted.

Challenges to peacebuilding: the operating environment

Governance, sectarianism and clientelism

There are significant structural challenges to long-term peacebuilding in Lebanon.⁶ The country is technically a parliamentary democracy, with power-sharing in governance.⁷ However, because of the dominance of political parties by particular sectarian groups traditionally, and the consolidation of power in the hands of a few powerful politicians, political parties lack much significance. The prevalence of clientelism increases this phenomenon. While the Ta'if agreement sought to break clientelism by

⁴ Wierda, Nassar, and Maalouf, "Early reflections".

⁵ Are Knudsen, "Precarious peacebuilding: Post-war Lebanon, 1990-2005," *CMI Working Paper* (Bergen: Chr. Michelsen Institute, 2005); Christine Sylva Hamieh and Roger MacGinty, "A very political reconstruction: governance and reconstruction in Lebanon after the 2006 war," *Disasters* vol. 34 (2010) pp. S103-S123.

⁶ Martin Kraft, Muzna Al-Mazri, Heiko Wimmen, and Natascha Zupan, "Walking the Line: Strategic Approaches to Peacebuilding in Lebanon," (Bonn: Working Group on Development and Peace, German Development Service, and Heinrich Böll-Stiftung, December 2008), pp. 15-24.

⁷ See Arab Reform Initiative and Palestinian Center for Policy and Survey Research, "The State of Reform in the Arab World 2009-10," (Arab Reform Initiative, March 2010), www.arab-reform.net.

stipulating that voting be in governates, or large administrative units, elections have regularly violated its terms with district-based and uni-confessional voting. The Lebanese Constitution of 1926, as amended in 1990, stipulates the abolition of confessionalism in article 95, but has yet to be implemented.⁸ Power-sharing arrangements have been used repeatedly to address immediate crises of governance, often leaving underlying grievances unaddressed.

It is unclear whether peacebuilding in any traditional sense, including the (re)building of a strong and unitary state, is feasible in the country. Sectarian parties have an interest in a weak state so that they are able to pursue their own interests, according to some experts, and individuals define themselves as much or more through sectarian identities than as Lebanese.⁹ One observer, pointing out that state weakness left vacuums that were filled by Hezbollah, Saad Hariri, Walid Jumblatt, and Christian factions, suggested that there were really many small strong states within a weak larger state.¹⁰ Further, each sectarian group has its own regional patrons, variously Saudi Arabia, Egypt, Jordan, Syria, and Iran. These factors make state consolidation difficult.

The regional environment

Any efforts at building peace and promoting justice in Lebanon do not operate in a vacuum. Obviously, Lebanon is in an unstable region, and subject to influences from regional powers noted above, even after the Syrian withdrawal from its territory. Israel only withdrew from a security zone it occupied in the south of the country in 2000, and in 2006 fought a war with Hezbollah. The presence of a large number of Palestinian refugees living in poor conditions in refugee camps is both a source of political dispute and security concerns. Many observers suggest that genuine peace

⁸ The Constitution of Lebanon (1926, as amended 1990), at <http://www.servat.unibe.ch/icl/le00000.html#A095> (accessed 12 December 2009). See generally Robert Fisk, *Pity the Nation: Lebanon at War* (Oxford: Oxford Paperbacks, 2001); Fawwaz Traboulsi, *A History of Modern Lebanon* (London: Pluto Press, 2007); Sandra Mackey, *Lebanon: A House Divided* (New York: W.W. Norton, 2006); Author's interview with Gaëlle Kibranian, Lebanese Transparency Association (Beirut, September 2009).

⁹ Kraft, Al-Mazri, Wimmen, and Zupan, "Walking the Line," pp. 5-6, 20-21; Author's interview with Bassel Salloukh, Lebanese American University (Beirut, September 2009). Author's interview with Father Fady Fadel, Antonine University (Beirut, September 2009).

¹⁰ Author's interview with Sylva Hamieh (Beirut, September 2009). (speaking in personal capacity)

in Lebanon will not be feasible in the absence of a broader regional settlement, which would include a fair solution for Palestinians.¹¹

Unfinished demobilization of combatants

The Ta'if agreement sparked new fighting between the Lebanese Forces, the largest militia, and the interim prime minister, General Michel Aoun, in 1990. A general amnesty, offering militia leaders posts in government, helped end the fighting, and some 50,000 fighters part of 24 militias disarmed by April 1991. Militias also had members integrated into the new Lebanon army, although all sought to integrate more than was feasible. However, there was widespread disarmament, if variation in willingness to hand over or canton weapons. The Druze and Amal militias tended to comply with the process, and also handed over heavy weaponry to the Syrians. Former Amal militia were heavily integrated into the state forces because of the group's ties to the state and the rise of its leader, Nabih Berri, to be speaker of the parliament. Unlike many countries emerging from conflict, there was no internationally-supported DDR process.

Two critical exceptions are to be noted. Hezbollah, viewed by many as a liberator from Israeli occupation, was allowed to keep its arms. Members of the LF were unable to take full advantage of DDR programmes and very few were allowed to be integrated into the new army or civilian posts, and tended to rely upon militia and family networks for reintegration. Many militia members did not seek inclusion in state forces because they had other opportunities, as they were established in legal businesses or in smuggling.¹²

The lasting impact of the failure to conduct DDR in Lebanon, according to one observer, has been not only continued sectarianism, but continued "territorialization of security," with factions controlling different sectors of the country, and providing or undermining security. Such groups, including but not limited to Hezbollah, compete with one another and with the legitimate state providers of security. The continued possibility of factional violence was demonstrated in the street fighting between Hezbollah and Amal militia members which occurred in May 2008.¹³

¹¹ Author's interview with Julien Courson, Alef (Beirut, September 2009). Author's interview with Kamel Mohanna, Director, Amel Association (Beirut, September 2009).

¹² Knudsen, "Precarious Peacebuilding," pp. 12-13; Author's interview with Paul Salem, Director, Carnegie Middle East Center (Beirut, September 2009).

¹³ Author's interview with Siad Darwish, Peace Permanent Movement (Beirut, September 2009). Ghaith Abdul Ahad, "Ghaith Abdul Ahad reports on the street battle in Lebanon,"

Sectarianism and the security forces

The possibility of security sector reform is limited, largely for the reasons that have been noted already. The state security forces, the ISF, do not control all the territory, and are widely viewed as, like the judiciary, politics, and other aspects of public life, shaped by sectarianism and patronage.¹⁴ Militia members were to be incorporated into the ISF following rehabilitation, but in general they were simply incorporated without any rehabilitation process.¹⁵ The army is considered to be a more professional and truly national institution, but it too is affected by sectarianism.¹⁶ And, as one observer noted, without true disarmament of the more general population and militias, which would leave the security forces with the monopoly on weapons and use of force, reform will prove difficult.¹⁷ The army continues to respond to internal security issues rather than confining itself to external security because the ISF has lacked the capacity to control militias or larger demonstrations.¹⁸

Human rights and rule of law

While the judiciary is formally independent sectarian divisions are said to interfere in its management by the Supreme Judicial Council.¹⁹ The judiciary is considered widely to be corrupt and subject to political manipulation.²⁰ More generally, it is very slow and inefficient.²¹ However, there are exceptional judges who have displayed independence and professionalism and have applied international human rights and refugee

The Guardian (10 May 2008), at

<http://www.guardian.co.uk/world/2008/may/10/lebanon.syria>.

¹⁴ Kraft, Al-Mazri, Wimmen, and Zupan, "Walking the Line," p. 10, 33-35; Yezid Sayigh, "'Fixing Broken Windows': Security Sector Reform in Palestine, Lebanon, and Yemen," *Carnegie Papers* no. 17 (Beirut: Carnegie Middle East Center, October 2009); Author's interview with Salloukh.

¹⁵ Author's interview with Salloukh.

¹⁶ Aram Nerguizian and Anthony Cordesman, "The Lebanese Armed Forces: Challenges and Opportunities in Post-Syria Lebanon," (Washington, DC: Center for Strategic and International Studies, 10 February 2009). Author's interview with Salloukh. Author's interview with Hamieh. Author's interview with Salem.

¹⁷ Author's interview with Darwish.

¹⁸ Author's interview with Jeremy Cornforth, Political and Economic Counsellor, Embassy of the United States of America (Beirut, September 2009).

¹⁹ Kraft, Al-Mazri, Wimmen, and Zupan, "Walking the line," pp. 31-3.

²⁰ Author's interview with Julien Courson, Alef (Beirut, September 2009). Expert speaking on condition of anonymity (Beirut, September 2009).

²¹ Author's interview with Salem.

law in their decisions.²² Thus, while most judges have the proper training, unlike in many countries where capacity-building is a necessary first step, the real challenge is the reform of the politicized environment in which they operate.²³

There are some positive signs of the prospects for human rights and the rule of law, albeit limited ones. President Michel Suleiman has publicly stated an interest in promoting judicial reform, and appointed as minister of the interior a former civil society activist, Ziad Baroud, who has promoted electoral reform. However, Suleiman and Baroud are considered by some observers as weak and/or exceptions to the rule, and reform will prove challenging given the sectarian nature of the polity, as well as the reliance of some judges on political patrons for their positions.²⁴ The minister of justice, also a reformist, proposed the abolition of the death penalty in the summer of 2009, but it was politically controversial and was not presented to Parliament amid a broader cabinet crisis.²⁵ The country also ratified the Optional Protocol to the Torture Convention in 2008, which obligates it to create a national office of prevention of torture within a year, which as of this writing has not been created.²⁶

Accountability and impunity

The absence of transitional justice mechanisms

In many countries emerging from violent conflict or repression, domestic trials are debated, if not held, and other measures such as commissions of inquiry, reparations, and commemorations may be utilized. However, the Amnesty Law of 1991 (law 94/91), provides for amnesty for all crimes, making it impossible to try war crimes, crimes against humanity, and forced disappearances domestically, but excluding political assassination from the amnesty. In general, there have been very few prosecutions for clear abuses of human rights or violations of humanitarian law, although there has been

²² Author's interview with Fateh Azzam, Regional Representative, Office of the High Commissioner for Human Rights (Beirut, September 2009).

²³ Author's phone interview with Nadim Houry, Human Rights Watch (Beirut, September 2009).

²⁴ Author's interview with Salloukh. Author's interview with Darwish. Author's interview with Hamieh. Author's interview with Salem.

²⁵ Lebanon: Justice ministry campaigns to abolish death penalty," (29 August 2009) at http://www.handsoffcain.info/archivio_news/200908.php?iddocumento=12311666&mover=0 (accessed 12 December 2009); Author's interview with Azzam.

²⁶ Expert speaking on condition of anonymity (Beirut, September 2009).

selective prosecution.²⁷ Thus Elias Hobeika, former leader of the Lebanese Forces (LF) security agency and implicated in the 1982 Sabra and Shatila massacres, escaped prosecution and was elected to Parliament twice, only disgraced (and assassinated) following revelations of his involvement in the massacres in the context of attempts to prosecute Ariel Sharon. However, Samir Geagea, the leader of the Lebanese Forces, was imprisoned for life, accused of responsibility for a church bombing near Beirut in 1994, and the party outlawed. He was given amnesty by the legislature in 2005.

There has been no plan for broader war crimes or human rights trials, and there are no policies in place for transitional justice mechanisms or a national reconciliation process. Proposals for a national commemorative day for the civil war have been rejected.²⁸ However, commemorative events in 2005, not long after the assassination of former Prime Minister Hariri, may have marked the beginning of a change in the so-called culture of amnesia. Absent official government efforts, civil society organizations in particular have developed memorials and recollection of the events of the civil war through films and documentaries.²⁹ One former Christian militia leader, M Assad Shaftari, has also offered an apology.³⁰

Nonetheless, there is relatively little public discussion of the past, and certainly no shared narrative regarding the conflict, although the latter is often difficult if not impossible. Following the Ta'if accord, a committee was created to develop a history textbook which would be acceptable to all confessional groups, but the result was not endorsed, which means that different groups continue to learn from different textbooks, and indeed receive news from different sources which each have their own particular biases.³¹

²⁷ Wierda, Nassar, and Maalouf, "Early reflections," pp. 1066-69.

²⁸ Knudsen, "Precarious peacebuilding," p. 15.

²⁹ Laurie King-Irani, "Commemorating Lebanon's War Amid Continued Crisis," *Middle East Report Online* (14 April 2005) <http://merip.org/mero/mero041405.html>; Author's interview with Siad Darwish, who suggested there was increased openness to transitional justice at the public and political level, referring to television programmes with politicians discussing the war, and commemorative events. One observer suggests that the Hariri assassination itself created new political space, by generating international condemnation, some directed at Syria and Iran, lessening Syria's influence in Lebanon. Author's interview with Fadel. Author's interview with Zeina el-Hélou, Lebanese Centre for Policy Studies (Beirut, September 2009).

³⁰ M. Assad Shaftari, "Letter from a militia leader in Lebanon's Civil War," at http://www.caritas.org/activities/peace_reconciliation/Peacebuilding_Slideshow.html?cnt=337 (accessed 10 December 2009);

³¹ United Nations Development Programme Lebanon, *Peace Building Project Newsletter* (1st Quarter 2009) on file with author. Stephen Dockery, "Journalists of all political colors attend media workshop," *The Daily Star* (Beirut) (8 July 2009).

There has, similarly, been little done to address the fate of the disappeared or the needs of their relatives.³² While the government has issued official statistics on those disappeared alongside estimates of the dead and wounded, those are alleged to be inflated. And while there have been two commissions of inquiry into the disappeared, one in 2000 and one in 2001, the first published only a two page report, and the other none at all, in relation to thousands of potential victims.³³ Pursuit of detailed information about, or justice for, the disappeared was impossible during Syrian occupation remains difficult in light of the 1991 amnesty, political divides, and security concerns. Further, there has historically been a political divide between the two main organizations of families of the disappeared, although that has been bridged to some degree, and more vocal advocacy for information about the disappeared and opening of mass graves has been possible in recent years.³⁴

The Hariri tribunal

There was widespread speculation in Lebanon and abroad about who might be responsible, with allegations that Hezbollah members, with Iran's backing, might be responsible, or that Syria might have arranged for Hariri to be killed in order to maintain its influence in the country, or that both were responsible.³⁵ Many in the international community felt that accountability was important, and that Lebanese courts were unlikely to be able to hear cases related to the assassination. Thus the only significant, and the only externally-supported, attempt at accountability, is the Lebanon Special Tribunal, which was created to prosecute just a few crimes—the 14 February 2005 assassination of former Prime Minister Hariri and several related assassinations.³⁶ It may be a mistake to treat the tribunal as a mechanism of transitional justice in anything other than form, given that it was created long after the Ta'if agreement, although the withdrawal of Syria certainly constituted an important transition for the country. The question

³² Wierda, Nassar, and Maalouf, "Early reflections," pp. 1067-68.

³³ Jaquemet, "Fighting Amnesia," pp. 5-6.

³⁴ Jaquemet, "Fighting Amnesia," pp. 6-8.

³⁵ An article in a German magazine spurred particular controversy in 2009 for alleging that the Special Tribunal had evidence regarding Hezbollah's role in the assassination and was keeping it secret. Erich Follath, "New Evidence Points to Hezbollah in Hariri Murder," *Spiegel Online* (23 May 2009), www.spiegel.de.

³⁶ One author, a Lebanese judge involved in the negotiations for the tribunal, says that the extension of the tribunal's jurisdiction to attacks related to, but other than, that of Hariri was to deter the "serial political assassinations" that followed Hariri's. Choucri Sader, "A Lebanese Perspective on the Special Tribunal for Lebanon," *Journal of International Criminal Justice*, vol. 5 (2007), pp. 1083-1089.

remains whether it could nonetheless catalyze efforts at broader accountability in the country.

The tribunal's creation

Following the assassination, the United Nations Security Council established the mandate of a commission of inquiry in April 2005.³⁷ That commission concluded that the assassination was carried out by a group with “extensive organization”, and indicated that some evidence pointed to Lebanese and Syrian involvement. It transmitted evidence collected in its investigations to Lebanese judicial authorities and expressed the view that further investigations should be undertaken by domestic judicial and security forces.³⁸ Whether members of Hezbollah or of the Syrian government are responsible, obtaining custody of them could be difficult.³⁹

Following a resolution by the UN Security Council calling for a criminal tribunal in 2006, the UN and the government of Lebanon entered into agreement for the creation of the Special Tribunal for Lebanon to prosecute individuals responsible for the organization of the Hariri assassination and related killings. The creation of the tribunal was endorsed by the Council in 2007.⁴⁰ There are 11 judges, of which 4 are Lebanese. Some scholars have questioned even the presence of 4 Lebanese judges, arguing that the judiciary is simply too corrupt and politicized to guarantee that their decisions at the tribunal would be impartial.⁴¹

Controversy over the tribunal: Selectivity and politics

The tribunal is controversial because it is only designed to address such a limited set of crimes, given the extensive history of assassinations both during and since the end of the civil war, as well as disappearances and violations of international human rights and international humanitarian law

³⁷ United Nations Security Council Resolution 1595, UN Doc. S/RES/1595 (7 April 2005).

³⁸ *Report of the International Independent Investigation Commission established pursuant to Security Council resolution 1595*, UN Doc. S/2005/662 (20 October 2005).

³⁹ Erich Foliath, “New evidence points to Hezbollah in Hariri murder,” *Der Spiegel* (23 May 2009) <http://www.spiegel.de/international/world/0,1518,626412-2,00.html>, created controversy in Lebanon when it was published.

⁴⁰ United Nations Security Council Resolution 1664, UN Doc. S/RES/1664 (29 March 2006); United Nations Security Council Resolution 1757, UN Doc. S/RES/1757 (30 May 2007), which includes the statute; for an overview, see International Center for Transitional Justice, *Handbook on the Special Tribunal for Lebanon* (10 April 2008) at www.ictj.org.

⁴¹ Interviews with anonymous sources in Beirut, August-September 2009.

during the armed conflict.⁴² Many see the tribunal as politicized and unable to deliver accountability, and a range of civil society organizations which do promote the idea of some form of transitional justice or reckoning with the past do not support the tribunal itself.⁴³ Families of the thousands of persons who disappeared during the war question the creation of a tribunal to investigate the killings of a few elites with no serious investigations into the fate of their relatives.⁴⁴ Indeed, even the international nature of the tribunal, which in form appears similar to hybrid tribunals such as the Special Court for Sierra Leone, but which does not have jurisdiction over any international crimes, might be called into question. As the Regional Representative of the Office of the High Commissioner for Human Rights in Lebanon observed, the internationalization of this particular judicial process is justifiable only with reference to either the inability of Lebanese courts to hear such politically sensitive cases, or because one or more of the perpetrators may be outside of Lebanese territory.⁴⁵

Furthermore, many view the tribunal's creation as having been motivated more by politics than a desire to pursue justice or confront a broader culture of impunity.⁴⁶ In particular, France and the United States are said to have used the creation of the tribunal to isolate and in some sense "criminalize" Syria, which is seen by many as at least partially responsible for the assassination. However, the changes in administration in both countries have meant, according to one observer, that their interest in promoting the tribunal has waned, and their concerns about destabilizing Syria increased.⁴⁷ Nonetheless, the faction most supportive of the tribunal is that led by Saad Hariri, the prime minister and former prime minister's son, while the primary opposition faction allege the tribunal is politicized.⁴⁸

Tribunal legacy?

There are numerous models of hybrid tribunals, and there is some controversy over whether the Special Tribunal for Lebanon is indeed such a

⁴² Wierda, Nassar, and Maalouf, "Early Reflections," pp. 1071-72; Author's interview with Courson. Author's interview with el-Hélou.

⁴³ Author's interview with Darwish (clear).

⁴⁴ Pamela Badine, Université Saint-Joseph de Beyrouth, (Beirut, September 2009), describes their view as it being a matter of 'leaders vs. people'.

⁴⁵ Author's phone interview with human rights official on condition of anonymity.

⁴⁶ Wierda, Nassar, and Maalouf, "Early Reflections," pp. 1072-73

⁴⁷ Author's phone interview with human rights official on condition of anonymity. see also Jan Erik Wetzel and Yvonne Mitri, "The Special Tribunal for Lebanon: A Court 'Off the Shelf' for a Divided Country," *The Law and Practice of International Courts and Tribunals*, (2008), pp. 81-114, 111; Author's interview with Fadel.

⁴⁸ Author's interview with Hamieh.

tribunal, although it shares some characteristics with existing hybrid models. Generally, hybrid tribunals share a number of features: they are sited in the country affected by the violence or conflict to be addressed, they utilize international and domestic judges, lawyers, and other court staff, and they prosecute international crimes and may also have some domestic crimes within their remit.⁴⁹ The STL shares few of these characteristics: it applies domestic law pertaining to domestic crimes of terrorism and murder, rather than international law crimes such as crimes against humanity or war crimes.⁵⁰ It is sited just outside the Hague, nearer to other international criminal tribunals such as the International Criminal Court and the *ad hoc* tribunals for the former Yugoslavia and Rwanda, rather than in Lebanon itself, for reasons of security. It does, however, include domestic and international staff, with Lebanese and international judges, and an international chief prosecutor, head of defense, and registrar.⁵¹ There is thus an argument for treating it as a hybrid.⁵²

More importantly for our purposes, the primary arguments for the tribunal are quite similar to those made for hybrid tribunals. Advocates of hybrid tribunals often argue that they should be created to pursue accountability where the domestic judiciary is unable to address serious crimes of the past due to damage, incapacity, or bias. They also argue that they help to address the needs of affected victims and society, sited as they are ordinarily in the country affected. And they are often expected to have a capacity-building and demonstration effect for weak or corrupt national judiciaries, through the inclusion of national staff, presence on the territory affected, and legacy-building through engagement with the domestic judiciary.

⁴⁹ Beth Dougherty, "Right-sizing international criminal justice: The hybrid experiment at the Special Court for Sierra Leone," *International Affairs* vol. 80, no. 1 (March 2004), pp. 311-28; compare Chandra Lekha Sriram, "Wrong-sizing international justice? The hybrid tribunal in Sierra Leone," *Fordham International Law Journal* vol. 29, no. 3 (February 2006), pp. 472-506; Cesare P.R. Romano, Andre Nollkaemper, and Jann K. Kleffner, eds., *Internationalized Criminal Courts: Sierra Leone, East Timor, Kosovo, and Cambodia* (Oxford: Oxford University Press, 2004).

⁵⁰ Janice Yun, "Special Tribunal for Lebanon: A Tribunal of International Character Devoid of International Law," *Santa Clara Journal of International Law* vol. 7 (2009-10), pp. 181-196; Marko Milanovich, "An Odd Couple: Domestic Crimes and International responsibility in the Special Tribunal for Lebanon," *Journal of International Criminal Justice* vol. 5 (2007), pp. 1139-52; James Cockayne, "The Special Tribunal for Lebanon: A Cripple from Birth?" *Journal of International Criminal Justice* vol. 5 (2007), pp. 1061-1064.

⁵¹ There is one international Pre-Trial Judge; a Trial Chamber with one Lebanese judge and two international judges, plus two alternate judges, one Lebanese and one international; and an Appeals Chamber with two Lebanese judges and three international judges.

⁵² On possible criteria for treating a tribunal as a hybrid, see Neha Jain, "Conceptualizing Internationalisation in Hybrid Criminal Courts," *Singapore Year Book of International Law* vol. 12 (2008), pp. 81-95.

Similar arguments have been put forth in support of the STL, despite its presence in the Netherlands. Its mixed character is defended as necessary due to the bias and corruption of the judiciary, and advocates emphasize their hopes for a wider legacy for domestic rule of law. The fact that the tribunal will apply purely domestic law but apply international standards regarding the rights of the defendant and due process, among others, has the potential to enhance domestic rule of law in Lebanon by having a more directly analogous relevance, at least for specific crimes.⁵³ Finally, advocates hope that the tribunal will contribute to, rather than undermine, peace.⁵⁴

It might be hoped that the tribunal, notwithstanding its mandate to try a limited number and type of cases, could re-open broader domestic debates regarding accountability and impunity that might eventually lead to either a real impetus for reform of rule of law and/or transitional justice processes, open political space for discussions about the civil war, or even enable reconciliation processes.⁵⁵ There is some evidence that the procedures of the tribunal have influenced some domestic legal discussions: following the release of four generals detained for the tribunal (see below), the minister of justice presented a proposal that would reform the Code of Criminal Procedure setting a limit to the period of detention without charge to a year, albeit much longer than the Tribunal's 90-day rule.⁵⁶ Advocates argue that the Lebanese judges serving on the tribunal will return to the country with expertise that will be shared with colleagues.⁵⁷

Some argue that the tribunal could serve as an example of impartial justice in operation, and could result in justice for a political crime, both rarities in Lebanon.⁵⁸ They suggest as well that the tribunal's creation, justified in part with reference to the inability of the Lebanese judiciary to manage a case of this nature, or to act impartially, will draw attention to the need for judicial

⁵³ Wierda, Nassar, and Maalouf, "Early evidence," p. 1078.

⁵⁴ Wetzel and Mitri, "The Special Tribunal for Lebanon," p. 111.

⁵⁵ Wierda, Nassar, and Maalouf, "Early reflections," p. 1077; Author's interview with Fadel, who emphasized the possibility of the tribunal's work encouraging reconciliation. Author's interview with Cornforth. Courson pointed out that the existence of the tribunal has prompted some Lebanese to speak more openly about the absence of trials for killings of ordinary civilians during the war. Author's interview with Iolanda Jaquemet, journalist (Beirut, September 2009).

⁵⁶ Author's interview with Fadel, who thinks nonetheless that the tribunal is unlikely to influence wider legal reform. Author's interview with Nadim Houry, Human Rights Watch (Beirut, September 2009), who noted that while this would be an advance if passed, it would not affect procedures of the Judicial Council so its impact would be limited.

⁵⁷ Author's interview with Cornforth.

⁵⁸ Author's interview with Azzam.

reform in the country.⁵⁹ They note too that families of the disappeared have sought to use the creation of the tribunal as an opportunity to draw attention to their concerns.⁶⁰ Any such impact, of course, will depend upon effective outreach, and as the office was launched in December 2009 it is as yet too early to assess its effects.⁶¹

However, the prospects for criminal accountability for other crimes remains unlikely so long as the 1991 amnesty remains in force, and leaders and fighters from various fighting forces who may be responsible for abuses are in office.⁶² It is not clear that the tribunal will have any further impact on rule of law promotion in the country.⁶³ While some discussions regarding the possibility of a truth commission were initiated with the support of the International Centre for Transitional Justice and the International Federation of Human Rights (FIDH), one observer suggests that the 2006 Israeli war with Hezbollah interrupted these discussions, which have not been seriously resumed.⁶⁴

At the same time, the selectivity of the tribunal's mandate may undermine its legitimacy and thus its ability to promote the concept of rule of law more generally, in the absence of any processes to address the legacy of the civil war, the assassinations and disappearances (in Syria as well as Lebanon) since the end of the war, the 2006 war, or the May 2008 violence. Some characterize the tribunal as simply demonstrating that there is a double standard—justice for wealthy elites and no justice for the rest of the populace.⁶⁵ The rumours first that Syria, and later Hezbollah, were the primary subjects of investigation have generated concerns too about the legitimacy or expedience of any future indictments. Others have suggested that the funds spent on the tribunal would be better spent on domestic judicial reform.⁶⁶ The lack of transparency at the tribunal is also problematic for its legitimacy—there was no public discussion of the selection process for judges.⁶⁷

⁵⁹ Author's interview with Salloukh.

⁶⁰ Author's interview with Lynn Maalouf (Beirut, September 2009).

⁶¹ Email from Wajed Ramadan, Outreach Officer (23 August 2010), outlining press and other events, including visits by several judges to Lebanon; Tolbert, "Introductory note to the Special Tribunal for Lebanon", p. 1151; Outreach page of STL website, at <http://www.stl-tsl.org/sid/146> (accessed 23 August 2010).

⁶² Author's interview with Fadel.

⁶³ Author's interview with Azzam. Author's interview with Hassan Krayem, UNDP policy specialist and scholar at the American University in Beirut (Beirut, September 2009).

⁶⁴ Author's phone interview with human rights official on condition of anonymity.

⁶⁵ Author's interview with Houry.

⁶⁶ Author's interview with Houry, who suggested that many human rights organizations are of this view.

⁶⁷ Author's interview with Houry. .

Unique features

The tribunal has a number of unique features, beyond the deviations from the common characteristics of hybrid tribunals noted above. It is noteworthy that it will be an internationalized court trying the crime of terrorism, given that there is no comprehensive agreed definition of the crime of terrorism in international law.⁶⁸ It is also unique in that trials *in absentia* are permitted, which critics have argued is inconsistent with international human rights law.⁶⁹ The final feature, if utilized effectively, might have the potential for wider impact of the tribunal, the provision for victim participation.⁷⁰ Article 17 of the statute, copying the language of article 168 of the statute of the International Criminal Court, permits victims to present their views during the proceedings. The purpose of inclusion of victims in such proceedings, according to one jurist, is not merely judicial, but also serves reparative and symbolic functions for the victims themselves;⁷¹ in theory, such participation might serve symbolic functions for the wider society as well. However, given the relatively limited scope of persons likely to be considered victims for the purposes of the STL, in comparison to those considered victims before the Extraordinary Chambers in Cambodia, which has similar provisions, the impact is likely to be limited. In particular, the large number of victims and families of victims, including the disappeared, would not be able to make statements at the STL as the crimes to which they could refer do not fall within the remit of the court. At this stage, in the absence of any criminal proceedings, it is too early to assess the impact of victim participation at the STL.

Legitimacy, politics, and stability: controversy over the 4 generals

⁶⁸ Jan Erik Wetzel and Yvonne Mitri, "The Special Tribunal for Lebanon: A Court 'Off the Shelf' for a Divided Country," *The Law and Practice of International Courts and Tribunals*, (2008), pp. 81-114; Cockayne, "The Special Tribunal for Lebanon," p. 1062. Specific terrorist crimes are defined in a range of international and regional agreements, of course.

⁶⁹ Paola Gaeta, "To Be (Present) or Not To Be (Present): Trials *In Absentia* before the Special Tribunal for Lebanon," *Journal of International Criminal Justice* vol. 5 (2007), pp. 1165-1174; Wayne Jordash and Tim Parker, "Trials *In Absentia* at the Special Tribunal for Lebanon: Incompatibility with International Human Rights Law," *Journal of International Criminal Justice* vol. 8 (2010), pp. 487-509.

⁷⁰ Cécile Aptel, "Some Innovations in the Statute of the Special Tribunal for Lebanon," *Journal of International Criminal Justice* vol. 5 (2007), pp. 1107-1124; Jerome de Hemptinne, "Challenges Raised by Victims' Participation in the Proceedings at the Special Tribunal for Lebanon," *Journal of International Criminal Justice* vol. 8 (2010), pp. 165-179.

⁷¹ de Hemptinne, "Challenges Raised by Victims' Participation," pp. 167-68.

Given the political context and the politicized nature of its creation, the Special Tribunal is viewed by many as politicized and potentially biased itself. This perception may undermine the impact of its operation on Lebanese politics, society, and discussions about accountability, even if it operates in an impartial and independent fashion. Thus, for example, even its decision in April 2009 to free four accused who had been detained by the Lebanese government for the Tribunal who were pro-Syrian generals did not prove its independence to some. The four men, former head of the presidential guard, Mustafa Hamdan, security services director Jamil al-Sayed, domestic security chief Ali Hajj and military intelligence chief Raymond Azar, were released after the prosecutor of the tribunal, Daniel Bellemare, requested that they be, on the grounds that there was not sufficiently credible evidence to make it possible for him to bring indictments in the legally mandated time frame of 90 days.⁷² A key witness, Mohammed Zuhair Siddiq, a Syrian army deserter, had recanted his original statements incriminating the four, and arrest warrants were issued for him in both Syria and Lebanon.⁷³ Following his release, al-Sayyed repeatedly made statements calling into question the impartiality of the Lebanese judicial system and high-level politicians. Members of the March 8 faction say that the Lebanese judges at the tribunal itself are corrupt and can be bought off, although they provide no specific evidence for such allegations, and indeed the order by the STL would seem to indicate that it is not.⁷⁴ One of the detained, al-Sayed, subsequently submitted a claim before the tribunal that he was the victim of arbitrary detention on the basis of libel. The matter has been assigned to a pre-trial judge and al-Sayed has been provided with defence counsel.⁷⁵

⁷² David Tolbert, "Introductory note to the Special Tribunal for Lebanon: Orders regarding the detention of persons and memorandum of understanding," *International Legal Materials* vol. 48 (April-June 2009), pp. 1149-1151; *Order regarding the detention of persons detained in Lebanon in connection with the case of the attack against Prime Minister Rafiq Hariri and Others* Case No. CH/PTJ/2009/06 (29 April 2009), reproduced in *International Legal Materials* vol. 48 (April-June 2009), pp. 1152-1160. Antonios Tzanakopoulos, "Special Tribunal for Lebanon: The First Orders by the Pre-Trial Judge," *ASIL Insights* vol. 13, issue 11 (7 August 2009) at www.asil.org. According to the rules of procedure of the tribunal, persons cannot be detained without charges being laid for more than 90 days.

⁷³ "Lebanon Frees Four Generals Held in Hariri Case", *Al-Arabiya.net* (29 April 2009) <http://www.alarabiya.net/articles/2009/04/29/71647.html#001>; "Jamil Sayyad to Saad Hariri: You are your father's killer until you punish forgers *Al-Manar TV* (30 August 2009) <http://www.almanar.com.lb/NewsSite/NewsDetails.aspx?id=101267&language=en>.

⁷⁴ Author's interview with Hamieh.

⁷⁵ *Order assigning matter to Pre-Trial Judge* Case No. CH/PRES/2010/01 (15 April 2010); *Appointment of Defence Counsel. Rule 58 of the Rules of Procedure and Evidence* Case No. CH/PTJ/2010/01 (26 April 2010).

The tribunal could according to some have a destabilizing effect on Lebanese politics, depending upon whom it chooses to indict.⁷⁶ Thus Walid Jumblatt, the leader of the Progressive Socialist Party, predicted that there would be an ‘earthquake’ when indictments were issued. Some observers are more circumspect, suggesting that the tribunal may have exacerbated existing political divisions, but that it did not create them.⁷⁷ Further, while the tribunal was extremely politicized at its creation, given perceptions that it was a tool for the US, France, and others to demonize Syria, Syria has begun to rebuild relations with regional and international powers. Thus the “shadow of the tribunal” may be lessened.⁷⁸ Conversely, indictments could help calm the political situation, ending rumor and speculation, according to one observer.⁷⁹

Conclusion

As one analyst asked me, “how can we establish peace with half a justice done?”⁸⁰ Despite the passage of 20 years since the Ta’if agreement, it is difficult to say that peace is truly consolidated in Lebanon. This has hampered efforts to pursue accountability, or even establish a shared narrative of the events of the civil war or under occupation, even five years after Syrian withdrawal. The Special Tribunal for Lebanon is ill-suited to engage the larger legacy of the past, given its limited mandate. And it is unlikely, on the evidence to date, to have the hoped-for effect of promoting efforts at accountability efforts or even truth-telling efforts domestically, engendering frustration and disappointment among victims and families of victims and the missing. Whether the tribunal will undermine stability, should it have any defendants before it, remains to be seen.

⁷⁶ Comments from observer speaking on condition of anonymity (Beirut, September 2009).

⁷⁷ Author’s interview with Lynn Maalouf (Beirut, September 2009).

⁷⁸ Paul Salem, “Lebanon’s Multiple Crises Risk Escalation,” (Carnegie Endowment for International Peace, Carnegie Middle East Center, 12 July 2010), at <http://carnegie-mec.org>.

⁷⁹ Author’s interview with official of the European Commission.

⁸⁰ Author’s interview with el-Hélou.