

# **Lebanese American University**

## The Power of Silence: Impunity and Accountability in Lebanon

By

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School of Arts and Sciences

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To my beloved father, mother and brothers

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# The Power of Silence: Impunity and Accountability in Lebanon

Michelle M. Bouchebel

## ABSTRACT

The Power of Silence: Impunity and Accountability in Lebanon by Michelle Bouchebel explores the extent to which transitional justice mechanisms could help to strengthen accountability and the rule of law in Lebanon and suggests several options for the kinds of transitional justice mechanisms that could be explored, taking into account the current political context of the country.

The study draws on, and seeks to contribute to, literature on transitional justice as well as literature on the Lebanese civil war and its aftermath. In an effort to assess the feasibility of implementing transitional justice mechanisms in Lebanon, the study develops four criteria: political feasibility, impact on rule of law, economic viability and potential for quick wins. Applying these criteria, the study argues that judicial reform targeting the independence of the judiciary; security sector reform targeting the behavior and mindsets of both the Internal Security Forces and the Lebanese Armed Forces, and adopting a bottom-up, civil society-led informal truth process, could be expected to produce some tangible results in the short to medium-term. It further argues that their



real importance lies in the normative change they would bring to Lebanese politics with regard to dealing with the past: towards a more just and more equal society and away from a culture of kleptocracy and *muhhasasa* which have dominated the post-war reconstruction and reform efforts in the country.

**Keywords:** Transitional Justice; Rule of Law; Impunity; Accountability; Corruption; Lebanon.

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# List of Abbreviations

AI	Amnesty International
CA	Courts of Accounts
CIB	Central Inspection Board
CLDH	Lebanese Center for Human Rights
CPI	Corruption Perception Index
EU	European Union
FPM	Free Patriotic Movement
GTCRP	Greensboro Truth and Community Reconciliation Project
ICC	International Criminal Court
ICRC	International Committee for the Red Cross
ICTJ	International Center for Transitional Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IDP	Internally Displaced People
ILO	International Labor Organization
ISF	Internal Security Forces
KLA	Kosovo Liberation Army
LAF	Lebanese Armed Forces
LF	Lebanese Forces
LNP	Liberal National Party
LTA	Lebanese Transparency Association
NATO	North Atlantic Treaty Organization

PLO	Palestinian Liberation Organization
PSP	Progressive Socialist Party
SCSL	Special Court for Sierra Leone
SFRY	Socialist Federal Republic of Yugoslavia
SSA	Stabilization and Association Agreement
SSR	Security Sector Reform
STL	Special Tribunal for Lebanon
TI	Transparency International
TRC	South Africa Truth and Reconciliation Commission
UN	United Nations
UNAC	United Nations Convention Against Corruption
UNGASC	United Nations General Assembly Security Council
UNODOC	United Nations Office on Drugs and Crime
UNOHCHR	United Nations Office of the High Commission for Human Rights
UNSC	United Nations Security Council
UTP	Unofficial Truth projects
WTO	World Trade Organization
YPA	Yugoslav People's Army

# Chapter One

## Introduction

*“We should not forget the war, but we should also not become its prisoners, nor should we impose it on the new generation. Today’s youth have a right to forget and we have a right to remember. I am concerned that they will make the same mistakes because we have not studied all of the war’s consequences. Perhaps we abandoned this more quickly than what was needed.”*

—Ghassan Salame (Barak, 2007, p.49)

Wars usually have a start date and an end date, but the suffering of the people who have been directly or indirectly affected endures long beyond a conflict’s timeline. During times of war, mass human rights violations occur and their consequences affect not only the victims themselves, but also tend to be transferred onto subsequent generations. People who are physically, sexually, morally and economically abused, abducted, displaced, kidnapped, disappeared and even killed, have rights considered by international law to be universal, which must be respected by their governments.

The consequences of wars do not only affect victims, on the contrary, they spill over to the society and country as a whole, often destroying a country’s entire infrastructure. In the aftermath of a conflict, war-torn societies can be faced with shattered state institutions, depleted resources, minimal levels of security, if any, and a divided and distressed population. The absence of oversight over state institutions often also leads to corruption and the embezzlement of resources. If the judiciary is weakened or undermined, then a culture of impunity prevails and laws are no longer obeyed or

enforced. This, in turn, amplifies mistrust in the government and structures of state, and leads to the absence of the rule of law (United Nations Security Council [UNSC], *The rule of Law and transitional justice in conflict and post-conflict societies*, 2004).

In the post-conflict period, significant attention is often given to repairing the material damage caused by war – rebuilding houses, roads, schools, hospitals and other essential infrastructure – and to demobilizing, disarming and reintegrating former combatants into productive employment. These measures may be sufficient for rebuilding a state, but are they sufficient for rebuilding society? Can they provide answers to questions such as: How to deal with the violent past? How to deal with the consequences of war and the atrocities committed during war in a way that would facilitate rebuilding an inclusive, democratic state? How to deal with the perpetrators of atrocities? How to safeguard the rights of the victims of conflicts and compensate for their emotional and material losses? How to reconcile between conflicting parties in a sustainable manner? Who are to be held accountable and by whom? How to rebuild respect for the rule of law and public confidence in the government and state institutions? How does transition happen?

The short answer is no, they cannot. This seems to have been also the conclusion of the international community, inasmuch as with the end of the Cold War and the growing number of intra-state conflicts (as opposed to the inter-state conflicts which had constituted the majority of conflicts in the past), a new field of study was created to deal with the “full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability,

serve justice and achieve reconciliation” (UNSC, 2004, art. 8). That field of study is transitional justice.

The concept of transitional justice can be defined as “an umbrella term that covers a range of disparate practices to address a violent past in a period of regime transition” (Barahona De Brito, 2010, p.360). It gained more prominence in literature in the late 1980s as a result of authoritarian regimes in Latin America and Eastern Europe, notorious for their systematic human rights abuses, being replaced by democratic ones (International Center for Transitional Justice [ICTJ], 2013). In 1988, a group of scholars and activists from Argentina, Uganda, Chile, South Africa, South Korea, Philippines, Uruguay, Guatemala, Haiti and Brazil, all countries that were going through political transitions, gathered at a conference organized by the Aspen Institute and had one common question: “what to do with the former torturers persisting in their midst” (Arthur, 2009, p.322). They shared their experiences and concerns regarding the ethical, legal and practical dilemmas facing human rights activists with regard to how to deal with past abuses without compromising the political transitions – questions that were hard to answer at that time. This conference was the first of a series of meetings that solidified and clarified the conceptual framework of this emerging field. Over the years, and with the help of a vast pool of human rights activists, legal experts and scholars, the concept of transitional justice emerged as a discipline at the international level and was acknowledged for its comparative knowledge base. (Arthur, 2009)

According to a key 2004 United Nations Security Council (UNSC) report on the rule of law and transitional justice, consolidating peace in post-conflict societies and preserving



it in the long run is only possible if “the population is confident that redress for grievances can be obtained through legitimate structures for the peaceful settlement of disputes and the fair administration of justice” (UNSC, 2004, art.2). The report also maintains that the intensified vulnerability of “minorities, women, children, prisoners and detainees, displaced persons, refugees and others, which is evident in all conflict and post-conflict situations, brings an element of urgency to the imperative of restoration of the rule of law” (UNSC, 2004, art. 2). In order to consolidate peace, citizens need to feel that they have access to justice and that perpetrators have been held accountable. Justice is seen as essential for consolidating the rule of law.

It would seem, therefore, that transitional justice can offer an approach and a set of mechanisms to help countries recovering from internal conflict or political transition in building a society that is just and acknowledges the suffering of the victims of past atrocities. This would be essential for instilling a sense of justice in society, which in turn is essential for consolidating the rule of law, a pillar of society which “ensures political rights, civil liberties, and mechanisms of accountability [that] affirm the political equality of all citizens and constrain potential abuses of state power” (O'Donnell, 2004, p.32).

The combination of justice and the rule of law are therefore very much connected to long-term peace and stability: the United Nations (UN) considers that these three together form the key components of the international community's efforts to improve human rights, optimize economic development and promote accountability and good governance (UNSC, 2004).

Among the countries that emerged from a bloody civil war in the immediate post-Cold War period is Lebanon. Unlike many other countries recovering from intra-state conflict at that time, Lebanon did not undergo a transitional justice process in the aftermath of its war, but rather took the decision not to deal with its past, with atrocities committed or with the suffering of the victims.

According to the Freedom in the World 2014 report by Freedom House, Lebanon is partly free with a score of 48 out of 100 (Freedom House, 2014); according to the Transparency International Corruption Perceptions Index 2013, Lebanon scored 28 – two points lower than in 2012 – and ranked 127 out of 175 countries examined (Transparency International, Corruption Perceptions Index 2013, 2013), and; according to the 2012 Rule of Law Index of the World Justice Project, Lebanon has an average rank of 59 out of 97 countries examined across the 8 factors of Rule of Law it examines (World Justice Project, WJP Rule of Law Index 2012-2013, 2013). It would seem, therefore, that the current status of Lebanon leaves much to be desired in terms of the political rights, civil liberties, and mechanisms of accountability called for by O'Donnell above.

Building on the above, the main research question of this thesis is: could transitional justice help to strengthen accountability and the rule of law in Lebanon, and if so, what might feasible transitional justice processes in Lebanon look like?

This study draws on, and seeks to contribute to, two main bodies of literature. On the one hand, it draws on literature on transitional justice and seeks to contribute to it by looking at the consequences of post-war settlements on impunity and accountability. On

the other, it will draw on literature on the Lebanese civil war and its aftermath and seek to contribute to it by analyzing the societal and institutional consequences of impunity in the Lebanese context and establishing the opportunities and limitations of a transitional justice approach in Lebanon.

The body of literature on transitional justice and its mechanisms has been expanding and maturing in parallel with this field's development over the last thirty years. This paper draws on the theoretical work done by scholars such as Ruti Teitel, who has focused in particular on the relationship between transitional justice and the rule of law, and Neil Kritz, who has also studied the experiences of different countries in implementing transitional justice mechanisms such as vetting or purge, truth seeking, prosecutions and amnesties. The study has been inspired by more recent work by Ruben Carranza, which has made a strong case for expanding the traditional scope of transitional justice to include also corruption and economic crimes.

With regard to transitional justice in the Balkans, the work of Jelena Subotić in "Hijacked Justice: Dealing with the Past in the Balkans", has been instrumental for studying criminal justice and its application especially in Croatia. As for literature on the case of Lebanon, this paper has drawn upon the work of a number of scholars writing about the causes of war, the post war settlement and its consequences. In his book "Civil and Uncivil Violence in Lebanon", Samir Khalaf examines the historical role that international and regional actors have played in de-stabilizing Lebanon. In "Spoils of Truth", Reinoud Leenders looks into the consequences of the post-war settlements by highlighting corruption and its impact on state-building. In terms of transitional justice,

the work of Nizar Saghieh, Sune Haugbolle and Aida Kanafi-Zahar gives a critical insight on the efforts that took place in Lebanon after the war.

By building on the work of these academics as well as looking into primary sources such as the Taif accord and the Amnesty law, this study hopes to invigorate the debate on transitional justice in Lebanon. The importance of this paper is twofold: first, it studies the impact of transitional justice on the rule of law and second, it draws on comparative experiences, good practices and lessons learned from other countries in an effort to identify politically feasible transitional justice measures that could enhance the rule of law and accountability in Lebanon.

Chapter 2 will start by defining transitional justice and the rule of law and exploring in more detail the link between the two. It will seek to demonstrate that transitional justice mechanisms are an effective tool for strengthening the rule of law in countries experiencing transition or recovering from conflict. Chapter 3 will then examine the case of Croatia as a relevant comparator for Lebanon and consider whether transitional justice mechanisms employed in Croatia, as well as the “carrots and sticks” used to implement them, could be relevant also in the Lebanese context. Chapter 4 will provide a brief introduction into the kinds of human rights violations that took place during the Lebanese civil war and its aftermath, in an effort to establish what measures were taken in Lebanon to address these and to rebuild society, why, and what impact they have had on the rule of law. The argument will be made that instead of introducing reforms aimed at strengthening the ability of state institutions to uphold the rule of law and revive the country, reforms were limited to revitalizing the economy and were notorious for the

high levels of corruption involved, which actually had a negative impact on the rule of law in Lebanon. Finally, Chapter 5 will develop a set of criteria for assessing the feasibility of different transitional justice mechanisms and processes that could be implemented to improve the rule of law in the prevailing Lebanese context.

## Chapter Two

# Transitional Justice, the Rule of Law and Democracy

*“In the past, peace and justice were presented as mutually incompatible goals. The dilemma was thought to be between securing peace with the cooperation of perpetrators of human rights violations or addressing justice at the cost of perpetuating conflict. In recent years, however, this perceived tension between peace and justice has been gradually dissolving. There has been a growing recognition that, when properly pursued, peace and justice can promote and sustain each other. Indeed, peace and justice are increasingly—and rightly—seen as inter-dependent and mutually reinforcing. The persisting dilemma concerns rather the extent of national mechanisms’ ability and determination to bring the alleged perpetrators of international crimes to justice.”*

—Navanethem Pillay, United Nations High Commissioner for Human Rights (Pillay, 2009, para.3)

It has often been postulated that seeking justice through trials after mass atrocities hinders the peace process and reconciliation between conflicting parties<sup>1</sup>. In some cases it is also advised to turn the page, forget about the past and start a fresh new beginning, such as in the case of Lebanon<sup>2</sup>. However, by forgetting about the past and wiping clean the slates of those who took active part in atrocities, the voice of the innocents also goes unheard and their suffering is perpetuated. Those who usually suffer the most from such conflicts are the “civilians” who end up paying the price for the ambitions, mistakes and profit seeking of those in power. So how can we talk about peace and reconciliation when the people who were affected the most by conflict are forgotten? We would do

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<sup>1</sup> See (Amstutz, 2005, p.10); (Kritz, 1995, p. xxi-xxii); (Huntington, 1995, p.69)

<sup>2</sup> See (Haugbølle, 2012); (Germanos & Germanos, 2012)

well to recall the words of the High Commissioner for Human Rights, that peace and justice go hand in hand and reinforce each other. If you want to have a peaceful nation, give its citizens justice so that they are able to reconcile with their past. Finding mechanisms and processes that would facilitate such reconciliation is what transitional justice tries to achieve (Pillay, 2009).

This chapter will begin by defining the concept of transitional justice and examining its evolution in academic discourse. It will further break down transitional justice into its commonly accepted sub-categories in an effort to assess what mechanisms they can offer to countries seeking to come to terms with their past. Finally, the chapter will consider the interrelationship between transitional justice and the rule of law, and argue that for post-conflict societies, engaging in transitional justice efforts is a means to strengthen the rule of law.

## **2.1. What is Transitional Justice?**

There are two approaches that can help in dealing with the past, “engagement or denial, accountability or avoidance” (Amstutz, 2005, p.8). Transitional justice is based on the concept of engagement, which entails that “before nations can be healed or reconciled, regime wrongdoings must be disclosed and acknowledged and then redressed through appropriate strategies of accountability” (Amstutz, 2005, p.8). How to deal with the transition from a bloody past, that left thousands of victims and shattered a country, to a new democratic system is not a new question, Ruti Teitel traces the first examples of

such considerations back to the “Nuremberg Trials” of 1945, where the Allied forces prosecuted elite members of the Nazi German Regime (Teitel, 2000).

However, it wasn't until the late 1980s and early 1990s that transitional justice emerged as a specific field of study. This is largely due to the fact that with the end of the Cold War, a number of countries in Latin America and Eastern Europe transitioned from various kinds of authoritarian regimes, often created and maintained by the ideological struggle between the two superpowers the United States and the Soviet Union, towards democracy, resulting in the so-called "third wave of democratization"(Huntington, 1995). According to Paige Arthur, it was the particular context of this third wave of democratization that established the need for a concept that would “signal a new sort of human rights activity and [as] a response to concrete political dilemmas human rights activists faced in what they understood to be transitional contexts.” (Arthur, 2009, p.326).

In its early stages, the concept of “transitional justice” was not very well developed or defined. It was widely used by Ruti Teitel in the early 90s and soon after by Neil Kritz, who published a three volume collection entitled: “Transitional Justice: How Emerging Democracies Reckon with Former Regimes” in 1995. At that time, the term transitional justice was exclusively used to refer to a **process assumed by nascent democracies that went through a change in their political system and needed mechanisms and processes to deal with the injustices of past authoritarian regimes**. Some of the reviewers of Krtiz’s book, such as Richard Siegel, argued that transitional justice



“characterized the choice made and quality rendered when new leaders replace authoritarian predecessors presumed responsible for criminal acts in the wake of the ‘third wave of democratization’” (Arthur, 2009, p.331).

Partly due to the political context of the post-Cold War world, transitional justice was initially conceptualized as an approach to dealing with political transition specifically, rather than post-conflict situations more broadly. However, it was soon recognized that the kinds of mechanisms and processes that can help national reconciliation and bring perpetrators of past violations to justice can be helpful in a broader range of contexts than simply transitions from authoritarian regimes to democratic ones.

In 1997, Louis Joinet presented a report to the UN sub-Commission on Prevention of Discrimination and Protection of Minorities, in which he tackled the question of “impunity of perpetrators of human rights violations”, which was becoming a growing concern in the eyes of the international community. While the report did not specifically relate this term to transitional justice, it nevertheless articulated the guiding principles for developing the rights of victims through three sets of principles known as the “Joinet principles”. These principles – the victim’s right to know, right to justice, and right to reparations (Joinet,1997, p. 5) – were soon thereafter adopted by transitional justice scholars and practitioners, and in 2004 the UN adopted an official definition of transitional justice as the “full range of **processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses**, in order to ensure accountability, serve justice and achieve reconciliation” (UNSC, 2004, p.4).

Since 2004, thinkers such as Naomi Roht-Arriaza, who argues that transitional justice should not be limited to political and civil rights, but instead should cover the full spectrum of human rights, have further enriched this definition. Roht-Arriaza goes on to propose a definition of transitional justice as a “set of practices, mechanisms and concerns that arise following a period of conflict, civil strife or repression, and that are aimed directly at **confronting and dealing with past violations of human rights and humanitarian law**” (Sandoval, 2011, p.3). It is in this context that transitional justice can also be considered relevant for the case of post-war Lebanon, where a 15-year conflict took place from 1975 to 1990 but did not lead to regime change, which means that the status quo remained the same and the war-time leaders or warlords are still governing the country today.

## **2.2. The Five Pillars of Transitional Justice**

Transitional justice processes and mechanisms are supposed to empower the victims of human rights violations and give them a voice. By so doing, they can help to ensure that the suffering of victims does not go unheard and that all possible measures are taken to attempt to prevent the recurrence of violence. This is why the literature on transitional justice, including the recommendations given by the UN, emphasizes the importance of engaging those most affected, in other words the victims or their families, in every process.

Transitional justice is commonly understood as a range of judicial and non-judicial measures and mechanisms, which, since it is a relatively young field of study, are still

developing and evolving. The UN considers transitional justice to rest on **five main pillars: 1) criminal prosecutions; 2) truth-seeking; 3) reparations; 4) institutional reforms; 5) vetting and dismissals** (UNSC, 2004, para.8). The International Center for Transitional Justice (ICTJ), one of the leading NGOs in the field of transitional justice, groups vetting and dismissals under institutional reform and thus identifies four key pillars instead of five, which are criminal prosecutions, truth-seeking, reparations and institutional reform (ICTJ, 2013). Regardless of the specific terminology used to describe the core elements or pillars of transitional justice, it is broadly agreed that these elements are interrelated processes that strengthen each other and should not be dealt with in isolation from each other (ICTJ, 2013).

For the purposes of this study, the five pillars identified by the UN will be used as the framework for examining whether and how the different pillars of transitional justice could help strengthen democracy and the rule of law in Lebanon. In order to assess the relevance of these different pillars or elements to the Lebanese context, the study will examine each pillar in more detail.

### **2.2.1. Criminal Prosecutions**

Criminal prosecutions aim at holding the perpetrators of serious violations of international humanitarian law and gross violations of international human rights law accountable by bringing them to justice (UN, 2010, p.7). The thinking behind this mechanism is that the people who are responsible for crimes against humanity, genocide and war crimes should be tried “in accordance with international standards of fair trial”

(UN, 2010, p.7) and if convicted, they should be sentenced for the crimes and violations that they committed, as opposed to simply being granted amnesty on the one hand (as was the case in post-Franco Spain for example) or executed without trial out of vengeance on the other (as was done to Muammar Gaddafi in Libya recently). One of the main arguments in support of this approach is that under international law, states are obliged to “investigate, prosecute and punish such crimes” (Sandoval, 2011, p.4). Another argument is that **holding the perpetrators accountable deters future atrocities from being committed and helps in fighting impunity** (Huntington, 1995, p.68).

The UN encourages trials to be mainly under the domestic jurisdiction of the state whose nationals are on trial. This is because domestic trials for human rights violations have a more powerful impact from the point of view of reinforcing a sense of justice; as Kim and Sikkink argue, “domestic prosecution and punishment inhibit individual criminal activity in the country where the prosecution occurs” (Kim & Sikkink, 2007, p.7), thus serving as a deterrent to further lawlessness in countries suffering from weak rule of law to begin with. Several examples of successful domestic trials can be found in countries in Latin America, such as Argentina where Alfredo Astiz, a Commander during the military rule of Videla from 1976 to 1983 was domestically tried. Astiz, known as “El Ángel Rubio de la Muerte” or “The Blond Angel of Death” was prosecuted and found guilty of crimes against humanity on October 27, 2011 (Mattes, 2012).

Some post-conflict countries lack the legal capacity and/or political will to establish national tribunals. In these cases, ‘hybrid tribunals’ have proved to be a workable alternative. Hybrid tribunals are composed of a mix of domestic and international justice actors and are known for blending “the international and the domestic as a product of judicial accountability-sharing between the states in which they function and international entities” (Holvoet & De Hert, 2012, p.229). Hybrid courts are able to exercise domestic justice while upholding international law and complying with relevant international standards and are usually jointly set up by the State and the United Nations, such as in the case of The Special Court for Sierra Leone (SCSL) and the Special Tribunal for Lebanon (STL), to name a few. Many scholars consider that such tribunals, which combine domestic and international judges, can reach a higher level of legitimacy than purely international courts. This is due to the fact that they can deliver ownership without compromising on independence and impartiality (Holvoet & De Hert, 2012, p.230). In other words, they are able to prosecute more perpetrators in less time and at a lower cost, but at the same time they also help build capacity at the national level. These trials are funded by voluntary funds from governments, for example the court of Sierra Leone received funds from over 40 states as well as some financial support from the UN (The Special Court for Sierra Leone, 2011). In September 2013, this tribunal successfully sentenced the former president of Liberia, Charles Taylor, for 50 years “for encouraging rebels in Sierra Leone to mutilate, rape and murder victims in its civil war” (Reuters, 2013, para.1).

Ad hoc tribunals, also known as international tribunals, are another type of international court that is occasionally set up by the UN Security Council “under its biding powers” specifically to prosecute the perpetrators of crimes against humanity, war crimes and genocides. As a response to the atrocities that were committed after the end of the cold war in Former Yugoslavia and in Rwanda, the international community intervened and the UN set up the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). What distinguishes these two tribunals from the rest is that they have “compulsory jurisdiction with primacy over domestic State courts” (Garraway, 2011, para.6) – in other words they are not reliant on domestic legislation or judges to accomplish their work. Both of these tribunals were established because the situation in the two countries was considered as “a threat to international peace and security” and the international community was “determined to put an end to such crimes and [...] to bring to justice the persons who are responsible for them” (International Committee of the Red Cross, 1993, para.1). These types of trials are often criticized for opting to resort to international jurisdiction at the expense of strengthening domestic legitimacy; Jose Alvarez, one of the main critics of the ICTR notes that “by depriving the Rwandan government of the opportunity to try high-level perpetrators, the ICTR’s primacy deprived the current government of legitimacy at a critical time” (Raub, 2009, p.1019).

In addition to the above-mentioned courts, which are specifically established to deal with crimes committed in a particular context, there is the possibility of referring violations of human rights to the International Criminal Court (ICC), as its work begins

when “States are unwilling or unable genuinely to investigate or prosecute themselves” (United Nations Office of the High Commissioner for Human Rights [UNOHCHR], 2006, p.1). The ICC’s jurisdiction is quite limited, however, since it only has jurisdiction if the state in question has signed the Rome Statute<sup>3</sup>, if the states specifically asks for the Courts’s assistance or if the UN Security Council refers a case to it. Furthermore, it can only cover violations that took place after July 2002 (UNOHCHR, 2006, p.1).

Indeed, it would seem that recent developments in the field of international criminal law and human rights law have placed considerable weight on upholding justice; through different types of tribunals, the international community has sought to ensure that serious violations of human rights law do not go unnoticed and unpunished. Building on existing international human rights conventions, such as the UN Convention on the Prevention and Punishment of the Crime of Genocide of 1948 and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, the international community has sought to develop the necessary public and customary international law to establish an international obligation to intervene in areas where such violations have taken place (Sandoval, 2011, p.4). Different kinds of tribunals, combined with normative developments made by initiatives such as the International Commission on Intervention and State Sovereignty, have gone a long way to establish the right of the international community to take action and “ensure that justice is done” (Sandoval, 2011, p.3) in situations where a state is not able or willing to

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<sup>3</sup> The Rome Statute is the founding treaty of the International Criminal Tribunal and outlines its jurisdiction and mandate. The text of this treaty can be found at [http://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome\\_statute\\_english.pdf](http://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf)

carry out its international obligations to hold accountable the perpetrators of human rights violations under its jurisdiction.

Despite these developments, the ‘peace vs. justice’ debate still dominates much of the discussion among practitioners: that is, the question of whether seeking justice hinders the ability to establish peace. Some countries, such as Brazil, have chosen to settle for peace at the expense of justice. In 2010, the Brazilian Supreme Court insisted that in order to maintain peace, an amnesty law had to be introduced through a social agreement. Other countries such as Columbia, Chile and Argentina, on the other hand, have continued to fight the impunity created by amnesia and have opted for domestic trials. (Sandoval, 2011, p.4)

While it is perhaps too early to determine whether, in the long run, seeking justice tends to strengthen peace or hinder it, many scholars and practitioners alike seem to be moving towards favouring justice over amnesty. A recent study completed in 2007 by Kim and Sikkink, entitled “Explaining the Deterrence Effect of Human Rights Prosecutions for Transitional Countries”, shows that in general, these **trials improve the protection of human rights in transitioning countries and can even extend this effect to neighboring countries** (Kim & Sikkink, 2007). From a UN point of view “Amnesties are impermissible if they prevent prosecution of individuals who may be criminally responsible for war crimes, genocide, crimes against humanity, and gross violations of human rights” (Pillay, 2009, para.3). Navi Pillay, the United Nations High Commissioner for Human Rights, reinforces this argument by stating “there are also



indications that in countries where amnesties for serious crimes are allowed, a corresponding culture of immunity has emerged. This, in turn, exacerbated human rights violations” (Pillay, 2009, para.3).

### **2.2.2. Truth Seeking**

Truth Seeking constitutes the second pillar of transitional justice, as identified by the UN. It aims at investigating and reporting on systematic patterns of abuses through truth commissions, which can be official state bodies or unofficial commissions that **help understand the patterns of violations and come up with recommendations to redress violations and prevent their recurrences** (UNSC, 2004) (ICTJ, 2013). Although it does not require judicial measures in the way pursuing actual criminal justice does, it can nevertheless “positively complement criminal tribunals” (UNSC, 2004, para. 26).

Much of the literature on transitional justice considers truth seeking to be a foundation for a wider strategy to reach accountability. According to Amstutz, “the foundation of any strategy of accountability is the discovery, disclosure, and acknowledgment of truth” (Amstutz, 2005, p. 8). Amstutz goes on to argue that the truth should be public and that the people should know of the atrocities that were committed by the state or particular organizations or groups within the state. This argument is further reinforced by various UN conventions. Protocol I of the Geneva Conventions focuses on the right of the families of missing persons to know what happened to their beloved and thereby “establishes the obligations to be fulfilled by each party to the conflict” (Sandoval, 2011,

p.8). The UN Convention on the Protection of all Persons from Enforced Disappearances, in turn, establishes “the right of victims to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person” (Sandoval, 2011, p.8).

Truth seeking is usually done through either official truth commissions or unofficial truth commissions, also known as unofficial truth projects. Official truth commissions are established by the state and are known to be “nonjudicial bodies of a limited duration established to determine facts, causes and consequences of past human rights violations” (Gonzalez & Varney, 2013, p.9). Such commissions serve to highlight the testimonies of victims, which provide them with recognition of the wrongdoings done to them. Given the interdependent nature of different transitional justice mechanisms, these commissions can also help in the prosecution and reparation processes by gathering data and providing recommendations, which can help determine what kind of institutional reforms would be needed to deter future violations. In short, the outcomes of official truth commissions help “societies to overcome a culture of silence and distrust” (Gonzalez & Varney, 2013, p.9). An example of a “government-appointed commission” is South Africa’s Truth and Reconciliation Commission (TRC), which was established by the government to find the truth and deal with the violations that took place during Apartheid (Amstutz, 2005, p.9). This commission was able to collect over 22,000 testimonies, organize public hearings and produce a report of 3,500 pages that set the record straight with regard to the memory of South Africa during its transition. Given its public tenure, it allowed victims to be involved in “amnesty proceedings where

perpetrators confessed their crimes”, which contributed to the reconciliation and healing process of the society (Gonzalez & Varney, 2013, p.12). The work of the TRC was nevertheless criticized as the government was unable to implement the recommendations given by this commission and the commission’s work focused exclusively on individual crimes whereas it was felt that “the ‘excesses’ of the apartheid regime came at the cost of largely ignoring the institutional violence that characterised National Party rule for over four decades” (Valji, 2003, para.3).

Unofficial truth commissions basically share the same objectives of an official truth commission in the sense that they are “geared towards revealing the truth about crimes committed in the past as a component of a broader strategy of accountability and justice” (Bickford, 2007, p. 994). What differentiates them from the official ones is that they are generally led by civil society and are not established by the government, which means that they do not have the authority to implement their recommendations and take decisions with regard to issues such as granting amnesty, prosecuting criminals, or providing reparations. One of the many examples of such efforts is the “Brazil: Nunca Mais” known as “Brazil: Never Again”, which was part of a truth-telling initiative that was intended at presenting indisputable documentation of the systematic violence by the Brazilian government which lasted for around 20 years. The fruit of this initiative was the publication of a report on the abuses that was disseminated all over the country (Bickford, 2007, p. 1005).

In sum, **truth-telling or truth-seeking efforts are essential for acknowledging the malpractices of the past.** They might not always lead to justice and to reconciliation, but they are, as Jose Zalaquett puts it, “an inescapable imperative” (Amstutz, 2005, p.9) in seeking those important goals.

### **2.2.3. Reparations**

Under international law, victims have the right to a remedy; this is upheld by the “UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law” (Magarrell, 2007, p.1). Reparation efforts, which are state-sponsored mechanisms by which governments acknowledge past violations and set up compensation initiatives for the victims, can be either symbolical in the form of an official apology or physical in the form of financial compensations, for example. According to Ruti Teitel, “the vocabulary of reparatory justice illustrates its multiple dimensions, comprehending numerous diverse forms: reparations, damages, remedies, redress, restitution, compensation, rehabilitation, tribute” (Teitel, 2000, p.119).

What characterizes reparations is that it sheds light on the victims and their situation and establishes these as central to seeking transitional justice. It aims to **redress the wrongdoings and the harm suffered by victims and tries to restore their dignity.** Given its complex nature, this mechanism is faced with many challenges. For example, how can one put a price on the harm inflicted to a person who has lost all of their family members, their house and their property? Who should be eligible to benefit from

reparations? How can a transitioning state, which often is on the verge of being bankrupt, afford these reparations? In a situation like Rwanda, where almost 10% of the population was killed in a month, should only those who died be considered victims or also their families?

One approach to tackling some of these challenges can be found in Peru, where the government developed an administrative reparation program that divided the victims and their family members according to classes or categories such as victims or family members of victims of disappearances, forcibly displaced, child soldiers, those who suffered rape, torture, etc. This policy has been considered to be more effective than treating violations on a case-by-case basis, as it reached a greater number of victims (Magarrell, 2007, p.4).

According to Magarrell, the symbolic forms of reparation can include an official apology by the state or the perpetrators, “the naming of a street in honor of a victim through to locating the remains of loved ones; creating dignified burial sites; establishing rehabilitation and community centers; releasing pools of credit or directly funding targeted community reparations projects; or paying compensation or pensions” (Magarrell, 2007, p.4). Physical forms of reparations typically take the form of material compensation, pensions and restoration of property rights (UNSC, 2004, para. 54). Symbolic and physical forms of reparation measures are often interdependent and particularly effective at rebuilding public trust in the state and at reintegrating victims back into society. For instance, the Chilean President Aylwin not only presented a public

apology for the violations committed by his predecessor General Pinochet, but also committed to give a pension to the families of the victims that were hurt by Pinochet's regime (Magarrell, 2007). It was only through this combination of an apology and the payment of a pension that this effort made sense to the public; otherwise the apology by itself would have been void.

It is worth noting that reparation efforts do not always satisfy the victims who suffered an intolerable amount of abuse, and are far from perfect and flawless, but they are nevertheless **widely considered necessary for rebuilding trust in a democratic state that at least acknowledges the harm that was inflicted upon its citizens** (UNSC, 2004).

#### **2.2.4. Institutional Reform**

The fourth pillar of transitional justice, institutional reform, is geared towards preventing the recurrence of violence and atrocities committed. Prevention of such acts cannot be achieved solely through the means of consoling the victims and punishing the perpetrators, but necessarily must also **address and reform the system and structures that allowed these violations to occur in the first place.**

The security sector (SSR) is often the main focus of such reforms, which the UN defines as targeting "the structures, institutions and personnel responsible for the management, provision and oversight of security in a country" (United Nations General Assembly Security Council [UNGASC], 2008, p.5). In other words, such reform generally targets the military, the police, "intelligence services, customs, certain segments of the justice

sector, and non-state actors with security functions” (Sandoval, 2011, p. 9). In fact, Sandoval makes a convincing argument for why the justice sector should also be incorporated in this mechanism, as it is primordial in bringing the perpetrators to justice and holding them accountable. It is difficult, for example, to try criminals in courts if the judicial system is fragile and corrupted, as such situations tend to lead to impunity. Through a proper institutional reform program, public trust can be restored in government institutions, the security sector as well as the judicial system.

### **2.2.5. Vetting and Dismissals**

Although vetting and purges are defined as a transitional justice mechanism by itself, they are often incorporated into institutional reform. Vetting is considered to consist of “processes for assessing an individual’s integrity as a means for determining his or her suitability for public employment” (Sandoval, 2011, p.10). The targets of such processes are usually individuals in the public sphere who were responsible for past human rights abuses. Following the rule of law, not every individual who worked for an unjust regime or was affiliated with parties responsible of human rights abuses in the past should be automatically removed from their post. In order to ensure a proper accountability process, evidence should be presented of the wrongdoings of civil servants, for example, before letting them go. Failure to do so could lead not only to the collapse of state institutions due to lack of qualified individuals with experience in fulfilling necessary tasks, but also more generally to questioning the emerging democracy itself (Kritz, 1995, p. xxiv).

### **2.2.6. Transitional Justice beyond Established Mechanisms**

In addition to the five established pillars of transitional justice outlined above, an emerging element of transitional justice, which is considered to be relevant for this study, relates to dealing with the economic crimes and corruption committed by former warlords. According to Ruben Carranza, transitional justice has traditionally focused exclusively on violations of political and civil rights, at the expense of economic rights. He argues that “corruption and human rights violations are mutually reinforcing forms of abuse” and that the current transitional justice culture “perpetuates an impunity gap by focusing on a narrow range of human rights violations while leaving accountability for economic crimes to ineffective domestic institutions or to a still evolving international legal system that deals with corruption” (Carranza, 2008, p. 310).

It is internationally recognized that there is a clear connection between accountability for economic crimes and respect for human rights; for instance, Transparency International highlights that “a corrupt government which rejects both transparency and accountability is not likely to be a respecter of human rights. Therefore, the campaign to contain corruption and the movement for the promotion and protection of human rights are not disparate processes. They are inextricably linked and interdependent” (Carranza, 2008, p.311). In Nigeria, after the death of its former dictator, General Sani Abacha, it was not considered possible to hold him accountable for the embezzlement committed during his reign. As a consequence, his family still enjoys their illegal wealth and uses it to influence the current political regime in the country (Carranza, 2008, p.312).



This and numerous similar cases clearly illustrate the potentially serious consequences that an impunity gap, created when people responsible for serious economic crimes are not held accountable in the same way those responsible for serious human rights violations are, can have on national transition. Indeed, the importance given to freezing the assets of former dictators and developing mechanisms through which emerging democratic regimes could reclaim those assets provide clear evidence of the rising importance of addressing economic crimes in the eyes of the international community. This has been reinforced in Chapter V of the UN Convention against Corruption which highlights that financial institutions need to “take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates” (United Nations Office on Drugs and Crime [UNODOC], 2004, article 50 (1)).

### **2.3. Why Transitional Justice Matters: A Case for the Rule of Law**

The aim of this study is not to engage in another analysis of whether or not transitional justice is necessary for achieving transition from violent conflict to stable democracy in a comprehensive sense, but rather to examine whether or not transitional justice could help to strengthen accountability and the rule of law specifically. This is because **rule of law is essential for establishing genuine democracy as well as a requirement for restoring accountability and fighting impunity**. In order to examine the relationship

between the five pillars of transitional justice outlined above and the rule of law, it is first necessary to establish an understanding of what constitutes the rule of law.

The UN has adopted a comprehensive definition of the rule of law as: “a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency” (UNSC, 2004, para. 6). Pekka Hallberg, on the other hand, offers a more compact and clear definition. He argues that it is “a house built on a solid ground”, resting on four cornerstones: first, “the principle of legality”; second, “the balanced separation of powers”; third, “the implementation of fundamental and human rights”, and; fourth, “the performance of the system” (Hallberg, 2005, p.5).

A comparison between these four cornerstones and the five pillars of transitional justice shows that the two are in fact closely linked; both fundamentally aim at protecting the human rights of citizens, holding people accountable before the law as well as reforming institutions in a way as to ensure their adherence to the “principle of supremacy of the law” and establish a clear separation of powers. In fact, in 2004 the UN, for the first time, made a clear link between the rule of law and transitional justice by stating that it

“reaffirms transitional justice as a crucial component of the UN’s broader work on the rule of law” (ICTJ, 2011, para.2).

One of the main elements of strengthening the rule of law in a post-conflict country is judicial reform (UNSC, 2004). As outlined above, the first pillar of transitional justice, criminal prosecutions, and the fourth pillar, institutional reform, help governments in strengthening their domestic courts through judicial reforms and training of the judges (ICTJ, 2013), which serve to strengthen three of the four cornerstones identified by Hallberg: the principle of legality, the balanced separation of powers, and the performance of the system. For example in Croatia, which went through a series of human rights violations during the breakdown of former Yugoslavia, transitional justice mechanisms were adopted and helped strengthen the rule of law. Some of the perpetrators of human right violations were tried under the ICTY while others were tried in domestic courts where special chambers were established to deal with war crimes. In terms of criminal justice and judicial reform, Croatia was able to reform “its constitution to ensure the independence of prosecutors” and revise “its system for the appointment of judges” (Reding & Mimica, 2013). Thus, on the first of July 2013, Croatia became the first country of the former Yugoslavia to join the European Union (EU) (Clingendael Netherland Institute of International Relations, 2013).

Through this cooperation between international and domestic courts as well as implementing other mechanisms of transitional justice, Croatia also “made significant progress in the field of the combat of corruption and organized crime and the reform of

the judiciary” (Clingendael Netherland Institute of International Relations, 2013, para.2) and was able to comply with the strict criteria for the rule of law needed for its accession to the EU. This is a prime example of how innovative transitional justice mechanisms that go beyond the traditional five pillars can also help strengthen the rule of law, primarily with regard to Hallberg’s fourth cornerstone, the performance of the system.

The remaining pillars of transitional justice also play a role in strengthening the rule of law. Truth-seeking not only provides the basis for a wider strategy to reach accountability in terms of the implementation of fundamental and human rights – the third cornerstone of rule of law as identified by Hallberg – inasmuch as it recognizes the violations of fundamental and human rights conducted during a conflict or by a previous oppressive regime, but the findings of such a process can also be used as a basis for the possible future prosecution of the violators (UNSC, 2004). As for reparations, be they symbolic or material, they are essential in acknowledging the harm caused by the regime and rebuilding the public trust in the state (UNSC, 2004). Vetting and dismissals are directly linked to the rule of law as civil servants who were affiliated with past abuses are held accountable and removed from their posts (Kritz, 1995). Both reparations and vetting and dismissals therefore strengthen two of Hallberg’s four cornerstones of the rule of law: the principle of legality and the performance of the system.

## **2.4. Conclusions**

This chapter has shown that transitional justice is an evolving field with mechanisms and processes that are still being developed and refined. The study therefore does not assume that the processes examined are comprehensive and exclusive, but rather that they represent the currently most broadly accepted and applied mechanisms for pursuing accountability and fighting impunity in a transitional context.

On the basis of the examination presented above, it would seem that transitional justice mechanisms clearly have potential for dealing with the challenges facing any country in a post-conflict environment. It also seems clear that transitional justice mechanisms have proven to be an effective tool for strengthening the rule of law in countries experiencing transition or recovering from conflict.

However, there are also several obstacles for implementing such mechanisms – given that transitional justice processes are most commonly pursued by the national government itself, one of the main obstacles is the national political environment and the extent to which there is political will for engaging in such processes. In the case of Lebanon for example, the former warlords are the politicians of today, which leads to complications when considering the viability of implementing a genuine process of transitional justice. Would politicians be ready to critically examine their own roles during the civil war? What are the carrots and the sticks that could be used in this case? What body would be able to implement any of the transitional justice mechanisms outlined above? What processes should form the starting point (truth-seeking,

reparations, criminal justice, institutional reform and vetting)? Where would the necessary financial resources be found? Are the Lebanese people ready for such processes?

While it would seem reasonable to assume that transitional justice could also help restore accountability and the rule of law in Lebanon, to further assess the viability of this hypothesis and find possible answers to at least some of the questions outlined above, this study will need to examine the experiences of countries that have gone through various processes of transitional justice. For the purposes of this study, the case of one country in former Yugoslavia, Croatia, has been chosen as a case study for three main reasons: it can be considered to be a relevant comparison for Lebanon due to the nature of the identity-based conflict it went through in the 1990s, it implemented several transitional justice processes, including criminal justice mechanisms, and at least some of the countries that formerly constituted Yugoslavia, such as Croatia, have been successful in strengthening the rule of law to the extent that they are being considered as candidates for EU membership (or their membership has already been approved, as is the case for Croatia). By examining what mechanisms were employed in Croatia and the extent to which they played a role in strengthening the four cornerstones of the rule of law outlined above, this study will attempt to draw lessons learned for the possible mechanisms used as well as the “carrots and sticks” used to implement them and consider whether similar mechanisms and incentives could be relevant also in the Lebanese context.

In so doing, the study will keep in mind that there is no ‘one size fits all’ formula for implementing transitional justice and that each context has its own specificities and complexities, around which a transitional justice process needs to be tailored. Nevertheless, comparative experiences can serve as an inspiration for ways in which seemingly insurmountable challenges can be, and have been, tackled.

## Chapter Three

# Transitional Justice in the Former-Yugoslavia

*“We must know the truth; truth needs to be established and determined, truth needs to be faced, whatever it might be, and regardless of whether it will please all; there is only one truth”*

— Stjepan Mesić, President of Croatia (Subotić, 2009, p. 118)

As much as truth is important in setting historical accounts straight and learning from the past in order to build a better future, dealing with a nation’s past, especially one filled with atrocities, has never been an easy task to do. The ethnic conflict that the Former-Yugoslavia witnessed during the nineties has been compared to the Lebanese conflict. Given its identity based clashes, Makdisi, for example, described the Balkans as a ‘Lebanonized’ conflict (Makdisi, 2008, p.21). Unlike the case of Lebanon, where a general amnesty law was issued, countries in the Former-Yugoslavia have attempted to deal with their past and the perpetrators of the war by cooperating with the ICTY. This transitional justice initiative has helped countries like Croatia to establish democracy and the rule of law and even to become a member of the EU. The transitional justice processes in the Former-Yugoslavia have also shown the complexities involved in settling past accounts, in the form of having to find ways to deal with political spoilers from the past regime and the at times wavering domestic demand to look into the past.



Given the similarities between the contexts within which the conflicts in Lebanon and the Balkans took place, this part of the study will examine the transitional justice efforts that were undertaken in Croatia, how they affected democracy and the rule of law in the country, and to try to draw possible lessons that could provide examples for Lebanon in terms of how to implement transitional justice initiatives.

Choosing the Former Yugoslavia in general and Croatia specifically as a case study is not the most common approach and perhaps deserves some further justification. In literature on post-conflict reconciliation, a comparison is more commonly made between Northern Ireland and Lebanon (see for example “Imposing Power-Sharing: Conflict and Coexistence in Northern Ireland and Lebanon” by Michael Kerr). Indeed, if looking at the complexities involved in designing a power-sharing arrangement aimed at preventing the re-emergence of conflict, the case of Northern Ireland is perhaps more relevant to the Lebanese context. However, since the objective of this study is not to analyze the post-conflict settlement in terms of power-sharing or political structures, but rather to understand whether transitional justice mechanisms and processes could help to strengthen the rule of law, the experience of Northern Ireland is not particularly pertinent to my study.

The Former Yugoslavia, on the other hand, gives a relevant example of a transitional justice process following an identity and community based conflict, where strengthening the rule of law was a specific objective. The comparative analysis provided in this chapter should therefore be understood in this context, with the limitations that come

with any comparative study between two different conflicts in two different countries, each with their political, historical and cultural specificities.

The first section of this chapter will give a brief background of the conflict in order to illustrate the impact it had on the country and the consequent transitional justice process. The second section will focus on Croatia as a case study by looking at its relationship with the ICTY as well as the carrots and the sticks that led to Croatia's cooperation with the tribunal. It will then move on look at the effect of such an effort on the rule of law and accountability in the country.

### **3.1. Background of the Conflict**

Once a united federation composed of six republics, the Socialist Federal Republic of Yugoslavia (SFRY) started disintegrating largely as a consequence of the collapse of the Soviet Union and its model of communism, which had played a key part in keeping the country unified, in the early 1990's. Prior to 1991, this federation was known as "one of the largest, most developed and diverse countries in the Balkans" (ICTY, 2013, para.1) due to its mixture of ethnic groups and religions. The federation included the republics of Slovenia, Macedonia, Croatia, Serbia, Bosnia and Herzegovina, and Montenegro; with Kosovo and Vojvodina as two autonomous regions within Serbia. The main religions that dominated these republics were Catholicism, Orthodox Christianity and Islam.

At a time when Eastern Europe was going through a period of heightened nationalism and the breakdown of communism, Yugoslavia, in its final years as a united federal nation, went through a rough period of economic and political crises. In this nationalistic atmosphere, the crisis in Yugoslavia began taking its toll as the federal government was getting weaker and nationalist groups were rapidly developing. On the political scene, the single party communist rule was being replaced by two emerging political parties with contradictory views: those who pushed for the independence of the republics on the one hand, and those who advocated for more control and authority of some republics within the Yugoslav federation on the other. The political leaders of the republics employed “nationalist rhetoric” to fuel mistrust and capitalize on the growing fear among the various ethnic groups. In 1991, the collapse of the federation became more visible as Croatia and Slovenia blamed the Serbian authorities for controlling the federation’s government and, in return, Serbia blamed these two republics for their separatist views (ICTY, 2013).

Following the elections of 1990, Slovenia and Croatia elected non-communist governments who started pushing for more autonomy within the federation. Slovenia was the first republic to declare its independence on June 25, 1991, followed by Croatia who declared it later during the same day (ICTY, 2013). As for Bosnia and Herzegovina, the results of the elections reflected the different constituencies in the country. Muslim Bosniaks, Croats and Serbs won seats in the parliaments, and as in the case of Macedonia, communists lost power. However, these two countries did not call for independence right away, as they were ready to stay in the Federation as long as they

enjoyed more autonomy (Center for European Studies [CES], 2004). Serbia and Montenegro, the remaining two republics, re-elected their communist governments. Slobodan Milošević, the president of Serbia, warned the voters of the social, economic and security drawbacks of an imminent change in the government. He was also able to influence the voters by using patriotic rhetoric, such as calling for a re-establishment of “Greater Serbia” which basically meant “that Serbia was destined to increase in influence and territory in the region and reclaim ancient glories” (CES, 2004, p.6).

Following Croatia and Slovenia’s appeals for independence, the Yugoslav government was in a confusing position. The government was still in place and had bills to pay, services to provide for its citizens and an economy and an army to manage. What would become of the federal government if the republics called for independence?

The federal government was not very pleased with these calls for independence and reacted strongly. In the case of Slovenia, the Prime Minister of the Yugoslav government ordered its invasion by the Yugoslav People’s Army (YPA), which was mainly composed of Serbs. However, the attack on Slovenia was over relatively swiftly and smoothly, largely thanks to the Slovenian National Guard being very well trained; the conflict lasted for ten days and in the end Slovenia reaffirmed its control over its territories with minimal casualties sustained (CES, 2004) (ICTY, 2013).

In Croatia, the case was different. Given its ethnic diversity, the minority of Croatian Serbs who wanted to remain in the federation rejected the Croatian State and rebelled. The rebellion, supported by Serbia and the YPA, seized one third of Croatian territory

and proclaimed it as “an independent Serb State” (ICTY, 2013, para.3). In a Brutal campaign of “ethnic cleansing”, non-Serbs and Croats were forced to leave their homes. In 1992, a UN sponsored ceasefire was signed by the conflicting parties, and although it ended the conflict at that time, it was not the best recipe for peace as “the Croatian Serbs had gained a large section of territory and agreeing to a cease-fire allowed them to keep it—thus, in many eyes legitimizing their attacks” (ICTY, 2013, para.3). The fighting broke out again in the summer of 1995, as the Croatians wanted to regain their territory from the Serbs. In the fall of 1995, the war finally ended as a result of two offensives strikes known as Operation Storm and Flash by Croatia, which was able to regain all of its territory (ICTY, 2013) (CES, 2004).

Bosnia and Herzegovina, which was also ethnically divided between three groups Muslims (44%), Serbs (32%) and Croats (17%) (Barber, 1992), shared the same fate as Croatia in 1992, as the results of a referendum, which was boycotted by Bosnian Serbs, showed that 60% of Muslim and Croatian Bosnians wanted their independence (ICTY, 2013). In April 1992, war broke out as Bosnian Serbs, with the help of the YPA and Serbia, rebelled and declared the areas they controlled as part of the Serbian republic. In the aim of creating a “Greater Serbia”, Serbs initiated an ethnic cleansing campaign mainly against the Muslims and Croats, whereby they expelled them “from their native areas in an effort to make the regions purely Serbian” (Barber, 1992, para.9). The Bosnian Croats followed suit and declared their area as a republic supported by Croatia. This conflict was described as “the deadliest of all in the disintegrating Yugoslav Federation” (ICTY, 2013, para.4) as it became three sided and very complex.

The conflict, which lasted from 1992 until 1995 ended through the Dayton Peace Agreement<sup>4</sup>, resulted in thousands of victims and massive human rights violations, specifically in the town of Srebrenica, a UN safe area that was invaded by the Serbs, resulting in the killing of 8000 citizens in a matter of days (ICTY,2013) (CES,2004).

In 1998, conflict broke out in Kosovo as the ethnic Albanians wanted their independence from Serbia. The rebellion was led by the Kosovo Liberation Army (KLA), which was then crushed by the Serbian Police and Army. The conflict, which lasted for a year, ended after a 78 days airstrike campaign by the North Atlantic Treaty Organization (NATO) against targets in Serbia and in Kosovo. Finally, Milošević accepted to withdraw the police and Serbian troops from Kosovo (ICTY, 2013) (CES, 2004). Since 1999, Kosovo has effectively had two parallel sets of state institutions: Serbia kept its pre-1999 administrative presence for the Serbian part of the population, while the Kosovo Albanians built their own institutions. EU-mediated talks between Serbia and Kosovo, related to the accession process of Serbia to the EU, have tried to solve the technical divisions between Serbs and Kosovo Albanians, but have so far failed to find a sustainable solution to the political divisions in the country. As Seferi notes, “Since EU accession won't happen soon with any country in the region, Serbia will not recognise Kosovo until then. But at some point, it will have to truly deal with Kosovo. Otherwise, it will go towards new blockades, tensions, hatred and the suffering of innocent people.” (Seferi, 2013, para 18).

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<sup>4</sup> Sponsored by the United States, the Dayton Peace Agreement was reached on the 21<sup>st</sup> of November 1995 between the heads of states of Serbia, Croatia and Bosnia to end the conflict in Bosnia.

In Macedonia, the separation went smoothly with the absence of armed clashes after it declared its independence in 1991 and the country was temporarily known as the Former Yugoslav Republic of Macedonia (ICTY, 2013).

The conflict in the Balkans ended with the breakup of Former-Yugoslavia and some of the countries that were part of it gaining their independence. However, the war left behind it thousands of victims and resulted in massive crimes against humanity and human rights violations. In fact, this conflict and especially the Serbian attacks in Bosnia and Herzegovina as well as Croatia “were marked by brutality unseen in Europe since the World War II” (Suljagić, 2009, p.179). Thus, the newly independent countries were now burdened with a heavy and bloody past that needed to be dealt with.

### **3.2. The Case of Croatia**

The war in the Balkans was known for its brutality: thousands of civilians were massacred, displaced and tortured. This cruelty led the UN to send a “Commission of Experts” in 1992 to verify the realities on the ground (ICTY, The Establishment, 2013). The report of this Commission concluded that violations of humanitarian law as well as breaches of the Geneva Convention were taking place. These findings resulted in the establishment of the international tribunal known as the ICTY through Security Council Resolution 827 in 1993. The aim of this first international tribunal established by the UN was to prosecute the perpetrators responsible for war crimes and “stop the violence and safeguard international peace and security” (ICTY, The Establishment, 2013, para.5). Thus, according to the ICTY website, 1993 “marked the beginning of the end of

impunity for war crimes in the former Yugoslavia” (ICTY, The Establishment, 2013, para.6).

### **3.2.1. Croatia and the ICTY**

As an international ad hoc tribunal, the ICTY is very dependent on domestic cooperation because it lacks “enforcement powers to compel state compliance with court orders” (Peskin & Boduszyński, 2003, p.1117). To be able to prosecute the perpetrators and fulfill its mandate, the ICTY, along with other international ad hoc tribunals, requires the state’s assistance in handing them to The Hague. Thus the cooperation between the state and the tribunal is a prerequisite for the latter’s success. In the case of Croatia, although it was one of the first countries in the Former-Yugoslavia to ask for a tribunal to prosecute war crimes that were committed during the Balkan war, its cooperation with The Hague has been described as “selective, reluctant and insufficient” (Subotić, 2009, p.83).

This behavior can be attributed to Croatia’s position during the war and its change of government in 2000 from a more autocratic regime led by Tuđman to a more democratic one led by Mesić. Having had some of the conflict on its own territory, Croatia was seen “as both the victim and the perpetrator of mass atrocities” (Subotić, 2009, p. 85). In fact, during the war, the YPA, supported by Serbian rebels, imposed a brutal and violent siege on the Croatian city of Vukovar, and bombed the historic city of Dubrovnik which did not have any strategic value for the war “other than demoralizing and humiliating Croatia” (Subotić, 2009, p.84). These assaults established Croatia as a victim of violent



attacks. However, Croatia also retaliated against Serbia and Serbian rebels operating within its territory in the form of two Operations, Flash and Storm, which helped it regain its territory from the Serbian rebels. These two operations were viewed by the Croatian population as liberation wars and were called “homeland wars”. However, in the eyes of the international community they were viewed as “ethnic cleansing” operations involving the deportation of hundreds of thousands of Serbs and the killing of those who could not move (Subotić, 2009). Such violent acts made Croatia a perpetrator as well as a victim.

After the ICTY’s first indictment in 1995 of a Croatian general for atrocities committed during the Bosnian war in 1993, Croatia suspended its cooperation with the tribunal and chose to promote the indicted general instead (Peskin & Boduszyński, 2003). The regime of President Franjo Tuđman was known for being nationalist and autocratic, and the regime’s move was not welcomed by the international community – the American ambassador to Croatia at that time stated that “Tuđman’s idea of cooperation with the tribunal was to kick his indicted officers upstairs” (Bass, 2000, p.244). According to Peskin and Boduszyński, the government “has pressured the court to prosecute Serbs for crimes against Croats, but has also lobbied for immunity when the tribunal has turned its attention to Croatian war crimes against Serbs” (Peskin & Boduszyński, 2003, p. 1119). Nevertheless, following pressure from the U.S., Tuđman succumbed and sent the general to The Hague. This reluctance to cooperate with the tribunal continued until Tuđman’s death and the election of a pro-Western government in 2000.

With Stjepan Mesić as the new elected President and the formation of a new government headed by Iвица Račan, Croatia became more popular on the international front and its dealings with the ICTY were far smoother than during Tuđman's time. As a result, it was "generously rewarded for its change of government and moves to correct its human rights reputation" by the international community (Subotić, 2009, p.87). The Račan government, which had the Europeanization of Croatia as its main aim was very open to dealing with the past. In fact, "Račan presented the issue of justice for war crimes as a central part of establishing the rule of law and consolidating democracy in Croatia, necessary for Croatia's European pretensions" (Subotić, 2009, p.92). With the aim of differentiating itself from its predecessor, Croatia's government not only collaborated with the ICTY, it also made significant progress in terms of transitional justice. For instance, Mesić welcomed the return of Serbian refugees to the country and the government allocated \$55 million to facilitate their return (Subotić, 2009). Although Croatia was faced with former regime spoilers and domestic pressure to avoid its collaboration with the ICTY, its government managed to fully collaborate with the international tribunal by sending its final indicted to The Hague in 2005, thus fulfilling its international obligations (Subotić, 2009). As part of its obligations to the tribunal, Croatia also managed to create its own "domestic war-crimes trials" within the country, which also tried some of the perpetrators of the war in Croatia, instead of sending them to The Hague (Subotić, 2009).

### **3.2.2. Carrots and Sticks**

Croatia's cooperation with the ad hoc tribunal was not solely based on its desire to make amends for the past and prosecute perpetrators for war crimes. Its commitment to such efforts was also based on the desire to secure the support of the international community, mainly the U.S., and to facilitate its accession to the EU. The pressure from the international community on Croatia to collaborate with international justice was very high, but it was matched with equally high rewards when collaboration was forthcoming.

Following Tuđman's refusal to send the first Croatian general to The Hague, the U.S. threatened to put an end to the military and financial aid it was giving to Croatia. This pressure led Tuđman to change his policy and cooperate with The Hague. To the Croatian nationalists who resented this move, Tuđman claimed that the general in question volunteered to present himself to the Court (Subotić, 2009). Moreover, the newly elected government was also rewarded with Croatia's admission to the NATO Partnership for Peace as well as the World Trade Organization (WTO). It also received financial aid from the U.S. amounting to \$30 million (Subotić, 2009, p.89).

The EU also used future membership of Croatia in the Union as both a carrot and a stick to encourage Croatia's compliance with the ICTY. Just like the U.S. poured financial aid into Croatia after the election of the new government in 2000, the EU also gave the country \$23 million in aid. Furthermore, Croatia received indications regarding its accession to the EU. In fact, in October 2001, Croatia signed the Stabilisation and

Association Agreement (SAA) with the EU, which according to Subotić, meant that “Croatia was clearly on the fast track back to Europe” (Subotić, 2009, p.87). In cases where the government faced objections from the nationalists against sending indicted generals to The Hague, Račan used the EU stick to justify the collaboration, arguing that “Croatia had a legal obligation to cooperate with the tribunal and that the country’s application to the EU would be sidelined if the Croatia refused to cooperate with the Hague” (Subotić, 2009, p.95). As much as the nationalists were unwilling to cooperate with the tribunal, using the EU stick would always work as both the government and the opposition shared the aim of the Europeanization of their country. In fact, in 2001, two generals were indicted by the ICTY for crimes and forced deportation against Croatian Serbs during Operation Storm in 1995. This indictment caused a political and a domestic stir as Operation Storm was viewed by the nationalists and the public as a defensive war and not an offensive one. Nationalists, who refused this indictment, went on to accuse that the cooperation of the government with the tribunal was against national values and that it “bargained and betrayed all values achieved in the homeland war” (Peskin, & Boduszyński, 2003, p.1141). Mesić, a savvy politician, was able to resolve this issue and send the two generals to The Hague by arguing that the individualization of war crimes would enhance Croatia’s values and not the other way around. He stated that “the Croatian nation should not and will not be hostage to those who bloodied their hands, bringing shame upon Croatia’s name – no matter what credits they might have otherwise” (Gall & Simons, 2001, para.8). As a carrot for its collaboration, the EU’s commissioner for external relations, Chris Patten, praised this step and stated “I applaud the decision of the Croatian Government to comply with their international obligations

in respect of indictments by the ICTY. I urge the people of Croatia to support that decision, difficult though that may be for many of them to do: it is the only course of action open to their government if it is serious about Croatia's European future and international commitments” (EU Press Release, 2001, para.5).

To sum up, transitional justice in Croatia, especially cooperation with the ICTY, was seen as the country’s ticket to become a member of the EU. Following the death of Tuđman, Croatia’s newly elected president and prime minister used this issue to enhance Croatia’s position in the international system as well as to achieve their goal of Europeanizing their country. Due to international pressure and the EU card, Croatia managed to collaborate with the international tribunal and fulfill its international obligations. As a believer in international justice, Račan was able to accomplish his strategy and convince nationalists of the need to cooperate with the tribunal. Before his speech seeking a vote of confidence in 2001, he addressed the parliament by saying “It is hard for one nation to face dark pages of his history – even harder for a small nation. But we have to give a chance to the world to respect us, while fighting for our truth” (Subotić, 2009, p.96). Thus, in the words of Subotić, “transitional justice was once again placed in the service of the Croatian state and its European strategy” (Subotić, 2009, p.96).

It is important to stress that the implementation of transitional justice initiatives in Croatia was successful due the **combination of international pressure and a strong leadership interested in reckoning with the past and implementing transitional**

**justice** – not only on the international level such as the ICTY, but also at home where it introduced several judicial reforms that helped enhance its rule of law. In comparison, this was not the case in Serbia, for example, where the leadership eventually collaborated with the ICTY due to considerable international pressure, but refused to make changes at home. According to Subotić, “the Serbian government made no effort to reform its judiciary or police to the degree that any domestic investigations and prosecutions for war crimes could take place” (Subotić, 2009, p.51).

### **3.3. Rule of Law in Croatia**

As demonstrated above, the process of transitional justice, especially criminal justice in Croatia, was not particularly easy or smooth to achieve. This process was continuously hindered by nationalists who had their own narrative of the war and did not want to deliver perpetrators to The Hague because they saw them as war heroes (Subotić, 2009). With a government keen on Europeanizing the country, pressure to achieve international justice was seen as a means to an end, which led Croatia to finalize its full cooperation with the ICTY in 2005. In the process of collaborating with the ICTY as well as its accession to the EU, the rule of law in Croatia witnessed major enhancements, most notably in terms of judiciary reform and the reduction of corruption.

Although it is difficult to quantify changes in the rule of law, the level of corruption is a relevant proxy to measuring overall respect for the rule of law. Improvements in tackling corruption in Croatia throughout the years of its cooperation with the ICTY can be observed through examining the country’s ranking in the Corruption Perception Index

(CPI) produced by Transparency International (TI). In 1999, out of 99 countries examined, Croatia ranked 74<sup>th</sup>, right after India (Transparency International [TI], 1999). Following its change of government, its corruption levels reduced in 2002, as it ranked 51<sup>st</sup> out of 102 countries (TI, 2002). Croatia's fight against corruption continued and in 2007, it ranked 64<sup>th</sup> out of 179 countries (TI, 2007). Again, in 2011, it ranked 66<sup>th</sup> out of 182 countries (TI, 2011). This progress in the field of anti-corruption can be used as a meaningful proxy for measuring the overall development of respect for the rule of law in Croatia because, according to Thomas Carothers, the latter cannot thrive in a corrupt society or system (Carothers, 1998, p. 96).

Croatia also made significant progress in terms of judiciary reforms, which allowed it to enhance its rule of law. The most notable developments were “the creation of specialized chambers to handle war crimes cases” (Cruvellier&Valinas, 2006, p.14) which tried war criminals in domestic courts instead of sending them all to The Hague. These developments required training of local judges and international expertise, which helped in terms of strengthening the judiciary. In terms of dealing with war crimes, its legislation was once again strengthened in 2004 as amendments to the country's criminal code were incorporated to include “the doctrine of command responsibility as a basis for liability” (Cruvellier&Valinas, 2006, p. 2). Although human rights activists viewed these reforms in the Croatian judicial system as incomplete, Croatia was able to significantly differentiate itself when it comes to “the quality of its domestic transitional justice” (Subotić, 2009, p.108) from its close Bosnian and Serbian neighbors. Subotić argues that the reasons behind these changes go back to Croatia's elite wanting their

country to be integrated with the EU. She states that this desire for integration was mutually shared by a vast majority of the political actors, and “that the government moved aggressively to change and improve its justice institutions and reshape them to make them more internationally acceptable” (Subotić, 2009, p.108).

### **3.3.1. Cornerstones of the Rule of Law**

As mentioned in the second chapter, Pekka Hallberg bases the rule of law on four cornerstones. These cornerstones interact with each other to strengthen the rule of law and are comprised of “the balanced separation of powers”, “implementation of fundamental and human rights”, “performance of the system” and “the principle of legality” (Hallberg, 2005, p.5). Croatia, with its ambitions to accede to the EU, has been working during the past ten years to strengthen its rule of law and democracy.

As a democratic country, Croatia’s government is based on the principle of separation of powers between its three branches: the legislative, the executive and the judicial. This principle “includes levels of mutual co-operation and reciprocal control of the holder of power prescribed by the Constitution and law” (Republic of Croatia, 2013, para.2). Unlike Lebanon, where the executive branch through the Ministry of Justice is responsible for the appointment and promotion of judges, “which brings the independence of the judiciary as a separate branch of government into question” (Saliba, 2010, para.8). In the case of Croatia, the constitution states that the State Judiciary Council appoints and relieves judges from their duties (Republic of Croatia, 2013).



Regarding the “implementation of fundamental and human rights”, it is argued that Croatia has been working on enhancing the respect of human rights through transitional justice more than its neighboring countries (Subotić, 2009). In fact, its full collaboration with the ICTY and its accession to the EU in 2013 shows that Croatia “has continued to take various measures to raise public awareness and improve protection of human rights” (European Commission, 2011, para.6). Respect for human rights, especially dealing with past human rights violations, was able to thrive in Croatia due to “the presence of a heterogeneous group of true believers in the ideas of institutions of transitional justice” (Subotić, 2009, p.116), comprising its political elites, especially President Mesić, as well as a broad section of civil society.

“The performance of the system” rests on how citizens perceive their system and whether or not they trust it. The Croats place high value on their state and consider it to be “intact, untouchable and unquestionable” (Subotić, 2009, p.109). With such trust in their state, a political analyst from the Serbian Democratic Forum went on to state that “Croats don’t believe in Jesus Christ, but they believe in the Croatian state” (Subotić, 2009, p.109).

In terms of “the principle of legality”, the anti-corruption efforts taken in Croatia, which are evident from its progress on the Transparency International Corruption Perception Index, seem to demonstrate that Croatia is on the right path. In January 2013, Croatia established a commission mandated to fight conflicts of interest in the public administration. Only two months after its establishment, this commission had raised

cases against 26 officials who were accused of having been involved in decisions that constituted a conflict of interests (European Commission, 2013).

### **3.4. Conclusion**

Dealing with the past is not the easiest path to embark on, especially in a situation where a country has been through a bloody conflict riddled with human rights abuses. In the same way as Lebanon, the Balkan conflict was largely an identity-based conflict. The path of the different states seeking independence from the Yugoslav Federation was rough and filled with human rights abuses. Although Yugoslavia represents a situation of a country disintegrating into several smaller states, whereas Lebanon does not, the community-based nature of conflict in Lebanon and the Former-Yugoslav countries share several common elements: most importantly, each of the warring communities viewed its war criminals as war heroes who were engaged in an existential conflict. It is this romanticized vision of the war in particular that makes it very hard to deal with the crimes committed and the war criminals who committed them, let alone engaging in public trials. It takes strong political will to achieve justice in such circumstances, as the example of Croatia demonstrates. With a leadership keen to come to terms with the country's past atrocities, combined with strong international support and pressure, Croatia was able to fully collaborate with the requirements of the international tribunal. This paper does not claim that Croatia's rule of law and democracy have been enhanced solely through its cooperation with the ICTY, on the contrary, Croatia's successive governments used the EU carrot to enact reforms that would ensure the country complies with international best practices and enhance its democracy and rule of law.

Knowing that the process of dealing with the past in Croatia has not been easy and that the country still faces major challenges at the level of its national narrative about the conflict, it is important to highlight that the country had the will to at least try to look in its own backyard and admit the mistakes that were done during the war, and to try to take measures to fix them. Although Croatia is not a perfect example of a full and complete transitional justice process, it offers good insights for other countries seeking to come to terms with a complex and violent past, such as Lebanon, on how to deal with war amnesia for the sake of a better future. The most important lesson learned from Croatia is that strong political will and leadership backed by strong international pressure is central for the success of transitional justice initiatives. Breaking from the past and healing the wounds of victims is not an easy quest, it is a long process that is both financially and morally costly, but ultimately fruitful and well worth the cost, if done correctly.

## Chapter Four

# The Case of Lebanon

*“I think the end of the 1975 civil war could, theoretically, be a point of beginning for a new history in which we will not be destined to engage in civil wars; yet it depends on many factors which, unfortunately, are not taking place”*

—Elias Khoury (Beirut Review, 2009, para.4)

From 1975 until 1990, Lebanon witnessed a devastating and controversial “civil” war that was characterized by sectarianism and fueled by external influence. After 15 years of warfare, Lebanon was left with approximately 144,000 people killed, 197,000 injured, 17,000 disappeared, some 750,000 displaced and one third of the population emigrated. On top of that, the country suffered the destruction of its infrastructure, estimated at a cost of \$25 billion USD, as well as the breakdown of state institutions (Leenders, 2012) (Barak, 2007). As a result of the war and the displacement, one third of the population is considered to be currently living under the poverty line (Khalaf, 2012).

This chapter seeks to uncover the post war settlements that took place after the conflict ended and their consequences on the current political situation in Lebanon, with the aim of assessing how they affected the rule of law. This chapter will be divided into two sections: the first part will give a brief background of the war and the post-war settlements that followed; the second part will examine developments in Lebanon that took place in parallel with, but separate from, official post-war settlements.

#### **4.1. The War and Its Consequences**

According to Khalaf, the war was “wasteful, futile and unfinished” (Khalaf, 2012, p. 77) as it “did not resolve the issues which had sparked the initial hostilities” (Khalaf, 2012, p.85). Indeed, this violent war did not amend the “internal imbalances” nor did it lead the country to a more peaceful and civil form of diversity or “coexistence” (Khalaf, 2012). Instead, for 15 years, Lebanon was caught in different forms of atrocities, committed by parties ranging from the national armed forces to private militias, that left thousands of victims and caused a lot of suffering to the country as a whole. Khalaf explains that as the conflict dragged on, “the hostility degenerated into communal and in-group turf wars, combatants were killing not those they wanted to kill but those they could kill” (Khalaf, 2012, p.13). Knudsen and Yassin stress that the Lebanese war “was fought by militias that were commanded by warlords. Indeed, the Lebanese civil war has been portrayed as the quintessential twentieth-century example of warlords and warlordism in the Middle East” (Knudsen & Yassin, 2012, p.119).

Given that this conflict did not only include Lebanese parties, it resulted in the forging and breaking down of alliances both between the different Lebanese militias, as well as between them and the Palestinians, Israelis and Syrians. According to Corm, the aim of militia wars is to destroy the foundations of society, and so was the case of Lebanon (Corm, 2003). The militia fighters “took control of the streets and neighborhoods, the government collapsed, the army disintegrated along confessional lines and Beirut was cantonized into a Christian East and a Muslim West” (Knudsen & Yassin, 2012, p.119). Another manifestation of such fragmentation described by Corm, was the forced

displacements which could also be considered as a sort of collective violence. According to Aida Kanafi-Zahar, throughout the war, the number of displacements varied between 600,000 and 800,000. The forced displacements were most acute during the “Two Years War”, during which the Lebanese were assassinated based on their religious identity. Another episode of displacements was during the Israeli invasions in 1978 and 1982. “The War of the Mountains” between Druze and Christian militias ended up with the expulsion of around 160,000 Christians from their towns in the Chouf area (Kanafi-Zahar, 2011).

Other sorts of violence that ravaged the Lebanese people during the war were the massacres committed and the forced disappearances. From 1975 until 1982, in terms of massacres, Labaki and Abou Rjeily identify at least five, which do not include the ones that happened during “The War of the Mountains” and “Black Saturday” (which took place in the beginning of the war and was launched by Christians against Muslims and Palestinians) (ICTJ, 2013, Lebanon’s Legacy of Political Violence). Three of the five massacres took place in 1976: the Karantina massacre launched by Christians against Palestinians, followed by the Damour massacre which was launched by the Palestinians against the Christians, and finally the siege of Tell Za’tar by Christian militias (ICTJ, 2013). Another two massacres, known as the Sabra and Chatila massacres, took place in 1982 and were carried out by Christian militias with the help of the Israeli army against Palestinians (Kanafi-Zahar, 2011, p.29). According to Labaki and Abou Rjeily, as a result of the massacres from 1978 until 1986, the death toll reached around 4261

individuals. During “The War of the Mountains” alone, around 1,155 bodies were found lying dead in the villages and on the streets (Kanafi-Zahar, 2011, p.28).

In terms of disappearances, there is no specific number due to the lack of official surveys. However, renowned civil society organizations such as Amnesty International (AI) adopted 17,000 as the number of disappeared during the war. This estimation includes individuals disappeared on Lebanese soil by Lebanese militias as well as individuals imprisoned in Syrian and Israeli prisons (Kanafi-Zahar, 2011).

These massacres and disappearances were accompanied by the massive destruction of the country’s infrastructure as well as homes and places of worship. In the Chouf area alone, more than 4,900 homes were destroyed and around 14,000 were damaged (Kanafi-Zahar, 2011, p.31). The war also became infamous for the assassinations that ended up killing political figures on both sides, including Kamal Jumblat in 1977, the President elect Bashir Gemayel in 1982, Prime Minister Rashid Karami in 1987 as well as other prominent political and religious figures. Car bombs killed not only targeted leaders but thousands of civilians as well – according to Knudsen & Yassin, the war witnessed around 3,600 car bombs, which left approximately 4,600 people dead (Knudsen & Yassin, 2012, p.119).

After almost two decades of warfare, the Lebanese war ended and with it came the “loss of state authority”, a devastated economy and a country penetrated by external actors. Tom Najem explains that the state lost its authority in the first phases of the war when the Lebanese army collapsed. He states that “even when the military was reconstituted to

some extent during several subsequent phases, the state institutions never really regained the dominance of the system that they had enjoyed from 1943 to 1975” (Najem, 2012, p. 44). As for the economy, the war left the country with a ravaged physical infrastructure. The country witnessed large numbers of displacements and devastated property as well as mass emigration of the middle class, thus depriving the country of their capital and skills. Lebanon fell into massive debt and its economy collapsed, resulting in Lebanon losing “its traditional role as the regional center for international trade and finance” (Najem, 2012, p.47). According to AI, the result of the war that ravaged the country is that “state institutions, including the army, collapsed and with them the rule of law” (AI, 1997, p. 1). Another effect of the war was the penetration of external actors into the country. Prior to the war, the Lebanese state, through the use of a moderate rhetoric and international backing, managed to “stave off major instances of external interference in Lebanese Affairs” (Najem, 2012, p.45). The first party to penetrate Lebanon was the Palestinian Liberation Organization (PLO), which was able to alter Lebanon’s foreign policy and include it in the Arab-Israeli conflict. Syria penetrated Lebanon during the war and managed to dominate the country until 2005, as will be explained later. Israel also played a role in destabilizing the country as it took over the Southern area and has been involved in conflicts in Lebanese territory even after the 1990’s. Iran as well as other Islamic movements managed to penetrate the country via Hezbollah, which weakened the image of Lebanon, which is now considered by the West to be “a major breeding ground for international terrorism” (Najem, 2012, p. 46).



## **4.2. Unsuccessful Reconciliation Attempts**

After fifteen years of warfare, the government thought of putting together reconciliation efforts to end the bloodshed and the sectarian divides posed by the war. The first “reconciliation” effort that ended the war was the Taif Agreement followed by a general Amnesty law. The long-term effect of these two efforts lasted for less than twenty years as in 2008 violence reoccurred again in Beirut between Lebanese factions and another sedative agreement, the Doha Agreement, was brokered. The following part will look into these three initiatives in order to examine their effect on the Lebanese society.

### **4.2.1. Taif Accord**

In September 1989, under the patronage of the League of Arab States Tripartite Committee, 62 members of the Lebanese Parliament, elected in 1972, gathered in Taif, a resort city in Saudi Arabia, where they negotiated the Taif Accord officially known as the “Document of National Understanding” that was ratified by the Lebanese parliament on November 5, 1989 (Norton, 1991). This Accord, supported by the U.S, the Arab Higher Tripartite Committee and directly supervised by Syria, formally marked the end of the 15 year conflict in Lebanon.

The Accord has two main elements. The first focuses on internal and institutional reforms such as identity, power sharing, sovereignty, socio-economic reform, internal security, participation and political reform, including the progressive abolition of the confessional system. The second focuses on external relations, such as the Lebanese-Syrian relations as well as the Arab-Israeli conflict. According to Karam Karam, the

thinking behind this Accord reflects a dual ambition for society as a whole on the one hand and the state on the other. Karam states that “On the one hand it symbolizes reconciliation objectives, responding to the needs of a society that had been searching for effective tools to end the war and to reinforce national cohesion, supported by a desire to ‘live together’. On the other hand it introduces reforms to support the consolidation of the Lebanese state and national institutions.” (Karam, 2012, p.36)

One of the repercussions of the Taif Accord is that it legitimized the Syrian patronage over Lebanon that was later institutionalized through the “Treaty of Brotherhood and Cooperation”. This “Brotherly” agreement asserted political and economical hegemony of Syria over Lebanon (Knudsen & Yassin, 2012, p.120) and “gave Syria a technically legal and very effective means to exercise decisive influence over all policy decisions” (Najem, 2012, p.53). According to Knudsen and Yassin, Taif “was brokered by Saudi Arabia on Syria’s terms at the expense of Lebanon’s sovereignty” (Knudsen & Yassin, 2012, p.120). This Syrian tutelage weakened the already flaccid Lebanese state, as its authority over its people and its control over its territory were decisions that were primarily taken in Syria. For instance, and as Tom Najem puts it: “in a strikingly open display of contempt for the formal procedures, the new Prime Minister, Omar Karami, was actually announced as Hoss’s successor in the Syrian press two days prior to his nomination in the Lebanese parliament” (Najem, 2012, p. 52). The Syrian tutelage over Lebanon not only affected the country’s foreign policy, but also played a negative role in terms of accountability. Allies of the Syrian regime were given privileges and impunity, whereas its opponents were prosecuted and activists “were arrested and subjected to

physical torture” (Knudsen & Yassin, 2012, p.122). Newspapers, television and radio stations that were affiliated with political opponents of the Syrian regime were suspended and in 1994, “public demonstrations were banned” (Knudsen & Yassin, 2012, p.122).

In terms of disarmament, the Accord states that the disarmament of all the Lebanese militias should take place within 6 months after the official approval of this Agreement; unfortunately, this provision was only applied on some militias and excluded others. In Southern Lebanon, armed groups in the Palestinian camps that were backed by Syria as well as pro-Iranian armed militias like Hezbollah were able to keep their weapons and Hezbollah was even portrayed in the government as the Lebanese resistance political party that stands against the Israeli occupation (El Khazen, 2001). According to Zahar, “Hezbollah was granted an exception [to disarm] by the government of the day because, it was argued, its weapons were intended to fight Israeli occupation of Lebanon” (Zahar, 2013, p.68). This unequal disarmament contributed to sectarian tensions in the country as the Christians such as the LF were forced to abandon their weapons whereas Muslims, such as Hezbollah and the Palestinians were not touched by this decision. On the other hand, it also meant that the State did not have full control over its territory as it has other armed groups that could threaten its security and might not abide by its laws. Moubarak argues that the selective implementation of the disarmament clause in the Taif Accord, which targets all Lebanese militias except the ones resisting Israel, such as Hezbollah, is due to the Syrian interests in managing the domestic and international affairs of Lebanon. He states that “Syria looks at Hizbollah as a Syrian and regional

necessity, and overlooks the fact that Hizbollah's armed presence especially in areas outside the south is a violation of the Taif Accord, a fact that could only disrupt inter-communal relations and exacerbate fears" (Moubarak, 2003, p.21).

What is interesting about this Accord, given that it was set up to put an end to the bloody conflict, is that it fails to make any significant reference to the war in any of its clauses. The victims of this conflict and the human rights abuses that they suffered were not even acknowledged. Other than mentioning the issue of the displaced, the word "victim" does not appear in any parts of the Accord. On top of that, it lacks policies or mechanisms that help dealing with the past abuses in terms of justice for the victims and perpetrators or non-repetition of human rights violations (Kanafi-Zahar, 2011, p. 35). The absence of such measures reinforces the culture of impunity and lack of accountability in Lebanon.

It could be argued that the flaws in this agreement threaten today's peace, by "leaving Lebanese political life stuck in a stalemate that has lasted longer than the war itself" (Picard & Ramsbotham, 2012, p.7). According to Picard, the "confessional political structures decided at Taif have facilitated the extension, elaboration and entrenchment of civil war sectarian animosities" (Picard & Ramsbotham, 2012, p.7). Picard adds that as Taif was "agreed by elites (pre-war and wartime), the revised 'national deal' to share power amongst a conservative oligarchy has done little to extend political inclusion or representation, but rather has enabled leaders to tighten their grip" (Picard & Ramsbotham, 2012, p.7).

Not all Lebanese were equally appreciative of the Taif, with especially the Christian community broadly critical of the agreement, which weakened their position and contributed to their feeling of frustration (Haugbolle, 2010, p. 68). Leaders such as Michel Aoun, the Maronite Prime Minister at the time, categorically rejected this Agreement. He considered it illegal since he had dissolved the Parliament at the time of its ratification. Aoun criticized Taif by saying, “It did not call, even in principle, for a Syrian Withdrawal from all of Lebanese territory, but only a redeployment of Syrian forces to the Bekaa Valley two years after the ratification of the Accord” (Norton, 1991, p.466). Patriarch Sfeir stated that although Taif may be a solution to the current crisis, it might nevertheless lead to death and division between the Lebanese (Sinno, 2008). As for Raymond Edde, he considered that Taif made Lebanon a “Syrian Colony” (Sinno, 2008). Moreover, according to Gebran Tueni, 95.5 % of the Lebanese were against the Deputies that convened in Taif. He further accused these delegates of treason and selling their country (Sinno, 2008). Messara on his part, criticized the text by questioning the sovereignty of the Lebanese State as mentioned in the Accord. He highlighted the fact that a state cannot be sovereign if its decisions and lands are shared by another country, which is the authority Syria was given by the Taif (Messarra, 2006).

It is important to note that even today, only some of the clauses of the Taif have been implemented, with many important clauses – especially the ones targeting internal political reforms crucial to state-building, such as reforming the electoral law, engaging in abolishing confessionalism, and decentralization – among those which have not. Furthermore, the reforms that have been implemented were selective and done under the

Syrian tutelage, following Syrian interests; as Zahar notes, “they transformed the implementation of the agreement into a menu for choice, selecting those items that suited their strategic objectives and discarding items for which they had little use” (Zahar, 2013, p.70). The implemented reforms included the amendments defining Lebanon’s relations with Syria, as well as the redistribution of power between the Troika (President, Prime Minister and the Speaker) whereby the president’s executive and constitutional authorities were reduced in favor of the Council of Ministers, and a new power sharing formula was introduced with regards to the numbers of seats in parliament and appointments to public offices to achieve equality between the Christians and the Muslims. Also, more than 30 amendments were introduced into the constitution, such as the “general principles” part of the Taif, which now constitutes the preamble of the constitution. Also, the Constitutional Council was established, but remains with no real powers (Karam, 2012, p.38).

One can conclude that this partial and selective implementation of the Accord has heightened sectarian tensions among the population and further damaged already fragile state institutions. According to Karam Karam, “the selective implementation of the Taif Agreement has belied the essence of its stated objectives. Arbitrary and partial application of reforms that have been initiated by Lebanese ruling elites under Syrian tutelage have in fact exacerbated confessional tension and competition, and have generated new imbalances in the post-war political system” (Karam, 2012, p.37). He further adds that “these developments have undermined the operation of Lebanon’s

consociational political system and of its institutions, which could be described as quasi-dysfunctional” (Karam, 2012, p.37).

#### **4.2.2. The Amnesty Law**

As discussed above, by not mentioning the war, its victims and its perpetrators, and by instituting Syrian tutelage, the Taif Accord already granted a kind of impunity to Lebanese and non Lebanese actors that played a role in the conflict, but this was further reinforced by the Amnesty Law of 1991.

The 1991 General Amnesty Law No. 84/91 was introduced on 26 August 1991, only two years after Taif and exonerated the atrocities that took place during the war, including crimes against humanity and war crimes that were committed against Lebanese civilians before March 28, 1991. Marking a difference between the treatment of crimes against internationals and crimes considered ‘local’, human rights violations/offenses committed against state security or political and religious leaders or Arab and foreign diplomats were not covered by the amnesty (AI, 1997). The pro amnesty group argued that “it provided a sense of stability as it was giving everybody a second chance, and since there are no clear winners, putting a large number of people on trial would have brought the country to a stand-still as there were not enough resources to carry out such prosecutions” (Khoury & Ghosn, 2011, p.390). This law, which “aimed at turning a new page in the political history of Lebanon” (AI, 1997, p.7), legitimized the difference between the ordinary citizens and the religious and political figures and is described by Nizar Saghieh as an “inacceptable distinction”. Saghieh further states that by

“introducing this distinction, the legislator is granting a higher value for the leader. We forgot about collective massacres, crimes against humanity and ordinary victims, only the death of a leader is to be punished” (Kanafi-Zahar, 2011, p.38). On the other hand, “instead of reconciling the citizens with the principle of justice and the rule of law, Lebanon’s authorities were always in favor of political leaders consolidating their positions as superior to the rest of the population” (Khoury & Ghosn, 2011, p.390).

This “sweeping amnesty” was seen as a consolidation of impunity and an impediment to democracy. The UN Human Rights Committee was among those who criticized the law and stated that “such a sweeping amnesty may prevent the appropriate investigation and punishment of the perpetrators of past human rights violations, undermine efforts to establish respect for human rights, and constitute an impediment to efforts undertaken to consolidate democracy” (AI, 1997, p. 8). AI, who adopted a similar reaction as the UN Human Right committee, added that “a new future of true and lasting peace and human rights protection in Lebanon is only possible if the country comes to terms with its past through a process aimed at investigating and establishing the truth of the war period and its related abuses” (AI, 1997, p.8).

This law coupled with the Taif agreement affected not only the post war political structure of Lebanon, but society as well. In terms of politics, it allowed the militia leaders and warlords to “assume ministerial posts and for their militias to be turned into parties” (Knudsen & Yassin, 2012, p.120) and thus granted them impunity for their bloody actions. Notorious leaders such as Elie Hobeiqa who was known to be



responsible for the Sabra and Shatila massacres as well as Nabih Berri, head of Amal, a Shiite militia and Walid Jumblat, the Druze leader, represent some of the “bloodstained” figures that secured posts in the post Taif regime. According to Haugbolle, “those responsible for massacres, theft, war crimes and displacement of civilians committed by militias under their command became responsible for rebuilding the country. Naturally, these people had no great desire to shed further light on the past” (Haugbolle, 2010, p.69). On the societal level, it led to a “state-sponsored amnesia” or “collective amnesia” which according to Haugbolle, “has been fostered by political elites who played a role in the civil war and have refused to foster public debates that could implicate them” (Haugbolle, 2012, p.15). This lack of encouragement of a public debate about the past has led to the “social practices of sectarian affiliation” to structure “interpretations of the war and to reproduce simplified antagonistic discourse of the ‘other’” (Haugbolle, 2010, p.69). In other words, although the leaders talked about national reconciliation, they had no real intent of institutionalizing it or debating it. This left a divided nation with unresolved grievances, where each sectarian group had its own narrative of the war and where each was “quietly apprehensive of the ‘others’” (Haugbolle, 2010, p.69).

#### **4.2.3. The Doha Agreement**

The distorted image of the “other” amongst the Lebanese continued throughout the post war period as no true government led reconciliation effort was successful. Following the Hariri assassination in 2004, the Lebanese political scene was divided into two main blocs, March 14 which was an anti-Syrian bloc comprised mainly of the Future movement and Christians and March 8 which was pro-Syrian mainly composed of

Hezbollah and Amal and some Christian parties. After several months of “political paralyses” and due to internal political rivalries and tensions between these two camps, on May 7, 2008, Beirut witnessed another round of internal violence. These clashes were attributed to two government decisions, the first one stipulated firing the head of the airport security, Wafiq Shuqeir, a close ally of Hezbollah; and the second one was related to taking apart the secure telecommunication network of Hezbollah (Mousavi, 2008). However, the root causes of these clashes extend beyond these two governmental decisions. One of the causes is related to the growing role of Hezbollah in the Lebanese political arena. Backed by Iran and Syria, Hezbollah is officially the only Lebanese militia that has been allowed to keep its arms as a deterrent force to Israel and has been portrayed as the national resistance party. Following the Syrian withdrawal in 2005 and the July War in 2006, the polarization between March 14 and March 8 heightened as each group perceived the other as an opponent, and as a result both are trying to advance their own agenda instead of becoming “partners in government” (Zahar, 2013, p.76) and working together for the benefit of the country. For March 14, the main justification stated is the imbalance of power caused by the fact that Hezbollah is able to use its arms to gain more leverage in decision-making. For example, after the July War, March 14 “accused Hezbollah of building a state-within-the-state and of standing as the major obstacle to the reinforcement of state institutions” (Zahar, 2013, p.76). As for Hezbollah, they accused March 14 “of colluding with the enemy” (Zahar, 2013, p.76). This polarization culminated in 2008 as Hezbollah fighters took the streets of Beirut following the government’s decision to take apart its communication networks. According to Amal Hamdan, “the swiftness of the takeover was perceived as a

humiliating defeat for the Sunnis and Hizbollah had demonstrated it held the military and political balance of power in Lebanon” (Hamdan, 2013, p.53). The bloody clashes in Beirut and in the mountains ended by a Qatari brokered deal, known as the Doha Agreement, which was backed by Iran, Saudi Arabia, Syria and the U.S. (Hamdan, 2013).

Under the auspice of the Qatari leadership and sponsored by the League of Arab States, the Lebanese political leaders from both camps met in Doha in the aim of ending the 18 months political stalemate between the majority led by March 14 and the opposition led by March 8. The leaders that gathered in Qatar to discuss the future of Lebanon included the heads of political parties such as Amine Gemayel representing the Phalangist party, Samir Geagea representing the Lebanese Forces, Nabih Berri representing the Amal party, Saad Hariri representing the Future Movement, Walid Jumblatt representing the Progressive Socialist Party (PSP), Michel Aoun representing the Free Patriotic Movement (FPM) and a representative of Hassan Nassrallah from Hezbollah (Mesarra, 2009). After days of negotiations, an agreement was reached on 21 May 2008 and was publicized through a statement issued by Hamad bin Jassem, a Qatari PM and Foreign Minister. The agreement stipulated the election of a consensus president, the formation of a national agreement cabinet, and reaching agreement on a new electoral law. It also had practical results such as reaching an agreement on refraining from resorting to the use of weapons to resolve conflicts (Now Lebanon, 2008).

Although the fourth clause of this agreement stipulated that the National dialogue between these leaders continues “under the aegis of the president as soon as he is elected” (Now Lebanon, 2008, art.4), the agreement as a whole did not retain any clause related to reconciliation between the conflicting factions or justice for the victims of the violent events that took place, thus granting impunity to the perpetrators of these events. Once again, a peace agreement for Lebanon was brokered by external forces, and just like the Taif, the Lebanese leaders agreed on a power sharing arrangement favoring their political gains over reconciliation and justice. Academics such as Paul Salem and Amal Ghorayeb were cautious in their reaction to this agreement. Although Doha had a positive effect in the sense that it broke the political stalemate that Lebanon was in, Salem feared that “it will not resolve the basic contradictions, because there are two states, the state itself and Hezbollah which is another state, and this will not change before the regional situation has changed” (AlJazeera, 2008, para.2). From her side, Ghorayeb stated that “this is a compromise between the government and the opposition; a settlement, not a solution [...] in no way does it address the real grievances that led to the current crisis” (AlJazeera, 2008, para.2).

#### **4.2.4. National Dialogue**

Following the deep political rifts between the main political blocs in Lebanon, caused by the Syrian withdrawal, the Lebanese political leaders convened in 2006 to launch an initiative called the National Dialogue. These leaders were representatives of 14 political groups and included Aoun (FPM), Nassrallah (Hezbollah), Berri (Amal), Jumblatt (PSP), Hariri (Future Movement), Geagea (LF), Gemayel (Phalangists) and prime

minister at the time Fouad Sanyoura (Future Movement), most of whom were also key actors during the war. The aim of this National Dialogue was to “discuss pressing issues that have divided the Lebanese political scene since the February 14, 2005 assassination of former Prime Minister Rafiq Hariri” (Carnegie Endowment for International Peace [CEIP], 2008, p. 2). Several meetings were held throughout 2006, as a result of which the group reached consensus on four main issues: normalizing the relations with Syria by establishing a Syrian embassy in Lebanon and a Lebanese embassy in Syria, the delineation of the borders with Syria, removing the Palestinians arms outside the Palestinian camps and the need to find a replacement candidate for the presidency, which was headed by Emile Lahoud, a pro-Syrian figure (Schenker, 2006).

The discussions were halted in late 2006, due to the eruption of the 2006 War with Israel, and were then resumed in 2008 with the formation of a National Dialogue Committee headed by President Michel Suleiman (Presidency of the Republic of Lebanon [PRL], 2010). The Committee included the above-mentioned leaders, in addition to MPs and Ministers representing the full spectrum of Lebanese politics (PRL, 2010). The talks gave birth to the Baabda Declaration of June 11, 2012, consisting of 17 clauses. Its main elements tackle the issues of preserving the security of Lebanon, reinforcing the culture of dialogue and coexistence, maintaining civil peace, strengthening state institutions, supporting the Lebanese army and the judiciary to be able to enforce the law and neutralizing Lebanon from regional conflicts (PRL, 2012). This declaration was later officially adopted by the UN and the League of Arab States and was described by the president as “an inclusive political framework that can unite

sincere efforts aimed at safeguarding this nation's sovereignty and unity" (Dakroub, 2013, para.3).

Although the Baabda declaration seems to be a positive achievement at first glance, upon closer examination its considerable weaknesses are revealed. First and foremost, the Baabda declaration was never implemented even by the parties who prepared it, especially with regard to the disassociation of Lebanon from regional conflicts; the ongoing involvement of Hezbollah in the Syrian conflict and its subsequent impact on the neutrality and security of Lebanon is perhaps the most glaring example of this. In May 2013, Hassan Nassrallah, the head of Hezbollah, officially declared that his party will stand by the regime and "would fight alongside Assad to prevent Syria falling "into the hands" of Sunni jihadi radicals, the United States and Israel [...] as the very survival of the Shi'ites was at stake" (Nakhoul, 2013, para.4). This unilateral involvement of Hezbollah in the Syrian conflict shattered the very foundation of the Baabda declaration by undermining Lebanon's neutrality and its disassociation from regional conflicts. It has further been argued that the military involvement of the Party of God in Syria backfired as Lebanon's security became threatened and it "heightened precarious Sunni-Shi'a tensions" (Nerguizian, 2013, para.2).

Secondly, although the declaration stresses the need for coexistence and dialogue between Lebanese in order to guarantee civil peace, it fails to provide any suggestions or details as to how such coexistence and dialogue is to be achieved – it does not contain specific reconciliation efforts Lebanon should engage in, which is why the country has

not only failed to achieve social reconciliation but has also witnessed a rise in sectarian tensions since June 2012. In terms of judicial reform, the declaration mentions the importance of supporting the judiciary in fairly imposing the provisions of the law without discrimination but once again fails to provide any details as to how such support and reforms are to be implemented.

These reconciliation efforts are not exhaustive and do not include all the efforts that were undertaken by the government throughout the post war period. They do, however, represent a sample of the most important but ultimately unsuccessful efforts that were led by the government in an effort to maintain peace and stability in the country. What is interesting about these initiatives is that they all fail to address the issue of the accountability of the perpetrators, thereby reinforcing the culture of impunity, which they nevertheless at least purport to be addressing. Also, all of the efforts outlined above are between members of ruling elite, many of whom were warlords during the civil war, without any representation of victim groups or individuals or even organizations from the grassroots level. Like the Taif Agreement, the Doha Agreement consisted of a reconciliation and power sharing agreement between the leaders, ignoring the needs of Lebanese society and citizens. Both of these agreements also contributed to changing the balance of power in Lebanese politics as Hezbollah, with military capabilities commonly considered to be stronger than those of the Lebanese State, gained a seat in government whilst also maintaining its ability to take unilateral action in matters of war and peace. This approach to peace and reconciliation in Lebanon has proven to be more anesthesia than a long-term solution, as is evident from the sectarian conflicts and struggles that

were once again revived during the May 2008 confrontations and continue to this day. Khoury and Ghosn argue that the causes of these relapses are to be found in the unsuccessful efforts of reconciliation through which “the root causes of the war, as well as the abuses created by the war, have not been confronted” (Khoury & Ghosn, 2011, p.386).

Having examined official, government-led reconciliation efforts, the following section will assess some of the official, government-led transitional justice measures in an effort to assess whether they have been any more successful in making amends for past injustices.

### **4.3. Transitional Justice Efforts**

As mentioned earlier, the Taif Agreement, followed by the General Amnesty Law, purposely failed to tackle the issue of justice for the victims of the war as it paved the way for the warlords to become the political elite. It was not in the interest of those newly emerged politicians to open up the debate on national reconciliation or the doors for retributive justice to take place, because they knew they would be among the first to be targeted. Thus, transitional justice was totally absent during the first phase of the post-war settlement.

#### **4.3.1. Reparations Program**

Due to the restrictions posed by the Amnesty law, a campaign of trials for the perpetrators of the war (and war crimes) was inconceivable. However, the need for transitional justice extended beyond assigning guilt for crimes committed during the



war, in particular to the internally displaced people (IDP) and the missing. During the Lebanese conflict and the abuses committed by different parties based on confessional lines, around 800 000 Lebanese, or 30% of the population, were displaced. After the end of the conflict, around 450 000 Lebanese, comprising around 90 000 families, were still considered as displaced. The displacement hit most of the Lebanese territory but some regions were affected more than others; 62% were from Mount Lebanon, 7.7% originated from Beirut, 23.8% came from the South and 2.3% were from the Bekaa (United Nations Development Program, 1997, p. 2). In an effort to tackle the immense challenge posed by the vast number of IDPs, the Taif stipulated “the right of the displaced Lebanese to return to the place from which they were displaced” (Kanafi-Zahar, 2012, p.46). Thus, in 1992 the government set up the Ministry of the Displaced and the Central Fund for the Displaced mandated “to ensure the return of all displaced people and to pay indemnities to them as applicable” (Kanafi-Zahar, 2012, p.46).

The official purpose of this ministry was “to deal with conflicts between squatters and former owners and even, as in the case of the Shuf, the repatriation of whole villages” (Haugbolle, 2010, p. 70). Ironically, or perhaps on purpose, this ministerial portfolio was assigned to Walid Jumblatt, the Druze leader of the PSP, who was responsible for most of the Christian displacement that took place in the Shuf area (Haugbolle, 2010, p.70). This ministry was accused of corruption and inefficiency as the allocated budget was overspent without resolving the issue of the displaced. Elias Bejjany describes this process as a “political bazaar” in which the government spent around \$800 million since the establishment of this ministry until 1999 in the aim of helping the displaced,

however “90 percent of this money was distributed to those who inflicted the displacement and not to the displaced victims themselves” (Bejjany, 1999).

Numbers show that from 1991 until 1999, \$800 million were spent and only 20% of the displaced returned to their towns and communities from which “9% were fully reimbursed for expenditure on house reconstruction, and the great majority of returnees having to pay for reconstruction from private funds” (Assaf & El-Fil, 2000, p.32). According to Assaf and El-Fil, the exertion of the return plan of the displaced was not only characterized by the embezzlement of funds and “blatant mismanagement”, it was also known for “the lack of coordination between the Ministry of the Displaced and the ministries in charge of infrastructure and social services” (Assaf & El-Fil, 2000, p.32). In fact, in regions where the infrastructure was lacking, the displaced were given the money in cash to rebuild their houses, whereas in the regions where infrastructure was available, funds were not given for restoration and construction. Thus, some displaced decided to rebuild their homes from their own funds as they did not receive money from the ministry, while others who did get the funds, cheated the system and decided not to return to their villages or rebuild their homes, but rather to use the money for other purposes (Assaf & El-Fil, 2000, p.32). Due to the lack of transparency in dealing with the issue of the displaced, there are no reliable statistics regarding the exact number of displaced that returned to their villages, however, according to the United States Committee for Refugees and Immigrants report published in 1999, “the pace of return has been slow and most of the displaced have not returned” (United States Committee for Refugees and Immigrants, 1999, para.16).

### **4.3.2. Truth Commissions**

The missing, of which it is estimated there are some 17,000, is another group the government was unwilling to look into in the first phase of “peace”. In 1991, after an exchange of prisoners between the Lebanese Forces and Hizbollah, Michel Murr, the Minister of Defense at the time, declared that there were no more detainees with the political parties and that the people that were released were the last of the detained (Kanafi-Zahar, 2011, p. 93). This statement was not very well received by the families of the disappeared whose beloved were still missing either in Lebanon or in the Syrian and Israeli prisons. After considerable pressure from civil society, three official commissions were set up by the government to look into the issue of the disappeared, but to no avail.

The first commission, created in 2000 under the Hoss government, was set to “Resolve the matter of the Disappeared”. The work of this commission was severely criticized as it was composed solely of security officials and did not include any representatives of the families of the victims (Saghieh, 2012). Furthermore, only a two-page summary of the final report was released to the public, and that denied the presence of any Lebanese detainees in Israel or Syria; a claim which was proved wrong after only four years when 54 Lebanese were released by the Syrian authorities and 23 by the Israeli authorities in 2004 (Lebanese Center for Human Rights [CLDH], 2008). The report also concluded, that “all persons who were kidnapped or reported as missing, whose disappearance dates back to four years or longer, and whose bodies were not found, have been declared as de

facto deceased” (CLDH, 2008, p.30). This in particular was strongly rejected by the families and supporters of the families of the missing.

After the failure of the first commission to provide any substantial information on the fate of the disappeared, a second commission was established a year later, in 2001, to look into the case of “disappeared for whom there are reasons to believe that they are still alive” (CLDH, 2008, p.30). Headed by Fouad Saad, Minister of State for Administrative Reform at that time, it was tasked with “collecting requests by citizens who wish to enquire about their missing relatives whom they believe to be still alive” (CLDH, 2008, p.30). The work of this commission once again proved to be futile as it was not able to prepare a report of its findings and its mandate did not include looking into “the executions that took place in Lebanon, Syria and Israel, nor to demand the return of the bodies of the missing” (CLDH, 2008, p.30). Furthermore, it placed the burden “to prove that their kidnapped were still alive” on the shoulders of the families rather than the commission itself (CLDH, 2008, p.30).

Many scholars have argued that both of these commissions were doomed to fail from the outset, because Lebanon was suffering from the Syrian occupation. According to Haugbolle, the political and the practical situation in Lebanon made such efforts inconceivable; Lebanon was unlikely to be the pioneer of such processes in the Arab world as it lacked both political will and the international pressure to pursue such efforts. Haugbolle adds that “it was inconceivable for the initiative to be endorsed by Syria, an authoritarian state without political transparency whose main interest was to keep its

Lebanese allies in power” (Haugbolle, 2010, p.71). Therefore, following the Syrian withdrawal from Lebanon in 2005, civil society in Lebanon again pushed for a commission of inquiry, hoping that the obstacle of the Syrian presence would no longer hinder such a process.

In 2005, a joint Lebanese-Syrian commission was created to “investigate the Lebanese missing in Syria and the Syrians missing in Lebanon” (CLDH, 2008, p.31). Although the Syrian obstacle was theoretically out of the way, the work of this commission was severely criticized by civil society and was not considered as a “genuine commission of inquiry” (CLDH, 2008, p.31): the Lebanese part of this commission was to provide the Syrians with lists of names of those detained in Syria, without the ability to engage in further investigations, whereas the Syrians denied that these individuals were detained in Syrian prisons (CLDH, 2008).

These three government-led initiatives failed as the families of the missing still do not have any clear information about the fates and whereabouts of their missing relatives. Even after the Syrian withdrawal, the joint commission proved to be unsuccessful as it failed to make a genuine effort at providing justice for the missing. A report by the Lebanese Center for Human Rights, which studied the work of these commissions, concluded that “the manner in which they conducted their inquiries raise serious doubts about whether their objective was to really get at the truth” (CLDH, 2008, p.32). The report goes on to say that the inefficiency of these processes contributed to a lack of trust in the state by the families of the missing and “reinforced their conviction that the

Lebanese authorities have never had any intention of uncovering the fate of their “disappeared” relatives” (CLDH, 2008, p.32).

Frustrated by the government’s unwillingness to disclose information or even actively work on the issue of the missing, persistent demands and active lobbying by Lebanese civil society concerned with the issue of the missing and disappeared played a very important role in moving the issue forward. In 2009 civil society, represented mainly by The Committee of the Families of the Kidnapped and Disappeared in Lebanon as well as Support of Lebanese in Detention and Exile (SOLIDE), filed two lawsuits, the first one aimed at requesting state protection for two mass graves that were revealed in the report of the commission set up in 2000, and the second one aimed at presenting the full report of this commission before the Shura Council, known as the State Council (ICTJ, 2014, p.16). Although the State Council did not issue any decision at the time, it recently gave a flare of hope to the families by issuing a decision in early March 2014 in which it recognized the right of the families to know and have full access to the report of the 2000 commission (El Hassan, 2014). However, families and concerned civil society activists remain skeptical about the decision: according to Nizar Saghieh, “the decision is a major achievement, but we cannot confirm if the state will abide by it, [...] It is difficult to get the authorities to implement the Shura Council decision; we cannot force the state to commit to the ruling” (El Hassan, 2014, para.2).

Through their advocacy and lobbying campaigns, local civil society also developed a “draft law for the missing and disappeared persons” to be used as a lobbying tool in their

quest to uncover the fate of their loved ones. The draft law, published in 2012, defined the terms “missing” and “forcibly disappeared” based on internationally recognized definitions. It also demanded the establishment of an investigative bureau or body to inspect the whereabouts of the missing as well as the creation of a Public National Commission, among others (ICTJ, 2013). In return, the Minister of Justice at the time, Chakib Kortbawi, issued a draft decree stipulating the creation of commission that will examine “the case of the disappeared” (ICTJ, 2014, p. 18). However, due to the resignation of Prime Minister Najib Mikati in 2013, the decree has yet to be adopted or developed further.

#### **4.3.3. Geagea Trials**

Following the bombing of Notre Dame de Deliverance, a church in Jounieh, The LF leader, Samir Geagea was detained with members of the LF and accused of the bombing. During the interrogations, the “examining magistrate” claimed to have evidence suggesting that the LF leader was involved in the killing of Dani Chamoun, the leader of the Liberal National Party (LNP) and his family in the early nineties (AI, 2004). Geagea was referred to the Justice Council and sentenced to life imprisonment in the case of Dany Chamoun. Geagea defense lawyers argued that the killing of Chamoun falls within the general amnesty law. However, the Justice Council dismissed their argument on the grounds that it was the assassination of a political leader and as such exonerated from the amnesty law (AI, 2004).

Following the Syrian withdrawal in 2005, Geagea along with Islamists who were involved in the Dounieh and Majdel Anjar clashes with the army in 2000 were granted an Amnesty. From reviewing these trials and the Amnesty law of 2005, one can conclude that first, although AI described the trial of Geagea as unfair and politically motivated (AI, 2004), it nevertheless proves that trials of political leaders are possible, given sufficient political will. Having said that, resorting to amnesty once again revived the culture of impunity in Lebanon; as Saghieh notes, it is this very impunity developed for the warlords that hinders any future attempts at restorative justice (Kanafi-Zahar, 2011, p.39). He goes on to argue that that the main reason for amnesty being granted to both Geagea and the Islamists – for two unconnected crimes – lies in the logic of the sectarian system and that “the deputies consider that it is not possible to give privileges to Christians without giving the same ones to the Muslims” (Kanafi-Zahar, 2011, p.39).

When assessing the impact of these transitional justice initiatives, one can only conclude that they were unsuccessful and at least partially flawed already by design. With regard to the missing, efforts undertaken lacked genuine intent and “seriousness” on the part of the government and failed to provide closure to the families of the missing (CLDH, 2008). With regard to the internally displaced, the reparations program initiated by the government was not fruitful as “the plight of the displaced was still far from being resolved” (Leenders, 2012, p.65). Finally, the Geagea trials were accused of being impartial and politically motivated (AI, 2004) and the amnesty that followed in 2005 reasserted the culture of impunity. The reasons behind the failure of these initiatives can be traced back to several key elements. Firstly, as the warlords became politicians as a



result of the Taif Accord, it was not in their personal interest to reveal for example the fate of the missing, because their militias were largely responsible for the missing in the first place and “because some of those who ordered the kidnappings were now in the government” (Khoury & Ghosn, 2011, p.394). Revealing such information would jeopardize their positions and the state of “collective amnesia” that they were trying to institute (Kanafi-Zahar, 2011). Secondly, the Syrian government, which had effectively assumed tutelage of Lebanon after the cessation of hostilities, was not interested in promoting reconciliation among the different Lebanese factions, as that would loosen its grip on the country (Leenders, 2012). Ghosn and Khoury argue that “so long as the Lebanese remained fragmented, the Syrians could make the argument that their presence sustained the peace between different factions” (Khoury & Ghosn, 2011, p.391). Thirdly, political corruption is a major reason for the failure of the reparations program; on the basis of investigations by internal and international organizations such as the International Labor Organization (ILO), the reparations program was filled with “corruption in the form of political patronage, favoritism, and bribery”, which contributed to undermining its results (Leenders, 2012, p.65).

Building on these observations, the next section will examine how the post-war settlements that took place undermined the rule of law in Lebanon and contributed to the rise of political corruption and the culture of impunity, as well as the reoccurrence of violence.

#### **4.4. Effect of Post-War Settlements on the Rule of Law**

Due to the official policies of forgetfulness, such as the general Amnesty law and the unresolved consequences of the war, the Lebanese have been characterized as living in a state of “social amnesia” and “civil war denial” (Burgis-Kasthala, 2013, p. 501). The Taif Agreement, which was supposed to end the confessional system, served instead to exasperate sectarianism as political offices were once again distributed according to sects (Leenders, 2012). In fact, “by reinstitutionalizing the sectarian divisions in the political system, it further perpetuated inequalities and differences” and thus, it did not touch on the “issue of structural violence” (Khoury & Ghosn, 2011, p. 389). The Amnesty laws of 1991 led to the idolization of warlords who came to be celebrated as heroes (Kanafi-Zahar, 2011). It also laid the ground for a culture of impunity because it failed to account for the war crimes and human rights abuses of the war (Kanafi-Zahar, 2011). Put together, these factors contributed to undermining the rule of law in Lebanon. In order to demonstrate how this happened, this section will first analyze the new image given to the warlords and how communitarianism replaced the state. It will then examine in some more detail the political corruption which has ravaged Lebanon’s state institutions after the war. Finally, it will examine the reoccurrence of violence in Lebanon.

##### **4.4.1. From Warlords to War Heroes**

As a perhaps unintended result of the redistribution of power brought about by the Taif Agreement, sectarianism and confessionalism were reinforced, leading to a heightened sense of “loyalty to the sect or sectarian or political leader [*za'im*] and not to the

country” (Khoury & Ghosn, 2011, p.388). Thus, the sectarian identity emerged as more dominant and “important than the national one” (Khoury & Ghosn, 2011, p.388). This sense of sectarianism coupled with a “state sponsored amnesia”, delayed or stood in the way of establishing a unified history of the war. In fact, history books following the Lebanese curriculum end in 1943 when Lebanon gained its independence; from that time onwards there have been failed efforts to put together a unified narrative of the war (Khoury & Ghosn, 2011, p.392). Thus, each sect retained its own narrative of the war and some of the militia leaders became “heroes” for their sects and their community (Kanafi-Zahar, 2011), able to justify their role in the war as well as their continued role in the post-war period “whether by past communal victimization, the threat of future communal victimization, or the invocation of a unique communal mission” (Arthur, 2011, p. 274). As a result, many individuals belonging to these sects are themselves not interested in changing the status quo, as they fear doing so would adversely affect their lives and future prospects.

Those war “heroes” were able to assert themselves and to provide for the needs of their communities as they gained power from their transition into politicians. In fact, they were able to put the interests of their communities above those of society as a whole (Kanafi-Zahar, 2011). As the state institutions were crumbling after the end of the war, these war heroes, with their new governmental positions “replaced unifying public institutions as the basis of government and social services” (Adwan, 2004, p.1). In terms of rebuilding the state, Adwan argues that “distributing state assets and institutions among as many of the warlords as possible was the interpretation of national

reconciliation adopted after the war” (Adwan, 2004, p.2). With these arrangements, political corruption in rebuilding the Lebanese state became rampant and these newly emerged politicians were able to “control public and private foreign aid” which “gave them exceptional leverage to broaden their clientele and thus to renew their legitimacy” (Khoury & Ghosn, 2011, p. 391).

#### **4.4.2. Political Corruption in State Institutions**

According to Leenders, political corruption is defined as “the use or abuse of public office for private gain” (Leenders, 2012, p.9). The roots of political corruption in post-war Lebanon have been outlined above; during the war, institutions parallel to state institutions such as the treasury and other administrations were built to “fulfill the needs of more warlords and militias” (Adwan, 2004, p. 2).

The Taif Agreement reshaped the power structure of the country, as the Council of Ministers was granted executive powers. This new system, built with the aim of guaranteeing the “representation and participation of all parties in the decision-making process” (Adwan, 2004, p.2), was in reality replaced by a “Troika System” that was comprised of the three top ranking positions in the country: the President of the Republic, the Prime Minister and the Speaker of Parliament. According to Adwan, this new arrangement “led to deadlocks, prompting calls for the intervention of Syria, the main power broker on the Lebanese political scene” (Adwan, 2004, p.2).

Also, due to the post war political settlement, the watchdogs of the state institutions were very weak as they were politically controlled. Watchdog agencies such as the

Central Inspection Board (CIB) and the Courts of Accounts (CA), were pressured by politicians “to refrain from taking disciplinary actions against public servants or from revealing administrative irregularities” (Leenders, 2012, p.164). Moreover, after the war, these agencies were unable to pursue their mandate properly as they were short in human resources. For example, in 1998, the CIB had only 90 inspectors expected to monitor all of the civil administration, a job that required at least 300 inspectors to carry out properly (Leenders, 2012, p.165). These vacant positions were due to “the inability of the troikists to agree on candidates” (Leenders, 2012, p.165) which also affected the senior positions of these agencies, which were left without management for long periods of time. Even once agreement was reached on candidates, positions were often given to civil servants who did not pose a threat to any member of the Troika (Leenders, 2012). This heavy political interference and the lack of staff left the transactions undertaken by state institutions and ministries without control or auditing. Sometimes, the work of these agencies was halted due to political pressure, and, at other times, politicians used them for the purposes of ensuring political gain over their opponents. For instance, during the Hoss cabinet at the time when Emile Lahoud was the president, the latter was “accused of prompting the CIB and CA to pursue and discredit Hariri and his allies with allegations of corruption in order to forestall their return to power” (Leenders, 2012, p.166).

The Constitutional Council is another example of a dismantled watchdog institution. Established in 1994, based on the reforms suggested in the Taif, the Council is mandated “to supervise the constitutionality of laws and arbitrate conflicts that arise from

parliamentary and presidential elections” (The Lebanese Constitution, 1995, art.19). In other words, it serves to ensure that laws are constitutional and legal and to ensure that politicians do not overstep the authority given to them by the constitution. The Council is, however, incapacitated as it is subjugated to severe politicization, which limits its efficiency in supervising the constitutionality of legislation, thus weakening the rule of law. According to Dr. Mohammad Mograby, “the Council itself is badly structured as largely a barrier against the defenders of the constitution and is stuffed by personal friends and allies of powerful politicians” (Mograby, 2005, para.5). This political manipulation of the Council was evident in 2013, when President Michel Suleiman as well as the head of the FPM, Michel Aoun, challenged a law presented by the parliament to extend its mandate for another 17 months. This law, which was supposed to be rejected by the Council members for its unconstitutionality, was instead passed as members of the Council failed to reach quorum in four consecutive sessions. This act was highly criticized by media outlets such as An-Nahar, a renowned Lebanese newspaper, which highlighted the political interference behind this lack of quorum and reported “that the council’s two Shiite and one Druze members have been boycotting the session as per a political agreement between Speaker Nabih Berri and Progressive Socialist Party leader MP Walid Jumblatt to prevent the challenge to the parliament extension from being approved” (Now, 21 June 2013, para.6). This incident of political manipulation of the Constitutional Council is one of many examples of the abuse of power and political corruption of the Lebanese governance. It further demonstrates how the institutions concerned with upholding the rule law are rendered incapable of playing

their constitutional role and manipulated instead for different political ends, thus further undermining the rule of law and accountability.

With the absence of checks and balances by these two official state watchdogs, the CIB and the CA, as well as the political manipulation of the Constitutional Council, political corruption ran rampant in state institutions. The cost of political corruption did not only affect the Lebanese economy, but also the citizens who “surrender the freedom of choice” (Adwan, 2004, p.4). These citizens “give up their right to hold their officials accountable and become enslaved by them in return of services” (Adwan, 2004, p.4). Adwan also argues that in the case of Lebanon, corruption was seen as “the cost of peace, reconciliation, reconstruction and politics in general” (Adwan, 2004, p.4). Although the presence of corruption in Lebanese state institutions such as the Ministry of Health and the Ministry of the Displaced was widely known by the political elites as well as the people, no real efforts were made to hold the perpetrators responsible or accountable. In fact, in 1998, “members of the same cabinet would accuse each other of chronic corruption, embezzlement, and abuse of authority” (Adwan, 2004, p.4), but none of those accused were held accountable. This lack of accountability reinforced the culture of immunity and impunity established by the Amnesty law; Ghosn and Khoury argue that “the amnesty law directly or indirectly ended up playing a role in hindering the post-conflict process because there was no accountability and no reason for changes in behavior” (Khoury & Ghosn, 2011, p. 391).

#### **4.4.3. Reoccurrence of Violence**

Although the war officially ended after the Taif Agreement, Lebanon has witnessed a series of external and internal violence throughout the post war period. Externally, Israel's war on Lebanon continued as Hezbollah and the Palestinian militias were still armed due to being excluded from the disarmament strategy stipulated in the Taif. In the nineties, Israel launched two operations targeting Lebanon: "Operation Accountability" in 1993 and "Operation Grapes of Wrath" in 1996 (Knudsen & Yassin, 2012, p.123). After Israel's withdrawal from Lebanon in 2000, it waged a 33-day full-scale "July War" targeting not only the southern parts of Lebanon, but most of its territory in July 2006, in response to an attack and kidnapping of two Israeli soldiers by Hezbollah (Knudsen & Yassin, 2012). The consequences of this war affected not only Lebanese citizens and infrastructure directly targeted by the war, but also had a negative impact at the political level. Knudsen and Yassin argue that "the July War was not only a stark reminder of the devastation of the civil war, but deepened the country's political divisions and ultimately led to a governance crisis" (Knudsen & Yassin, 2012, p.125).

Internally, throughout the mid-nineties and under the Syrian tutelage, the country was witnessing an increase of "sectarian attacks on civilians, vendettas between rival Islamists groups and bombing of churches and other places of worship" (Knudsen & Yassin, 2012, p.122). Following the Israeli withdrawal in 2000, Syria's presence in Lebanon was highly questioned and culminated in UNSC Resolution 1559 of 2004. This Resolution "called for an immediate end to Syrian troop deployment and the disarmament of Hezbollah and Palestinian militias" (Knudsen & Yassin, 2012, p.124).



During this period, Lebanon was suffering from targeted assassinations of anti-Syrian politicians and journalists, which climaxed in 2005 when Rafik Hariri, a former Prime Minister, was killed. His murder, which the Syrians were accused of, split the country between two rival camps: the anti-Syrian March 14 group which called for Syrian withdrawal from Lebanon and the Pro-Syrian March 8 group which welcomed the presence of Syrian forces in the country. The rift between these two blocs widened due to the July War, for which Hezbollah was largely considered responsible, and the establishment of the Special Tribunal for Lebanon (STL) to investigate the murder of Prime Minister Hariri. In fact, Knudsen and Yassin state that the STL “divided the country and led to new outbreaks of violence” (Knudsen & Yassin, 2012, p.125). The tension between these two rival political groups left the country in a political deadlock, which culminated in the breaking out of violent clashes in Beirut and in the mountains in 2008. As a result of this instability, confessionalism resurfaced in Lebanon and “people retreated to their confession, their neighborhood and their families for reasons of safety, a safety the state could no longer guarantee” (Knudsen & Yassin, 2012, p.125). The Syrian conflict also had repercussions on Lebanon’s fragile confessional system as clashes erupted in Tripoli along confessional lines between the Sunnis and Alawites. Sectarian tensions between Sunni and Shi’aa also heightened due to Hezbollah’s continuing military involvement in the Syrian conflict where the party is accused by many of “killing Sunnis in Syria who are fighting their own government” (White, 2013, para.4).

This instability is often attributed to Lebanon being a “weak state” (Zahar, 2012) penetrated by external powers that use it as proxy to fight their own wars (Hirst, 2010). Picard and Ramsbotham attribute Lebanon’s vulnerability to its “post-war cosmetic democracy”, which according to them “has left internal tensions vulnerable and sensitive to regional interests and instability – namely Syrian interference and Israeli armed threat and incursion” (Picard & Ramsbotham, 2012, p. 7). Makdisi agrees with Picard and Ramsbotham and stresses that this vulnerability is caused by the consociational democracy. He argues that “Lebanon has been trapped by sectarian based consociationalism, which has rendered it greatly vulnerable to destabilizing outside shocks” (Makdisi & Marktanner, 2012, p.1).

#### **4.4.4. Rule of Law in Lebanon**

Having gone through the post war settlements and their effect on Lebanon in terms of instability and political corruption, it is clear that that these settlements also undermined the rule of law. The confessional system, deepened the sectarian tensions between different communities and, according to Hamd, “was transformed from a mechanism for partnership and peaceful coexistence to a tool that compromises the prevalence of the law” (Hamd, 2012, p.1). Another factor that hindered the rule of law is the policies undertaken by consecutive governments after the war; Hamd argues that “instead of a top down reform approach that strengthens and develops institutions to which the legislative, executive and judicial powers devolve” (Hamd, 2012, p.1), these policies focused on economic expansion and reconstructing the infrastructure. Moreover, having an armed militia that is stronger than the state also obstructed the rule of law inasmuch

as the state was no longer able to claim monopoly over the use of force, assert its authority or control the actions of this armed group.

Going back to Pekka Hallberg's definition of the rule law and its cornerstones, it can be argued that in Lebanon's case, these cornerstones are not very solid. With regard to the first cornerstone – “the balanced separation of power” – contrary to the aspirations of the Lebanese constitution that “The political system is established on the principle of separation, balance and cooperation amongst the various branches of government” (Lebanese constitution, Preamble, para. e), the actual situation is quite different. Hamd argues that “the independence of the judiciary is limited to its duties, namely to the interpretation and application of the law, and the adjudication of disputes” (Hamd, 2012, p.2). As for the executive and legislative powers, Serhal argues that they are independent in theory but not in practice. He states that the “complicit and often suspicious exchange of personal benefits between the government and the parliament distorted the constitutional principle of cooperation between the two powers, and conflict over personal and sectarian interests blurred the separating lines among them” (Hamd, 2012, para. 2).

In terms of the “implementation of fundamental and human rights”, the second cornerstone (Hallberg, 2005, p.5), the revised Lebanese constitution reaffirms Lebanon's pledge to the Universal Declaration of Human Rights (Hamd, 2012). However, not all human rights are respected in this country. In terms of transitional justice, one of the basic rights, the right to know, is clearly not respected, as the fate of Lebanon's missing

is still unknown to this day. Research also shows that government initiatives to this end have been unsuccessful, futile and actually served to weaken trust in the government (CLDH, 2008). The rights of victims have been similarly neglected due to peace settlements that did not consider their needs – a factor further contributing to hindering the respect for human rights in Lebanon.

As for the third cornerstone, “performance of the system” (Hallberg, 2005, p.5), which Hallberg explains as resting on how citizens perceive their country functioning in terms of “participation, legitimacy of decision making, and trust” (Hallberg, 2005, p.5), Lebanon’s consociational democracy coupled with the Syrian tutelage, allowed the Syria to dictate “the domestic politico-sectarian balance [...] and how simmering political differences were to be resolved” (Makdisi & Marktanner, 2012, p. 4). Although the Syrians withdrew from Lebanon in 2005, they were still involved in its policy making and its security decisions. Najem argues that “Syria’s penetration of the security services was such that, at the very least, even if it was no longer calling for political shots, it was in a position to cause considerable instability in Lebanon should political developments become hostile to key Syrian interests” (Najem, 2012, p. 77). With Syria calling the shots in the internal affairs of Lebanon, and the patronage and clientelist system reinforced by the war, citizens lost their trust in the Lebanese government and turned to their confessional communities for services instead, resulting in a weak or even non-existent third cornerstone.

Fourthly, regarding the “principle of legality” or the “conformity of the law” (Hallberg, 2005. p.5), Lebanon’s state institutions fail to conform with the law, are corrupt and have frequently been accused of embezzlement. The state’s watchdogs have been paralyzed, corruption has grown rampant and accountability is lacking at all levels. The Amnesty law further undermined adherence to the laws as it reinforced the culture of impunity and downgraded accountability.

#### **4.5. Conclusions**

Lebanon’s post-war settlements had a negative impact on the country’s accountability process and lasting peace. The Taif, instead of paving the way for a reconciliation process between the communities, reaffirmed confessionalism and legitimated the Syrian presence in Lebanon, both of which hindered the fragile peace that Lebanon had. This was affirmed by the reoccurrence of internal violence throughout the post-war period, culminating in the events of 2008 as well as the current spillover from the Syrian war. The Amnesty law failed the victims of the war, denying them justice and reinforcing the culture of impunity in the country; not only were crimes against humanity not tried, but to make matters worse, the leading elite was able to get away with corruption and embezzlement even after the war. Lebanon became a penetrated country where regional powers fought conflicts through their Lebanese proxies. Instead of reforms aimed at strengthening the ability of state institutions to uphold the rule of law and revive the country, as was the case in Croatia, reforms were limited to revitalizing the economy and rebuilding the country and were notorious for the high levels of corruption involved. All of these factors contributed to a lack of trust in the

government, further exacerbated by the state's lack of monopoly over the use of arms. Hezbollah and Palestinians militias are still armed and the state lacks the power to control them or their use of arms. With the absence of efficient, accountable institutions and the unwillingness and inability of the government to establish its authority over all of its territory, Lebanon's rule of law continues to be undermined and the country's accountability process hindered.

## **Chapter Five**

# **Alternatives for Lebanon**

Although the destruction caused by a 15-year civil war has been horrific, Lebanon is not the only country to have gone through a destructive and divisive civil war – in fact, according to Sambanis, 146 civil wars have taken place between 1945 and 1999 (Sambanis, 2004). Although every conflict and every country is unique, there are some common challenges countries face in a post-conflict situation, such as: how to deal with victims of human rights violations committed during the conflict; how to engage with the perpetrators of those violations; how to reconcile between the parties in conflict; and how to rebuild state institutions that were damaged by the conflict. The UN, which has increasingly been involved in the post-conflict reconciliation efforts of numerous countries emerging from internal conflict, has noted that “the consolidation of peace in the immediate post-conflict period, as well as the maintenance of peace in the long term, cannot be achieved unless the population is confident that redress for grievances can be obtained through legitimate structures for the peaceful settlement of disputes and the fair administration of justice” (UNSC, 2004, para 2). As noted in Chapter II, the concept of transitional justice has emerged precisely as a result of academics and practitioners trying to put together some of the key elements that can help mend societies not physically but societally in the aftermath of a bloody transition or conflict.

Chapter II provided a list of the key tools of transitional justice that are commonly considered in a post-conflict situation and that have proven to be successful in a number

of different contexts. These tools include: the prosecution of the perpetrators of human rights abuses to ensure accountability and justice for the victims; the establishment of truth commissions to look into the abuses that were committed and prevent their reoccurrences; symbolic or material reparations efforts for the victims to restore their dignity and redress the harm that they suffered; Institutional reform to address the structures of the system that allowed the human rights abuses to take place, and; vetting and dismissals targeting those individuals working in the public sector that were involved in inflicting human rights abuses.

As Chapter III showed, in Croatia the consolidation of peace and rule of law has largely been achieved through the cooperation with the ICTY and judiciary reforms. However, the example of Croatia also showed that without a combination of a strong political will backed by international pressure, such initiatives would not have been possible – sadly, both internal political will and international pressure are currently missing in the case of Lebanon.

Finally, Chapter IV then provided an inventory of transitional justice measures taken in Lebanon and an assessment of their relative successes, noting that none of them have really addressed past issues in an adequate manner or been implemented with the seriousness and follow-up necessary for achieving concrete results. The government led three commissions of inquiry about the fate of the missing, but none of them presented any practical results and the whereabouts of the missing are still unknown to their families. With regard to human rights violations committed by the perpetrators of the war, only one warlord, Samir Geagea, has been tried. Even his trial was only possible



because he was one of the opponents of the Syrian occupation governing Lebanon at the time. With regard to the Internally Displaced Persons, a Ministry for the Displaced was established but it failed to meet its primary purpose. Past efforts also clearly show that any transitional justice efforts directed towards bringing warlords to justice are bound to fail, as it is not in the interest of the warlords-come-politicians to undermine their own ability to remain in power. Rather than striving towards national reconciliation and justice after the war, through developing stronger institutions and processes that would encourage dialogue and reduce the risk of renewed conflict, the efforts implemented by leaders in Lebanon, in particular the Taif accord and the amnesty law, have in fact weakened the rule of law and accountability, thus paving the way for increased corruption and a high risk of renewed conflict.

The Taif Accord was riddled with shortcomings and ill implementation, the effects of which are still palpable today. A new equal confessional formula was temporarily put in place between Christians and Muslims, and was to be followed later by the abolition of the confessional system. However, until this day, the sectarian system remains unchanged and, as Hassan Krayem puts it, “leaves the door open to the renewal of conflict, and increases the possibilities of its occurrence” (Krayem, 1997, para. 39). In terms of political structure, Taif effectively delegated government sovereignty to Syria, legitimizing its tutelage over Lebanon and allowing it to favour its allies in Lebanon, thus weakening already damaged and fragile state institutions and increasing corruption. By failing to mention anything about the victims of war or justice for crimes committed, the accord allowed bloodstained warlords such as Nabih Berri and Walid Jumblatt, to

name a few, to secure political gains instead of facing trials and to become heroes to their constituencies.

The Amnesty law reinforced impunity and lack of accountability by exonerating the atrocities committed during the war. Coupled with the Taif Accord, it legitimized former warlords and helped in preserving the status quo in the country. Amnesty laws are usually given to perpetrators following a regime change, whereby these figures are no longer in positions of power. In the case of Lebanon, however, amnesty was given to the perpetrators who became heads of political parties and are still in power until this day – there was no regime change.

Most importantly from the point of view of Lebanon's ability to rebuild society and democracy, the Taif Agreement and the Amnesty Law served to weaken and undermine the rule of law in Lebanon. As the prior analysis of the four pillars of the rule law showed, the lack of separation between powers and the political manipulation of Lebanon's judiciary weakened the country's independence and led to the lack of a culture of democracy. According to Mattar, for the Lebanese "the law has become an instrument the regime uses for oppression and intimidation, instead of being a resource and a guarantee of rights" (Mattar, 2004, p.191). Moreover, the absence of checks and balances for its already fragile state institutions has led the population to lose its trust in them. These challenges, in turn, lead to weak accountability, rampant corruption, and a high risk of conflict.

It is clear, then, that the carrots and sticks that made it possible for Croatia to successfully implement transitional justice measures that promoted national healing and

strengthened the rule of law are not present in Lebanon, and therefore then that Lebanon is unlikely to be able to implement similar measures. In order to tackle the transitional challenges and strengthen the rule of law, which needs to be the foundation of building a just society and “a fundamental principle embraced in most modern democracies” (Tommasoli, 2012, para.11), a different kind of approach to transitional justice would need to be adopted in Lebanon.

Due to the fact that the main perpetrators of crimes against citizens during the civil war are currently the political leaders of the country, any future transitional justice efforts need to avoid targeting the warlords, through criminal trials and other such measures, and focus instead on tackling systemic injustices perpetuated through flawed state institutions as well as high the level of corruption hindering the rule of law. Such an approach should mainly target current legislation and government policies and should be based on a set of measures chosen specifically for their feasibility, practicality and potential for bringing about positive change. This is certainly not an easy task, but it is the aim of this study to identify some possible initiatives that would fulfill these criteria.

This chapter will first develop criteria for assessing possible transitional justice efforts in Lebanon. Using these criteria, the latter part of the chapter will then seek to identify potential transitional justice measures that would fulfill the criteria developed and make recommendations for what could be done.

## **5.1. Possible Transitional Justice Efforts in Lebanon**

The study of the Croatian case has shown that political will and international pressure are crucial for the successful implementation of transitional justice in the aftermath of an internal conflict. In Lebanon, where former warlords have been governing the country since the end of the war, are internationally recognized as legitimate leaders, and are supported by international actors more concerned with maintaining their influence in Lebanon than strengthening democracy and unity in the country, both are sadly lacking. Given that criminal prosecution of war criminals is not an option at the moment, this chapter will examine other possible transitional justice measures and initiatives, through which accountability and the rule of law in Lebanon could be enhanced.

In order to be able to assess the value of different transitional justice tools and mechanisms, it is first necessary to establish criteria for assessing their feasibility, practicality and potential for positive change. The *first* and perhaps most important criterion has already been introduced above: given that there has been no regime change and that former warlords are still in power today, any tool or mechanism must be acceptable to them and therefore refrain from prosecuting them. It is important to note, however, that this does not mean that any tools or mechanisms must ignore the wrongdoings of the past; such an approach would simply lead to another Amnesty Law. Rather, it means that initiatives need to use the promise of refraining from criminal prosecutions as a bargaining tool for securing political support for less drastic transitional justice measures, such as legislative and institutional reform as well as more robust anti-corruption measures.

The *second* criterion is based on the likelihood that the initiative will positively affect the rule of law in Lebanon. The reason for this is that the rule of law has been identified as a key building block for democracy and improved governance as well as a key weakness in today's Lebanon. By strengthening the rule of law, transitional justice tools or mechanisms are more likely to have a snowball effect down the line, whereby they will bring about changes on which future initiatives can then build and bring about even more ambitious change. When exploring reform options, priority should be given to those reforms that seek to strengthen the rule of law.

The *third* criterion is a practical one. Given that Lebanon is not a rich country and that currently there is no significant funding available for a transitional justice process in Lebanon, it is essential to try to identify tools and mechanisms that can achieve as much as possible for as little a cost as possible. This cost-effectiveness criteria will also consider the amount of people whose needs would be met by a given tool or mechanism.

The *fourth* and final criteria is linked to the timeframe required to reach results by means of a given tool or mechanism. While acknowledging that it is extremely difficult to assess whether efforts that yield greater benefits after 20-30 years are more or less valuable than efforts that yield small benefits in 5 years or so, it is the starting point of this study that in the first instance it would be important to identify some "low hanging fruit", which could build trust and confidence in transitional justice initiatives and thus encourage both decision-makers and citizens to commit to longer-term efforts.

These four criteria – political feasibility, impact on rule of law, economic viability and potential for quick wins – will be used to evaluate several legislative and institutional reform options available to Lebanon.

### **5.1.1. Judicial Reform**

Judicial reform is considered to be part of the institutional reform pillar of transitional justice and aims at reforming the system that allowed for human rights atrocities to take place in the first place. A strong and independent judicial sector is also an important building block of rule of law: achieving justice through corrupt and politically-motivated courts is rarely possible. According to academics such as David Boies as well as practitioners such as the Chief Justice of Australia Sir Gerard Brennan, for the rule of law to thrive in any society, the independence of the judiciary must be respected. Sir Gerard Brennan states that “the reason why judicial independence is of such public importance is that a free society exists only so long as it is governed by the rule of law – the rule which binds the governors and the governed, administered impartially and treating equally all those who seek its remedies or against whom its remedies are sought” (Brennan, 1996, para.2).

In Lebanon, the independence of the judiciary is a misapprehension and exists only on paper due to political interference. According to Suleiman Takiyeddine, “the independence of the judiciary in Lebanon is a mere illusion since the latter is no more than another administration open to the interference of politicians” (Takiyeddine, 2004, p.23). In Croatia, the impartiality and independence of the judicial system was achieved through amendments to the constitution relating to the appointment of judges (COE,

2011). In Lebanon, a reform of the judicial system would need to tackle not only the appointment of judges but also the degree of independence of the judicial system as a whole. Takieddine stresses the importance of independence as a cornerstone of democracy: he states that “no democratic system can be considered sound without an independent judiciary to embody justice, to protect its legal foundations and to safeguard it against the manifold influences of power” (Takieddine, 2004, p.37).

In Lebanon, reforms targeting the external and internal independence of the judiciary should be implemented. In terms of external independence, an external body with legal personality – independent of the executive branch – such as the Higher Council of the Magistrature, should take control of supervising the judiciary to make sure it functions properly. This body would have financial and administrative independence to exercise its power in terms of the appointment of judges, for example (Takieddine, 2004). In terms of internal independence, reforms should include the empowerment of scrutiny and control systems as well as the training of judges (Takieddine, 2004).

A similar case for reform could also be made with regard to the Constitutional Council, which currently does not allow regular citizens to raise cases, is not mandated to assess the constitutionality of old laws, and is susceptible to political manipulation, as demonstrated in Chapter 4.4.2. In fact, Mograby argues that reforms related to expanding access to the Council, removing the time restriction regarding the eligibility of cases and revising the process of appointing members of the Council would go a long way towards strengthening constitutionality in Lebanon (Mograby, 2005).

In order to assess the potential of judicial reform, the proposed measures need to be considered in light of the criteria identified above. With regard to political feasibility, although the measures suggested may not be a high priority for the political elite and would weaken their ability to influence the judiciary, given that it has essentially already been agreed to as part of the Baabda declaration (which has never been implemented), it would seem to fulfill this criteria. Renewed efforts could build on the Baabda declaration and remind politicians about the importance of implementing the provisions regarding judicial reform. With regard to its ability to strengthen the rule of law, judicial reforms geared towards improving the professionalism and independence of the judiciary go to the very heart of rule of law. Takieddine's work reinforces this analysis by noting that "there will be no rule of law unless the judicial power alone is the authority for the interpretation of the law and its impartial implementation, according to criteria and standards that the law itself determines, in order to confer legality and legitimacy on relations among people" (Takieddine, 2004, p.37). In terms of the cost-effectiveness of judicial reform, although such reform is likely to involve increases in salaries and the setting up of new bodies, these costs are not above and beyond regular institutional reform and would certainly be worth the investment. Finally, in terms of the timeframe of judicial reform, if implemented correctly it will yield visible results in the short term. Overall, then, judicial reform would be a viable and desirable measure to implement.

### **5.1.2. Security Sector Reform**

Security Sector Reform goes hand in hand with transitional justice mechanisms and is considered by the UN to be part of the institutional reform mechanism which targets



“the structures, institutions and personnel responsible for the management, provision and oversight of security in a country” (UNGASC, 2008, p.5). Reforming the security sector, including law enforcement agencies, such as the police, aims at increasing accountability and strengthening the rule of law. According to the Commission of the European Communities, the objective of such reform “is to contribute explicitly to strengthening of good governance, democracy, the rule of law, the protection of human rights and the efficient use of public resources” (Commission of the European Communities, 2006, p. 6).

With the political assassinations in Lebanon since 2004, recent bombings and clashes in Tripoli, the Hezbollah Israeli war in 2006, the Nahr Al Bared events of 2007 between Fateh al Islam and the Lebanese Armed Forces (LAF) , the May 2008 events, the recent sectarian incidents in Tripoli as well as the security threats resulting from the spillover of the Syrian war , the security sector – which mainly includes the LAF and the Internal Security Forces (ISF) – has been systematically weakened and lost much of its credibility in the eyes of the Lebanese people. According to Emile El-Hokayem and Elena McGovern, these security incidents “increased the sense of insecurity of the general population and eroded its confidence in the ability of the state to prevent, counter and investigate acts of violence” (El-Hokayem & McGovern, 2008, p.8). These challenges are increased by other, broader, factors such as armed non-state actors (including Hezbollah and Palestinian factions) not answerable to the government, which hinder the state’s authority over the monopoly of weapons and border control. More specifically, these challenges also include “the Army’s lack of fundamental systems and supplies” (El-Hokayem & McGovern, 2008, p.18) as well as the lack of trust in the ISF

in general as “it suffers from severe image problems” (El-Hokayem & McGovern, 2008, p.18).

The challenges indicated above show that Lebanon is facing challenges with regard to most if not all of the five key features of an effective and accountable security sector, identified by the UN:

1. A legal and/or constitutional framework for the use of force in accordance with human rights norms and standards;
2. An institutionalized system of governance, management and oversight;
3. Mechanisms for coordination and cooperation among different security actors;
4. The capacity of to provide effective security in terms of structures, personnel, equipment and resources;
5. Culture of service and key values, such as promoting unity, integrity, discipline, impartiality and respect for human rights, guide the way security actors carry out their work (UNGASC, 2008, p.6).

The first three features could be considered elements that would need to be addressed at the macro level, whereas the last two would need to be addressed at the micro level. With regard to challenges at the macro level, addressing them would require comprehensive reform. According to El-Hokayem and McGovern, however, this is not possible at the moment due to the level of politicization of issues such as border security and armed non-state groups, as well as the continuing internal conflict in Syria. They argue that engaging in comprehensive reform would require “a better implementation of the Taif Agreement, a national security policy that defines the country’s threats and

allies; [and] a national defense strategy which establishes an authority to manage and coordinate among the various security services” (El-Hokayem & McGovern, 2008, p.27).

At a more micro level, on the other hand, some of the challenges facing the ISF and LAF could be tackled through means such as providing capacity building for the police force to be able to more effectively uphold law and order and earn the respect of the people as well as the armed forces in order to enhance their morale, authority and credibility. Training both security institutions to respect human rights and international best practices with regard to operating procedures may not address the fundamental flaws in the national framework within which they operate, but would go a long way towards improving their standing in the eyes of the people they are meant to serve and protect.

In order to determine whether or not security sector reform would be a worthwhile transitional justice measure to pursue in Lebanon, the measures proposed above need to be assessed on the basis of the four criteria presented. First of all, it seems clear that macro level reforms (addressing features 1-3 in the list above) would not be feasible at this time, due to the political divisions which have only gotten deeper as a result of the Syrian crisis. Micro level reforms, focusing on building capacity as well as changing mindsets and organizational culture, on the other hand, are less politicized as they do not require political decision-making and would not only be feasible, but could actually help to mitigate some of the harmful effects of increased political polarization.

In general, security sector reform is considered to be based on a principle of the primacy of the rule of law, meaning that the goal of security sector reform should be to ensure

that all entities (whether individuals or institutions), including the state, are accountable to publicly promulgated laws which are equally enforced and independently adjudicated in line with human rights norms and standards (see for example UNGASC, 2008; OECD, 2007; Sedra, 2010). As such, the training of security forces in, for example, human rights, the equal treatment of citizens, and an approach focused more on long-term crime prevention rather than short-term reactionary measures would directly impact the rule of law. They would not only help improve accountability by upholding law and order with respect to human rights, but would also increase the trust of the Lebanese people in these public institutions.

The cost of security sector reform greatly depends on the kind of reform envisaged: improving equipment or increasing salaries is more expensive whereas providing trainings, manuals or workshops is less so. In the case of Lebanon, a model could be found that would provide value for money, for example one consisting of incremental steps, depending on the availability of funds. With regard to the possibility of achieving quick wins through engaging in limited security sector reform in Lebanon, it must be noted that generally speaking security sector reform is a long-term process, although limited measures, such as trainings, could be implemented within the reasonably short-term.

Overall, the viability, usefulness and cost-effectiveness of security sector reform is a complex matter. On the one hand, it is clear that existing political divisions, lack of resources and a long timeframe mean that comprehensive security sector reform, which would have the biggest impact on the rule of law, is not possible at the moment in

Lebanon. On the other, limited, micro level measures that would target the behavior and mindsets of security sector employees would be feasible, less costly and could nevertheless have a positive impact on the rule of law; furthermore, they could even help address growing sectarian tensions in the country.

### **5.1.3. Improving Accountability of State Institutions**

Traditionally, transitional justice measures have focused on human rights violations and largely disregarded economic crimes. However, in recent years, experts such as Ruben Carranza, have been advocating for including accountability for economic crimes within the ‘toolkit’ of transitional justice mechanisms due to the way in which economic crimes are directly linked to impunity and the perpetuation of human rights abuses, as argued in Chapter II. According to Carranza, “transitional justice can be strengthened and can confront impunity more effectively if it engages with accountability for corruption and economic crimes” (Carranza, 2008, p. 311). In fact, accountability for such crimes not only strengthens transitional justice, but it also strengthens the rule of law. The Executive Director of the UN Office on Drugs and Crime (UNODC), Mr. Yury Fedotov, further emphasizes this relation between corruption and the rule of law by stating that “where corruption flourishes, development and the rule of law fail” (UNDOC, 2012, para 5).

As seen in Chapter IV, economic crimes and wide-scale corruption in Lebanon did not end with the war. Since the political system never changed, these crimes and violations continued and are still taking place until this day. Corruption in all its forms, such as the embezzlement of public funds, bribery and nepotism, to name a few, is commonplace in

Lebanon. According to Gaelle Kibranian, Director of Programs at the Lebanese Transparency Association (LTA), resorting to power sharing agreements such as the Taif and the Doha agreements, rather than working on peace building and transitional justice, has “provided a network of favouritism, with patronages between leaders and any given confession” (Galey, 2009, para.13).

A number of proposals have been made for addressing corruption in Lebanon, such as clarifying, standardizing and streamlining state agencies’ mandates and procedures, introducing ‘e-governance’, strengthening oversight mechanisms by watchdogs, establishing a ‘republican ombudsman’, greater transparency in the state budget and obliging politicians and public servants to declare their wealth and connections prior to assuming office (Leenders, 2012, p. 236). Unfortunately practically all of these measures require action by the parliament and/or government, making their implementation largely contingent on the existence of sufficient political will.

Out of these proposals, two are particularly interesting from the point of view of this study as they are mostly related to strengthening or creating independent bodies to shed light on corrupt practices. The first of these was already brought up in Chapter IV: addressing the political penetration, paralysis and ineffectiveness of watchdogs such as the CIB and the CA, so that they would be able to perform their duties correctly. One way to enhance accountability for corruption and economic crimes in the public sector would be to empower these two institutions by making them more independent, and thus less prone to political interference. They could work together with an independent

judiciary to hold the perpetrators of economic crimes accountable before the law and provide much-needed checks and balances to the public sector.

Another option, which builds on these suggestions, would be to fully implement the UN Convention Against Corruption (UNCAC), which Lebanon ratified in 2009. One of the key recommendations of the Convention is for the state to establish an independent anti-corruption body (UNODC, 2004, Article 6), which could work in collaboration with the CIB and the CA.

With regard to the political feasibility of either of these alternatives, strengthening the watchdog institutions or establishing an independent anti-corruption body, a study by Reinoud Leenders into corruption in post-war Lebanon makes the argument that the post-war political settlement transferred the gridlock in political decision-making down to the level of state institutions, encouraging each leader to establish control over the institution they headed control, at the expense of the bureaucratic organization of that institution (Leenders, 2012, pp. 224-225). He goes on to argue that only by strengthening the bureaucratic organization of key state institutions can the level of political corruption, or the allotment state, be addressed so that bureaucratic rule is no longer exercised selectively to the benefit of some over the others (Leenders, 2012, p. 232). Therefore, it would seem that political will would be needed to implement either of the two alternatives outlined above. The very state watchdogs that were made ineffective by the political elite in the 2000s are unlikely to be strengthened by that same political elite, unless the political environment experiences a significant change. Similarly, establishing an independent anti-corruption body, with even more extensive

powers than the watchdogs, seems unlikely given that the political system remains unchanged.

With regard to the impact of strengthening anti-corruption measures in Lebanon on the rule of law, as already stated above, corruption is generally considered to undermine the rule of law by eroding democratic institutions that are the basis for fair and equitable societies. Therefore, implementing any measures to address corruption would have a positive impact on the rule of law.

As for costs, since the CIB and CA already exist and the reform suggested would focus on empowering them to carry out their mandates as originally envisaged, the financial implications of this reform would be minimal. Setting up an independent anti-corruption body, however, would incur considerable costs. Having said that, addressing corruption and the embezzlement of public funds would result in more money for the government in the long run. Similarly, any reforms aiming at improving the accountability of state institutions require time and effort, and are likely to bare fruit in the long term than the short term.

Overall, while strengthening the CIB and CA would be economically feasible and likely to significantly improve the rule of law in Lebanon in the medium to long term, it seems unlikely that it would be politically acceptable. The establishment of an independent anti-corruption body, on the other hand, would seem even less likely, considering that it would require considerable financial resources in addition to political will.



#### **5.1.4. Bottom-Up Approach**

Transitional justice approaches, such as official truth commissions, are usually initiated by the government and known for being top-down processes. Due to their top-down character, these processes are sometimes criticized for denigrating victims and for having to make “trade-offs between truth and justice on the one hand and stability and pragmatic politics on the other” (Lundy &McGovern, 2008, p.271). Due to these limitations, practitioners as well as academics involved in these processes are shifting towards a new way of thinking, one that engages more with the grassroots level and is known as a bottom-up approach. The benefit of such an approach is that it integrates citizens in the process and gives them the feeling of ownership. According to Lundy and McGovern, such a process is “conscious of the value and the need to listen to and head local people in order to develop locally owned processes” (Lundy &McGovern, 2008, p.271).

Among such processes, unofficial truth projects, also known as UTPs, could be particularly relevant to the Lebanese case. According to Bickford, the work of the UTPs is quite similar to that of official truth commissions, in the sense that they target past crimes “as a component of a broader strategy of accountability and justice” (Bickford, 2007, p.994). UTPs can also have the same mandate and outcome as official commissions: a final report of the findings could be published, highlighting not only the atrocities committed during the war, but also making recommendations regarding the needs and demands of the victims (Bickford, 2007). What differentiates UTPs from official truth commissions is that they are led by civil society and directly work with the grassroots. The advantage of such an approach is that it “represents a shift away from

the top-down ‘one size fits all’ approach to a bottom up model that allows ‘voices from below’ to be heard and headed” (Bickford, 2007, p. 995). In situations, such as Lebanon, where political considerations and pressure play a role in restraining the establishment of an official truth commission, civil society-led processes can instigate a UTP initiative to do the work of an official commission. This was the case in Brazil, for example, where a UTP was established by civil society and its findings were published in a final report entitled “Brazil: Nunca Mais” that was widely disseminated all over the country (Bickford, 2007). Other UTPs such as the Greensboro Truth and Community Reconciliation Project (GTCRP), not only complemented truth commissions, but actually served as a replacement, “or possibly a precursor for a larger, regional or national effort” (Bickford, 2007, p. 1017).

Going back to the Lebanese case, as demonstrated in chapter IV the Lebanese government initiated three commissions to look into the fate of the missing during the war. These initiatives failed to meet their original purposes, however, and instead left the families of the missing with feelings of disappointment, frustration and distrust with the state (CLDH, 2008). Given this lack of trust in the Lebanese state to initiate and support a truth commission, one option would be for Lebanese civil society to learn from the Brazilian example and take the lead by establishing a bottom-up UTP. Although such a process would be costly and require a lot of effort, it would bring together civil society organizations interested in this issue to work directly with the victims, so that their voices and concerns could be heard. The findings and recommendations of the UTP could also be used as a lobbying tool by civil society to push the government to initiate further transitional justice processes – in essence following the relative although

moderate success already achieved by Lebanese civil society with regard to the issue of the missing and disappeared, as shown in Chapter 4.3.2. In terms of reconciliation, the establishment of a UTP can fill in the gap that the government left. Given that after the war the Lebanese government only focused on reconciliation at the highest level, a UTP can help by bringing conflicting sides together, as was the case with the Greensboro Truth and Community Reconciliation Project (GTCRP), which not only aimed at investigating events that took place in Greensboro on the 3<sup>rd</sup> of November, 1979, but to also to “promote healing and reconciliation in the Greensboro community” (Bickford, 2007, p.1017).

In terms of the criteria for examining the usefulness of initiating an unofficial truth commission, it would seem that in terms of political feasibility such an initiative would be feasible, given that it could be undertaken by civil society without any kind of formal decision or sanctioning by the government. In terms of its potential impact on the rule of law, that would depend largely on the approach taken by the UTP. If the UTP focuses mainly on human rights violations, it would not have a direct impact on the rule of law, although by finding out the truth about what was done and by whom, it would at least make it possible to clearly assign responsibility to a certain group or even a certain leader. If, on the other hand, the UTP adopts a broader scope, including also the kinds of economic crimes highlighted by Ruben Carranza in its scope of inquiry, it could be argued that an UTP could have a stronger impact on the rule of law, as it would also highlight corrupt practices and networks of favouritism created and sustained by the ruling elite. In this context it must be noted, however, that a bottom-up UTP can only try to bring to light various crimes and wrongdoings, it does not have the power to offer

compensation to victims or bring perpetrators to justice. Nevertheless, in a society like Lebanon, where civil society is largely free to voice opinions and advocate for issues, strong pressure from the bottom up could push political leaders to take transitional justice more seriously.

Any unofficial truth project is likely to be costly, even if it is undertaken by civil society. However, as mentioned before, several civil society organizations could work together in such an effort to share costs and multiply efforts and, as was the case in Brazil, several international organizations could be interested in funding such an effort (Bickford, 2007). At this time, the argument could also be made that such a process could be used as a model for any future transitional justice effort in Syria.

With regard to the time required to successfully implement a UTP, Bickford notes that the mandate of such initiatives is a short-term one; it usually takes three to five years for a UTP to produce results and recommendations (Bickford, 2007).

Overall, it would seem that an unofficial, bottom-up transitional justice process would be much more feasible than an official one given the current political situation in the country. Despite its unofficial nature, such a process would also be beneficial to Lebanon as it would empower the victims of the war, who are still marginalized until this day, by seeking the truth about crimes committed during the civil war, and it would also bring to light the connections between those who were responsible for atrocities during the war and those who hold political power today, thus paving the way for greater accountability and transparency. By so doing, a UTP would also have a positive impact on the rule of law. Although the concrete, short-term impact of an unofficial process

would likely be quite limited, it could serve as a stepping-stone to other transitional justice measures, and provide citizens and civil society groups with tools for lobbying.

## **5.2. Conclusions**

In countries emerging from conflicts, state institutions are weakened and the rule of law is not respected. In such contexts, transitional justice approaches are set up to help restore justice and accountability for the crimes that were committed during the war, thus reinforcing the rule of law and democracy. In Lebanon, however, this was not the case. Opening a new page and forgetting about war, along with all the injustices that took place without dealing with them, was the policy that was chosen by consecutive governments. By not dealing with its past through appropriate measures – such as criminal trials, truth commissions, institutional reforms and reparations – the rule of law in Lebanon was weakened and democracy reduced to little more than a facade. Citizens lost their trust in the state and in the law, corruption was rampant, especially in the public sector, and society remained fragmented even after the war, due to the lack of serious reconciliation efforts outside of the highest political levels, ignoring the needs of the people.

In order to build a more democratic and less fragmented Lebanon, it would be necessary to strengthen the rule of law, which means that transitional justice efforts aiming at strengthening the rule of law would need to be implemented. However, given that the perpetrators of war crimes are still in power, transitional justice measures that would target them, such as criminal prosecutions, would not be the most plausible solution.

Therefore, in the case of Lebanon, transitional justice efforts should be customized to the political context in order to be feasible.

Given this particular political context, this chapter outlined several possible alternatives for transitional justice processes that could be realistic in Lebanon. In an effort to assess the feasibility of these alternatives, four criteria were developed: political feasibility, impact on rule of law, economic viability and potential for quick wins. Assessed against these criteria, the study found the following initiatives as both potentially feasible and conducive to strengthening the rule of law: judicial reform targeting the independence of the judiciary; security sector reform targeting the behavior and mindsets of both the Internal Security Forces and the Lebanese Armed Forces, and; adopting a bottom-up, civil society-led informal truth process, which would give victims and citizens a possibility to feel included in efforts to heal societal wounds, thus increasing their ownership in eventual measures created to facilitate such healing.

While all these potentially feasibly transitional justice measures could be expected to produce some tangible results in the short to medium-term, their real importance lies in the normative change they would bring to Lebanese politics with regard to dealing with the past. By addressing institutional and behavioural weaknesses and calling for the truth regarding past crimes, considerable pressure would be generated towards political parties and leaders for greater accountability. For the Lebanese people to demand accountability from their so-called democratically elected leaders would be the first step in moving towards a more just and more equal society and away from a culture of

kleptocracy and *muhasasa* which have dominated the post-war reconstruction and reform efforts in the country.

## **Chapter Six**

# **Conclusion**

This study has sought to make the case for the potential of transitional justice mechanisms in helping societies to deal with the complex challenges facing any country in a post-conflict environment. Based on the concept of engagement, which entails that acknowledging past wrongdoings is a precondition for healing, transitional justice mechanisms have proven to be effective at strengthening the rule of law in several countries during democratic transition or post-conflict recovery. The five cornerstones of transitional justice currently acknowledged by the UN – criminal justice, truth commissions, reparations, institutional reform and vetting and dismissals – are being complemented by new mechanisms that make it possible to address accountability not only for crimes against human rights but also for economic crimes. It was argued that such developments serve to more clearly underline the intrinsic linkages between transitional justice and the rule of law, both of which aim at ending impunity, strengthening accountability and protecting human rights.

At the same time, the study has outlined many of the obstacles for implementing such mechanisms. Given that transitional justice processes are most commonly pursued by the national government itself, one of the main obstacles discussed was the national political environment and the extent to which it can provide the political will necessary for genuine and effective transitional justice.



In order to provide an in-depth analysis of the role of transitional justice in a specific post-conflict context, the experiences of Croatia were analyzed. It was shown that despite going through a divisive, identity-based conflict during the 1990s, the country was able to implement several transitional justice processes, including criminal justice mechanisms, and has since been successful in strengthening the rule of law, to the extent that Croatia was accepted as a member of the EU. By examining the mechanisms employed in Croatia and the extent to which they played a role in strengthening the rule of law, the study then attempted to draw lessons with regard to the mechanisms as well as the “carrots and sticks” used to implement those mechanisms in order to see if they could be relevant also in the Lebanese context.

The comparison between the Croatian and Lebanese experiences clearly showed that dealing with the past is never an easy path to embark on, especially not in a situation where a country has been through a bloody conflict riddled with human rights abuses. Like the Lebanese civil war, the conflict in the Balkans was largely an identity-based conflict and filled with human rights violations. Although Yugoslavia represents a situation of a country disintegrating into several smaller states, whereas Lebanon does not, the community-based nature of conflict in Lebanon and the Former-Yugoslav countries share several common elements: most importantly, each of the warring communities viewed its war criminals as war heroes who were engaged in an existential conflict. The argument was made that such a romanticized vision of the war makes it very hard to deal with the crimes committed and the war criminals that committed them, let alone engage them in public trials; it takes strong political will, as well as some

pressure and support from the international community, to achieve justice in such circumstances. Indeed, the most important lesson learned from Croatia is that strong political will backed by a strong civil society and a clear range of external incentives is central for the success of transitional justice initiatives, but also that when done correctly, such a process can help considerably in rebuilding respect for the rule of law.

Unlike the Croatian experience, it was shown how the post-war settlements in Lebanon actually had a negative impact on accountability processes, respect for the rule of law, and sustainability of peace. Instead of paving the way for a reconciliation process between different communities, the Taif Accord served more to reaffirm confessionalism and legitimate the Syrian presence in Lebanon, both of which hindered the fragile peace that had been established. Not surprisingly, then, it was demonstrated how Lebanon experienced a reoccurrence of internal violence throughout its post-war period, culminating in the events of 2008.

Instead of a Tribunal for war crimes, as was the case in the Former Yugoslavia, Lebanon instituted the Amnesty law, which denied the victims of the war access to justice and reinforced the culture of impunity in the country. In a perverse turn of events, the perpetrators of crimes against humanity during the war were not only granted amnesty from being brought to justice, but to make matters worse, were actually converted into the new political elite and allowed to get away with corruption and embezzlement in the post-war period as well.

Lebanon became a penetrated country, where regional powers fought conflicts through their Lebanese proxies. Instead of reforms aimed at strengthening the ability of state institutions to uphold the rule of law and revive the country, reforms were limited to revitalizing the economy and rebuilding the country and were notorious for the high levels of corruption involved. All of these factors contributed to a lack of trust in the government, further exacerbated by the state's lack of monopoly over the use of arms – the absence of efficient, accountable institutions and the unwillingness and inability of the government to establish its authority over all of its territory continues to undermine the rule of law in Lebanon.

On the basis of these findings, the main argument of this study is that transitional justice efforts, aiming at strengthening the rule of law, are an essential prerequisite for building a more democratic and less fragmented Lebanon. However, given that those responsible for the gravest violent and economic crimes currently form the political elite of the country, classical transitional justice measures, such as criminal prosecutions, would not be a realistic path to take. Instead, what Lebanon needs is an innovative approach to transitional justice, customized to its political context.

The argument was developed, that any effort that has a chance to succeed must be based on four key criteria: political feasibility, impact on rule of law, economic viability and potential for quick wins. Applying these criteria, the study then found three complementary and mutually reinforcing paths that transitional justice efforts could take in Lebanon: judicial reform targeting the independence of the judiciary; security sector

reform targeting the behavior and mindsets of both the Internal Security Forces and the Lebanese Armed Forces, and; adopting a bottom-up, civil society-led informal truth process, which would give victims and citizens a possibility to feel included in efforts to heal societal wounds, thus increasing their ownership in eventual measures created to facilitate such healing. The greatest contribution such efforts could be expected to make would be to put pressure on political parties and leaders for greater accountability, thus leading to a normative shift in Lebanese politics away from sectarian *muhasasa* towards social justice. Short of such fundamental change, in the words of Reinoud Leenders, “flawed state institutions and corruption are bound to flourish, just as Lebanon’s political elites will reap the spoils of yet another truce.” (Leenders, 2012, p. 250)

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