

Beyond the Failure of Justice: Lebanon's General Amnesty Law of 1991 and Access to Redress for Victims of the 1975-1990 Civil War

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This article examines the elements of the general amnesty law of 1991 promulgated in Lebanon a year after the end of the civil war that extended from 1975 to 1990. Through analysis of the provisions and the language, it finds that the law was drafted exclusively for the benefit of the new political elite, former war belligerents, integrated into the political sphere through the negotiation of the Ta'if agreement at the end of the war. The paper investigates the legal avenues for overturning the amnesty law in a comparative analysis with Latin American countries in an effort to promote accountability. After finding that legal accountability is unlikely to be reached, the paper looks at the legacy of the amnesty law in terms of truth and reparations for victims of the war. It finds that in some contexts, recognition of a crime has more weight than retribution, to ensure a legacy of remembrance.

Introduction

This city is like a great suffering being, too mad, too overcharged, broken down, gutted, and raped like those girls raped by thirty or forty militia men, and are now mad or in asylums because their families, Mediterranean to the end, would rather hide than cure . . . but how does one cure the memory?¹

The atrocities that took place over the course of the 15-year Lebanese Civil War are unfathomable. It is through contemporary Lebanese cultural pillars, through films, novels, and music that the surviving Lebanese population can timidly tap into a process of remembrance. Etel Adnan goes to great lengths to undertake this responsibility to remember: ‘How can I avoid writing about the Lebanese Civil War when I lived it [...] How can we turn our back on that?’²

Such eagerness to ostracise demons of the past through art is emboldened in part by the inability of transitional governments to lead the country into peace and to account for the gross, total, and indiscriminate human rights violations which gripped Lebanon over the better part of two decades. While academic texts about the Lebanese war indeed exist, one cannot read an unbiased, formal and state-sanctioned account of the past, delivered in official history books taught in schools and without the threat of subjectivity. To truly understand the

¹ Etel Adnan, *Sitt Marie Rose* (The Post Apollo Press, 1982).

² Aftim Saba, ‘Etel Adnan’s There, A Meditation on Conflict’ 4 *Al-Jadid* (1998).

war, one can only resort to experiencing it through the uninterested eyes of Sitt-Marie Rose,³ the boldness and impetuosity of Tarek and Omar in the movie 'West Beyrouth,'⁴ and the poignant lyrics of Fairuz.⁵ This is an article about access to redress for gross human rights violations in post-conflict Lebanon, where a blanket amnesty law applies. The end of the civil war was negotiated in the Saudi town of Ta'if in 1989,⁶ brokered between the surviving members of the pre-war parliament into a renegotiated confessional power-sharing formula between Christians and Muslims. It formalised the demobilisation of combatants and the surrender of their weapons to the Lebanese Armed Forces, and further cemented the Syrian presence on Lebanese soil.⁷ A year and a half later August 26, 1991, the Lebanese Parliament voted a general amnesty law for all crimes perpetrated before March 28 of that same year.⁸

This article still examines at length perpetrator responsibility and access to justice as possible means of redress. The primary difficulty in this endeavour is discussing types of remedy where an amnesty law prohibits the prosecution of war crimes, restraining possible investigations.⁹ Paradoxically, in the

³ Adnan (n 1).

⁴ Ziad Doueiri, *West Beyrouth* (Movie, 1998).

⁵ Fairuz, *Li Beirut*.

⁶ Hannes Baumann, *Citizen Hariri: Lebanon's Neoliberal Reconstruction* (2016, Hurst & Co) 41.

⁷ *ibid.*

⁸ General Amnesty Law no. 84/91, Lebanon.

⁹ Law No. 84/91.

1990s, global trends in international criminal law and international human rights law imposed new obligations on states in transition in a push for accountability for the perpetrators of war and atrocity.¹⁰

While the movement for victim's rights was not yet prominent in the 1990s,¹¹ this article endeavours to answer the following questions: is access to justice for victims of the Lebanese civil war absolutely prohibited by the promulgation of the general amnesty law? Has Lebanon defaulted from its international obligations with the promulgation of the general amnesty? What is the legacy of the amnesty law with regards to access to justice, access to the truth and access to reparations?

I. The Lebanese General Amnesty Law of 1991

Some people say that the wartime should be rubbed out from our memories and be forgotten once and for all. This is their opinion; but I believe we should remember, so that we may learn a lesson, and so that the past may be a warning for generations to come.¹²

¹⁰ Lisa J. Laplante, 'Outlawing Amnesty: The Return of Criminal Justice in Transitional Justice Schemes' (2009) 49 *Virginia Journal of International Law* 915, 918.

¹¹ *ibid.*

¹² Emilie Nasrallah *What Happened to Zeeko* (English edition 2001).

1.1 The Context

Lebanon's amnesty law was brought into effect at the end of an intense armed conflict waged between different military and confessional fractions of society and with the involvement of a multitude of international actors. The civil war erupted when different alignments over regional and domestic policies formed around first, the presence of Palestinian factions in Lebanon, and second, the Western versus pan Arab vision of the country as an Arab state in the Middle East.¹³ The armed conflict was declared to have officially commenced on April 13th, 1975.

The schism came about along communal lines, as an alliance of right-wing Christian groups opposed an alliance of leftist Muslim parties.¹⁴ The armed conflict culminated in the negotiation of a peace agreement between militia leaders and warlords in 1989, after almost 15 years of intense violence, shifting alliances, and 144,000 casualties, of which 90 percent were civilians.¹⁵ Divisions occurred along communal and political lines; as a mosaic of communities coexist with conflicting interests, and issued from different economic layers of society.¹⁶ When the general amnesty law was

¹³ Fawwaz Traboulsi, *A History of Modern Lebanon* (Pluto Press, 2007).

¹⁴ *ibid.*

¹⁵ Amal Makarem, *Memory for the Future*, (Dar An-Nahar, 2002).

¹⁶ Iolanda Jacquemet, 'Fighting Amnesia: Ways to Uncover the Truth about Lebanon's Missing' (2009) 3 *International Journal of Transitional Justice* 70, 72.

promulgated on August 26, 1991, it was hailed by the President in office Elias Hraoui as a necessary 'clean slate' for factional leaders, and 'essential to peace'.¹⁷

The International Center for Transitional Justice (ICTJ) has deemed the Lebanese amnesty law to have 'dramatic negative consequences for guaranteeing victim's rights.'¹⁸ Beyond preventing criminal prosecutions, amnesties have had the indirect effect of halting investigations, as they are used in the case of Lebanon, there is no requirement for application, amnesty is simply granted. Hence, in the absence of any the active pursuit of perpetrators of war crimes, an arbitrary selection of cases takes place. In the case of Lebanon, most war-related cases were referred by the Council of Ministers to the Justice Council, a judicial body that only tries national security cases.¹⁹

1.2. *The Provisions*

The Scope

When analysing the provisions of the ten-article general amnesty law, one can only notice the broadness of its language. Article 1 set out the one-sided temporal scope of the of the law. It establishes the applicability of the law before

¹⁷ Aida Kanafani-Zahar, *Liban: La Guerre et la Memoire* (Presse Universitaire de Rennes, 2011) 90.

¹⁸ International Center for Transitional Justice, 'Failing to Deal with the Past: What Cost to Lebanon?' (2014) 1, 9.

¹⁹ *ibid* 45.

March 28th, 1991 without delimiting its scope or restricting it to the period of the war.²⁰

The law grants immunity for 'all political crimes' as per Article 2(3)(c), notably including crimes of homicide and torture.²¹ Strikingly, the law aims to grant amnesty for crimes committed under Article 569 of the Lebanese Penal code, as per Article 2(3)(f) of the amnesty law.²² Article 569 in particular was very unique to the circumstances of the conflict. It was promulgated during the war in 1983 and was amended to include crimes of kidnapping.²³ The intensity of abductions at checkpoints escalated during the conflict, facilitated by the inclusion of confessional affiliation on identity cards.²⁴ Confessional kidnappings symbolised the randomness of the civil war, targeting based on religion, rather than on political affiliations. Nonetheless, Article 569 only incriminates political kidnappings. This distinction is not made in the amnesty law, which imprecisely conflated politically motivated and religiously motivated kidnappings into one crime impliedly covered under the amnesty.²⁵

It has been deemed by scholars that the main objective of the law was to 'garner support for the dissolution of wartime

²⁰ Law No. 84/81, art 1.

²¹ Law No. 84/91, art 2.

²² *ibid.*

²³ Code Penal Libanais, (Antoine Edition, 2009), art 569.

²⁴ Jacquemet (n 16) 72.

²⁵ Law No. 84/91, art 2.

militias.²⁶ The language of the amnesty law is implicitly focused on the protection of peace as a legitimate aim. Article 2(3)(g) stipulates that a requirement of non-recidivism is paramount to the adequate application of the law.²⁷ Moreover, the law specifies that any continuous crime or crimes that are perpetrated after the amnesty date would not fall under the law, thereby legally enforcing the need to strengthen a lasting peace.²⁸

The result of such a process is an added onus to charge and prosecute on a significantly diminished post-conflict Lebanese state, while simultaneously ignoring its lack of capabilities in meeting standards of prosecutions and investigations.²⁹ Granting amnesty without application has also resulted in diminishing the scope of the amnesty process nationally. Without the exclusion of war crimes, the lack of delimitation of the *rationae personae*,³⁰ and other parameters of amnesties, there remains a shrinking space for legal basis of prosecution and of legal argumentation. For all these reasons, the general amnesty law has had a silencing effect rather than an atoning one, excluding perpetrators and victims from the process, and only limiting the number of cases to a few, cherry-picked by the Council of Ministers.

²⁶ Rola el-Husseini, *Pax Syriana: Elite Politics in Postwar Lebanon* (Syracuse University Press, 2012) 249 supra 40.

²⁷ Law No. 84/91, art 2.

²⁸ *ibid.*

²⁹ ICTJ (n 18) 9.

³⁰ Mark Freeman, *Necessary Evils: Amnesties and the Search for Justice* (CUP 2009) 151.

Most of these cases are often referred to the Justice Council for review, which has ironically been known to expedite dismissal of amnesty cases on the basis of lack of evidence.³¹ Unwilling and unable to act, the Justice Council had dismissed claims for the Bmarmyan and Kfar Matta massacres in Mount Lebanon, which had occurred in 1983, even before the enactment of the amnesty law.³²

Perhaps the most critical elements of this amnesty law are the ones missing. Not only was a cut-off date never set,³³ the amnesty omits a significant element in the general practice of amnesty laws: a preamble. According to scholar Mark Freeman and to the extensive set of amnesties that he reviewed, almost all of the laws drafted customarily contained a preamble as an explanation of the 'historical and contextual background', relevant for the 'the proper interpretation of ambiguities within the text.'³⁴ Although, according to Freeman, a preamble should be taken at face value, it is still relevant to introduce the purpose and language of the text. Still, there was no mention of victims of the conflict, a national reconciliation process, or a historical background primordial to a process of remembrance. This duty to remember was never put forward by law or by the consecutive post-war governments, only undertaken by victims of the conflict through organizations such as Badna Naaref (We want to know).

³¹ ICTJ (n 18) 9.

³² *ibid.*

³³ Law No. 84/91, art 1.

³⁴ Freeman (n 30) 143.

The most glaring absence in the amnesty law, however, concerns the main protagonists of the war – Palestinian factions in Lebanon. Noting that the Palestinians had already been alienated from the reconciliation process, having been only briefly mentioned in the Ta'if Agreement,³⁵ the law neglects a key aspect of the conflict, noting that the Palestinians had already been alienated from the reconciliation process, having been only briefly mentioned in the Ta'if Agreement.³⁶

Reconciliation of the Elites and Impunity for Victims

It has been asserted by experts that the success of an amnesty process cannot be guaranteed without inscribing it in a wider inclusive mechanism to increase its effectiveness.³⁷ Processes conducted only at the elite level tend to alienate on-the-ground issues, which are essential to a successful transition.³⁸ Article 3(3) of the general amnesty comes only to reinforce this perception that the law was drafted to profit and protect the elite and perpetrators of mass violence.³⁹ This Article stipulates that amnesty will not be granted for murder or

³⁵ National Accord Document, 'The Taif Agreement' (1989), Lebanon, art 1.

³⁶ *ibid.*

³⁷ Freeman (n 30) 122.

³⁸ Patrick Vinck and Eric Stover, 'Nothing about US, Without US: Responding to the Needs of Survivors of Mass Violence During and After Armed Conflicts' (Building a Future on Peace and Justice conference, Nuremberg, June 2007) 3.

³⁹ Law No. 84/91, art 3.

attempted murder of political or clerical figures and diplomats. Consequently, the only victims of the war recognised through legal proceedings are members of the elite, adding to the perception that the law does not apply similarly to different levels of society, further damaging the rule of law.

In parallel, a study by the International Committee of the Red Cross (ICRC) asserted that 75% of the population in Lebanon has directly and personally experienced the war, and 96% of the population has been affected in some way by the conflict,⁴⁰ further perpetuating the omnipresent sense of injustice and impunity. The Office of the United Nations High Commissioner for Human Rights (OHCHR) notably mentioned the adverse impact of blanket amnesties in its report on amnesties and post-conflicts states, bolstering an international prohibition on blanket amnesties.⁴¹

This, with the apparent failure to undertake a policy of memory, aggravates the feeling of impunity already entrenched in the co-existence of warring communities living in proximity.

⁴⁰ ICRC, 'Lebanon: Opinion Survey and In-Depth Research' (2009) <<https://www.icrc.org/eng/assets/files/2011/lebanon-opinion-survey-2009.pdf>> Accessed 18 August 2018.

⁴¹ OHCHR, 'Rule of Law Tools for Post-Conflict States: Amnesties' (2009) <https://www.ohchr.org/Documents/Publications/Amnesties_en.pdf> accessed on 16 August 2018.

1.3 *Legal Manipulation with Political Aim: Article 9*

Through archival research of the amnesty law at the offices of L'Orient le Jour, a prominent newspaper in Lebanon, evidence surfaced to back up the conjecture that the amnesty law was inadequately drafted to benefit the political elite rather than the population in transition. Never mentioned in amnesty literature on Lebanon, it appeared that at the time of drafting of the amnesty law, the Lebanese authorities were in the midst of a diplomatic crisis with the French Embassy.

Amongst its 10 Articles, one was particularly representative of the political intricacies surrounding the general amnesty law. Article 9 was promulgated with much controversy and debates in the council of ministers and at parliament. For a period of 6 months following the enactment of the law, this Article bestowed upon the Council of Ministers the power to grant a 'special amnesty' for any person charged with any of the exceptions to the amnesty listed in the law.⁴²

The beneficiary of the general amnesty would then be forced into exile 48 hours after the amnesty was granted, for a period set according to Article 47 of the penal code. According to subsections 2 and 3 of Article 9, the granting of the amnesty and its application are governed by a set of rules the beneficiary is required to follow, among them, the ceasing of any political activity.⁴³

⁴² Law No. 84/91, art 9.

⁴³ *ibid.*

The Article was particularly controversial because of the powers it granted the Council of Ministers, which superseded the powers afforded to it by the Lebanese Constitution.⁴⁴ When questioned about it, the drafter of the law, M. Khatchig Babikian, recognised that these powers did not feature in the Penal Code or the constitution; he instead called it a constitutional custom already entrenched in the mores, though no real evidence of this was found upon research.⁴⁵ M. Babikian then highlighted the difference between an amnesty, stemming from legislation, which is granted to individuals who have already been charged with offences, and pardons, typically an executive power of clemency, which are granted to people who have been convicted of an offence.⁴⁶ However, this stance seems to directly contradict the opinion of a magistrate who recalls that such measures (the special amnesty and the exile) are novelties in previous applied law.⁴⁷ Further, Article 150 of the Penal Code specifically states that amnesties can only stem from a legislative power.⁴⁸

While debated in parliament, the commission in charge of the bill found many retractors to the application of Article 9, and members of parliament opposing its application refused to overlook constitutional provisions, walking out in protest of

⁴⁴ Archives L'Orient-le Jour, 'Le Projet d'Amnistie' (21 August 1991).

⁴⁵ *ibid.*

⁴⁶ *ibid.*

⁴⁷ Archives L'Orient-le Jour, 'Le Cas Aoun : Un Corset Juridique Rigide Pour l'Ancien Chef de Gouvernement' (16 August 1991).

⁴⁸ Code Penal Libanais, (Antoine Edition, 2009), art 150.

the inclusion of the article in the law. MP Ghassan Mokheiber deplored the inclusion of the article for the 'special amnesty' has the same effect as the general amnesty,⁴⁹ which is only to be granted by parliament or by deference to the Justice Council (Article 8),⁵⁰ condemning a gross manipulation of power.

A few months before the enactment of the law, in October 1990, opposition leader General Michel Aoun, currently the Lebanese President, took refuge at the French Embassy in Beirut, chased out by the Syrian military presence in Lebanon. He was charged, amongst other charges, with embezzlement of public funds, used to finance his opposition movement - a sum of an estimated 30 million dollars.⁵¹ Stressing the importance of a solution protecting 'the honour of Michel Aoun,' French authorities closely followed the process, encouraging an expedited solution.⁵²

Although crimes of rebellion and usurpation of power were covered under the amnesty, embezzlement of government funds was one of the crimes excluded from the protections of the law.⁵³ Instead, Michel Aoun and his collaborators benefitted from the special amnesty drafted specifically for

⁴⁹ Archives L'Orient-le Jour, 'Les Commissions Apportent des Amendements Mineurs au Projet D'Amnistie Generale' (23 August 1991).

⁵⁰ Law No. 84/91, art 8.

⁵¹ L'Orient-le Jour Archives, 'Cabinet : Le Ralliement : Le Cas Aoun' (20 March 1991).

⁵² *ibid.*

⁵³ Law No. 84/91, art 9.

them,⁵⁴ leaving the country only three days after the amnesty law was enacted and 48 hours after President Elias Hraoui signed the governmental decree issued by the Council of Ministers granting them special amnesty.⁵⁵

1.4 Conclusions

In this section, the lack of clear popular commitment to the amnesty law was demonstrated. It cannot be said that the law was drafted in the urgency to end hostilities, nor was it part of the negotiated agreement of Ta'if. Infighting had stopped in 1990, almost a year before the promulgation of the law.⁵⁶ In the cross-analysis of the provisions in the general amnesty law and the theory on amnesty laws, it transpired that the Law No. 84/91 was hastily drafted, with no clear delimitation of its parameters, and lacking crucial elements such as the preamble, or exclusion of gross human rights violations and massacres from the ambits of its protections.

Likewise, the cross-analysis of the text within its political context and drafting phase rendered a similar result - that the general amnesty law fostered impunity and neglected to reap the full benefits of reconciliation. In the same way, the drafting process crucially excluded vulnerable groups such as Palestinians and civilian victims of the war from the process, included hasty legal manoeuvres, political negotiations and

⁵⁴ Archives (n 51).

⁵⁵ Archives L'Orient-le Jour, 'Jeux d'Ombres' (30 August 1991).

⁵⁶ Georges Corm, *Le Liban Comporain: Histoire et Soci t * (La Decouverte, 2012) 221.

crisis mitigation. Selim Hoss, Prime Minister of Lebanon for the early and later years of the war, famously opposed the law, deploring its expeditious nature and advancing the view that the law should have been written at a later date, to give an opportunity for victims to express their grievances with regards to the horrors they had endured.⁵⁷ These grievances are now only conveyed through film and novels, often too cautious to name warring militias like it is the case in Maroun Baghdadi's 'Little Wars'.⁵⁸

II. International Legal Standards and Amnesties: The Rights to Justice, Truth, and Remedy

[Hala]: Who do you think was behind the massacre?

[Riyad]: I think the Israelis retaliated against the Palestinians. It's not our problem.

[Hala]: How can you say that when it's happening on our soil? Today a European reporter told me Lebanon is about to go through drastic changes.

[Riyad]: (sarcastically) Drastic changes! What a genius. He hasn't discovered the rifle. For 100 years the Middle East has been going through drastic changes.

[Hala]: He said, "Préparez-vous pour un long hiver" (Prepare for a long winter)⁵⁹

⁵⁷ Archives L'Orient-le Jour, 'Amnistie Generale : Hoss Critique la Precipitation du Gouvernement' (19 August 1991).

⁵⁸ Maroun Bagdadi, *Little Wars* (Movie, 1982).

⁵⁹ Ziad Doueiri *West Beirut*.

2.1 International Standards

In transitions, post-conflict societies are not necessarily left to their own devices or in the hands of the protagonists of the transition. There are a series of international standards that states may look to in order to ascertain their international obligations. Although international law has been set up to safeguard state sovereignty, the Second World War initiated an atmosphere in which states were more willing to supersede state sovereignty for gross breaches of international human rights and humanitarian law.⁶⁰ Still, despite a heightened risk of violations in transition, the international community has shown 'complete and absolute deference'⁶¹ with regards to intervention in the amnesty process.⁶² It is therefore meaningful to note that there exists no explicit international treaty related to the enactment or prohibition of amnesties.⁶³

In 1977, the tendency to allow for the adoption of amnesties was made clear in Additional Protocol II of the Geneva Convention, Article 6(5), paradoxically titled as 'relating to the protection of Victims of Non-International Armed Conflict', which purported that authorities in power at the end of an

⁶⁰ Hans Schmitz and Kathryn Sikkink, 'International Human Rights' in *Handbook of International Relations* (Sage, 2002).

⁶¹ Garth Meinteij and Juan E Méndez, 'Reconciling Amnesties with Universal Jurisdiction' (2000) 2 *Forum du Droit International* 76.

⁶² Louise Mallinder, *Amnesty, Human Rights and Political Transitions: Bridging the Peace and Justice Divide* (Hart Publishing, 2008) 326.

⁶³ Freeman (n 30) 32.

armed conflict shall ‘grant the broadest possible amnesty’ to protagonist of the armed conflict.⁶⁴ Once again, reflecting the trend in 1977, commentaries about the text issued by the ICRC in 1987 mentioned amnesty as a ‘competence of the authorities’ and a way to promote reconciliation in a divided society.⁶⁵ Lebanon acceded to Additional Protocol II in 1997⁶⁶ and signed the Additional Protocols to the Geneva Conventions in 1997, particularly Protocol II in relation to non-international armed conflict, which bestows upon the state an obligation to protect civilians, should an armed conflict break out.

The Massacre of Sabra and Shatila

Although not explicitly mentioned in international law, certain treaty provisions chip away at the extent of the application of an amnesty law. Article 1 of the Convention on the Prevention and Punishment of the Crime of Genocide poses an obligation on the state to prevent and to punish the

⁶⁴ International Committee of the Red Cross (ICRC), ‘Protocol Additional of the 12 August 1949, and relating to the Geneva Conventions relating to the Protection of Victims of the Non-International Armed Conflict (Protocol II), of 8 June 1977’ 1125 UNTS 609.

⁶⁵ ICRC, ‘Commentary of 1987 on Additional Protocol II: Penal Prosecutions’ <<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=C6692EB184B56F56C12563CD0043A476>> Accessed August 20, 2018.

⁶⁶ ICRC, ‘Treaties, State Parties and Commentaries: Lebanon’ <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByCountrySelected.xsp?xp_countrySelected=LB> Accessed August 20, 2018.

crime of genocide, irrespective of it occurring at a time of war or peace.⁶⁷ In the absence of the Rome Statute at the time of the war, as well as the lack of temporal jurisdiction of the International Criminal Court, for the purpose of this article, the Convention of 1948 will be the primary source for the definition of the crime.⁶⁸ Moreover, Lebanon has signed and ratified the Convention in 1953 with no reservations.⁶⁹

In Article 2, the Convention provides for a definition of the crime of genocide as the 'acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group.'⁷⁰ Article 2 paved the way for the universal application the crime of genocide as a peremptory norm.⁷¹ To understand the position of Lebanon at the time of drafting of the Convention in the late 1940s, one can look at the *travaux préparatoires* of the text, in which the Lebanese delegation was quite engaged. The Lebanese delegation reiterated its commitment to international intervention with regards to the

⁶⁷ UNGA Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277, art 1.

⁶⁸ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002), art 11.

⁶⁹ UNGA Convention on the Prevention of Genocide (n 65).

⁷⁰ *ibid* art 2.

⁷¹ UN Office on Genocide Prevention and the Responsibility to Protect, 'Definitions: Genocide'

<<http://www.un.org/en/genocideprevention/genocide.html>>

Accessed 25 August 2018.

crime of genocide.⁷² Furthermore, the Lebanese delegation purported that individuals committing such crimes should be brought to justice before domestic courts and that statesmen should answer to international justice.⁷³

The Sabra and Shatila massacre committed by the Christian militia was possible only with the acquiescence of the Israeli occupying forces. The UN General Assembly voted a resolution 37/123 condemning the 'large-scale massacre of Palestinians in the Sabra and Shatila refugee camp', and resolving that 'the massacre was an act of genocide.'⁷⁴ The terminology of genocide and 'its loose use', was far from being unanimously adopted, strongly challenged by many delegates.⁷⁵ Although Antonio Cassese does not challenge the identification of the massacre as genocide, he puts forward the argument that the massacre should be examined through the rule of military responsibility produced by the Yamashita trials, or command responsibility.⁷⁶

Being the occupying force, Cassese says, the onus fell on the Israeli military to prevent the massacre, or to put a stop to it once it had started as it has 'effective power to direct and

⁷² Hiram Abtahi and Phillippa Webb, *The Genocide Convention: The Travaux Préparatoires* (Martinus Nijhoff Publisher, 2008) 589.

⁷³ *ibid* 590.

⁷⁴ UNGA Res 37/123 (16 December 1982) UN Doc A/Res/37/123.

⁷⁵ Antonio Cassese, 'Genocide and the International Community: The Case of Sabra and Shatila' in *New Directions in Human Rights* (University of Pennsylvania Press, 1989) 103.

⁷⁶ *ibid* 104.

control the Phalangist [a Christian militia] actions.⁷⁷ With this, Cassese points to the Israelis for accountability. Still, in light of the inclusion of the crime of genocide within the ambits of the amnesty law, at least some critical thought ought to have been given to the obligations of the Lebanese state under the Genocide Convention. In failing to do so, the Lebanese state breached one of its international obligations.

According to Cassese, these acts were enough to begin proceedings before the ICJ under Articles 8 and 9 of the Genocide Convention. However, it was not until the late 1990s and the establishment of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) that the Genocide Convention became particularly relevant in international law.⁷⁸ So, the missed opportunity deplored by Cassese was only common state and international practice at the time of the massacres.

Other International Obligations related to Amnesties

Other relevant treaties include the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (adopted in 1984, signed by Lebanon in 2000)⁷⁹, and the International Convention for the Protection of all Persons from

⁷⁷ *ibid* 105.

⁷⁸ Payam Akhavan, 'The Crime of Genocide in the ICTR Jurisprudence' (2005) 3 JICJ 990.

⁷⁹ UNGA Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987)1465 UNTS 85.

Enforced Disappearances (CED) in 2007, never ratified.⁸⁰ Article 3 of this convention limits the applicability of amnesties when they impede investigations; it stipulates that when states are not suspected of an enforced disappearance, the contracting parties shall put in place all appropriate measures to investigate acts defined in Article 2, as well as bringing them to justice.⁸¹

Furthermore, the obligation on the state to investigate gross human rights violations as prescribed in the Genocide Convention is reiterated by other international instruments. Notably, Lebanon ratified the International Covenant on Civil and Political Rights on the 3rd of November 1972.⁸² In 1992, the UN Human Rights Committee issued general comments on Article 7 of the ICCPR relating to torture, inhuman and degrading treatment, which were critical of the effect of amnesties on the execution of Article 7:

Amnesties are generally incompatible with the duty of states to investigate such acts (of torture) to guarantee

⁸⁰ ICRC, 'Treaties, States Parties and Commentaries: Lebanon' <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByCountrySelecte.d.xsp?xp_countrySelected=LB> Accessed 28 August 2018.

⁸¹ International Convention for the Protection of All Persons from Enforced Disappearance (adopted 20 December 2006, entered into force 23 December 2010) 1465 UNTS art 3.

⁸² International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force on 23 March 1976) 999 UNTS 171 (ICCPR).

freedom from such acts within their jurisdiction and ensure their do not occur in the future.

Although this is not a treaty obligation, the comments provide additional insight on the understanding of Article 7 and the stance taken by the ICCPR text for better interpretation of its provisions. An adverse position of the ICCPR with regards to amnesties can be inferred. This attitude was made all the more apparent in the comments issued by the Human Rights Committee in its period report of Lebanon in 1997:

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.⁸³

Even if the above comments lack any legal impact, they underline the need for Lebanon to fully comprehend its obligations under the ICCPR. Still, the committee does not make specific recommendations relating to the amnesty law, but stays vocal on less politically-charged provisions in Lebanese law related to torture or the death penalty.⁸⁴

Access to Remedy

Beyond international treaty obligation explicitly related to amnesties, specific international instruments bestow a

⁸³ HRC, 'Concluding Observations of the Human Rights Committee' (1997) CCPR/C/42/Add.14.

⁸⁴ *ibid* [20].

requirement to provide for effective remedy to victims for gross human rights violations, even if committed by state officials (Article 2(3) of the ICCPR). Moreover, the General Assembly adopted the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian law. The Guidelines provide for a definition of ‘victim’ outside of its relationship with the perpetrator of the crime, notably stating that a victim is designated as such regardless of whether the perpetrator has been ‘identified, apprehended, prosecuted, or convicted.’⁸⁵ Instead, a victim is granted a right to remedy in relation to the harm he/she has suffered. The jurisprudence within the CCPR around Article 2 of the ICCPR has shown that bringing a claim under Article 2(3) has only been successful in cases of enforced disappearances, later discussed.⁸⁶

International Jurisprudence on Lebanon

The only jurisprudence on Lebanon at the International Court of Justice opposed Lebanon and France in multiple cases dating back 15 years before the civil war. Further, Lebanon has only been brought once before the Human Rights Committee (HRC) (all treaties included), and never as a defending state. Indirectly, the case⁸⁷ concerned the amnesty law of 1991, and the forcible removal of a Palestinian born in Lebanon from

⁸⁵ UNGA Res 60/147 (21 March 2006) UN Doc A/Res/60/147.

⁸⁶ Human Rights Committee, ‘CCPR Jurisprudence’ <<https://www.ohchr.org/en/hrbodies/ccpr/pages/jurisprudence.aspx>> Accessed 15 August 2018.

⁸⁷ *Mr. X vs. Australia*, 2009 CAT/C/42/D/324/2007.

Australia. He was claiming redress under Article 3 of the Convention against Torture, asserting that he would face torture if he were to be deported back to Lebanon.

The complainant was the assistant of a high-ranking member of a Christian militia, his unit having participated in the infamous Sabra and Shatila massacre.⁸⁸ Having witnessed illegal activities and with the party's changing allegiances, Mr X decided to seek asylum in Australia. However, a provision in Australian law excluded the protection of perpetrators of war crimes and crimes against humanity, preventing Mr X from obtaining asylum.⁸⁹

Strikingly, the views issued by the HRC decided on lack of substantiated evidence, and the unsupported evidence that retaliation would be sought against him were based, amongst other things, on the State's comments on the promulgation of the General Amnesty law.⁹⁰ It was rendered that ensuing from the lack of prosecution of such crimes by the authorities (the Sabra & Shatila massacre was included in the amnesty law), that Mr X did not factually and personally risk torture in Lebanon.⁹¹

⁸⁸ *ibid* [2.2].

⁸⁹ *ibid* [2.5].

⁹⁰ *ibid* [4.23].

⁹¹ *ibid* [7.5].

2.2 *The Latin American Experience: Can Amnesties be Overturned?*

A closer look at the Latin American experience with amnesties may give us some more insight on their construction and deconstruction. In Chile,⁹² Brazil,⁹³ Guatemala,⁹⁴ Peru,⁹⁵ El Salvador,⁹⁶ and Argentina,⁹⁷ only to name a few, dictatorships and military powers have historically negotiated their exits with immunity deals so as to avoid criminal prosecutions, in the name of peace.⁹⁸ In the 70s, these amnesties were considered to be vehicles of freedom. They were necessary to obtain immunity for political prisoners in exile⁹⁹ – the price to pay for these developments was the extension of such immunities to state officials.¹⁰⁰ Louise Mallinder distinguishes

⁹² Decree Law 2.191, 1978, Chile.

⁹³ Priscilla Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*, (Routledge, 2011) 19.

⁹⁴ 1983 Decree Law 89-83 (Guatemala).

⁹⁵ Law No. 26479, June 14 1995 (Peru).

⁹⁶ Legislative Decree 147, Law of National Reconciliation, January 23, 1992 (El Salvador).

⁹⁷ Law No 23521, Law on Due Obedience, June 4, 1987 (Argentina).

⁹⁸ Louise Mallinder, 'The End of Amnesty or Regional Overreach? Interpreting the Erosion of South America's Amnesty Laws' (July 2016) 65 *International & Comparative Law Quarterly* 645.

⁹⁹ UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, *The Administration of Justice and the Human Right of Detainees: Question of Impunity of Perpetrators of Human Rights Violations (Civil and Political)* (2 October 1997) para 2.

¹⁰⁰ Mallinder (n 98) 648.

between amnesties promulgated during this first phase and the second phase of the 'democratisation' of Latin America, which is characterised by amnesties developed under military pressures, to promote reconciliation.¹⁰¹

The third phase of transition to democracy of Latin American countries ignited a wave of solidarity between civil society groups and victims of gross human rights abuses, resulting in the organization of civil activism into access to justice campaigns.¹⁰² The downfall of amnesty laws is often attributed to the 'erosion' of these amnesties undertaken within domestic legal mechanisms and through the Inter-American Court of Human Rights (IACtHR).¹⁰³ For example, the self-granted amnesty by the military in Argentina was overturned by the civil government that followed the 'democratisation' of the country.¹⁰⁴

However, as scholar Louise Mallinder points out, the Latin American experience with annulling or amending amnesties by reducing their scope through domestic and regional means is far from being homogenous.¹⁰⁵ The only two remaining valid amnesties in South America are Brazil and Suriname. For example, a challenge at the Brazilian Supreme Court, which

¹⁰¹ *ibid* 648.

¹⁰² Paige Arthur, 'How Transitions Reshaped Human Rights: a Conceptual History of Transitional Justice' 31 *Human Rights Quarterly* (2009) 335.

¹⁰³ Mallinder (n 98).

¹⁰⁴ Hayner (n 93).

¹⁰⁵ Mallinder (n 98) 658.

undertook to declare the granting of amnesties for gross human rights violations such as torture unconstitutional, was unsuccessful. The Brazilian Supreme Court regarded political arguments such as the preservation of peace and democratisation efforts as paramount to the need for justice for crimes of torture.¹⁰⁶ Successful means of challenges ranged from the 'implementation of exceptions in legislation' to the 'reinterpretation of amnesties', to the 'declaration of amnesty laws unconstitutional' to their simple 'legislative annulment,' recognising a regional trend in South America in at least narrowing past amnesties.¹⁰⁷

The Inter-American Court for Human Rights

As purported by jurisprudence of the Inter-American Court of Human Rights, the rulings on the legality of amnesties has been limited to the inclusion of gross human rights violations within the scope of amnesties as per the seminal *Barrios Altos*¹⁰⁸ case in Peru. The Court found that the amnesty law in Peru – a blatant case of self-amnesty¹⁰⁹- infringed upon Articles 1(1) and 2 of the American Convention on Human Rights (ACHR) which imposes on contracting states the obligation to harmonize domestic law according to the ACHR, and Articles

¹⁰⁶ Nina Schneider, 'Impunity in Post-authoritarian Brazil: the Supreme Court's Recent Verdict on the Amnesty Law' 90 *European Review of Latin American and Caribbean Studies* (2011) 49.

¹⁰⁷ Mallinder (n 98) 659.

¹⁰⁸ *Barrios Altos v Peru*, Inter-American Court of Human Rights, March 14, 2001.

¹⁰⁹ Freeman (n 30) 50.

8(1) and 25 of the Convention, which protect a victim's right to justice and to criminal prosecutions respectively.¹¹⁰ Further, the IACtHR subsequently confirmed its strong stance against non-prosecution of gross human rights violation, introducing a duty on the state to investigate these violations, and annulling any legal provisions within amnesty laws that prohibit proper examination and punishment of these crimes.¹¹¹

The parameters put in place by the jurisprudence of the court cannot be set in stone, as the court has officially taken the stance that every amnesty law differs in context and structure, and emphasising that amnesties put in place at the end of an international armed conflict must be dealt with more carefully than amnesties marking the end of dictatorships.¹¹² In the *El Mazote* massacres case, the court took the stance that countries should strike a careful balance between the delivery of justice and the protection of peace by prioritizing the prosecution of war crimes and crimes against humanity over human rights violations.¹¹³

¹¹⁰ American Convention on Human Rights, 1978.

¹¹¹ *Gelman v Uruguay*, Inter-American Court of Human Rights, February 24, 2011.

¹¹² Concurring Opinion of Judge García-Sayán, *El Mazote v El Salvador*, Inter-American Court of Human Rights, October 25, 2012.

¹¹³ *ibid.*

Beyond a Regional Influence?

Impact of the movement on amnesty laws in Latin American has been assessed by many scholars as ground-breaking as it opens the gateway for reassessment of past amnesties which were deemed to be permanent at the time of their promulgation. In fact, 90 per cent of challenges to amnesty laws have stemmed from Latin America.¹¹⁴ When El Salvador declared its amnesty law unconstitutional, it was deemed by UN experts that 'the declaration of unconstitutionality reflects the norms and principles of international law, including the prohibition of amnesties for crimes against humanity and serious violations of international humanitarian law.'¹¹⁵ The real impact on international legal norms, however, is yet to be determined.

In *Prosecutor v Anto Furundzija*, the International Criminal Tribunal for the former Yugoslavia declared in obiter:

It would be senseless to argue on the one hand that on account of the jus cogens value of the prohibition against torture, treaties or customary rule providing for torture would be null and void ab initio, and then

¹¹⁴ Francesca Lensa, Tricia Olsen, Leigh Payne, Gabriel Pereira, Andrew Reiter, 'Persistent or Eroding Impunity? The Divergent Effects of Legal challenges to Amnesty Laws for Past Human Rights Violations' 47 *Israel Law Review* (2014) 112.

¹¹⁵ UN Human Rights Office of the High Commissioner, 'El Salvador: Hope for the victims – UN Experts welcome Annulment of the Amnesty Law' (Press Release, 15 July 2016) <<https://ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20275&LangID=E>> Accessed on 15 August 2018.

be unmindful of a state say, taking national measures authorising or condoning torture or absolving its perpetrators through an amnesty law.¹¹⁶

This position seems to reflect the stance offered by Latin American countries and the IACtHR. However, the resulting duties imposed on the state beyond outright prohibition are still unclear. Although the Argentinian Supreme Court established a duty to prosecute flowing from the prohibitions on international crimes like genocide, war crimes and crimes against humanity having attained *jus cogens* status in *Julio Simón*,¹¹⁷ the existence of an international customary rule to prosecute such crimes has not yet been confirmed by jurisprudence or state practice, and the Latin American experience has failed to be replicated beyond the region.¹¹⁸

Furthermore, Mallinder makes the argument that regional dynamics cannot be easily duplicated, with the presence of a strong human rights review body with the IACtHR, and a with a wave of democratization that allowed for reform of key institutions such as the judiciary and the military, paving the

¹¹⁶ ICTY, Prosecutor v Anto Furundzija (10 December 1998) para 155.

¹¹⁷ Supreme Court of Argentina, *Simón, Julio Héctor and others* Case No. 17.768 (14 June 2005).

¹¹⁸ Mallinder (n 98) 670.

way for civil society organisations to demand justice and amendment of amnesties.¹¹⁹

Finally, Mallinder argues that the erosion of human rights in Latin America has not in practice amounted to a rejection of amnesties as a mechanism in transition altogether. Although the annulment, amendment, or reinterpretation of past amnesties has been made conceivable in Latin America, a more pragmatic approach on amnesties should be adopted. Amnesties should be inscribed in a wider transitional justice approach for post-conflict societies in which 'limited amnesties and alternative punishments may continue to be permissible.'¹²⁰

2.3 *What are the Lessons for Lebanon?*

The preamble of Lebanese Constitution confirms the Lebanese state's commitment to international standards, giving full effect to international provisions in Lebanese courts:

Lebanon is also a founding and active member of the United Nations Organization and abides by its covenants and by the Universal Declaration of Human Rights. The Government shall embody these principles in all fields and areas without exception.¹²¹

¹¹⁹ Kathryn Sikkink, Carrie Booth Walling, 'The Impact of Human Rights Trials in Latin America' 44 *Journal of Peace Research* (2007) 436.

¹²⁰ Mallinder (n 98) 680.

¹²¹ The Lebanese Constitution, 1995.

Based on the above observations on international treaty obligations, it seems that Lebanon, at the time of the drafting its General Amnesty was in contemplation of almost all its international legal obligations. Because of its late accession to most human right treaties, Lebanon never specifically breached treaty obligations as they relate to its amnesty law in application of the principle of non-retroactivity as per Article 28 of the Vienna Convention on the Law of Treaties¹²².

By including in the amnesty law, the Sabra and Shatila massacre and other still contested massacres, namely in Tal el-Zaatar and Damour, the Lebanese State might have breached its international obligation to prosecute crimes of genocide under the Genocide Convention, as a result of evaluating the assassination of political and religious leaders as graver than crimes against humanity and crimes of genocide.

However, as demonstrated by the almost non-existent human rights jurisprudence against Lebanon (perhaps based on a lack of legal awareness of the Lebanese citizens of their international rights as hinted at by the CCPR)¹²³ at the ICJ and the HRC, prospects of the Lebanese state answering for such a breach or even overturning the amnesty law because of its international obligations remain slim. Still, the recognition of these crimes, although romanticised in movies like Ziad Doueiri's 'The Insult', never occurred in an official capacity, to soothe tensions between perpetrators and victims of massacres.

¹²² Vienna Convention on the Law of Treaties, 1969, Article 28.

¹²³ CCPR (n 83).

For Lebanon to follow the path of Latin American countries in the absence of regional body as powerful and legitimate as the IACtHR, will be a long a laborious journey. It is often assumed, rightfully so, that accountability and access to justice are concepts that pave the way to a successful and democratic transition.¹²⁴ Nevertheless, the Latin American experience has showed that in some cases, only a new and second wave of democracy can bring about the inspiration to reverse the status quo and take a closer look at atrocities of the past, in search of redress.

Latin American countries seem much more legally progressive than Lebanon, as they adopted regional principles on Human Rights, in line with their international obligations. However, this is reflective of an entire region and an evolving jurisprudence trying human rights abuses domestically and regionally for decades. This is undeniably not the case in the Middle East, still prone to regional wars and unstable conflicts. Hence, the fate of Lebanese jurisprudence on Human Rights may be inscribed in a wider stalled regional movement. One can then venture an argument that while Latin American countries were in transition, the Middle East is too unstable to welcome changes in its legal framework, thereby impeding individual and domestic endeavours to reconciliation and improvements in human rights jurisprudence.

Prescription

As proposed below, time seems critical in transition. Lebanon was never a party to the Convention on the Non-Applicability

¹²⁴ OHCHR (n 41).

of Statutory Limitations to War Crimes and Crimes Against Humanity.¹²⁵ The *Almonacid-Arellano* judgement confirmed an earlier judgement in the *Barrios Altos* case in which the IACHR also took a notably strong stance on prescription:

All amnesty provisions on prescription and the establishment of measures designed to eliminate responsibility are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations such as torture, extra-legal, summary or arbitrary execution and forced disappearance, all of them prohibited because they violate non-derogable rights recognized by international human rights law.¹²⁶

In Lebanon the penal code does not specifically mention war crimes and crimes against humanity, hence do not specifically criminalise it. The law on prescription is instead focused on the type of penalties, Article 162 of the Penal Code states that 'prescription shall not, however be applicable to penalties and precautionary measures involving loss of rights, a residence ban or confiscation of property.'¹²⁷

According to Article 10 of the Code of Criminal Procedure, 'the provisions of the Criminal Code governing the prescription

¹²⁵ UNGA, 'Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity' (26 November 1986) A/RES/2391 (XXIII).

¹²⁶ *Almonacid-Arellano v Chile*, IACHR, 26 September 2006 at 112.

¹²⁷ Code Penal Libanais, Article 162.

period shall be applicable to the penalties imposed.¹²⁸ This being the only material limitation on the prescription period, for felonies rendering life sentences or the death penalty, arguably the most serious crimes in the Penal Code, the prescription period is 25 years. This means that for any crime perpetrated during the war now, the prescription period has just already passed, which nullifies any possibility to prosecute.

This is quite significant in our analysis for the overturning of the amnesty law. Indeed, the overturning of the amnesty in the present would have no real legal effect on the perpetrators of gross human rights violations and war crimes. It would however make the symbolic gesture of releasing the Lebanese society from 25 years of amnesia, during which the Lebanese population was legally forbidden to build a collective memory.¹²⁹

III. The Legacy of the General Amnesty in Lebanon: Case Studies on Access to Justice, Truth, and Reparations in Transition

The question isn't whether we should talk about the war, but how. It's important to not only see the

¹²⁸ International Labour Organization, Code of Criminal Procedure (Selected Articles), Article 10.

¹²⁹ Peace Direct, 'Lebanon in a Context of State-Imposed Amnesia' (13 October 2016) <<https://reliefweb.int/report/lebanon/lebanon-education-context-state-imposed-amnesia>> Accessed on September 1st, 2018.

atrocities, but also that the responsible people still walk the streets...remembering is the only antidote to a relapse.¹³⁰

3.1 Post-Conflict Grievances

Inclusive Process

In Lebanon, the focus of the post-war period has been consistently concentrated on the political elite. The amnesty law either protects warlords-turned-politicians from prosecution, or otherwise prosecutes only the perpetrators of murder against the same political elite. As demonstrated above, with the passing of time and the effect of prescriptive measures, there is a very small probability of justice being achieved through retributive means.

The inclusion of victims in the process is paramount for amnesties to render the wanted results. According to scholars, attitudes of victims towards amnesties will be contingent on the relationship of the victim to the amnesty and on whether the victim is perceived to be a beneficiary of the amnesty or to the contrary, if it is its former oppressor that seems to have profited.¹³¹

Conflicting grievances

The right to remedy in international law is a complex concept, particularly in a post-war context, when international human rights law, international humanitarian law, and international

¹³⁰ Jean Chamoun, *In the Shadows of the Cities*.

¹³¹ OHCHR (n 41)

criminal law collide.¹³² From arguments presented above, the conjecture seems to be that without investigations, basis for prosecution or the formal recognition of a crime, victim's access to remedy for harm incurred during the war seems strongly impeded by the enactment of an amnesty law.¹³³

Amnesties should not preclude victims from obtaining redress, be it monetary or symbolic.¹³⁴ William Schabas is of the opinion that amnesties and redress for human rights violations are not mutually exclusive concepts.¹³⁵ First he endeavours to identify the perceived conflicting rights in the application of amnesties, supporting the idea that human rights norms must be balanced against each other, namely the evident example of the right to peace and the cost of justice.¹³⁶ Equally, keeping processes in transition harmonised with victims' needs may have contradicting aims. Organising programs for redress for victims of systematic violence entails an impressive financial and temporal commitment.¹³⁷ Reconciling the right to remedy on the individual level and the need for a collective state building with adequate resources is the main challenge of a state like Lebanon, crippled by debt

¹³² Lawrence Hill-Cawthorne, 'Humanitarian Law, Human Rights Law, and the Bifurcation of Armed Conflict' 64 *International and Comparative Law Quarterly* 2 (April 2015), 317.

¹³³ Mallinder (n 62) 372.

¹³⁴ *ibid* 372.

¹³⁵ William Schabas, *Unimaginable Atrocities: Justice Politics and Rights at the War Crimes Tribunals* (OUP, 2014) 185.

¹³⁶ *ibid* 186.

¹³⁷ Mallinder (n 62) 374.

and reconstruction costs, and prone to the involvement of foreign powers with contradicting interests.

Balancing rights similarly means balancing capacities and achieving what available resources and political willpower transitional bodies possess. However, in transition, who is equipped to make these decisions? Schabas' underlying assumption is that the decision maker or the 'peace negotiator' will use out of his legal 'toolbox' the optimal mechanism that seems most appropriate, the peace negotiator being a sensible, altruistic, rational, and honest decision maker.

In Lebanon, it cannot be said that the transitioning bodies detained all of these virtues. Syrian forces which had entered Lebanese soil in 1976, were now overrunning government institutions amongst them decisive ones such as the security and intelligence forces who had appropriated government funds, after a purge against Syrian detractors within the Lebanese Army had taken place.¹³⁸ Meanwhile, the Israeli Occupation of the South of Lebanon had settled after the end of the war¹³⁹, cementing a transition from armed conflict to occupation of foreign powers. Invigorated by a sectarian status quo, the '*la ghalib, la maghlub*' (no victor, no vanquished) method,¹⁴⁰ occupying powers detained no incentives or interests in seeing a fragile peace impugned by victims' investigations.

¹³⁸ Baumann (n 6) 84.

¹³⁹ ICTJ (n 18).

¹⁴⁰ Dean Sharp, 'Lebanon and the Fog of Reconstruction' in *The Politics of Post-Conflict Reconstruction* (POMEPS, 2018).

Instead, victims resorted to creative means to achieve some form of redress. By focusing on three case studies, this section will explore means through which atoning for the past can be achieved, with the application of the blanket amnesties, and what legal avenues could be employed to divert it. The cases of three vulnerable groups will be assessed, the disappeared, the displaced and victims of the Sabra and Shatila massacre.

3.2 *Universal Jurisdiction and Access to Justice*

Universal jurisdiction is a theoretical pillar of the international fight for justice; it is however seldom used in practice. This is widely due to the extensive political repercussions of infringing on state sovereignty; indeed, scholars typically promote the notion of universality with great caution.¹⁴¹ Hovell makes the argument that the international legal order has gradually moved from a 'sovereignty-centred to an individual-oriented system,' still in search of its equilibrium, thereby allowing the court of a foreign state to review the actions of another state.¹⁴²

The idea of Universal Jurisdiction has been engrained in international law through the four Geneva Conventions: Article 49 (I), Article 50 (II), Article 129 (III), Article 146 (IV), and extended to grave breaches in hostilities by Additional

¹⁴¹ Antonio Cassese, *International Law* (OUP, 2005) 452.

¹⁴² Devika Hovell, 'The Authority of Universal Jurisdiction' (London School of Economics and Political Science Working Papers, 2018) 15.

Protocol I.¹⁴³This gave standing to victims of grave international crimes in foreign courts (the ones who allowed such measures in their legislation)in order to pursue their right for justice, based on the notion that 'certain crimes are so grave that they affect the international community as a whole.'¹⁴⁴ This notion was replicated in international jurisprudence, notably in obiter at the ICTY, particularly in the context of amnesties:

Proceedings could be initiated by potential victims if they had *locus standi* before a competent international or national judicial body with a view to asking it to hold the national measure to be internationally unlawful [...].¹⁴⁵

In the case of Lebanon, victims have not gone as far as asking for remedy before a foreign court but have pressed the Belgian courts for justice for Israeli participation in the massacre of Sabra and Shatila, particularly through Ariel Sharon's involvement.¹⁴⁶

¹⁴³ ICRC, 'Universal Jurisdiction Over War Crimes' (March 2014) <<https://www.icrc.org/eng/assets/files/2014/universal-jurisdiction-icrc-eng.pdf>> Accessed 10 September 2018.

¹⁴⁴ *ibid.*

¹⁴⁵ ICTY, Prosecutor v Anto Furundzija (10 December 1998) at 155.

¹⁴⁶ Andrew Osborn, 'Belgium Asserts Right to Try Sharon' (The Guardian, 25 February 2003) <<https://www.theguardian.com/world/2003/feb/13/israel>> Accessed 10 September 2018.

Victims of the massacre sought justice, benefitting from the Belgian reinforcement of its legislation on universal jurisdiction in 1999, particularly on amendments like Article 5(3), which excludes immunity attached to the official qualification of the prosecuted.¹⁴⁷ During the arguments on admissibility of the case before Belgian Courts, legal counsels who had brought the claim forward were challenged by hurdles indirectly imposed by the amnesty law, namely, lack of evidence. For example, Chibli Mallat, one of the counsels, recounts that the complaint was lodged against 'Ariel Sharon, Amos Yaron, and all Lebanese and Israeli officials whom the investigation would find responsible.'¹⁴⁸ This, he notes, was in large due to a standard of evidence that could not be reached to directly name the other 'Lebanese and Israeli officials.'¹⁴⁹ In contrast, Yaron and Sharon were both conclusively faulted by the 1983 Israeli Kahan commission on the massacres.

At first instance, the case was dismissed; however, the Court of Cassation confirmed the indictment of Yaron on appeal but granted immunity to Sharon so long as he remained prime minister. This was the result of the *Yerodia Case* at the ICJ, which ruled that 'immunity prevails only as long as the Minister is in office and continues to shield him or her after

¹⁴⁷ Loi de 1993 telle que Modifiée par la Loi du 10 Février 1999 Relative à la Repression des Violations Graves du Droit International Humanitaire, 1999, Belgium.

¹⁴⁸ Chibli Mallat, *Philosophy of Non-Violence: Revolution, Constitutionalism, and Justice Beyond the Middle East* (OUP, 2015) 264.

¹⁴⁹ *ibid* 264 *supra* 62.

that time only for “official” acts.¹⁵⁰ Then, the legal battle that ensued in the Court of Cassation in June 2003, which ordered further investigations into the massacre, soured and shifted to a diplomatic and political struggle. The same month, Israeli ambassador in Belgium was recalled home, US and Lebanese governments put pressure onto Belgian authorities culminating in the retroactive amendment of the Belgian universality law, effectively stopping investigations.¹⁵¹

Indeed, Mallat considered the unfolding of the trials to be a ‘moral and legal victory.’ However, reconciling universal jurisdiction, aimed primarily at correcting injustice, with the post-conflict realities and regional as well as international geopolitics is difficult to achieve. To do so, the development of objective benchmarks set by the international community can determine whether ‘the state has satisfied or fallen short of the international community’s interest in accountability.’¹⁵² All in all, the restriction of the concept of universal jurisdiction to the aim of accountability is ineffective because it excludes legal, procedural, and political impediments to access to justice such as sovereignty, particularly in the context of amnesties where the political element is extremely potent.

¹⁵⁰ ICJ, *Democratic Republic of the Congo v. Belgium*, 11 April 2000 at 85.

¹⁵¹ Mallat (n 148) 265.

¹⁵² Meintej and Méndez (n 61) 82.

3.3 Case Study: *The Case of Kidnappings and the Missing and the Right to Truth*

'The missing are the war memories that cannot simply be wiped out.'¹⁵³ There are different numbers to account for the missing after the civil war. A 1992 report issued by the police reports and statements of relatives assert the number to reach 17,415 missing.¹⁵⁴ However, this number is claimed to be inflated by relatives who have gone to multiple police stations petitioning their help and by unreported deaths. The real number is believed to be situated between 2,312 and 6000.¹⁵⁵ As mentioned earlier, kidnappings were a symbol of the Lebanese War - first, with checkpoint kidnappings, and second with the systematic abduction of political opponents by militias, Israel and Syrian forces.

In 1995, Law No. 435/95 was issued to accelerate the process of declaring a missing person deceased. This law, initially aimed at facilitating the administrative burden on families of the disappeared was ill received.¹⁵⁶ First, the burden was put on the families of victims to initiate the process, distastefully implying that the sole reason for such endeavour is to remarry or acquire inheritance rights.¹⁵⁷ It was clear thereafter that the

¹⁵³ Lynn Maalouf, 'Women Fighting Against War Amnesia: The Case of the Disappeared' 103 *Al-Raida* (2003).

¹⁵⁴ Jacquemet (n 16) 73.

¹⁵⁵ *ibid.*

¹⁵⁶ Michael Young, 'Civil Society and Governance: Moving Forward, Resurrecting Lebanon's Disappeared' (Lebanese Centre for Policy Studies, 1999) 3.

¹⁵⁷ *ibid.*

government did not meet, and had no intention to meet, the demands for investigation of the families.¹⁵⁸

Instead, the government issued two 'token'¹⁵⁹ commissions, deplored by family organisations (SOLIDE and the Committee of the Families of the Kidnapped and Disappeared) for being 'designed to fail.'¹⁶⁰ The Commission was given an absurd timeframe of six months to investigate 2,046 cases for which it published a two-page-long report, declaring dead all missing persons for a period of 4 years.¹⁶¹ Moreover, the commission was composed of member of the security apparatus; controlled by the Syrian presence in post-conflict Lebanon¹⁶², further delegitimising its existence and the results it rendered. The complete reports, along with their raw data were not initially distributed to the families as the government did not consider the right of the families to obtain the files.¹⁶³ Once again, the Lebanese state has failed to initiate proper measures to contribute to the right to truth so as to end impunity.

¹⁵⁸ *ibid.*

¹⁵⁹ Jacquemet (n 16) 74.

¹⁶⁰ Lynn Maalouf, 'Enforced Disappearances in Lebanon: A Nation's Unyielding Legacy' (Act for the Disappeared, 2009) 7.

¹⁶¹ Jacquemet (n 16) 73.

¹⁶² Human Rights Watch, 'Lebanon: Ruling Aids Families of Disappeared' (2009)

<<https://www.hrw.org/news/2009/11/04/lebanon-ruling-aids-families-disappeared>> Accessed September 8, 2018).

¹⁶³ Legal Agenda, 'Lebanon's Disappeared: Ruling Consecrates Right to the Truth' (March 1 2014) <<http://legal-agenda.com/en/article.php?id=2986>> Accessed September 7 2018.

As mentioned in the previous chapter, the CED expands the definition of enforced disappearances in its Article 3, to apply the measures of the convention to private individuals. Lebanon signed the CED but never ratified it; as such, the provisions of the conventions are not binding on Lebanon. Although the applicability of this provision in the CED does not apply in the Lebanese case, Article 7 of the ICCPR, which poses a prohibition on torture, or cruel and inhuman treatment, may apply.

It was only in 2014, that the *Conseil d'Etat* (the administrative court) formally recognised the families' right to the truth by a overturning previous decree issued by the Council of Ministers and consecrating for relatives of missing people the right to the truth.¹⁶⁴ However, the ruling in the case references Article 7 of the ICCPR to justify delivering the reports of previous investigations to families of missing persons. It does not take the obligation further so as to prosecute alleged perpetrators or uncover the circumstances of the disappearances.¹⁶⁵ The legal counsel for the family organisations, asserts that this is only the first step towards the eventual goal of exposing the 'incontrovertible proof of negligence of past governments [...] of refusing to acknowledge the victims and of repressing the memory of the civil war.'¹⁶⁶ The IACtHR, specifically its judgement of the

¹⁶⁴ *ibid.*

¹⁶⁵ *ibid.*

¹⁶⁶ Nizar Saghieh, 'Handover of the Investigations Dossier on the Fate of the Disappeared: Its Significance and Consequences' (Legal Agenda, September 29 2014) <<http://legal->

Almonacid case, recognises the lack of investigation of disappearances as a continuous crime, relying on comments in a General Assembly report on breaches of international law:

The breach of an international obligation by an act of a State having a continuing character extends over the entire period during which the act continues and remains not in conformity with the international obligation.¹⁶⁷

The same logic could be applied to move beyond the restrictive provisions of the General Amnesty Law domestically. As mentioned above, Article 2(3)(g) puts a requirement of non-recidivism, thus it does not allow for a crime to extend beyond the *ratione temporis* of the amnesty law, the continuous nature of the crime also annuls the immunity on the crime. Adopting the stance that the enforced disappearances are continuous crimes should provide a legal basis to demand proper investigation, and for the search of perpetrators of such crimes, as well as establishing the truth about their disappearances.

On November 2018, in a landmark step towards the right to know, the Lebanese Parliament took the unprecedented step to enact a law for the missing and forcibly disappeared. This law established a national commission to investigate the fate of the missing. Nevertheless, according to the ICTJ, there are

agenda.com/en/article.php?id=3031> Accessed September 9 2018.

¹⁶⁷ UNGA, 'Report of the International Law Commission on the Work of its Fifty-third session' A/56/589, Article 14.2.

many hurdles awaiting this commission.¹⁶⁸ The main one concerns the respect of deontological practices involving the commission, namely issues of independence, impartiality and protection from political oversight. Then, to avoid a reoccurrence of the failed government reports, proper allocation of funding and appointment of its members will have to follow. So far, these executive steps have been stalled in a period of political limbo.¹⁶⁹ Surely, this new 'institutional mechanism'¹⁷⁰ will be safeguarded and monitored by the relentless determination of NGOs and families of victims who have achieved the inconceivable.

3.4 Case Study: Druzo-Christian Reconciliation in the Chouf Mountains and the Right to Reparations

The Druzo-Christian reconciliation in the Chouf Mountains is a striking example of the involvement of religious leaders to benefit the reconciliation process, echoing the presence of Reverend Desmond Tutu in the South African Truth and Reconciliation commissions.¹⁷¹ In 2001, the Maronite patriarch Mar Nasrallah Boutros Sfeir concluded a series of meetings in

¹⁶⁸ ICTJ, 'Lebanon Passes Law for the Missing and Forcibly Disappeared, Marking a Victory for Victims' Families and for Justice' (3 December 2018).

¹⁶⁹ Nada Merhi, 'Les Disparus Ont Enfin Leur Loi, l'État Libanais Face à Ses Responsabilités' (L'Orient-le Jour, 2 August 2018).

¹⁷⁰ *ibid.*

¹⁷¹ Megan Shore and Scott Kline, 'The Ambiguous Role of Religion in the South African Truth and Reconciliation Commission' 31 *Peace & Change* (2006). 310.

several villages, to definitely close the chapter of violence and cement the reconciliation in the Chouf Mountains.¹⁷²

Following waves of displacement during the conflict, in 1993, the Ministry of the Displaced was established by decree in 1992 and by law 190/92.¹⁷³ Its aim was to implement the policies required for the return of the displaced in 6 different departments of the country. In parallel at Central Fund for the Displaced (CFD) was set up to ensure the return and reconstruction of their homes and businesses by law 193/92.¹⁷⁴ Walid Jumblatt, Druze leader from the Shouf Mountains was initially appointed minister for the displaced. In 1998, he was replaced at the Ministry after his successor accused him of corruption.¹⁷⁵

These two initiatives were aimed at reversing a 'ghettoization' phenomenon that became evident during the conflict. Where religious communities were accustomed to peacefully live in the same geographical space, particularly in the Chouf Mountains, the conflict segregated communities, with religious identities priming over relationship to the land.¹⁷⁶ In coordination with municipalities, and the CFD, the ministry

¹⁷² Fady Noun, 'La Réconciliation de la Montagne, un Souvenir Teinté d'Amertume' (L'Orient-Le Jour, 13 November 2018).

¹⁷³ Law No. 190/92, Article 2.

¹⁷⁴ *ibid*, Articles 1 and 2.

¹⁷⁵ Baumann (n 6) 84.

¹⁷⁶ Aïda Kanafani-Zahar, 'La Réconciliation des Druzes et des Chrétiens du Mont Liban ou le Retour à un Code Coutumier' 2 *Critique Internationale* (2004) 61.

initiated a case-by-case 'general reconciliation' agenda, aimed at amongst other things neutralise 'vengeance killings' made possible by a customary 'eye for an eye' or *lex talionis* rule in the region,¹⁷⁷ where about 250,000 Christians were displaced.¹⁷⁸

However, dismissal of criminal prosecutions did not render the intended results of peace and reconciliation. The Kfar Matta massacres of 1983 concerned the culmination of revenge killings that had occurred in neighbouring villages of the Shouf Mountains in Lebanon between Druze and Christian Maronite militiamen with hundreds of bodies discovered the following year.¹⁷⁹ Reports of the battle are to this day unclear. In 1983, an official investigation into the carnage had been opened, but fault for the carnage had never been attributed.¹⁸⁰ Widespread displacements also took place, with civilians

¹⁷⁷ Kanafani-Zahar (n 17) 65.

¹⁷⁸ Tom Perry, 'In a Lebanese Village, Civil War Scars Fade Slowly' (Reuters, September 1 2016). <<https://www.reuters.com/article/us-lebanon-brih-specialreport-idUSKCN117433>> accessed 14 September 2018.

¹⁷⁹ Advisory Committee on Human Rights in Lebanon, 'Towards Legal Order and Respect for Human Rights' 1 The Palestinian Yearbook of International Law (1984) 222.

¹⁸⁰ Samira Kawar, 'Druze Gunmen apparently massacred Christian civilian Tuesday following their ...' (United Press International, September 6 1983) <<https://www.upi.com/Archives/1983/09/06/Druze-gunmen-apparently-massacred-Christian-civilians-Tuesday-following-their/4859431668800/>> Accessed August 13 2018.

forcibly removed from their homes only to see them being occupied by their neighbours.

The reconciliation completed in 2006 with the return of the displaced and the re-appropriation of their properties. However, the settlement seems to have occurred only on the surface. To this day, former combatants attest to the superficial nature of the reconciliation:

I think that the reconciliation has only occurred on the political level. At the level of the population, things are not the same; there has not been any communication between us [Christian and Druze communities] in the village. People have not been able to forget their dead. We need time.¹⁸¹

Still, the reconciliation process in Mount Lebanon, marked by the promise of reparations, was never fully achieved. Testimonies of displaced persons now established abroad have recounted the failure of delivery of payments from the Ministry of the Displaced, promised by the accord, a full 12 years after it was reached: 'what I received from the government so far has only helped me dispose of the rumbles in my house', said one of the beneficiaries in Brih who is still missing a second payment.¹⁸²

¹⁸¹ Zeina Antonios, 'Montagne Druzo-Chrétienne: Que l'Etat Ne Nous Force pas à Partir une Deuxième Fois' (L'Orient-le Jour, 3 August 2018).

¹⁸² *ibid.*

Nevertheless, reconciliation occurred in a granular and symbolic manner, sometimes involving convincing ‘someone who lost his father to invite over his killer and offer him coffee.’¹⁸³ Moreover, in some villages such as in Brih, churches were built in order to attract the displaced Christian population.¹⁸⁴ In some cases, the involvement of mediators, operating in the shadow of the law, was required, particularly in cases where houses had been destroyed and built over by a new occupier.¹⁸⁵

3.5 *Legacy of Amnesties in Lebanon*

The Special Tribunal for Lebanon

The first exclusion or limitation to the power of amnesties in Lebanon is Article 6 of the Statute for the Special Tribunal for Lebanon (STL), established in 2007. Article 6 stipulates ‘An amnesty granted to any person for any crime falling within the jurisdiction of the Special Tribunal shall not be a bar to prosecution.’¹⁸⁶ Even though the *ratione temporis* of the two tribunals does not overlap (the STL sets its jurisdiction for attacks that have occurred after October 1, 2004),¹⁸⁷ Article 6 allows for the possibility to prosecute a suspect that was absolved from prosecution under the general amnesty law of 84/91 or any amnesty law that might be drafted since. This was already made possible with the above-mentioned Article 2(3)(g) the requirement of non-recidivism within the general

¹⁸³ Perry (n 178).

¹⁸⁴ *ibid.*

¹⁸⁵ *ibid.*

¹⁸⁶ Statute for the Special Tribunal for Lebanon, 2007, Article 6.

¹⁸⁷ STL Statute, Article 1.

amnesty law, but Article 6 rendered difficult the promulgation of an amnesty law that would afford immunity for the crimes within the jurisdiction of the STL. In the event such an amnesty law was promulgated, perpetrators would escape domestic criminal liability but would still have to answer for their crimes before the STL.

Amnesty as a Legacy

Amnesties are a mechanism of transition. In 1997, the Lebanese parliament promulgated a general amnesty law, one that grants amnesty for drug-related crimes before 1995.¹⁸⁸ In 2005 an 'amnesty' was enacted to retroactively pardon Samir Geagea, one of the only warlord tried for the crimes he committed during the war.¹⁸⁹ Most strikingly, the new amnesty law was enacted¹⁹⁰, bolstered by a climate of independence from the Syrian occupation in Lebanon, and signed by Lebanese President Emile Lahoud. Although the law was textually and widely designated as an amnesty, it was effectively a pardon, displaying a clear evidence of the ability of the Lebanese political elite to overcome legal hurdles where there is political will.

Finally, in 2018, the parliament is preparing to enact a new amnesty law, this one aimed at absolving from prosecution Islamists who are believed to have carried out terrorism activities on Lebanese soil (predominantly Sunni Muslims),

¹⁸⁸ General Amnesty on Drug-Related Crimes Law No. 666/97, Lebanon.

¹⁸⁹ ICTJ (n 18) 10.

¹⁹⁰ Law No. 677/2005, Lebanon.

drug traffickers in the Bekaa Valley (predominantly Shia Muslims), and Israeli collaborators during their occupation of the south (predominantly Maronite Christians).¹⁹¹ All of this emboldens the population's perception that there is no equality before the law resulting from the injustices of 'sectarian-based discriminations'.¹⁹²

Amnesties and pardons have proliferated since the end of war, firstly to absorb belligerents of the war into political institutions,¹⁹³ and secondly to account for the grievances of their respective communities to co-opt supporters and to reinforce a firm grasp on power. Hence, clientelism has been deemed 'a cause and a consequence of the war,'¹⁹⁴ and is still legally entrenched in sectarian-based personal status laws. Dysfunction of government institutions, crippled with corruption, enhance the system of patronage grounded in the need of citizens to obtain basic government services.

Failed Process of Remembrance

This article has been punctuated with quotes of directors, poets, painters and novelists, to symbolise the duty of

¹⁹¹ Timour Azhari, 'Not Just an Electoral Stunt? Talk Resumes on General Amnesty' (The Daily Star, 2018) <<http://www.dailystar.com.lb/News/Lebanon-News/2018/Jul-12/456215-not-just-an-electoral-stunt-talk-resumes-on-general-amnesty.ashx>> Accessed 10 September 2018.

¹⁹² ICTJ, 'How People Talk About the Lebanon Wars' (2014) 34.

¹⁹³ Oren Barak, 'Don't Mention the War? the Politics of Remembrance and Forgetfulness in Postwar Lebanon' 61 Middle East Journal (2007) 51.

¹⁹⁴ ICTJ (n 192) 20.

remembrance, undertaken exclusively by members of the civil society.¹⁹⁵ Over the years, the population has lost hope in achieving retributive accountability, rightfully so; prescription periods on crimes of war have expired. However, demands for truth-telling have never faded.¹⁹⁶ While the movie directors and writers never cease to be inspired by war stories, they also sometimes face severe criticisms and even frivolous prosecutions.

'Beit Beirut', the beautiful but infamous building still bearing the scars of the conflict was set to become a museum of the war. It was chosen because it 'bore witness to some of the most terrible events of the war,'¹⁹⁷ when Syrian and Lebanese snipers exploited its strategic locations on the demarcation line between East and West Beirut. Once again, spaces for collective remembrance have been co-opted by political rivalries and stalled for almost a decade. Hopes and proposals for the development of the space still seem to fade away as they enter the municipality of Beirut,¹⁹⁸ whose silence is deafening. The conclusion for this is rather simple, at this time, only member of civil society can steer the conversation on collective memory. All in all, it appears that the only people experiencing remorse about the horrors of the war are not

¹⁹⁵ ICTJ, (n 192) 4.

¹⁹⁶ *ibid* 34.

¹⁹⁷ Victoria Yan, 'Beit Beirut: The Museum that Never Was' (The Daily Star, 27 January 2019).

¹⁹⁸ Victoria Yan, 'Saga of Beit Beirut: A Museum Struggles to Remember Civil War' (Peace-building Deeply, 18 July 2018).

those who have participated in it, but those who have suffered from it.

IV. Conclusion

Scholars have long debated the controversial nature of amnesties.¹⁹⁹ This article is not an advocate for their dissolution. Through analysis of the provisions of the General Amnesty law in a wider political context, the examination of international legal standards related to the specific case of Lebanon, and a comparative analysis of Latin American jurisprudence on amnesties, this paper shows that a series of factors are required for the sound application of this mechanism in post-conflict situations, particularly in politically charged contexts, in order to fulfil victims' needs for redress. This article also finds that the Lebanese government, though the General Amnesty law has failed to achieve its principal aim of reconciliation, all the while failing to deliver justice.

First, the granting of amnesties without application should be prohibited. This would circumvent the temptation of a 'collective amnesia'²⁰⁰ by imposing an obligation to investigate and thus constructing a wider narrative of the war, ascertaining responsibility without penalty. For such a process, an abundance of resources is a requisite for success.

¹⁹⁹ Mallinder (n 62) 3.

²⁰⁰ Samir Khalaf, 'Culture, Collective Memory and the Restoration of Civility' in Deirdre Collings, *Peace for Lebanon?* (Boulder, 1994) 285.

For Lebanon, although the outcome of the Shouf Mountains reconciliation is contested, adopting a decentralised approach targeting specific grievances and the communal makeup of an area could be a valid option for achieving a balance of justice and truth. Decentralisation would similarly allow for the inclusion of victims in the amnesty process, instead of promoting impunity to absolve a political elite from its crimes.

Second, blanket amnesties that do not exclude crimes of genocide and crimes against humanity should have no standing legally. Although an international custom was put in place after the law was enacted, the irony prevails in that amnesties retroactively absolve perpetrators from prosecution but cannot themselves be retroactively amended or qualified. Still, in Lebanon, from testimonies gathered, it seems that the most sought-after remedy for victims is memory and nation building. Simply put: History instead of amnesty, recognition instead of retribution.

Finally, the guiding principle in this article has been time. Time has expunged the possibility for legal accountability, it has also aggravated the plight of victims of continuous crimes, still suffering from the mental and inhuman treatment of remaining in the dark about their loved one's fate. Time may also impede future processes of remembrance, as it continues to run. Almost 30 years after the end of the war, memories fade, testimonies have become scattered and entire generations are lost. There is an urgency to collect, store, and curate documents, pictures, testimonies of the past. These efforts are made harder, but not impossible, by a political elite who is still too afraid to remember.

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