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## Truth-Seeking and Justice in Lebanon and its Repercussion on the Conflict

Expert Paper “Workshop 9 – Justice Mechanisms and the Question of Legitimacy: Concepts and Challenges”

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## 1. Background

The current project of establishing a hybrid tribunal (usually called “Hariri Tribunal”) in Lebanon, vaguely inspired by the Sierra Leone precedent, is changing the traditional way of coping with political crimes in Lebanon. It raises new challenges and new opportunities, but also creates significant risks for the stability of the country. The establishment of the Hariri Tribunal will be the focus of this overview.

In order to better understand the current dynamic, let’s analyse the historical context since the Taef agreement. These last 16 years could be divided in three periods.

### 1. The Silencing of the Memory of the Civil War

In 1991, a general amnesty law is adopted by the Lebanese Parliament, including for the perpetrators of crimes against humanity. The concept could be summed up by the idea of “no victors, no vanquished” (*La ghalib, la maghlub*), assuming that the passage from war to peace goes through a process of voluntary amnesia.

### 2. The Awakening of Memory

Ten years after the Taef agreement, the policy of silencing is progressively being eroded. As a matter of fact, Switzerland is instrumental in setting up the first ever conference in Beirut on that theme in 2001 called “Memory for the Future”. The aim of this conference is to reveal what has been hidden during the civil war, in order to transform the suffering that has been so far silenced in a way which will help to create a new stronger Lebanon, better equipped to face the future as it is not afraid to confront the past.

At the time, the underlying hypothesis is that Lebanon would only get stronger by establishing some accountability mechanisms for the crimes committed during the civil war. Since then, there have been a few meetings in Lebanon to think through the different options regarding the setting up of accountability mechanisms (Truth Commission, Tribunal). These meetings involved NGOs, such as the International Center for Transitional Justice (ICTJ), la Fédération internationale des droits de l’homme (FIDH) and others. Some Lebanese NGOs, Solida, for instance, was pushing for establishing a Truth and Reconciliation Commission.

### 3. The Hariri Tribunal

The assassination of the former Prime Minister Rafik Hariri took place in 2005 in that context of awakening of memory and demand of clarification for past crimes. This assassination created a new momentum which led ultimately the Sinora government to ask the United Nations Security Council (UNSC) to establish the tribunal.

## 2. The Hariri Tribunal: Legitimacy, Perceptions and Ownership

Even before this new hybrid tribunal materializes, it is raising fundamental issues:

### 1. The Question of Legitimacy

The tribunal has been created under the Chapter VII of the UN Charter. Its judicial legitimacy is therefore unquestionable as the Milosevic precedent with the ICTY demonstrates. But its political legitimacy is already being disputed by the Lebanese President, Emile Lahoud, the president of the Parliament, Nabih Berri, the Hezbollah, Syria and Iran. They denounced the intervention in the internal affairs of a sovereign State, the politicisation of justice and they regard the present Lebanese government as being "illegitimate". The very fact that the Lebanese Parliament was unable to establish the tribunal by itself will be politically costly at least in the short term.

The fundamental question is the following: will the tribunal be instrumental in helping Lebanon to recover its full independence and eventually, serve in the medium term the cause of national unity? Or, rather, will it deepen the existing divisions and threaten even more the fragile balance between the different parties?

The issue could also be seen differently: what would be the price for the future of Lebanon of a pursuit of a policy of impunity?

The Sinora government with the support of the US, UK and France, made the strategic choice to go for that tribunal. They believe that the judicial and political gains will be greater than the risks.

### 2. The Question of Perception: Media, Location, Communication

The question of perception of the tribunal is fundamental. The UN has a long tradition of intervention in the region. Most of the Arab populations regard the UN as politically biased. This will not help the tribunal. In Lebanon, opinions are sharply divided. Some Lebanese believe that only an internationalized Tribunal can bring justice. On the other hand, critics will stress the double standard existing between the many UNSC resolutions adopted which had never been implemented by Israel and the fact that this tribunal is created under Chapter VII. They will also stress the opportunism of the Bush administration which has been a vocal critic of the UN system, but is using it by supporting actively this establishment of this tribunal under UN auspices to achieve its political goals.

In these conditions, how will this tribunal be able to improve its image and assert its credibility? This will depend on the way it will operate and communicate. Obviously, there are many unknowns at this present day: what will be the criminal strategy of the prosecutor? And what will be the political context in which he will operate?

The perception of the tribunal will depend also on many others factors:

- The role of the media: it is very likely that the media will be divided along the political line. A part of the media will perceive the tribunal as an instrument of justice, and others will depict it as an anti-Syrian instrument in the hands of the Americans.

- In that context, the strategy of communication of the tribunal will be essential for the credibility of its work. The ICTY and the ICTR have both lost the battle of communication and paid an enormous price for it.
- Location: the location of the tribunal will play a major role in shaping the perception. More the geographical distance with Lebanon will be important, more it will increase the perception that it is a remote tribunal in the hands of the Western World.

### **3. The Question of Cooperation**

An international or hybrid tribunal does not operate in a political vacuum. Past international justice experiments have shown a tribunal can only succeed if it enjoys a high degree of political, judicial and financial support. The two UN ad hoc tribunals (ICTY, ICTR) were created against the will of key governments (Yugoslavia, Rwanda). This opposition could be seen in the minimal degree of cooperation by these states, when it was not pure obstruction. Here again, the cooperation between Syria and the tribunal will be a key component of the success of that institution.

Another danger would be a change in the political environment either in Lebanon itself or between Israel and Syria. An escalation of the conflict(s) or, in the contrary, the prospect of some types of negotiation will affect the work of the tribunal and may hinder its work. The president and the prosecutor of the tribunal will have to operate very smoothly in such a volatile environment to keep or improve the credibility of their institution.

### **4. The Question of Ownership: The Decisive Question**

The question of ownership of the tribunal is the decisive question. First and foremost, such a tribunal has value only to the degree in which societies see it as an essential component to clarify past crimes and to rebuild trust in the institutions and improve the rule of law.

This being said, the work of a criminal tribunal – even when it is highly successful – is a long process. Nuremberg trials have been perceived from 1946 to the mid-sixties as being a tribunal of victors. It has taken a generation in order that the legacy of the Nuremberg trials became part of the German ethos. To believe that the Hariri Tribunal will be a quick fix to create a common narrative among Lebanese would be a major mistake.