

## **Fighting Amnesia: Ways to Uncover the Truth about Lebanon's Missing**

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### **Abstract**

*After a 15-year conflict characterized by mass violations of human rights, the Lebanese state and society have favored amnesia over truth seeking. This has marginalized the victims, in particular the relatives of thousands of missing or forcibly disappeared persons.*

*The 2007 decision by the UN Security Council to create a Special Tribunal for Lebanon (STL), tasked exclusively with trying suspects in the assassination of former Prime Minister Rafik Hariri and other politically motivated assassinations, has fuelled perceptions of selective justice. This article outlines possible strategies for taking advantage of changed circumstances in Lebanon, including the future STL, in order to implement the internationally guaranteed right to truth for families of the missing. The author examines recent regional practices and, drawing from the experiences of Morocco and Cyprus, argues that given the strong constraints in Lebanon, the priority, at least initially, should be to establish the truth of what happened and not the prosecution or even naming of culprits.*

### **Introduction**

*They are telling me, 'Let's close the page of the war!' My answer is, 'How could we close it without ever having opened it in the first place?'*

—Wadad Halwani, president of the Committee of the Families of the Kidnapped and Disappeared in Lebanon

Each society emerging from a dark period faces a similar dilemma: seek justice for the gross abuses of human rights or directly 'reconcile' in the name of stability? The answers go from a cathartic nationwide effort at remembrance, coupled with legal accountability for some perpetrators (South Africa), to partial truth seeking despite official amnesties (Chile), to societal amnesia (Mozambique).<sup>2</sup> Lebanon until now has belonged to this last category. At the end of 15 years of conflict usually described as a civil war (1975–1990), the general amnesia concerning its events has not only prevented accountability but also obliterated truth seeking. No monument to the dead has been erected and history schoolbooks read as though time stopped in 1975. Among the many victims – the official tally of the war is

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<sup>1</sup> Among the many persons who helped with this research, the author wishes to express particular thanks to Habib Nassar and Nizar Saghie, both lawyers in Beirut, Lebanon.

<sup>2</sup> Priscilla B. Hayner, *Unspeakable Truths: Facing the Challenge of Truth Commissions* (New York: Routledge, 2002).

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144, 000 dead, of which 90 percent were civilians<sup>3</sup> – there are thousands of 'missing' or 'forcibly disappeared' persons.<sup>4</sup> It seems only fitting for a society in denial to 'forget' its disappeared. One exception has emerged however: the relatives of the disappeared, who continue to demand the truth despite the limited odds that these demands will be heard.

Recent developments may offer unexpected opportunities for their lonely struggle. Worldwide, the issue of the missing is being increasingly highlighted with, *inter alia*, the progress made in the forensic identification of mortal remains, the

adoption by the UN General Assembly of the International Convention for the Protection of All Persons from Enforced Disappearances and an ongoing multidisciplinary project by the International Committee of the Red Cross (ICRC) called 'The Missing.'<sup>6</sup>

On the Lebanese domestic scene, a positive development was the April 2005 pullout of the Syrian army, which has allowed for a much freer political and social atmosphere that has encouraged the country's fledgling civil society. The February 2005 assassination of former Prime Minister Rafik Hariri, which triggered these developments, also sparked nationwide demands for 'the truth.' These demands were taken up at the UN Security Council, which established the Special Tribunal for Lebanon (STL), tasked with trying the suspects in Hariri's assassination and a number of related attacks.<sup>7</sup> The chronically unstable political climate in Lebanon could be used as an additional opportunity to highlight the importance to the country's future of dealing with issues relating to the civil war in an upfront manner.

This article adopts a deliberately narrow approach in two respects. First, it deals only with the missing, to the exception of the many other serious crimes committed during the civil war. The reason is simple: the families of the missing, whose perspectives are critically reflected here, are the only organized movement of victims in Lebanon. The author argues that truth seeking in this one issue could be the entry point for addressing the larger legacy of the civil war.

Second, the article advocates the right of families to know the truth about the fate of their missing relatives to the exclusion of any accountability process, at least initially.<sup>8</sup> Such an approach might seem controversial in light of current

<sup>3</sup> Lebanese Ministry of Interior, March 1992, quoted in, Amal Makarem, ed., *Memory for the Future* (Beirut: DarAn-Nahar, 2002). This is a high toll for a country of fewer than four million inhabitants.

<sup>4</sup> The difference between the two terms will be explained below.

<sup>5</sup> A/RES/61/155 and E/CN.4/2006/57, Annex I [Hereinafter 'International Convention on Enforced Disappearances'].

<sup>6</sup> Most of the published material from this initiative may be found at <http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/themissing?opendocument> (accessed 25 July 2008).

<sup>7</sup> UN Security Council Resolution 1757, 30 May 2007. The period covered is 3 October 2004 to 12 December 2005, although subsequent attacks could be included. The STL, which should be hosted by the Netherlands, will be a hybrid, with a mixture of international and Lebanese judges and prosecutors applying the Lebanese Criminal Code. The date when the Tribunal will commence has yet to be set. See, *Agreement between the United Nations and the Lebanese Republic on the Establishment of a Special Tribunal for Lebanon*, Annex to UNSC Resolution 1757.

<sup>8</sup> The secretary-general of Amnesty International acknowledged that Lebanon 'could envisage a phased approach,' with an initial enquiry into 'the cases of disappearance and other abuses since *International Journal of Transitional Justice*, Vol. 3, 2009, 69–90

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thinking in transitional justice, but the author argues it is the only realistic strategy given the current perilous divisions within Lebanese society. Further, this victim-centered approach, which prioritizes the relatives of the disappeared, is grounded in a humanitarian perspective. The 'slow and prolonged moral torture'<sup>9</sup> of these relatives has been going on for up to three decades, and many among them face the risk of dying without ever experiencing respite from this pain. Only by knowing with certainty the fate of their loved ones can they find some peace of mind. And time is pressing.

This article examines the obstacles to and opportunities for reaching this objective, including:

- \_ the constraints arising from the historical context;
- \_ the right to know in international law;
- \_ the examples of Cyprus and Morocco, where some measure of truth has been sought, but to the exclusion of any accountability process; and
- \_ practical strategies in the national and international arenas, including those currently promoted by the families of the disappeared.

The questions asked in the article are the following: What are the specific rights

of the families of the missing? Can the international community and the STL afford the suspicion of selective justice? Are there models on which Lebanon could draw? How best can stakeholders frame an advocacy project in such a challenging context?

## ***Two Amnesties, One Long Case of Amnesia***

From 13 April 1975 to 13 October 1990, the Lebanese lived through a succession of conflicts characterized by the commission of war crimes and crimes against humanity. One specific trait of this ‘generalized and bloody chaos’<sup>10</sup> was that each of the armed groups involved resorted at some point to kidnappings that often resulted in the disappearance of the victim.<sup>11</sup> Thousands of individuals, overwhelmingly civilians, were abducted from their homes or at checkpoints, at times just because they had the ‘wrong’ communal affiliation.<sup>12</sup> People were kidnapped for three main reasons: as political hostages who could be exchanged

1975’ that could then pave ‘the way for bringing perpetrators to account in a second stage.’ Irene Khan, ‘Lebanon’s Justice System on Trial,’ *Daily Star*, 22 December 2006.

9 Jean-Francois Rioux and Marco Sassoli, ‘The Missing: Study on Existing Mechanisms to Clarify the Fate of Missing People,’ ICRC report (January 2003), 10/35.

10 Georges Corm, *Le Liban contemporain, Histoire et société* (Paris: La Découverte, 2005), 117. Other useful books on this period are: Samir Kassir, *La guerre du Liban, de la dissension nationale au conflit régional* (Paris: Karthala-Cermoc, 1994); Farid el-Khazen, *The Breakdown of the State in Lebanon* (Cambridge, MA: Harvard University Press, 2000).

11 There were approximately a dozen major armed groupings involved, including the regular armies of Lebanon, Syria and Israel.

12 The religious affiliation of every Lebanese citizen used to be stated on his/her identity card. A number of these abductions were witnessed by family members. Personal interviews, Wadad Halwani, president of the Committee of the Kidnapped and Disappeared in Lebanon, and Habib Nassar and Nizar Saghieh, lawyers, Beirut, Lebanon, December 2005–January 2007.

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for those captured by the opposing side; for money; and for politically motivated revenge, which was aimed at spreading terror among the community of the victim and at creating ‘religiously pure’ areas.<sup>13</sup>

The patterns of the kidnappings were roughly congruent with the contours of the conflicts. From 1975 to 1977, when an alliance of leftist, mainly Muslim and Palestinian groups, fought predominantly Christian organizations, disappearances happened mostly across communal and political lines in a fairly ‘haphazard and chaotic’ way.<sup>14</sup> The practice became more systematic with the intervention of Syria and Israel and an increase in the organizational capacities of the militias, some of which acted as proxies for the foreign armies. By 1977, opponents of Syria were targeted by the Syrian military. The Israeli invasion in the summer of 1982 allowed the Christian Lebanese Forces militia to take partial control of the state, which led to the involvement of the state security apparatus in systematic abduction of ‘political opponents,’ who were often members of leftist groups and Palestinians.<sup>15</sup> A number of victims were handed over to Israel, while others would ‘disappear’ at the hands of their Lebanese abductors. Finally, as the army split along communal lines in 1984 and the Lebanese state collapsed further, the militias took over and disappearances increased in the following year, amid general chaos. Even though the Syrian army ruthlessly silenced opposition figures between 1990 and 2005, it is generally agreed that disappearances during the postwar period were a few dozen at most.<sup>16</sup>

In 1990, the order of the day was reconciliation. With Damascus needed on the side of the coalition against Saddam Hussein, a *pax syriana* was permitted to take root. As former warlords shared ministerial portfolios and seats in parliament, two measures promptly settled past crimes. First, in March 1991, all militias, with the notable exception of Hezbollah, were dissolved without any questions concerning

remaining prisoners. In the following month, the Lebanese parliament adopted a sweeping amnesty law.<sup>17</sup> Complete amnesty was granted for ‘political crimes,’ including homicide, as well as kidnapping and torture.<sup>18</sup> Article 3 of the amnesty law made exceptions, in particular for ‘crimes of assassination and attempted assassination of religious figures and clerics, political leaders, and Arab or foreign diplomats.’ Thus, members of the Lebanese Forces, which had killed thousands of civilians, received amnesty, but the assassin of Bashir Gemayel, the head of

<sup>13</sup> Michael Young, *Resurrecting Lebanon's Disappeared* (Beirut: The Lebanese Center for Policy Studies, 2000), 4. The following chronology is based largely on this study.

<sup>14</sup> Ibid.

<sup>15</sup> Annual reports of the UN Working Group on Enforced or Involuntary Disappearances, e.g., E/CN.4/1995/36, para. 263 (30 December 1994).

<sup>16</sup> Personal interview, Sonia Eid, Support of Lebanese in Detention and Exile, Beirut, Lebanon, 30 May 2006. Eid mentioned 62 unsolved cases.

<sup>17</sup> Law 84 promulgated on 26 August 1991. ‘The Granting of a General Amnesty for the Crimes Committed before 28 March 1991 According to Specific Conditions’ (unofficial translation, on file).

<sup>18</sup> Ibid., art. 2 (c) and (f). The latter mentions crimes under Article 569 of the penal code, ironically amended by Decree Law 112 of 1983 in order to cover abductions, which had reached a peak at the time.

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the Lebanese Forces and president-elect when he was killed in 1982, did not. In violation of the basic tenets of international law, large-scale war crimes and crimes against humanity were weighted less than targeted political assassinations.<sup>19</sup> The law had not one word for the victims, who found themselves marginalized legally, politically and socially.

The government believed that it had ‘dealt’ with the families of the missing by simply adding 17,415 missing persons to its 1992 assessment of the war.<sup>20</sup> This figure was inflated and reflected police lists made on the basis of declarations by relatives, who had not necessarily announced subsequent reappearances, releases and known deaths, or who had approached several police stations for the same case in the course of internal displacement. The real figure is estimated to be somewhere between a minimum of 2,312, which is the number of names submitted by relatives to two commissions of enquiry (detailed below), and a maximum of 5,000 to 6,000. This second discrepancy is due to several factors, including that many relatives did not trust the commissions of enquiry, others had emigrated abroad and, sometimes, entire families had been wiped out during the war, particularly among Palestinians. Whatever the figure, the largest association of relatives of the disappeared, the Committee of the Families of the Kidnapped and Disappeared in Lebanon, a group founded in 1982, vocally continued to demand information, braving harassment, threats and occasional beatings.<sup>21</sup> The authorities never seriously attempted to address the core issue of the disappeared, but rather strove to persuade the survivors to give up their fight. The majority of families were outraged by a 1995 law that facilitated the procedure for declaring a missing person dead.<sup>22</sup> The way the law was drafted gave the families the impression that the government believed that enabling survivors to deal with the material aspects of disappearance would buy their silence.

Two token commissions of enquiry followed. The first, in 2000, had all the ingredients for failure: its membership (five representatives of the security apparatus), its time frame (three months, consequently extended for another three months) and a lack of terms of reference and powers of investigation. To deal with the 2,046 cases submitted by relatives, the commission published a two-page report summarily concluding that, apart from 17 people detained in Israel, all the ‘kidnapped and missing persons for more than 4 years and whose bodies could not be found

<sup>19</sup> The UN Human Rights Committee noted ‘with concern the amnesty granted to civilian and military personnel for human rights violations they may have committed against civilians during the civil war. 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.’ Concluding Observations on Lebanon, UN Doc. CCPR/C/79/Add. 78, para. 12 (1 April 1997).

20 Makarem, supra n 3.

21 The overwhelming majority of the Committee of the Families’ members are women, mostly mothers and wives of the missing.

22 Law 434 of 25 May 1995. There are, of course, more elegant ways to deal with this difficulty. Argentina and Uruguay issued certificates of ‘forcibly disappeared,’ which allowed relatives to overcome administrative hurdles without declaring the victim dead. Diane Orentlicher, *Study on Best Practices to Combat all Aspects of Impunity*, UN Doc. E/CN.4/2004/88 (27 February 2004), 4. *International Journal of Transitional Justice*, Vol. 3, 2009, 69–90

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should be considered dead.’<sup>23</sup> The report mentioned the location of three ‘mass graves’ in Beirut, affirmed that no identification was possible ‘due to the number of years’ and added that some bodies ‘were discarded in the sea.’<sup>24</sup> In particular, the report, which was drafted by men who owed their positions to Damascus, denied that anyone was still detained in Syria. Dozens of families were summoned by the military police in Beirut and pressured to formally declare their relatives dead. When some of the ‘dead’ turned up among 54 detainees freed by Damascus five months later,<sup>25</sup> the first commission’s findings were discredited.

The second commission, hastily appointed in January 2001, never published a report. It also only accepted complaints from relatives in possession of elements indicating that the missing person was still alive. The government, meanwhile, never made good on the first commission’s recommendations to pay compensation to the relatives. Although Damascus and Beirut set up a bilateral commission on missing Lebanese in 2005, it has made no progress.

In a last symbolic blow, the freshly elected parliament passed a new amnesty law in July 2005, freeing from prison the only former head of militia ever tried, Samir Geagea, amid almost unanimous pronouncements on ‘national reconciliation.’<sup>26</sup> Geagea’s Lebanese Forces are considered responsible for a significant proportion of the forced disappearances during the war period. From the 1991 amnesty, granted under Syrian control, to the 2005 amnesty, granted by a euphoric anti-Syria legislature, the powerful absolved each other of their crimes and ignored the victims. In both cases, the international community tacitly supported the Lebanese choice for geopolitical reasons, at the expense of human rights.

The marginalization of the victims was furthered by a remarkable similarity between the views of the political elites and those of the wider population, although they held them for partially different reasons. While the former mainly whitewashed their crimes, the latter feared a revival of conflict. Thus, the mantra that ‘digging up the past will reignite the civil war’ still carries much weight. Moreover, categories of victims and perpetrators are fluid, both on a communal and, at times, an individual level. Unlike in the more classical – from a transitional justice perspective – Latin American contexts, perpetrators in Lebanon were multiple, often nonstate actors. The fractures within postwar Lebanese society did not divide the country neatly into two, but instead split it into numerous groupings.

The Lebanese came out of the war more deeply divided along sectarian lines and often more reliant on their *zu’ama* (traditional leaders), even if, and probably at times because, these leaders had blood on their hands. Fifteen years of war were

<sup>23</sup> *Report of the Official Commission of Investigation into the Fate of the Abducted and Disappeared Persons* (25 July 2000).

<sup>24</sup> *Ibid.* This alludes to the fact that the headquarters of the Lebanese Forces militia were located close to the seashore during the war and that the militia is known to have disposed of the bodies of its victims in the sea.

<sup>25</sup> December 2000 was the last time a missing person reappeared alive in Lebanon.

<sup>26</sup> Law 677 of 20 July 2005. Geagea was singled out for his opposition to Syria and sentenced in 1994 for two high-profile political assassinations during the war period. This was made possible by Art. 3 of the 1991 amnesty law.

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compounded by 15 years of Syrian occupation, during which Damascus fought any attempt at collective remembrance that would have brought the various Lebanese communities together.

This fragmentation, together with underlying fears of renewed conflict, explains the limited appeal of the issue of the missing. Additionally, the two main associations of families of the missing reflect deep historical divisions. The older one, the Committee of the Families, though politically independent, is generally perceived as close to leftist and Palestinian groups. It was indeed founded in 1982, mainly by women whose relatives had disappeared at the hands of Israeli forces and their Lebanese proxies. The other association, Support of Lebanese in Detention and Exile (SOLIDE), which pleads the cause of 'victims of enforced disappearance at the hands of the Syrian intelligence,'<sup>27</sup> has been identified with an anti-Syrian, 'Christian' agenda, despite the fact that more than half its members are Muslim. In some cases, the missing from one association may have been guilty for the disappearance of men and women from the other.<sup>28</sup> For a long time, this facilitated neither the relations between the two associations nor the mobilization of Lebanese society in favor of addressing the issue of the missing.

Since late 2007, however, the Committee of the Families and SOLIDE have been meeting on a regular basis, with support from a handful of other human rights nongovernmental organizations (NGOs), in order to devise a common strategy. Their rapprochement, which started before late 2007, was facilitated by three interrelated factors that are shaping the current Lebanese sociopolitical scene. The first was the Syrian pullout in April 2005 and the ensuing thaw, which ushered in a freer atmosphere with regards to freedom of assembly and free speech, and helped challenge the taboo of bringing up the past.<sup>29</sup> SOLIDE was able to step onto the public stage, setting up a permanent sit-in in front of the UN building in Beirut. The Lebanese parliament's Human Rights Commission agreed to discuss the missing, while two major political parties, the pro-Syria Hezbollah and General Michel Aoun's Free Patriotic Movement (FPM), included 'the right of the [families of the missing] to know the fate of their loved ones' in a 2006 political agreement.<sup>30</sup> Human remains were discovered and identified, including those of Michel Seurat, a French sociologist abducted in 1985 by Islamic Jihad, and those of 20 soldiers buried in 1990 on the premises of the Ministry of Defense, whose families had believed that they were detained in Syria.<sup>31</sup> The discovery of other supposed 'mass graves' has been shrouded in controversy, particularly regarding the lack of

<sup>27</sup> Quoted from the association's website, <http://www.solide-lb.org>.

<sup>28</sup> Nothing in Lebanon is clear-cut however, as some relatives are members of both associations.

<sup>29</sup> Initiatives started earlier, with, among others, a 2001 symposium that pleaded for an opening of the files of the past, published in Makarem, *supra* n 3.

<sup>30</sup> Scarlett Haddad, 'Le document de travail commun entre le Hezbollah et le CPL,' *L'Orient-Le Jour*, 7 February 2006. Hezbollah was in government at the time, but it later joined Aoun in the opposition. Aoun's troops never resorted to abductions, and Hezbollah did so less than other militias, with the exception of the kidnapping of foreigners carried out by the affiliated Islamic Jihad.

<sup>31</sup> Rym Ghazal, 'Families Learn Fate of Loved Ones After 15 Years,' *Daily Star*, 18 March 2006, 2.

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professional procedures used by the authorities.<sup>32</sup> Nonetheless, the very fact that the issue is now publicly discussed constitutes a small step forward for the families, who are united in demanding 'the opening of all mass graves.'<sup>33</sup>

The second factor was the summer 2006 war with Israel, which precipitated a sharp break within the political class and within society at large, with the Hezbollah and FPM-led opposition blocking state institutions and disagreements leading to deadly clashes.<sup>34</sup> The political majority has accused Hezbollah of bringing disaster on the country by abducting two Israeli soldiers in July 2006. In response, Hezbollah has charged the political majority with serving American interests. More fundamentally, the conflict, which was brought to a head by the issue of the STL in November 2006, is about power-sharing and opposing visions of the country's

future, but it has taken on sectarian undertones. These divisions have raised serious fears about the outbreak of a new civil war, which were almost played out in the streets of Beirut in May 2008.<sup>35</sup>

Paradoxically, this crisis – the deepest since the 1975-1990 conflict – has favored the mushrooming of small but vocal civil society movements that are challenging politicians on all sides and preaching civil concord. Some refer to the silence about the past and the many unresolved issues of the civil war as reasons behind this renewed predicament.<sup>36</sup> Increasingly, the issue of the missing is being put forward as symbolic of the past poisoning the present.<sup>37</sup> In sum, the challenge of a dangerously divided society may be used as a renewed opportunity for putting the issue of the missing on the national agenda.

The third factor is the STL, which has been a major source of the political deadlock. The anti-Syria governmental majority has consistently called for the Tribunal, hoping it will prove that Syria was behind Hariri's assassination. The Hezbollah-led opposition denounces the STL as blatant interference by outside actors.<sup>38</sup> Here, too, resides a powerful paradox. The political majority, many of whom favor keeping a lid on the past, promotes the Tribunal in the name of the fight against impunity. For their part, both associations of families of the disappeared are challenging not the creation of the STL but its limited mandate.

<sup>32</sup> Amnesty International, *Lebanon: Mass Graves – Exhumations must be in line with international standards, and perpetrators brought to justice* (5 December 2005); 'ISF Begins Investigations of Mass Grave Near Jbeil,' *Daily Star*, 12 April 2008.

<sup>33</sup> Personal email correspondence, Ghazi Aad, president of SOLIDE, 15 April 2008; personal email correspondence, Wadad Halwani, president of the Committee of the Families, 24 April 2008.

<sup>34</sup> Parliament did not convene between the end of 2006 and May 2008, and the country was without a president for six months.

<sup>35</sup> It seems that violations of international humanitarian law committed during this latest bout of violence will also go unpunished. See, Human Rights Watch, *Lebanon: Political Talks in Qatar Should Address Abuses* (18 May 2008).

<sup>36</sup> This was visible most recently during the April 2008 commemorations of the start of the civil war, which were well organized and had a wide echo. 'Lebanese Mark Civil War Teetering on New Abyss,' *Daily Star*, 12 April 2008.

<sup>37</sup> Particularly during a series of public events titled 'What is to be Done?' which took place all over Lebanon in 2008. For information on the events, see, <http://www.memoryatwork.org>.

<sup>38</sup> The political majority and the opposition finally signed a power-sharing agreement in Doha, Qatar, on 21 May 2008. Ideological differences on many issues, including the STL, remain nonetheless.

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The Committee of the Families asks, 'Why should the family of one man [Rafik Hariri] be entitled to the truth, and thousands of others be denied the same truth?'<sup>39</sup> while SOLIDE speaks of 'selective justice.'<sup>40</sup> For one human rights lawyer, the logic of the STL embodies the same 'charismatic regime'<sup>41</sup> that presided over the exceptions made by the 1991 amnesty law in favor of political leaders. Nonetheless, the two associations are very much aware of the tactical opportunities offered by the STL for their campaign.

## ***Right to Know and Right to Truth: A Lebanese Reading***

International legal obligations in the field of the missing and forced disappearances derive from three sources: international humanitarian law (IHL), international human rights law and international criminal law. In the case of armed conflict, they are concurrently applicable.<sup>42</sup> The missing are both the most ancient and the broadest notion, which may include victims of natural disasters, armed conflict, displacement and criminal acts. IHL has a long set of rules regarding persons missing as a result of armed conflicts, whether civilian or military. They are defined as 'all people unaccounted for as a result of an international or non-international armed conflict or internal violence.'<sup>43</sup> Forced disappearance is both a more recent and a narrower concept made infamous by Latin American dictatorships.

It was only in December 2006 that the crime of forced disappearance was defined, and expressly prohibited, in a universal treaty, when the UN General Assembly adopted the International Convention for the Protection of All Persons from Enforced Disappearance. The treaty, which needs 20 accessions or ratifications to enter into force, defines enforced disappearances as<sup>44</sup>

... the arrest, detention, abduction or any other form of deprivation of liberty committed by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law. (Article 2)

The convention extends the definition to acts perpetrated by private persons (Article 3).

As for international criminal law, the International Criminal Court (ICC) statute lists 'enforced disappearance of persons' under crimes against humanity, which are crimes committed 'as part of a widespread or systematic attack directed against any

<sup>39</sup> Personal interview, Wadad Halwani, Beirut, Lebanon, 15 December 2006.

<sup>40</sup> Personal email correspondence, Ghazi Aad, 15 April 2008. See also, Marieke Wierda, Habib Nassar and Lynn Maalouf, 'Early Reflections on Local Perceptions, Legitimacy and Legacy of the Special Tribunal for Lebanon,' *Journal of International Criminal Justice* 5(5) (2007): 1065–1081.

<sup>41</sup> Personal interview, Nizar Saghieh, Beirut, Lebanon, 19 January 2006.

<sup>42</sup> Vasuki Nesiah, 'The Missing: Overcoming the Tensions between Family Needs and Judicial Procedures,' ICRC study (September 2002).

<sup>43</sup> Monique Crettol and Anne-Marie La Rosa, 'The Missing and Transitional Justice: The Right to Know and the Fight Against Impunity,' *International Review of the Red Cross* 88(862) (2006): 355.

<sup>44</sup> As of July 2008, there were 73 signatures and four ratifications to this Convention. See, <http://www2.ohchr.org/english/bodies/ratification/16.htm> (accessed 18 July 2008).

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civilian population, with knowledge of the attack.'<sup>45</sup> Nonstate actors are included, as Article 7.2(i) defines the possible authors as 'a State or a political organization.' The 'right to know' is an IHL notion, and its central provision is Article 32 of Additional Protocol I to the 1949 Geneva Conventions,<sup>46</sup> which appears under section three, 'Missing and Dead Persons,' and states:

In the implementation of this Section, the activities of the High Contracting Parties, of the Parties to the conflict and of the international humanitarian organizations mentioned in the Conventions and in this Protocol shall be prompted mainly by *the right of families to know the fate of their relatives*. (Adopted by consensus. Emphasis added.)

An ambitious study by the ICRC concluded that the right to know has become customary international law in both international and noninternational armed conflicts.<sup>47</sup> Additionally, agreement has emerged that if 'the principal responsibility lies with government authorities' then 'armed groups have also a responsibility in this regard.'<sup>48</sup>

The 'right to truth,' which is a human rights notion, is more ambitious than – and an expansion of – the IHL-based right to know. It encompasses both an individual and a societal dimension: not only victims of human rights violations but also the society at large is entitled to the truth regarding the circumstances of the violations, the structural responsibilities related to the violations and the names of the perpetrators.<sup>49</sup> Truth commissions typically arise from this broad aspiration. Treaty-wise, the notion is present in the last preambular paragraph of the International Convention on Enforced Disappearance. Moreover, this right has been affirmed in international case law,<sup>50</sup> particularly in Latin America and Bosnia and Herzegovina.<sup>51</sup> Finally, the Argentine 'truth trials' are particularly interesting for Lebanon because they took place despite national amnesty laws in an innovative effort at establishing the fate of the disappeared without seeking punishment for the culprits. Thousands of cases were investigated after the government accepted

<sup>45</sup> ICC Statute, A/CONF.183/9, Rome, 17 July 1998, *entered into force* 1 July 2002, art. 7 (i) and chapeau.

<sup>46</sup> Additional Protocol to the Geneva Conventions of 12 August 1949, relating to the Protection of

Victims of International Armed Conflicts (Protocol I), 8 June 1977, *entered into force* 7 December 1979 [hereinafter 'Additional Protocol I'].

47 Louise Doswald-Beck and Jean-Marie Henckaerts, ed., *Customary International Humanitarian Law* (Cambridge: ICRC/Cambridge University Press, 2005).

48 Observations and Recommendations (adopted by consensus) at the International Conference of Governmental and Non-Governmental Experts, 'The Missing and their Families' (organized by the ICRC, Geneva, 19–21 February 2003). See also, Doswald-Beck and Henckaerts, *supra* n 27 at 418.

49 Juan E. Mendez, 'The Right to Truth,' *Nouvelles Etudes Penales* 14 (1998): 255–278.

50 UN Human Rights Committee, *Quinteros v. Uruguay* (1983), *Saker v. Algeria* (2006) and General Comment No. 06; European Court of Human Rights, *Kurt v. Turkey* (1998) and *Cyprus v. Turkey* (2001); African Commission on Human and Peoples' Rights, *Amnesty International and others v. Sudan* (1999).

51 Inter-American Court of Human Rights, *Velasquez-Rodriguez v. Honduras* (1988), *Blake v. Guatemala* (1998) and *Efrain Bamaca Velasquez v. Guatemala* (2000); Human Rights Chamber for Bosnia and Herzegovina, *Srebrenica Cases* (2003), *Palić v. Republika Srpska and others* (2001).

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in 2000 to guarantee 'the right to the truth, which involves the exhaustion of all means to obtain information on the whereabouts of the disappeared persons.'<sup>52</sup> In the Lebanese case, IHL was applicable during the war period. This is why this article uses the term 'missing', which covers all categories. It is nevertheless understood that most victims belong to the narrower category of forcibly disappeared persons. Lebanon, Syria and Israel were all parties to the Geneva Conventions well before 1975. None was a party to the 1977 Additional Protocols,<sup>53</sup> but the customary right to know the fate of the missing in armed conflict stated in Article 32 of Additional Protocol I mainly rephrased existing obligations in the 1949 conventions. One could add that, in any case, given the continuing lack of clarification of the fate of the missing persons, Lebanon, Syria and Israel still have a duty today to address this issue. In addition, the UN Working Group on Enforced or Involuntary Disappearances has repeatedly reminded Lebanon of its 'continuing responsibility to undertake all requested investigations, until the fate of the missing persons is fully elucidated,' notwithstanding the government's insistence that it 'was not able to exercise full control over national territory' at the time of the conflict.<sup>54</sup>

## **Morocco and Cyprus: Limited Truths**

Every postconflict situation is unique, and Lebanon, with its mix of multiple domestic communities and foreign actors, defies international parallels. It nonetheless may be useful to look at the Lebanese case in light of the Moroccan *Instance Equit'e et R'econciliation* (IER) and the Cyprus Committee on Missing Persons (CMP). The most important reason to do so is political. Both Morocco and Cyprus have undergone limited attempts at truth seeking in a highly restrictive political context. The two processes have been flawed from a general human rights perspective, but, regarding feasibility from a Lebanese perspective, they prove that it is possible for families to learn the fate of their loved ones without challenging the general status quo. The second reason why they may be useful is that they have a certain cultural proximity to Lebanon. Morocco is an Arab and Muslim state (the first ever to have launched a truth commission). Cyprus is half an hour by plane from Beirut and has close historical, economic and social links to Lebanon. Moreover, its division between Sunni Muslims and Greek Orthodox Christians makes it closer to the multiple Lebanese religious communities. A public campaign advocating the cause of the missing that uses these precedents would have a greater chance of being understood than African or Latin American examples both by the political elites in Lebanon and by the population at large.

The Moroccan IER has been relatively well documented.<sup>55</sup> It was launched in January 2004 through a sovereign decision of King Mohammed VI with a mandate

<sup>52</sup> Orentlicher, *supra* n 22 at 7.

<sup>53</sup> Only Lebanon subsequently acceded, on 23 July 1997.

<sup>54</sup> UN Doc. E/CN.4/1996/38, para. 293 and 292 (15 January 1996).

<sup>55</sup> Pierre Hazan, *Juger la guerre, juger l'histoire* (Paris: PUF, 2007); International Center for Transitional Justice, *Transitional Justice in Morocco: A Progress Report* (November 2005). See also, the IER's website at <http://www.ier.ma>.

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to establish the truth about violations under the reign of the king's father, King Hassan II (the period covered was 1956 to 1999), to provide reparations to victims and families and to make recommendations aimed at preventing future abuses. Some 20,000 victims came forward to the IER. On the positive side, several commissioners were themselves former political detainees and survivors of torture, and the seven public hearings held were partially broadcast on television. A number of exhumations were carried out and, by the IER's account, 742 cases of forced disappearance were elucidated,<sup>56</sup> with the king publicly acknowledging state responsibility for disappearances.<sup>57</sup> Compensation has been paid to approximately 16,000 survivors.

Critics of the Commission have underlined a number of serious flaws however. Theoretically, the IER was meant to determine state responsibility for the crimes committed. However, no individual could be called to account and victims were expressly forbidden from mentioning the names of perpetrators during the public hearings, making attribution of responsibility difficult. The Commission, which lacked powers of subpoena, was denied access to the archives of a number of security services. Not all mass graves have been exhumed, and Sahraoui families, in particular, have denounced as highly doubtful the 'identification' of victims in Western Sahara. A more fundamental problem perhaps is the ongoing impunity, as human rights organizations were denouncing forced confessions and torture practiced against suspected Islamists even as the IER was examining past abuses. Shifting away from an absolute monarchy in search of renewed legitimacy to an altogether different context, the partitioned island of Cyprus started in 2006 an even narrower program of exhumations in search of 2,000 missing persons (1,498 Greek-Cypriots and 502 Turkish-Cypriots). The first wave of disappearances occurred during the communal tensions between 1964 and 1967. The second, by far larger, wave occurred as a result of the Turkish army's invasion of the northern part of the island in 1974, following a Greek-Cypriot coup led by officers who wanted union with Greece. The CMP was established in 1981 under UN auspices. Its limited mandate, excluding any 'attempt to attribute responsibility for the deaths,'<sup>58</sup> did not prevent its quarter-century-long paralysis. The deadlock was broken as a result of outside judicial and political pressure. In 2001, in a case filed by the government in Nicosia, the European Court of Human Rights (ECHR) found Turkey in violation of the European Convention on 14 counts, three of which related to 'the rights of Greek-Cypriot missing persons and their relatives.'<sup>59</sup> The Court concluded that 'there has been a continuing violation . . . on account of the failure of the [Turkish] authorities to conduct an effective investigation' on the fate of 'Greek-Cypriot missing persons who disappeared in life-threatening

<sup>56</sup> Hazan, *supra* n 55 at 178.

<sup>57</sup> See, <http://www.maec.gov.ma>.

<sup>58</sup> CMP, Terms of Reference, 23 April 1981.

<sup>59</sup> *Cyprus v. Turkey*, Application No. 25781/94, Judgment of 10 May 2001, para. 2, 4 and 7.

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circumstances.' It stressed that the silence of the [Turkish] authorities in the face of the real concerns of the relatives of the missing persons attains a level of severity which can only be categorized as inhuman treatment.<sup>60</sup>

In 2004, Turkey was engaged in talks for accession to the European Union. Moreover, the European Commission promised to compensate economically the Turkish-Cypriots, following the rejection by the Greek-Cypriots of the reunification

of the island.<sup>61</sup> This explains why the leader of the Turkish-Cypriots asked the UN for a reactivation of the CMP and a reinforcement of its powers – in order to comply with the European Convention's requirements.<sup>62</sup> The CMP went back to work on 30 August 2004, explicitly aiming to 'exhume, identify and return remains of people listed as missing,' but excluding 'findings as to the cause of deaths.'<sup>63</sup> Each party investigated on its own territory, trying mainly to locate remains belonging to members of the opposite community.

Despite the passage of time, changes in the landscape, false leads and the fading memories of witnesses (where they were still alive), the results were relatively good, with the CMP estimating that about 60 percent of the missing were located.<sup>64</sup> The small size of the island and of its population (9,251 square kilometers and fewer than 800,000 inhabitants), as well as the fact that many killings took place in villages, resulted in a situation where 'everyone knows everyone else' and where witnesses remembered exactly how many people were buried where and even, at times, their names.<sup>65</sup> A clever identification of the types of witnesses who would be most helpful, including former policemen, priests, shepherds or bulldozer owners who had dug the graves, helped the process. The CMP achieved these results despite its inability to subpoena witnesses. By April 2008, 399 remains from both communities had been exhumed, of which 84 were identified and returned to the families of the victims.<sup>66</sup> Remarkably, this has been, for several years, the only bicomunal undertaking on the island, with Turkish-Cypriot and Greek-Cypriot experts working together under the aegis of the Argentine Forensic Anthropology Team (EAAF).<sup>67</sup>

<sup>60</sup> Ibid., para. 136 and 158.

<sup>61</sup> 'U.S. Accuses Greek-Cypriot Leaders of Derailing Unification Vote,' *New York Times*, 27 April 2004.

<sup>62</sup> Council of Europe, 'Summary of Cases – indications of execution measures required and last decision taken. 25781/94 Cyprus against Turkey, Judgment of 10/05/01 – Interim Resolution ResDH (2005) 44,' 168/227.

<sup>63</sup> See, CMP, Overview of the Project on the Exhumation, Identification and Return of Remains of Missing Persons in Cyprus, 15 July 2006, project summary para. 1 and implicit reference at para. 7 to 1981 Terms of Reference.

<sup>64</sup> Personal interview, Christophe Girod, third member of the CMP, Nicosia, Cyprus, 18 October 2006.

<sup>65</sup> This makes the 'Cypriot model' technically applicable in at least one Lebanese context: the Christian-Druze War of the Mountain of 1983–1984.

<sup>66</sup> According to the CMP website (<http://www.cmp-cyprus.org>), as well as Christophe Girod, personal email correspondence, 8 April 2008.

<sup>67</sup> EAAF was born out of Argentina's own transition to democracy, and its members have since assisted with similar processes in 35 countries. Personal interview, Luis Fondeviller, president, EAAF, Nicosia, Cyprus, 16 October 2006.

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Although it was agreed from the beginning that there would be no accountability in the Cyprus case, critics, particularly the families of the missing, have underlined additional weaknesses in the process. Its slowness is one, and relatives are asking for the number of exhumation teams to be doubled.<sup>68</sup> More fundamentally, there are all the unanswered questions. 'Giving a son a box of remains and saying, "This is your father" is not fair when that person has been waiting during 34 years for an answer,' says one relative.<sup>69</sup> The ECHR agrees, underlining that 'whatever its humanitarian usefulness,' the CMP does not carry out effective investigations and should deal with the causes of disappearances and the circumstances in which they occurred.<sup>70</sup> It appears, however, that not much more can be achieved in the absence of overall political progress, with several Cypriots saying that, for example, the population is 'not ready yet' for a truth and reconciliation process.<sup>71</sup> It is also telling that the Greek-Cypriot and Turkish-Cypriot associations of relatives have never held a combined meeting. The outcome of the ongoing political talks between the two Cypriot leaders will, in all likelihood, reflect on the future dynamics of the CMP.

Despite their shortcomings, the Moroccan and Cypriot experiences have at least brought closure to a number of relatives,<sup>72</sup> which is what this author advocates

in Lebanon. The contextual differences are obvious. In Morocco, the sovereign is all-powerful, while an official decision to address the missing in Lebanon would involve numerous antagonistic political groups. In Cyprus, it is the clout of the ECHR and the European Union that led to the deadlock being broken, while Lebanon does not belong to such a regional system. Nonetheless, these cases' very limitations make them potentially reassuring, both for the Lebanese political class and for the wider population. Neither Morocco nor Cyprus held perpetrators accountable; indeed, they were not even named. This could be used to disprove the often-heard assertion that opening the graves would reignite civil war in Lebanon. No clean break with the past has occurred in Morocco, and the state's repressive security apparatus remains partially in place today, while the two halves of Cyprus have, until recently, agreed on nothing except the CMP. This again refutes the argument that as long as there is no real political transition in Lebanon, the files of the civil war cannot be opened.<sup>73</sup>

<sup>68</sup> Telephone interview, Nicos Theodosiou, president of the Pancyprian Organization of Undeclared Prisoners and Missing Persons, 2 May 2008.

<sup>69</sup> Ibid.

<sup>70</sup> *Cyprus v. Turkey*, Application No. 25781/94, Judgment of 10 May 2001, and *Varnava and others v. Turkey*, Application No. 16064/90, Judgment of 10 January 2008. The latter case makes express reference to a man whose remains were identified by the CMP in 2007.

<sup>71</sup> Among others, telephone interview, Nicos Theodosiou, 2 May 2008.

<sup>72</sup> Angelique Chrisafis, 'Bones Don't Speak,' *Guardian*, 15 April 2008; Hazan, *supra* n 55.

<sup>73</sup> On a technical note, the disappearances in Cyprus predate the Lebanese civil war, which is a fact that can be used to counter the criticism that the truth is impossible to establish after such a long time.

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## ***How to Break the Wall of Silence: A Possible Strategy for Lebanon***

*If cruelty is individual, then silence is collective . . . Breaking the silence as a way of dealing with the legacy of cruelty is thus necessarily a collective act.*

—KananMakiya<sup>74</sup>

For over a quarter of a century Lebanese families have been grappling with the question of how to make the missing a national cause. How can they convince reluctant authorities – without whom there are no exhumations, no commission of enquiry, no opening of archives – to clarify the fate of the disappeared? As field practitioners emphasize, technical questions regarding exhumations are not the biggest issue; rather, political will is key.<sup>75</sup> This is sorely lacking in Lebanon. Before outlining a possible strategy to break the wall of silence around the missing, it is necessary to summarize both the positions of the political leaders and the demands made by the associations of families.

This author has not systematically canvassed the reaction of the Lebanese body politic to the issue. Nonetheless, from newspaper articles, interviews with prominent politicians<sup>76</sup> by the two associations of relatives and a few personal interviews by the author, four sets of stated positions have emerged:

- 1) 'All the missing are dead, therefore there is no point in looking for their bodies.' This line of argument is mainly put forward by former heads of militias.
- 2) 'It is a worthy cause, but the timing is ill-chosen and it could imperil the fragile balance of the country.' This argument cuts across political divides and could be the most widespread, including in the population at large.
- 3) 'Syria should tell the truth about those it has kidnapped and free the survivors.' A number of members of the anti-Syria political majority support SOLIDE in this argument, but they do not extend their interest to other categories of Lebanese missing.<sup>77</sup>
- 4) 'All the families should learn the truth, but retribution is out of the question.'

Aminority of human rights-oriented members of parliament from across the political spectrum share this position.<sup>78</sup>

These arguments imply that even the most open of decision makers in Lebanon envisage only a limited humanitarian approach to the missing and exclude a comprehensive transitional process. It is worth mentioning that the missing are

<sup>74</sup> Kanan Makiya, *Cruelty and Silence: War, Tyranny, Uprising and the Arab World* (New York and London: Norton, 1993).

<sup>75</sup> Personal interview, Luis Fondebrider, president, EAAF, Nicosia, Cyprus, 16 October 2006. International experience nonetheless shows that it is likely that most of the missing will never be located.

<sup>76</sup> The names are confidential, but several among these individuals are former heads of militias.

<sup>77</sup> 'Le dossier des d'etenus libanais dans les prisons syriennes: l'interminable surplace,' *L'Orient-Le Jour*, Beirut, 11 April 2008.

<sup>78</sup> Personal interview, Samir Franjeh, prominent member of parliament from the majority coalition, Beirut, Lebanon, 1 June 2006.

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the only issue relating to the civil war that has been publicly discussed in any meaningful way, which is in itself a testimony to the efforts of the families of the missing.

In terms of their demands, the main difference between the two associations of families is concerning impunity. The older group, the Committee of the Families, insists on the truth to the exclusion of retribution, 'given the complicated situation in Lebanon.'<sup>79</sup> Nonetheless, it argues that 'leaders from the Civil War should be excluded from official posts.' Individual members of the association may not have renounced punishment of perpetrators, but this has not been systematically researched.<sup>80</sup> The president of SOLIDE, Ghazi Aad, believes that most of that association's members are presently asking only for the truth, but that should missing relatives prove to be dead, they would also demand justice.<sup>81</sup> Officially, SOLIDE favors legal action against perpetrators in Lebanon through the 'loophole' in Article 2.3 (f) of the amnesty law (see below).

Beyond this major difference, the positions of the two associations are quite similar. Both advocate the creation of an international commission of enquiry, because of the dismal failure of the previous Lebanese commissions. SOLIDE adds a second reason: the fact that 'many missing Lebanese were arrested by regional powers inside Lebanon.' Aad believes that this body, with Lebanese and international members, could be 'an expansion of the United Nations Hariri commission,' which is presently tasked with investigating the former prime minister's assassination. Its mission, according to SOLIDE and in contrast to the Committee of the Families, should be not only to disclose the fate of the missing and provide reparations to the victims but also to 'bring criminals to court.'

The Committee of the Families has tacitly recognized what international experience proves – that 'the missing persons are almost always dead.'<sup>82</sup> It demands the 'opening of all mass graves in the country,'<sup>83</sup> as well as the related creation of a DNA database with samples from relatives. This demand is shared by SOLIDE, even though it argues that its 680 or so missing are alive in Syrian prisons. Both groups advocate setting up a truth and reconciliation commission, reforming Lebanese criminal law, public apologies and reparations, as well as the building of monuments to the victims. They also agree that Lebanon should become a party to the ICC and to the International Convention on Enforced Disappearance in order to guarantee the nonrepetition of crimes. Finally, they agree that they need systematic and long-term assistance from international human rights and humanitarian organizations.

<sup>79</sup> Repeated personal interviews, Wadad Halwani, Beirut, Lebanon, 2006–2008. Specifically, the association has never asked for the 1991 amnesty law to be repealed.

<sup>80</sup> Luis Fondebrider underlines that, in his long experience, 'no relative has ever told me: "I want to reconcile."' Personal interview, Nicosia, Cyprus, 16 October 2006.

<sup>81</sup> Personal interviews, Ghazi Aad, Beirut, Lebanon, 2006, and personal email correspondence, 15

April 2008. Here, too, no systematic research has been conducted into the wishes of individual relatives.

<sup>82</sup> Rioux and Sassoli, *supra* n 9 at 10/35.

<sup>83</sup> Press conference in Beirut, Lebanon, 15 December 2006.

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A minimal consensus appears to exist among some politicians and a number of relatives around the notion of truth without retribution that has been put forward by the Committee of the Families. The prudent approach of this group seems to this author the more realistic in the present context, purely from a tactical point of view. Based on this finding and on lengthy discussions with several Lebanese lawyers who have closely followed the issue, this author suggests an advocacy campaign with the following minimum objectives:

\_ The appointment of a mixed commission with Lebanese and international members that has access to Lebanese state archives and powers of enquiry. The commission should be able to order exhumations and highlight circumstances of death (thus going beyond the Cyprus CMP) to the exclusion of naming individual culprits (as in the Morocco and Cyprus models).

\_ Payment of reparations and provision of psychosocial support to survivors (in practice, the relatives of the missing).

\_ Public apologies by the Lebanese state and the building of a memorial to the missing and other victims of the civil war. In a country where no one ever said, ‘We are sorry,’ this would go a long way towards restoring the dignity of both the missing and their families.

\_ Ratification of the statute of the ICC and of the International Convention on Enforced Disappearance.<sup>84</sup>

This agenda may appear highly unsatisfactory, as it leaves untouched goals like the simple identification, let alone prosecution and sentencing, of the culprits. It also does not address reconciliation. Indeed, it has been argued that there can be no reconciliation without some sort of retribution.<sup>85</sup> Nonetheless, this agenda is probably the only realistic way forward under the present circumstances. Even so, it can only be successful if the political class is convinced that the truth can be revealed in ways that do not threaten either their individual positions or civil peace.

In order to start reaching the objectives listed above – or any others for that matter – the associations of families need first and foremost to surmount a lethal weakness: their divisions. This is finally underway, with the two associations meeting on a regular basis in order to discuss a common platform and devise advocacy strategies.<sup>86</sup> A number of Lebanese human rights groups are participating in the process. The very creation of this coalition should facilitate the second step: enlisting some meaningful outside support. If it is indisputable that solutions must be homegrown, the relatives are nonetheless aware that they can and should draw from the experience of victims’ movements worldwide, improve advocacy techniques and develop fundraising and management skills. Equally important for people who have led a lonely battle for a long time, the attention of

<sup>84</sup> Lebanon was among the first signatories to the convention in Paris on 6 February 2007.

<sup>85</sup> John Borneman, ‘Reconciliation after Ethnic Cleansing: Listening, Retribution, Affiliation,’ *Public Culture* 14(2) (2000): 281–304.

<sup>86</sup> The content of these discussions, which began in September 2007, is still confidential.

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sympathetic international organizations would provide them with a crucial psychological boost.

Theorists have argued that transnational campaigns have been more successful in countries where ‘well-organized domestic human rights organizations existed.’<sup>87</sup> Such domestic NGOs have been able to find international partners in order to create

a ‘boomerang effect,’ where one or several international groups take up local demands with their own governments and/or the UN, thus amplifying ‘voices to which domestic governments are deaf.’<sup>88</sup> Furthermore, ‘the vulnerability of the target state is a key factor in network effectiveness.’<sup>89</sup> Lebanese civil society has been developing in recent years, but it remains fledgling, and the active members of the associations of families are few, overworked and isolated from the international arena. On the positive side, Lebanon corresponds to the profile of the ‘vulnerable state’ susceptible to network pressure. It aspires ‘to belong to a normative community of nations’<sup>90</sup> (unlike Syria) and does not enjoy totally unconditional outside support from world powers (unlike Israel). Lebanon’s huge debt and need for reconstruction offer potential leverage for donors willing to raise human rights issues.<sup>91</sup>

The Lebanese associations of relatives have already had contact with a number of the ‘universal mechanisms’ dealing with the missing, but it is argued that one or several among these should now offer their systematic support if things are to move forward. Possible candidates are Amnesty International, Human Rights Watch, the International Federation of Human Rights Leagues (FIDH), which has long-time contacts in Lebanon,<sup>92</sup> and EAAF.<sup>93</sup> Further advice could come from the Beirut office of the UN High Commissioner for Human Rights and from the International Center for Transitional Justice (ICTJ), which has shown interest in Lebanon. Another obvious international partner would be the ICRC, which has been present in the country since 1967. Its archives could yield useful preliminary information for documenting cases, such as the forms filled out by relatives at the time of the abductions.<sup>94</sup> It would also be an ideal candidate for providing

<sup>87</sup> Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders* (Ithaca: Cornell University Press, 1998), 206.

<sup>88</sup> *Ibid.*, 200. Argentina in the late 1970s was a classic example of successful international lobbying by human rights NGOs, which managed to decrease the practice of disappearances by the military junta.

<sup>89</sup> *Ibid.*, 117.

<sup>90</sup> *Ibid.*, 29.

<sup>91</sup> Beirut’s January 2007 appeal for economic assistance was met with the sort of donor generosity that many countries can only dream of. ‘Donors Pledge USD 7.6 Billion for Lebanon,’ *Associated Press*, 25 January 2007. The national debt stood then at USD 40.5 billion, or 180 percent of gross domestic product – one of the highest per capita rates in the world.

<sup>92</sup> In May 2006, FIDH organized, in Beirut, a confidential workshop on transitional justice, with the participation of the two main associations of families. The July war curtailed any follow-up of this initiative.

<sup>93</sup> EAAF is in principle open to the idea, depending on the political situation in Lebanon. Personal interview, Luis Fondebrider, Nicosia, Cyprus, 16 October 2006.

<sup>94</sup> ICRC does share these data with national commissions of enquiry under certain conditions, including approval by the families, protection of witnesses and respect for international rules on data protection, among others.

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international participants if a Lebanese commission on the missing were to be created. Finally, practical advice could come from two national mechanisms, the Cyprus CMP and Morocco’s IER.<sup>95</sup>

Expert advice could help the associations design a common platform and strategy, as well as document as many cases of missing persons as possible. Available lists of names should be compared, and at least a number among them researched and completed with testimonies of witnesses. The historical patterns of disappearance should be detailed and individual cases checked against these patterns in order to narrow down probable locations. This would be helpful when mass graves are identified. This task in principle belongs to the official commission-to-be, but by doing the preliminary work, the relatives would increase their chances of success. A clear and detailed file, anticipating criticism, would be easier to defend in the international arena and more difficult to dismiss at home. These three phases – capacity building, establishing a common platform and documentation of cases –

should go on despite the country's political ups and downs. Such work would be confidential, and it would lay the foundations for the fourth stage – going public.

### ***Speaking to the World about the Lebanese Missing***

A perfect moment for taking the cause public would be the opening of the STL at The Hague. The Lebanese associations could act alone, but their cause would have wider resonance if international partners relayed their message in a coordinated campaign. The campaign should underline states' obligations under international law (the right to know) and stress that:

\_ The issue is not about the dead but about the living, as not only the families but also Lebanese society at large would benefit from coming to terms with the past. A possibility would be to take advantage of the recurrent Lebanese crises, and of the international interest they attract, to show the causal link between amnesia and renewed conflict.

\_ Consistency is needed, as it is not defensible to support the creation of the STL for about 40 victims and ignore the rights of thousands of others.

One possible avenue for going public is a FIDH-led campaign in France, where public interest in Lebanon is high and where the government maintains a tradition of interest and influence upon Beirut. Paris is a strong sponsor of the International Convention of Enforced Disappearance. Many Latin American states are also sponsors, given their history. Their support could be enlisted both through sympathetic Latin American NGOs and through the important Lebanese diaspora in parts of the continent.<sup>96</sup> These states could bring up the matter with Lebanon, Syria and/or Israel and/or sponsor a campaign in the relevant organs of the UN,

<sup>95</sup> The assistant to the Turkish-Cypriot member of the CMP, Ahmet Erdengiz, who studied and taught in Lebanon during the civil war, expressed his readiness to share his experience in the CMP with interested Lebanese parties. Personal interview, Nicosia, Cyprus, 17 October 2006.

<sup>96</sup> One can also think of the diaspora in Canada or the US, whose assistance with the missing issue has not been systematically sought.

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such as the Human Rights Council and treaty bodies (for example, the Committee on the Rights of the Child, as a number of the missing were minors at the time of abduction), and in international conferences of the Red Cross and Red Crescent, among others.

If Lebanon is the 'weak link' among the three states at play, the two others should not be forgotten. Syria has been under international pressure for its policies in Lebanon, but the missing have never been mentioned. Israel should be asked to share information with regard to those Lebanese and Palestinians who went missing on Lebanese territory under Israeli occupation.<sup>97</sup> At a minimum, setting the missing on the international agenda would show the families that their cause is being taken seriously by the international community, and it would constitute an acknowledgment of their suffering.

### ***Speaking to the Lebanese about Their Missing***

Despite the 1991 amnesty law, a few families have brought judicial cases, and courts have found them admissible. In 2001, in a case introduced by a mother for the 1982 kidnapping of her son, the Criminal Court of Mount Lebanon sentenced the defendant to three years in prison with hard labor based on the continuous nature of the crime.<sup>98</sup>

Such court actions are few and far between for at least three reasons: a fear of reprisals; a lack of evidence, in particular with regard to the identity of abductors; and a reluctance to embark on such actions given that cases can often take years to

complete. Most relatives could not afford the costs of bringing a case unless a pool of lawyers were to begin working *pro bono*. Nonetheless, a useful strategy might be symbolic court actions, such as a number of ‘actions against persons unknown’ introduced on the same day by relatives across Lebanon with maximum media coverage. In that respect, SOLIDE’s plan to take legal action could serve as a useful means of putting pressure on the authorities. Even though, generally, the Lebanese judiciary lacks independence, cases could be brought to individual judges known for their integrity.

With nonjudicial strategies, the challenge is to create a consensus within society at large. It is crucial to frame the issue of the missing in a way that makes it appear both relevant to Lebanon’s present challenges and unthreatening to the delicate balance of the country. Given the particular constraints of Lebanese society, the public campaign – in the media, through sympathetic members of the parliament and with the former heads of militias – should take the most inclusive tone possible.

<sup>97</sup> This would include the so-called security zone in southern Lebanon, occupied until May 2000. It is not suggested here that Israel is hiding prisoners, but rather that it possesses information that could help ascertain the fate of a number of the missing.

<sup>98</sup> Plaintiff Ratiba Dib Fares, defendant Hussein Muhammad Hatoum, decision of the Criminal Court of Mount Lebanon, 13 December 2001. The Court concluded that Art. 2.3(f) of the amnesty law applied. This article excludes amnesty in cases of ‘repeated or uninterrupted crimes.’

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The author suggests three main parameters for action within Lebanon (two of which have already been suggested for the international campaign):<sup>99</sup>

\_ This is a humanitarian issue. The objective is to find the truth, to the exclusion of naming individual perpetrators and seeking retribution. The 1991 amnesty law is not challenged.

\_ This is not about the dead but about the living. The families’ moral torture cannot end before they know the fate of the missing. All Lebanese will benefit, as a healthy country cannot be built on mass graves.

\_ The right to know is grounded in international law, and Lebanon cannot set itself outside the law.

The precedents of Morocco and Cyprus should be explained, and representatives of the Moroccan IER and the Cyprus CMP invited to Lebanon. The former heads of militia should be approached separately and informed that since mass graves will not always stay hidden, it is in their interest to take the initiative in a controlled way rather than risk having the whole issue derail to their disadvantage.

These judicial and nonjudicial strategies could be carried out simultaneously so as to increase pressure on the relevant actors. Both approaches are fraught with danger, ranging from simple failure, given the amount of social and political resistance, to a real security risk for individuals who might be seen as coming too close to unpleasant truths. Nonetheless, progress in Lebanon is only possible if the missing are brought onto the international and the domestic agendas in a visible, documented and inclusive way.

## **Conclusion**

It takes in some cases generations for a country to face its troubled past, if it ever does. In Spain, exhumations of civil-war dead began only in the early 21st century. Waiting might not be a luxury Lebanon can afford, however. Apart from the humanitarian questions involved, the fact that the country keeps going through renewed cycles of violence might well indicate that as long as the fundamental weaknesses of its social contract are not addressed, a peaceful future is in jeopardy. In this respect, further research is necessary to show more systematically how present-day tensions may be linked to unsolved past issues. This link is intuitively

put forward by many, but it deserves to be explored in depth.

The small first step suggested here, imperfect as it is, would already constitute a revolution. It might make the whole question of confronting the past in Lebanon look less awesome. In the best-case scenario, it would open the door for an end to impunity. Today, prosecutions of perpetrators of grave crimes dating back to the civil war are unthinkable, and even a truth and reconciliation commission is taboo.

This may change in the future if an alliance of Lebanese and international human rights organizations succeeds in taking advantage of world interest in the country's affairs, as well as of the STL, to further its agenda. The missing seem an ideal testing ground for this. Here, too, further research into attitudes of individual families of missing persons and of the Lebanese public at large is necessary to find out how the rapid pace of events since the Syrian withdrawal might have affected perceptions of the past, impunity, retribution and preconditions for reconciliation. This type of research would be a welcome change in a country where, traditionally, only the political elites have had a voice.

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