

# Beirut's Sunset: Civil War, Right to the Truth and Public Remembrance

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## 1. The Years of Darkness: An International-Regional Civil War

Several factors contributed to the 1975-1990 Lebanese civil war and different weight has been given to them in the literature on the topic. Some have a distinct Lebanese origin; others pertain to the domain of Middle Eastern and international politics. Inter-communal (and no less ferocious intra-communal «wars within the war») battles intertwined with wars by proxy and episodes of full-scale inter-state conflict against a background of regional rivalries (many states of the region played a role, even if only financial or diplomatic), the unsolved Palestinian issue and the influence of superpowers. The Lebanese civil war is probably better described as «cycles of wars» with internal, regional and international dimensions<sup>1</sup>. In its modern history Lebanon experienced two civil wars prior to 1975: in 1858-1860, between the Maronite and Druze communities, which triggered French intervention in defense of the former, and in 1958, between pro-Western and nationalist/leftist forces, which ended with US intervention at the Lebanese government's request. In between, Lebanon (together with Syria) became a French mandate under the League of Nations in 1918. The creation of Greater Lebanon out of the original mandate, although making it economically viable, was to alter the demographic balance and create Syrian irredentism. The National Pact (hereinafter Pact) of 1943, an unwritten supplement to the 1926 Constitution, sealed an historic inter-communal power-sharing compromise; among other things, it sanctioned Lebanon's confessionalism, apportioning the share of political power of each religious community. The Pact ratified a Christian-Sunni alliance, with the former in a position of supremacy<sup>2</sup>; it bore the influence of

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<sup>1</sup> On Lebanon's recent history and the civil war, I have consulted, among others: P. Hitti, *History of the Arabs*, London, Palgrave MacMillan, 2002 (1st ed. 1937), pp. 728-736; P. Mansfield, *A History of the Middle East*, London, Penguin Books, 2003 (1st ed. 1991), pp. 280-322; F. Massoulie, *Les conflits du Proche Orient*, Paris, Casterman, 1994 (revised ed.); R. Fisk, *Pity the Nation: Lebanon at War*, London, Oxford University Press, 2001<sup>3</sup> (1st ed. 1990); D. Hiro, *Lebanon: Fire and Embers*, London, Weidenfeld and Nicholson, 1993; D. Hirsch, *Beware of Small States*, London, Faber and Faber, 2000; J. Sarkis, *Histoire de la guerre du Liban*, Paris, Presses Universitaires de France, 1993; B. Morris, *Righteous Victims: A History of the Zionist-Arab Conflict, 1881-2001*, New York, Vintage Books, 2001 (1st ed. 1999), pp. 494-560; X. Baron, *Les Palestiniens. Genèse d'une nation*, Paris, Seuil, 2003 (revised ed.).

<sup>2</sup> The predominant role of the Maronite was recognised based on a census carried out by the French in 1932.

the colonial power in its last days and contributed to ossifying a sectarian system. The Pact shaped Lebanese political life until the beginning of the civil war, by which time the demographic balance had significantly changed in favour of the Muslim community. Blocking any opportunity for political evolution, the Pact has often been referred to as one of the causes of the civil war. Intra-communal dynamics (and divisions), leading to the radicalisation of individual communities and the consequent exacerbation of inter-communal relations, also played a non-marginal role<sup>3</sup>.

In addition to internal factors, the strong Palestinian presence in Lebanon<sup>4</sup> contributed to the radicalisation of the underprivileged Muslims, threatened to subvert the fragile and tense inter-communal balance of the country and further «regionalised» Lebanese political life. Lebanon was also high on the agendas of the Middle East regional powers; the superpowers at the time, the US and the USSR, also played their part, mainly supporting their allies in the region.

In the years prior to the beginning of the civil war, tension progressively increased<sup>5</sup>. The rival camps, broadly speaking the Maronites against the so-called Muslim/leftists backed by the Palestinians, began arming themselves and establishing their own militias as well as pulling in their respective regional backers<sup>6</sup>. At the start, the civil war brought to the fore long simmering issues in the Lebanese polity<sup>7</sup>. The beginning of the civil war is conventionally linked to the killings in the Ain Rummane district in East Beirut on 13 April 1975. From that moment on, both sides attempted to gain control over territories perceived as their own. The fighting caused the progressive break-up of state institutions such as the army and the internal security force. After part of the Army joined the Muslim/leftists and the Palestinians, the defeat of the Maronites seemed imminent and was avoided by the military intervention of Syria in support of the latter. The diplomatic intervention of the Arab world, with the creation of the Arab Deterrence Force (which in time became a solely Syrian force), ended this phase of the civil war.

A further step in the regionalisation of the civil war was the full-scale invasion of Southern Lebanon by Israel in March 1978 («Operation Litani»). It ended three months later, following UN Security Council Resolution 425, with the

<sup>3</sup> O. Barak, *Intra-communal and Inter-communal Dimensions of Conflict and Peace in Lebanon*, in «International Journal of Middle East Studies», no. 34 (2002), pp. 619-644.

<sup>4</sup> Both refugees (from the 1948-1949 and 1967 wars) and guerrillas (in particular after the 1970 «Black September» in Jordan).

<sup>5</sup> The intensification of Palestinian guerrilla actions, Israel holding Lebanon responsible and the Lebanese state unable to restrain the guerrillas (without the risk of irreparably fracturing itself) contributed to further rendering the situation more tense.

<sup>6</sup> The Phalangist-dominated coalition of right-wing Maronite parties was called the Lebanese Front. The coalition to which the Muslim/leftists belonged, called the Lebanese National Movement, included Christians, too. The so-called Muslim/leftists were competing within their community (Sunni) against the traditional leaders. Arab states, although not consistently, sided with the Palestinians and the Muslim/leftists, whereas Israel (and sometimes some Arab states) aligned themselves with the Maronites.

<sup>7</sup> As indicated by the fact that the leading figures of the two main rival camps in 1975, K. Jumblatt and C. Chamoun, were the same as in the 1958 civil war.

partial withdrawal of Israel<sup>8</sup>. In June 1982, Israel started a full-scale invasion of Lebanon («Operation Peace in Galilee») and after a few weeks the Israeli Army, together with the Maronite Lebanese Forces, had besieged West Beirut<sup>9</sup>. After two months of huge human and materials loss, the siege was lifted. Under the supervision of a multi-national force (MNF), the Palestinian combatants were evacuated from Beirut, leaving behind their families, whose protection was guaranteed by the MNF; soon after, the MNF handed this duty over to the Lebanese Army and left. After the assassination of president-elect Bashir Gemayel on 14 September, Israelis and Phalangists entered West Beirut in violation of an agreement mediated by the US. Massacres in the Sabra and Shatila Palestinian refugee camps, which took place on 16-18 September and left hundreds dead and an unspecified number of disappeared<sup>10</sup>, prompted large protest in Israel and worldwide outrage<sup>11</sup>. A new MNF was dispatched to Lebanon with the mandate of protecting the civilian population. Israel would pull out of Lebanon in 1985, although not completely – it retained a «security zone», setting up a new South Lebanese Army. On 17 May 1983, Israel signed the Lebanese-Israeli peace treaty adopted by the Lebanese parliament the day before.

In the same period, two new actors (overlapping to a certain degree) emerged on the Lebanese political scene: the Shiite and Islamists<sup>12</sup>. Their ascent owed as much to internal as to external factors: the declining influence of the Sunnis; the suffering caused by the Israeli invasions and occupations, the Shiite being mainly based in the South; the decline of nationalism in the Middle East; and the support of Iran after the Islamic revolution in 1979.

Within the MNF, some of the troop-contributing states actively supported the Lebanese Army (under the orders of President Gemayel) fighting the Muslim forces<sup>13</sup>. Large-scale defections in the Lebanese Army caused its further break-up. After attacks by suicide bombers, allegedly belonging to the Islamic Jihad organisation, in February 1984 the second MNF left Lebanon. Without allies, President Gemayel sought a *rapprochement* with the internal opposition and Syria; less than one year after its adoption, the Lebanese Parliament abrogated the 17 May treaty.

The last phase of the war reflected the state of utter fragmen-

<sup>8</sup> The so-called «security zone» (mainly manned by the Israel-supported Christian Army of Free Lebanon) was to remain in place for twenty-two years.

<sup>9</sup> UN Security Council Resolution 509 asked for Israel's immediate and unconditional withdrawal (para. 1).

<sup>10</sup> Disappearance in this article refers to enforced and involuntary disappearance.

<sup>11</sup> Approximately a quarter of the dead were actually Shiite; see D. Hirsch, *Beware of Small States*, cit., p. 198.

<sup>12</sup> The Shiite, traditionally underprivileged and disenfranchised, gave expression both to secular entities (the Amal movement) and religious ones (typified by Hizbollah).

<sup>13</sup> By this time Gemayel had remained without the protection of the Israeli Army, which was in the process of gradually pulling back from Lebanon.

tation the country had plunged into; no external actor had been able to fully command its own peace<sup>14</sup>. Lebanon drifted towards a *bellum omnium contra omnes*, with possibly as many as 150 militias/factions, the state just being one of these actors and the country divided into several «cantons». The fighting did not have any clear political or military objective anymore, and once the dominant sects established control inside their cantons, intra-sectarian battles (mainly within the Shiite and Christian communities) intensified, at times encouraged by external actors<sup>15</sup>. In 1988, what was left of official state authority fell apart and two rival governments started competing for power, one based in East Beirut led by the Christian General Aoun and the other based in West Beirut. Aoun, with Iraqi support, launched his «war of liberation» from Syria.

Following the initiative of the Arab League, inspired by Saudi Arabia and approved by the US, the remaining members of the Lebanese Parliament elected in 1972 met in Ta'if, Saudi Arabia, and approved the National Reconciliation Charter (also known as the Ta'if Agreement), amending the foundational documents of the confessional state<sup>16</sup>. It postulated the abolition of political sectarianism as a final objective, but at the same time institutionalised confessional compromise again<sup>17</sup>. It provided, *inter alia*, for a fairer distribution of power between the communities in terms of the ratio of parliamentary seats and the competencies of the main institutional bodies. In this respect the civil war produced a different formulation of the power-sharing formula, without questioning its fundamental logic<sup>18</sup>. The Ta'if Agreement recognised the role of Syrian forces in Lebanon.

The government led by General Aoun was the only party which refused to recognise the Ta'if Agreement and kept asking for Syrian withdrawal. This led to the last episode, one of the bloodiest, of infighting within the Christian camp: the «war of the brothers». In the end, Aoun's resistance was crushed in one day by the Syrian forces allied with the Christian Lebanese Forces, his erstwhile allies during the «war of liberation». The Army started dismantling the «Green Line» established in Beirut in 1975. After more than fifteen years, an uncountable number of truces and ceasefires, 3,641 car bombs, more than 140,000 dead, many more wounded and displaced, thousands

<sup>14</sup> The ones who got closer to it, the Syrians, could not be said to have pacified the country.

<sup>15</sup> Intra-sectarian battles were part of the conflict almost from the very beginning. By way of illustration, they were an integral element of Bashir Gemayel's efforts to gain the leadership of the Maronite community. In 1987, the Maronite camp was divided into eight factions. Social mobility and geographical provenance also played important roles. On the other front, apart from fighting between Sunnite and Shiite militias, it is worth mentioning the fighting between Amal and Hizbullah in the South and the «war of the camps» between the Shiite Amal and the Palestinian guerrillas supported by the Druze. Infighting took place within the Palestinian camp as well.

<sup>16</sup> The 1926 Constitution (amended in 1946) and the unwritten 1943 National Pact. For an English language translation of the Ta'if Agreement, sometimes also rendered as the Document of National Accord, see D. Hiro, *Lebanon: Fire and Embers*, cit., pp. 231-240.

<sup>17</sup> Then translated into domestic law, see the Lebanese Constitution, Article 95, as amended by the Constitutional Law of 21 September 1990.

<sup>18</sup> M.-J. Zahar, *Power Sharing in Lebanon: Foreign Protectors, Domestic Peace and Democratic Failure*, in P.G. Roeder and D. Rothchild (eds.), *Sustainable Peace: Power and Democracy After Civil Wars*, New York, Cornell University Press, 2005, pp. 219-240; H. Krayem, *The Lebanese Civil War and The Taif Agreement*, in P. Salem (ed.), *Conflict Resolution in the Arab World: Selected Essays*, Beirut, American University of Beirut, 1997, at <http://ddc.aub.edu.lb/projects/pspa/conflict-resolution.html> (10 June 2011).

of disappeared, and immense material and immaterial cost, the civil war was finally over<sup>19</sup>.

## 2. The Years of Darkness: Disappearing in Lebanon During the Civil War

It should be premised that, compared to most recent conflicts, information on human rights violations/abuses during the Lebanese civil war is more scant and less precise<sup>20</sup>. Nonetheless, it is known that the Lebanese civil war was characterised by gross human rights violations/abuses committed by governments and militias exercising effective control over regions or areas. It was not always possible to determine which militia (acting independently or by proxy) or army was responsible for the violations nor if the acts were politically motivated<sup>21</sup>.

Lebanon became one of the sad pioneers of contemporary inter-communal (and intra-communal) fighting, with «flying roadblocks» springing out suddenly and «identity card checking» resulting in killings/kidnappings. Individuals and sometimes entire families disappeared at roadblocks, kidnapped by different armies and militias<sup>22</sup>. Others were abducted at home or in the streets. Disappearances were systematically practiced during the civil war. Bloody retribution became common, leading to a cycle of periodic massacres, mainly targeting civilians. Extreme violence fit into a larger scheme: to establish clear control over enclaves, rendering them mono-communal<sup>23</sup>. Other disappearances aimed at taking hostages or getting ransoms. Large-scale arbitrary detentions, extra-judicial executions and disappearances took place against a background of classic warfare, massive cross-city artillery bombings, use of snipers and car bombs, all of which wrecked havoc on Beirut and the rest of the country, and resulted in massive displacement of populations and flight from the country.

The practice of abductions resulting in disappearance started in 1975 and was used by almost all militias throughout the conflict, with peaks at particular periods of the conflict. Regular armies used it as well. While it is widely assumed that some of the disappeared were killed, others were detained in Lebanon or transferred to Syria and Israel<sup>24</sup>.

In 1992 the Lebanese government stated that 17,415 people

<sup>19</sup> The official figures are reported in *Lebanon: The Terrible Tally of Death*, in «The Times», 23 March 1992 (<http://www.time.com/time/magazine/article/0,9171,975156,00.html>, 25 July 2011). All figures of the civil war, including the number of victims of specific episodes, are disputed.

<sup>20</sup> Current major international human rights NGOs were either not established at that time or not able (due to the difficulty of investigating on the ground or the lack of available information) to devote an individual entry to Lebanon into their annual reports. The first entry by Amnesty International was in its 1983 Annual Report. At the same time, bodies such as the UN Charter based Working Group on Enforced or Involuntary Disappearances (WGEID) – a Special Procedure created in 1980 by the then Human Rights Commission with a humanitarian mandate – had been working only on cases brought to their attention, therefore their information can be said to be only partially representative of the general situation.

<sup>21</sup> Amnesty International, *Report 1985*. All documents by Amnesty International are accessible at [www.amnesty.org](http://www.amnesty.org).

<sup>22</sup> Amnesty International, *Lebanon: Commission of Inquiry into «Disappearances» Must Be Effective and Public*, 26 January 2000.

<sup>23</sup> D. Hiro, *Lebanon: Fire and Embers*, cit., p. 34; D. Hirsch, *Beware of Small States*, cit., pp. 110-111, 192; J. Sarkis, *Histoire de la guerre du Liban*, cit., p. 31.

<sup>24</sup> Amnesty International, *Lebanon: Human Rights Developments and Violations, 1997*; Human Rights Watch, *Syria/Lebanon: An Alliance before the Law, 1997*. All documents by Human Rights Watch are available at [www.hrw.org](http://www.hrw.org).

<sup>25</sup> Amnesty International, *Report 2008*; Amnesty International, *Report 1984*.

<sup>26</sup> Lebanese Center for Human Rights, *Lebanon: Enforced Disappearances and Incommunicado Detention* (hereinafter, *Disappearances*), 2008, at [http://solida.org/Rapports%20et%20communiqués/Rapports/english/CLDH%20Enforced%20Disappearances\\_EN%202008.pdf](http://solida.org/Rapports%20et%20communiqués/Rapports/english/CLDH%20Enforced%20Disappearances_EN%202008.pdf) (3 July 2011).

<sup>27</sup> In this section we will mainly focus on international human rights law, making passing references to international humanitarian law and international criminal law. The first sub-section concerns the taking shape of international and regional human rights frameworks on the issue of disappearances. In the second section, we will examine the standard-setting and interpretative work of pertinent bodies as well as relevant case law related to the right to the truth (with the corresponding state's duty to investigate) and the state's duty to preserve collective memory of past atrocities within the broader context of victims' rights. The article does not deal with the states' duty to prosecute the violations under discussion.

<sup>28</sup> See Manfred Nowak, independent expert charged with examining the existing international criminal and human rights framework for the protection of persons from enforced or involuntary disappearances, pursuant to paragraph 11 of Commission Resolution 2001/46, E/CN.4/2002/71 (2002).

<sup>29</sup> Doc. A/61/488 (2006).

<sup>30</sup> Leaving aside the states that ratified the Inter-American Convention on Forced Disappearance of Persons, see below.

<sup>31</sup> UNTS I-17512, Part II, Section III. The prohibition of enforced disappearances and the duty to investigate them are now considered to be part of customary international humanitarian law according to the study on international humanitarian law conducted by the International Committee of the Red Cross (<http://www.icrc.org/customary->

disappeared during the civil war, of whom almost 14,000 were Lebanese nationals; already well before the war's end, fear about the fate of those unaccounted for intensified<sup>25</sup>. Some have maintained that the figures given by the government were inflated, in part because families reported the same disappearance to more than one police station; this phenomenon was allegedly accentuated by the displacement of a large number of people. It was also claimed that families had often not reported to the authorities the eventual release of the disappeared or the handing over of mortal remains<sup>26</sup>.

### 3. International Standards on Disappearances, Right to the Truth and Public Remembrance<sup>27</sup>

#### 3.1. Disappearances: The Emergence and Consolidation of a Legal Framework

Enforced disappearance is one of the most serious human rights violations and, under certain conditions, constitutes a crime against humanity<sup>28</sup>. Until the adoption of the International Convention on Enforced Disappearances (hereinafter ICED) in 2006<sup>29</sup>, there was no specific right not to be subjected to enforced disappearance in general human rights treaties. Until that time, and still now for those states which are not parties to the ICED<sup>30</sup>, enforced disappearance has been construed as multiple human rights violations, although seemingly with no consistent agreement on which rights are actually violated. Moreover, this qualification depends on precise facts, which is exactly what is lacking in most cases.

In international humanitarian law, the issue of missing persons is dealt with in the Protocol Additional to the Geneva Conventions relating to the protection of victims of international armed conflicts (Protocol I) adopted in 1977, with its entry into force the following year<sup>31</sup>. By that time the phenomenon had become widespread and the figures had swelled; the only human rights instrument dealing with it, although not directly, had been the International Covenant on Civil and Political Rights (ICCPR)<sup>32</sup>. The ICCPR does not contain any specific provision related to disappearances, but

ihl/eng/docs/v1\_rul\_rule98, 27 July 2011).

<sup>32</sup> ICCPR, 999 UNTS 171. The ICCPR was adopted in 1966 and entered into force in 1976; its implementation is monitored by the Human Rights Committee (hereinafter HRC).

<sup>33</sup> E/CN.4/2002/71 (2002), para. 17.

<sup>34</sup> A/RES/47/133 (1992).

<sup>35</sup> A/CONF.157/23 (1993), para. 62.

<sup>36</sup> Office of the United Nations High Commissioner for Human Rights (hereinafter OHCHR), *Enforced or Involuntary Disappearances*, Fact Sheet No. 6/Rev. 3 (2009). All documents by the UN Charter and Treaty based bodies are available at [www.ohchr.org](http://www.ohchr.org).

<sup>37</sup> The Convention, *OAS Treaty Series No. 68*, was adopted in 1994 and entered into force in 1996. NGOs were instrumental in the drafting and adoption of the Declaration and the Inter-American Convention on Forced Disappearance of Persons through their intense lobbying; the drafting processes were almost simultaneous and, at different moments, reinforced each other. R. Brody, F. González, *Nunca Más: An Analysis of International Instruments on «Disappearances»*, in «Human Rights Quarterly», vol. 19.2 (1997), pp. 365-405.

<sup>38</sup> UN Doc. A/CONF.183/9 (1998); the Rome Statute entered into force in 2002. This kind of gross human rights violations was included under the rubric of crimes against humanity, when committed as part of a widespread or systematic attack against civilians, with knowledge of the attack. The attack must be committed pursuant to or in furtherance of a state or organisational policy (Article 7).

<sup>39</sup> A monitoring mechanism, also entrusted with sending urgent communications to states, is established (Part II). The Convention entered into force in 2010; the number of state parties has not been particularly high so far.

lists several rights that may be potentially violated by this act<sup>33</sup>. In 1992 the UN General Assembly adopted the Declaration on the Protection of All Persons from Enforced Disappearance (hereinafter Declaration)<sup>34</sup>, which is not legally binding and contains a preambular working definition of enforced disappearance. It considers enforced disappearance a cumulative human rights violation constituting a continuing offence until the fate and whereabouts of the disappeared are not clarified; it also places limits on statutes of limitation (Articles 2, 17). The Declaration lists several state obligations, among which are those to investigate and bring perpetrators to justice (Articles 13, 14). The Working Group on Enforced or Involuntary Disappearances (WGEID) assumed the task of monitoring states' compliance with the Declaration. The 1993 Vienna World Conference on Human Rights commended its adoption, reminding states of their duties<sup>35</sup>; since then the Commission on Human Rights and its successor, the Human Rights Council, have adopted resolutions along the same lines<sup>36</sup>.

At the regional level, the Inter-American Convention on Forced Disappearance of Persons, adopted in 1994, was the first legally binding instrument adopted on this issue<sup>37</sup>. In international criminal law, the adoption of the Rome Statute further strengthened the legal framework on enforced disappearances<sup>38</sup>.

The process of giving a solid legal foothold to the right not to be subjected to disappearance culminated in the adoption of the ICED in 2006. Article 2 provides a definition of enforced disappearance, according to which the perpetrators are state agents or persons or groups authorised/supported by the state, also through acquiescence (as in the Declaration). The term of limitation begins from when the disappearance ceases; universal jurisdiction applies (Articles 8, 9). Any individual who suffered from a disappearance is considered a victim and the right to the truth is stipulated (Article 24): the Convention is the first international human rights instrument to explicitly set this right out<sup>39</sup>.

### 3.2. The Right to the Truth and Preservation of Memory

The right to the truth is considered an emerging right in international human rights law, with both an individual (mainly concerning the direct victims and the next of kin) and a

societal dimension. In recent years the OHCHR has devoted considerable efforts to elucidating the nature of this right<sup>40</sup>. What emerges from this analysis is that the right to the truth is evolving and must be seen as linked to other rights (such as that to an effective remedy), which are mirrored in corresponding obligations of states (to investigate and to preserve memory, *inter alia*).

The United Nations has been among the actors most engaged in defining this right and its contours. The emergence of the right to the truth can be seen at the convergence of two parallel processes that began in the late 1980s, when the then United Nations Sub-Commission on Prevention and Discrimination and Protection of Minorities embarked on studies aimed at combating impunity and strengthening victims' rights to reparation.

On combating impunity, the process was completed in 2005 with the adoption of the Updated Set of Principles to Combat Impunity<sup>41</sup>. Principles 2 to 5 are devoted to the right to know both for victims and society at large. The right of victims to know the circumstances of the violation and, in the case of disappearance, also the fate, is defined as imprescriptible. States have a duty to take measures aimed at preserving the collective memory.

The process of defining victims' rights through draft principles was completed in 2005 with the adoption by consensus by the General Assembly of a resolution on reparation principles<sup>42</sup>. The principles list restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition as forms of reparation. The right to the truth is listed under the category of satisfaction (para. 22), which also includes commemorations and tributes to the victims; access to relevant information on the violations is also provided for (para. 24).

UN bodies, such as the General Assembly (since 1974), the Security Council and the Secretary General have frequently addressed issues related to the right to the truth in the recent past. The latter has underlined the importance of truth in post-conflict societies<sup>43</sup>. Among the UN Charter based mechanisms, the Human Rights Commission and subsequently the Human Rights Council have adopted several resolutions recognising the importance of the right to the truth<sup>44</sup>. The Special Procedures have also dealt with this issue; among them, the

<sup>40</sup> OHCHR, *Study on the Right to the Truth*, E/CN.4/2006/91 (2006), and its follow-up report, A/HRC/5/7 (2007). See also the Rule-of-law tools dealing with post-conflict societies, in particular those on truth commissions (2006), on reparation programmes (2008), amnesties (2009), national consultations on transitional justice (2009).

<sup>41</sup> E/CN.4/2005/102/Add.1 (2005).

<sup>42</sup> UN Doc. A/RES/60/147 (2005). The Resolution was adopted 20 years after a previous one by the General Assembly, where access to justice, restitution, compensation and assistance were listed among victims' rights, without mention of the right to the truth, UN Doc. A/RES/40/34 (1985), paras. 4-17. On victims' rights, see: S.R. Ratner, *New Democracies, Old Atrocities. An Inquiry in International Law*, in «Georgetown Law Journal», vol. 87, February 1999, pp. 707-748 (in particular pp. 730-731); R. Pisillo Mazzeschi, *Reparation Claims by Individuals for State Breaches of Humanitarian Law and Human Rights: An Overview*, in «Journal of International Criminal Justice», no. 1, 2003, pp. 339-347; N. Roht-Arriaza, *Reparations Decisions and Dilemmas*, in «Hastings International and Comparative Law Review», no. 27, Winter 2004, pp. 157-219; M. Sassöli, *Reparation*, in V. Chetail (ed.), *Post-Conflict Peacebuilding: A Lexicon*, New York, Oxford University Press, 2009, pp. 279-290. According to the latter author, the trend in post-conflict situations is clearly moving toward reparation, but so far more in international discourse than in reality.

<sup>43</sup> S/2004/616 (2004).

<sup>44</sup> See, for instance, A/HRC/12/L.27 (2009).



WGEID has referred to it in several General Comments. In the WGEID's view, this right is now widely recognised in international law as an autonomous right, both in the international legal framework (humanitarian law and human rights law) and in state practice. The right is an individual and a collective one. The right to know the fate and whereabouts is absolute, but the right to know the circumstances of the disappearance is not<sup>45</sup>. The obligation to investigate is one of means, not of result; states should use methods of identification to the maximum of their resources<sup>46</sup>. According to the WGEID, enforced disappearance is a consolidated act and not a combination of acts; in case the act took place before the entry into force of a treaty, if parts of the violation are still continuing the obligation to clarify fate and whereabouts remains<sup>47</sup>. The WGEID also asserted that clemency measures should not infringe on victims' right to the truth<sup>48</sup>.

Other Special Procedures, such as the Special Rapporteur on the independence of judges and lawyers, have stressed the importance of the right to the truth, to the point of considering it part of customary international law<sup>49</sup>.

Interpretations of treaties as well as decisions by human rights bodies and courts at both the universal and the regional levels have also been increasingly referring to the right to the truth. With regard to the ICCPR, it should be kept in mind that the Covenant does not explicitly deal with disappearances, therefore also references by the HRC on rights and freedoms that can possibly be violated by the disappearance, such as freedom from torture and from arbitrary detention, become relevant<sup>50</sup>. The HRC maintained that the prohibitions against taking of hostages, abductions or unacknowledged detention are not subject to derogation, because they represent norms of general international law<sup>51</sup>. The HRC asked states to establish effective facilities and procedures to thoroughly investigate cases of disappearances when a violation of the right to life may be involved<sup>52</sup>. According to the HRC, states are under the obligation to investigate allegations of violations (also committed by private persons or entities) promptly, thoroughly and effectively through independent and impartial bodies; the cessation of an ongoing violation is an essential element of the right to an effective remedy. In the case of enforced disappearances (violation of Articles 7 and, frequently, 6), there is also

<sup>45</sup> General Comment on the Right to the Truth in Relation to Enforced Disappearances, A/HRC/16/48 (2011), G. 39, paras. 4, 8.

<sup>46</sup> General Comment on the Right to the Truth in Relation to Enforced Disappearances, A/HRC/16/48 (2011), G. 39, para. 5.

<sup>47</sup> General Comment on Enforced Disappearance as a Continuous Crime, A/HRC/16/48 (2011), G. 39, para. 2.

<sup>48</sup> General Comment on Article 18 of the Declaration, E/CN.4/2006/56 (2006), para. 49, sub-para. 2-3.

<sup>49</sup> E/CN.4/2006/52 (2006), paras. 14-39.

<sup>50</sup> Not all rights potentially violated by disappearances will be considered here, but we will mainly refer to pronouncements by the HRC either directly related to disappearances or to remedies to redress serious human rights violations. For a general presentation, see S. Joseph, J. Schultz, M. Castan, *The International Covenant on Civil and Political Rights. Cases, Materials and Commentary*, New York, Oxford University Press, 2004, in particular with reference to the right to life (pp. 154-184) and freedom from torture and rights to human treatment (pp. 194-219, 252-256, 260-265). On the difference between duty to investigate and duty to prosecute, see A. Seibert-Fohr, *The Fight against Impunity under the International Covenant on Civil and Political Rights*, in «Max Planck Yearbook of United Nations Law», vol. 6, 2002, pp. 301-433 (in particular, pp. 328, 343).

<sup>51</sup> CCPR, General Comment No. 29, UN Doc. CCPR/C/21/Rev.1/Add.11 (2001), para. 13.b.

<sup>52</sup> CCPR, General Comment No. 6 (1982), para. 4.

<sup>53</sup> CCPR, General Comment No. 31[80], CCPR/C/21/Rev.1/Add.13 (2004), paras. 8, 15, 16, 18. For similar comments on freedom from torture, also committed by not-state actors, see CCPR, General Comment No. 20, paras. 14-15. As to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT, 1465 UNTS 85, adopted in 1984 and entered into force in 1987), see CAT Committee, General Comment No. 2, Implementation of Article 2 by State Parties, CAT/C/GC/2, paras. 5, 18.

<sup>54</sup> E/CN.4/2006/91 (2006), para. 26.

<sup>55</sup> Communication No. 30/1978 (1982), para. 15.

<sup>56</sup> Communication No. 107/1981 (1983), paras. 13-16. See also Communication No. 563/1993 (1995), para. 8.2 (purely disciplinary and administrative remedies do not constitute adequate and effective ones) and Communication No. 540/93 (1996), para. 10 (perpetrators have to be brought to justice despite any contrary domestic legislation). See also E/CN.4/2002/71 (2002), para. 21.

<sup>57</sup> Communication No. 1196/2003, 27 April 2006, para. 11; Communication No. 1588/2007 (2010), paras. 9.2, 11.

<sup>58</sup> CCPR/C/79/Add.95 (1998), para. 10; CCPR/C/79/Add.113 (1999), para. 10; CCPR/CO/84/SYR (2005), para. 8; CCPR/C/BIH/CO/1 (2006), para. 14; CCPR/C/ESP/CO/5 (2009), para. 9.

<sup>59</sup> 1144 UNTS 123 (adopted in 1969 and entered into force in 1978).

<sup>60</sup> 213 UNTS 222 (adopted in 1950 and entered into force in 1953).

<sup>61</sup> E/CN.4/2002/71 (2000), paras. 26-38.

<sup>62</sup> In the «Srebrenica cases», for instance, the Chamber also ordered measures of satisfaction concerning collective memory, CH/01/8365 *et al* (2003), paras. 220.3, 220.8 and 220.10.

<sup>63</sup> See, for example, *Barrios Altos v. Peru*, Merits, Judgment, Inter-Am. Ct. HR, ser. C, no. 87, 30 November 2001, sub-paras. 44.e and 44.f. See

the obligation to bring those responsible to justice, despite amnesties. Measures of satisfaction for the victims include public apologies and public memorials<sup>53</sup>.

In its final views on individual communications, the HRC has expressly recognised the right to the truth for families of victims of enforced disappearances<sup>54</sup>. The two leading cases regarding the question of «disappearances» were considered by the HRC in 1978 and 1979. In the first case the HRC urged, *inter alia*, the state to investigate and to bring to justice those responsible<sup>55</sup>. In the second case the HRC also recognised that the mother of the victim had the right to know what happened to her daughter and considered that she had to be regarded as a victim as well<sup>56</sup>. In more recent cases, the HRC stressed, *inter alia*, the obligation of the concerned state to provide (adequate) information on the results of its investigations; the HRC has also asked for investigations and prosecutions despite the adoption of clemency measures by the state<sup>57</sup>. Similar points have been stressed by the HRC in Concluding Observations, although more often referring to the state's duty to investigate and generically to victims' rights than specifically to the right to the truth<sup>58</sup>.

At the regional level, the jurisprudence has been developing since the late 1980s in the American continent and since the late 1990s in the European region. Neither the American Convention on Human Rights<sup>59</sup> nor the European Convention on Human Rights<sup>60</sup> provides a right not to be «disappeared»<sup>61</sup>. The Commission and the Court of the Inter-American human rights system and the European Court of Human Rights have recognised victims' right to the truth, although with different accents and, in the case of the latter, inferring it from other rights (such as that to an effective remedy) and states' duties (such as that to investigate). The lack of proper investigation into the facts related to the disappearance has also been considered a continuing violation of the respondent states. The Human Rights Chamber for Bosnia and Herzegovina, applying the European Convention of Human Rights, further contributed to the recognition of this right<sup>62</sup>. The Inter-American Court has been particularly innovative with regard to ordering measures of satisfaction, some related to the preservation of public memory, such as building memorials or re-naming streets or schools<sup>63</sup>. In

another regional context, the African Commission on Human and Peoples' Rights has recognised access to the factual information related to the violation as part of the right to an effective remedy<sup>64</sup>.

At the domestic level, the issue of truth has been considered, directly or indirectly, in countries transitioning from conflict or an authoritarian past<sup>65</sup>. Truth-searching mechanisms (among them, truth commissions), domestic trials (sometimes decades after the events), together with creative judicial initiatives (such as the so-called «truth trials» in Argentina to bypass amnesty laws) have contributed to giving a more solid footing to the right to the truth. In certain cases the right has been enshrined in national legislation. Some states have also adopted measures related to collective memory, such as establishing archives and guaranteeing public access to them, transforming previous torture places into museums/memorials, or observing days of remembrance. At the same time, the adoption of amnesties or exemptions from prosecution as well as the lack of disclosure of information alleging protection of national security still remain tools used by states, although seemingly less frequently than in the past.

Finally, the creation of *ad hoc* international tribunals and later the establishment of the International Criminal Court have, among other things, strengthened, sometimes indirectly, the position of the right to the truth.

In sum, under international human rights law, it seems that the right to the truth, often linked to reconciliation processes, has been gradually evolving with the broader category of the right to reparation for gross human rights violations, such as enforced disappearances<sup>66</sup>. An expansion of the potential right-holders and material scope of the right can be discerned. Among those entitled to the right, victims and their relatives are to be listed among them; more recently, frequent mention is also made to the collective side of the right, considering society as a right holder. As far as society as a whole is concerned, initiatives have mainly focused on archives, commemorations and memorials. As to its content, the core of the right has historically focused on the fate and whereabouts of disappeared persons, but its material scope seems to be expanding, with increasing references being made to the causes and the circumstances of the events and the identity of the perpetrators.

also B.M. Swart, *Name Changes as Symbolic Reparation after Transition: The Examples of Germany and South-Africa*, in «German Law Journal», vol. 09, no. 02, 2008, pp. 105-121 (in particular, pp. 108-110); J.M. Pasqualucci, *The Whole Truth and Nothing but the Truth: Truth Commissions, Impunity and the Inter-American Human Rights System*, in «Boston University International Law Journal», Vol. 12, No. 321, 1994, pp. 330-370 (in particular, pp. 330-333). In 2010 the Organization of American States adopted a resolution on the right to the truth, AG/RES. 295 (XL-O/10).

<sup>64</sup> African Union DOC/OS(XXX)247 (2001), Principle C, paras. a)4 and b)3.

<sup>65</sup> T.A. Borer (ed.), *Telling the Truths: Truth-Telling and Peace Building in Post-Conflict Societies*, New York, University of Notre Dame Press, 2006; M. Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence*, Boston, Beacon Press, 1999; D. Orentlicher, *Independent Study on Best Practices, Including Recommendations, to Assist States in Strengthening Their Domestic Capacity to Combat All Aspects of Impunity*, E/CN.4/2004/88 (2004) (hereinafter *Independent Study*), paras. 14-23.

<sup>66</sup> E/CN.4/2002/71 (2002), para. 79. The analysis in the report is as of 2001; further developments have been considered in this article.

<sup>67</sup> Y. Navqi, *The Right to the Truth in International Law: Fact or Fiction?*, in «International Review of the Red Cross», vol. 88, no. 862, June 2006, pp. 245-273; the right to the truth would lie somewhere above a good argument and below a clear legal rule (p. 273).

<sup>68</sup> See P. Trumbull, *Giving Amnesties a Second Chance*, in «Berkeley Journal of International Law», vol. 25.2, 2007, pp. 283-345; M.P. Scharf, *Accountability for International Crimes and Serious Violations of Fundamental Human Rights: The Letter of the Law: The Scope of the International Legal Obligation to Prosecute Human Rights Crimes*, in «Law and Contemporary Problems», vol. 59, Autumn 1996, pp. 41-61 (in particular, pp. 60-61); R.I. Rotberg, D. Thompson (eds.), *Truth v. Justice. The Morality of Truth Commissions*, Princeton, Princeton University Press, 2000.

<sup>69</sup> This article focuses on Lebanese efforts in discovering the truth; the actions taken by other states will only be referred to sporadically. It is certain that cases of disappearances attributable to foreign states cannot be solved without their cooperation. In any case, it should be mentioned that there is broad agreement that the overwhelming majority of the disappearances was committed by militias and that many of the victims were killed and their bodies disposed of in Lebanon.

<sup>70</sup> Amnesty International, *Report 1985*.

<sup>71</sup> Amnesty International, *Lebanon: Commission of Inquiry into «Disappearances» Must Be Effective and Public*, cit.

<sup>72</sup> Amnesty International, *Never Forgotten: Lebanon's Missing People* (hereinafter, *Never Forgotten*), April 2011; Amnesty International, *Human Rights Developments and Violations* (hereinafter, *Human Rights*), 1997.

<sup>73</sup> Law 84/91 of 26 August 1991, Article 3.2. Amnesty International, *Human Rights*, cit.

<sup>74</sup> Human Rights Watch, *Report 1995*.

Ultimately, it seems premature to assert that the right to the truth, its holders and its precise content are firmly grounded in existing international law; nevertheless, the trend seems to suggest the emergence of a customary right, although with not perfectly marked contours<sup>67</sup>. In parallel, the increasing consensus on the inadmissibility of sweeping or blanket clemency measures (like those forbidding not only prosecutions, but also more generally investigations) and the less critical views expressed on conditional amnesties, such as that applied in South Africa, seem to implicitly reinforce the recognition of the right to the truth<sup>68</sup>.

## **4. Lebanon Searching for Its Disappeared and Remembering the Civil War: A Long Story Still Without an End**

### **4.1. Steps Taken by Lebanon**

It must be said that not much is known about formal efforts made by the Lebanese authorities to uncover the truth concerning the disappearances that occurred during the internal conflict – still less, obviously, about informal initiatives, if any. The most recent efforts as well as those in the early 1980s have been characterised by strict confidentiality, which renders difficult a proper assessment<sup>69</sup>.

In 1984, 1985 and 1987, the Lebanese government established special committees to look into the issue of disappearances. The only known result was the release of the names of 764 detainees by the Lebanese authorities<sup>70</sup>. No report by these committees was ever made public<sup>71</sup>.

In 1991 a police report set the number of disappeared at 17,415, of whom 13,968 were Lebanese<sup>72</sup>. In August 1991 the Parliament passed an amnesty law for all politically motivated crimes and other crimes committed before 28 March 1991; abductions and hostage-taking are covered by the amnesty, but other crimes, notably killings or attempted killings of religious clerics, political leaders and Arab or foreign diplomats, are not<sup>73</sup>. Selective prosecutions for crimes committed during the civil war took place; those prosecuted were members of specific political groups<sup>74</sup>. In May 1995 a

law on procedures to declare the death of those disappeared was adopted<sup>75</sup>.

In January 2000 a commission was established (Official Commission of Investigation into the Fate of the Abducted and Disappeared Persons, hereinafter Commission)<sup>76</sup>. It received 2,046 applications from the families of the victims and after six months made its conclusions public: none of the disappeared was alive in Lebanon; the families should declare the disappeared as dead. Lists of disappeared were also sent to Israel through the International Committee of the Red Cross (216 cases) and Syria (168 cases), which denied any knowledge of them. The Commission's report was never published; only a three-page summary was released. The existence of mass graves was acknowledged: the Commission specifically mentioned three burials sites and more generally other areas (including the sea) where the bodies of those disappeared could be located. In February 2001 another Commission was set up: it received around 700 cases and its mandate was extended for six months. Its final results were never disclosed<sup>77</sup>. In May 2005 a Joint Syrian-Lebanese Committee was established with the task of investigating the fate of more than 600 disappeared, allegedly in Syrian custody. The body was supposed to deliver its report to the Council of Ministers<sup>78</sup>; its final results or conclusions have never been made public. This is the last body known to have been charged with clarifying the fate of (at least some) of the disappeared.

In general, no known measures have been taken to protect the sites of mass graves<sup>79</sup>. In 2005 two mass graves were discovered<sup>80</sup>. In November 2005, the remains of 24 military personnel were discovered close to the Ministry of Defence in al-Yarze. This was the only mass grave where exhumations and DNA tests are known to have been conducted thus far<sup>81</sup>.

On 25 May 2008, in his inaugural speech, President Suleiman stated the need to work wholeheartedly to reveal the fate of the disappeared<sup>82</sup>. On 4 August 2008, the government adopted a ministerial declaration pledging to take steps to uncover the fate of the disappeared and to ratify the ICED, but no known initiative has followed<sup>83</sup>. The executive and the legislative have recently shown a few signs of renewed commitment, but no specific concrete action seems to have been taken. Two 2009 court decisions might have broken some ground on this issue:

<sup>75</sup> Law 434 of May 1995.

<sup>76</sup> Prime Ministerial Decision No. 60/2000 of 21 January 2000.

<sup>77</sup> Decree No. 1/2001 (signed by the Prime Minister on 5 January 2001. Amnesty International, *Report 2002*; Amnesty International, *Report 2003*.

<sup>78</sup> WGEID, *Report 2005*.

<sup>79</sup> Amnesty International, *Never Forgotten*, cit.; Amnesty International, *Report 2001*; Lebanese Center for Human Rights, *Disappearances*, cit.; Human Rights Watch, *Lebanon: Ruling Aids Families of «Disappeared»* (hereinafter *Ruling*), 4 November 2009.

<sup>80</sup> Amnesty International, *Report 2006*.

<sup>81</sup> Amnesty International, *Lebanon Must Investigate All Civil War Mass Grave Sites*, 25 November 2009. In 2009 the remains of the British journalist Alex Collett, kidnapped in 1985, were discovered and identified by British experts (Amnesty International, *Lebanon: Submission to the UN Universal Period Review*, April 2010).

<sup>82</sup> At <http://www.presidency.gov.lb/English/President/Pages/Inaugural-speech.aspx> (29 June 2011).

<sup>83</sup> Human Rights Watch, *Report 2009*.

one stated that disappearances as continuous crimes are not covered by the 1991 amnesty law; the other ordered the authorities to provide it with the confidential findings of the 2000 Commission<sup>84</sup>. Allegedly, the Council of Ministers then provided the Court with a short document on mass graves<sup>85</sup>. Very recently DNA analysis started being used<sup>86</sup>.

Some detainees have reportedly been freed by Syria (1998, 2000 and 2009) and Israel (2000, 2001 and 2004). In addition, the former returned to Lebanon the body of a Lebanese citizen who disappeared in 1990<sup>87</sup>; the latter allegedly handed over bodies of some disappeared to their families in 2004<sup>88</sup>. No other initiatives are known to have been taken by these two states to date.

As regards the duty to preserve the memory of the disappeared (and more generally of the victims of human rights violations related to the civil war) and to properly commemorate them, no specific action has been taken by the Lebanese state up to now. No remembrance day has been set; neither memorials nor museums concerning the civil war have been built or designated<sup>89</sup>.

#### 4.2. Assessment of Initiatives and Actions Undertaken by Lebanon

Before turning to an assessment of Lebanon's initiatives by human rights bodies and international NGOs, it bears mentioning that Lebanon is a state party to the ICCPR (in force in Lebanon since 1976), but not to its Optional Protocol on Individual Communication (ICCPR - OP 1)<sup>90</sup>. Lebanon acceded to the CAT in 2000, but its initial report has been overdue since 2001. Lebanon signed the ICED, but has not ratified it. At the regional level, Lebanon has not ratified the Arab Charter on Human Rights. With regard to international criminal law, Lebanon ratified the Genocide Convention in 1953<sup>91</sup>; Lebanon is not a state party to the Rome Statute of the International Criminal Court. As regards international humanitarian law, Lebanon acceded to the Protocol I and Protocol II Additional to the Geneva Conventions in 1997.

With regard to UN Charter based mechanisms, Lebanon's human rights record was discussed under the Universal Periodic Review in November 2010. In its report, Lebanon

<sup>84</sup> Amnesty International, *Report 2010*; Human Rights Watch, *Ruling*, cit. Allegedly in 2001 and 2003 two courts considered the amnesty law not applicable to cases of disappearances because of the continuing nature of the crime, see Lebanese Centre for Human Rights, *Disappearances*, cit.

<sup>85</sup> Amnesty International, *Report 2011*.

<sup>86</sup> Amnesty International, *Never Forgotten*, cit.

<sup>87</sup> Human Rights Watch, *Syria: Account for the «Disappeared»*, 8 November 1999.

<sup>88</sup> Lebanese Centre for Human Rights, *Disappearances*, cit.; S. Dockery, *Reports Emerge of Lebanese Freed from Syrian jails*, in «The Daily Star», 24 June 2009.

<sup>89</sup> The initiatives taken by civil society will be presented in the next section of the article.

<sup>90</sup> 999 UNTS 302 (adopted in 1966 and entered into force in 1976).

<sup>91</sup> 78 UNTS 277 (adopted in 1948 and entered into force in 1951).

announced its intention to accede to the ICED, to honour the memory of the disappeared, to promote national reconciliation and respect the rights of families of victims to know. It also declared that it was going to consider establishing a national body on the issue of disappearances<sup>92</sup>. During the discussion of the report, Lebanon asserted that involuntary disappearances from the wars had still to be addressed (para. 11). Mexico recommended the establishment of an independent national body to investigate the whereabouts of the disappeared and, in addition, Germany recommended creating a DNA database and exhuming mass graves<sup>93</sup>. Among the Special Procedures of the then Human Rights Commission, and presently of the Human Rights Council, the WGEID transmitted its first case to the government of Lebanon in 1982<sup>94</sup>. Lebanon started being featured as an individual country entry in WGEID's reports the following year. As of 2010, out of 320 cases transmitted, 312 remained pending; the majority of them concern disappearances that occurred in 1982-1983.

As far as UN treaty bodies are concerned, the HRC considered Lebanon's initial report in 1983 (due in 1977): the delay was caused by the ongoing internal conflict. The HRC recognised that Lebanon could not be considered responsible for the areas of the country that were not under its control. It was ascertained Lebanon had never declared a state of emergency pursuant to Article 4. Asked by the HRC about what actions it had taken with regard to disappearances, the government replied that in those cases it tried to avoid (presumably: further) human rights violations through high-level political contacts with those concerned and that disappearances were not taking place in areas under its control<sup>95</sup>. In its second periodic report submitted in 1996 (due in 1988), the Lebanese government stated that tens of thousands of persons disappeared after being abducted by the Israeli Army or militias; the fate of many of them remains unknown<sup>96</sup>. The HRC expressed concern about the 1991 sweeping amnesty preventing investigations and punishment<sup>97</sup>. It should be noted in passing that the HRC has also asked states that were involved in the Lebanese wars to account for the disappeared and persons kept in administrative detention<sup>98</sup>.

Major international NGOs have been generally critical of Lebanon's approach to the issue of disappearances. Broadly

<sup>92</sup> A/HRC/WG.6/9/LBN/1 (2010), para. 47.

<sup>93</sup> A/HRC/16/18 (2011), paras. 11, 84.4 and 84.5.

<sup>94</sup> The WGEID does not deal with cases arising in the context of international armed conflict.

<sup>95</sup> General Assembly, Official Records, Thirty eighth session, Supplement No. 40 (A/38/40) (1983), paras. 346 and 362.

<sup>96</sup> CCPR/C/42/Add.14 (1996), para. 47.

<sup>97</sup> CCPR/C/79/Add.78 (1997), para. 12. It is noteworthy that in the case of another country with a high number of disappearances (Algeria), the HRC criticised the issuing of death certificates for disappeared when no proper investigation had taken place (CCPR/C/DZA/CO/3, 2007, para. 13). The same criticism was made by the CAT Committee, CAT/C/DZA/CO/3 (2008), para. 13. Some states in the past have issued certificates of «forcibly disappeared» instead of «presumed dead», see D. Orentlicher, *Independent Study*, cit., para. 5.

<sup>98</sup> On Syria, see CCPR/CO/71/SYR (2001), para 10; CCPR/CO/84/SYR (2005), para. 8; on Israel, CCPR/C/79/Add.93 (1998), para. 21. The documents do not specify if the persons were abducted during or after the civil war.

speaking, criticism has concerned the legal steps taken by Lebanon, the bodies charged with dealing with the matter and the practical handling of disappearances, in particular with regard to exhumations. The 1991 sweeping amnesty law and the 1995 law concerning the declaration of death of the disappeared have been considered obstacles to the establishment of the fate and whereabouts of the disappeared, let alone the circumstances of the events and bringing to justice those responsible. The amnesty law covers the crime of disappearances and the 1995 law does not foresee either investigation or accountability<sup>99</sup>.

The bodies established by Lebanon to shed light on the issues have been criticised for multiple reasons. The 2000 Commission has been criticised because of its lack of independence and terms of reference as well as for its very short lifespan, which made it ill-equipped to deal with thousands of cases. Furthermore, it only examined cases of those whose families filed the relevant forms<sup>100</sup>. The 2001 Commission has been equally criticised for not producing either an agreed total number of the disappeared or a list of names<sup>101</sup>. To date, no body working on disappearances has ever issued a public report. Lebanese authorities have generally failed to protect mass graves and to conduct exhumations, nor have they set up a database containing DNA samples from family members of the disappeared<sup>102</sup>. The conclusion by the major international NGOs is that the Lebanese authorities have done little to establish the fate and whereabouts of the disappeared and nothing with regard to justice. The same can be said for other states involved in the conflicts in Lebanon<sup>103</sup>.

No specific comments have been made either by UN bodies or NGOs on the issues of remembrance and commemoration, although generic references to the broad category of reparations to victims have been included in their recommendations<sup>104</sup>.

## 5. The Years of Twilight: Lebanon at a Crossroads or Just a One-Way Street?

By the time the Lebanese civil war ended, some countries in other parts of the world had started offering material on ways to deal with a legacy of massive human rights violations,

<sup>99</sup> Human Rights Watch, *Report 1994*; Amnesty International, *Developments*, cit.; D. Hiro, *Lebanon: Fire and Embers*, cit., p. 197; M. Young, *The Sneer of Memory: Lebanon's Disappeared and Postwar Culture* (hereinafter *The Sneer of Memory*), in «Middle East Report», no. 217, Winter 2000, pp. 42-45.

<sup>100</sup> Amnesty International, *Lebanon: Commission of Inquiry into «Disappearances» Must Be Effective and Public*, cit.; Amnesty International, *Lebanon: Truth Is a Necessary Part of Reconciliation*, 3 August 2000.

<sup>101</sup> Amnesty International, *Never Forgotten*, cit.

<sup>102</sup> Amnesty International, *Lebanon: Submission to the UN Universal Period Review*, April 2010. According to local NGOs, mass graves have mainly been discovered by chance while carrying out construction work or in archaeological sites, but rarely as a result of proper investigations. See Lebanese Center for Human Rights, *Disappearances*, cit.

<sup>103</sup> Amnesty International, *Never Forgotten*, cit.

<sup>104</sup> *Ibidem*.



including disappearances. Amnesties were intertwined with prosecutions, efforts at discovering/disseminating the truth and fostering public remembrance. The 1990s would see a further refinement of transitional justice options, exemplified by what is often treated in the literature as the yardstick of transitional experiences – the South African one<sup>105</sup>. The era of the international *ad hoc* tribunals was not very far away.

Lebanon has remained outside the by now traditional palette of transitional justice tools, neither pursuing criminal justice, truth-seeking experiences nor a vetting process. The National Reconciliation Charter, sponsored by regional and international actors, ended the civil war without any mention of institutions or measures to deal with the past<sup>106</sup>. There was no regime change: most of the leaders of the warring factions assumed high-level political posts. The state, after years of factual collapse, started being rebuilt; a domestic economy had to be wrested from the war factions and regenerated. Lebanon was in shambles. Unlike other post-conflict settings, it was not possible to pinpoint a single evil-doer, in particular after the war became a *bellum omnium contra omnes*, with bitter intra-communal infighting. Relations within and between communities, and between individuals and the state, had to be mended and, in some cases, built/rebuilt. The only adopted tool to deal with the past, the 1991 amnesty law, allowed for selectivity, because only crimes committed against religious and political personalities and diplomats were not covered by it<sup>107</sup>. At the same time, no international justice, in the form of, for example, an *ad hoc* tribunal, was pursued. Universal jurisdiction on the facts of the civil war (specifically, a case on the Sabra and Shatila massacres opened in Belgium) made a brief appearance in the early 2000s, but the case was subsequently closed.

It should be recognised that the post-civil war period has not been easy for Lebanon. The country has undergone many difficult moments related both to its relations with neighbouring states and its internal politics. Among the former, mention should be made of the continued Syrian presence in the country until 2005; the Israeli withdrawal in 2000; and the Israeli military operations in the 1990s culminating with the full-blown conflict between Israel and Hizbollah in 2006. Among the latter, it would suffice to mention the killing of the

<sup>105</sup> The literature on transitional justice has been constantly increasing in the last two decades. See, for example, N.J. Kritz, *Transitional Justice. How Emerging Democracies Reckon with Former Regimes*, Washington, United States Institute of Peace Press, vol. 1, 1995; R.G. Teitel, *Transitional Justice*, New York, Oxford University Press, 2000; A. Rigby, *Justice and Reconciliation. After the Violence*, Boulder, Lynne Rienner, 2001; P. Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity*, New York, Routledge, 2002; E. Hughes, W.A. Schabas, R. Thakur (eds.), *Atrocities and International Accountability. Beyond Transitional Justice*, Tokyo, United Nations University Press, 2007; B.A. Leebaw, *The Irreconcilable Goals of Transitional Justice*, in «Human Rights Quarterly», no. 30 (2008), pp. 95-118; N. Roht-Arriaza, J. Mariezcurrena (eds.), *Transitional Justice in the Twenty-First Century: Beyond Truth v. Justice*, New York, Cambridge University Press, 2006.

<sup>106</sup> Human rights institutions in transitional times are shaped by the «deal» ending the conflict. Ideally, the «deal» is supposed to be a «meta-bargain», that is, an agreement (or at least a discussion) on what the conflict was about («meta-conflict»). See C. Bell, *Peace Agreements and Human Rights*, New York, Oxford University Press, 2000.

<sup>107</sup> Members mainly of the Christian camp were tried for crimes exempted by the amnesty law (Article 3). See Amnesty International, *Lebanon: Samir Geagea and Jirjis al-Khoury: Torture and Unfair Trial*, 2004. Geagea benefited from an amnesty in 2005.

former Prime Minister Rafiq al-Hariri on Valentine's Day in 2005 (with the following spate of politically-motivated assassinations) and the rising level of tension within the country between the two main rival camps (backed by their respective international sponsors), which led to episodic outbreaks of violence. All of this took place against the backdrop of the permanence of the Palestinian presence, itself against the background of the permanence of the Palestinian issue.

The international community has not generally pressed the issues of truth and justice in post-conflict Lebanon, focusing at the beginning more on its institutional, political and material reconstruction<sup>108</sup>. The quest for justice came to the fore after the killing of al-Hariri, with the establishment of a UN Fact Finding Mission and a UN International Independent Investigation Commission, followed by the creation of the Special Tribunal for Lebanon<sup>109</sup>. The issue has proven divisive in Lebanon and has at the same time increased the bitterness of those who have for years been asking for justice with regard to the civil war. This was compounded by the fact that the 1991 amnesty law already made an exception allowing for prosecution of crimes targeting the political and religious elites<sup>110</sup>.

Short of the «golden» options either decided or recommended by the international community in other contexts (namely international justice, domestic trials and commissions of inquiry), and with recourse to amnesties being a regular feature in Lebanese recent history (1958, 1991 and 2005), the question remains of what might have been done or still might be done<sup>111</sup>. This is where the right to the truth and the duty to preserve the memory may have entered and may still enter into play. And this is also where, even in the absence of hard and fast rules, states' creative initiatives can at least provide some form of recognition and satisfaction to victims' rights and societal demands. For reasons of clarity, below I will deal separately with the two *foci* of this article – the right to the truth and the issue of preserving the memory of the past together with the aspect of commemoration.

<sup>108</sup> It has been asserted that there never was an international peacebuilding strategy for Lebanon and by the time the civil war ended Lebanon had lost its strategic importance. See A. Knudsen, *Prekarious Peacebuilding: Post-war Lebanon, 1990-2005*, Bergen, Chr. Michelsen Institute, Working Paper, 2005, p. 12.

<sup>109</sup> All documents are available at <http://www.stl-tsl.org/sid/49> (25 July 2011).

<sup>110</sup> M. Wierda, H. Nassar, L. Maalouf, *Early Reflections on Local Perceptions, Legitimacy and Legacy of the Special Tribunal for Lebanon*, in «Journal of International Criminal Justice», no. 5 (2007); Amnesty International, *The Special Tribunal for Lebanon: Selective Justice?*, 2009. According to the latter report, the yearly contribution paid by Lebanon to the Tribunal for its functioning is beyond what is allocated annually to the Lebanese Ministry of Justice. Article 6 of the Statute of the Tribunal (attachment to S/RES/1757 (2007)) stipulates that an amnesty would not be a bar to prosecution. See also, M.H. Ali, *When Will There Be Justice for Lebanon's War Dead?*, in «The Guardian», 22 December 2010, at <http://www.guardian.co.uk/commentisfree/2010/dec/22/lebanon-justice-deaths-civil-war> (4 July 2011).

<sup>111</sup> The ideas presented below aim to explore less demanding steps which could be taken, should there be no willingness to embark on «classic» transitional justice initiatives. It does not mean that they would make Lebanon fully compliant with its human rights obligations.

## 5.1. The Right to the Truth

The efforts made by Lebanon to discover (at least) the fate of the disappeared have produced scant results. The bodies established since the 1980s, for various reasons examined above, have not borne fruit in any significant way; the extreme confidentiality of their work, dealing with an issue such as the truth, which should foster openness, renders the assessment difficult. Even if the contours of the right to the truth in international human rights law are not always clearly discernible, it seems fair to say that Lebanon has not fulfilled its obligations in this respect. The commitments expressed by Lebanon during the Universal Period Review in 2010 seem to confirm this<sup>112</sup>.

This appears to be an area where, even without entering into an open truth-seeking process, Lebanon could still start comprehensive information gathering and archiving exercises related to the disappeared, which could be implemented through several initiatives, such as: launching and maintaining a public information campaign about the disappeared; issuing certificates of «enforced disappeared» and not death certificates as long as a proper investigation has not been carried out; promoting the collection, preservation and organisation of archival material; promoting the disclosure of and access to pertinent documents; establishing walk-in centres, specific telephone lines and web-based applications to collect information; conducting interviews with key actors of the period, family members and witnesses; collecting oral histories; preserving the known mass graves and executing proper exhumations, using adequate forensic expertise; and creating a database with the DNA of victims' relatives<sup>113</sup>. A central body should be tasked with the coordination of the entire process, and privacy concerns should be given the utmost attention. As a less demanding and politically sensitive approach, focus could be directed in the beginning towards clarifying the fate and whereabouts of the disappeared as opposed to the circumstances of the events and the identity of the perpetrators. Ideally, it should be an officially state-led process. Should government inertia persist, a similar project, albeit on a smaller scale, less ambitious and without the weight that comes from an official recognition, could be left in the hands of civil

<sup>112</sup> A/HRC/WG.6/9/LBN/1 (2010), para. 47.

<sup>113</sup> On practical steps to clarify the fate of the disappeared, see M. Crettol, A.M. La Rosa, *The Missing and Transitional Justice: The Right to Know and the Fight against Impunity*, in «International Review of the Red Cross», vol. 88, no. 862, June 2006; on preservation of documentation, see L. Bickford, *The Archival Imperative: Human Rights and Historical Memory in Latin America Southern Cone*, in «Human Rights Quarterly», no. 21.4 (1999), pp. 1097-1122.

society<sup>114</sup>. Considering that 36 years have passed since the beginning of the internal conflict and that the war generation is growing older, at the very least the issue of primary source documentation should be dealt with as a matter of priority.

## 5.2. The Duties to Preserve the Memory and of Commemoration

The official Lebanese policy on this issue, at both the institutional and political levels, seems to have been underpinned by a narrative which favours national forgetting in order to rebuild state institutions and to allow the former militia actors to enter the political stage and public administration, also through the amnesty law<sup>115</sup>. According to this narrative, the disappeared should be considered victims of a more general national tragedy, either portrayed as «events» or a war waged by others on Lebanese soil, which saw «no victors, no vanquished». Forgetting would be required for the country to move on, providing a justification for giving up the search for individual «details»<sup>116</sup>. A contributing factor to the prevailing desire of silence by (and possibly not only) the elites could also be the embarrassment of remembering a war that was not a heroic experience and was not often fought for a national cause, which would consequently render awkward a discourse on a shared national identity and future. Only a top-level militiaman, As'ad Shaftari, has so far publicly apologised for the crimes committed during the civil war<sup>117</sup>.

No effort to remember through an intentional articulation of the landscape has been undertaken either; only the «natural» leftovers of the war, such as iconic pockmarked buildings, are allowed, having for the moment, either for technical or financial reasons, slipped through the wave of massive (and rampant) reconstruction of Beirut<sup>118</sup>. Among the outcomes of the reconstruction process of Beirut was the erasure of the main public space in which inter-communal social contact used to take place in downtown Beirut in favour of the construction of an exclusive luxury zone for an upper-class minority<sup>119</sup>. The central area came to be known by the name of the company that planned and reconstructed it, Solidere<sup>120</sup>. The idea behind the project was to re-establish Beirut as a financial, commercial and recreational hub, preserving/re-

<sup>114</sup> On bottom-up initiatives in other contexts, see L. Bickford, *Unofficial Truth Projects*, in «Human Rights Quarterly», vol. 29, no. 4, 2007, pp. 994-1035.

<sup>115</sup> Some entities did not disarm (such as Hizbollah), while others did not integrate into the army or the public administration (mainly some Christian militias).

<sup>116</sup> On the position of the institutions, politicians and civil society, see O. Barak, «Don't Mention the War?» *The Politics of Remembrance and Forgetfulness in Postwar Lebanon*, in «Middle East Journal», vol. 61, no. 1, Winter 2007. On «new» wars, centered on systematic massacres of civilians and characterised on the elimination of the «other», see M. Kaldor, *New and Old Wars: Organized Violence in a Global Era*, Stanford, Stanford University Press, 1999.

<sup>117</sup> M. Young, *The Sneer of Memory*, cit., p. 42.

<sup>118</sup> D. Mahdawi, *Lebanon's Amnesia for Civil War Missing*, in «BBC News», 1 May 2010, at [http://news.bbc.co.uk/2/mobile/programmes/from\\_our\\_own\\_correspondent/8652601.stm](http://news.bbc.co.uk/2/mobile/programmes/from_our_own_correspondent/8652601.stm) (28 June 2011).

<sup>119</sup> This compounded with the «communal homogenisation» of entire districts of Beirut, one of the objectives of the fighting. See M.F. Davie, *A Post-War Urban Geography of Beirut*, EURAMES Conference, Warwick, July 1993; M.F. Davie, *Beirouth: Quelle capital pour quel pays?*, Atelier «L'aménagement de Beirouth ou l'urbanisme en question», Paris, Le Sénat, 12 septembre 1994. Writings by M.F. Davie on Lebanon are available at <http://almashriq.hiof.no> (13 June 2011).

<sup>120</sup> Acronym for Société Libanaise pour le Développement et Reconstruction, at [www.solidere.com](http://www.solidere.com).

<sup>121</sup> T.S. Ragab, *The Crisis of Cultural Identity in Rehabilitating Historic Beirut Downtown*, in «Cities», no. 28 (2011), pp. 107–114. S. Khalaf, *On Collective Memory, Central Space and National Identity*, at [http://www.cccb.org/ca/autor-samir\\_khalaf-10390](http://www.cccb.org/ca/autor-samir_khalaf-10390) (15 June 2011); L. Martinez Garrido, *Beirut Reconstruction: A Missed Opportunity for Conflict Resolution*, in «Al-Nakhlah», Fall 2008; D. Salamé, *On Memory and Commemoration in Beirut: The Holiday Inn in Bloom*, in «Undergraduate Journal of Art History», vol. VI, at <http://cujah.com/publications/volume-vi/> (12 July 2011).

<sup>122</sup> Uniformity in books and in the field of history and national education was one of the objectives of the Ta'if Agreement (III.F.5).

<sup>123</sup> K. Harrison, *Between Politics and Identity. The History and Future of Education in Lebanon*, in «NIMEP INSIGHTS», vol. III, Fall 2007, pp. 117–125; H.S. Sarkis, *Pour un renouvellement de l'enseignement de l'Histoire au Liban*, in «Annales - Université Saint-Joseph», juillet 1991.

<sup>124</sup> For an overview, see F. Mermier, C. Varin (dir.), *Mémoires de guerres au Liban (1975-1990)*, Paris, Sinbad, 2010.

<sup>125</sup> For example the association UMAM Documentation and Research has organised many activities aimed at preserving the memory of Lebanon's recent past, including the disappeared (at <http://www.umam-dr.org/>, 27 July 2011).

<sup>126</sup> L. King-Irani, *Commemorating Lebanon's War Amid Continued Crisis*, in «MERIPS», 14 April 2005; R. Fisk, *Time to commemorate the End of Lebanese Civil War*, in «The Independent», 9 April 2005. On youth and memory of the civil war, see C. Larkin, *Beyond the War? The Lebanese Postmemory Experience*, in «International Journal of Middle East Studies», no. 42, 2010, pp. 615–635.

creating its archeological and architectural heritage, which would differentiate the city from competing neighbouring urban centres. The reconstruction efforts mainly focused on downtown, without reaching the outer metropolitan area or trying to bridge urban and social gaps, in particular with Beirut's «belt of misery». No meaningful public participation infused the preparation of the project (entirely in the hands of a private company led by then Prime Minister Rafiq al-Hariri); no production of social space was included in the planning and no public remembrance of the civil war found place in what the local press called at that time «the largest construction site in the world»<sup>121</sup>.

State institutions and the political class, albeit not always for the same reasons, have overall been monolithic in their version of the civil war, be it in public pronouncements or in proposals for shaping the urban landscape. The same approach of silence is applied to those who went to school after the end of the conflict: curriculum and books do not include the civil war either in a coherent historical narrative or in a plurality of narratives<sup>122</sup>. History ended earlier and, after the searing lacerations of the civil war, what remains is the research of an ancient identity to serve as a founding myth of a unified society<sup>123</sup>. At the same time, the narration of the civil war had been left to informal agencies, be it families or communities at large.

Enforced *official* silence has not meant absence of *social* remembrance. Two actors have so far escaped the strictures of the official narrative and decided to play their own roles: a composite and lively civil society (including journalists, artists, etc.) and non-governmental organisations, among which the relatives of the disappeared have played a prominent role<sup>124</sup>.

The former, in different ways, have tried to present «counter-narratives» of the internal conflict and to keep the discussion on the issue open through debates and artistic creation<sup>125</sup>. Whereas in 1995 the twentieth anniversary of the beginning of the civil war was not publicly marked, ten years later it was commemorated by a week of special events and widely discussed in the local press. Curiously, many of the participants were too young to have experienced the civil war<sup>126</sup>. The latter have consistently asked the government, since the early 1980s, to shed light on the fate of their next of kin, to erect a me-

morial devoted to the victims and to proclaim 13 April as a day of remembrance<sup>127</sup>. The Committee of the Families of the Kidnapped and Disappeared in Lebanon was born out of a demonstration in November 1982 by hundreds of relatives of the disappeared, giving the issue a state-wide profile. Other NGOs later emerged, including the Lebanese Detainees in the Israeli Prisons, Support of Lebanese in Detention and Exile (SOLIDE) and Support for Lebanese Detained Arbitrarily (SOLIDA). They remain as a stark remainder with a sit-in tent (established by SOLIDE and relatives) outside the offices of the United Nations in downtown Beirut since April 2005; one of their symbols, Audette Salam, died after being run over by a car just outside the tent in 2009. She was 77 years old and had been looking for her children for almost a quarter of a century<sup>128</sup>. After decades, a generation is ageing without knowing what happened to their children and relatives.

As discussed in the third section of the article, the contours of the state's duty to preserve the memory of past atrocities and of commemoration seem to be more fluid than those of the victims' right to the truth. Since much of the above would fall under an obligation of means, the state would acquit itself of its duties making sincere, meaningful and pertinent efforts. Considering the paucity of initiatives on the part of Lebanon, it seems safe to maintain that the issue has not been dealt with. Lebanon has also explicitly recognised that some issues have remained unaddressed.

Some steps can still be taken by the state in the field of memory and commemoration; before presenting a few general ideas, some additional comments on official narratives and the planning of public space seem in order.

As regards the official narrative, it can be said that in history, public law resources have been routinely mobilised to forge national collective memories through the founding or re-founding of myths. These myths have tried to impress a fixed structure on events and provide societies with a ready-made version of the past. Despite this attempt, the challenges of unassimilated memory and «counter-memories» to the official version are always present, perpetuating deep fissures in social bodies that might otherwise seem compact<sup>129</sup>.

As to the construction and re-construction of public space, it can be said that it leaves open the question of whom the space

<sup>127</sup> M. Young, *The Sneer of Memory*, cit., p. 44.

<sup>128</sup> N. Houry, *They Killed Audette Salam Twice*, 19 May 2009, at <http://nowlebanon.com/NewsArchiveDetails.aspx?ID=94034> (20 July 2011).

<sup>129</sup> On national myth creation, see E. Hobsbawm, T. Ranger (eds.), *The Invention of Tradition*, Cambridge, Canto, 1992; B. Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, London, Verso, 2006 (1st ed. 1983). On official narratives, M.J. Osiel, *Ever Again: Legal Remembrance of Administrative Massacre*, in «University of Pennsylvania Law Review», no. 144 (1995-1996), pp. 463-704; B.F. Havel, *Public Law and the Construction of Collective Memory*, in M.C. Bassiouni (ed.), *Post-Conflict Justice*, Ardsley (NY), Transnational Publishers, 2002, pp. 383-397.

belongs to, with the state, business community, communities and ordinary residents among the competing actors. Choosing a post-conflict identity based on an urban landscape free of poignant historical memories was one possible option, but buildings and spaces could also be used to ask questions and to promote a sense of shared civic occasion<sup>130</sup>.

In Lebanon, the social legacy of the war is between a silent official narrative, on the one hand, and segregated communal and familial memories/narratives on the other<sup>131</sup>, all against the backdrop of a war-shunning reconstructed urban landscape. Under these conditions, the emergence of a collective national memory, in the sense of a shared vision of past history, appears difficult, at least in the near future<sup>132</sup>. And it is not certain that it would be the optimal option: a historic narrative should allow for contending voices/sub-narratives; history is contrapuntal, not harmonic<sup>133</sup>. The cautious public promotion of a plural and articulate social memory combining the different memories, without trying to forcibly melt them, might be a possible avenue<sup>134</sup>. In any case, it should not be a top-down approach managed by the political and communal elites, but one allowing for the emergence of individual, intra-communal and communal stories, which so far have at most circulated within the communal networks without being the subject of exchange. Remembering is also extricating the victims out of a grey and uniform mass through the gathering of particular memories<sup>135</sup>. The state should take the overall official ownership of the process(es), guaranteeing as broad a participation as possible and plurality of expression. A museum, for example, could be well placed to host a plurality of *histories*. This does not exclude contemporaneous initiatives (such as a monument or a memorial) to generally remember *all* the disappeared, the dead and more generally the victims of the civil war. A recognised plurality, albeit conflicting and short of a shared vision of the past, can still offer better prospects for starting a dialogue than the private communal and familial compartmentalised transmission of memories. The gradual unrolling of *each* (individual, intra-communal and communal) history from the private into the public sphere might finally allow recognition of the suffering of the *other*, see *oneself* in that suffering and slowly consign the past to the past<sup>136</sup>.

<sup>130</sup> See D. Sudjic, *The Edifice Complex: How the Rich and the Powerful Shape the World*, New York, Penguin, 2006 (1st ed. 2005).

<sup>131</sup> S. Haugbølle, *Looking the Beast in the Eye. Collective Memory of the Civil War in Lebanon*, unpublished MA Thesis, Oxford University, June 2002, at [http://www.11101.net/Writings/Articles/PDF/Sune\\_Haugbolle.pdf](http://www.11101.net/Writings/Articles/PDF/Sune_Haugbolle.pdf) (3 July 2011). The author interestingly underlines that most of the unofficial discourse on remembrance is carried out by a «secular middle class», of whom many (and their children) spent the war years outside the country.

<sup>132</sup> The elaboration of a shared memory with the aim of strengthening the Lebanese national identity would in any case leave out the Palestinians.

<sup>133</sup> C.S. Maier, *Doing History, Doing Justice. The Narrative of the Historian and of the Truth Commission*, in R.I. Rotberg, D. Thompson (eds.), *Truth v. Justice*, cit., pp. 274-276.

<sup>134</sup> D. Mahdawi, K. Byrns, *Lebanese Mark Start of Civil War with Calls for Awareness*, in «The Daily Star», 14 April 2009.

<sup>135</sup> M. Minow, *The Work of Remembering: After Genocide and Mass Atrocity*, in «Fordham International Law Journal», no. 23 (1999-2000), pp. 429-439.

<sup>136</sup> Acknowledgment of group suffering would be easier than the acknowledgment of somebody else's historical interpretation of the past, but an indispensable preliminary step. See C.S. Maier, *Doing History, Doing Justice*, cit., 267; B. Stora, *Histoire de la guerre d'Algérie (1954-1962)*, Paris, La Découverte, 2004, pp. 100-103.

## 6. Conclusion

As exposed in this article, Lebanon has dealt only minimally with the legacy of the civil war. Admittedly, the recent history of the country after the end of the civil war has not always been conducive to dealing with its painful past. Nevertheless, it seems that the opportunity to take some gradual and cautious steps, in particular in the last years, has so far been missed. At long last, when the international community asked for justice in Lebanon, it was not related to the civil war, but for something more recent: the assassination of Rafiq al-Hariri, for which a Special Tribunal was created.

Experience in other countries has shown that coming to grips with a painful past can be a long process and, often, non-linear. Countries which witnessed gross human rights violations roughly at the same time as Lebanon have gone through *de facto* impunity, clemency measures, truth-searching experiences and domestic trials. Sometimes the internal dynamics have been accelerated by regional human rights systems, with bold and innovative jurisprudence. At other times, confessions of human rights violators have revamped the domestic debate on dealing with the past<sup>137</sup>. Occasionally, universal jurisdiction accelerated the process within specific countries, as the Pinochet case showed<sup>138</sup>. In the end, it can be said that for some states «transitional» justice is lasting longer than their political and institutional transitions. In certain countries, relatives of the disappeared have achieved iconic status and been able to fit into the international attention span, which has not been the case for the courageous relatives of the Lebanese disappeared.

In Lebanon, the main initiatives to come to terms with the past have been taken by civil society; attempts to involve the political and institutional spheres have largely met with a «return to sender». A stunning and unique public apology by a former high-level militiaman has not pierced the silence of the official and public realms, once again leaving the request for truth to the victims and the memory discourse to civil society, communities and families<sup>139</sup>. No regional human rights system is going to prod Lebanon into looking into its own past, at least in the near future. It is difficult to say what the passage of time might bring in the Lebanese context: much will depend

<sup>137</sup> The so-called «Scilingo effect»; see H. Verbitsky, *El vuelo*, Buenos Aires, Sudamericana, 1995.

<sup>138</sup> See, for instance, R. Evans, *Pinochet in London - Pinochet in Chile: International and Domestic Politics in Human Rights Policy*, in «Human Rights Quarterly», vol. 28, no. 1, 2006, pp. 207-244.

<sup>139</sup> R.F. Worth, *10 Years after a Mea Culpa, No Hint of a «Me, Too»*, in «New York Times», 16 April 2010, at <http://www.nytimes.com/2010/04/17/world/middleeast/17lebanon.html> (5 August 2011).



on the interaction, and its possible evolution, between institutions, politicians, civil society and the relatives of the disappeared. The process of institution re-building might produce institutions strong enough to deal with the issues more openly and, with time, a new political class more willing to at least publicly remember a painful past might emerge. For the moment the reality is that the war generation of those who know what happened and those who still want to know has started fading away. In this sense, time is definitely not on the victims' side. Whether or not a new generation cultivates their demand will be one of the determining factors in the quest for truth and forging of meaningful public remembrance.