

MAY THE “LEGAL” BATTLE BEGIN:
PUSHING FOR THE ACCESSION OF LEBANON TO THE ROME STATUTE

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Since 1948, the world has been embracing the expansion of international law while the Middle East drowns in increasing and continuous bloodshed. By establishing the Nuremberg Trials, the international community progressed toward innovative means of deterring war crimes, providing legal remedies for violations of human rights, and offering peaceful modes to settle disputes.

One of the most groundbreaking treaties is the Rome Statute, giving birth to the International Criminal Court (ICC), with jurisdiction over war crimes, crimes against humanity and genocide. The Court has been viewed as an impartial guardian of international criminal justice, prosecuting the most heinous crimes such as mass murder, rape, and torture. The Middle East, ironically, is in most need of protective mechanisms, and yet exhibits the least enthusiasm vis-à-vis hopping on the train of international accountability procedures.

Lebanon, in particular, abstained from accepting the Court’s jurisdiction for political reasons. Had it opted otherwise, its ratification would undoubtedly have benefited its citizens, provided a tool to tackle regional security concerns and promoted internal peace.

Protection at home: the case of Lebanon’s 2008 war

Lebanon’s civil war, a conflict with regional and international implications, lasted from 1975 to 1990. Barbaric means of inflicting violence were employed, including rape, torture, indiscriminate attacks on civilians and mass murder. No faction is immune from blame, and little justice has been granted to the victims. The 1990 peace treaty, the Taef Accord, offered amnesty to all belligerents, most of whom still walk the political arena today.

After a short episode of relative stability, a national crisis developed in December 2006 when the pro-Syrian minority, mainly representing Hezbollah and their allies, resigned from the government in order to reach a new power-sharing deal and gain the veto power. The opposition set up a camp in downtown Beirut, denied authorities access to the area, and paralyzed the economic and social activity of the capital. A time bomb had started ticking once again, and it detonated on May 7th, 2008, with the Blitzkrieg-like deployment of militants in the streets of Beirut. Militias associated principally with Hezbollah, the Syrian Social Nationalist Party and the AMAL movement, which had all been within the opposition’s coalition, set up check-points, forcefully closed down media institutions, and engaged in armed street fighting with locals. The conflict swiftly spilled over to the North and the *Beqaa* valley, where inter-communal violence led to abhorrent massacres. On May 10th, Hezbollah armies invaded the *Jabal*, a mountainous area

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traditionally viewed as the Druze minority's stronghold, where inhabitants were quick to take up arms. Heavy weapons were deployed on both sides, though in disproportionate numbers, and systematic bloodshed was the dominant tactic of the game.

The League of Arab States, which had been attempting mediation efforts between the various Lebanese parties since early 2007, appointed Qatar as the main facilitator of a "National Dialogue". The Qatari government hosted the belligerent factions in Doha, and successfully brokered a peace deal on May 21st, 2008, which chiefly consisted of (1) the formation of a national unity government, (2) the prompt election of General Michel Suleiman as President of the Republic, (3) the adoption of the 1960 electoral law for the upcoming legislative elections in 2009, and (4) the commitment of the Lebanese political leaders to instantly desist from resorting to violence and the rhetoric of treason or political or sectarian instigation.

What followed were national jubilations that welcomed a "new era", accompanied by festivities and a renewed feeling of peace. But the ability of Lebanese civilians to robotically reassume a pseudo-normal life does not eclipse the mass violations of human rights which had marked the short, albeit horrific war. Massacres, torture, cadaver mutilation, and other war crimes were caught on film, which was ceaselessly broadcasted on some channels and internet websites. This further antagonized viewers of both the majority and opposition supporters, and led to an intensification of abuse. International humanitarian law, primarily through Common Article 3 to the 1949 Geneva Conventions and its 1977 Additional Protocol II – to which Lebanon is a party - prohibit blatant violations of human dignity such as murder, torture, cruel treatment, and hostage-taking. Such breaches, practiced in the various regions, were condemned by the public through the media, but mostly for partisan motives and political affiliations, and not due to the ethical rejection of outrageous violations to universal humanitarian and human rights standards. The watch-dogs monitoring wartime conduct were partial media agencies which exhibited unethical and unprofessional reporting, thereby adding fuel to the fire. An alternative regulatory tool would be the undisclosed reports of international human rights organizations, which have detailed incidents of limb amputations, beheading, and torturous deeds. But the memory of these recent events scarred various groups and will probably make eventual genuine and sustainable inter-communal reconciliation implausible.

Though it might have not guaranteed peace, Lebanon's commitment to the Rome Statute would have deterred combatants from adopting illegal means on the battleground. With the complete breakdown of the State, militiamen assumed *carte blanche* to engage in prohibited acts while enjoying impunity. The bigger danger is the current social integration of those combatants while they are still heavily armed and unaccountable. Moreover, the fighting in May has probably led to greater militarization of many splinter groups, diminishing the Doha agreement into a mere sedating truce, which could fall apart at any given moment.

Lebanese citizens thus have a strong interest in having their State ratify the Rome Statute, to shield themselves and future generations from the dreadful recent past. Those concerned about warlords of the 1975-1990 civil conflict having to face the bench fail to see that the Statute does not address the reversal of an amnesty, which is viewed as a product of national consensus and a legitimate tool of transitional justice. Moreover, the Court may not hear cases of events that took place prior to July 1st, 2002, when it entered into force. It has, according to article 11, jurisdiction

ratione temporis and thus will not pose any threat to the 1990 amnesty, which has not guaranteed peace, as obviated in May.²

International security: Israel v. Hezbollah, 2006.

As to inter-state violence, had Lebanon accepted the Court's jurisdiction, it could have called for the prosecution of the deplored Israeli war crimes. The attacks during the summer of 2006 offer enough grounds for a very solid case. Human Rights Watch, Amnesty International and the UN Human Rights Council all documented the various violations of international humanitarian and criminal law. Crimes include "willfully causing great suffering, or serious injury to body or health; (...) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly; (...) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices; (...) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated." (Rome Statute, Article 8)

The widespread misconception is that the ICC is useless in a case against Israel, which is not a party to the Statute. But the key aspect of the Court is that it can exercise jurisdiction over nationals of a State party (Rome Statute, article 12(2b)), or those committing crimes on its soil (article 12(2a)). In this sense, even though Israel is opposed to the Court, its officials would have to face criminal justice. Initiatives have taken place by private individuals to incite the Court's prosecutor, Judge Luis Moreno-Ocampo, to take action on this very matter. How deplorable is it that international NGOs and individuals acting in their private capacity are advocating for the Court to take up this case, while the State of Lebanon sits idle?

Lebanon should reconsider its past decision and ratify the Rome Statute. To anticipate Hezbollah's perpetual vindication, one could guarantee that the Court is not a "Zionist Plot aimed at sabotaging the resistance", as is made obvious by Israel and the United States' vociferous opposition not only to accession, but also to the ICC's core pillars. *A priori* accusations of a politicized or biased prosecutor are quite simply, unsubstantiated and unacceptable.

The importance of popular pressure

When the treaty was negotiated in 1998, the country was subjected to Syrian hegemony, whose army and intelligence services had their own reasons to abstain from welcoming international adjudicatory bodies. But today, Lebanon has no excuse to refuse the ICC's jurisdiction. But the main obstacle to ratification is the lack of political will. As evidence shows that various conflicting parties have been engaged in a range of violations to the core spirit and mission of the Statute, and that no national judicial remedy appears imminent, it is the role of Lebanese citizens to engage in assertive lobbying. Civilians were indeed those who mostly suffered human, economic and emotional damage, and have to be able to hold the political class and its military factions accountable.

The silent majority of civilians felt helpless in the face of escalations. But as soon as a new government is formed, it would be a golden opportunity for civil society to advocate for the

² On amnesties, the ICC could use Articles 17(2) and 17(3) to determine a case's admissibility, though this has not been tested yet.

State's accession to the International Criminal Court, in order to reduce the risk of history repeating itself. In Lebanon, as in many other troubled spots, though we cannot make conflict disappear, we must learn to manage conflict non-violently if we are to hope to resolve it at all. International courts have effectively proven to be practical mechanisms to enhance and hopefully ensure human security in times of conflict. May the legal battle begin.