

Master's Degree in International Relations

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**THE ROLE OF INTERNATIONAL LAW IN THE DEMOCRATIC
TRANSITION FOR LEBANON**

From the UN Special Tribunal to the European Partnership for Democracy

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To Family, Country, and the young men and women of Lebanon

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In Lebanon, we are a generation of war, but we are also survivors, thinkers, builders, and an inspired generation who appreciates life and strives for a better future. This thesis was inspired by the political turmoil and security threats I grew up witnessing in Lebanon and by a dream of building a better society one day.

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“Change will not come if we wait for some other person or some other time. We are the ones we’ve been waiting for. We are the change that we seek.” Barack Obama.

Introduction

Renowned political scientist Samuel P. Huntington of Harvard University has described the history of democracy as a succession of waves, mainly three waves that manifested throughout history. The first wave began in the early 19th century, after suffrage was granted to a large proportion of males in the United States until the 1920s. This wave gave birth to some 29 democracies but later the reversal of this wave began in 1922 with the accession of Mussolini to power in Italy until 1943. And the number of democracies went from 29 to 12 only.

The second wave, according to Huntington began after the triumph of the Allies in World War II. This wave gave birth to 36 democracies, but the number was reduced to 30 between 1962 and mid seventies.

Finally the third wave of democracy began in 1974 with the Carnation revolution in Portugal, adding approximately 30 new democracies. This wave continued after the collapse of the Soviet Union and emergence of new democratic states.^{1 2}

Nonetheless, the third wave of democracy has demonstrated that democracy ceased being merely a western phenomenon and like every idea, way of life or technological discovery has gone global, the same happened to democracy. Between 1990 and 1995 the world witnessed the birth of at least 41 democracies adding up to 117 in total in every region of the world except the Middle East³. 17 years later this exception still stands, which makes it an extremely attractive puzzle especially for the world's oldest democracies. But why? The common assumption would be the religious conflicts existing in the region or the concentration of Islam with the exception of Lebanon which is half Christian, and maybe also the culture as all those countries are Arab countries. But the failure to achieving democracy in this part of the world isn't due to

¹ US Department of State, Democracy's third wave, 2004

² Samuel Huntington, Democracy's Third Wave, Journal of Democracy, 1991

³ Larry Diamond, Why are there no Arab democracies? The Journal of Democracy, Johns Hopkins University Press, January 2010, p.93

religion nor culture but it is more linked to political economy, geopolitics and the internal political structures of the Arab states.⁴

For example no Muslim Arab country has passed the electoral democratic test and eight Muslim Arab countries have passed it according to Freedom House.⁵

And if we would assume that the absence of democracy is due to sectarian and ethnic divisions such as in Lebanon and Iraq, then how could we explain that even with their polarized divisions, Iraq and Lebanon are actually the only two Arab countries closest to full electoral democracy today? While the most ethnically and religiously homogenous countries like Saudi Arabia and Egypt have authoritarian regimes instead of democratic electoral systems. Therefore if the divisions aren't the obstacles hindering democratic processes, then why these countries are unable to achieve democracy especially since we saw that in South Africa and Indonesia, ethnic and religious differences were indeed surmountable obstacles.⁶

On the other hand, if we suppose that the people of Arab countries do not believe in the effectiveness of democracy then how can we explain the Arab uprisings or the persistent protests in Lebanon and the rise of the civil society in both Lebanon and Tunisia?

The economic development and social structure in the Arab world is one of the major obstacles to achieving democracy. Although many Arab countries are oil rich countries they still rank low in human development. Arab oil rich countries are rentier states and because of the flood of cash they don't have a well-structured taxation system, they are also usually heavily centralized, repressive, policed and very corrupt. In these countries usually real initiative and entrepreneurship is scarce and it usually depends on government contracts or foreign companies business. In rentier states wealth creation through investment is very little. This is where developed countries like Norway or Britain who also have oil differ from Arab rich nations, because they are market based economies and have accountable taxation systems, which come

⁴ Larry Diamond, *Why are there no Arab democracies?* Op. cit. p.94

⁵ Id at 94

⁶ Larry Diamond, *Why are there no Arab democracies?* Op. cit. p.95

before oil revenues. Instead of oil revenues being used to develop the market, and the community it is corrupting it and sustaining the authoritarian structure as well.⁷

Arab states have also mastered the art of authoritarianism through their vigorous spending on unchecked secret police and intelligence. State affairs are usually driven by fear of losing power to someone else. Therefore when pressures mount from within the society or because of external pressure from the international community, authoritarian leaders loosen their constraints but once they feel the opposition is gaining momentum they immediately go back to their old habits; rigging elections, arresting journalists or activists and civil society members,⁸ or even extend their own mandate as in the case of the Lebanese parliament to prevent new elections.

In case of elections, Arab authoritarian leaders choose their electoral models to benefit their agendas, privileging tribal or sectarian candidates over an organized party even if it was an Islamist or a secular one.

Finally the geopolitics of the region play a big role in hindering Arab democracy from flourishing. External support for authoritarian Arab regimes isn't new, due to the interest in oil resources, as it was once with the Soviet Union and now mainly with Europe and the US, giving those regimes more political-legitimacy.⁹

As for non-oil countries they use other sources of rents as well and it is mostly a dependence on foreign aid, which they spend mostly on public jobs rather than restructuring the taxation system or boosting a market-based economy.

In addition to that, the Arab-Israeli conflict remains central to the Middle Easterner's political life, which plays conveniently in distracting the public from the corruption, human rights violations committed by the leaders. In the Arab world it is safer to organize protests condemning Israel than to protest the Arab leaders' repression. Moreover, Arab leaders have managed to support each other's rule through a 22-member Arab league club.¹⁰

⁷ Larry Diamond, *Why are there no Arab democracies?* Op. cit. p.97

⁸ Larry Diamond, *Why are there no Arab democracies?* Op. cit. p.98-99

⁹ Larry Diamond, *Why are there no Arab democracies?* Op. cit. p.101

¹⁰ Larry Diamond, *Why are there no Arab democracies?* Op. cit. p.101-102

The question here is; is there any hope to achieve democracy in the Arab world? Yes there is, and this statement isn't a merely optimistic one. It can actually be done through the empowerment of the civil society in these countries and with the help of social media tools, young Arabs have been given a way to express themselves and mobilize.

The emergence of a single democratic polity in the region could change perception in the region and encourage other countries to follow suit.

Hence, this thesis will discuss the limits of international law, and more specifically those of the UN, through the analysis of the establishment of the Special Tribunal for Lebanon. In addition this thesis will examine a possible constitutional democratic transition for Lebanon with the support of the European Union, in an approach, which avoids an international paternalistic intervention. Similar interventions in the past have nurtured the divisions in the country and undermined the rule of law in many occasions rather than creating a path to true accountability and national identity building. The case of the Special tribunal for Lebanon, which was established by the UN Security Council outside of constitutional norms,¹¹ is one of the examples of international paternalistic approaches the international community should avoid when dealing with the Middle East.

The respect of the nation's sovereignty, its constitution and the principle of self-determination are central to this debate.

In Lebanon the rise of the opposition mostly represented by the civil society and NGOs and the increasing number of protests against the sectarian system of government, the electoral system, corruption, and lack of basic human rights, is a sign that people are eager to see change.¹²

¹¹ STL-14-05/PT/CJ, R000530, Amicus Curiae/Lebanese University Faculty of Law and Political and Administrative Sciences, 22 May 2014, p.2

¹² Antoun Issa, "Lebanon's emerging Protest Movement", Middle East Institute, 23 March 2017

The withdrawal of Syria in 2005 after the assassination of the Prime Minister Rafiq Hariri, and later the weakening of Syria by the civil war, along with the Arab Uprising Spring has definitely played a role in maturing the cries for freedom and rule of law in Lebanon to combating political and economic corruption.¹³

In addition to that, the refugee crisis, which led to more than one million and half Syrian pouring into a Lebanon lacking the infrastructure and means to sustain such numbers,¹⁴ was eventually accompanied by the garbage crisis and corruption scandals related to it.

The free media has been playing an important role in checking the government but it is not enough in the absence of strong institutions.

This thesis will shed the light on Article 95¹⁵ of the Lebanese constitution, which calls for a democratic transition to end the confessional state and birth a secular republic. This thesis will examine a suitable and successful international support through a multilateral organization to achieve this goal.

This paper proposes the EU as a sponsor of this necessary transition, through a model similar to that introduced in Tunisia. However, the International community and Europe would have to “overcome their undifferentiated view of Islamic parties and engage the Islamist actors who are willing to commit to liberal democratic norms”.¹⁶

¹³ Daniel Meier, The effects of Arab Spring and Syrian Uprising on Lebanon, University of Oxford, May 2013, p.4-5

¹⁴ Peter Biro, European Commission Humanitarian Aid and Civil Protection, Lebanon: Syria Crisis, ECHO Factsheet, Brussels, March 2017, p.1-3

¹⁵ Article 95, Lebanese Constitution, “1- The first Chamber or Deputies which is elected on the basis of equality between Muslims and Christians takes the appropriate measures to realize the abolition of political confessionalism according to a transitional plan. A National Committee is to be formed, headed by the President of the Republic, including, in addition to the President of the Chamber of Deputies and the Prime Minister, leading political, intellectual, and social figures.”

¹⁶ Larry Diamond, Why are there no Arab democracies? Op. cit. P.101-103

CHAPTER I

A brief history of Lebanon's political structure

Lebanon has always enjoyed a reputation of liberal life style and freedom of the press, amongst Arab countries. However since the beginning of the sectarian civil war, which lasted from 1975 until 1989, Lebanon has been drowning into a chasm of political corruption, disorganization, lack of basic services like electricity and clean water, and the absence of the rule of law. As Kamal Salibi puts it in his book, *A house of Many Mansions the History of Lebanon Reconsidered*, "Officially the Lebanese republic still exists within internationally recognized borders, however it has long ceased to exercise sovereign control over its national territory".¹⁷

The administrative bureaucracy still existed but the basic public services were deteriorating. This situation has left the average citizen no choice but to look for these services elsewhere; in consequence, organized groups or individuals profited from the government's shortcomings, whether they benefited from the support of old or new sectarian party leaders to maintain a monopoly over certain services like providing "alternative" electricity for the people through huge generators they set up in each corner of the country to the lack of national electricity coverage, or clean water providers to make up for the government's shortcomings. On the other hand, NGOs especially environmental ones were left to do the government's job of protecting the environment and keeping Lebanese town streets clean. Many also worked hard to spread awareness about the importance of recycling, while trying to implement recycling programs in towns where the party lords profiting from the mayhem, weren't present to fight them.¹⁸

¹⁷ Kamal Salibi, *A House of Many Mansions the History of Lebanon Reconsidered*, London, 2002, p.1

¹⁸ Nawaf A. Salam, *Options for Lebanon*, Centre for Lebanese Studies, Oxford & I.B Tauris & Co Ltd, 2004, p.167

Today Lebanon is short from being a country that acknowledges human dignity, accountability, and a common identity. When the country was first established under the French mandate in 1920, it was supported by the Christians but rejected by the Muslims. The Christians insisted and pushed for the independence of Lebanon and it becoming a sovereign nation, but the Muslims believed in a pan-Arab unity, considering that the country was an integral part of the Arab world. This is where the main split happened, and two identities were born, the Christians were pro Lebanese particularism and the Muslims were pro pan-Arabism. Their differences were manifested later during the civil war when the majority of Muslims along with a few Christians believed that it was their duty and cause to support the Palestinian revolution, while the majority of Christians rejected the idea that Lebanon should be entangled in Palestinian affairs. ¹⁹

The country is still until today suffering the consequences of the conflict that broke in 1975, which resulted in a paternalistic Syrian sponsorship over Lebanon ending only in 2005. The same events led also to an Israeli invasion and later occupation of the South in 1982 until 2000, as well as the rise of Hezbollah. Finally culminating in the assassination of Prime Minister Rafic Hariri and the chronic political deadlock that followed and from which Lebanon still suffers today. ²⁰

These events, each in its uniqueness, have contributed relentlessly to the undermining of Lebanese sovereignty, stepping over its constitution, and neglecting its people's right to self-determination and other fundamental human rights.

¹⁹ Kamal Salibi, *A House of Many Mansions the History of Lebanon Reconsidered*, Op. Cit. p.2-3

²⁰ El Husseini Rola, *Pax Syriaana Elite Politics in Postwar Lebanon*, Syracuse University Press, 2012, p.15-16

1.1 An Identity crisis strengthened by a continuous breach of sovereignty:

A number of foreign powers have intervened in Lebanon whether as peacekeepers or as invaders or even as olive branch carriers through which they meddled in Lebanese politics and affairs influencing the decision-making processes, such as: The United States, France, Britain, Italy, Israel, Syria, Saudi Arabia, and Iran, each serving their own interests supporting one group over another, pushing one party against the other, as if the meddlers were fighting each other by proxy.²¹

Moreover, it is well known that since its independence in 1945 from the French Mandate, Lebanon has hosted several militias both Christian and Muslim and secular too, such as the Arab Army, the Lebanese Forces, the Guardians of the Cedars, the South Lebanon Army, People's liberation Army, Tawheed, Al Mourabitoun, the Palestinian guerilla Liberation movement, Amal movement and many others who have contributed to the civil war. Many of them hold positions in the government today and are leaders of the main parties, "the old parties", and they have kept the divisions in the country alive.²²

Arend Lijphart has described 1943-1975 Lebanon as a successful consociational democracy. A consociational democracy is a political system where political power is shared among various groups and where no one represents a majority. But in Lebanon's case the peace that was celebrated by Lijphart didn't last long, and soon enough a bloody 15 years civil war broke.²³²⁴ After the conflict ended in 1990, the same power sharing arrangements that were made in 1943 were renewed again in 1990, and it was long before they proved to hinder any possibility of a democratic

²¹ El Husseini Rola, *Pax Syriana, Elite Politics in Postwar Lebanon*, Syracuse University Press, 2012, p.4-5, from the letter of former US Ambassador to Lebanon (1990-1993), Ryan Crocker.

²² Augustus Richard Norton, *Hezbollah a Short History*, Princeton University Press, 2007, p. 17-18

²³ Bassel Salloukh, Rabie Barakat, Jinan Al Habbal, Lara W. Khattab, Shoghig Mikaelian, *The Politics of Sectarianism in Postwar Lebanon*, Pluto Press, 2015, p.12

²⁴ El Husseini Rola, *Pax Syriana, Elite Politics in Postwar Lebanon*, Op. Cit. p. 3

transition. The problem is that those very arrangements *relied on the stabilizing influence of external powers* and not on building the political institutions of the country and upholding its constitution.²⁵

It's like Lebanese politicians always had one foot out of the door. Each political leader or "Zaim"²⁶ a "powerful feudal chieftain" linked himself to an external power to guarantee and ensure his position of power in the government will never expire.

Thus it is clear that Lebanese leaders have always opened themselves, since before the establishment of the Republic to "protectors", in order to keep their seats in government and maintain power over their followers. But the need for a "protector" seemed to also help stabilize the conflicting elements of government and guarantee peace to a certain extent. For example, in 1861 the arbitrator between the Druze and the Christians, who were in conflict, in Mount Lebanon, were the Ottomans, after the Ottomans came the French, after the French came the Syrians.²⁷ And today for the first time, as Syria was pushed out of the country in 2005, and the devastating war in Syria weakened its leadership, the Lebanese political leaders found themselves at a crossroad. The absence of a foreign power to control the political currents and ensure the country's stability has also slowed down the usual meddling in Lebanese affairs, which had always hindered any democratic transition.

1.2 The Accords

1943 birthed the first pact between conflicting Lebanese powers: the National Pact, which was an unwritten gentlemen's agreement between the Maronites and the Sunnis with a French sponsored constitution of 1926. This agreement lasted until 1975 before the civil war broke. It regulated the political life where the president was agreed to be Christian, the Prime Minister to be Sunni, the Speaker of the Parliament

²⁵ El Husseini Rola, *Pax Syriana, Elite Politics in Postwar Lebanon*, Op. Cit. p. 2

²⁶ Robert Fisk, *Pity the Nation: The Abduction of Lebanon*, Thunder's Mouth Press/Nation Books New York, 2002, p.86

²⁷ El Husseini Rola, *Pax Syriana, Elite Politics in Postwar Lebanon*, Op. Cit. p.2

to be a Shiite. The Christians agreed that Lebanon could have an Arab character, and the Muslims promised to stop pursuing unification with Syria.²⁸

It's true that this Pact was influenced by external powers (France, the UK, Syria, and Egypt) but it seemed then, that this National accord would finally allow the development of a true Lebanese national identity and bring peace.

As the 1975 civil war broke it brought back the old identity crisis to the table. The establishment of a Jewish homeland in Palestine caused a flood of Palestinian refugees into Lebanon. The Christians considered the Palestinian Liberation Organization and its acts of violence from Lebanese territory onto the newly formed Israeli state, a breach of Lebanese sovereignty, while the majority of the Muslims considered their duty to support the Palestinian cause, being part of the Arab world. The National Pact didn't unite the people; instead it actually highlighted their religious differences by dissecting the government.²⁹

After the end of the Civil War, the Second Lebanese Republic was erected through the TAIF agreement in 1989. The TAIF agreement was sponsored this time by Syria, Saudi Arabia and the Arab league, and it left unchanged the same old political positions for the heads of states, which the National Pact had presented. Moreover, with the TAIF the constitution was amended to give the Sunni Prime Minister more powers, and the Christian president's powers to dissolve the parliament were revoked. The regime became more parliamentary and the redistribution of powers between Christians and Muslims was renewed.³⁰

Another major change came along the TAIF was Article 95 of the constitution allowing for a democratic transition from a sectarian state into a secular state, which obviously never happened.³¹

²⁸ El Husseini Rola, *Pax Syriana, Elite Politics in Postwar Lebanon*, Op. Cit. p. 3-4

²⁹ El Husseini Rola, *Pax Syriana, Elite Politics in Postwar Lebanon*, Op. Cit. p. 4-6

³⁰ El Husseini Rola, *Pax Syriana, Elite Politics in Postwar Lebanon*, Op. Cit. p. 11-13

³¹ El Husseini Rola, *Pax Syriana, Elite Politics in Postwar Lebanon*, Op. Cit. p. 14

Part F, Article 95 (the national committee) On the abolition of political confessionalism of the Lebanese constitution:

(1) The first Chamber or Deputies which is elected on the basis of equality between Muslims and Christians takes the appropriate measures to realize the abolition of political confessionalism according to a transitional plan. A National Committee is to be formed, headed by the President of the Republic, including, in addition to the President of the Chamber of Deputies and the Prime Minister, leading political, intellectual, and social figures.

(2) The tasks of this Committee are to study and propose the means to ensure the abolition of confessionalism, propose them to the Chamber of Deputies and the Ministers, and supervise the execution of the transitional plan.

(3) During the transitional phase:

a. The confessional groups are to be represented in a just and equitable fashion in the formation of the Cabinet.

b. The principle of confessional representation in public service jobs, in the judiciary, in the military and security institutions, and in public and mixed agencies are to be cancelled in accordance with the requirements of national reconciliation; they shall be replaced by the principle of expertise and competence. However, Grade One posts and their equivalents are exempt from this rule, and the posts must be distributed equally between Christians and Muslims without reserving any particular job for any confessional group but rather applying the principles of expertise and competence.³²

The TAIF's objective contrary to what many believe, was to abolish the distribution of powers based on a sectarian association, however the Second Republic was reluctant to implement Article 95.

With the TAIF, Syria put its hand on Lebanon to "protect the peace process". The presence of Syrian troops on Lebanese soil showed that Lebanon was far from being sovereign and democratic.

³² Lebanese Constitution, Article 95

Hafez al Assad, the father, had made a tripartite agreement with Amal (Shiite Militia), the Lebanese forces (Christian militia) and the progressive socialists (Druze militia) to legitimize Syrian military presence in Lebanon acting as a broker to end the war.

Once the TAIIF agreement was created Syria deployed its troops after it was given the green light from Lebanese leaders themselves.³³

Since then many treaties between the two countries followed. All Lebanese presidents were chosen and agreed upon by the Syrian government. The blessings of Ghazi Kanaan or the “kingmaker” who was head of the Syrian intelligence in Lebanon, needed to be given for anyone aspiring to office and without it, it was impossible. He was later on, replaced by Rustom Ghazaleh in 2002 after Bahsar Al Assad became president, Rustom didn’t last long as his predecessor due to his entanglement in corruption, crime and shady business in Lebanon.³⁴

During the Syrian presence in Lebanon, the constitution was also amended on several occasions to serve Syrian political ambitions when they needed to keep someone in power; it was amended in 1995 to extend the presidency of Elias Hrawi, then also in 1998 to allow the election of then president Emile Lahoud who was a military commander and the constitution forbid military commanders to run for office. Then the constitution was further amended to extend the latter’s presidency in 2004.³⁵

Undermining the constitution and bending the rules in order to serve a foreign agenda became a habit in the country, and have stripped the country of its sovereignty. The lack of rule of law and accountability has put personal interests, foreign interests and party interests over national interests.

Furthermore, Syria has also manipulated the parliamentary elections on many occasions, appointing 29 parliamentarians in 1991 to fill the seats of those who perished during the civil war. 25 of those 29 parliamentarians were reelected in 1996, then 21 of them reelected for a third term in 2000. The same people were kept in positions of power to control legislations and other important governmental

³³ El Husseini Rola, *Pax Syriana, Elite Politics in Postwar Lebanon*, Op. Cit. p. 14-16

³⁴ El Husseini Rola, *Pax Syriana, Elite Politics in Postwar Lebanon*, Op. Cit. p. 17-19

³⁵ El Husseini Rola, *Pax Syriana, Elite Politics in Postwar Lebanon*, Op. Cit. p. 18

responsibilities. And the evidence of that is that after the 2005 Cedar revolution and the retreat of the last Syrian soldier from Lebanon, all Syrian backed parliamentarians lost their seats.³⁶

After the TAIF, the democratic process was abandoned and any hopes of political institutional reconstruction went with it. Lebanon was no longer a functioning government based on power sharing and consensus as Lijphart saw it, but rather a dismembered nation based on fear of the different other.

³⁶ El Husseini Rola, *Pax Syriana, Elite Politics in Postwar Lebanon*, Op. Cit. P. 18

CHAPTER II

Hezbollah: the many faces of the Party of God

As the “old parties” laid their guns after the war and joined their efforts to rebuild the country under a paternalistic Syrian protection, a new party was on the rise. Unlike the “old parties” this party had no hand in the civil war, and had a totally different agenda.³⁷

Hezbollah was first formed in 1985 as a response to the invasion of Lebanon by Israel in 1982. The Party of God operated under the banner of the “Islamic Resistance” against the Israeli invasion and its settlement in the south. The emergence of the organization was associated with several factors in the context of a fractured state increasingly dominated by militias.³⁸ Important figures, who most were Ulama, following the Ayatollah Khomeini’s religious leadership in Iran, like the Muhammad Hussein Fadlallah, Muhammad Mahdi Chamsedine and Moussa al Sadr were the key actors and Ulamas or spiritual leaders in the Shiite community and most importantly at the origins of Hezbollah. The political culture fostered by the Mahrumīn movement or “the deprived” in English seeking social justice especially for a neglected Shiite community, played an important role in the formation of Hezbollah. The members of Hezbollah today, like its current Secretary General Hassan Nasrallah, Naim Qassem and others such as Hussein Mussawi, were originally members of the Mahrumīn movement the origins of the Amal movement party currently led by Nabih Berri the Speaker of the parliament.³⁹

So Hezbollah’s establishment happened mostly by former Amal members at odds with the leader of the party Nabih Berri after Sadr’s death. The rogue Amal member

³⁷ Joseph Alagha, *The Shifts in Hizbullah’s ideology: religious ideology, political ideology and political program*, Amsterdam University Press, 2006, p.12

³⁸ Joseph Daher, *Hezbollah, the political economy of Lebanon’s Party of God* Pluto Press, 2016, p.31

³⁹ Joseph Daher, “Hezbollah, the political economy of Lebanon’s Party of God” 2016, Op. Cit. p.26

allied themselves with other Shiite groups such as Al-Dawa party, al Ittihad al lubnani lil talaba al muslimin (The Lebanese Union of Muslim Students) and others⁴⁰, and produced a document titled “Manifesto of the Nine”, focusing on three points:

- 1- Islam is the comprehensive and appropriate program for a better life, and the new organization is founded on it.
- 2- Resistance against Israel’s occupation of Lebanon is the priority of the organization.

Legitimate leadership is that of the Guardianship of the Jurist theologian who is considered to be the successor to the Prophet and the Imam. In this case Ayatollah Khomeini and his vision of *wilayat al faqih*, which is the concept of the creation of an Islamic republic on the Iranian model,^{41,42}

Hezbollah’s identity as an “Islamic jihadi or struggle movement” changed in the following three stages: (1) from propagating an exclusivist religious ideology and a resistance movement against the Israeli occupation of the South of Lebanon; (2) to a more encompassing political ideology; and (3) to what can be considered a pragmatic political program.

Since the early 1990s Hezbollah evolved into a mainstream political party, with a political and social program that attracted both Muslims and Christians. Hezbollah participated in the elections and as a result it won not only parliamentary and municipal seats, but also governmental positions by joining the cabinet for the first time in 2005.⁴³

⁴⁰ Joseph Alagha, The Shifts in Hizbullah’s ideology: religious ideology, political ideology and political program, Op. Cit. P. 33

⁴¹ Joseph Alagha, the shifts in Hizbulla’s ideology Religious ideology, political ideology and political program, Op. Cit. P.208-209

⁴² Augustus Richard Norton, Hezbollah; a short history, Princeton Press, 2014, p.39

⁴³ Joseph Alagha, The Shifts in Hizbullah’s ideology: religious ideology, political ideology and political program, Op. Cit. P. 213

The party managed to further integrate in the political sphere by striking an unprecedented alliance with the Christian majority leader Michel Aoun, currently president, and its party the Free Patriotic Movement.⁴⁴

Alliances with Christian leaders reshaped the party's identity and image in the public eye. Hezbollah continued to nurture relations with parties of different religious basis in order to attract more allies within the government.⁴⁵ Many outspoken politicians and political commentators representing Sunnis and Druze joined the Christian leaders to defend the party at each turn and express their support for it.

Hezbollah's popularity kept rising exponentially in the country especially after the 2000 Liberation war when the Israelis withdrew from the south of Lebanon after facing rigorous and unexpected resistance from Hezbollah.⁴⁶ After the border incident with Israel and the abduction of the Israeli soldiers in the aim to trade them with Lebanese prisoners in Israeli prisons in 2006, which resulted in the Israeli war on Lebanon, Hezbollah's popularity wasn't affected, on the contrary it kept growing. The people, especially in the affected South, further legitimized Hezbollah as a necessary resistance, which widened its social base also amongst those that didn't adhere to its religious perspective.⁴⁷

Hezbollah's military wing, the Islamic Resistance, was deemed a legitimate-national resistance by the Lebanese state making a clear distinction between a militia and a necessary resistance to defend the land. Hezbollah also emphasized the legitimate right of its Islamic Resistance to practice self-defense as a natural and inalienable right in accordance with international legitimacy.⁴⁸

⁴⁴ Joseph Daher, "Hezbollah, the political economy of Lebanon's Party of God" 2016, Op. Cit. P.229

⁴⁵ Joseph Daher, "Hezbollah, the political economy of Lebanon's Party of God" 2016, Op. Cit. P.229

⁴⁶ Joseph Alagha, The Shifts in Hizbullah's ideology: religious ideology, political ideology and political program, Op. Cit. P. 64

⁴⁷ Joseph Daher, "Hezbollah, the political economy of Lebanon's Party of God" 2016, Op. Cit. P.161

⁴⁸ Joseph Alagha, The Shifts in Hizbullah's ideology: religious ideology, political ideology and political program, Op. Cit. P. 178

On the other hand, it is no secret that Hezbollah has been politically, socially and financially supported by Iran since its establishment. According to Norton: “the contingent quickly became the nodal point for the Iranian training, supply, and support of Hezbollah under the watchful eye of Ali Akbar Mohtashemi, then Iran’s ambassador to Damascus.”⁴⁹

But Hezbollah’s resistance and political revolution didn’t stop at a revolution against an oppressive invader; it also took a social aspect against the corrupted political system, which apportioned the country between warlords and sectarian leaders. Hezbollah didn’t stop at securing itself positions in the government and striking alliances with Christian leaders to support its “opening up policy”, it also provided its own charitable, medical and educational centers and activities in many deprived areas overlooked by the government, such as the Bekaa, Beirut’s southern suburbs and the south of Lebanon.

Hezbollah built its own social services independently from the state in the absence of the state. It also guaranteed electricity to the population of Dahyeh and kept the streets clean by collecting the garbage.⁵⁰

However, the socio-economic efforts and services brought by Hezbollah to the deprived especially Shiite neighborhoods and towns have had additional effect. The Party of God’s initiatives introduced a culture of commitment to conservative Islamic practices or *Iltizam*, which refers to the individual norms and practices, such as the hijab or headscarf that is a part of *Iltizam* for women. Therefore a big part of Hezbollah’s religious culture is in circumscribing the norms of social behavior and thus propagating a worldview that dictates a religiously conservative social behavior mostly amongst the Shiite population where high levels of conformity are present.⁵¹ For example, since the liberation of South from the Israeli occupation in 2000, and

⁴⁹ Norton, A.R, *Hizballah of Lebanon: Extremist Ideals vs. Mundane politics*, Council of Foreign Relations press, 2000, P. 11

⁵⁰ Joseph Alagha, *The Shifts in Hizbullaha’s ideology: religious ideology, political ideology and political program*, Op. Cit. P. 197, P.217-218

⁵¹ Joseph Daher, “Hezbollah, the political economy of Lebanon’s Party of God” 2016, Op. Cit. P.116-117

especially after the 2006 war, the number of women wearing the Hijab or the burqa has increased dramatically in Shiite neighborhoods whether they were encouraged by Hezbollah's Hijab campaigns or to show sectarian pride and support to the resistance.

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2.1 Hezbollah and the TAIF:

As for the TAIF agreement, Hezbollah initially rejected it because they believed the agreement “doesn't touch upon the essence of the sectarian privileges”⁵³ further transforming Lebanon into a racial state. Hezbollah considered the TAIF a repetition of the mistakes of the past with the 1943 National Accord, which was the main factor behind the disintegration of the state and the deep divisions that survived to date. Hezbollah only abided by the security clause of the TAIF Agreement, which prohibits bearing arms and walking in military clothes in the non-occupied areas of Lebanon and restricted its military actions to the resistance to the Israeli occupation.⁵⁴

2.2 The opening up policy

In 1992, Hezbollah publicly announced its decision to participate in the elections and launched its political program, which was based on the following points:

- 1- the liberation of Lebanon from the “Zionist” occupation;
- 2- the abolishment of political sectarianism;
- 3- amending the electoral law so that it will be more representative of the populace;
- 4- ensuring political and media freedoms;
- 5- enacting a modern naturalization law based on meritocracy;
- 6- the complete return of all the displaced;
- 7- administrative, developmental, educational and cultural, and social reforms⁵⁵

⁵² Now media, veiled Intentions, 8 September 2008, <http://bit.ly/2sGdWCN>

⁵³ Joseph Alagha, the shifts in Hizbulla's ideology Religious ideology, political ideology and political program, Op. Cit. P.40

⁵⁴ Joseph Alagha, the shifts in Hizbulla's ideology Religious ideology, political ideology and political program, Op. Cit. P.40-41

⁵⁵ Joseph Alagha, the shifts in Hizbulla's ideology Religious ideology, political ideology and political program, Op. Cit. P.43

As a result Hezbollah won all 12 seats on its election list, 8 seats for the party members, and 4 seats for sympathizers, 2 Sunnis and 2 Christians (a Maronite and an orthodox)

Following these events, the resistance against the occupation heightened between 1992 and 2000 until the last Israeli soldier was driven out of Lebanon after 22 years of occupation, the 25th of May is now celebrated as a national holiday celebrating this event, and what came to be known as Liberation Day.

However, even after its 2000 victory, Hezbollah considered its work far from done, because Israel failed to relinquish the Lebanese *Shibaa* farms and the issue continues to be an issue between Israel and Lebanon.

After 2000, Hezbollah left the state's laws to deal with ex-spies and collaborators with Israel and ex Southern Lebanese Army members, which were supported by Israel and one of its strategic allies.

Hezbollah's August 2000 electoral program was divided along seven categories:

- 1- Resistance and liberation (E.g. the *Shibaa* Farms);
- 2- Enhancement of Lebanese foreign policy;
- 3- Reforms on the economic level in order to solve the serious socio-economic crisis;
- 4- Building of institutions and the state of law as well as the promotion of political participation;
- 5- Educational and cultural issues;
- 6- Social and health issues;
- 7- Environmental issues

During that year, Hezbollah won twelve seats in the 2000 parliamentary elections. Hezbollah's nine candidates, along with two Sunnis, and one Maronite Christian, received the highest number of votes in the country.⁵⁶

⁵⁶ Joseph Alagha, the shifts in Hizbulla's ideology Religious ideology, political ideology and political program, Op. Cit. P.51-52

On January 19, 2004 Hezbollah destroyed an Israeli military bulldozer after it crossed the “Blue Line”. Hezbollah targeted it by firing an anti-tank rocket when it was 26 meters inside Lebanese territory by the concession of the UNIFIL. This happened during a time when Hezbollah and Israel were still negotiating prisoner swap with Germany as a mediator.⁵⁷ The attack on the bulldozer marked Hezbollah’s policy: *military confrontation and negotiation* go hand in hand. The negotiations were successful with a groundbreaking result, releasing 400 Palestinians and 23 Lebanese from Israeli prisons, along with the remains of 59 Lebanese guerilla fighters, of which 11 were Hezbollah members. With this move, Israel recognized the resistance movement in Lebanon as a force not to be reckoned with, which was confirmed again during the 2006 Israeli war on Lebanon.⁵⁸

2.3 Hezbollah and the Hariri assassination in 2005

The party rallied for a protest against accusations of Syria’s alleged involvement in the Hariri assassination. And contrary to mainstream belief Hezbollah encouraged initiatives to find out the killers of Hariri, but it didn’t condone rushed judgments and accusations of Syria, which had significantly supported Hezbollah for years in its war against Israel. It only made sense that Hezbollah would defend its ally.⁵⁹ However the trend of encouraging impunity in order to protect Arab regimes and their leaders is at odds with Hezbollah’s program and the political culture the party has been laying out in Lebanon. In their socio-economic and political programs, Hezbollah have repeatedly insisted, as we witnessed in every election candidacy program, to carry on the fight for social justice and thus fighting the trend of impunity by holding the corrupted politicians accountable in Lebanon. But the Party of God’s policy towards Syria cannot be more contradicting with its policy in Lebanon. It may seem that accountability in the region is recognized whenever it serves certain political interests and replaced by impunity when it doesn’t.

⁵⁷ CNN international, Israel, Hezbollah swap prisoners, January 29 2004

⁵⁸ Joseph Alagha, the shifts in Hizbulla’s ideology Religious ideology, political ideology and political program, Op. Cit. P. 290-291

⁵⁹ Joseph Alagha, the shifts in Hizbulla’s ideology Religious ideology, political ideology and political program, Op. Cit. P. 59

In the 2005 elections Hezbollah called again for a reform of the electoral law based on a proportional representation to allow a better representation in parliament for all communities. Its program focused on:

- 1- Safeguarding the Resistance.
- 2- Facilitating the UN mission which was investigating the Hariri assassination
- 3- Maintaining a special relationship with Syria even after it agreed to withdrawing its troops from Lebanon
- 4- Refusing any foreign interference in Lebanese affairs
- 5- Insisting on the importance of national dialogue
- 6- Pushing for a socio-economic program

Hezbollah achieved a landslide victory winning 11 seats in 2005. This was the fourth election, which Hezbollah wins after 1992, 1996, 2000, and 2005.⁶⁰ The interesting part was that 84 pro-Syrian MPs in the previous parliament failed to be reelected this time and only four of them remained.^{61 62}

2.3.1 Assassination aftermath

During the negotiations that headed the formation of the cabinet, Hezbollah attempted to change an important tradition, which prevented Islamic movements from obtaining the two sensitive ministries of Defense and Foreign Affairs in the Lebanese government. As Hezbollah lobbied hard to obtain the Foreign Ministry seat, International pressure, especially from the US and France, as well as from domestic rivals, increased dramatically to stop Hezbollah from realizing its objective. Hezbollah then proposed an independent moderate Shiite, Fawzi Sallukh, who was a respected ex-ambassador and a veteran diplomat.

In response to that, the US department of State said it would boycott all Hezbollah's ministers but will keep dealing with the rest of the government. This US interference

⁶⁰ Joseph Daher, "Hezbollah, the political economy of Lebanon's Party of God" 2016, Op. Cit. P.46

⁶¹ Joseph Alagha, the shifts in Hizbulla's ideology Religious ideology, political ideology and political program, Op. Cit. P.60-61

⁶² El Husseini Rola, Pax Syriana, Elite Politics in Postwar Lebanon, Op. Cit. P. 18

was followed by Condoleezza Rice's unexpected visit to Lebanon that same year to stress on the disarmament of Hezbollah.⁶³

Hezbollah's response was to reject the US meddling accusing the administration of not respecting the will of the people manifested in the parliamentary elections. As Lebanon welcomed an investigative unit sent by the UN to uncover clues, which could crack open the Hariri assassination case, Hezbollah was one of the parties to encourage the initiative.

However, after the first report by the UN investigative unit came out in October 2005, it was deemed by Hezbollah and its allies as *politicized, dogmatic and inconclusive*. The report wasn't legally conclusive⁶⁴ but it had powerful political implications since it moved to implicate high-ranking Syrian and Lebanese officials. Nevertheless, Hezbollah agreed to the extension of the mandate of the UN investigative unit, but it didn't hesitate to warn the public of a possible US-Israeli led mission to destroy the Party of God.^{65 66}

This accusation was confirmed for Hezbollah and its allies, once the Special Tribunal for Lebanon was set up and its first suspects were members of Hezbollah. Four Hezbollah members were charged with conspiracy to commit a terrorist act along with other charges based on forensic evidence collected from the Hariri explosion scene, and evidence of preparatory acts that led to the assassination.⁶⁷ The Party of God even threatened to "cut off the hand" of whomever, threatens their armament and its members even those who were indicted by the STL.⁶⁸

⁶³ Joseph Alagha, the shifts in Hizbulla's ideology Religious ideology, political ideology and political program, Op. Cit. P. 65

⁶⁴ Foreign policy journal, Franklin Lamb, Bellemar's STL procedural problems: Indict, quit, and blame the system, December 9, 2010 <http://bit.ly/2rMvxup>

⁶⁵ Joseph Alagha, the shifts in Hizbulla's ideology Religious ideology, political ideology and political program, Op. Cit. P. 65-67

⁶⁶ The National Interest, Conflict in Lebanon? The Broader Dimensions behind "STL", January 5, 2011

⁶⁷ STL, Ayyash et al. (STL-11-01) <http://bit.ly/2sWawen>

⁶⁸ Joseph Daher, "Hezbollah, the political economy of Lebanon's Party of God" 2016, Op. Cit. P.166

2.4 In the context of a transition into a secular democratic state where would such transition leave Hezbollah?

Any military group outside of the government and the official national military stands in the way of establishing a true sovereign and democratic nation. But does that mean that the Party of God that has given so much to Lebanon and brought peace back into the once occupied territories should be discarded as if it had never existed?

Hezbollah's very existence and actions today are only a result of the lack of determined action by the international community when Lebanon was under Israeli occupation.

In a possible transition into a secular democratic state context, Lebanon's transition must be inclusive in order for it to succeed, where inclusivity can only serve the principle of self-determination⁶⁹ Therefore as Hezbollah's supporters form a big chunk of the population if not a majority, they cannot be excluded and demonized; instead they deserve an equal seat on the table.

And the people will later on have the decision-making power in the ballot, as it should be in any democratic context.

As for the military wing of Hezbollah, there should be a plan to integrate the resistance into the military under a special defense unit, which would legitimize its presence by bringing it under the new government's wing rather than risking the organization would go rogue and regional.

Labeling Hezbollah as a terrorist organization would only hinder the national debate and stand in the way of truly achieving peace in the country and the region.

Although core differences exist between Hezbollah and LAS FARC, or the revolutionary armed forces of Columbia, we cannot but compare the two scenarios and draw valuable conclusions on them. Both organizations are military groups, outside of the official national army of their respective countries. Both were fighting against injustices, and inequalities. But as Hezbollah was fighting a foreign power invading the country, LAS FARC was fighting the Colombian Security forces and

⁶⁹ Emmanuel De Groof, Domestic Interim Governance under International Law, PHD the European University Institute, Florence, 2016 P.211

caused great loss to the Colombian people. Both have been supported by foreign governments but unlike Hezbollah LAS FARC used drug trafficking especially cocaine to fill their pockets. A decade ago, no one could have imagined that LAS FARC would make peace with Colombia's security forces and join a peace process, but they did thanks to President Santos's efforts to keep pushing for peace talks with LAS FARC in 2012.

And finally in 2016 the revised peace deal between the Colombian government and LAS FARC was officially ratified ending a 52 year conflict which had taken the lives of more than 220,000 people. This peace deal could be one of the most difficult deals a nation could go through, especially after the bloodshed and crimes committed by LAS FARC.⁷⁰

⁷¹Therefore if Colombia managed to include a ruthless organization such as LAS FARC in its political reforms, then in a possible democratic transition for Lebanon, Hezbollah's collaboration would be guaranteed if not even highly encouraged by both Hezbollah and the Lebanese people. Hence, accepting Hezbollah and its military wing in a new government would be easy for the Lebanese and the challenge would be in this case the International community, which would be expected to support the transition and respect the will of the people in the name of peace in the region.

2.5 Conclusion

Hezbollah's popularity and increasing public support isn't just due to riding Lebanon from the Israeli occupation, or that it offered protection for the Lebanese living in the then occupied areas, but it was also due to the party's socio-economic programs especially since the government's socio economic initiatives were very centralized⁷², thus ignoring the deprived peripheries. Hezbollah initiated a redistribution system in those rural areas through its NGOs, social institutions and welfare programs and its

⁷⁰ BBC Report, Who are the FARC?, 24 November 2016, <http://bbc.in/28STmsa>

⁷¹ Stanford University, Mapping Militant Organizations, Revolutionary Armed Forces of Colombia-People's Army, Updated August 15, 2015, <http://stanford.io/1zyGZ7Y>

⁷² Bassel Salloukh, Rabie Barakat, Jinan Al Habbal, Lara W. Khattab, Shoghig Mikaelian, The Politics of Sectarianism in Postwar Lebanon, Pluto Press, 2015, P.7

aim as a political party too, to eradicate unequal development, constructing a “Resistance Society”.⁷³ It is worth mentioning that these services weren’t only directed towards Shiites but also towards Sunnis and Christians who have benefited from them regardless of their religious affiliations or political beliefs. These initiatives inspired by social justice ideals have earned Hezbollah a lot of support from different parts of the country.

However, many on the opposition called Hezbollah “a state within the state” because of it handling national security threats and socio-economic aspects of government voluntarily. But in response to that, Hezbollah considers itself a nationalistic patriotic Lebanese political party and a resistance; and this summed up its *Infitah* policy (opening up policy), which started in 1992 marked by its parliamentary participation.

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Hezbollah managed to take the resistance from only a military resistance to also a social and political resistance.⁷⁵ Finally the Party of God consider its job still unfinished with the Shebaa farms, a small Lebanese town, still under Israeli occupation, putting Hezbollah on the offensive this time rather than the defensive⁷⁶. Therefore Hezbollah will undoubtedly remain a great threat to Israel’s security as long as the party is armed and ready and as long as Israel doesn’t give up the last piece of Lebanese land.

⁷³ Robert G. Rabil, Hezbollah, the Islamic Association, and Lebanon’s Confessional System, *Al-Infitah and Lebanonization*, *The Levantine Review* Volume 1, 2012, P.57-58

⁷⁴ Robert G. Rabil, Hezbollah, the Islamic Association, and Lebanon’s Confessional System, *Al-Infitah and Lebanonization*, *The Levantine Review* Volume 1, 2012, P.54

⁷⁵ Joseph Alagha, the shifts in Hizbulla’s ideology Religious ideology, political ideology and political program, *Op. Cit.* P. 165-166

⁷⁶ Foreign Policy, Hezbollah’s Death Valley, March 3, 2016. <http://atfp.co/21MshJa>

CHAPTER III:

The Special Tribunal For Lebanon: a paternalistic International approach.

Since 2004, Lebanon has been affected by a series of bombings, terrorist attacks and assassinations mostly in Beirut targeting various groups and political persons on different sides of the political game.

Several political assassinations were registered since 2005 and throughout the term of pro-Syria president Emil Lahoud⁷⁷, as they followed the Hariri assassination⁷⁸

These attacks have started with the assassination attempt on the Druze MP Marwan Hamadeh a fierce critic of Syria, and the situation exploded with the assassination of the Prime Minister Rafic Hariri on February 14, 2005. Hariri's assassination triggered the Cedar Revolution against Syrian presence in Lebanon, resulting in the withdrawal of Syrian troops, and eventually ending an occupation that had lasted for more than a decade.^{79 80}

The international community's handling of Prime Minister Hariri's assassination could be interpreted as invasive and counter productive especially in the context of a deeply divided country, which had just gained its "independency" from Syrian political and military hold. Only after 11 days of the assassination, a fact-finding mission was sent by the Secretary General of the United Nations led by Deputy Police Commissioner Peter FitzGerald to investigate the attack, and after a little less than a month on March 24, 2005, the mission recommended in its report that an independent international investigation was to be launched as soon as possible.⁸¹

⁷⁷ Reuters, FACTBOX-Lebanon in critical week as president's term ends, 20 November 2007, <http://reut.rs/2sOG86A>

⁷⁸ AlJazeera English, Timeline: Lebanon Assassinations, 13 February 2008, <http://bit.ly/2seOdVf>

⁷⁹ El Husseini Rola, Pax Syriana, Elite Politics in Postwar Lebanon, Op. Cit. P. 16-17

⁸⁰ New York Times, Syrian Troops Leave Lebanon After 29 year Occupation, 26 April 2005, <http://nyti.ms/2t6unYo>

⁸¹ STL, Report of the Fact-Finding Mission to Lebanon, 24 March 2005, English Document, <http://bit.ly/2rcXmNO>

Therefore the UN Security Council Resolution 1595 established the United Nations International Independent Investigation Commission (UNIIC) on April 7th, 2005 to lead the investigation⁸². The UNIIC work focused on gathering evidence and assisting the Lebanese authorities in their investigation. The mandate of the UNIIC ended after 4 years in 2008⁸³, before the Special Tribunal for Lebanon (STL) was established through a UN Security Council Resolution 1757 following an agreement between the UN and the Lebanese government. It is worth mentioning that this is the first international court to prosecute terrorism as a distinct crime, and the first international tribunal to employ trial in *absentia*, which meant trial in the absence of an actual arrest of suspects or accused. The STL is a hybrid court in a sense that it comprises a mix of national and international judges. It is the most recent modern International tribunal to criminally prosecute individuals for serious crimes.⁸⁴

On the other hand, the STL's jurisdictions have raised a number of questions regarding its efficacy, which we will examine later in this thesis. The nature of the political sectarian landscape in Lebanon and the assassinations that continued made the STL's work very hard. Due to these factors, its location was in The Hague instead of Lebanon, which undercut "one of the primary rationales underpinning a hybrid tribunal" keeping it away from the affected communities.⁸⁵ Unlike other tribunals the STL jurisdictions are connected to one terrorist event and other cases connected to it, rather than being connected to several crimes and territorial borders. Thus making the

⁸² United Nations Security Council, S/RES/1595, 7 April 2005,

⁸³ United Nations Security Council, S/RES/1853, 17 December 2008. In this resolution the STL's establishment date is mentioned as 1st March 2009, and the resolution provided the last extension to the UNIIC mandate up to 28th of February 2009

⁸⁴ Alamuddin Amal, Jurdi Nidal Nabil, Tolbert David, *The Special Tribunal for Lebanon Law and Practice*, Oxford University Press, 2014, *Chapter 1, A very Special tribunal*, P. 1

⁸⁵ Alamuddin Amal, Jurdi Nidal Nabil, Tolbert David, *The Special Tribunal for Lebanon Law and Practice*, Oxford University Press, 2014, *Chapter 1, A very Special tribunal*, P. 2

Tribunal's jurisdiction very narrow especially because it leaves a trail of atrocities committed on several stages unpunished.⁸⁶

As for the tribunal's judges, they are a mix of national and international judges; four Lebanese and seven international judges⁸⁷. One of the issues is how the Tribunal applies the national law relating to terrorism, which makes it difficult for the international judges. In addition to that the trial in *abstentia* is highly criticized because it "undermines the search for justice and illustrates the weakness of the Tribunal" according to Dov Jacobs instead of demanding the delivery of the accused by the national authorities.⁸⁸

3.1 The public's reaction to the STL

Through the American War on Terrorism, American and Israeli politicians had been lobbying and pushing to put Hezbollah on the world's terrorist list, and to strip it of its arms, considering the party of God a threat to international peace and security.⁸⁹

Therefore the establishment of the STL came at a time when Hezbollah was already warning the people of a possible move by the international community do threaten the resistance's existence.⁹⁰ Hence, the STL meant one thing for the majority of Hezbollah's supporters in the country and to its political allies in Lebanon and abroad: the international community was after the party of God, when the US and Israel failed to crush it.

⁸⁶ Alamuddin Amal, Jurdi Nidal Nabil, Tolbert David, *The Special Tribunal for Lebanon Law and Practice*, Oxford University Press, 2014, *Chapter 1, A very Special tribunal*, P. 2-3

⁸⁷ STL, Judges of the Special Tribunal for Lebanon, list of the judges.

⁸⁸ Alamuddin Amal, Jurdi Nidal Nabil, Tolbert David, *The Special Tribunal for Lebanon Law and Practice*, Oxford University Press, 2014, *Chapter 1, A very Special tribunal*, P. 5

⁸⁹ Jeremy Pressman, Brandeis University Crown Center for Middle East Studies, "The United States and the Israel-Hezbollah war", November 2006, <http://bit.ly/2sf5nCa>

⁹⁰ The National Interest, Conflict in Lebanon? the Broader Dimensions behind STL, 5 January 2011. <http://bit.ly/2spuK3P>

On the other side, national and international parties opposing Hezbollah and their supporters saw the STL as a mean to an end, which would curb Hezbollah's growing military forces and public base through a tribunal that would incriminate the party. Therefore many deemed the Tribunal necessary for this particular reason giving it a political aspect and purpose.⁹¹

Thus many Lebanese journals and News outlets accused the intentions behind the establishment of the tribunal of not being true to finding the killers of Hariri, and stressed on the possibility that there was a deeply distorted political ambition boiling underneath the surface. Between the two currents, it seemed that the STL became a symbol of division in the country and a tool used by one group to target another, rather than serving its true purpose of upholding principles of accountability and finding justice for the Late Prime Minister. This Lebanese political climate made the Tribunal's job harder and questioned its credibility regardless of the Tribunal's mandate and composition. As for the STL's judges criticism was basically linked to how they "arguably control the process far more than any other international judges whether it be in relation to the (absent) accused, the victims or the Prosecutor" according to Dov Jacobs.⁹²

The debate around the STL regarding its unconstitutional establishment, its jurisdiction, and abstentia trials, and its link to the UN, historically lacking credibility in the Middle East, which would be further discussed in a following chapter, made the Tribunal seem politicized by national and international actors alike.⁹³

⁹¹ New York Times, The Hezbollah Connection, 10 February 2015
<http://nyti.ms/2jEQgtr>

⁹² Alamuddin Amal, Jurdi Nidal Nabil, Tolbert David, *The Special Tribunal for Lebanon Law and Practice*, Oxford University Press, 2014, *Chapter 1, A very Special tribunal*, P. 5

⁹³ American University of Beirut, "The Special Tribunal for Lebanon (STL): International Justice Dissected, September 2012, P.5 <http://bit.ly/2sfuCU>

3.2 STL Establishment and its Judicial Jurisdiction and Judicial Power

The first issue with the establishment of the Tribunal is that it didn't happen through a constitutional custom, because it bypassed the parliament's vote and disregarded the Lebanese constitution, which insists on parliament approving any international project or treaties that require funding,

Article 88 of the Constitution, provides that:

"No public loan or undertaking involving an expenditure from the treasury funds may be contracted except by virtue of a law." However, since the creation of the STL, and until today, Parliament has not passed any law to approve the funding of this Tribunal, nor has any budget been passed containing a line item for such funding.⁹⁴

In addition to that, Article 52 of the constitution also states: "The President of the Republic shall negotiate and ratify international treaties in agreement with the Prime Minister. These treaties are not considered ratified except after approve by the Council of Ministers. They shall be made known to the Chamber and Deputies whenever the national interest and security of the state permit. However, treaties involving the finances of the state, commercial treaties, and in general treaties that cannot be renounced every year shall not be considered ratified until they have been approved by the Chamber of Deputies."⁹⁵

In the case of the STL this never happened. The STL was established after a request by the Lebanese government and consultation between the new prime minister of Lebanon and the secretary general, giving birth to Resolution 1757: "Recalling the letter of the Prime Minister of Lebanon to the Secretary-General of 13 December 2005 (S/2005/783) requesting inter alia the establishment of a tribunal of an international character to try all those who are found responsible for this terrorist crime, and the request by this Council for the Secretary-General to negotiate an

⁹⁴ Amicus Curiae/Lebanese University Faculty of Law and Political and Administrative Sciences, 2014, Case no. STL-14-05/PT/CJ

⁹⁵ Lebanese Constitution, Article 52

agreement with the Government of Lebanon aimed at establishing such a Tribunal based on the highest international standards of criminal justice”⁹⁶

Also, article 20 of the constitution states, “Judicial power is to be exercised by the Tribunals of various levels and jurisdictions. It functions within the limits of an order established by the law and offering the necessary guarantees to judges and litigants.”⁹⁷ Therefore, for any body to have a judicial capacity, the law must establish it, and this means that for the STL to have judicial jurisdictions parliament must approve its statute.⁹⁸

This didn’t happen for Lebanon, no law has been passed to approve the establishment of the STL. On the other hand, the UN Security Council considered a letter signed and sent by “majority of MPs”⁹⁹ requesting creation of the tribunal sufficient. The SCR decision was made because the speaker of parliament refused to convene parliament in order to ratify the agreement.

Consequently, the STL’s own Rules of Procedure and Evidence are in conflict with the constitution and the law of the land as well, Article 8 of the constitution, which states, “Individual liberty is guaranteed and protected by law. No one may be arrested, imprisoned, or kept in custody except according to the provisions of the law. No offense may be established or penalty imposed except by law.”¹⁰⁰

⁹⁶ United Nations Security Council, Resolution 1757, S/RES/1757, 2007, Adopted by the Security Council at its 5685th meeting, 2007

⁹⁷ Lebanese Constitution, Article 20

⁹⁸ Amicus Curiae/Lebanese University Faculty of Law and Political and Administrative Sciences, 2014, Case no. STL-14-05/PT/CJ

⁹⁹ Security Council Resolution 1757, “Referring to the letter of the Prime Minister of Lebanon to the Secretary-General of the United Nations (S/2007/281), which recalled that the parliamentary majority has expressed its support for the Tribunal”

¹⁰⁰ Lebanese Constitution, Article 8

3.3 STL and the rule of law

It is true that the STL aimed at helping the Lebanese people in coming to terms with the concept of accountability and its importance after serial assassinations, as well as its efforts in restoring faith in the rule of law, the Tribunal's statutory framework for individual criminal responsibility leads to concerns regarding the rule of law.

First the mix between international and Lebanese criminal law in which much is still unclear about how to harmonize these two especially because of overlaps and conflicts.

Secondly, the application of modes of responsibility found in international criminal law to crimes in the Lebanese law runs the risk of breaching the principle of legality.

¹⁰¹ The STL Appeals Chamber has departed from the body of case law built up by the ICTY and ICTR, which indicates a fragmentation of international law, which could undermine the STL and the jurisprudence accumulated by various international criminal tribunals in the past. ¹⁰² Therefore the STL faces a grave issue of legitimacy.

Therefore the question is how could the UN strengthen the rule of law in a country with poor institutions and shaken sovereignty, by undermining the country's constitution, while also supporting accountability when a crime is committed?

3.4 The STL's Funding

Another controversial issue regarding the STL is its means of funding. In its mandate, the funding of the STL will be by the Lebanese government and the rest by foreign countries and donors. Thus if we take the history of Lebanon into consideration and its receptivity to political interference from external powers, would the means of funding of the STL guarantee the impartiality of the court and promise its complete independence from any foreign influences? How could the UN as a multilateral organization guarantee that the work it's doing through its assumed to be highly

¹⁰¹ Alamuddin and Nidal Nabil Jurdi and David Tolbert, *The special tribunal for Lebanon: law and practice* Op. cit. P.5

¹⁰² Amal Alamuddin and Nidal Nabil Jurdi and David Tolbert, *The special tribunal for Lebanon: law and practice* Op. Cit. P.4

politicized Security Council to be unbiased and truly independent from external powers.¹⁰³

3.5 The STL's jurisdictions: Journalists accused of Contempt

As stated in the first article of the Statute of the Court, “The Special Tribunal shall have jurisdiction over persons responsible for the attack of 14 February 2005 resulting in the death of former Lebanese Prime Minister Rafiq Hariri and in the death or injury of other persons. “If the Tribunal finds that other attacks that occurred in Lebanon between 1 October 2004 and 12 December 2005, or any later date decided by the Parties and with the consent of the Security Council, are connected in accordance with the principles of criminal justice and are of a nature and gravity similar to the attack of 14 February 2005, it shall also have jurisdiction over persons responsible for such attacks....”¹⁰⁴

However, the STL expanded its jurisdictions to prosecuting journalists and news outlets. Its attention shifted from the Hariri case to indicting the free press. Both national news outlets, Alakhbar and Al Jadeed faced heat from the court, after publishing documents the STL deemed confidential. The documents that were published by the journalists were leaked to the press by unknown sources.¹⁰⁵

On 31 January 2014, Judge David Baragwanath charged Ms Karma Mohamed and Tahsin Al khayat and Al Jadeed News TV with two counts of contempt and obstruction of justice, as well as Mr. Ibrahim Mohamed Ali AL Amin and Al Akhbar Beirut, a newspaper and its CEO with one count of contempt and obstruction of justice¹⁰⁶.

These contempt cases have infuriated the public, where they felt that their freedom of speech and freedom of the press were under attack by the STL, as well as the

¹⁰³ Loraine Sievers and Sam Daws, *The Procedure of the UN Security Council*, Oxford University Press, 2014, updated on 6 September 2015, <http://bit.ly/2sp44jK>

¹⁰⁴ Security Council Resolution, S/RES/1757, 2007, Article 1, Establishment of the Special Tribunal

¹⁰⁵ STL, Contempt cases, <http://bit.ly/2rhwhUI>

¹⁰⁶ STL Contempt cases (STL-14-05 & STL-14-06)

taxpayers' money wasn't put to good use. Article 13 of the constitution stipulates, "The freedom to express one's opinion orally or in writing, the freedom of the press, the freedom of assembly, and the freedom of association are guaranteed within the limits established by law."¹⁰⁷ Also, Article 19 of the Universal Declaration of Human Rights: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."¹⁰⁸ In addition to the Article 19 on the International Covenant on Civil and political Rights:

- “1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”¹⁰⁹

However in the same Article, section 3, the ICCPR specifies that the rights mentioned in Paragraph 2 include certain responsibilities. However in the contempt cases the Tribunal lacked Jurisdictions over legal persons (in this case news and media outlets), where the News outlets weren't found guilty.¹¹⁰

“Article 19. 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (order public), or of public health or morals.”¹¹¹

¹⁰⁷ Lebanese Constitution, Article 13

¹⁰⁸ Universal Declaration of Human Rights, Article 19

¹⁰⁹ United Nations Human Rights Office of the High Commissioner, International Covenant on Civil and Political Rights, <http://bit.ly/1bNeudO>

¹¹⁰ STL, Contempt Cases, Al Jadeed SAL & Ms Khayat (STL-14-05) <http://bit.ly/2rXvpqE>

¹¹¹ United Nations Human Rights Office of the High Commissioner, International Covenant on Civil and Political Rights, <http://bit.ly/1bNeudO>

In addition to that, the Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racism, apartheid and incitement to war, UNESCO, Article II¹¹²:

“1. The exercise of freedom of opinion, expression and information, recognized as an integral part of human rights and fundamental freedoms, is a vital factor in the strengthening of peace and international understanding.

2. Access by the public to information should be guaranteed by the diversity of the sources and means of information available to it, thus enabling each individual to check the accuracy of facts and to appraise events objectively. To this end, journalists must have freedom to report and the fullest possible facilities of access to information. Similarly, it is important that the mass media be responsive to concerns of peoples and individuals, thus promoting the participation of the public in the elaboration of information.

3. With a view to the strengthening of peace and international understanding, to promoting human rights and to countering racism, apartheid and incitement to war, the mass media throughout the world, by reason of their role, contribute to promoting human rights, in particular by giving expression to oppressed peoples who struggle against colonialism, neo-colonialism, foreign occupation and all forms of racial discrimination and oppression and who are unable to make their voices heard within their own territories.

4. If the mass media are to be in a position to promote the principles of this Declaration in their activities, it is essential that journalists and other agents of the mass media, in their own country or abroad, be assured of protection guaranteeing them the best conditions for the exercise of their profession.”¹¹³

¹¹² UNESCO, Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racism, apartheid and incitement to war, Article II, 28 November 1978

¹¹³ UNESCO, Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racism, apartheid and incitement to war, 28 November 1978, <http://bit.ly/2e3qIGD>

3.6 The false witnesses

Another controversial issue was the evidence collection and handling of the “false witnesses” who falsely testified against General Jamil El Said former head of the Lebanese General Security Directorate, and other three generals and caused their imprisonment for four years. The Prosecutor at the STL refused to deliver documents relating to false witnesses who testified against Major-General Jamil El Sayed. The head of the Defense office at the STL confirmed that he doesn’t approve with the position of the Prosecutor, which may have affected the credibility of the court. This seemed strange especially since a similar situation happened in another tribunal and the ruling was different; Where the International Criminal Court (ICC) ruled on 14 March 2012 in the case of the Leader of the Congolese Rebels, ordering the prosecutor to put on trial the intermediaries who led witnesses to the court, after the court considered them unreliable witnesses.¹¹⁴¹¹⁵

General Jamil El Sayed was detained with other three generals for four years from 2005 to 2009 due to his alleged involvement in the assassination of the Hariri after some witnesses came forward accusing them and Syria and its allies. He was later released due to inconsistencies in the statements of key witnesses and lack of evidence. The refusal of the STL to prosecute and investigate “the false witnesses” especially after shifting its accusation from Syria, to the four generals, and then finally to Hezbollah members, may have caused the Tribunal to appear bias.

¹¹⁴ The Special Tribunal For Lebanon, “STL’s credibility may be affected if Prosecutor fails to hand over False Witnesses’ documents. Roux to “Assafir”: Defense Teams began their investigations to challenge the indictment – Assafir, 2012”, <http://bit.ly/2rFJDOE>

¹¹⁵ International Criminal Court, Lubanga Case, ICC-01/04-01/06, <http://bit.ly/2eX0VxQ>

3.7 STL jurisdictions doesn't apply to individuals but to states

Finally, referring to the Lebanese University faculty of law and Administrative science study discussing the legitimacy of the STL and its judicial jurisdiction, then presented to the STL and published on its official website; resolutions of the Security Council are binding on States, not individuals, except in conformity with constitutional procedures, i.e. under a treaty approved by Parliament, pursuant to Article 52¹¹⁶ of the Constitution. This treaty and the law approving it must be published in the Official Gazette, in accordance with Article 56¹¹⁷ of the Constitution, and Legislative Decree No. 9/ET of 21 November 1939.

The publication of the treaty is not intended merely to inform individuals that they must abide by its provisions; it is a necessary condition that gives the treaty the force of law, as mentioned in Lebanese jurisprudence: "Whereas for the treaty to come into force, all its texts must be published in the Official Gazette, and not just the decree passing it, but the treaty itself after being ratified to become effective."¹¹⁸ The publishing is to make an international treaty an internal law, by which the citizens of the state must abide eventually. The study adds that until the STL's statutes and Rules of Procedure and Evidence are approved and published then no Lebanese citizen is to abide by its laws.

¹¹⁶ Lebanese Constitution, Article 52: The President of the Republic shall negotiate and ratify international treaties in agreement with the Prime Minister. These treaties are not considered ratified except after approve by the Council of Ministers. They shall be made known to the Chamber and Deputies whenever the national interest and security of the state permit. However, treaties involving the finances of the state, commercial treaties, and in general treaties that cannot be renounced every year shall not be considered ratified until they have been approved by the Chamber of Deputies.

¹¹⁷ Lebanese Constitution, Article 56: The President of the Republic shall issue the laws, which have been definitely adopted and demand their publication. He must issue laws, which were declared urgent by a Decision of the Chamber within five days and demand their publication. He shall issue decrees and demand their publication; he has the right to ask the Council of Ministers to reconsider any decision taken by the Chamber within fifteen days as of its registration with the Presidency. If the Council of Ministers insists on the adopted decision or if the time limit expires without the decree being issued or returned, the decision or decree shall be considered automatically operative and must be published.

¹¹⁸ Amicus Curiae/Lebanese University Faculty of Law and Political and Administrative Sciences, 2014, Case no. STL-14-05/PT/CJ

The study also continues to recommend that the Lebanese laws should by law precede the STL's rules since the international decision of the Security Council and consequent arrangements establishing the STL were not ratified, referring to Articles 52, 56, and 88¹¹⁹ of the constitution, considering its very existence unconstitutional until ratified by parliament.

2.8 STL moves to prosecute legal persons, changing its jurisdictions:

The appeal chamber of the STL ruled that it has jurisdiction to prosecute legal persons, such as corporations for contempt of the court.

This decision was made so that the tribunal would be able in the case of Contempt, to prosecute the news outlet, in this case Al Jadeed TV, and not only the individuals held accountable of contempt. Lebanese judge Akoum was the only dissenting judge, fearing that this decision would allow the court to prosecute political parties making them subject to criminal proceedings. It is nonetheless another controversial decision made by the court.¹²⁰

3.9 Why the UN's approach to the Assassination has been unsatisfactory: The STL

The concept of accountability is an important pillar of international law, as it is manifested in "the mechanisms of state responsibility and liability, characterized by a claim in injured parties against a wrongdoing state or organization with a view to obtain reparation for the injury caused by the wrongful acts."¹²¹¹²²

¹¹⁹ Lebanese Constitution, Article 88: No public loan or undertaking involving an expenditure from the treasury funds may be contracted except by virtue of a law.

¹²⁰ International Justice Monitor, "*STL Appeals Chamber decides it Can Prosecute Legal persons for Contempt*", by Anne-Marie Verwiel and Karlijn van der Voort, 2014, <http://bit.ly/2qN9D7x>

¹²¹ Nollkaemper, P.A.; Curtin, D.M, Conceptualizing Accountability in International and European law, 2007, Netherlands Yearbook of international law,

¹²² The Special Tribunal For Lebanon, STL Official Website, "Appeals Panel decides on jurisdiction in Case STL-14-05," 2014 <http://bit.ly/2qUpe4v>

However in a divided nation like Lebanon, undermining the only pillar of rule of law in the country, which in this case the Lebanese Constitution; wouldn't help bringing about a society and culture that cherishes justice and understands the importance of accountability. Silencing the free press also wouldn't play in favor of promoting human rights and the respect of freedoms. If the international community seeks to promote democratic practices and social and political justice in the Middle East, it simply cannot succeed through intrusive and interfering paternalistic approaches, and the STL is an example.

But then does this mean there will be no accountability in Arab corrupted regimes? Achieving accountability in authoritarian or corrupted regimes can be very difficult if not almost impossible, especially when the leaders are left to hold the people hostage. Therefore to insure the lack of impunity trend ends in such regimes, the international community and multilateral organizations such as the EU or the UN could find that helping these countries achieve a democratic transition may solve the issue of impunity in repressive and corrupt nations through transitional justice. However the conditions to moving forward with a democratic transition must be ripe: such as a revolution, civil unrest, a growing civil society, a political deadlock hindering democratic processes such as in Lebanon. Therefore, providing the right conditions to solve the issue of accountability in the Middle East is crucial to succeed in promoting the rule of law.

3.10 Conclusion

Therefore irrespective of the intentions of the STL and the ideals and objectives behind its establishment or the impartiality of its judges and the sanctity of international law, which the STL wishes to uphold. The means in which the tribunal came to life are what made the tribunal so controversial and lacking credibility in the eyes of the public and the press.

In the next chapter I will further discuss why the United Nations' approach to crisis in the Middle East isn't working. The UN today, is rather perceived by Middle Easterners as interfering, limited, weak and controlled by foreign political agendas

rather than global impartial intentions to restore peace and ensure stability in the Region. Based on this analysis, I will continue to explain how a likely politicized Security Council and pending reforms within the UN are the reasons why the UN cannot be the right organization to sponsor and support a democratic transition to a secular state in Lebanon.

CHAPTER IV

The United Nations: no longer the only option in the Middle East

4.1 The failure of the UN in the Middle East: lacking credibility

After the United Nations was founded in 1945 it brought hope to a world recovering from a destructive war that has left countries in ruins and created more than 40 million refugees and displaced persons in Europe alone.^{123 124} The mission and work of the UN were to promote much needed peace and security in the world and ensure the sustainability of the new founded peace. Its main organs the general assembly, which started with 51 members in 1945,¹²⁵ today has 193 members. Its secretariat headed by the Secretary General, its Economic and Social council and its Security Council made up of 15 members, of which 5 are permanent and remain unchanged to date, possessing veto power over UN resolutions (the United States, France, the UK, Russia and China), all have worked for the same goal: preserve international peace and security.¹²⁶

After the war the UN had many successes on many fronts; ending wars, brokering peace, and attending to urgent issues like refugee crisis, natural disaster relief and combating poverty and famine world wide. However today after 7 decades of its

¹²³ Mona Chalabi, What happened to History's refugees? The Guardian, 25 July 2013, <http://bit.ly/2sazaeg>

¹²⁴ Adrian Edwards, Global forced displacement hits record high, UNHCR, 20 June 2016, <http://bit.ly/2r8G9nv>

¹²⁵ The United Nations, History of the United Nations, <http://bit.ly/2bVHJSx>

¹²⁶ United Nations Charter, Article 23: The Security Council shall consist of eleven Members of the United Nations. The Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America shall be permanent members of the Security Council. The General Assembly shall elect six other Members of the United Nations to be non-permanent members of the Security Council, due regard being specially paid, in the first instance to the contribution of Members of the United Nations to the maintenance of international peace and security and to the other purposes of the Organization, and also to equitable geographical distribution.

establishment, the UN and its programs are in crisis. The organization is being perceived as increasingly unequipped to face the current global challenges of our modern world.¹²⁷ The growing divide between the South and the North of the world and the little progress achieved to limit the existing inequalities¹²⁸ were manifested in one of the biggest refugee crisis in recent human history. By the end of 2015, an unprecedented 65.3 million people, of which 21.3 million refugees, have been forced to flee their homes in the South of the world to seek shelter in the developed North.¹²⁹¹³⁰

In addition to that, the proliferation of the UN agencies and their overlapping jurisdictions made collaboration more complicated, less effective and objectives difficult to attain. And finally the bureaucratic and political challenges continue to control the UN's policy and actions or inactions in difficult situations demanding the organization's attention.¹³¹

4.2 The UN in Lebanon, 2006

The examples of the UN's recent failures in handling international crisis were especially in the Middle East. The failure of the UN to end the Israeli occupation of Lebanon from 1982 to 2000, and to stop sooner the Israeli war on Lebanon in 2006,¹³² which resulted in a month of destruction of Lebanese civil infrastructure and the death of more than 1,109 Lebanese people mostly civilian, 4,399 injured and 1 million displaced, as well as the death of 43 Israeli civilians and 12 IDF Soldiers¹³³. It wasn't

¹²⁷ Council on Foreign Relations, Crisis of Relevance at the UN, 17 September 2010, <http://on.cfr.org/2saPXOw>

¹²⁸ Royal Geographical Society, The Global North/South Divide, 2013 <http://bit.ly/2kQKS88>

¹²⁹ The Independent, Refugee crisis: record 65 million people forced to flee homes, UN says, 20 June 2016 <http://ind.pn/28Irztb>

¹³⁰ UNHCR, Figures at a glance, 20 June 2016, <http://bit.ly/1YkKspr>

¹³¹ UN General Assembly: Problem of the Proliferation and overlapping of the programmes of the United Nations and of the Specialized Agencies, A/RES/310, 24 November 1949, <http://bit.ly/2reB7XY>

¹³² Institute for Policy Studies, The Lebanon war and the Failed UN Resolution, 8 August, 2006, <http://bit.ly/2r7ZCC7>

¹³³ Human Rights Watch, Executive Summary, 2007, <http://bit.ly/1ITUW9w>

until August 11 2006, that the UNSC approved resolution 1701¹³⁴ and expanded the UNIFIL's mandate to end the hostilities, which was a month after the violence began. The damages were estimated to be around 2.5 billion dollars to the Lebanese civilian infrastructure.¹³⁵ The UN's lack of steadfastness to stop the violence was apparent since the beginning of the conflict, as they couldn't sway the Israelis and their prime ally the US to end the Israeli assault on Lebanon. It was only until an unexpected lasting resistance from Hezbollah, pressed both countries to seek the UN's help to brokering peace.

4.3 The UN in Iraq

Another example of the UN's limited influence, which is only linked to how much its members are willing to concede it, was the Iraq war. After the UN sustained sanctions on the Iraqis, which lasted for 13 years, through the Security Council, were causing more damage than good. The results were plunging Iraq in poverty and famine in order to punish country's leader, which ended up in punishing the helpless people of Iraq.¹³⁶

This didn't help form a good image of the UN in the eyes of Middle Easterners. On the contrary, the perception of the UN in general, in that region of the world isn't completely positive, as it should be¹³⁷. After 7 decades the world still waits the birth of a Palestinian state to end the conflict in the region and still suffer from the ongoing illegal Israeli settlements¹³⁸. Therefore to the Middle East the UN didn't become a

¹³⁴ United Nations, Security Council calls for end to hostilities between Hezbollah, Israel, Unanimously adopting Resolution 1701, 11 August 2006, <http://bit.ly/2sQE8e7>

¹³⁵ USA Today, Lebanese infrastructure damage tops 2.5 billion \$, updated 7 August 2006, <https://usat.ly/2rf4Y2x>

¹³⁶ CNN International, UN Security Council lifts Iraq Sanctions, 22 May 2003, <http://cnn.it/2t8RMbW>

¹³⁷ UN News Center, Taking Oath of Office, Ban Ki-moon Vows to Restore Trust in United Nations, 2006, <http://bit.ly/2r7X1I8>

¹³⁸ United Nations, Security Council, SC/12657, Israel's Settlements Have No Legal Validity, Constitute Flagrant Violation of International Law, Security Council Reaffirms, 23 December 2016. <http://bit.ly/2i5asHJ>

source of security and, but instead,¹³⁹ it seemed that it has become a highly politicized organization, serving the national interests of powerful countries and lobbyists.

In Iraq, after 13 years of international sanctions (Resolution 660 in 1990) and the Oil for Food Program (OIF),¹⁴⁰ and after the failure of resolution 1441 in 2002 offering Saddam “a final opportunity to comply with its disarmament obligations”¹⁴¹, the UN Security Council’s refusal to endorse the US-UK illegal invasion of Iraq in 2003, did little if nothing to stop the assault on Iraq.¹⁴² Later on, the UN assistance offered to the same US-UK invaders did further great damage to the organization’s image. With this step, the UN identified itself with the illegal war, which is condemned by international law and a breach of the Charter¹⁴³. After 4 months of the war in August 2003, the UN headquarter was bombed killing 15 UN staffers including the Special Representative.¹⁴⁴

The UN then withdrew and kept its distance until under pressure from the US again; it sent another mission in February 2004 to help construct a new interim government.¹⁴⁵

The failure of the interim government because of the conditions under which it was established will follow in another chapter on the transition.

The UN’s duty of non-intervention, impartiality and refrain from sending peacekeeping missions into a state without the consent of the state¹⁴⁶ was violated

¹³⁹ United Nations Secretary General, Secretary-General's briefing to the Security Council on the Situation in the Middle East, including the Palestinian question [as delivered], 16 December 2016, <http://bit.ly/2hspIh2>

¹⁴⁰ CNN International, UN Security Council lifts Iraq Sanctions, 22 May 2003, <http://cnn.it/2t8RMbW>

¹⁴¹ United Nations, SECURITY COUNCIL HOLDS IRAQ IN ‘MATERIAL BREACH’ OF DISARMAMENT OBLIGATIONS, OFFERS FINAL CHANCE TO COMPLY, UNANIMOUSLY ADOPTING RESOLUTION 1441 (2002), 8 November 2002, <http://bit.ly/2sQIou7>

¹⁴² Global Policy Forum, *UN Role in Iraq*, 2003 <http://bit.ly/2rTikBq>

¹⁴³ Sending a UN mission to a country without the invitation of the country but rather taking the side of the invader is a breach of international law

¹⁴⁴ The Guardian, Iraq war was illegal and breached UN Charter says Annan, 16 September 2004, <http://bit.ly/29479vH>

¹⁴⁵ United Nations, SECURITY COUNCIL EXTENDS UN IRAQ MISSION FOR 12 MONTHS, UNANIMOUSLY ADOPTING RESOLUTION 1557 (2004), 12 August 2004, <http://bit.ly/2sbhq2m>

¹⁴⁶ See UN Charter, Article 2(7)

when the UN succumbed to the US's pressure to intervene. It may have seemed that the UN served as a tool in a US toolbox rather than an independent organization with its objective to maintaining world peace.

After the declaration of the United Nations Secretary General Kofi Annan that the US-led war on Iraq was illegal and do not conform with the Charter¹⁴⁷, there is still no accountability for the culprits to date.

4.4 The UN in Syria

It is often debated that the UN and its agencies have become politicized, especially when nations introduce work to UN agencies in order to further their political interests. The United States' foreign policy especially regarding its policy in the Middle East, as well as that of Russia, have raised many questions regarding the paralysis of the UN when facing the Syrian crisis.¹⁴⁸

The UN's failure to end the Syrian conflict is evidence to the inability of the organization to fulfill its first and most important role, which is maintaining international peace and security. The difference between the Syrian crisis and other civil wars is that countries involved in the conflict whether those supporting Assad or those supporting the opposition have been acting on their own interests and paying little attention to the UN.

The Secretary General Ban Ki-moon spoke about these issues in the annual General Assembly of the United Nations on September 2016. He also admitted that the UN Security Council has failed in Syria. The deep power divisions within the council have hindered necessary initiatives towards a sustainable peace in Syria, causing the biggest refugee crisis since World War II.¹⁴⁹

¹⁴⁷ UN news Center, Lessons of Iraq war underscore importance of UN Charter Annan, 2004, <http://bit.ly/2rf2iBV>

¹⁴⁸ UNHCR, UN Refugee chief warns against politicizing plight of refugees, 3 February 2017, <http://bit.ly/2r7uH8U>

¹⁴⁹ Crossette Barbara, The Nation, *Ban Ki-Moon Reflects on the Successes and Frustrations of His 10 Years as UN secretary General*, 2016, <http://bit.ly/2sszd2Y>

The Syrian crisis has showed us the immensity of the divisions in the international community manifesting in the Security Council and Assembly.¹⁵⁰

It makes us wonder, is the UN today incapable of fulfilling its primary role and goal of maintaining international peace and security?

Inevitable reform and changes within its structure especially that of the Security Council are definitely becoming more urgent.

4.5 The UN in Yemen

After the bombing of a funeral in Yemen by Saudi warplanes killing 140 people, the UN failed to punish the war crime. The United Nations High Commissioner for Human Rights, Zeid Raad al Hussein said that countries belonging to the UN Human Rights Council had contributed to “a climate of impunity” in Yemen, failing to investigate the war crimes committed.¹⁵¹ It is worth mentioning that Saudi Arabia is on the Council of Human Rights. The Council refused to start an international investigation into the crimes in Yemen.¹⁵²

The failure of the UN to respect the rules of accountability laid in international law, immediately contributes to the image of the UN lacking credibility and reliability.

Today 21 million people in Yemen are dependent on foreign aid to survive¹⁵³. At least 785 children were killed and 1,168 injured since 2015, and the Saudi coalition was responsible for 60 percent of these child deaths and injuries.¹⁵⁴ The UN released a report putting the Saudi led coalition on a Children’s Rights Blacklist, however after

¹⁵⁰ BBC News, Syria Conflict: UN assembly highlights divisions, 29 September 2015, <http://bbc.in/liW9mep>

¹⁵¹ Reuters, official website, Middle East and North Africa, Oct, 10, 2016. Article: After Yemen funeral raid, UN rues failure to punish war crimes.

¹⁵² The Guardian, UK accused of blocking UN inquiry into claim of war crimes in Yemen, 25 September 2016, <http://bit.ly/2cNREXm>

¹⁵³ Time IDEAS, World affairs, June 15, 2016, the UN failed Yemen’s children.

¹⁵⁴ Human Rights Watch, Official website, Middle East and North Africa division, Article: Dispatches: Yemen’s Children Victims of Shocking Violations

protests and threats to cut funding or declare the UN anti-Islamic by Sharia law, the UN backed down and was forced to remove the Saudi coalition of the list.¹⁵⁵

This incident clearly shows that the UN is facing a serious problem political manipulation and held hostage by powerful nations when their interests are threatened.

4.6 The UN in Afghanistan

The UN failed to support the plan for a democratic transition in Afghanistan. The former UN representative for Afghanistan Mr. Brahimi, believed that international actors went beyond acts of assistance and exercised significant leverage on the transition process. For Brahimi, “the United Nations, continued to operate, far too often, through parallel structures that did provide some services to the population but undermined rather than helped the state establish and sustain its credibility”¹⁵⁶ the close involvement of states in the transition created dependency schemes making Afghanistan a rentier state dependent on foreign aid and assistance instead of an independent nation. The international influence on Domestic Interim Governance or DIG in Afghanistan definitely concerns other countries requesting the UN’s help in supporting their own DIGs.¹⁵⁷

4.7 Growing competition between the UN and relatively new international and multilateral organizations puts a lot on the UN’s plate

China has launched a new international development bank vs. the US led World Bank. It is no secret that the *Asian Infrastructure Investment Bank (AIIB)* translates to a Chinese move to balance rules of global development. The AIIB was joined by

¹⁵⁵ BBC News, *Yemen Conflict: UN takes Saudi Coalition Off Child Blacklist*, 2016, <http://bbc.in/2rFjf2I>

¹⁵⁶ L. Brahimi, ‘State-building in Crisis and Post-Conflict Countries’, June 2007, P. 6

¹⁵⁷ PHD European University Institute, Emmanuel H. D. De Groof. “*Domestic Interim Governance Under International Law*”, 2016, P.36

Australia, Britain, Germany, Italy, the Philippines, and South Korea, tipping the scale for the US and the UN.¹⁵⁸

Development aid is a highly competitive and fragmented policy area. At least 28 multilateral international organizations specialized in international development exist, and competition is inevitable in terms of acquiring more donors. One UN body which can be in competition with the AIIB is the UNDP especially since the agency was created with a decision-making structure that limits the influence of important donor states: following the broader UN principle that each member state should have equal representation, the organization follows a one-country-one-vote rule. Hence, the United States, one of the largest donors to the organization, has the same voting power as Nepal, a major aid recipient.¹⁵⁹ This shows how new multilateral international organizations with less constraints are being established and growing with the needs of new emerging markets.

The *G20* and the *G7*, are two new forums where the powerful states can meet and manage their global interests. These forums present a possible competition with the UN, in areas like financial crisis management, a field where it is believed the G20 will especially play an important role managing. In this field the G7 will have limited competitiveness because of its limited representativeness, as for the UN it doesn't have a clear advantage in this field. Regarding the field of global security, which is a fundamental basis of the UN, will still give the organization an important advantage due to its resources and experience.¹⁶⁰

¹⁵⁸ Lipsy Philip Y., Stanford.edu, "*who's afraid of the AIIB: Why the United States should support China's Asian Infrastructure Investment Bank*" Foreign Affairs, May7, 2015.

¹⁵⁹ Stanford.edu, who's afraid of the AIIB: Why the United States should support China's Asian Infrastructure Investment Bank. Philip Y. Lipsy, Foreign Affairs, May7, 2015.

¹⁶⁰ Shuyong Guo, Dean of school of international relations at Shanghai international studies university: "Three Systems of Global Governance: their competition and future prospect"

However the G20 and especially the G7 is becoming stronger in dealing with international terrorism especially since it presents the countries with the most sophisticated intelligence in the world.

Finally in the field of international development governance, the UN would still remain a necessary platform however in order to act efficiently the UN needs support and cooperation from both the G20 and the G7 in order to get the necessary funds and put to work its action plans.¹⁶¹

The proliferation of multilateral international organizations and agencies, as well as multilateral aid is changing the system of global governance and the influences and impacts are still not clear.¹⁶² There is evidence of cooperation and competition intertwining between these systems. This doesn't mean that the UN will not play a decisive role in issues concerning global governance, or that it is not relevant anymore as an organization. But it is important to mention that its influence is diminishing and countries around the world are looking for new outlets to accomplish their objectives where the UN has proven to be incapable or unwilling to reform or introduce changes to its main bodies. The delayed reform on the Security Council isn't stopping many member states from demanding a new and updated Security Council that reflects the reality of global changes since the UN was founded in 1946. But the division remains over their respective visions for the council. Many member states feel underrepresented, especially African countries and believe they deserve permanent seats on the council.¹⁶³

The issue of the veto power remains one of the most important ones. The veto power currently belongs to only 5 members and this has shown to interfere in the Council's effective functioning especially lately regarding the Syrian crisis and its inability to

¹⁶¹ Prof. Guo Shuyong, Dean of school of international relations at Shanghai international studies university, "Three Systems of Global Governance: their competition and future prospect"

¹⁶² OECD, What do we know about Aid? <http://bit.ly/2t9u5A5>

¹⁶³ United Nations, General Assembly, GA/11715, 30 October 2015, <http://bit.ly/2rP2N4s>

draft a resolution on Aleppo.¹⁶⁴¹⁶⁵ A certain level of accountability and responsibility must be expressed when dealing with war crimes in order to restore the Security Council's credibility, and bring back trust in the UN as a whole.

4.8 The EU, a glimmer of hope for the Middle East

The European Union is another multilateral organization with powerful agencies dealing with many fields, including transitional justice through the EU action Plan on Human Rights and Democracy 2015-2019,¹⁶⁶ providing a framework for EU support to transitional justice as well as the European Partnership for Democracy and its efforts to assist in democratic transition in developing countries.¹⁶⁷

In a statement released by the European council in January 2017, after the successful election of President Michel Aoun following 2 year gap in the presidency, by saying that the Council adopted conclusions reaffirming the EU support to the democratic process in Lebanon and welcoming the recent election of President Michel Aoun and the formation of a new government led by Prime Minister Saad Hariri. It calls on the country to hold timely legislative elections in 2017 and ensure a smooth and transparent process.¹⁶⁸

¹⁶⁴ The National, Syrian Crisis reveals how the UN failed, 21 September 2016, <http://bit.ly/2sbzn0E>

¹⁶⁵ United Nations website, UN.org, General Assembly, 71 session and 42nd and 43rd meetings, updated Security Council must reflect changing global reality, Member States say, as General Assembly debates ways to advance progress on reform, 7 November, 2016.

¹⁶⁶ European Commission, Action Plan on Human Rights and Democracy (2015-2019), Brussels, 28 April 2015, <http://bit.ly/2rOFpUw>

¹⁶⁷ The EU's Policy Framework on support to transitional justice, <http://bit.ly/2shaMsb>

¹⁶⁸ European Council, press release 16.01.2017, foreign affairs & international relations, "Lebanon: Council adopts conclusions", 2017, <http://bit.ly/2qQ17sq>

The Council also reiterated the importance of Lebanon's ongoing commitment to a policy of dissociation from all regional conflicts, as well as to commend the country's extraordinary efforts in hosting more than 1.1 million Syrian refugees.¹⁶⁹

This statement shows the support of the EU for a democratic process in Lebanon that would bring stability and peace not only to the country but also to the region.

4.9 Conclusion

To conclude this chapter, the evident lack of objectivity in the recent actions of the UN in the Middle East, and evidence of its politicization is crystalizing as it couldn't be more apparent especially when accountability becomes selective. Thus making the organization serve what is contradictory to its original purpose, which is maintaining international peace and security and standing up against those who breach the Charter and International law.

These are examples why Lebanon cannot rely on the UN if the country were to decide to establish a secular democratic regime. Lebanon has to look for another multilateral organization to fulfill the role of sponsor and support its transition to a sustainable inclusive democracy.

¹⁶⁹ European Council, press release 16.01.2017, foreign affairs & international relations, Lebanon: *council adopts conclusions*, 2017, <http://bit.ly/2qQ17sq>

CHAPTER V

The Democratic transition for Lebanon

5.1 Is Lebanon ready for a transition and why?

Lebanon is undoubtedly one of the oldest constitutional democracies in the Middle East. However since the end of the civil war in 1989, and the TAIF accord,¹⁷⁰ Lebanon wasn't able to perform a democratic constitutional transition from a confessional state into a secular state due to the sectarian party leaders who have kept the country's divisions well and alive. Their divisions nurtured one another, like an enclosed circle that has kept the country in a political and economic turmoil.¹⁷¹ National identity was lost in the midst of categorical interests and true democracy became a dream for most of the Lebanese. Sectarian loyalties kept feeding on the consociative system and hindered the passing of any proposal of a reformed electoral system or democratic transition. Fears of a transition, which might bring about a new regime where sectarian old sectarian parties aren't sovereign, kept democracy at bay.

However the transition proposed in this thesis is an inclusive transition, especially because transitions generally happen after a war where the winners take over the new government or after civil unrest and or a revolution. However in Lebanon this is not the case, the transition is overdue and should happen as Article 95 of the Lebanese constitution indicates¹⁷². It is time for Lebanon to end the sectarian divisions serving only a few leaders in the country, and celebrate one national Lebanese identity through the creation of a secular state.

¹⁷⁰ Library of Congress, Lebanon: Constitutional Law and the Political Rights of Religious Communities, 06 September 2015, <http://bit.ly/2sbFWjT>

¹⁷¹ Bassel Salloukh, Rabie Barakat, Jinan Al Habbal, Lara W. Khattab, Shoghig Mikaelian, *The Politics of Sectarianism in Postwar Lebanon*, Op. Cit. P.19

¹⁷² Lebanese Constitution, Article 95

Therefore a peaceful and most importantly inclusive transition through negotiations between the current leaders and the civil society needs to happen, and that's why the European Council's support and sponsorship is crucial in order to guarantee a peaceful and smooth transition.

5.2 Why now?

The latest events in the Middle East have shown that the people and especially a young generation who suffered decades of oppression, poverty and corrupted regimes under long-standing authoritarian leaders, didn't believe they could stay silent as their parents or grandparents did. They wanted more rights, more opportunities, and the chance to grow and accomplish more in their lives.¹⁷³

Social media a millennial phenomenon has undoubtedly helped the uprising spread and sweep away many Arab countries from North Africa to the Middle East. The Arab spring was inevitable, in most countries it was opposed by the dictators who were still in government while the upsurge of popular anger started.¹⁷⁴ Peaceful protests were met with extreme violence towards the protestors, like in Libya there were as many as 30,000 dead due to battles happening between pro-Qaddafi forces and the opposition rebels. Egypt 900 dead and 6400 people were injured, in Tunisia around 300 dead. In Syria, 3500 dead in 2011 after protests broke out,¹⁷⁵ the conflict later escalated transforming into a full-fledged uncontrollable civil war. Foreign meddling in Syrian affairs by opposite powers; such as the US and Russia, added fuel to the fire.

Today in Syria there are 6.1 million internally displaced people and 4.8 million seeking refuge abroad, according to the UN Office for the Coordination of Humanitarian Affairs. The war has claimed the lives of more than 470,000 people.¹⁷⁶

¹⁷³ UN OHCHR, Who will be accountable?, UN 2013, <http://bit.ly/2shn43W>

¹⁷⁴ World Bank, the economics of the Arab Spring and its aftermath, 2015

¹⁷⁵ US news, Death toll of Arab spring, November 2011

¹⁷⁶ Human Rights Watch, World Report 2017, Syria.

From these events we could excerpt lessons, from other countries facing a risk of conflict and internal destabilization. Therefore we can understand the importance of inclusivity in any future democratic transition and the importance of power sharing and compromise when dealing with authoritarian regimes and volatile and divided communities.¹⁷⁷

5.3 Lebanon in the Arab uprising, canceling the elections, and the constitutional council fails the people

In Lebanon although, the protests were happening even before the parliament decided to postpone the elections in 2013 and then again in 2014,¹⁷⁸ the situation never escalated to extreme violence as it happened in neighboring Arab countries. Probably the reason behind this, is the structure of the country being a complex consociative democracy with ample social freedoms helped Lebanon stand out in the Middle East. Also the type of authoritarian regime in Lebanon is different from the one existing in Arab nations where one supreme leader governs all. In Lebanon, however, the regime could be identified as an authoritarian oligarchy, where each leader commands its own little community, and the continuity of his ruling is ensured balanced by the continuity of the ruling of his adversary.¹⁷⁹

Both decisions in 2013 and 2014 to extend the parliament's mandate twice came after the parties couldn't agree on a new electoral law to abolish the old majoritarian system and adopt a proportional one. The old parties claimed then that the extension was happening because of security concerns linked to the civil war in Syria.¹⁸⁰ The European Union condemned the decision as unconstitutional. As well as other

¹⁷⁷ De Groof Emmanuel, European University Institute, Department of Law PHD, "*Domestic Interim Governance Under International Law*", Op. Cit. P.208

¹⁷⁸ Conseil Constitutionnel libanais, cc.gov.lb, Decision 7/2014, 28/11/2014, <http://bit.ly/2ssq5Lr>

¹⁷⁹ Al Jazeera, Lebanese Oligarchy preserves its interests once again, 21 October 2016, <http://bit.ly/2f8ZOi2>

¹⁸⁰ Naharnet Newsdesk, "*Constitutional Council Says Decision on Extension of Parliament Term 'Legal'*", 2014, <http://bit.ly/2sDV6eU>

international actors,¹⁸¹ especially since one of the basic political rights of citizens is the right to vote as clearly stated in Article 25 of the International Covenant on Civil and Political Rights (ICCPR) “Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections, which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.”

Article 2, paragraph 1 states: “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”¹⁸²

Clearly the Lebanese government and the very parliament, which is supposed to be representing the people was violating the civil and political rights of the Lebanese citizens. A grave violation of International Human Rights law was committed.

5.4 Where was the constitutional council after this move?

After the first extension of the parliamentary mandate for 17 months, the constitutional council failed to convene for at least four consecutive times because some judges abstained from the meeting.¹⁸³ Appeals were filed by the then president Michel Suleiman and the Free patriotic movement, the party under leadership of current president Michel Aoun, against the extension of the mandate, but the council seemed reluctant to rule on the unconstitutional move. The lack of quorum made the

¹⁸¹ Reuters, Lebanese Parliament extends own term till 2017 amid protests, 5 November 2015, <http://reut.rs/2sRbjOT>

¹⁸² See ICCPR, Article 25

¹⁸³ NOW, Lebanon’s constitutional council fails to meet amid protest, 18 June 2013, <http://bit.ly/2sb2Rfd>

17-month extension of the parliamentary mandate a law. The people began to question the constitutional council's credibility and impartiality.¹⁸⁴

Moreover, the same parliament decided to extend its mandate a second time for 31 months until June 2017. The constitutional council met on November 28, 2014 and was presided by President Issam Sleiman in the presence of the Vice-President Tarek Ziadeh and its members: Ahmad Takkieddine, Antoine Messarra, Antoine Khair, Zaghoul Atiyah, Toufic Soubra, Souheil Abdel Samad, Salah Moukhaiber, and Muhammad Bassam Murtada. They decided that:

Based on article 19 of the Constitution,¹⁸⁵ which states that; "A Constitutional Council is established to supervise the constitutionality of laws and to arbitrate conflicts that arise from parliamentary and presidential elections..."

The constitutional council expressed that the extension is a violation of the constitution, adding:

"Considering that the extension by the parliament of its own term of office disturbs the balance on which is based the parliamentary mandate, it is thereby inconsistent with the concept of this mandate in virtue of the article 27 of the Constitution "A member of the Chamber represents the whole nation. No restriction or stipulation may be imposed upon his mandate by his electors"

Considering that the Constitutional Council had already invalidated through its decision 4/96 the text setting out the mandate of the Parliament to four years and eight months, thereby failing to comply with the parliamentary principles and customs in Lebanon;

Considering that the extension of the parliamentary mandate, subsequent to holding elections, is more dangerous than the extension of the mandate by an electoral law and prior to the organization of elections;"

¹⁸⁴ Naharnet, Constitutional Council fails to meet again as Parliament extension law becomes valid, 21 June 2013, <http://bit.ly/2sboJHp>

¹⁸⁵ See Lebanese Constitution, article 19

Although the Council judged the mandate's extension to be a violation of the constitution, it however, remarked, "the extraordinary circumstances Lebanon is passing through forced the council to reject the appeal."¹⁸⁶

As it stated in its decision (Decision No 7/2014): "Considering that the invalidation of the law on the extension of the mandate of the Parliament in the current situation shall lead to vacuum in the Legislative besides the vacuum in the Presidency, which shall be a flagrant violation of the Constitution;

Thus, in order to prevent further vacuum in the constitutional institutions and to avoid impeding the holding of presidential election, the extension shall be considered a *fait accompli (amran waqi'an)*"¹⁸⁷

To the majority of the Lebanese, the constitutional council has failed them and any chance of a democratic peaceful transition seemed impossible.

5.5 But is the constitutional council truly independent?

Looking at the constitutional council's structure and establishment before anything else raises questions. Five of its ten members are appointed by parliament by an absolute majority and the other five by members of the Council of Ministers through a two-third vote, to check the constitutionality of laws, proposals and decisions made by the two institutions and the president. An institution, which the same institution that picks the former's appointees defies the principle of checks in balances in any given democratic system and would insinuate a clear conflict of interest.^{188 189}

¹⁸⁶ Naharnet, Constitutional Council Says Decision on Extension of Parliament Term 'Legal', 30 November 2014, <http://bit.ly/2sDV6eU>

¹⁸⁷ Conseil Constitutionnel libanais, cc.gov.lb, Decision 7/2014, 28/11/2014

¹⁸⁸ International Foundation for Electoral Systems, Lebanon's constitutional council, 26 May 2009, <http://bit.ly/2rjTNRf>

¹⁸⁹ See Conseil Constitutionnel, presentation, <http://bit.ly/2r7F8t6>

Although, it is true that the council is one of the greatest achievements brought to Lebanon by the TAIIF agreement in a similar model to the constitutional council in France, but the selection process of the members remains the main issue, especially since the sectarian divisions have also poisoned the council itself. 5 of the members in the constitutional council need to be Muslims and the remaining 5 have to be Christians. This has allowed political partiality and influence on the council's work, rendering it incapable of making a fair decision in both parliamentary extension crises.¹⁹⁰

Mr. Mahfouz Skina, a former adviser to the State Council in Lebanon, and a scholar who has conducted many studies on the constitutional problems in Lebanon has criticized the current structure of the council and proposed reforms. Skina who holds a Doctorate in law from the French University of Poitiers said: "The parliament chooses half of the members and the Council of Ministers chooses the other half. This selection is in fact made through a political quota system among the various parliamentary and political blocs. Within the scope of such a mechanism for selecting members, it's only logical that council members are loyal to the party that named them or elected them, and not to the Constitutional Council itself or the constitutional committee to which they are affiliated.

Moreover, the members of the Constitutional Council rarely distance themselves from political or sectarian alignments. Hence, I believe that the reason [for this crisis] lies in the method of selection, since as long as said selection is made in the manner specified above, the members of the council will not be independent in performing their duties and will be subjected to pressure from the political party or authority appointing them."¹⁹¹

¹⁹⁰ Al-monitor, the pulse of the Middle East, "*Lebanese Expert: Constitutional Council must be reconstructed*", by Nasser Chararah, 24 June 2013
<http://bit.ly/2ssoMMP>

¹⁹¹ Al-monitor, the pulse of the Middle East, Lebanese Expert: Constitutional Council must be reconstructed, by Nasser Chararah Op. Cit.

Another issue with the constitutional council is their mandate, which lasts for only 6 years. Unlike the French Constitutional Council, which members serve for 9 years, the mandate duration is the same for the Italian Constitutional Court, 9 years, inspiring more stability.

In addition, in Italy, the members are appointed by the President, the Parliament, the administrative and ordinary Supreme Courts. As for France, the members are appointed by the President, the National Assembly and the Senate.

But in Lebanon, the members of the constitutional council are picked by only two institutions: the Parliament and the Council of ministers, which isn't sufficient to guarantee the complete independency of the council and true democratic checks and balances.¹⁹²

On the other hand, the president, the prime minister, and ten members of the parliament are the only ones who have the right to consult the Council on matters that relate to the constitutionality of laws and file petitions as stated by Article 19 of the Lebanese constitution: "A Constitutional Council is established to supervise the constitutionality of laws and to arbitrate conflicts that arise from parliamentary and presidential elections. The President, the President of the Parliament, the Prime Minister, along with any ten Members of Parliament, have the right to consult this Council on matters that relate to the constitutionality of laws. The officially recognized heads of religious communities have the right to consult this Council only on laws relating to personal status, the freedom of belief and religious practice, and the freedom of religious education. The rules governing the organization, operation, composition, and modes of appeal of the Council are decided by a special law."¹⁹³

Also religious leaders can consult the Council on laws related to their religious freedoms. But the citizens or the civil society aren't allowed to consult the Council. Changing this practice by allowing the public to approach the constitutional council

¹⁹² See French Constitution, Article 56, <http://bit.ly/2qQ6SGv>
And the Italian Constitution, Article 135, <http://bit.ly/1DWVvk2k>

¹⁹³ See Lebanese Constitution, Article 19.

through a court filtration system, can definitely allow a more democratic representation of the people's interests.

5.6 Is Lebanon ready for democracy? The role of the civil society

If we go back to our initial analysis answering the question why would Lebanon be ready for a democratic constitutional transition, we cannot deny that the Arab Spring Uprising news on social media and national news outlets have encouraged the Lebanese to also stage their own protests against government corruption, a failing economy, and lack of basic social and political rights. However the protests related to the Arab uprising didn't have the same effect on Lebanon as they did in other Arab nations. Many have drawn similarities between the Arab Spring to the 2005 Cedar Revolution ousting Syrian troops and protesting impunity in the death of Prime Minister Rafic Hariri.^{194 195}

In Lebanon there was only protests but no civil unrest, no regime change, no transition, and no overthrow of the old regime or war. The protests instead died out quietly for fears of another civil war. But this doesn't mean that the protests didn't accomplish anything, on the contrary, a stronger and more aware civil society was in the making.

A young generation was fed up of not being able to voice its concerns and hopes for radical change. This new generation of secular young university students and workers didn't feel it belonged to the old parties and their leaders¹⁹⁶ who have been present since the civil war and responsible for the corruption and political deadlock in the country, as well as the recent garbage crisis, which hit the country in the summer of 2015. The country witnessed the rage of this generation, which for the first time paralyzed the government, the parties, and flooded the capital center with peaceful

¹⁹⁴ The Economist, The Arab Winter, 9 January 2016, <http://econ.st/1RxCB4a>

¹⁹⁵ Rupert Sutton, A new Paradigm: Perspectives on the Changing Mediterranean, Center for Transatlantic Relations, 2014, P.99-101

¹⁹⁶ Daniel Meier, The effects of Arab Spring and Syrian Uprising on Lebanon, University of Oxford, May 2013, P.4-5

protests.¹⁹⁷ The protesters demanded the fall of the government, and not only a more accountable and responsible government in handling the environmental crisis but also the end of the sectarian rule, which has benefited the party leaders but exhausted and impoverished the people.¹⁹⁸

This young and ambitious movement gave birth to many groups like “You Stink”, “*Sakker el Deken*”, which translates to “close the shop”, “*Badna Nhasseb*” which translates to “we want accountability”.¹⁹⁹ These protests shook the nation, and birthed other civil society movements such as “*Beirut Madinati*”, which translates to “Beirut my city”, a volunteer-led campaign to elect a municipal council of qualified, politically unaffiliated individuals. Their candidature during the May 2016 municipal elections proved to be successful on many levels, as they almost won the elections that year, they put the fear of God in all the traditional political parties, to the point where the latter had to form one coalition to stand against *Beirut Madinati*. The old parties won by a marginal vote only, which is a historical and unprecedented happening in Lebanon.

Beirut Madinati is the first organized civil society movement with a strong political agenda and serious work on the ground. Their core values are: “the primacy of the public good, social justice, transparency, and stewardship of our city for future generations.”²⁰⁰ They are determined in their program advocacy work in urban affairs and urban development for Beirut. Their support base has grown rapidly and young Lebanese have volunteered to support the movement.

Naqabati, which translated for “My Syndicate, another outstanding civil society movement managed to triumph, beating all political parties who have also joined their

¹⁹⁷ Business Insider, Thousands protest in Beirut over Lebanon’s trash crisis, 12 March 2016,

¹⁹⁸ Los Angeles Times, Protesters raise a stink as Lebanon’s garbage crisis worsens, 26 August 2015, <http://lat.ms/2rke1dn>

¹⁹⁹ Sharq for Citizen development with the Konrad-Adenauer Stiftung, Collaboration with Lebanese Civil Society, Lebanon, 13 January 2017, P.22-23, <http://bit.ly/2rk9rMt>

²⁰⁰ Beirut Madinati official website, About us, our core values. 2016

efforts for the second time in a coalition against *Naqabati*.”²⁰¹ This happened during the Syndicate of Engineers Elections April 2017. As the traditional parties lost to the civil society, the country awaits change. It is still not a national victory yet for the civil society, until they win the parliamentary elections, but it is nonetheless an immense and recognizable victory. It is worth mentioning that the Engineers Syndicate is part of the High Council for Urban Planning in the government and it is as well a hub for innovation and skillful young women and men who can have a positive and effective influence on the ever deteriorating infrastructure in Beirut and the rest of major Lebanese cities.

Another Civil society movement, NGO, called “*Sakker el Dekene*”²⁰² which translates to “close the shop” began their fight against institutional corruption in Lebanon in 2014. They have a hotline where citizens can report on a corruption related event or crime. They have been spreading awareness regarding the inefficiency and lack of accountability in public administrations in Lebanon. And have opened the door for any citizen to volunteer and become part of their campaign.

They additionally included on their website a section that solely focuses on the international and national laws related to corruption, such as the UN convention against corruption, the OMSAR youth Charter against Corruption, Access to Information or Whistle Blower protection draft laws etc... in order to educate the people more about their rights and the issue at hand.²⁰³²⁰⁴

They are also famous for their funny videos mocking government related corruption stories, as well as creative and funny posters spread through social media.

²⁰¹ Naqabati official website

²⁰² Sakker el dekkene official website

²⁰³ See Sakker el Dekene” legal, <http://bit.ly/2shUWgZ>

²⁰⁴ Sharq for Citizen development with the Konrad-Adenauer Stiftung, Collaboration with Lebanese Civil Society, Lebanon, 13 January 2017, P.23-25, <http://bit.ly/2rk9rMt>

Lebanon was ranked first in corruption amongst Arab countries, according to the International Transparency Index.²⁰⁵ It has exceeded its neighbors in regards to organized misappropriation of public funds, and has attained the status of most corrupt Arab nation with a percentage of people thinking corruption is increasing of 92% the highest amongst Arab Nations.²⁰⁶

Corruption in Lebanon has come to govern all sectors and branches of government and in all forms according to the Lebanese Transparency Association report: Including bribery, nepotism, favoritism, patronage, embezzlement, kickbacks, and vote buying.

The causes behind corruption in Lebanon are various and include among others:

- The lack of awareness on corruption, its causes and consequences;
- The absence of dysfunctional key anti-corruption institutions;
- The weak legal framework and the lack of proper legal implementation mechanisms;
- The post-war structure in Lebanon, which has led to a power-sharing formula among political and confessional groups resulting in competition for state resources.²⁰⁷

Finally, this is why the conditions for a transition are available and the situation is ripe. However the transition in Lebanon cannot be a hostile one, since we understand that the traditional parties and their sectarian leaders still hold a great deal of power in the country and especially among uneducated, poor and underprivileged communities who seek the benevolence of the leaders in order to find a job or support their families or even those who fear change and that their interests might be lost.²⁰⁸

²⁰⁵ The Lebanese Transparency Association, *corruption in Lebanon*
<http://bit.ly/2rz28C8>

²⁰⁶ Transparency International, Nearly 1 in 3 paid a bribe in Middle East and North Africa in Past 12 Months, 3 May 2016, <http://bit.ly/2srwrgZ>

²⁰⁷ Transparency-lebanon.org, Lebanese Transparency Association, corruption in Lebanon

²⁰⁸ Al Jazeera, Why the Lebanese Sectarian Leaders, 6 April 2017,
<http://bit.ly/2rfkY4j>

Finally the civil war in Syria has definitely contributed to the chaos in Lebanon, as we saw politicians spent over two years clashing and unable to elect a president until the election of President Aoun in 2016 a Hezbollah ally. The kingmaker was gone and the arena was left empty for another power to fill Syria's place. And Lebanon has become less of a "battleground for regional and international actors".²⁰⁹

Today another political crisis face the traditional parties, they are unable to agree on a new electoral law for the third time.²¹⁰ Which was supposed to happen after the TAIF agreement.²¹¹

Today Lebanon is left without a protector without a sponsor to prevent the colliding parties from spilling their disagreements on the field and causing havoc in the country.

Therefore for all the reasons mentioned above, it is not only time for Lebanon to execute a long awaited transition, but it is also the responsibility of the international community to support and protect this initiative as a step to bringing peace to the region and avoiding another war and refugee crisis.

5.7 The transition, how?

There are many essays and studies on post-conflict transitional justice and post-conflict domestic interim governance DIG, introducing a new constitution during a transitional period.²¹² But in the case of Lebanon and in the absence of a direct conflict (Civil war, civil unrest or regime toppling), the starting point, which would trigger a democratic transition, would actually be the current Lebanese constitution.

²⁰⁹ The Weekly Standard, Presiding over chaos, 14 November 2016, <http://tws.io/2rfH2Mf>

²¹⁰ AL Monitor, Will Lebanon's president keep parliament from re-electing itself? 12 April 2017, <http://bit.ly/2shLzy5>

²¹¹ See Lebanese Constitution, Article 95

²¹² Christine Bell on "Transitional Justice, interdisciplinarity and the State of the field and non-field.", 1 March 2009/ David Crocker, Truth Commissions, Transitional Justice and Civil Society, 2000/ Jon Elster, Coming to terms with the past. A framework for the study of Justice in the transition to Democracy 01 July 2009/ Lisa Anderson, Transition to Democracy, New York, 1999

The Lebanese constitution calls for such transition in Article 95, “The Chamber of Deputies that is elected on the basis of equality between Muslims and Christians shall take the appropriate measures to bring about the abolition of political confessionalism according to a transitional plan. A National Committee shall be formed, headed by the President of the Republic, it includes, in addition to the President of the Chamber of Deputies and the Prime Minister, leading political, intellectual, and social figures.

The tasks of this Committee shall be to study and propose the means to ensure the abolition of confessionalism, propose them to the Chamber of Deputies and to the Ministers council of ministers, and to follow up the execution of the transitional plan. During the transitional phase:

- a. The sectarian groups shall be represented in a just and equitable manner in the formation of the Cabinet.
- b. The principle of confessional representation in public service jobs, in the judiciary, in the military and security institutions, and in public and mixed agencies shall be cancelled in accordance with the requirements of national reconciliation; they shall be replaced by the principle of expertise and competence. However, Grade One posts and their equivalents shall be exempted from this rule, and the posts shall be distributed equally between Christians and Muslims without reserving any particular job for any sectarian group but rather applying the principles of expertise and competence.”²¹³

Therefore a transition in this situation would have to be carried out differently from when a state is emerging from conflict. In the case of Lebanon a transition cannot be deemed as a regime change but a natural transition foreseen by the constitution itself. The duty to apply international law through making sure the principle of accountability is respected will have to become a process rather than an action taken immediately against traditional parties, especially in cases of corruption. This thesis argues that it is necessary to maintaining the peace in Lebanon, to stress the

²¹³ See Lebanese Constitution, Article 95

importance of inclusivity in the transitional period and after it in order to guarantee the success of this initiative.

The wave of demonstrations during 2011 known as the ‘Arab Spring’ ended where, in some cases, creation of noteworthy ‘transitional councils’ or ‘transitional authorities happened’, in the light of the principle of self-determination.²¹⁴ However it seemed that the transitional institutions and procedures were set up to (purportedly) steer a regime change in Arab Spring countries.²¹⁵

Conversely, what Lebanon needs is the support and sponsorship of the EU, as this thesis proposes, to build consensus-based transitional institutions derived from an agreement between the traditional parties and the civil society protesting and demanding change. Because it would be absurd to think that the triumph of one side could simply eliminate the other.

A transition can be defined as “the process or a period of changing from one state or condition to another”, and evokes the idea of passage rather than rupture.²¹⁶ This should be the main feature of any transition in Lebanon.

Domestic Interim Governance or DIG isn’t an alien practice, especially internationally assisted DIG is a very familiar model which happened in many countries in Africa and the Middle East, with some failures as in the case of Iraq, and other successes as in the case of South Africa.²¹⁷

²¹⁴ Emmanuel H. D. De Groof PHD Thesis, Domestic Interim Governance Under International Law, Op. Cit. P.58-59

²¹⁵ Emmanuel H. D. De Groof PHD Thesis, Domestic Interim Governance Under International Law, Op. Cit. Preface P.5

²¹⁶ Emmanuel H. D. De Groof PHD Thesis, Domestic Interim Governance Under International Law, Op. Cit. P.13

²¹⁷ Forbes, War without end: why Iraq can never be a stable democracy, 20 June 2014, <http://bit.ly/2s0ipjW>

5.8 Important features of DIG for a successful transition are many:

1) Nonconstitutionality: refers to the adoption of texts, or to the execution of actions, which are, if not *contra constitutionem* then at least *praeter constitutionem*. Non-constitutionality can refer to the modification of the constitution without following the constitutional (amendment) procedures.²¹⁸

Which means that the constitution could be amended during the transitional period by transition authorities without going back to the traditional methods.

2) Domestic transition with international assistance: The only transition that can work for Lebanon should be domestic, therefore DIG could be a good model, because it is based on domestic actors who are the beneficiaries of the transition and the transition doesn't give rise to a new state. The domestic actors are responsible for carrying out the transition with international assistance.²¹⁹ International assistance has been normally given by the UN, but for the reasons stated in previous chapters, this thesis suggests that the EU would be the best choice for Lebanon. The EU's successful and fresh experience in supporting Tunisia's transition²²⁰ is proof why the EU is a good choice.

So DIG may constitute an alternative option for direct International territorial administration ITA and it definitely respects the principles of state sovereignty and self-determination.²²¹

DIG may allow international actors to influence the interregnum with lesser legal constraints, so the responsibility of the "transition" is on domestic actors primarily. Also the promotion of DIG may be seen as a means for avoiding shared international

²¹⁸ Emmanuel H. D. De Groof PHD Thesis, Domestic Interim Governance Under International Law, Op. Cit. P.22

²¹⁹ Emmanuel H. D. De Groof, PHD Thesis, Domestic Interim Governance Under International Law, Op. Cit. P.22-23

²²⁰ European Parliamentary Research Service, EPRS, Apap Joanna, "*Tunisia: Democracy in Transition*", June 2016, <http://bit.ly/2sS0Bra>

²²¹ Emmanuel H. D. De Groof, PHD Thesis, Domestic Interim Governance Under International Law, Op. Cit. P.33-34

responsibility between the domestic and international constituencies involved in the transition.²²²

This is why DIG is important for Lebanon, to keep the decisions in the hands of the Lebanese domestic transitional actors rather than to have a direct international intervention dictating the terms. However with a transition that guarantees self-determination and sovereignty comes greater responsibility and accountability to be bared by the domestic Lebanese actors.

5.9 How does the transition happen?

There is no one form to set up a DIG, it depends on the nature of the political life in the country and the situation as a whole. In Burundi and the DRC externally facilitated peace agreements led to domestic interim governance. In Guatemala for example the International community provided guidance in the transitional process.²²³ In Lebanon one scenario would be that transitional authorities could come to life after negotiations between the traditional parties and the civil society under EU sponsorship, upon agreeing on the inevitable new secular state and in consequence a new constitutional order. Then the work on giving birth to a secular constitutional democratic state can begin.

The transition eventually ends with national elections after agreeing on a new elections law conforming to the new order.²²⁴ Therefore in the case of Lebanon the old majoritarian and sectarian election system wouldn't be an option anymore and therefore would be replaced with a proportional and fair electoral system. And finally a new or amended constitution can be adopted. At the end the transitional authorities can hand over the power to the new government.

²²² Emmanuel H. D. De Groof, PHD Thesis, Domestic Interim Governance Under International Law, Op. Cit. P.37

²²³ Karen Guttieri, Interim Governance: Institutional Bridges to peace and democracy? US institute of peace press 2007, P.30

²²⁴ Karen Guttieri, Interim Governance: Institutional Bridges to peace and democracy? US institute of peace press 2007, P.173

The duties of inclusive transitional authorities should be clear and they generally are: The setting up of a new constituent assembly to draft a new constitution or amend the old one, then organizing a referendum to adopt its draft or reject it, once it is adopted the general elections can take place.²²⁵

The transition however needs to be limited in both time and substance to avoid a prolonged transitional process, which could stray from the original objective of building a democratic state. Therefore it is crucial to understand that transition authorities prepare for the future but do not pre-define it.²²⁶

5.10 Inclusivity:

As we mentioned before DIG is a means to implement the principle of self-determination leading to the “emergence into any other political status determined by a people”²²⁷

Also inclusivity should be further emphasized in this context because it is a crucial element for a successful transition and preparation for peace building within the communities especially in the case of a divided nation.

For example the south African transition success depended on inclusivity:

“transformation of the apartheid state into the new, non-racial, democratic Republic of South Africa was achieved through a deliberate, patient, careful, inclusive process [...] An inclusive national debate was organized by the ‘peace structures’, and nobody was excluded from this process”²²⁸

²²⁵ Emmanuel H. D. De Groof, PHD Thesis, Domestic Interim Governance Under International Law, Op. Cit. P.138

²²⁶ Emmanuel H. D. De Groof, PHD Thesis, Domestic Interim Governance Under International Law, Op. Cit. P.181

²²⁷ United Nations, General Assembly, A/RES/25/2625, 1970, 25TH Session, Item 85, Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations. <http://bit.ly/1FG3sBE>

²²⁸ L. Brahimi, ‘State-building in Crisis and Post-Conflict Countries’, 26-29 June 2007, Vienna, p.6, <http://bit.ly/2sdXig4>

There is no doubt that the inclusivity of the South African national dialogue and constitution-making process was essential to the success of the South African transition.²²⁹ It is indeed the only way to guarantee a smooth transition and avoid destabilizing the country.

Another example is Liberia, in 2003, transitional authorities in Liberia also were committed to inclusivity. The Liberian ‘all-inclusive Transitional Government’ included the parties previously at war. The Liberian transition also introduced a reform of the electoral system “in order to ensure that the rights and interests of Liberians are guaranteed”²³⁰²³¹

Therefore inclusivity should be one of the transition principles in Lebanon to allow national reconciliation as well.

Inclusivity isn’t restricted to allowing the old sectarian leaders to participate in the negotiations and the new state-building but also encouraging women’s participation into the transition process and emphasizing on their active involvement later on in the new government.

Women’s inclusion in the political process is pivotal to the success of democracy in Lebanon. The 2017 UNDP Lebanese Elections Assistance Project report on women’s quota in parliamentary elections in Lebanon came out showing that there are only 4 women out of 128 deputies in the parliament and only one woman minister out of 30 ministers. Lebanon ranks 180 on women’s representation in parliament around the world, which is a grave result.

The report mentions that the percentage of women in parliament in Lebanon is only 3% only to come above Kuwait 2%, and Yemen and Qatar 0%. Lebanon cannot be a

²²⁹ Emmanuel H. D. De Groof, PHD Thesis, Domestic Interim Governance Under International Law, Op. Cit. P.209

²³⁰ Emmanuel H. D. De Groof, PHD Thesis, Domestic Interim Governance Under International Law, Op. Cit. P.215

²³¹ United Nations, Security Council S/2003/850, 2003 Accra Agreement, art. XVIII.2.a. 29 August 2003, P.15-16

true democracy without women's participation in government and decision-making, and this is why inclusivity is so important.²³²²³³²³⁴

5.11 DIG and International law:

Another aspect of DIG is the importance of its reliance on international law, especially human rights instruments,²³⁵ and that's where the EU's assistance would also prove to be indispensable. The EU would introduce the necessary expertise, experience and tools to the transitional domestic authorities. International law and international human rights law will then fill the vacuum during the transition period to define the general legal principles before the formation of the new constitutional order, which should later conform with international law as well.²³⁶

An important development in international law and international constitutional law also points out the importance of international law and human rights law to be part of the new constitutions: "acknowledging the importance of national ownership does not imply that constitutions are entirely domestic instruments, given that states are subject to international law and processes"²³⁷

This will force all parties in the transitional period to pledge to respect international law and international human rights law and thus cannot go against them. The UN also promotes the compliance with international law: "encourages constitutional

²³² UNDP Lebanese Elections Assistance Project LEAP, Official Website, Project Report, <http://bit.ly/2s6VTsd>

²³³ UNDP Lebanese Elections Assistance Project, *Women's Quota: Parliamentary Elections 2017*, Project Funded by the European Union. UNDP LEAP, 2017

²³⁴ International Institute for Democracy and Electoral Assistance, IDEA, *Voter turnout data for Lebanon*, 2011, <http://bit.ly/2qUJa7c>

²³⁵ Emmanuel H. D. De Groof, PHD Thesis, *Domestic Interim Governance Under International Law*, Op. Cit. P.275

²³⁶ Emmanuel H. D. De Groof, PHD Thesis, *Domestic Interim Governance Under International Law*, Op. Cit. P.275-276

²³⁷ IDEA, *Constitution building after Conflict: External Support to a Sovereign process*, 1 July 2011 <http://bit.ly/2qPIFAc>

approaches that directly incorporate and make supreme international human rights standards”²³⁸

5.12 What if the old political parties refused to participate in a transition into a new constitutional order?

“Exercising the right of resistance against violations of core human rights by triggering DIG may be called *remedial transition*. In addition, when the incumbent resorts to forcible actions depriving the people of their right to self-determination, this situation would arguably entitle the injured people to seek and receive support in triggering a transition”²³⁹²⁴⁰

In this case, it would be if the parliament of Lebanon decides to further postpone the parliamentary elections due in June 2017 against the will of the people and extend its mandate for the third time, violating the political and civil rights of the Lebanese. Therefore in this case, it will only automatically trigger a remedial type of transition led by transitional authorities representing the civil society.

5.13 What are the limits of external assistance to transitional authorities?

Papagianni says that “the international community has an important role to play in assisting power-sharing governments to manage their countries political transition”²⁴¹ however the responsibility to assist and support transitional authorities in a country seeking change comes with the respect of the domestic nature of the transition, and

²³⁸ UN Rule of Law Unit Website, Constitution Making, 2015, <http://bit.ly/2rq0xjW>

²³⁹ Friendly Relations Declaration, under principle e: “Every State has the duty to refrain from any forcible action which deprives peoples referred to above in the elaboration of the present principle of their right to self-determination and freedom and independence. In their actions against, and resistance to, such forcible action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the Charter”.

²⁴⁰ Emmanuel H. D. De Groof, PHD Thesis, Domestic Interim Governance Under International Law, Op. Cit. P.301

²⁴¹ K Papagianni, “power sharing, transitional governments and the role of mediation”, Center for Humanitarian Dialogue Geneva, 2008 p.42-45

focusing on technical and financial assistance, which comprises state-building assistance through the rule of law without influencing the process politically by favoring one party over another. Therefore multilateral institutions such as the EU are the best way to offer assistance to inclusive transitional authorities.

Under international law, important aspects of DIG and the limits of external assistance are:

- It is prohibited for external assistance to empower oppositional transitional authorities before the transition begins, in order to avoid predefining the transitional process
- Regarding the foundation of DIG, it is not allowed to impose transition instruments by assisting institutions
- DIG must not violate the limits of *ratione temporis* of the interregnum
- DIG must be inclusive, which prohibits it to favoring particular groups during the interregnum
- It is prohibited for external assistance to impose transitional constitution-making because of the domestic ownership nature of transitional constitution-making as well as that of transitional justice.²⁴²

When the domestic nature of DIG wasn't respected, it proved that the transition was shaky and struggled to obtain its goal of maintaining peace and stability, examples of external meddling and pressure on the transition are:

Afghanistan, the Bonn conference, which produced the 2001 Bonn agreement regulating Afghanistan's DIG. The transfer of power happened under a lot of pressure from the US, which threatened anyone opposing the peace process. As "the Bonn conference was, in effect, a gathering of some interested groups which set out to allocate positions of power and determine a sequence of events and timeline for this to take place".^{243 244}

²⁴² Emmanuel H. D. De Groof, PHD Thesis, Domestic Interim Governance Under International Law, Op. Cit. P.315

²⁴³ C. McCool, "the role of constitution-building processes in democratization",2004 p.7-8

²⁴⁴ Emmanuel H. D. De Groof, PHD Thesis, Domestic Interim Governance Under International Law, O Cit. P.318

In Iraq, the 2004 Transitional Administrative Law (TAL) which was the provisional constitution for Iraq following the 2003 war was produced under both internal and external pressures. Especially since it was proclaimed during US occupation of Iraq and a result of negotiations between the Coalition Provisional Authority (CPA) which was representing the US as an occupying power, and the Interim Governing Council (IGC) and appointed body by the same occupying power.^{245 246} The TAL was clearly a US product and not an Iraqi one, therefore the domestic ownership of the transition wasn't respected at all, and the people of Iraq ended up resisting the provisional constitution because it reflected the occupying power and not the will of the Iraqis.²⁴⁷

In addition to respecting the domestic ownership of the transition process, and the self-determination of the people seeking such transition, external actors must also respect the limitations *ratione temporis* of the interregnum without imposing their own timetables and interests²⁴⁸

The constitutional reconstruction needs to take its time in order to come out solid and strong. The external actors should instead encourage inclusivity during the transition process and offer the requested legal and technical assistance. And that's why a multilateral institution as the EU is key to a successful transition in Lebanon, where the combined institutions working objectively to offer technical assistance for the transitional authorities will overshadow the possible interests of one member country. Such approach will avoid a forced or rushed constitution building process as it happened in Iraq or Afghanistan preventing consensus building in both countries.

Finally, States and IOs are prohibited to leave a definitive influential imprint on post-transition stage, making sure that transitional authorities are only there to facilitate

²⁴⁵ J. Benomar, "Constitution-making After Conflict: Lessons for Iraq" *Journal of Democracy*, 2004 p.92-93

²⁴⁶ Emmanuel H. D. De Groof, PHD Thesis, *Domestic Interim Governance Under International Law*, O Cit. P.318

²⁴⁷ L. Brahimi, "State-building in crisis and post-conflict countries" *Op. Cit.* p.8

²⁴⁸ K Papagianni, "power sharing, transitional governments and the role of mediation", *Center for Humanitarian Dialogue Geneva*, 2008 *Op cit.* p.43

consensus building amongst the parties and only relevant to the transition and the preparedness for a new constitutional order and a new state order decided by general elections once the transition is completed.²⁴⁹²⁵⁰

5.14 Tunisia's experience with the EU

Like Lebanon, Tunisia was also a former French colony, and it gained its independence in 1956. However, Tunisia maintained and nurtured its relation with the EU through bilateral cooperation. In 1998 Tunisia was the first Mediterranean country to sign an Association Agreement with the EU, and this agreement added to the cooperation political dialogue, respect for human rights and democracy.

Then in 2005 the EU worked through the European Neighborhood Policy to strengthen its cooperation with Tunisia and other southern and eastern neighbors, by building common values as democracy, the rule of law, respect of human rights and social cohesion.²⁵¹

The EU stands out in its unique and patient approach to helping countries establish democratic institutions and build stronger and less corrupted societies.

In 2010 after the Arab uprising in Tunisia, the EU's role in fostering greater participation of civil society and its support to democratic reforms were substantial for Tunisia's progress after the revolution. Finally in 2012, the EU-Tunisia relations were culminated by a Privileged Partnership during the Association Council held on 19 November 2012. This partnership embodies objectives related to democracy and human rights.²⁵²²⁵³

²⁴⁹ Emmanuel H. D. De Groof, PHD Thesis, Domestic Interim Governance Under International Law, Op. Cit.P.324

²⁵⁰ Karen Guttieri, Interim Governance: Institutional Bridges to peace and democracy? US institute of peace press 2007, P.24

²⁵¹ The European Partnership for Democracy, *Tunisia: Democracy Assistance Resource page*, <http://bit.ly/2rT5rao>

²⁵² The European Partnership for Democracy, *Tunisia: Democracy Assistance Resource page*, <http://bit.ly/2rT5rao>

²⁵³ European Partnership for Democracy, INSPIRED EIDHR, <http://www.epd.eu/inspired-project/>

The EU is assisting Tunisia in its transition through two programs: the PASC TUNISIE and INSPIRED. PASC (*Programme d'Appui à la Société Civile*) is one of the most ambitious initiatives for democracy support that the European Union has launched in its Neighborhood. In the wake of the Jasmine Revolution and for the first time in the history of European cooperation, the interim Tunisian government decided to reallocate a substantial envelope of bilateral funds (7M€) – originally foreseen for technical assistance and institutional building – to reinforce the capacities of Tunisian CSOs so that they could be capable of playing a substantial role in the transition to democracy.²⁵⁴²⁵⁵

As for INSPIRED which is also a part of the European Partnership for Democracy, is a project funded by the European union Instrument for Democracy & Human Rights (EIDHR) to which the EPD is leader, and its main target groups are local and regional stakeholders and civil society representatives. INSPIRED stands for Integrated Support Programme for Inclusive Reform and Democratic Dialogue, and it addresses the operational divide between democracy support and the array of instruments aimed at promoting good governance.

In particular, it encourages international aid organizations and practitioners to make use of policy dialogue, by enhancing its inclusiveness and putting in place participatory mechanisms that make it more representative and legitimate.²⁵⁶

Concerning Tunisia, INSPIRED encouraged a national dialogue on social justice in the country, facilitating social dialogue and exchange of information and political views to build trust amongst different actors after the Jasmine revolution. INSPIRED worked with representatives from the country's main political parties, selected members of the Constitutional Assembly (those working on economic and regional development), the Ministry of Regional Development and Planning, the Ministry of

²⁵⁴ European Partnership for Democracy, INSPIRED EIDHR, <http://www.epd.eu/inspired-project/>

²⁵⁵ European Partnership for Democracy, *Programme D'appui a la societe civile*, <http://www.epd.eu/pasc-tunisie/>

²⁵⁶ European Commission Democracy and Human Rights, The European Instrument for Democracy and Human Rights, EIDHR 2014 <http://www.eidhr.eu/whatis-eidhr>

Social Affairs, the main labor union UGTT, the employers' organizations UTICA, IADH and CONECT, as well as civil society groups such as the *Forum Tunisien pour les Droits Economiques et Sociaux*.²⁵⁷

Today the lack of social justice and economic opportunities are clearly one of the main remaining challenges for the consolidation of democracy in Tunisia. And INSPIRED aimed to address this issue by facilitating consensus-building among a wide range of state, civil and political society actors on the reforms that are needed to achieve better and fairer socio-economic development throughout the country.²⁵⁸

INSPIRED continue to see successful results as many small and medium sized enterprises as well as key local stakeholders have joined the dialogue discussing reforms on taxes, fiscal justice, inequalities, and to achieve greater social justice in Tunisia. INSPIRED has also started in Ghana, Kyrgyzstan, Moldova, and Morocco.

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²⁵⁷ European Partnership for Democracy, INSPIRED EIDHR, <http://www.epd.eu/inspired-project/>

²⁵⁸ European Parliament, At a glance, Tunisia: Democracy in Transition, European parliamentary research service by Joanna Apap, June 2016

²⁵⁹ INSPIRED EIDHR, Inspiring Democracy, Operating model for inclusive and participatory policy dialogue, 2014, p.30-31, <http://bit.ly/1Fv170x>

Conclusion

The EU's partnership to building a sustainable democratic model is much needed for Lebanon. As the growing Lebanese civil society is demanding more social justice and accountability, and the political deadlock is becoming harder to solve by the day.

What makes the EU, the right organization in this case, is its focus on the importance of inclusivity, participation, consensus-building, empowerment of civil society organizations, and most importantly stressing on the importance of human rights and the rule of law which ought to be the ombudsmen on any transition to democracy process in the Middle East.²⁶⁰

²⁶⁰ European Partnership for Democracy, INSPIRED EIDHR, <http://www.epd.eu/inspired-project/>

Conclusion

The international community has taken a profound interest in domestic interim governance especially with the rising people's demand of change in undemocratic regimes. On the other hand, transitional democratic processes have become central to maintaining international peace and security by assisting struggling nations to shape better functioning societies built on the respect of Human Rights and conforming to International law. However it really always comes down to peoples' willingness and participation in such transitions to build their own democratic institutions and secure a peaceful future for their countries. The international community's role lies in providing the necessary technical assistance and expertise, while promoting inclusivity and human rights in DIGs. Therefore they ought to avoid a paternalistic involvement dictating the fate of these future governments.

In this context, International aid and support has to replace international meddling and favoritism in order for these transitions to be successful and sustainable.

Although the problems of the troubled Middle East seem impossible to solve, it isn't a lost cause yet, and the rise of civil societies and domestic NGOs in many Arab nations is proof that the journey towards true social justice and democracy building has just begun. The international community, however, has to look at the issues in the region with an open mind; the wave of Islamist terrorism that has swept the globe may have accomplished its goal in intimidating everyone and eventually succeeded in creating a fear of parties or political movements having an Islamic nature. However moderate Islamic political parties can exist and flourish in a peaceful and equal environment if they weren't excluded from democratic processes. The reliance on International Law's guiding principles is key to surpassing these obstacles and worries, as it would set the tone for any transition in the Middle East, and every political party whether Islamic or secular will have to abide by the same rules as long as they are indiscriminately included in the decision-making. The international community shouldn't be afraid to work with religious parties and especially Islamic ones, because in retrospect, they do represent a big chunk of the population in Arab nations, and that cannot be simply ignored. Collaborating with moderate Muslim leadership and empowering them could indeed accomplish a lot.

On the other hand, the impossibility of erecting democratic governments in the Middle East could be overcome, if one example country could break the authoritarian cycle encouraging the rest of the region to follow suit. And Lebanon could be that country.

In the case of Lebanon, like many other Arab Nations in conflict, the central issue is the lack of a true national identity that unifies the divergent communities, which is rather replaced by tribal and categorical identities and interests. However the national identity rises when there are common interests and it is fortified by a just constitutional order, which establishes a strong relation with the culture it operates within. Today in Lebanon those common interests are expressed through its very active civil society, NGOs and civilian protests, who are calling for a functioning government, a fair electoral system, basic human rights and a united nation for the first time.

The growing politicized aspect of the United Nations and particularly that of the Security Council pushed the people of the Middle East to lose their confidence in the organization especially after its failure to secure peace in the region and to conduct successful democratic transition. For Lebanon the establishment of the controversial STL has been an example of such imposing approaches by the UN, doubting the organization's impartiality and true interest in accountability.

On the other hand, the European Union and its European Partnership for Democracy project already seems like a better candidate than the UN's programs and could as a fresh and new approach gain the confidence of the people in the Middle East, especially after the organization's successful still ongoing democratic process in Tunisia.

Finally the right to self-determination, a principle, which has emerged after WWII and the decolonization process that followed, has taken a broader significance today. This would also include the importance of freedom of choice, and by that we mean that Lebanon and other Middle Eastern countries should be able to choose the multilateral organizations they would like to be supporting their democratic transitions, as well as the system of governance and the constitutional order they

believe in, of course within the boundaries and recommendations of International Law. And only by acknowledging and respecting the right of the people to self-determination a transition could be successful.

Today Lebanon is dawning on new elections due this June 2017. The fears of a new unconstitutional extension of the current parliamentary mandate, which would not only prolong the political deadlock but also greatly destabilize an already unstable nation, have been revived after the failure of key leaders to agree on a new electoral law.

The diverging interests of the current political parties have reached unprecedented depths, and the nation fears the risks of plunging into a new conflict. Therefore the international community's responsibility would be to reach out and encourage the negotiations between the civil society; demanding change and fair elections, and the sitting parties, in order to start a peaceful transition before it is too late.

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THESIS SUMMARY

THE ROLE OF INTERNATIONAL LAW IN THE DEMOCRATIC TRANSITION FOR LEBANON

From the UN Special Tribunal to the European Partnership for Democracy

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The third wave of democracy, a term coined by renowned political scientist Samuel P. Huntington of Harvard University, who has described the history of democracy as a succession of three waves, the first one being in the early 19th century after suffrage was granted to a large proportion of males in the United States lasting until the 1920s. This wave gave birth to some 29 democracies until the accession of Mussolini to power in Italy. The second wave began after the Allies triumphed in WWII and until the collapse of the Soviet Union, which added around 30 new democracies. The third wave began when democracy ceased being a western phenomenon only introducing at least 41 more democracies between 1990 and 1995 in every region of the world except the Middle East.

The absence of democracy in the Middle East isn't linked to religion and sectarian divisions or culture, but more to the Arab countries' political economies, their internal political structures and geopolitics. Most Arab countries are rentier states, whether they are dependent on oil revenues or foreign aid. Thus creating extremely centralized and corrupt governments lacking a well-structured taxation system, hence a lack of an accountable and responsible political culture. In addition to that, Rentier states do not pursue the development of market-based economies and therefore they lack an initiative-based mentality and eventually an accountable taxation system.

Such conditions allow authoritarian regimes to thrive in their absolute impunity. And to keep themselves in power, they spend more on intelligence and policing, they rig elections and arrest journalists and shut down civil society members.

Arab authoritarian leaders kept the country in a cyclical sequence of bad governance. But does this mean that democracy won't happen for the Middle East?

The emergence of a single democratic polity in the region (in this case a proposal for Lebanon) could change the perception in the region and encourage other countries to follow suit.

This thesis will propose a democratic transition for Lebanon under EU sponsorship as well as examining the limits of international law, and more specifically the paternalistic intervention of the UN, analyzing the establishment of the Special Tribunal for Lebanon (STL) and other UN shortcomings in the region.

Lebanon has always struggled with international and regional interference in its affairs, from the Ottoman rule to the French mandate to the Syrian protectors and the Israeli occupation, which proved that paternalistic approaches do not help creating a path to true accountability and national identity building. This thesis is proposing a different approach under international law.

Why a Lebanese democratic transition?

Lebanon is considered one of the oldest constitutional democracies in the Middle East; a multiethnic country renowned for its freedom of speech and unique confessional governing system. The country is today dawning on new elections due this June 2017. However, after the parliament was successful in extending its mandate twice in 2013 and 2014, there is a growing fear that there will be a new

unconstitutional extension of the current parliamentary mandate, which could only prolong the political deadlock and greatly destabilize an already unstable nation in a volatile region. The civil society is calling for new and fair elections based on proportionality, which would replace the consociational government with a secular democracy. Something the old parties who have been in power since the end of the civil war in 1989, are reluctant to grant.

Article 95 of the Lebanese constitution speaks of the necessity to abolish political confessionalism according to a undetermined transitional plan. And this can only be achieved through inclusive Domestic Interim Governance (DIG) under international law.

The international community has taken a profound interest in Domestic Interim Governance especially with the rising people's demand of change in undemocratic regimes. On the other hand, transitional democratic processes have become central to maintaining international peace and security by assisting struggling nations to shape better functioning societies built on the respect of Human Rights and conforming to International law. However it really always comes down to peoples' willingness and participation in such transitions to build their own democratic institutions and secure a peaceful future for their countries. The international community's role lies in providing the necessary technical assistance and expertise, while promoting inclusivity and human rights in DIGs. Therefore they ought to avoid a paternalistic involvement dictating the fate of these future governments.

In this context, International aid and support has to replace international meddling and favoritism in order for this transition to be successful and sustainable.

For Lebanon, like many other Arab Nations in conflict, the central issue is the lack of a true national identity that unifies the divergent communities, which is rather replaced by tribal and categorical identities and interests. However the national identity could rise when there are common interests and it is fortified by a just constitutional order, which establishes a strong relation with the culture it operates within. Today in Lebanon those common interests are expressed through its very active civil society, NGOs and civilian protesters, who are calling for a functioning

government, a fair electoral system, basic human rights and a united nation for the first time.

After establishing that the Middle East could eventually witness the birth of democratic nations and why Lebanon could be ready for a democratic transition, the mechanism through which such transition should happen is very crucial.

Therefore this thesis suggests that the European Union through its European Partnership for Democracy program could be a sponsor for the transition instead of the UN. This is due to the growing politicized aspect of the United Nations and particularly its Security Council, leading to the many failures of the organization in the region, to ultimately losing their credibility in the Middle East.

The STL

Respecting a nation's sovereignty, its constitution and the principle of self-determination are central to this debate.

The main issue regarding the Special tribunal for Lebanon is that the UN Security Council established it outside of constitutional norms.

The STL's controversial establishment has been an example of the UN's paternalistic approach, leaving great doubt in the organization's impartiality and true interest in accountability.

The Security Council Resolution (1757) established the Tribunal bypassing the Lebanese parliament, which was described as an unconstitutional move.

The Tribunal was set up as a hybrid court comprising a mix of national and international laws, which is still unclear about how to harmonize these two especially because of overlaps and differences between the two systems.

It is the first international court to prosecute terrorism as a distinct crime, and the first international Tribunal to employ trial in *Abstentia*, which meant trial in the absence of an actual arrest of suspects or accused. This is a highly criticized practice because it undermines the search for justice and illustrates the weakness of the Tribunal, unable to force the Lebanese authorities to deliver the accused.

The STL is located in The Hague instead of Lebanon, which undercuts one of the primary rationales underpinning a hybrid tribunal, keeping it away from the affected communities.

Moreover, the Tribunal's jurisdictions are very controversial and narrow since they are linked to one terrorist event only leaving a trail of atrocities unpunished.

The STL's jurisdictions in theory apply to States and not individuals since its mandate was never incorporated within the national laws as it was never voted on by parliament, but it later went on to prosecuting individuals especially journalists and even attempting to change its jurisdiction to prosecute legal persons (corporations and political parties). Those were summed up in the contempt cases, which have stolen the limelight, because of the Tribunal shifting its attention from the Hariri case towards indicting journalists who published material deemed classified by the tribunal.

The concept of accountability is an important pillar of international law. However in a divided nation like Lebanon, undermining the only pillar of rule of law in the country, which in this case is the Lebanese Constitution; wouldn't facilitate bringing about a society and culture that cherishes justice and understands the importance of accountability. Silencing the free press also wouldn't play in favor of promoting human rights and the respect of freedoms. If the international community seeks to promote democratic practices and social and political justice in the Middle East, it should lead by example and therefore it simply cannot succeed through paternalistic and divisive approaches.

But does this mean that there will be no accountability in Arab nations?

Achieving accountability in authoritarian or corrupted regimes can be very difficult. Therefore the International community and multilateral organizations such as the EU or the UN could find that helping these countries achieve a democratic transition may solve the issue of impunity in repressive and corrupt nations through transitional justice.

Hezbollah is central to the debate.

Hezbollah was first formed in 1985 as a response to the invasion of Lebanon by Israel in 1982. The Party of God operated under the banner of the “Islamic Resistance” against the Israeli invasion and its settlement in the south. Since the early 1990s Hezbollah evolved into a mainstream political party, with a political and social program that attracted both Muslims and Christians, this was its “opening up policy” or *Infitah*.

Hezbollah participated in the elections and as a result it won not only parliamentary and municipal seats, but also governmental positions by joining the cabinet for the first time in 2005. The party managed to further integrate in the political sphere by striking an unprecedented alliance with the Christian majority leader Michel Aoun, currently president, and leader of the Free Patriotic Movement.

Hezbollah’s military wing, the Islamic Resistance, was deemed a legitimate-national resistance by the Lebanese state making a clear distinction between a militia and a necessary resistance to defend the land.

On the other hand, Hezbollah built its own social services independently from the state, in the absence of the state. It also guaranteed electricity to the population of *Dahyeh*; the Beirut Southern Suburbs mostly Shiite, and kept the streets clean by collecting the garbage. However, the socio-economic programs, NGOs and services brought by Hezbollah to the deprived neighborhoods and towns have had another effect. The Party of God’s initiatives introduced a culture of commitment to conservative Islamic practices or *Iltizam*, which refers to the individual norms and practices, such as the hijab or headscarf that is a part of *Iltizam* for women. Therefore a big part of Hezbollah’s religious culture is in circumscribing the norms of social behavior and thus propagating a worldview that dictates a religiously conservative social behavior.

After the Hariri assassination, protests against the Syrian presence in Lebanon began. Consequently, the Cedar Revolution managed to successfully push the Syrians out in 2005 after an occupation that lasted for more than a decade. This was followed by a UN investigative Unit, which issued its first report prior to the establishment of the STL. The report powerfully implicated Syrian and Lebanese officials.

Hezbollah and its allies deemed it politicized dogmatic and inconclusive.

Later as the STL was established in 2009, four Hezbollah members were charged with conspiracy to commit a terrorist act along with other charges based on forensic evidence collected from the Hariri explosion scene, and evidence of preparatory acts that led to the assassination. The Party of God refused to deliver the four members but the *Abstentia* trials began and are still ongoing.

Does this mean that in case of a democratic transition Hezbollah should be excluded from it?

Hezbollah's very existence and actions today are only a result of the lack of determined action by the international community when Lebanon was under Israeli occupation. Also, Hezbollah's socio-economic programs are a direct result of the government's unequal distribution of services in the country.

In a context of a possible transition into a secular democratic state, Lebanon's transition must be inclusive in order for it to succeed, where inclusivity can only serve the principle of self-determination. Therefore since Hezbollah's supporters form a big chunk of the population if not a majority, they deserve an equal seat on the table.

On another note, a decade ago, no one could have imagined that LAS FARC of Colombia would make peace with the Colombian government and join a peace process, but they did, thanks to President Santos who kept pushing for peace talks with LAS FARC in 2012. He understood that only through inclusivity one could build long lasting peace.

Therefore if Colombia managed to include a ruthless organization such as LAS FARC in its political reforms, then in a possible democratic transition for Lebanon, Hezbollah's collaboration would be guaranteed and highly encouraged by both Hezbollah and the Lebanese people.

The UN

The UN failed Lebanon in 1982 as it was unable to end the Israeli occupation of Lebanon, which lasted until 2000. It also lacked steadfastness to stopping the 2006 Israeli assault on Lebanon sooner, which resulted in a month of destruction of Lebanese civil infrastructure and the death of more than 1,109 Lebanese people

mostly civilian, 4,399 injured and 1 million displaced, as well as the death of 43 Israeli civilians and 12 IDF Soldiers. It wasn't until 11 August 2006 that the UNSC approved resolution 1701 to end the hostilities a month after the violence began.

The UN failed Iraq as well, unable to stop the illegal and highly controversial American-British war on Iraq in 2003. Moreover, the UN's 13 years sanctions on Iraq have impoverished the Iraqi people and caused massive famine in the country, punishing the people instead of the leaders.

The UN failed the Palestinian people who after 7 decades still await the birth of a Palestinian state and cannot stop the ongoing illegal settlements, which according to the UN are a "flagrant breach of international law".

The UN failed Syria, a seemingly politicized and paralyzed Security Council failed to secure an anonymous Resolution to end the violence in Syria which resulted in the worst refugee crisis in recent history.

The UN failed Yemen, after Saudi warplanes bombed of a funeral in Yemen killing 140 people, the UN failed to punish the war crime.

The Human Rights Council refused to start an international investigation into the crimes in Yemen. The Saudi coalition was responsible for 60 percent of child deaths and injuries in Yemen.²⁶¹ The UN released a report putting the Saudi led coalition on a Children's Rights Blacklist, however after protests and threats to cut funding or declare the UN anti-Islamic by Sharia Law, the UN backed down and was forced to remove the Saudi coalition of the list.

The UN failed Afghanistan, The UN failed to support the plan for a democratic transition in Afghanistan. The United Nations continued to operate, far too often, through parallel structures that did provide some services to the population but undermined rather than helped the state establish and sustain its credibility.

²⁶¹ Human Rights Watch, Official website, Middle East and North Africa division, Article: Dispatches: Yemen's Children Victims of Shocking Violations

The failure of the UN to respect the rules of accountability laid in international law in many situations, immediately contributes to the image of the UN lacking credibility and reliability.

Finally the proliferation of UN agencies and their overlapping jurisdictions has created more problems to the UN than facilitating its work. In addition, the UN today faces competition from new global governance institutions such as the G20, G7, China's AIIB and the growing influence of the European Union, which gave the world new outlets to accomplish their objectives. The deadlock on its Security Council reform is another issue where many countries feel underrepresented. This however doesn't mean that the UN is no longer relevant, but it definitely points out the need to restore its credibility by implementing the necessary reforms and changes in its organs and bodies.

The EU a new hope for the Middle East

The EU action Plan on Human Rights and Democracy 2015-2019 provides a framework for EU support to transitional justice, as well as the European Partnership for Democracy and its efforts to assist in democratic transitions in developing countries, are very interesting programs.

In Lebanon the questionable independency of the constitutional council, which has failed the Lebanese people after it allowed the parliament to extend its mandate twice is another issue hindering democratic practices. Therefore the only hope and last straw for Lebanon to achieving fair democratic elections and to allow democracy to flourish is through a European initiative.

Is Lebanon ready?

A new generation of secular young university students and workers didn't feel it belonged anymore to the old parties and their leaders, who have been present since the civil war and responsible for the corruption and political deadlock in the country, including the recent garbage crisis (summer of 2015). The country witnessed the rage of this generation, which for the first time paralyzed the government, the parties, and flooded the capital center with peaceful protests. The protesters demanded the fall of

the regime, and not only a more accountable and responsible government in handling the environmental crisis but also the end of the sectarian rule.

As a result, the movement gave birth to many groups like “You Stink”, “*Sakker el Deken*”, which translates to “close the shop”, “*Badna Nhasseb*” which translates to “we want accountability”. These protests shook the nation, and birthed other civil society movements such as “*Beirut Madinati*”, which translates to “Beirut my city”, a volunteer-led campaign to elect a municipal council of qualified, politically unaffiliated individuals. Their candidature during the May 2016 almost lost the old parties the Beirut municipal elections by a small margin. *Naqabati*, which translated for “My Syndicate, another outstanding civil society movement managed to win the Syndicate of Engineers Elections in April 2017, beating all political parties combined. Another Civil society movement and NGO, called “*Sakker el Dekene*”, which translates to “close the shop” began their fight against institutional corruption in Lebanon in 2014.

This is why the conditions for a transition are available and the situation is ripe.

However the transition in Lebanon cannot be a hostile one, since we understand that the traditional parties and their sectarian leaders still hold a great deal of power in the country. Syria; the old Kingmaker is gone, but now possibly replaced by Hezbollah, and for the first time in History Lebanon is left without a protector or a sponsor to prevent the colliding parties from spilling their disagreements on the field and causing havoc in the country.

Therefore for all the reasons mentioned above, it is not only time for Lebanon to execute a long awaited transition, but it is also the responsibility of the international community to support and protect this initiative as a step to bringing peace to the region and avoiding another war and refugee crisis.

How? DIG

Internationally assisted Domestic Interim Governance (DIG) is a very familiar model, which happened in many countries, and this thesis suggests an international assistance given by the EU. DIG is interesting for Lebanon because it allows international actors

to influence the interregnum with lesser legal constraints, so the responsibility of the “transition” is on domestic actors primarily, and keeping the decisions in the hands of the Lebanese domestic transitional actors rather than to have a direct international intervention dictating the terms.

The transition eventually ends with national elections after agreeing on a new electoral law conforming to the new order.

It is important to understand the duties of the domestic transitional authorities: setting up of a new constituent assembly to draft a new constitution or amend the old one, then organizing a referendum to adopt its draft or reject it, and once it is adopted the general elections can take place. The transition however needs to be limited in both time and substance to avoid a prolonged transitional process, which could stray from the original objective of building a democratic state. Inclusivity should be further emphasized in this context because it is a crucial element for a successful transition and preparation for peace building within the communities especially in the case of a divided nation. This also includes: Women’s inclusion in the political process, which is pivotal to the success of democracy in Lebanon. The 2017 UNDP Lebanese Elections Assistance Project report on women’s quota in parliamentary elections in Lebanon came out showing that there are only 4 women out of 128 deputies in the parliament and only one-woman minister out of 30 ministers. Lebanon ranks 180 on women’s representation in parliament around the world, which is a grave result. Another important aspect of DIG is its reliance on international law, especially human rights instruments, and that’s where the EU’s assistance would also prove to be indispensable.

What if the old political parties refuse to cooperate?

Exercising the right of resistance against violations of core human rights by triggering DIG may be called *remedial transition*. In addition, when the incumbent resorts to forcible actions depriving the people of their right to self-determination, this situation would arguably entitle the injured people to seek and receive support in triggering a transition.

Limits of the international community

According to Papagianni “The international community has an important role to play in assisting power-sharing governments to manage their countries’ political transition”. However the responsibility to assist and support transitional authorities in a country seeking change comes with the respect of the domestic nature of the transition, and focusing on technical and financial assistance. This comprises state-building assistance through the rule of law without influencing the process politically by favoring one party over another. Therefore multilateral institutions such as the EU are the best way to offer assistance to inclusive transitional authorities.

In addition to respecting the domestic ownership of the transition process, and the self-determination of the people seeking such transition, external actors must also respect the limitations *ratione temporis* of the interregnum without imposing their own timetables and interests

Finally, States and IOs are prohibited to leave a definitive influential imprint on post-transition stage, making sure that transitional authorities are only there to facilitate consensus building amongst the parties and only relevant to the transition and the preparedness for a new constitutional order and a new state order decided by general elections once the transition is completed.

Tunisia experience:

In 2010 after the Arab uprising in Tunisia, the EU’s role in fostering greater participation of civil society and its support to democratic reforms were substantial for Tunisia’s progress after the revolution. The EU is assisting Tunisia in its transition through two programs: the PASC TUNISIE (*Programme d’Appui à la Société Civile*) and INSPIRED (stands for Integrated Support Programme for Inclusive Reform and Democratic Dialogue), and it addresses the operational divide between democracy support and the array of instruments aimed at promoting good governance. PASC is one of the most ambitious initiatives for democracy support that the European Union has launched in its Neighborhood.

INSPIRED worked with representatives from the country’s main political parties, selected members of the Constitutional Assembly (those working on economic and

regional development), the Ministry of Regional Development and Planning, the Ministry of Social Affairs, the main labor union UGTT, the employers' organizations UTICA, IADH and CONECT, as well as civil society groups such as the *Forum Tunisien pour les Droits Economiques et Sociaux* INSPIRED has also started in Ghana, Kyrgyzstan, Moldova, and Morocco. Tunisia has still a long way to go strengthening its new democratic institutions and fighting for social justice but it is definitely on the right track.

Conclusion

Although the problems of the troubled Middle East seem impossible to solve, it isn't a lost cause yet, and the rise of civil societies and domestic NGOs in many Arab nations is proof that the journey towards true social justice and democracy building has just begun. The international community, however, has to look at the issues in the region with an open mind; the wave of Islamist terrorism that has swept the globe may have accomplished its goal in intimidating everyone and eventually succeeded in creating a fear of parties or political movements having an Islamic nature. However moderate Islamic political parties can exist and flourish in a peaceful and equal environment if they weren't excluded from democratic processes. The reliance on International Law's guiding principles is key to surpassing these obstacles and worries, as it would set the tone for any transition in the Middle East, and every political party whether Islamic or secular will have to abide by the same rules as long as they are indiscriminately included in the decision-making. The international community shouldn't be afraid to work with religious parties and especially Islamic ones, because in retrospect, they do represent a big chunk of the population in Arab nations, and that cannot be simply ignored. Collaborating with moderate Muslim leadership and empowering them could indeed accomplish a lot.

Finally the right to self-determination, a principle, which has emerged after WWII and the decolonization process that followed, has taken a broader significance today. This would also include the importance of freedom of choice, and by that we mean that Lebanon and other Middle Eastern countries should be able to choose the

multilateral organizations they would like to be supporting their democratic transitions, as well as the system of governance and the constitutional order they believe in, of course within the boundaries and recommendations of International Law. And only by acknowledging and respecting the right of the people to self-determination a transition could be successful.

The reality now in Lebanon is that the diverging interests of the current political parties have reached unprecedented depths, and the nation fears the risks of plunging into a new conflict. Therefore the international community's responsibility would be to reach out and encourage the negotiations between the civil society; demanding change and fair elections, and the sitting parties, in order to start a peaceful transition before it is too late.