

BEIRUT AFTER THE EXPLOSION: A TIME FOR TRUTH AND COMPENSATORY JUSTICE

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ABSTRACT

This Note argues that the international community should pursue a mass claims commission with both claims processing and investigative functions as a companion process to other judicial proceedings relating to the Beirut port explosion. After discussing Lebanon's political and economic situation, this Note explores the strategic and moral case for international involvement. It then discusses the possible bases of legal authority for international involvement and types of jurisdiction, drawing on lessons from the Special Tribunal for Lebanon and the United Nations Claims Commission, and makes three suggestions on key questions that would need to be answered to establish a commission. These suggestions cover, first, eligibility for submitting claims; second, the source of funds for compensation; and third, evidentiary standards. A mass claims commission would give the people impacted by the explosion some measure of compensatory justice by providing additional funds for the rebuilding and recovery process and establish the truth about the events leading to the Beirut port explosion.

I. INTRODUCTION

On August 4, 2020, a fire in Beirut's port ignited 2,750 tons of ammonium nitrate and caused a massive explosion, sending a shock wave through the city.¹ The explosion, which was heard 150 miles away in Cyprus, blew out windows and doors and destroyed historic buildings within at least two miles of the blast site.² 218 people died from the explosion and 7,000 were injured.³ At least 300,000 people

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1. See Ben Hubbard et al., *How a Massive Bomb Came Together in Beirut's Port*, N.Y. TIMES (Sept. 9, 2020), <https://www.nytimes.com/interactive/2020/09/09/world/middleeast/beirut-explosion.html> [https://perma.cc/MK3J-WSAU].

2. See *Beirut Blast: Dozens Dead and Thousands Injured, Health Minister Says*, BBC (Aug. 5, 2020), <https://www.bbc.com/news/world-middle-east-53656220> [https://perma.cc/323V-G5KP]; Hubbard et al., *supra* note 1.

3. HUM. RTS. WATCH, "THEY KILLED US FROM THE INSIDE": AN INVESTIGATION INTO THE AUGUST 4 BEIRUT BLAST 1 (2021), https://www.hrw.org/sites/default/files/media_2021/08/lebanon0821_web.pdf [https://perma.cc/W72H-DV8H].

became homeless because their houses were destroyed and the cost of the damage is estimated at \$10 to \$15 billion.⁴ The explosion also caused an estimated 70,000 people to lose their jobs.⁵

The source of the explosion was a cache of ammonium nitrate, a compound used in both explosives and fertilizers, that had been stored in hazardous conditions in a hangar in the Beirut port and ignored by the Lebanese government for nearly six years.⁶ Already suffering from a severe economic crisis, entrenched political corruption, and the COVID-19 pandemic, the Lebanese people launched massive protests in the immediate aftermath of the explosion, and Prime Minister Hassan Diab resigned six days later.⁷

People both in and outside of Lebanon remain skeptical of the integrity and efficacy of the domestic investigation of the explosion. As of this writing, there has been minimal progress towards accountability due to political maneuvering by the Lebanese government officials involved in the explosion.⁸ Many of those impacted by the explosion as well as advocates within the international community have called for an international investigation that centers on the Lebanese government's human rights obligations and results in actual accountability.⁹

This Note argues that a mass claims commission should be pursued as a companion process to any international criminal prosecutions, as well as the domestic investigation, in order to provide justice in the form of compensation for those harmed. The mass claims commission should be accompanied by an international

4. *Beirut Explosion*, CTR. FOR DISASTER PHILANTHROPY (Jan. 21, 2021), <https://disasterphilanthropy.org/disaster/beirut-explosion/> [<https://perma.cc/DV9B-T47T>].

5. Press Release, Amnesty Int'l, Lebanon: Fire Brigades Union Joins Call for Full Investigation into Beirut Explosion (Nov. 2, 2020), <https://www.amnesty.org/en/latest/news/2020/11/lebanon-fire-brigades-union-joins-call-for-full-investigation-into-beirut-explosion/> [<https://perma.cc/RL56-LJR9>].

6. See Hubbard et al., *supra* note 1; *Beirut Blast: Dozens Dead and Thousands Injured*, Health Minister Says, *supra* note 2.

7. See *Lebanon President Accepts Gov't Resignation After Beirut Blast*, AL JAZEERA (Aug. 10, 2020), <https://www.aljazeera.com/news/2020/8/10/lebanon-president-accepts-govt-resignation-after-beirut-blast> [<https://perma.cc/CG5R-KD2A>]; Michael Fakhri, *International Justice for Lebanon?*, AL JAZEERA (Aug. 26, 2020), <https://www.aljazeera.com/opinions/2020/8/26/international-justice-for-lebanon/> [<https://perma.cc/LN6C-TP22>].

8. See *Lebanon: Flawed Domestic Blast Investigation*, HUM. RTS. WATCH (Oct. 22, 2020), <https://www.hrw.org/news/2020/10/22/lebanon-flawed-domestic-blast-investigation> [<https://perma.cc/65MH-9LP4>].

9. See Fakhri, *supra* note 7; see also Press Release, Amnesty Int'l, Lebanon: Only an International Investigation Can Set the Course for Justice for Beirut Blast Victims (Sept. 7, 2020), <https://www.amnesty.org/en/latest/news/2020/09/lebanon-only-an-international-investigation-can-set-the-course-for-justice-for-beirut-blast-victims/> [<https://perma.cc/CGE9-F3ZW>] [*hereinafter* Press Release, Amnesty Int'l, Only an International Investigation Can Set the Course for Justice]; *Lebanon: Set Impartial, Expert Probe of Beirut Blast*, HUM. RTS. WATCH (Aug. 6, 2020), <https://www.hrw.org/news/2020/08/06/lebanon-set-impartial-expert-probe-beirut-blast> [<https://perma.cc/T9XL-U73F>].

investigation to ensure that the narrative put forth by the Lebanese government is accurate and explore all possible avenues of responsibility for the events that brought about the explosion.

This Note will first discuss Lebanon's current economic and political crises, describe the ongoing domestic investigation, and explain the various possibilities for establishing an international justice mechanism. It will then make the strategic and moral case for international involvement in the form of a mass claims commission and accompanying investigation operated by the United Nations Security Council (Security Council).¹⁰ Drawing on the source of legal authority of the Special Tribunal for Lebanon (STL) and the structure and functioning of the United Nations Claims Commission (UNCC) for Iraq and Kuwait, it then proposes a claims commission structure, discusses the legal authority of the Security Council, and makes three suggestions on key questions that need to be answered to establish a Beirut mass claims commission. These suggestions cover, first, eligibility for submitting claims; second, sources of funds for compensation; and third, evidentiary standards.

II. BACKGROUND

The background section of this Note will first, contextualize the port explosion in Lebanon's recent history and current affairs; second, explain how the port explosion occurred; third, describe ongoing domestic efforts to provide compensation and investigate the explosion; and fourth, explain the available justice mechanisms at the international level.

A. *The Significance of the Port Explosion Must be Understood in the Context of Lebanon's History and Current Economic and Political Challenges.*

1. The Legacy of Lebanon's Civil War Continues to Impact Lebanese Politics.

After gaining independence from France in 1943, Lebanon's political leaders created a government structure that ensured proportional representation of the country's three major religious

10. Since this Note was first drafted, many Lebanese and international organizations have repeatedly called on the U.N. Human Rights Council to pass a resolution establishing an international fact-finding mission into the explosion. This Note does not disagree with that effort but simply offers an additional or alternative solution for evaluation. See, e.g., *Lebanon: Joint letter to the Human Rights Council calling for an international fact-finding mission into the Beirut blast*, AMNESTY INT'L (Aug. 3, 2020), <https://www.amnesty.org/en/documents/mde18/7080/2023/en/>.

groups: Sunni Muslims, Shiite Muslims, and Maronite Christians.¹¹ However, sectarian differences between these groups descended into a civil war in 1975, with horrific consequences; more than 144,000 people were killed, 184,000 were injured, 13,000 were kidnapped, and at least 17,000 people went missing.¹²

Intervention in the war by Israeli and Syrian forces further complicated the situation and the conflict did not end until the signing of the Ta'if Accord in November 1989.¹³ While the Accord called for a gradual abolition of sectarianism from the political system, divisions among political-religious groups remain strong today and encourage corruption through the use of sect-based patronage networks for the distribution of jobs and public resources.¹⁴ Syrian forces did not fully withdraw from Lebanon until 2005, following mass protests known as the Cedar Revolution in reaction to the assassination of former Prime Minister Rafiq Hariri.¹⁵

Today, Lebanon continues to be a proxy battleground between Iran, which provides an estimated \$700 million annually to Hezbollah,¹⁶ and Saudi Arabia and its Western allies such as the United States.¹⁷ The United States has designated Hezbollah as a foreign

11. *Political Instability in Lebanon*, COUNCIL ON FOREIGN RELS.: GLOB. CONFLICT TRACKER, (Apr. 25, 2023), <https://www.cfr.org/global-conflict-tracker/conflict/political-instability-lebanon> [<https://perma.cc/2A53-GC6P>]. Sunni Muslims are represented by the Prime Minister, Shiite Muslims are represented by the Speaker of the Parliament, and Maronite Christians are represented by the President. *See id.*

12. *See id.*; Faten Ghosn & Amal Khoury, *Lebanon After the Civil War: Peace or the Illusion of Peace?*, 65 MIDDLE E. J. 381, 382 (2011).

13. *See Political Instability in Lebanon*, *supra* note 11; Ghosn & Khoury, *supra* note 12, at 383. The Ta'if Accord has been criticized for not addressing the root causes of the Civil War such as structural violence and inequalities between political groups. *See id.* at 388–89.

14. *See Ghosn & Khoury*, *supra* note 12, at 384; Mohamad Bazzi, *The Corrupt Political Class That Broke Lebanon*, FOREIGN AFFS. (Aug. 14, 2020), <https://www.foreignaffairs.com/articles/lebanon/2020-08-14/corrupt-political-class-broke-lebanon> [<https://perma.cc/62VR-S2GN>].

15. *See Political Instability in Lebanon*, *supra* note 11; *Lebanese Government Dissolved Amid Opposition Protests*, N.Y. TIMES (Feb. 28, 2005), <https://www.nytimes.com/2005/02/28/international/middleeast/lebanese-government-dissolved-amid-opposition.html> [<https://perma.cc/8CQT-B5YA>]. There have been other instances of both internal and external violence in the post-war period, including a war between Israel and Hezbollah in 2006 and a brief period where Hezbollah took over the Lebanese government in 2008. *See id.*; Ghosn & Khoury, *supra* note 12, at 382; *Hezbollah's Role in Lebanon's New Government*, NPR (July 21, 2008), <https://www.npr.org/2008/07/21/92728683/hezbollahs-role-in-lebanons-new-government> [<https://perma.cc/XXL9-6VHA>].

16. *See Political Instability in Lebanon*, *supra* note 11; Claire Parker & Rick Noack, *Iran Has Invested in Its Allies and Proxies Across the Middle East. Here's Where They Stand After Soleimani's Death*, WASH. POST (Jan. 3, 2020), <https://www.washingtonpost.com/world/2020/01/03/iran-has-invested-allies-proxies-across-middle-east-heres-where-they-stand-after-soleimanis-death/> [<https://perma.cc/U4AG-8WJU>].

17. *See Political Instability in Lebanon*, *supra* note 11; Tom Perry & Laila Bassam, *Analysis: Lebanon Slips Further into Iran's Orbit as Hariri Bows Out*, REUTERS (Jan. 26, 2022), <https://>

terrorist organization.¹⁸ Hezbollah is also one of the most powerful political parties in Lebanon and has maintained its long-standing ties with Syria by providing fighters to support Syrian president Bashar al-Assad.¹⁹

2. The Port Explosion Has Only Exacerbated Lebanon's Current Economic and Political Crises.

In October 2019, a sudden end to capital inflows caused a protracted financial crisis, followed by the Lebanese government's default on the redemption of a \$1.2 billion Eurobond in March 2020.²⁰ The country faces dramatic currency, debt, fiscal, and banking crises, which have led to hyperinflation, debt default, and severe economic contraction.²¹ The Lebanese government can no longer reliably provide basic public services, such as electricity, and peoples' savings and means of employment have disappeared.²² The World Bank calls the crisis a "deliberate depression" caused by the inaction and corruption of Lebanon's ruling class.²³ The presence of over one million Syrian refugees in Lebanon, many of whom rely on the

www.reuters.com/world/middle-east/lebanon-slips-further-into-irans-orbit-hariri-bows-out-2022-01-26/ [<https://perma.cc/G2Y6-7854>].

18. *Id.*

19. See *id.*; Parker & Noack, *supra* note 16; *Explainer: Who Are Lebanon's Main Political Parties Contesting the Elections?*, AL ARABIYA (May 20, 2020), <https://english.alarabiya.net/features/2018/05/05/EXPLAINER-Who-are-Lebanon-s-main-political-parties-contesting-the-elections-> [<https://perma.cc/D73Y-VZHV>].

20. See Kareem Chehayeb, *Lebanon's Crippled Economy Hobbles into a New Year*, AL JAZEERA (Jan. 6, 2022), <https://www.aljazeera.com/economy/2022/1/6/lebanons-crippled-economy-hobbles-into-new-year> [<https://perma.cc/2BBQ-PRRD>]; Agence France-Presse, *Lebanon to Default on Debt for First Time Amid Financial Crisis*, THE GUARDIAN (Mar. 7, 2020), <https://www.theguardian.com/world/2020/mar/07/lebanon-to-default-on-debt-for-first-time-amid-financial-crisis> [<https://perma.cc/C83Y-6ZLN>].

21. See CARLA E. HUMUD, CONG. RSCH. SERV., IF11617, LEBANON (2020), <https://crsreports.congress.gov/product/pdf/IF/IF11617/7> [<https://perma.cc/2MYX-P6TQ>].

22. See Sarah El Deeb, *Lebanon Faces Internet Service Interruption Amid Fuel Crisis*, ASSOC. PRESS (Jan. 16, 2022), <https://apnews.com/article/business-middle-east-lebanon-beirut-ba006e73de8116680c438859fe95a560> [<https://perma.cc/2HSQ-N7PV>]; Chehayeb, *Lebanon's Crippled Economy Hobbles into a New Year*, *supra* note 20.

23. Press Release, World Bank Grp., *Lebanon's Crisis: Great Denial in the Deliberate Depression* (Jan. 25, 2022), <https://www.worldbank.org/en/news/press-release/2022/01/24/lebanon-s-crisis-great-denial-in-the-deliberate-depression> [<https://perma.cc/8BWW-KTH2>]; *Fuel or Flour? Lebanon to Ration \$2bn in Subsidies, PM Says*, AL JAZEERA (Dec. 29, 2020), <https://www.aljazeera.com/economy/2020/12/29/lebanon-can-stretch-reserves-for-subsidies-for-6-months-pm-says> [<https://perma.cc/EZ4W-CZNH>] (noting the lack of a plan for a way forward a year after the explosion and accusations of negligence on the part of Prime Minister Diab and other ministers). The situation reached the point where Human Rights Watch took an unprecedented step in calling for sanctions against Lebanese government officials. See HUM. RTS. WATCH, *supra* note 3.

government for support, only further compounds the country's economic issues.²⁴

The country has been politically volatile since October 2019, when nationwide protests against the widespread corruption and ineptness of Lebanon's political elites led to the resignation of Prime Minister Saad Hariri.²⁵ While the Lebanese people have dealt with economic and social issues tied to the government's corruption for many years,²⁶ the current economic crisis and the October protests destroyed most of the remaining legitimacy of the ruling class.²⁷ Since October 2019, there have also been multiple episodes of violence between protestors and security forces, including one instance where the security forces injured 600 protestors.²⁸ According to International Crisis Group, there is a danger that further protests may spin out of control and questions about whether the security forces will have the capacity or the willingness to control the situation.²⁹

While downtown Beirut felt the most immediate and direct effects of the explosion, the damage has nationwide implications. Because the explosion damaged the downtown area where many popular restaurants, nightclubs, stores, art galleries, and offices are located, the losses to the finance, housing, tourism, and commerce sectors are particularly severe.³⁰ The damage to the port caused

24. See U.S. DEP'T OF STATE, *Relations with Lebanon* (Sept. 28, 2020), <https://www.state.gov/u-s-relations-with-lebanon/> [<https://perma.cc/4RXY-223W>].

25. See Martin Chulov, *Lebanon's PM Saad Hariri Resigns as Protestors Come Under Attack*, THE GUARDIAN (Oct. 29, 2019), <https://www.theguardian.com/world/2019/oct/29/lebanon-pm-saad-hariri-resigns-amid-angry-protests> [<https://perma.cc/EM6F-PKPL>]; Humud, *supra* note 21. The next prime minister, Diab, resigned after the port explosion, although he continues in a caretaker capacity because his replacement has failed to form a government. See Zeina Karam, *Charges in Beirut Port Blast Stir Controversy in Lebanon*, PBS: NEWS HOUR (Dec. 11, 2020), <https://www.pbs.org/newshour/world/charges-in-beirut-port-blast-stir-controversy-in-lebanon> [<https://perma.cc/583R-FDFM>].

26. See Mohammad Almoghabat, *Lebanon: Systemic Corruption Problems Require a Systemic Response*, TRANSPARENCY INT'L: VOICES FOR TRANSPARENCY (Jan. 28, 2021), <https://www.transparency.org/en/blog/cpi-2020-lebanon-systemic-corruption-problems-require-systemic-response> [<https://perma.cc/EY2T-EMCS>].

27. INT'L CRISIS GRP., *Pulling Lebanon out of the Pit*, Middle E. Rep. No. 214, at i, (June 8, 2020), <https://icg-prod.s3.amazonaws.com/214-pulling-lebanon-out-of-the-pit.pdf> [<https://perma.cc/E2RJ-V6TQ>] [hereinafter Int'l Crisis Grp., Middle E. Rep. No. 214].

28. See *id.* at 18. In a related incident, one person died as a result of their injuries from the protest. See *id.*

29. See *id.*

30. See Anjali Singhvi et al., *Mapping the Damage from the Beirut Explosion*, N.Y. TIMES (Aug. 4, 2020), <https://www.nytimes.com/interactive/2020/08/04/world/middleeast/beirut-explosion-damage.html> [<https://perma.cc/XB95-ZGBH>] (mapping the areas of Beirut that were impacted by the blast, including major commercial areas); *The World Bank in Lebanon*, WORLD BANK, <https://www.worldbank.org/en/country/lebanon/overview> (Oct. 17, 2021) [<https://perma.cc/EXN6-VSL8>].

trade disruptions, increasing transaction costs and threatening the livelihood of many Lebanese people who rely on imports for basic resources.³¹ The damage also makes it more difficult to fix long-term infrastructure vulnerabilities that need attention, such as water shortages, ineffective solid waste and wastewater management, and an ineffective electricity sector.³² Additionally, in the immediate aftermath of the explosion, over half of the fifty-five healthcare facilities in Beirut were unable to function, complicating the city's response to the COVID-19 pandemic.³³

In response to the port explosion, numerous entities including the World Bank Group, European Union, United Nations, France, and other countries created plans to provide an immediate social safety net in Lebanon and outline necessary steps for economic reform.³⁴ However, these initiatives maintained the ongoing policy of international donors to only provide Lebanon with humanitarian aid (as opposed to other types of aid) until the government agrees to serious structural reforms and reaches a deal with the International Monetary Fund (IMF).³⁵ A deal with the IMF is needed to

31. See *Beirut Explosion Caused Over \$8bn in Damage, Economic Loss: World Bank*, MIDDLE E. EYE (Aug. 31, 2020), <https://www.middleeasteye.net/news/lebanon-explosion-world-bank-8-billion-aid> [<https://perma.cc/7NL2-A22Q>]; Tewodros Aragie Kebede et al., *A Blast in the Midst of Crises: Impact of the Beirut Port Explosion on the City's Enterprises*, INT'L LAB. ORG. 4 (Aug. 2021), http://www.ilo.org/wcmsp5/groups/public/-arabstates/-ro-beirut/documents/publication/wcms_816468.pdf [<https://perma.cc/CH98-36EZ>].

32. *The World Bank in Lebanon*, *supra* note 30.

33. See Christianna Silva, *Corona, Cancer and a Blast: Beirut's Hospitals Struggling After Port Explosion*, NPR (Aug. 15, 2020), <https://www.npr.org/2020/08/15/902599700/corona-cancer-and-a-blast-beirut-s-hospitals-struggling-after-port-explosion> [<https://perma.cc/B5CK-UTNU>].

34. See *generally* Press Release, World Bank, US\$246 Million to Support Poor and Vulnerable Lebanese Households and Build-Up the Social Safety Net Delivery System, (Jan. 12, 2021), <https://www.worldbank.org/en/news/press-release/2021/01/12/us246-million-to-support-poor-and-vulnerable-lebanese-households-and-build-up-the-social-safety-net-delivery-system> [<https://perma.cc/A5JY-45ZF>] [*hereinafter* World Bank, US\$246 Million]; *Lebanon Reform, Recovery and Reconstruction Framework (3RF)*, WORLD BANK GRP. 3, 48–49 (Dec. 2020), <http://documents1.worldbank.org/curated/en/948021607068524180/pdf/Lebanon-Reform-Recovery-and-Reconstruction-Framework-3RF.pdf> [<https://perma.cc/XG65-HGRR>] (announcing the approval of World Bank funding to provide emergency payments to Lebanese citizens and to support the development of a national social safety net system). See also World Bank, US\$246 Million, *supra* note 34 (announcing the approval of World Bank funding to provide emergency payments to Lebanese citizens and to support the development of a national social safety net system); INT'L CRISIS GRP., HOW EUROPE CAN HELP LEBANON OVERCOME ITS ECONOMIC IMPLSION, Middle E. Rep. No. 219, at 2 (Oct. 30, 2020), <https://icg-prod.s3.amazonaws.com/219-lebanon-economic-implosion.pdf> [<https://perma.cc/8AAK-KWBU>] [*hereinafter* INT'L CRISIS GRP., Middle E. Rep. No. 219] (discussing France's key role in seeking to mobilize international financial support for Lebanon).

35. See INT'L CRISIS GRP., Middle E. Rep. No. 219, *supra* note 34, at i; World Bank, US\$246 Million, *supra* note 34, at 3. On April 7, 2022, the International Monetary Fund

unlock further aid because it is the only international actor with enough financing to address Lebanon's economic challenges, including the stabilization of currency and the state budget.³⁶

B. *While a Narrative of the Port Explosion Has Begun to Emerge, Questions Remain About How the Explosives Came to Beirut.*

Investigative efforts by the media and the Lebanese government have discovered that the ammonium nitrate that caused the deadly explosion came from a leaking Moldovan-flagged cargo ship that arrived in Beirut in November 2013.³⁷ The ship, called the *Rhosus*, was being used by Russian businessman Igor Grechushkin to bring the ammonium nitrate to a commercial explosives factory in Mozambique.³⁸ Grechushkin allegedly told the ship to stop in Beirut to pick up heavy machinery to transport to Jordan on the way, but the ship was impounded by the Lebanese authorities for failure to pay for certain maritime services.³⁹ Rather than paying the debts, Grechushkin walked away, abandoning the captain and crew in the process.⁴⁰

Since the explosion, various facts about parties with connections to the *Rhosus* point to the possibility of Syrian involvement in the ammonium nitrate shipment. Initially, Grechushkin appeared to be the ship's owner and was considered the party responsible for the shipment.⁴¹ However, investigative efforts revealed additional names that were associated with the ship, indicating that Grechushkin may not have been the primary decisionmaker regarding the ammonium nitrate shipment.⁴²

(IMF) reached a staff-level agreement on economic policies supported by a four-year extended fund facility. Full approval and implementation of the agreement is dependent on several reform efforts by the Lebanese authorities. See Press Release No. 22/108, *IMF Reaches Staff-Level Agreement on Economic Policies with Lebanon for a Four-Year Extended Fund Facility*, IMF (Apr. 7, 2022), <https://www.imf.org/en/News/Articles/2022/04/07/pr22108-imf-reaches-agreement-on-economic-policies-with-lebanon-for-a-four-year-fund-facility>.

36. See INT'L CRISIS GRP., Middle E. Rep. No. 219, *supra* note 34, at 6; INT'L CRISIS GRP., Middle E. Rep. No. 214, *supra* note 27, at 22.

37. See Hubbard et al., *supra* note 1.

38. See *id.*; Oliver Carroll, *Igor Grechushkin: Who Is the Russian Businessman Who Owned a Floating Bomb in Beirut's Port?*, THE INDEPENDENT (Aug. 7, 2020), <https://www.independent.co.uk/news/world/europe/igor-grechushkin-beirut-port-russia-floating-bomb-ammonium-nitrate-a9657816.html> [<https://perma.cc/WZH8-JXMJ>].

39. See Hubbard et al., *supra* note 1.

40. See *id.* The ship's captain and crew were not allowed to leave the ship until the debts were paid, and if some port officials had not brought them food and water while they were stuck, they likely would have died. *Id.*

41. See Christie K., *How the Syrian Regime and Businessmen are Linked to the Beirut Ammonium Nitrate Shipment*, 961 (Jan. 15, 2021), <https://www.the961.com/syria-regime-businessmen-beirut-ammonium-nitrate/> [<https://perma.cc/B2GP-XFQQ>].

42. See *id.*

The new information also connected the ammonium nitrate order to three Russian-Syrian businessmen with strong ties to the Assad regime.⁴³ Apparently, the factory in Mozambique purchased the explosives through a London-based shell company, which shares a registered address with companies previously affiliated with the three Syrian businessmen.⁴⁴ The three Syrian men in question have all been sanctioned by the United States, and one previously attempted to supply ammonium nitrate to the Assad regime in 2013 to create explosive weapons.⁴⁵ One of the businessmen, George Haswani, has publicly denied any affiliation with the Beirut ammonium nitrate shipment.⁴⁶ Most recently, a Danish bunker fuel supplier, Dan Bunkering Ltd., was convicted for violating European Union fuel sanctions against Syria.⁴⁷ The company also sold fuel to the *Rhosus*, and later requested that the ship be seized in the Beirut port because the ship owed the company money.⁴⁸ However, some have questioned whether the outstanding fuel payments were really the reason the company requested the seizure of the ship, and believe that the seizure request could have been used as a cover to keep the ship in the Beirut port for an extended period of time and unload the explosives.⁴⁹ Additionally, some forensic experts who examined the blast believe that the explosion would have been larger if all 2,750 tons had detonated, indicating that some portion of the original shipment may have been secretly moved elsewhere during the

43. See Anchal Vohra, *Syria's Hidden Hand in Lebanon's Port Explosion*, FOREIGN POL'Y (Jan. 20, 2021), <https://foreignpolicy.com/2021/01/20/syrias-hidden-hand-in-lebanon-port-explosion/> [https://perma.cc/G4BW-RRNG].

44. See *id.*; Christie K., *supra* note 41. Weapons and explosives, including ammonium nitrate, were commonly smuggled through Lebanon to Syria during the early years of the Syrian conflict. See Vohra, *supra* note 43.

45. See Vohra, *supra* note 43.

46. *Syrian Businessman Haswani Denies Links to Beirut Port Explosion: Report*, AL ARABIYA (Jan. 28, 2021), <https://english.alarabiya.net/News/middle-east/2021/01/28/Beirut-explosion-Syrian-businessman-Haswani-denies-links-to-Beirut-port-explosion-Report> [https://perma.cc/HG8D-SSRC]. George Haswani's company is a subsidiary of a company owned by Russian billionaire Gennady Timchenko, who has strong ties with Vladimir Putin. See Claude Assaf, *Dan Bunkering's Conviction Sheds New Light on the Beirut Port Probe*, L'ORIENT TODAY (Jan. 14, 2022), <https://today.lorientjour.com/article/1287581/dan-bunkerings-conviction-sheds-new-light-on-the-beirut-port-probe.html> [https://perma.cc/3RRN-XH5N].

47. See Assaf, *supra* note 46.

48. *Id.*

49. See *id.* Some believe the fuel debts were used as an excuse to keep the ship in the Beirut port because the *Rhosus* refueled in Greece before sailing to Lebanon, but Dan Bunkering waited to request seizure of the ship until it reached Lebanon. *Id.* Additionally, the seizure order was eventually lifted, but it is not clear who actually paid off the fuel debt. See *id.*

seven-year storage period.⁵⁰ While circumstantial, these details may indicate that the shipment was always intended to be kept in the Beirut port and syphoned off by Syrian actors for use in the civil war.

While the *Rhosus's* debt issue was being resolved, a port security officer as well as the law firm representing the stranded crew warned the customs authorities that the *Rhosus's* cargo posed a danger to the port, the first of many warnings to various Lebanese governmental institutions.⁵¹ Afraid that the decrepit ship might sink into the harbor, a judge ordered that the cargo be taken off the ship and stored in one of the port's hangars until the legal claims were resolved.⁵² Once the explosives were transferred to Hangar 12, the Lebanese military and the customs authority had the legal authority to relocate them.⁵³ The New York Times documented at least six unsuccessful attempts in the next three years by customs officials to convince the military or the judiciary to remove the chemicals from the port.⁵⁴ According to lawyers and judicial officials familiar with these communications, the attempts were unsuccessful because the letters were not addressed to the correct office.⁵⁵

In 2019, a member of the state security agency found a broken door and a hole in the wall of Hangar 12, where he discovered the ammonium nitrate spilling out of bags and sitting beside oil, kerosene, hydrochloric acid, five miles worth of fuse, and fifteen tons of fireworks.⁵⁶ The guard warned his superiors, who reported the explosives to the state prosecutor's office.⁵⁷ In May 2020, top prosecutor Ghassan Oueidat ordered the port to fix the hangar and for a supervisor to be appointed to the project.⁵⁸

According to a senior security official, Prime Minister Hassan Diab was informed of the explosives in July of 2020 and planned to visit the port to address the issue, but later cancelled the visit.⁵⁹ About a month and a half later, the state security agency reported

50. See Timour Azhari, *Syrian Businessmen Linked to Firm that Bought Beirut Explosives*, AL JAZEERA (Jan. 14, 2021), <https://www.aljazeera.com/news/2021/1/14/syrian-businessmen-linked-to-firm-that-bought-beirut-blast-matter> [https://perma.cc/R8SB-UF5S].

51. See Hubbard et al., *supra* note 1.

52. *Id.*

53. See *id.*; see also Timour Azhari, *Intelligence Probe into Beirut Explosion Lays out Liabilities*, AL JAZEERA (Nov. 16, 2020), <https://www.aljazeera.com/news/2020/11/16/beirut-blast-intelligence-probe-lays-out-liabilities> [https://perma.cc/KUX8-76CQ].

54. See Hubbard et al., *supra* note 1.

55. See *id.*

56. See *id.*

57. See *id.*

58. See *id.*

59. *Id.*

the issue to the High Security Council, the members of which include the president, the prime minister, and the heads of Lebanon's security agencies.⁶⁰ Finally, on August 4, 2020, the government sent a team of welders to fix Hangar 12. The welding likely caused a fire in the hangar, which led to the explosion.⁶¹

About three months after the explosion, Lebanon's Information Branch Intelligence Agency released a 350-page report placing liability for the explosion on a large group of government agencies and officials.⁶² The report holds the Lebanese Customs and the Beirut port authority primarily responsible for allowing the ammonium nitrate to remain in dangerous storage conditions for so long, noting that the customs chiefs had the power to move the explosives to safer storage conditions at the port, but did not do so.⁶³ Other entities, including the Cases Authority (the State's lawyer), the Directorate of Land and Maritime Transport within the Public Works Ministry, and the Army Intelligence and State Security agency, are also partially to blame.⁶⁴ The report concludes that, while many officials knew about the explosives, they simply did not appreciate the danger of the situation.⁶⁵ While this report identifies the government officials who were responsible for the ammonium nitrate once it was removed from the *Rhosus*, questions remain about why the explosives ended up in Beirut in the first place and why no one took action to store them in a safer location.

C. *The Domestic Avenues for Justice Consist of Government Efforts to Provide Compensation and the Politicized Domestic Investigation.*

1. *The Lebanese Government's Delayed Compensation Plan Will Cover Only a Fraction of the Damage From the Explosion.*

On September 25, 2020, nearly two months after the explosion, the Lebanese government presented its compensation program to provide 100 billion Lebanese pounds in relief money for those whose homes and businesses were damaged by the explosion.⁶⁶ At the time, this amount equated to about \$66 million at the official

60. *Id.*

61. *See id.*

62. Azhari, *Intelligence Probe into Beirut Explosion Lays Out Liabilities*, *supra* note 53.

63. *Id.*

64. *Id.*

65. *See id.*

66. *See Beirut Explosion: Lebanese Government Offers Compensation to Victims Nearly Two Months On*, MIDDLE E. EYE (Sept. 25, 2020), <https://www.middleeasteye.net/news/lebanon-beirut-explosion-victims-compensation> [<https://perma.cc/AUW8-23W7>].

exchange rate or \$13 million on the black market.⁶⁷ Both numbers cover only a fraction of the billions of dollars of estimated losses from the explosion.⁶⁸ Additionally, the Lebanese government announced that the families of decedents from the explosion would be given the same allowances as the families of Lebanese army martyrs.⁶⁹

The Lebanese insurance sector will provide additional relief, but many payments will not be made without a determination on the cause of the explosion from the judiciary's ongoing investigation.⁷⁰ While estimates vary, the total amount of insured losses is expected to cover only about twenty-five percent of the property and car damage from the blast.⁷¹ As of November 2021, more than a year after the explosion, \$230 million of an estimated \$900 million of insurance liabilities have been paid.⁷²

2. The Lebanese Domestic Investigation Has Made Minimal Progress Towards Accountability for the Port Explosion.

Lebanon's judiciary has long been characterized by corruption and political interference, and the investigation into the port explosion is beset with political maneuvering and allegations of bias.⁷³

67. Agence France Presse, *Lebanon to Compensate for Beirut Blast Lost Homes, Businesses*, BARRON'S (Sept. 24, 2020), <https://www.barrons.com/news/lebanon-to-compensate-for-beirut-blast-lost-homes-businesses-01600965336> [<https://perma.cc/Q7R3-5E8Z>]. The Lebanese pound is pegged to the dollar, but its unofficial value has plunged considering the financial crisis. *Lebanon Currency Hits New Low on Black Market Amid Political Crisis*, MIDDLE E. EYE (Mar. 16, 2021), <https://www.middleeasteye.net/news/lebanon-currency-low-black-market-political-crisis> [<https://perma.cc/AD4M-EUX2>]. Because banks have stopped people from accessing dollars or transferring them abroad, many have resorted to obtaining foreign currency on the black market. *Id.*

68. *See Thousands of Lebanese Caught in Insurance Trap After Beirut Port Blast Damage*, ARABIAN BUS. (Nov. 7, 2020), <https://www.arabianbusiness.com/banking-finance/454244-thousands-of-lebanese-caught-in-insurance-trap-after-beirut-port-blast-damage> [<https://perma.cc/LQ8E-BMFK>] [*hereinafter* Insurance Trap Article] (estimating that the value of property damage caused by the explosion may reach \$15 billion).

69. *See* Nadia El Tannir, *Aftermath of the Beirut Port Explosion: Between Law, Insurance & Sympathy*, MONDAQ (Aug. 21, 2020), <https://www.mondaq.com/reinsurance/978178/aftermath-of-the-beirut-port-explosion-between-law-insurance-sympathy> [<https://perma.cc/2LV5-5AVT>].

70. *See id.*

71. *See* Insurance Trap Article, *supra* note 68.

72. Kabalan Farah & Farah-Silvana Kanaan, *Paying a Lot More for Much Less: The Woes of an Insurance Industry and Its Clients in a Crisis-Ridden Land*, L'ORIENT TODAY (Mar. 4, 2022), <https://today.lorientlejour.com/article/1292621/paying-a-lot-more-for-much-less-the-woes-of-an-insurance-industry-and-its-clients-in-a-crisis-ridden-land.html> [<https://perma.cc/Z5LJ-3X3Y>].

73. *See Lebanon: Flawed Domestic Blast Investigation*, *supra* note 8; Timour Azhari, *Fadi Sawan: The Man Leading the Beirut Explosion Investigation*, AL JAZEERA (Aug. 21, 2020), <https://www.aljazeera.com/news/2020/8/21/fadi-sawan-the-man-leading-the-beirut->

Thirty-three mid- and low-level security officials and administrators who knew about the explosives were charged with willful negligence, a crime that carries a maximum five-year prison sentence under Lebanese law.⁷⁴ In December 2020, the first prosecutor, Fadi Sawan, shocked many by bringing criminal negligence charges against Prime Minister Diab, former finance minister Ali Hassan Khalil, and former public works ministers Youssef Fenianos and Ghazi Zeatier.⁷⁵ The ministers refused to comply with the investigation and argued that they were immune because they are public officials.⁷⁶ Khalil and Zeatier filed a motion to have Sawan dismissed from the case, which was granted in mid-February 2021 because of alleged suspicions regarding his neutrality and impartiality, the fact that he refused to recognize the officials' immunity, and because his house was damaged in the blast.⁷⁷

The new prosecutor, Tarek Bitar, had to restart the investigation, a major setback in the quest for accountability.⁷⁸ Bitar has been persistent in his efforts to hold Lebanese leaders accountable, charging one additional minister and requesting to summon two senior officials.⁷⁹ However, the politicians in question have refused to show up for interrogations and tried to remove Bitar from his position due to

explosion-investigation [https://perma.cc/GWT8-WSFT]; Nizar Saghieh, *Twelve Bad Signs at the Outset of the Beirut Massacre Investigation*, THE LEGAL AGENDA (Sept. 28, 2020), https://english.legalagenda.com/twelve-bad-signs-at-the-outset-of-the-beirut-massacre-investigation/ [https://perma.cc/J3NL-GLH5].

74. See Sarah Dadouch & Nader Durgham, *Six Months After Massive Beirut Explosion, Official Investigation Has Been Upended*, WASH. POST (Feb. 21, 2021), https://www.washingtonpost.com/world/middle_east/beirut-explosion-blast-investigation/2021/02/20/632f75a6-72ba-11eb-8651-6d3091eac63f_story.html [https://perma.cc/4WPX-MYFR]. In addition to the judiciary's investigation, the Lebanese Bar Association submitted nearly 700 complaints from people affected by the explosion to the public prosecutor. *Beirut Begins Clearance of Port Containers, Probe Drags On*, ARAB WKLY. (Nov. 20, 2020), https://thearabweekly.com/beirut-begins-clearance-port-containers-probe-drags [https://perma.cc/FN4B-MS7L].

75. See Timour Azhari, *Lebanon PM, Former Ministers Charged over Beirut Blast*, AL JAZEERA (Dec. 10, 2020), https://www.aljazeera.com/news/2020/12/10/lebanon-pm-former-ministers-charged-over-beirut-blast; Kareem Chehayeb, *Analysis: How Judge Bitar's Probe Shook Lebanon Leaders*, AL JAZEERA (Oct. 16, 2021), https://www.aljazeera.com/news/2021/10/16/analysis-how-judge-bitar-probe-shook-lebanon-leaders [https://perma.cc/GFQ4-RQ5E].

76. See Dadouch & Durgham, *supra* note 74; Timour Azhari, *Lebanon Judge Faces Off with Top Politicians over Port Explosion*, AL JAZEERA (Dec. 14, 2020), https://www.aljazeera.com/news/2020/12/14/lebanon-judge-faces-off-with-top-politicians-over-port-explosion [https://perma.cc/8XQP-5F4V].

77. See Dadouch & Durgham, *supra* note 74.

78. *Id.*

79. See Chehayeb, *Analysis: How Judge Bitar's Probe Shook Lebanon Leaders*, *supra* note 75.

accusations of bias.⁸⁰ The removal attempts often suspend the investigation.⁸¹

Beyond delaying accountability for the explosion, the investigation has become deeply politicized. Various political leaders from different parties have called for Bitar's removal from his position.⁸² Hezbollah has led the campaign for his removal, despite the fact that no politicians from Hezbollah are being investigated.⁸³ In October 2021, a protest calling for Bitar's removal by supporters of Hezbollah and the Shi'ite Amal Movement turned into a four-hour gun battle when snipers fired on the crowd.⁸⁴ Seven people were killed in the violence.⁸⁵ At the time of publication of this Note, the investigation remains ongoing.⁸⁶

D. *The Ideal International Avenue For Justice Will Depend on the Source of Legal Authority and the Scope of Jurisdiction.*

Because of the substantial delays and politicization of the domestic compensation and investigation mechanisms, those impacted by the explosion as well as many members of the international community have called for accountability at the international level, going as far as appealing to the U.N. Security Council for an international investigation.⁸⁷ The President of the Beirut Bar Association also announced his willingness to initiate a claim on behalf of victims against Lebanon in a competent international court.⁸⁸ Thirty-seven U.N. experts, including various Special Rapporteurs, issued a statement calling for an independent investigation that "underscores international human rights obligations, clarifies responsibilities relating to the explosion, and leads to justice and accountability."⁸⁹

80. *See id.*

81. *See id.*

82. *See id.* Hezbollah maintains close ties with the Assad regime in Syria. *See* Aurélie Daher, *Hezbollah and the Syrian Conflict*, MIDDLE E. INST. (Nov. 4, 2015), <https://www.mei.edu/publications/hezbollah-and-syrian-conflict> [<https://perma.cc/32HD-BKJ4>].

83. Chehayeb, *supra* note 75.

84. *Id.*

85. *Id.*

86. *Lebanon Marks Three Years Since Catastrophic Beirut Port Blast*, AL JAZEERA (Aug. 4, 2023), <https://www.aljazeera.com/news/2023/8/4/lebanon-marks-three-years-since-catastrophic-beirut-port-blast> [<https://perma.cc/SXA3-P7EL>].

87. *See* Zeina Karam & Lori Hinnant, *Families of Lebanese Blast Victims Plead for Outside Inquiry*, ASSOC. PRESS (Aug. 14, 2020), <https://apnews.com/article/ap-top-news-international-news-middle-east-lebanon-paris-64b3226337874969e2cbf375c6c37fc3> [<https://perma.cc/7UXZ-5XSG>].

88. El Tannir, *supra* note 69.

89. Press Release, U.N. Off. of the High Comm'r of Hum. Rts., U.N. Human Rights Experts Call for Justice & Accountability in Response to Beirut Explosion (Aug. 13, 2020), <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26163&LangID=E> [<https://perma.cc/L73H-8SLN>].

Major human rights organizations, such as Amnesty International and Human Rights Watch, have echoed the call for an international investigation through a U.N. fact-finding mission.⁹⁰

Justice mechanisms at the international level based in international human rights and criminal law can be established using a variety of sources of international legal authority and exercise multiple different scopes of jurisdiction. This section will examine, first, the possible sources of international legal authority, and second, the possible types of jurisdiction, for an international justice mechanism for those affected by the Beirut port explosion. In doing so, it will rely on the examples of the STL and the UNCC for Iraq and Kuwait.

1. Possible Sources of Legal Authority for an International Justice Mechanism Include Domestic Governments, Treaties, and the United Nations.

International justice mechanisms have been established through a variety of sources of legal authority. Some have been established by domestic governments, using local judicial processes to implement aspects of international law.⁹¹ Others were established through treaties between the relevant state parties.⁹² The U.N. Secretary-General (Secretary-General) has also helped mediate negotiations for establishing justice mechanisms.⁹³ Still others were established through binding Security Council powers, including the STL and the UNCC for Iraq and Kuwait.⁹⁴

Prior to establishing any of the international justice mechanisms mentioned above, the United Nations often conducts an investigation

90. See *Lebanon: Flawed Domestic Blast Investigation*, *supra* note 8; Press Release, Amnesty Int'l, Only an International Investigation Can Set the Course for Justice, *supra* note 9.

91. See, e.g., Yudan Tan, *Prosecuting Crimes Against Humanity Before International Crimes Tribunal in Bangladesh: A Nexus with an Armed Conflict*, 24 ASIAN Y.B. INT'L L. 294, 294, 296 (2018) (describing the use of domestic courts to implement international law in Bangladesh); Thomas Buergenthal, *Truth Commissions: Between Impunity and Prosecution*, 38 CASE W. RESRV. J. INT'L L. 217, 221 (2007).

92. See Lucy Reed, *Institutional and Procedural Aspects of Mass Claims Settlement Systems: The Iran-United States Claims Tribunal*, 1 PERM. CT. ARB. PEACE PALACE PAPERS 9, 10 (2000) (discussing the creation of the Iran-United States Claims Tribunal, which was established through a resolution between the two countries).

93. See Buergenthal, *supra* note 91, at 217, 219. The Truth Commission for El Salvador relied on a representative of the Secretary-General to oversee negotiations between the warring groups and international judges to conduct its activities. *Truth Commission: El Salvador*, U.S. INST. FOR PEACE (July 1, 1992), <https://www.usip.org/publications/1992/07/truth-commission-el-salvador> [<https://perma.cc/DD34-RUGX>].

94. See S.C. Res. 1757, ¶ 1(a) (May 30, 2007) (authorizing the creation of the STL); S.C. Res. 687, ¶ 18 (Apr. 8, 1991) (establishing the UNCC).

to establish the factual basis of a particular situation.⁹⁵ The Security Council has the power to investigate “any dispute, or any situation which might lead to international friction or give rise to a dispute” to determine whether the situation is a danger to “international peace and security.”⁹⁶ These investigations can have a wide variety of objectives, including the implementation of peace agreements and political transitions or reconciliation processes; the assessment of security and humanitarian situations; the protection of civilians and human rights; cooperation with peacekeeping mandates; and support for regional and sub-regional organizations.⁹⁷ The Security Council may also rely on investigations conducted by other U.N. organs, such as the Secretary-General, the Human Rights Council, and the Office of the High Commissioner of Human Rights.⁹⁸

The Security Council’s Chapter VII powers refer to a variety of enforcement mechanisms up to and including the use of force.⁹⁹ Once the Security Council has determined that there is a threat to international peace and security, state parties to the United Nations must comply with the measures the Security Council takes pursuant to its Chapter VII powers.¹⁰⁰ In some cases, states requested Security Council assistance, like the initial attempts to establish the STL.¹⁰¹ In other cases, the Security Council uses its powers to force states to comply with certain proceedings, like the UNCC for Iraq and

95. See U.N. Sec. Council, *Commissions and Investigative Bodies*, <https://www.un.org/securitycouncil/content/repertoire/commissions-and-investigative-bodies> [<https://perma.cc/8464-JLFX>]; Ernest L. Kerley, *The Powers of Investigation of the United Nations Security Council*, 55 AM. J. INT’L L. 892, 892 (1961).

96. U.N. Charter art. 34.

97. See Consideration of the Provisions of Chapter VI of the Charter [2016–2017 Supplement], 20 Repertoire Prac. S.C. 315, U.N. Doc. ST/PSCA/1/Add.20, https://www.un.org/securitycouncil/sites/www.un.org.securitycouncil/files/repertoire_20th_supplement.pdf [<https://perma.cc/DF3R-FW5F>].

98. See *id.*

99. See U.N. Charter arts. 40–42.

100. See *id.* arts. 25, 39; SEC. COUNCIL REP., THE U.N. SECURITY COUNCIL HANDBOOK, at 11 (2019), <https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8C-D3-CF6E4FF96FF9%7D/the-un-security-council-handbook-by-scr-1.pdf> [<https://perma.cc/NWA2-U3LG>]. Some of the most significant international justice mechanisms, such as the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia, have been established through the use of Chapter VII powers. See S.C. Res. 955, at 2 (Nov. 8, 1994) (relying on the Security Council’s Chapter VII powers to establish the International Criminal Tribunal for Rwanda); S.C. Res. 827, at 2 (May 25, 1993) (relying on the Security Council’s Chapter VII powers to establish the International Criminal Tribunal for the Former Yugoslavia).

101. See *About the STL: History and Establishment*, SPECIAL TRIBUNAL FOR LEBANON, <https://www.stl-tsl.org/en/about-the-stl/history-and-establishment> [<https://perma.cc/R983-YW3Q>].

Kuwait.¹⁰² These examples will be discussed in more detail in the following sections.

- a. The Special Tribunal for Lebanon Demonstrates the Advantages and Challenges of Relying on Chapter VII Powers.

Any discussion of an international justice mechanism for Lebanon would be incomplete without a more detailed discussion of the STL, which was established by the Security Council to prosecute those responsible for the February 14, 2005 terrorist attack that killed former Prime Minister Rafiq Hariri and twenty-two others.¹⁰³ The Security Council initially established the U.N. International Independent Investigation Commission (UNIIC) to assist with the investigation of the attack, with approval from the Lebanese government.¹⁰⁴ The Security Council's motivation for an independent investigation stemmed from serious flaws in the domestic investigation as well as overwhelming demand for accountability, demonstrated through protests against Syrian influence in Lebanon.¹⁰⁵

Shortly after the UNIIC began its investigation, the anti-Syrian political alliances within the Lebanese government requested the establishment of an international tribunal in or outside of Lebanon to try the perpetrators of the terrorist attack.¹⁰⁶ At the direction of the Security Council, the Secretary-General negotiated an agreement with the Lebanese government to establish the STL.¹⁰⁷

102. See S.C. Res. 687, *supra* note 94, at ¶¶ 18–19.

103. See Martin Wählisch, *The Special Tribunal for Lebanon: An Introduction and Research Guide*, N.Y.U. SCH. L.: GLOBALEX (Sept. 2012), https://www.nyulawglobal.org/globalex/Special_Tribunal_Lebanon.html#I2 [<https://perma.cc/GVN3-9H24>].

104. See *id.*; S.C. Res. 1595, at 1–2 (Apr. 7, 2005); Charge d'affaires a.i. of the Permanent Mission of Lebanon, Letter dated Mar. 29, 2005 from the Charge d'affaires a.i. of the Permanent Mission of Lebanon to the United Nations addressed to the Secretary-General, at 1, U.N. Docs. A/59/757, S/2005/208 (Mar. 29, 2005).

105. See S.C. Res. 1595, *supra* note 104, at 1; *Lebanese Government Dissolved Amid Opposition Protests*, *supra* note 15. This mass protest movement is known as the Cedar Revolution. See *id.* The movement resulted in the resignation of the pro-Syrian prime minister and the withdrawal of Syrian troops from Lebanon less than three months after the assassination, ending a twenty-nine-year-long occupation. See *id.*; *Syrian Troops Leave Lebanon After 29-Year Occupation*, N.Y. TIMES (Apr. 26, 2005), <https://www.nytimes.com/2005/04/26/international/middleeast/syrian-troops-leave-lebanon-after-29year-occupation.html> [<https://perma.cc/7XA2-DUT8>].

106. See Wählisch, *supra* note 103; *Lebanon's Simiora Asks U.N. to Set Up Hariri Court*, REUTERS (May 14, 2007), <https://www.reuters.com/article/us-lebanon-tribunal/lebanons-simiora-asks-u-n-to-set-up-hariri-court-idUSL1420555620070514> [<https://perma.cc/HD82-B82P>].

107. See *id.*

However, the Hezbollah-aligned Parliament Speaker refused to convene Parliament in order to ratify the Tribunal's statute.¹⁰⁸ In response, the Prime Minister requested that the Security Council establish the STL using its binding Chapter VII powers to bypass deadlock within the Lebanese government.¹⁰⁹ The STL was officially established in 2007, and it superseded the mandate of the UNIIC after the investigation was complete.¹¹⁰

The STL released its judgment on August 18, 2020, less than two weeks after the port explosion.¹¹¹ After more than a decade of work, the STL only indicted five defendants, all presumed to be Hezbollah operatives.¹¹² After an appeals process, the tribunal ultimately convicted three of them.¹¹³ All defendants were tried in absentia and, as of this writing, remain at large.¹¹⁴

The establishment of the STL and its verdict remain controversial, both outside and within Lebanon. Some members of the Security Council saw the use of Chapter VII enforcement powers as a last resort that would break the domestic political impasse and avoid impunity for political assassinations.¹¹⁵ Others were afraid that an imposed tribunal would undermine stability in Lebanon, and had concerns that the Security Council was going beyond its mandate and interfering in a sovereign state.¹¹⁶ Within Lebanon, support for

108. See Press Release, U.N. Sec. Council, Security Council Authorizes Establishment of Special Tribunal to Try Suspects in Assassination of Rafiq Hariri, U.N. Press Release SC/9029 (May 30, 2007); Maya Gebeily, *Berri Wins Tight Speaker Vote in Divided Lebanon Parliament*, REUTERS (May 31, 2022), <https://www.reuters.com/world/middle-east/lebanese-parliament-re-elects-nabih-berri-speaker-reuters-count-2022-05-31/> [<https://perma.cc/67ZN-R2UW>].

109. See *id.*; S.C. Res. 1757, *supra* note 94, ¶ 1; *Lebanon's Simiora Asks U.N. to Set Up Hariri Court*, *supra* note 106.

110. See Wählisch, *supra* note 103.

111. See *The Cases: Ayyash et al. (STL-11-01), Key Developments (Case Timeline)*, SPECIAL TRIBUNAL FOR LEB., <https://www.stl-tsl.org/en/the-cases/stl-11-01/key-developments> [<https://perma.cc/T8ZW-B9AX>]. The verdict was originally supposed to be released on August 7, 2020, but was postponed out of respect for the victims of the explosion. *Id.*

112. See *id.*; Nour El Bejjani Nouredine et al., *Justice Served? The Special Tribunal for Lebanon Renders Its Long-Anticipated Judgment*, INT'L CTR. FOR TRANSITIONAL JUST. (Aug. 20, 2020), <https://www.ictj.org/news/justice-served-special-tribunal-lebanon-renders-its-long-anticipated-judgment> [<https://perma.cc/JU5U-D5VF>]; Beth Van Schaack, *Special Tribunal for Lebanon Is Set to Issue Historic Ruling on the Assassination of PM Hariri*, JUST SEC. (Aug. 17, 2020), <https://www.justsecurity.org/72046/special-tribunal-for-lebanon-is-set-to-issue-historic-ruling-on-the-assassination-of-pm-hariri/> [<https://perma.cc/2WES-TZRJ>]. Three of the other defendants were acquitted due to a lack of evidence, and the proceedings against the fifth were terminated when he was killed in Syria in 2016. See *id.*

113. *Accused*, SPECIAL TRIBUNAL FOR LEB., <https://www.stl-tsl.org/en/the-cases/stl-11-01/accused> [<https://perma.cc/UB8P-DTE9?type=image>].

114. See Van Schaack, *supra* note 112.

115. See U.N. Press Release SC/9029, *supra* note 108.

116. See *id.*

the tribunal initially fell along partisan lines; those aligned with the assassinated Prime Minister and the new government supported the tribunal.¹¹⁷ The opposition parties, including Hezbollah, said they accepted the concept of the STL, but wanted to address its mandate to ensure it would not be used to settle political scores.¹¹⁸

More than ten years later, enthusiasm for the STL has waned even among those in Lebanon that originally supported it. Criticisms include its use of in absentia trials; its location in the Netherlands, far away from where the events took place; and the fact that it took over a decade to reach a verdict.¹¹⁹ Given the high costs of the trial for both Lebanon and the international community, as well as the country's current economic situation, many feel that the conviction of only a few operatives does not adequately portray the extent of the crimes that occurred, which were politically orchestrated and required many participants to execute.¹²⁰

The cost-benefit analysis of the STL becomes even more difficult to accept when viewed in the context of Lebanon's history. As just one example, family members of the 10,000 to 17,000 people who disappeared during the country's Civil War have had no opportunities for justice.¹²¹ Against this backdrop of unaccountability, one very expensive international trial becomes a dangerous form of selective justice.¹²² Some suspect that the STL ultimately lacked the political will to try high-ranking Hezbollah and Syrian officials out of concern for Lebanon's political stability.¹²³ While the verdict's contributions to punitive justice for the victims and the significance of the conviction of members of Hezbollah should not be overlooked, the overall impact of the STL was far less than many originally hoped.¹²⁴

117. See *Lebanon's Siniora Asks U.N. to Set Up Hariri Court*, *supra* note 106.

118. See *id.*

119. See Tjitske Lingsma, *Special Tribunal for Lebanon: Billion Dollar Trial*, JUST. INFO (July 7, 2020), <https://www.justiceinfo.net/en/44825-special-tribunal-for-lebanon-billion-dollar-trial.html> [<https://perma.cc/6WET-7XMM>].

120. See *id.* The trial cost nearly \$1 billion in total, of which the Lebanese government covered 49 percent of the bill, and the European Union and other states voluntarily covered the rest. See *id.*

121. See *id.*

122. See *id.*

123. See Reem Salahi & Bachar El-Halabi, *The Limits of the Special Tribunal for Lebanon and What Syrians Can Learn*, ATL. COUNCIL: MENASOURCE (Sept. 16, 2020), <https://www.atlanticcouncil.org/blogs/menasource/the-limits-of-the-special-tribunal-for-lebanon-and-what-syrians-can-learn/> [<https://perma.cc/EA4N-DQLL>]. The judgment noted that both Syria and Hezbollah had motives to murder the former prime minister but did not go as far as holding either group responsible. See *id.*

124. See El Bejjani Nouredine et al., *supra* note 112.

2. Possible Jurisdictions of an International Justice Mechanism Include Criminal Prosecutions, Truth Commissions, and Mass Claims Programs.

An international justice mechanism for those impacted by the Beirut port explosion can be modeled on international criminal prosecutions, truth commissions, and mass claims commissions. This section will offer a brief overview of the jurisdiction of criminal prosecutions and truth commissions, including their advantages and disadvantages, and then provide more information on mass claims commissions through the example of the UNCC for Iraq and Kuwait.

a. International Criminal Liability Offers Punitive Justice But Faces Challenges in Implementation and Timelines.

A mechanism premised on international criminal liability would hold individuals who contributed to the port explosion individually liable, and either establish an ad hoc international tribunal to prosecute the crimes or apply the relevant customary international criminal and human rights laws directly in Lebanese domestic proceedings.¹²⁵ Because Lebanon is not a party to the International Criminal Court and does not currently have legislation criminalizing major international human rights crimes,¹²⁶ customary law regarding the failure to act in certain situations as a crime against humanity would likely be the most promising basis for international criminal liability.¹²⁷

Individual criminal liability offers victims punitive justice for the harms they have endured.¹²⁸ It also may contribute to deterrence against major international crimes and strengthen the rule of law in countries dealing with political strife or violent conflict.¹²⁹ However, international trials tend to be lengthy and expensive processes, and face limitations imposed by procedural rules and availability

125. See, e.g., *Ad Hoc Tribunals*, INT'L COMM. OF THE RED CROSS (Oct. 29, 2010), <https://www.icrc.org/en/who-we-are> [https://perma.cc/33GY-2M8C] (discussing the existence of various ad hoc international criminal tribunals); Tan, *supra* note 91, at 294, 296 (describing the use of domestic courts to implement international law in Bangladesh).

126. See Clare Brown, *A Reckless Crime Against Humanity: Justice for the Victims of the Beirut Blasts*, JUST. IN CONFLICT (Aug. 13, 2020), <https://justiceinconflict.org/2020/08/13/a-reckless-crimes-against-humanity-justice-for-the-victims-of-the-beirut-blasts/> [https://perma.cc/Y9DB-4XYR].

127. *Cf. id.*

128. See *Why Back the International Criminal Court and the Fight for Global Justice?*, COAL. FOR THE INT'L CRIM. CT., <https://www.coalitionfortheicc.org/explore/20-icc-benefits> [https://perma.cc/BV9J-XNQT].

129. *See id.*

of evidence.¹³⁰ Trials also focus on the specific actions and motives of individual perpetrators, sidelining the experiences of the people impacted by the events in question.¹³¹ On a logistical note, international criminal tribunals require cooperation from domestic authorities with regard to evidence gathering, arrests, extradition, and enforcing sentences, meaning that resistant domestic governments can derail prosecutions.¹³²

As a final note, international criminal trials do not automatically result in compensation for the victims; for example, the STL did not provide any compensation to the family members of the victims of the attack.¹³³ Compensation would have to be provided separately. As an example, the Trust Fund for Victims at the International Criminal Court distributes funds paid in by state parties to those impacted by events under the court's jurisdiction, but the payments constitute a process separate from the prosecutions.¹³⁴

b. Truth Commissions Provide Healing and Establish a Narrative, But Do Not Necessarily Offer Punishment or Compensation.

Truth commissions are ad hoc fact-finding bodies with mandates to investigate serious humanitarian and human rights violations.¹³⁵ They provide a way for people to confront conflicts by investigating, documenting, and disseminating information about the past.¹³⁶ In doing so, they try to reconcile different groups in societies broken by conflict, provide dignity and healing to victims, and contribute to the deterrence of future crimes and accountability by establishing a record of crimes committed.¹³⁷

Truth commissions developed as a response to the shortcomings of international criminal liability, and in that regard they have several

130. See Martha Minow, *The Hope for Healing: What Can Truth Commissions Do?*, in TRUTH V. JUSTICE: THE MORALITY OF TRUTH COMMISSIONS (Robert I. Rotberg & Dennis Thompson eds., (2000)), reprinted in RALPH G. STEINHARDT ET AL., INTERNATIONAL HUMAN RIGHTS LAWYERING 999–1000 (2009).

131. See *id.* at 1000.

132. See Courtney Hillebrecht, *International Criminal Accountability and the Domestic Politics of Resistance: Case Studies from Kenya and Lebanon*, 54 L. & SOC'Y REV. 453, 455 (2020).

133. See M. Tyler Gillett, *Special Tribunal for Lebanon Sentences Hezbollah Member to Five Life Terms for Assassination of Former PM Hariri*, JURIST (Dec. 12, 2020), <https://www.jurist.org/news/2020/12/tribunal-sentences-hezbollah-member-to-five-life-terms-for-assassination-of-lebanon-prime-minister> [<https://perma.cc/BA4N-NCFB>].

134. See Minow, *supra* note 130, at 424; *Trust Fund for Victims*, INT'L CRIM. CT. <https://www.icc-cpi.int/tfv> [<https://perma.cc/CZ79-PXLC>].

135. See Buergethal, *supra* note 91, at 220.

136. See STEINHARDT ET AL., *supra* note 130, at 996.

137. *Cf. id.* at 997–98, 1000 (including Minow); Buergethal, *supra* note 91, at 220–21.

advantages.¹³⁸ In situations where prosecutions may either be politically inadvisable or practically impossible, truth commissions can serve as the next-best alternative to ensure the crimes committed are not completely ignored.¹³⁹ Because they operate outside the judicial system, truth commissions can provide more dignity and healing to victims by focusing on their stories and experiences.¹⁴⁰ Additionally, because the emphasis is not on the specific acts of one defendant, but rather on building an honest narrative for a moment in history, truth commissions can offer a fuller account of the relevant events, holding entire governments and segments of society accountable rather than just a few perpetrators.¹⁴¹

However, truth commissions do not actually prosecute criminal abuses, potentially undermining the rule of law.¹⁴² They may face questions of legitimacy which, in addition to a lack of judicial authority, can hamper their investigative abilities and limit participation in the process, as well as acceptance of the narrative they put forth.¹⁴³ While the results of truth commissions might recommend compensating people who have been harmed, they do not definitively result in payment for harms suffered.¹⁴⁴

c. Mass Claims Commissions Can Quickly Provide Compensation for a Large Number of Claims.

Mass claims programs establish ad hoc, binding arbitral, quasi-arbitral, or administrative forums to address a large number of claims.¹⁴⁵ While mass claims processes have been used for centuries, many mass claims programs have been established in the last few decades to address a wide variety of issues, such as death and injury arising out of war and human rights violations; property stolen, lost, or damaged during conflict; and a variety of financial claims.¹⁴⁶ Mass claims processes fulfill the important purpose of providing remedy

138. See STEINHARDT ET AL., *supra* note 130, at 998 (including Minow).

139. See *id.* at 999.

140. See *id.* at 1000.

141. See *id.* at 1000–01.

142. See *id.* at 998.

143. See *id.* at 1002.

144. See Buergethal, *supra* note 91, at 220–21.

145. See LORI FISLER DAMROSCH & SEAN D. MURPHY, INTERNATIONAL LAW 542 (7th ed. 2019); LEA BRILMAYER ET AL., INTERNATIONAL CLAIMS COMMISSIONS: RIGHTING WRONGS AFTER CONFLICT 10 (2017).

146. See BRILMAYER ET AL., *supra* note 145, at 13–14; DAMROSCH & MURPHY, *supra* note 145, at 543–44. The financial claims include contract disputes and Holocaust-era claims regarding the bank accounts and insurance policies of the victims. See DAMROSCH & MURPHY, *supra* note 145, at 543.

to a large number of victims of unlawful activity in situations where it would be practically unrealistic to litigate such a high number of claims.¹⁴⁷

The processes can be structured to address violations of both international and domestic law, in the context of both international conflict and domestic disputes.¹⁴⁸ Mass claims commissions can also take on either a “statist” structure, where governments represent the claims of impacted individuals in the international forum, or an individualist approach, where individual victims represent their own claims.¹⁴⁹

Mass claims programs have several advantages over both international and domestic judicial proceedings. Commissions can process a large number of similar claims far more quickly than traditional litigation.¹⁵⁰ International mass claims commissions can allow individuals and non-state parties to bring their claims directly rather than under the cover of diplomatic protection, removing some of the control and influence of over the claims process.¹⁵¹ Additionally, because mass claims commissions are ad hoc tribunals, the parties have flexibility and autonomy in creating—and relaxing—the rules, something that is not available in traditional litigation.¹⁵² At the same time, the parties do not have to start from scratch, as several versions of arbitration and mass claims rules already exist. Relying on established rules allows parties to save time and avoid sideshow disagreements when establishing the commission.¹⁵³

Mass claims commissions are most likely to work effectively in situations where there are many similar-situated people with similar injuries; where an authoritative body has made a judgment that those injuries deserve a remedy; and where the commission has the necessary resources and political support to conduct its work.¹⁵⁴ Without these underlying factors, the commission may encounter significant procedural hurdles or budgetary limits that prevent it from assessing claims and providing compensation quickly.¹⁵⁵ Because of

147. See DAMROSCH & MURPHY, *supra* note 145, at 542; BRILMAYER ET AL., *supra* note 145, at 27–28.

148. See BRILMAYER ET AL., *supra* note 145, at 10, 79 n.21.

149. See *id.* at 58–59.

150. See *id.* at 71.

151. See *id.* at 73–74.

152. See *id.* at 76.

153. See *id.* at 77.

154. John R. Crook, *Mass Claims Processes: Lessons Learned Over Twenty-Five Years*, in *RE-DRESSING INJUSTICES THROUGH MASS CLAIMS PROCESSES* 41, 56 (Int’l Bureau of the Permanent Ct. of Arb. ed., 2006).

155. See *id.* at 56–58; BRILMAYER ET AL., *supra* note 145, at 141.

the structural benefits of adjudicating certain types of claims as a class, claimants face a tradeoff between efficient processing versus individual attention on their specific injuries.¹⁵⁶ Additionally, while mass claims processes may be cheaper than traditional litigation, they cannot be done effectively without enough monetary support to meet staffing and technology needs.¹⁵⁷

The next section will draw on the specific experience of the UNCC because it shares factual similarities regarding damages with the Beirut port explosion and is considered a successful international mass claims process.

i. *The U. N. Compensation Commission Demonstrates Best Practices for Any Future Beirut Mass Claims Commission.*

The Security Council established the UNCC to provide compensation for losses caused by Iraq's 1990–1991 invasion and occupation of Kuwait.¹⁵⁸ The UNCC dealt with claims relating to death, injury, property loss, commercial loss, and environmental damage from Iraq's aggression.¹⁵⁹ The claims processing concluded in 2005, with final payments to individuals made in 2007, after having processed 2,686,131 claims and awarded greater than \$52 billion.¹⁶⁰

When establishing the UNCC, the Security Council stipulated that, given the widespread and clearly discernable destruction caused by the invasion and occupation, Iraq was liable for the claims that fell within the jurisdiction of the UNCC.¹⁶¹ The UNCC was established as a subsidiary organ to the Security Council pursuant to its authority to establish subsidiary bodies deemed necessary to perform its functions and focus on specific issues.¹⁶² The Security Council also established a fund to pay the claims and cover the expenses of the UNCC, financed by a percentage of the value of Iraq's petroleum and petroleum-product exports and premised on Iraq's stipulated liability for all of the claims brought.¹⁶³

With the exception of a few larger adversarial cases, the UNCC was designed as an administrative, fact-finding institution, relying

156. See Crook, *supra* note 154, at 56–57.

157. See *id.* at 57.

158. DAMROSCH & MURPHY, *supra* note 145, at 543.

159. *Id.* at 543–44.

160. *Id.* at 544.

161. See *id.* at 543.

162. Norbert Wühler, *Institutional and Procedural Aspects of Mass Claims Settlement Systems: The United Nations Compensation Commission*, 1 PERMANENT CT. ARB. PEACE PALACE PAPERS 17, 17 (2000); U.N. Charter art. 29.

163. See BRILMAYER ET AL., *supra* note 145, at 18–19.

on administrative techniques to evaluate claims.¹⁶⁴ Even though the Security Council had stipulated Iraq's liability, it was still necessary to demonstrate a causal link between Iraq's actions and the claimant's damages; therefore, the use of relaxed evidentiary standards significantly facilitated the claims evaluation process.¹⁶⁵ Conventional arbitration proceedings require the claimant to prove certain events "more likely than not" led them to incur a loss, but the UNCC only required "simple documentation" or "a reasonable minimum" in light of the dramatic circumstances experienced by many claimants who had to quickly flee a war zone without official documentation of their prior addresses and expected losses.¹⁶⁶ While the minimal amount of evidence available necessitated the use of lower evidentiary standards, this choice meant that the UNCC tolerated a higher degree of fraudulent claims in the effort to ensure that those deserving compensation received it.¹⁶⁷

The UNCC created six different categories of claims, including: departure claims for those forced to leave Iraq or Kuwait during the war; claims on behalf of individuals and families for serious personal injuries, including mental pain and anguish; claims for individual personal injury, bereavement, and financial losses; claims over \$100,000, primarily from wealthy people for business and property-related losses; claims by private and public sector entities and business enterprises; and claims by international organizations and governments.¹⁶⁸ Each category had guidelines, including ceilings on compensation, and the UNCC required more specific and official documentation for claims over a certain amount and for claims brought by governments, corporations, and international organizations.¹⁶⁹

To further facilitate the expedient processing of claims, the UNCC developed evidentiary patterns based on socio-economic or national groups to simplify determining the claims' credibility.¹⁷⁰ This meant that, for certain cases, the UNCC presumed the causation of an applicant's loss if they fell within a certain group known to have been

164. See INTERNATIONAL MASS CLAIMS PROCESSES 98 (Howard M. Holtzmann & Edda Kristjánsdóttir eds., 2007).

165. See Rajesh Singh, *Raising the Stakes: Evidentiary Issues in Individual Claims Before the United Nations Compensation Commission*, in REDRESSING INJUSTICES THROUGH MASS CLAIMS PROCESSES, *supra* note 154, at 61, 73.

166. See *id.* at 61–62.

167. See *id.* at 91.

168. *Id.* at 65–66.

169. See *id.* at 65–67.

170. See *id.* at 76.

affected by the invasion.¹⁷¹ The UNCC also relied heavily on technological innovations in the area of mass claims processing, including the use of sampling, statistical modeling and computerized matching from a large database in order to more quickly verify claims.¹⁷² Because an individual evaluation of most claims was not possible, relying on statistical analyses and evidentiary patterns helped reduce the overall risk of fraudulent claims.¹⁷³ “Non-party” evidence from reports by NGOs and international organizations was also used as evidence to verify claims.¹⁷⁴

The UNCC is considered a highly successful claims commission because it processed and paid a huge number of claims in a relatively short amount of time.¹⁷⁵ It marked the first time a mass claims commission provided compensation for foreign workers who had to leave their host country because of a conflict.¹⁷⁶ Also for the first time, the UNCC prioritized processing and paying smaller individual claims over those of governments and corporations.¹⁷⁷

III. ANALYSIS

The international community should heed the call of those impacted by the Beirut port explosion by conducting an international investigation into the explosion and establishing an international mass claims commission to compensate people for their losses. The people impacted by the explosion deserve compensation to help them recover and rebuild, but they also deserve to understand the events that brought about the port explosion. The proposed Beirut mass claims commission should be established by the United Nations, ideally through an agreement with the Lebanese government, with the fallback option of using Chapter VII enforcement powers if negotiations are unsuccessful.

The following sections will explain in more detail, first, why a Beirut mass claims commission is both a just and strategic action for the international community; second, the advantages of establishing a Beirut mass claims commission, in contrast with other international justice mechanisms; and third, a proposal for what a successful commission might look like, including possible sources of international

171. *See id.*

172. *See* Wühler, *supra* note 162, at 20.

173. *See* Singh, *supra* note 165, at 90.

174. *See id.* at 69.

175. *See* BRILMAYER ET AL., *supra* note 145, at 20.

176. *See id.*

177. Wühler, *supra* note 162, at 18.

legal authority and three suggestions on the structure and functioning of a Beirut mass claims commission.

A. *The Strategic Case for an International Mass Claims Commission for Beirut Presents Both Economic and Security Benefits, as well as Justice for People Who Deserve It.*

1. The Beirut Mass Claims Commission Will Provide Economic Benefits to Claimants and Help Stabilize the Security Situation in Lebanon.

Compensation, especially for those who experienced significant property damage to their homes or businesses, is critical to rebuilding the Lebanese capital. While some people will get money through insurance claims and the Lebanese government will provide some compensation, those funds do not come close to covering the full extent of the damage.¹⁷⁸ The funds also will not cover businesses' long-term loss in revenue nor the foregone income of people who lost their jobs because of the explosion.¹⁷⁹ Furthermore, even if the domestic investigation eventually results in an actual prosecution—the Lebanese judiciary is pursuing criminal charges¹⁸⁰—and a jail sentence for the government officials involved would certainly provide accountability, it will not rebuild the property destroyed in the explosion or cover the medical expenses of those dealing with long-term injuries.

The destruction caused by the explosion becomes even more stark when set against Lebanon's dire political and economic situation. Economic relief is critical to ensuring political stability and preventing a potential descent into violence.¹⁸¹ A violent conflict could also create even more refugees in an already pressured region and potentially strengthen the position of terrorist groups who might take advantage of a conflict.¹⁸² As such, it is in the interest of

178. See Insurance Trap Article, *supra* note 68 (estimating that the total value of the property damage caused by the explosion could reach \$15 billion but stating that insured losses are not expected to exceed \$1.5 billion); Agence France Presse, *supra* note 67 (indicating that the government would be paying out a mere 100 billion Lebanese pounds, worth \$66 million at the official exchange rate or \$13 million on the black market, to compensate individuals and businesses for property damage caused by the explosion).

179. See *id.*

180. See Azhari, *Lebanon PM, Former Ministers Charged over Beirut Blast*, *supra* note 75.

181. See INT'L CRISIS GRP., *supra* note 27, at 18.

182. See Kali Robinson & Will Mellow, *Iran's Regional Armed Network*, COUNCIL ON FOREIGN RELS. (Mar. 1, 2021), <https://www.cfr.org/article/irans-regional-armed-network> [<https://perma.cc/2X86-SVFR>] (explaining the dynamics of terrorist groups in the region); Marc Lynch & Laurie Brand, *Refugees and Displacement in the Middle East*, 25 PROJECT ON MIDDLE E.

the international community to find creative methods to improve Lebanon's current state of economic crisis, and a mass claims commission could contribute to this goal.

Establishing the Beirut mass claims commission would allow the international community to evaluate and compensate different categories of losses and provide funding directly to the people who need it, bypassing the corrupt political establishment.¹⁸³ It also allows for financial assistance that goes beyond humanitarian aid but does not violate international donors' current stance that the Lebanese government must make serious reform efforts and come to an agreement with the IMF before receiving any aid packages.¹⁸⁴

The cross-border nature of the events that led to the explosion, especially the possibility that the ammonium nitrate may have been intended for use in the Syrian Civil War, also necessitates the involvement of the international community.¹⁸⁵ Syrian-Lebanese relations are complicated because of Syrian involvement in the Lebanese Civil War and the strong alliance between Hezbollah and the Assad regime.¹⁸⁶ Stronger evidence of Syrian involvement in the accident could have grave consequences for the relationship between the two countries as well as the interactions between the competing political factions within Lebanon.¹⁸⁷ At the same time, Hezbollah's power within the Lebanese government means that Syrian involvement could be covered up by any domestic investigation.¹⁸⁸ As such, the international community should conduct its own investigation on these facts and be prepared to mediate the potential fallout.

2. The Beirut Mass Claims Commission Will Provide Justice for People Who Will Not Get It Elsewhere.

Compensation through a mass claims commission can provide a measure of justice, in the form of compensation and the establishment

POL. SCI. STUD. 3 (Mar. 2017), *reprinted in* CARNEGIE ENDOWMENT FOR INT'L PEACE (Mar. 29, 2017), <https://carnegieendowment.org/2017/03/29/refugees-and-displacement-in-middle-east-pub-68479> [<https://perma.cc/WC2Y-SDD6>] (discussing the ongoing refugee crisis in the Middle East).

183. See BRILMAYER ET AL., *supra* note 145, at 73–74 (noting that mass claims commissions can be structured to allow individuals to prosecute their own claims, rather than requiring a state to present claims on the individuals' behalf).

184. See INT'L CRISIS GRP., *supra* note 34, at i; World Bank, US\$246 Million, *supra* note 34, at 3.

185. See Vohra, *supra* note 43.

186. See *Political Instability in Lebanon*, *supra* note 11.

187. See discussion *supra* Section II.A.1 (discussing the complicated role of Syria in Lebanese politics).

188. See *id.*; *supra* Section II.C.

of a truthful record, for people who have been wronged by their government. There is not currently another forum that could adequately and efficiently compensate people for their losses or take any steps to combat impunity for the explosion. Compensation from the Lebanese government will likely be minimal, and the domestic investigation is only pursuing criminal charges.¹⁸⁹

As of this writing, attempts at domestic prosecution have made minimal progress, with high-ranking Lebanese officials who knew about the explosives directly undermining the judiciary's attempts to hold them accountable.¹⁹⁰ This signals that they have no intention to take responsibility for their failure to prevent the dangerous situation that led to the explosion. Operating the mass claims program at the international level, rather than providing aid to be administered domestically, ensures that the process will not be sidetracked by political maneuvers or corrupted by the Lebanese government, and increases the likelihood that the compensation will actually make it into the hands of people who need it.

While the primary goal of the mass claims commission would be compensation, connecting it with an investigative function provides a number of benefits similar to those of truth commissions.¹⁹¹ Given that many of the people impacted have asked for an international investigation, including this function in any international justice mechanism directly addresses their concerns about the domestic investigation.¹⁹² An international investigation removes doubt as to whether national parties are being truly impartial in their investigative efforts, depoliticizes the process, and either lends credibility to or uncovers falsehoods in the domestic investigation.¹⁹³ The investigative component will also help identify the people ultimately responsible for the accident, which provides a measure of accountability in the public mindset and helps build an accurate historical narrative.¹⁹⁴

An independent effort to establish what happened may improve the actual functioning of the mass claims commission by providing

189. See discussion *supra* Section II.C.

190. See Dadouch & Durgham, *supra* note 74 (discussing the successful efforts of two high-level officials to have a prosecutor who brought charges against them removed from the investigation).

191. See discussion *supra* Section II.D.2.b (discussing the advantages of truth commissions).

192. See Karam & Hinnant, *supra* note 87.

193. See Buergethal, *supra* note 91, at 219, 221 (discussing the effectiveness of the U.N. Truth Commission for El Salvador, as compared to prior investigations conducted by the Salvadoran government and discussing the benefits of international commissions generally).

194. See Minow, *supra* note 130, at 1000–01.

an additional level of legitimacy in the eyes of the people impacted, rather than relying purely on the results of the tainted domestic investigation.¹⁹⁵ It may also enable the commission to require the responsible parties to pay into the compensation fund (this will be discussed more below).¹⁹⁶ Finally, discovering the truth about what happened will help establish a narrative about not only the events that led to the explosion, but also the extent of the damage and the human impact it had on the people of Beirut. In doing so, it can provide a measure of dignity and healing to those who have been unfairly harmed.¹⁹⁷

B. *The Beirut Mass Claims Commission Will Have Several Advantages Over Other Forms of International Justice.*

The Beirut mass claims commission should not be pursued as a replacement for other justice mechanisms such as the domestic investigation or international criminal prosecutions. However, at this moment in time, a mass claims commission may offer certain advantages over other international justice mechanisms because of the specific context of the port explosion.

International criminal trials for Lebanon's negligent politicians and anyone else who may have contributed to the explosion present a tempting choice given the horrific scale of the destruction from the explosion.¹⁹⁸ However, trials would face a number of challenges in execution that make them a less efficacious choice. First, the law of criminal negligence at the international level is underdeveloped, and whether the conduct of those associated with the port explosion falls within the realm of a crime against humanity by omission is arguable, but by no means undisputed.¹⁹⁹ This means that if international trials ever did occur, the current state of international criminal law might not actually result in a conviction.

Second, given the brazen interferences in the domestic investigation that have already occurred, it is highly unlikely that Lebanese politicians would ever willingly comply with the investigation and

195. See Buergethal, *supra* note 89, at 221 (asserting that an independent international investigation is preferable to a national investigation when the national investigation lacks credibility); Hinnant & Karam, *supra* note 87 (discussing Lebanese citizens' distrust of the national investigation of the explosion).

196. See *id.* at 220–21.

197. See Minow, *supra* note 130, at 1000.

198. See Hubbard et al., *supra* note 1; see also Karam, *supra* note 25 (discussing the negligence charges brought against four high-level Lebanese government officials).

199. See Brown, *supra* note 125.

enforcement mechanisms, such as arrest warrants, of an international criminal tribunal that targets them.²⁰⁰ Attempts at interrogating and arresting the politicians would likely result in accusations of imperialism and create political instability when the government officials attempt to evade the processes of the tribunal.

Third, Lebanon's population already has experience with one international criminal tribunal, which took over a decade to complete its work and resulted in a controversial and, for some, unsatisfying outcome.²⁰¹ At this moment in time, it seems unlikely that people in Lebanon would have the appetite for another drawn-out, expensive, and potentially ineffective international criminal prosecution.

Fourth, another international criminal prosecution for Lebanon would face all of the usual challenges of any international criminal tribunal.²⁰² It would be an expensive and time-consuming endeavor that may not necessarily result in a conviction or in compensation for those impacted by the explosion.²⁰³ Any compensation mechanism would need to be separately administered, increasing institutional costs, and an award dependent on a conviction would mean that people would not see any compensation for years, if at all.²⁰⁴ Because of Lebanon's economic challenges, the people impacted need compensation as soon as possible, rendering any future award an unhelpful solution to the current situation.

Establishing an international truth commission for the port explosion would similarly prove to be an ineffective endeavor. This is not because Lebanon doesn't stand to benefit from some kind of truth and reconciliation process; indeed, some have argued that this kind of process would help bring the deeply divided elements of Lebanese society together.²⁰⁵ However, a truth commission focused solely on the port explosion would exclude many other experiences, such as those of families whose loved ones went missing during the

200. See Dadouch & Durgham, *supra* note 74 (discussing the successful efforts of two high-level officials to have a prosecutor who brought charges against them removed from the investigation into the explosion).

201. See Lingsma, *supra* note 119; El Bejjani Nouredine et al., *supra* note 112.

202. See discussion *supra* Section II.D.2.a (discussing the disadvantages of international criminal prosecutions).

203. See Minow, *supra* note 130, at 999–1000 (discussing the cost and lengthiness of international tribunals' proceedings).

204. See, e.g., *Trust Fund for Victims*, *supra* note 134 (explaining that the International Criminal Court operates separately from its fund for victims); Gillett, *supra* note 133 (noting that when the Special Tribunal for Lebanon issued a single conviction fifteen years after the crime it was tasked with investigating, it was not authorized to issue compensation or reparations to victims); STEINHARDT ET AL., *supra* note 130, at 424.

205. See Ghosn & Koury, *supra* note 12, at 382, 386.

Civil War, and give an incomplete, cherry-picked view of Lebanon's recent history.²⁰⁶

Truth commissions also do not necessarily offer compensation, meaning that those impacted by the port explosion might have a chance to share what happened to them, but would not receive the compensation they need to rebuild and recover.²⁰⁷ Furthermore, while the personal stories of those impacted by the explosion form one important part of the narrative, these experiences will not shed light on why the ammonium nitrate arrived in Beirut to begin with or why it was really ignored by the authorities for so long. A formal international investigation would examine these issues and would also establish a narrative of the event, tapping into several of the advantages of truth commissions without having to establish an actual ad hoc body.²⁰⁸ By going beyond the scope of the port explosion, remedies for those affected would become wrapped up in a much larger political process that would delay or prevent them from receiving the monetary awards they need to rebuild.

In contrast, a mass claims commission would avoid several of the challenges presented by international criminal prosecutions and truth commissions. International mass claims commissions were used often in the latter half of the twentieth century; unlike the uncertain law of international criminal negligence, there are several reliable and well-known methods for conducting mass claims commissions.²⁰⁹ While there may be challenges in convincing the Lebanese government to approve of the Beirut mass claims commission, an international process that provides compensation to their people is a far more compelling offer than an international criminal tribunal seeking to prosecute politicians. Similarly, a mass claims process with a goal of efficiently providing compensation is likely a far preferable alternative, at least in the short term, for those impacted by the explosion than a decade-long trial with an uncertain outcome.

In contrast to a truth commission, which would need to consider many different harmful experiences over the course of several decades, mass claims are intended for situations where many people have experienced the same kind of harm.²¹⁰ As such, the Beirut mass

206. See *id.* at 382 (listing multiple unresolved issues from the Lebanese Civil War that would pose obstacles to reconciliation).

207. See Buergethal, *supra* note 91, at 220–21 (noting that truth commissions sometimes recommend the payment of compensation, but do not definitively offer it).

208. See discussion *supra* Section III.A.2.

209. See BRILMAYER ET AL., *supra* note 145, at 5–6, 15, 28.

210. See DAMROSCH & MURPHY, *supra* note 145, at 543–44; BRILMAYER ET AL., *supra* note 145, at 104.

claims commission can focus exclusively on the explosion without prejudice to the many other injustices in Lebanon's recent history. Above all, a mass claims commission would recognize the harm that occurred in the course of the port explosion, while also delivering efficient compensation.²¹¹

C. *A Successful Beirut Mass Claims Commission Will Get its Legal Authority From the Security Council and Follow the Example of the UNCC in Terms of Claim Eligibility and Evidentiary Standards.*

A successful Beirut mass claims commission should have both a mass claims function and an accompanying investigation. The mass claims arm will verify claims and provide compensation for damages caused by the explosion, while the investigation will conduct an independent, international inquiry into the explosion, and then publish a report detailing its findings. While the findings from the investigation may help inform the verification and evaluation of claims, the preparatory work for establishing the commission should begin immediately, and if needed, operate concurrently with the investigation so that the claimants do not need to endure any more delays than necessary before receiving compensation. When the investigation is complete, the results should be publicly shared, and then the investigative mission can transfer its work product and mandate to the mass claims processing function, similar to the transfer that occurred from the UNIIICC to the STL.²¹²

The following sections will discuss potential sources of legal authority for the commission and make suggestions as to the type of claims the commission should consider, the source of funding for the commission, and the evidentiary standards the commission should use, relying heavily on the experience of the UNCC.

1. *The Beirut Mass Claims Commission Should Get Its Legal Authority from the Security Council Because of the Security Council's Institutional Integrity, Knowledge, and Binding Power.*

The source of legal authority is important because it will impact the legitimacy of the institution as well as the actual structure and functioning of the commission once established. The basis of legal authority for an international claims commission for the Beirut

211. See BRILMAYER ET AL., *supra* note 147, at 69.

212. See Wählich, *supra* note 103.

port explosion likely needs to come from the Security Council, either as a Chapter VII enforcement mechanism or through an agreement between the Security Council and the Lebanese government.²¹³

Initially, the Security Council should attempt to establish the commission through an agreement with the Lebanese government and can delegate negotiations to the Secretary-General, similar to the initial steps taken to establish the STL.²¹⁴ A negotiated agreement would generate buy-in from Lebanese institutions, paving the way for easier submission and payout processes if the those impacted by the explosion have the support of local institutions. Establishing an agreement would also avoid the controversy and infringement on state sovereignty inherent in an exercise of Chapter VII powers.²¹⁵

However, if political divisions and deadlock prevent the Lebanese government from agreeing to a treaty establishing the claims commission, the Security Council should not hesitate to establish the commission as an exercise of the Chapter VII powers as it did when establishing the STL.²¹⁶ The economic and political situation in Lebanon, especially given its location in a volatile region, likely meets the threshold of a threat to international peace and security, so the Security Council would be well within its authority to establish the Beirut mass claims commission even without the agreement of the Lebanese government.²¹⁷

The claims commission should be established as a subsidiary organ to the Security Council like the UNCC.²¹⁸ The Security Council should concurrently conduct the international investigation by establishing a mission pursuant to its Article 34 powers, following the model of the UNIIC that was charged with investigating the 2005 assassination of Rafiq Hariri prior to the establishment of the STL.²¹⁹

While there are other potential sources of legal authority, such as a treaty between Lebanon and some of its international partners

213. Cf. Francis E. McGovern, *Dispute System Design: The United Nations Compensation Commission*, 14 HARV. NEGOT. L. REV. 171, 171 (2009) (discussing the ultimate establishment of the UNCC through the exercise of Chapter VII powers).

214. See Wählisch, *supra* note 103.

215. See U.N. Press Release SC/9029, *supra* note 108 (noting the controversy over the use of Chapter VII powers when establishing the STL).

216. See *id.*; S.C. Res. 1757, *supra* note 94, ¶ 1; *Lebanon's Siniora Asks U.N. to Set Up Hariri Court*, *supra* note 106.

217. See U.N. Charter arts. 39–41; SEC. COUNCIL REP., *supra* note 100, at 11.

218. See Wühler, *supra* note 162, at 17; U.N. Charter art. 29.

219. See Wählisch, *supra* note 103.

who could provide funding and oversight to a commission,²²⁰ establishing the commission through the Security Council has several advantages. Participation from the Lebanese government through a treaty with its international partners might make the establishment and functioning of the commission easier, especially in terms of offering support for people to submit their claims. However, involving the government runs the risk that politicians may get too much influence over the process, presenting an inherent conflict of interest since the Lebanese government is implicated in the explosion.²²¹ Furthermore, too much domestic influence may expose the commission to the same corruption issues that challenge Lebanese institutions, degrading the legitimacy and effectiveness of the commission.²²² Most significantly, international partners who are unwilling to provide anything more than humanitarian aid until Lebanon reaches a deal with the IMF are unlikely to directly support and finance an international claims commission where the government is involved.²²³

In contrast, a commission conducted within the purview of the Security Council will have some institutional protections from the influence of the Lebanese government. If established through Chapter VII powers, the commission will be binding on all members of the United Nations and require their cooperation and participation as needed.²²⁴ Finally, the Security Council frequently uses its authority under Article 29 of the Charter to establish subsidiary bodies and conduct investigations, so there is a level of institutional knowledge within the Security Council that will enhance the functioning of a potential Beirut mass claims commission.²²⁵ The Security Council would likely rely heavily on the experience of conducting the UNCC and can apply those best practices to the Beirut mass claims commission.²²⁶

220. See, e.g., Reed, *supra* note 92, at 10 (discussing the establishment of an international judicial mechanism through a treaty between relevant parties rather than through the Security Council).

221. See generally, Hubbard et al., *supra* note 1 (detailing the many ways in which Lebanese government officials failed to respond to warnings about the presence and danger of the ammonium nitrate).

222. See Almoghabat, *supra* note 26 (discussing the endemic corruption in Lebanon).

223. See INT'L CRISIS GRP., *supra* note 34, at i.

224. See U.N. Charter arts. 25, 40–43.

225. See U.N. Sec. Council, *Subsidiary Organs Branch*, <https://www.un.org/securitycouncil/content/subsidiary-organs-branch> [<https://perma.cc/3L8Y-LGXW>]; U.N. Sec. Council, *Commissions and Investigative Bodies*, *supra* note 95 (demonstrating a large range of Security Council subsidiary bodies and investigative missions).

226. See Wühler, *supra* note 162, at 17 (discussing the creation of the UNCC as a subsidiary organ of the Security Council).

2. The Issues of Claims, Funding, and Evidentiary Standards Will Be Essential to Developing the Beirut Mass Claims Commission.

a. What Kind of Claims May Be Brought?

One important question to consider when establishing the Beirut mass claims commission focuses on the different categories of individuals and injuries that may bring claims before the commission. Because of the role of Lebanese government officials in causing the explosion, it is important that the commission avoid the statist mass claims model; instead, individuals impacted by the explosion should submit their claims directly to the commission and be paid directly from the commission, without going through the Lebanese government.²²⁷

The Beirut mass claims commission should compensate for claims brought by citizens of Lebanon experiencing wrongful death, injury, property loss, commercial loss, or environmental damage, similar to the UNCC.²²⁸ The commission should also extend to claims brought by citizens of other countries experiencing those same losses, as Beirut is home to many Syrian refugees, foreign workers, and international organizations and corporations.²²⁹

Claims should be divided into categories modeled on the UNCC, based on the type of injury and amount of losses incurred.²³⁰ The categories should cover claims on behalf of individuals and families for death, personal injury, emotional distress, bereavement, property, and business losses below a certain amount.²³¹ Within this category, it may make sense to create further divisions based on whether there was a death involved that can be traced to the explosion, or whether the injury was serious or minor in nature, or whether the property was a home or a business.²³² However, as some people likely experienced a combination of these losses, it is important to not

227. See BRILMAYER ET AL., *supra* note 145, at 58–59 (discussing the possibility for mass claims commissions to be structured according to the statist model, where states represent individual claimants before the commission, or the individualist model, where individuals submit their own claims to the commission).

228. See generally DAMROSCH & MURPHY, *supra* note 145, at 543–44.

229. See, e.g., Dalal Yassine, *Facing the Abyss: Refugees and the Beirut Port Explosion One Year Later*, MIDDLE E. INST. (Aug. 3, 2021), <https://www.mei.edu/publications/facing-abyss-refugees-and-beirut-port-explosion-one-year-later> [<https://perma.cc/FUV2-WQ48>] (discussing the large number of Syrian refugees impacted by the Beirut port explosion).

230. See Singh, *supra* note 165, at 61, 65–66 (discussing the different categories of claims accepted under the UNCC).

231. See *id.*

232. See, e.g., *id.*

make people submit multiple applications for their claims, and to process and pay all of their damages together as one package. There should also be a category of departure claims, including foregone income, for those who lost their job or had to leave as a result of the explosion.²³³ Finally, there should be a category of larger claims brought by corporations, international organizations, and foreign governments, which can be further divided based on the amounts and the type of damages in question, such as property destruction versus foregone business.²³⁴

It is necessary to provide compensation for all of these categories of losses, not only because of the obvious moral considerations regarding fair compensation, but because the damage to the Lebanese economy extends well beyond the destructions of homes and small businesses. While those individual and family claims should be prioritized, the losses of larger corporations, international organizations, and foreign governments represent important international participation in the Lebanese economy and these groups should be fairly compensated in order to bring them back to Beirut in the future.²³⁵ Furthermore, foreign workers represent a significant portion of the Lebanese labor force and many remain in Beirut.²³⁶ Therefore, they need to be compensated and taken care of until they can find employment to replace the roles they lost due to the explosion.

b. Where Will Funds for Compensation Come From?

Given the dire economic realities facing Lebanon, it is unrealistic to expect the government to foot any part of the bill for a mass claims commission like it did for the STL.²³⁷ Not only is there a genuine lack of funds,²³⁸ but requiring the government to spend money

233. See *id.*; BRILMAYER ET AL., *supra* note 145, at 20 (discussing the significance of the UNCC as the first mass claims commission to compensate foreign workers).

234. See Singh, *supra* note 165, at 61, 65–66.

235. See, e.g., Press Release, World Bank, US\$25 Million Grant to Build Beirut Businesses Back and Better (Aug. 5, 2021), <https://www.worldbank.org/en/news/press-release/2021/08/05/us-25-million-grant-to-build-beirut-businesses-back-and-better> [<https://perma.cc/YR6C-G34J>] (discussing the impact the explosion has had on businesses).

236. See Ban Barkawi, 'Bad to Worse': Beirut Blast Final Blow for Lebanon's Trapped Migrants, REUTERS (Aug. 20, 2020), <https://www.reuters.com/article/lebanon-crisis-migrants/bad-to-worse-beirut-blast-final-blow-for-lebanons-trapped-migrants-idINL8N2FM1SC> [<https://perma.cc/H3MA-5R75>].

237. See Aya Iskandarani, *Lebanon Will Run Out of Money for Subsidies in May, Minister Says*, THE NATIONAL (Apr. 3, 2021), <https://www.thenationalnews.com/mena/lebanon/lebanon-will-run-out-of-money-for-subsidies-in-may-minister-says-1.1196286> [<https://perma.cc/3RTT-FPQP>]; Lingsma, *supra* note 119.

238. See *id.*

on another international organ would likely undermine the legitimacy and acceptance of the claims commission. The STL has been heavily criticized for using up government funds when so many people in Lebanon cannot afford or access basic necessities.²³⁹

Therefore, the Beirut mass claims commission will have to be supported by funding from the United Nations for it to work effectively.²⁴⁰ While this might seem like a large ask, it would not be the first time that states have paid into a fund to compensate those impacted by certain crimes. For example, the Trust Fund for Victims is funded by payments from member states of the International Criminal Court, and then distributed in various forms to claimants impacted by the prosecutions within the jurisdiction of the Court.²⁴¹

Depending on the outcome of the international investigation, it may be possible to obtain additional funding for the claims from the specific individuals and institutions responsible. Specifically, if the international investigation is able to confirm Syrian involvement in the ammonium nitrate shipment, it may make sense for the Security Council to mediate an agreement between the two countries whereby Syria pays into the fund for the claims commission.²⁴² Depending on the timing of the conclusion of the investigation and the ability to secure payment from those responsible, these funds may be used to reimburse the initial source of funds, or may be paid directly into the Beirut mass claims commission's budget.

c. What Evidentiary Standards Will Be Required to Verify Claims?

The success of the Beirut mass claims commission with regard to processing and paying out claims will depend in part on the use of relaxed evidentiary standards. Similar to UNCC claimants, the people affected by the Beirut port explosion did not have time to find their legal documents and assess their assets before their homes and businesses were destroyed.²⁴³ The Beirut mass claims commission should follow the example of the UNCC and use a "simple documentation"

239. See Lingsma, *supra* note 119; *The World Bank in Lebanon*, *supra* note 30.

240. See Crook, *supra* note 154, at 56 (emphasizing the need for adequate funding for mass claims processes to function properly).

241. See STEINHARDT ET AL., *supra* note 130 (discussing the scope of the International Criminal Court's jurisdiction).

242. See Vohra, *supra* note 43 (indicating that the ammonium nitrate that exploded in the Port of Beirut may have been intended for the Syrian government for use in the Syrian War).

243. See Singh, *supra* note 165, at 61 (asserting that, due to the nature of the conflict that caused the losses suffered by UNCC claimants, it was unlikely that the claimants would have actual evidence of their losses).

or “reasonable minimum” standard in light of the dramatic circumstances prompting the need for the claims commission in the first place.²⁴⁴ Claims of larger amounts, brought by wealthy individuals, corporations, international organizations, and governments, should be subjected to a higher standard of documentation, which should not be a problem given the resources and institutional capacity of these claimants.²⁴⁵

Because a lot of work has already been done to assess the damage from the explosion, including by the Lebanese military as well as international parties,²⁴⁶ the commission should be able to rely on this information to help quickly and accurately verify submitted claims.²⁴⁷ The Beirut mass claims commission may be able to use this information to develop evidentiary patterns using statistical modeling, perhaps based on location within Beirut, to more quickly process claims.²⁴⁸ The commission should also explore various technological developments that have occurred since the UNCC to further facilitate the quick verification of claims.²⁴⁹

Causation poses a major challenge to developing evidentiary standards in the Beirut context.²⁵⁰ In some cases, such as destruction of property and deaths that occurred directly because of the explosion, the causation will be clear cut. However, the long-term effects of the explosion mean that business losses, property destruction, injury, and even death that can be linked to the explosion are still occurring. For example, the Beirut mass claims commission will have to consider how to address injuries from buildings that became unstable as a result of the explosion, but collapsed months later, or deaths from medical emergencies unrelated to the explosion but that likely would have been preventable had major hospitals in the downtown area not been destroyed by the explosion.²⁵¹ There may

244. *See id.* at 62.

245. *Cf. id.* at 65–67 (indicating the higher evidentiary standard for UNCC claims brought by wealthy individuals, corporations, international organizations, and governments); *see id.* at 65–66.

246. *See Beirut Explosion: Lebanese Government Offers Compensation to Victims Nearly Two Months On*, *supra* note 66.

247. *Cf. Singh*, *supra* note 165, at 69 (noting that the UNCC relied extensively on non-party evidence in order to verify claims).

248. *Cf. id.* at 76 (discussing the use of statistical models to more effectively process claims before the UNCC). *See id.* at 76.

249. *See Wühler*, *supra* note 162, at 20 (discussing the technology utilized by the UNCC to process hundreds of thousands of individual claims).

250. *Cf. Singh*, *supra* note 165, at 73 (discussing the challenges relating to causation at the UNCC).

251. *Damaged Building Collapses Three Months After Beirut Blast*, NIGERIAN TRIB. (Nov. 5, 2020), <https://tribuneonlineng.com/damaged-building-collapses-three-months-after>

also be ongoing business losses due to a significant decrease in activity in downtown Beirut, but the losses may also have been exacerbated by COVID-19 pandemic lockdowns and tourism restrictions.

In making these decisions, the Beirut mass claims commission will have to balance the desire to evaluate each claimant's situation with the goals of quickly paying effective compensation to as many people as possible.²⁵² The Beirut mass claims commission should work with organizations in Beirut to understand how certain limitations on claim eligibility, such as only accepting claims for damages that occurred within a few months of the explosion or limiting business and job loss claims to those that were physically damaged and destroyed by the explosion, will impact the overall goals of providing compensatory justice to the people impacted by the explosion and helping people rebuild their homes and businesses.²⁵³

d. Anticipated Challenges to Establishing the Beirut Mass Claims Commission Includes the Negative Legacy of the STL, Corruption and Fraud, and "Tribunal-Fatigue."²⁵⁴

Establishing the Beirut mass claims commission for the port explosion is not without its challenges. The predominantly negative outlook towards the STL, for the litany of reasons described in the earlier section, may make people in Lebanon resistant to any kind of international justice process, even one that is not focused on criminal prosecutions.²⁵⁵ People in Lebanon also might criticize the use of international funds to establish the Beirut mass claims commission rather than provide other forms of desperately needed financial aid.²⁵⁶ However, this resistance is mitigated by the calls of those impacted by the explosion for some form of international accountability.²⁵⁷ Additionally, one of the advantages of a United Nations-led mass claims commission is that it can provide compensation beyond

beirut-blast/ [https://perma.cc/5M7S-4SDT]; Elizabeth Gourd, *Patients with Cancer Hit Hard by Deadly Explosions in Beirut*, NAT'L LIBR. OF MED. (Aug. 13, 2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7426086/> [https://perma.cc/FAM8-LL68].

252. See Crook, *supra* note 154, at 56–57 (noting the tension between efficient processing of a large number of claims and focusing on the specificities of individual claims).

253. Cf. Singh, *supra* note 165, at 69 (noting that the UNCC relied extensively on non-party evidence in order to verify claims).

254. Roger P. Alford, *The Proliferation of International Courts and Tribunals: International Adjudication in Ascendence*, 94 AM. SOC'Y INT'L L. PROC. 160, 160 (2000) (discussing concerns of "tribunal fatigue" due to the proliferation of ad hoc international tribunals).

255. See discussion *supra* Section II.D.1.a.

256. See *id.*; Lingsma, *supra* note 119 (discussing Lebanese dissatisfaction with the high cost of the STL).

257. See Karam & Hinnant, *supra* note 87.

humanitarian aid without compromising the stance of international donor countries and other institutions that conditions bail out funds on significant structural reforms to the Lebanese economy.²⁵⁸

The Beirut mass claims commission will have to take appropriate measures when verifying claims to make sure that corrupt entities in Lebanon do not take advantage of the commission as a way to receive money.²⁵⁹ While verification methods should be used as much as possible in this regard, the Beirut mass claims commission will face a tradeoff between the accurate screening of claims and efficient processing and payment.²⁶⁰ Challenges in verification, however, do not mean that the entire project of the Beirut mass claims commission is not worth pursuing, and technological innovations and the use of statistical modeling may be able to decrease the overall risk of approving fraudulent claims.²⁶¹

Finally, there may be some resistance on the part of the international community in the form of tribunal fatigue.²⁶² The Beirut mass claims commission will not work without a reliable source of funding,²⁶³ and unlike the case of the UNCC, the Security Council cannot simply stipulate a liable party and require them to finance the commission and pay the claims.²⁶⁴ Others might raise valid questions about the intentions of the Security Council and other major powers when they become involved in the affairs of other countries,²⁶⁵ or simply doubt the efficacy of international justice mechanisms generally.²⁶⁶ For these people, establishing yet another ad hoc forum at the international level may seem like a burdensome and risky endeavor.

However, when considered in the context of past international justice mechanisms with broad mandates to prosecute years' worth of crimes arising out of extremely complicated, violent conflicts, this proposal is actually quite circumscribed to providing a reliable

258. See INT'L CRISIS GRP., *supra* note 34, at i; Holtmeier, *supra* note 35.

259. See Almoghabat, *supra* note 26 (discussing the need to adopt measures to address systemic corruption in Lebanon).

260. Cf. Singh, *supra* note 165, at 91 (noting that the UNCC was more susceptible to fraudulent claims because it utilized lower evidentiary standards).

261. Cf. *id.* at 90 (discussing how the UNCC's use of evidentiary patterns and statistical modeling reduced the overall risk that any given claimant's application was fraudulent).

262. See Alford, *supra* note 254, at 160.

263. See Crook, *supra* note 154, at 56–57; BRILMAYER ET AL., *supra* note 145, at 140–141.

264. See McGovern, *supra* note 213, at 171.

265. See, e.g., U.N. Press Release SC/9029, *supra* note 108 (documenting the concerns raised by various members of the Security Council with respect to the use of Chapter VII powers in establishing the STL).

266. See, e.g., discussion *supra* Section II.D (discussing the disadvantages of each of the different international justice mechanisms)

and targeted solution to a particular problem.²⁶⁷ It relies on the Security Council's knowledge and practices that have already been well developed and successfully executed through the experience of the UNCC.²⁶⁸ It is narrowly targeted to one accident and does not attempt to address the broader sectarian divide within Lebanon, something that would require a much broader mandate and likely be better suited to a different forum.²⁶⁹ Nor does it target specific government officials with a finding of legal liability, which could be construed as favoring certain political factions over others.

It also will not be a panacea for Lebanon's economic challenges. Instead, this proposal responds to the economic challenges of a specific group of people who have experienced a direct harm and pursues the establishment of a truthful record about the events that led to that harm. Rather than interfering in the affairs of the Lebanese government, this proposal seeks to simply provide a companion process to the domestic investigation, offering compensation and a reliable narrative where the government has thus far been unable to.²⁷⁰

IV. CONCLUSION

There are compelling economic, security, and justice concerns for the international community to establish a mass claims commission to provide compensation to those impacted by the Beirut port explosion. At this point in time, a mass claims process has certain advantages regarding efficiency and is also a more politically acceptable choice to Lebanon's leaders, in comparison with international criminal prosecutions. It also avoids the issue of selective justice that a truth commission focused solely on the explosion, and ignoring other grievances in Lebanon's recent history, might pose.²⁷¹ The Beirut mass claims commission should be established by the Security Council and accompanied by an international investigation

267. See, e.g., S.C. Res. 827, *supra* note 100, at 1–2 (establishing the International Criminal Tribunal for the former Yugoslavia to try genocide, crimes against humanity, and war crimes arising out of the Yugoslav war).

268. See BRILMAYER ET AL., *supra* note 145, at 18–20.

269. See Ghosn & Koury, *supra* note 12, at 382 (discussing the need for a reconciliation process in Lebanon to address unresolved grievances from the country's civil war).

270. See Dadouch & Durgham, *supra* note 74; *Beirut Explosion: Lebanese Government Offers Compensation to Victims Nearly Two Months on*, *supra* note 66 (noting that the Lebanese government's compensation scheme).

271. See Lingsma, *supra* note 119 (noting that the STL was criticized for its pursuit of "selective justice" for the victims of the 2005 attack that killed the prime minister and 21 others, while no justice was sought for the victims of other recent conflicts, including the more than 100,000 people who died or disappeared during the country's civil war).

that will confirm the current version of events that caused the explosion. Claim eligibility and relaxed evidentiary standards should be modelled on the experience of the UNCC and funding should be provided by the United Nations, pending the identification of responsible parties who could also pay into the fund.

This proposal is heavily tailored towards the goals of providing effective compensation as quickly as possible and discovering the truth about the chain of events that caused the explosion. However, these goals represent only certain types of justice, and should not be pursued to the detriment of other processes. While domestic or international criminal trials may not be best suited for efficiently establishing the truth and giving compensation to rebuild at this moment in time, they represent another important form of accountability for Lebanese politicians. As such, the Beirut mass claims commission should be viewed as a companion process to efforts to establish individual liability for the explosion at both the international and domestic levels.

This Note points to many possible areas of further research. There is an argument to be made that Lebanon may benefit from a much broader political reconciliation process that deals with events well beyond the Beirut port explosion and the scope of this Note.²⁷² If such a process was politically viable, it might make sense to connect the efforts of any mass claims commission for the Beirut port explosion with the efforts of a broader truth and reconciliation commission. This proposal also only establishes the broad strokes of a what the Beirut mass claims commission might look like, creating opportunities for deeper research on issues of corruption in mass claims or mass tort processes, as well as any major technological innovations in mass claims that have occurred since the UNCC and their potential application to this process.

The port explosion is by no means the first disaster experienced by the people of Beirut, and their resiliency in the face of conflict and political strife has already been demonstrated multiple times over. However, resiliency can be emboldened and strengthened by targeted and effective support. By relying on the learnings from past international justice mechanisms established by the United Nations, a mass claims commission for the Beirut port explosion could offer exactly the kind of targeted and effective support to help the resilient people of Beirut rebuild their homes and lives.

272. See Ghosn & Koury, *supra* note 12, at 382.

