



Vanishing Responsibilities: Political and Criminal Aspects of the Beirut Port Massacre

Chibli Mallat

Principal, Mallat Law Offices, Beirut

Presidential Professor of Law Emeritus, University of Utah



This piece is based on a talk given by Chibli Mallat at the “*Japan and Lebanon: Trajectories of Reconstruction*” symposium held on March 8, 2022. This symposium, organized by the Issam Fares Institute for Public Policy and International Affairs (IFI) in collaboration with the Embassy of Japan in Lebanon, tackled the question of political and legal reconstruction and recovery efforts after two devastating wars: World War II’s impact on Japan and the Civil War in Lebanon.

The Beirut Port Massacre, Two Years On

The explosion at the Beirut port on August 4, 2020 had a yield equivalent to one-twentieth of the one carried by the August 6, 1945 atomic bomb over Hiroshima. The blast is considered “the most powerful non-nuclear explosion of the 21st Century,” the third such magnitude on record [1].

It was a massacre. Over 220 people were killed, with several victims dying weeks and months after excruciating suffering. Some 7,000 thousand people were gravely wounded, and the whole port and its neighborhood were destroyed. Damages sustained from the blast were estimated by the World Bank to be approximately 4 billion USD [2].

This piece highlights major shortcomings two years after the massacre. In any devastating catastrophe of this sort, responsibility emerges in two major ways: one political, and the other judicial. Lebanon failed on both. Failure is characterized by the vanishing accountability, both with little or no political responsibility of those in charge - for the main officials remain in place - and with the failure of the judicial process, with selective arrests of low-level officials while the senior officials are left undisturbed or protected.

In the Beirut port wide-scale killings, human, man-made responsibility is total. Fukushima can hardly be considered a massacre, with no immediate loss of life [3]. Unlike the Fukushima nuclear meltdown, which resulted in part from an earthquake – a natural disaster – the Beirut port explosion was totally man-made. This characterizes the event as a crime, albeit without *mens rea* so far. While Fukushima might have a criminal element in it, for which the accused have been so far exonerated, the main cases were administrative and civil [4]. In Lebanon, there is no administrative action. Civil cases, if any, are peripheral. Although a wide call for an international investigation and prosecution emerged in Lebanon due to the lack of trust in the domestic system, the only criminal action so far is domestic – and it is now stalled. Several low-level officials were charged and many remain in prison. None of the top officials were arrested.

[1] Jonathan Amos and Paul Rincon, “Beirut blast was ‘historically’ powerful”, BBC News, 5 October 2020 (<https://www.bbc.com/news/science-environment-54420033>). Quote from Sam Rigby, an expert on large blasts.

[2] See for details ‘Summary’ in Human Rights Watch, “They Killed Us from the Inside”, An Investigation into the August 4 Beirut Blast, August 2021, (<https://www.hrw.org/report/2021/08/03/they-killed-us-inside/investigation-august-4-beirut-blast>).

[3] Estimates of loss of life because of the earthquake and tsunami are about 18,500, yet no one person died in the meltdown itself. About 40 people died in the rushed evacuation, leading to criminal charges against three top executives of TEPCO, the Tokyo power company in charge of the nuclear plant. See e.g. “Fukushima nuclear disaster: Tepco executives on trial”, BBC News, 30 June 2017, (<https://www.bbc.com/news/world-asia-40453383>).

[4] Details in Prof Hitomi Takemura’s PowerPoint presentation. At the time of writing, news emerged about the supreme court of Japan confirming compensation from the Tokyo Electronic Company in charge of the plant to 3,700 victims, “Japan’s top court orders damages for Fukushima victims in landmark decision”, NHK, 4 March 2020. The case against the state is ongoing.

1. Lebanese Authorities and Political Responsibility for the Blast

When the explosion took place, the government of Prime Minister Hassan Diab was still in power, but its legitimacy was already wavering under the pressure of a continued but unstructured popular anger since the outbreak of the October 2019 protests. The immediate political outfall of the massacre was the resignation of the full cabinet. Several deputies also resigned from Parliament, but the rest of the deputies hung on to their positions, keeping a truncated Parliament going. Despite a clear text in the Constitution indicating a need to call for elections to replace them, no elections were held. As a result, amongst the three top officials in the country, only the Prime Minister resigned. The President and the Speaker of Parliament did not.

Also in political terms, speculation immediately followed the blast, with mentions of an air attack on the port by Israel and of Hezbollah using the silos to store chemicals for use in the armed conflicts it is involved in across the region. Both allegations have been denied by the respective parties. The accusation of Hezbollah using the port as an ammunition depot lingered on, with further loss of life linked to the explosion when Lokman Slim, leading human rights defender and critic of the dual Shi'i political leadership in the country, was found dead in South Lebanon on February 4, 2021. Family and friends attribute his assassination to his exposing, on television, the responsibility of Hezbollah in the storage of the port chemicals as ammunition for Syria's war [5].

Further loss of life was also politically linked to the killings of the morning of October 14, 2022, when participants in a demonstration organized by the Amal and Hezbollah factions against the Beirut blast's investigative judge at the Palace of Justice marched on to the predominantly Christian neighborhood of Ain al-Remmaneh. The marchers were met with sniper fire, and at least six young Shi'i demonstrators lost their lives, as well as a female resident in the neighborhood. Hezbollah leadership accused the Lebanese Forces of conspiring to committing and executing the killing, and several young Christian men in the neighborhood were arrested.

[5] Three other assassinations have also linked to the port. "Colonel Joseph Skaf, Chief of the Anti-Narcotics and Money Laundering Division in the Customs Administration, who wrote to the Customs Administration's anti-smuggling department, copying various other officials, warning about the *Rhosus's* cargo on February 21, 2014, died in March 2017 under suspicious circumstances... Mounir Abou Rjeily, a retired anti-smuggling customs colonel who was friends with Skaf, was reportedly assassinated on December 2, 2020 in Kartaba. On December 21, 2020, Joseph Bejjani, a freelance photographer who was reportedly one of the first people to take photos at the port following the blast, was executed in front of his home in Kahale." Human Rights Watch, "*They Killed Us from the Inside*", *An Investigation into the August 4 Beirut Blast*, above n.2, 110, August 2021, (<https://www.hrw.org/report/2021/08/03/they-killed-us-inside/investigation-august-4-beirut-blast>). None of the investigations led to any further relevant information or arrest.

None of the armed men from the Amal/Hezbollah factions who rallied the scene and were shown shooting at the buildings was reported to be arrested. Criminal complaints were cross-brought against the head of the Lebanese Forces, Samir Geagea, and Hezbollah leader Hassan Nasrallah, with no political consequence or judicial follow-up.

2. Judicial Accountability and the Path to Justice

In both instances of blood-shedding – whether directly or indirectly tied to the investigation of the port massacre – judicial action did not show balance or progress. It took six months before an investigative judge was assigned to the assassination of Lokman Slim, and the file remains empty, with no meaningful interrogations and not a single arrest.

Lack of judicial accountability persists for deaths resulting from the port deflagration despite the continuing outrage of the victims' families. With regard to the massacre proper, the judicial process has been domestic, with only a small element of foreign technical support to the investigation. More specifically, the last important action the Diab government took before its resignation on August 10, 2020, was the deferral of the judicial file to the so-called Judicial Council. The Judicial Council is in charge of criminal investigation and prosecution of crimes deferred to it by the Council of Ministers. This is a special court composed of five top judges of the country. It is supposed to address crimes that violate national security as well as momentous political cases, such as the assassination of top leaders. Unfortunately, its track record is poor.

The Judicial Council operates in a first phase through an investigative (or investigation) judge (*Qadi al-tahqiq*), French-style, who is jointly appointed to conduct the investigation by the Minister of Justice and the High Judicial Council (*Majlis al-qada' al-'la*, not to be confused with the *Al-majlis al-a'dli*, the Judicial Council). The Judicial Council's investigative judge has significant powers, including to subpoena and arrest those he or she deems responsible for the crime. His role ends in the indictment/*qarar ittihami*, which is presented to the full court, opening the trial phase for those charged. No such report has been filed yet – accordingly no trial has started.

Since the assignment of the port massacre to the Judicial Council, the judicial saga has been scandalous, by any standard. The first investigative judge, Fadi Sawan, issued various criminal subpoenas, arresting over fifteen officials of various ranks. He also issued charges against higher-ranking political officials, including the then Prime Minister and various ministers in charge of the port at different times, among them close political associates of the Speaker of Parliament.

All the high officials subpoenaed refused to be heard and counterattacked by bringing cases against the alleged bias of the judge or by hiding behind alleged immunities and/or by some official 'permissions' to be investigated [6]. No less than 21 judicial actions were filed to remove the two successive investigative judges looking into the port blast [7].

One of the cases impugning the first investigative judge prevailed, and Sawan was removed from his position. He was replaced with Judge Tarek Bitar. Bitar confirmed several of the subpoenas, reviewed the case of some of the people arrested, and released some. He also issued arrest warrants against top security and political officials, and, on September 20, 2021, notified former Prime Minister Hassan Diab of a "summons to appear", with significant criminal charges [8].

None of the arrest orders has been implemented yet, and Diab ignored the summons, supported by a slew of former prime ministers, in a blatant sectarian cover to prevent the effectiveness of the investigation. Both investigative judges left President Michel Aoun undisturbed, despite his evident responsibility as the head of the High Council of Defense, which was officially notified of the presence of dangerous material in the port on July 20, 2020 (over ten days before the explosion occurred) and took no action whatsoever [9]. The President admitted his knowledge of the notification but said that he 'did what was needed' [10]. Despite his public acknowledgment, he did not resign, and he was not interrogated – let alone indicted – on account of his alleged constitutional immunity.

Another barrage of judicial actions from the accused followed to impugn Judge Bitar soon after he took over. This time, the courts in charge of examining these petitions continuously held in favor of the judge.

Concurrently, and within Lebanon's new Cabinet, the Amal (the party tied to the Speaker of Parliament) and Hezbollah factions prevented cabinet meetings from taking place for

[6] When a security official is requested to testify as witness or even as accused, the official argues that only the ranking minister in charge can give him permission to do so. The minister refuses, or simply ignores the convocation or arrest warrant.

[7] See Al-mufakkira al-qanuniyya, "al-tahqiq fi jarimat al-marfa' fu ghaybuba tamma (investigation in port crime in total coma)", 4 March 2022, (<https://www.nna-leb.gov.lb/ar/justice-law/526265/المفكرة-القانونية-التحقيق-في-جريمة-المرفأ-دخول-في-غ>).

[8] The text of the subpoena, published by the Janoubia news site, reads: "You are required to come to this circuit at ten o'clock on Monday, 4/10/2021, to explain your defense in the lawsuit filed against you by the public prosecution for the crimes of murder, injury, arson and vandalism, with probable intent under Articles 547, 557, 556, 554, 587, 588, 590, 595 and 73 of the Penal Code, under Article 189 of the same law and Article 373, for penalties related to breach of job duties and your related interrogation therefore." "Janoubia yanshur wathiqat al-ijra' al-akhir bi-haqq diab qabl mudhakkarat al-tawqif (Janoubia published the latest document against Diab before the arrest warrant)", Janoubia, 20 September 2021, <https://bit.ly/3zLYHwJ>.

[9] The letter can be read in the appendix of the HRW report, above n.2, Appendix 2, August 2021, (<https://www.hrw.org/report/2021/08/03/they-killed-us-inside/investigation-august-4-beirut-blast>).

[10] See e.g. "Beirut blast: Lebanese president was informed about dangerous stockpile nearly three weeks ago", *Euronews*, 8 August 2020. (<https://www.euronews.com/2020/08/07/beirut-blast-could-have-been-due-to-negligence-a-missile-or-a-bomb>): "...president Aoun said he immediately ordered military and security agencies to do "what was needed", but suggested his responsibility ended there, saying he had no authority over the port and that previous governments had been told about the explosive chemicals."

three months, and made it a condition to remove the Beirut blast judge before they attend any meetings again. The Cabinet started meeting again in January 2022, after another procedural quirk halted the investigation altogether. This quirk involved a technicality with the General Assembly of the Court of Cassation, which is in charge of reviewing the requests of defendants to dismiss an investigative judge. As the General Assembly of the Court of Cassation lost its quorum (due to the fact that some judges reached retirement age and ultimately left), the investigative judge remains effectively unable to proceed with the investigation until this Court is replenished. Since no replacements are expected any time soon, the investigation into the Beirut port blast is frozen indefinitely.

This is where Lebanon is at in the judicial process. The investigation is stalled, with not even a concluding indictment report in sight to start the trial. About fifteen accused low-level officials remain under arrest, and some have been detained for almost two years. All the other accused (mostly top-level and senior ranking officials) have succeeded in mooting the investigation and stopping the judicial process dead in its tracks.

Concluding Remarks: Lebanon and the Quest for Accountability

In a broad-brush comparison with Fukushima, Lebanon has dramatically failed in bringing even a modicum of justice to the Beirut port blast's victims, let alone ending the country's continuous impunity and preventing similar crimes from taking place again. The only legal action reported abroad appears weak, in the shape of a civil action carried out in England in the name of some of the victims, with the support of the Beirut Bar against the transport company that brought the chemicals into the port.

Parliament has all but abdicated any fact-finding or reporting responsibility. Domestic prosecution, despite the courage of the investigative judges, has produced little to no public information.

The Lebanese and international media have filled the void, haphazardly and unofficially. Their work, under the pressure of the victims, as well as NGO mobilization, sheds serious light on the events, participants, and process leading up to the port explosion. Several reports of varying lengths have emerged, the most remarkable by Human Rights Watch, which includes over 700 pages of analysis and documents.

The investigation into (and trial of) the blast is domestic. There is little to no expectation of any international investigation or trial abroad, especially in light of the Ukraine war and its impact on the United Nations where no common decision on an important matter can be decided before the conflict settles. Furthermore, any prosecution before domestic courts abroad is difficult, despite the presence of various Western nationalities among the victims. Universal jurisdiction criminal complaints may be possible, but there is no sign of any such case proceeding.

Various alleged immunities and 'permissions' to prosecute high political or security officers prevent the investigation from going forward, although several lower-level officials have been arrested and remain in jail. As the stalling of the investigation into the senior officials continues, their arrest without trial becomes increasingly untenable.

The higher-ranking officials are shielded by various immunity and 'permission' devices, including various indicted ministers, in addition to President Michel Aoun, who knew as the head of the High Council of Defense of the imminent risk caused by the lethal material stocked in the port, and to former Prime Minister and vice-president of the same Council Hassan Diab, who remains under *de facto* protection from judicial pursuit, despite the fact that he cannot formally use the argument of immunity as he is no longer in position and is not a deputy in Parliament either. As a result, to this day, all the high-level security officials and ministers under investigation for the Beirut blast remain both scot-free and defiant.



المرفأء

The Issam Fares Institute for Public Policy and International Affairs (IFI) at the American University of Beirut (AUB)

Inaugurated in 2006, the Issam Fares Institute for Public Policy and International Affairs (IFI) at the American University of Beirut (AUB) is an independent, research-based, policy-oriented institute. It aims to initiate and develop policy-relevant research in and about the Arab world.

The Institute aims at bridging the gap between academia and policymaking by conducting high quality research on the complex issues and challenges faced by Lebanese and Arab societies within shifting international and global contexts, by generating evidence-based policy recommendations and solutions for Lebanon and the Arab world, and by creating an intellectual space for an interdisciplinary exchange of ideas among researchers, scholars, civil society actors, media, and policymakers.

📍 American University of Beirut
P. O. Box 11-0236,
Riad El-Solh Beirut,
Lebanon 1107 2020

☎ +961-1-350000 Ext. 4150
@ ifi.comms@aub.edu.lb
🌐 www.aub.edu.lb/ifi
f aub.ifi
🐦 @ifi_aub
📷 @ifi_aub