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Time for Justice? Reflections on Narrative Absences and Presences in the Special Tribunal for Lebanon's Ayyash *Decision*

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Abstract

After a tumultuous inception and drawn-out in absentia trial, the Trial Chamber of the Special Tribunal for Lebanon finally handed down its key judgment in August 2020. This article offers a critical appraisal of the tribunal and the decision, first, by situating the finding within Lebanon's political context and, second, by adopting a close narrative reading of the text itself. It argues that the judgment is structured around a series of presences and absences that build the Chamber's narrative about post-civil war Lebanon and its need for justice. The article suggests that, while the Chamber succeeds in convicting one of the co-accused for his role in the terrorist conspiracy to assassinate Rafiq Hariri, it fails to produce a convincing narrative about the role of international criminal justice in the fractured polity of modern Lebanon.

> The reason behind the Special Tribunal's creation was that 'all those responsible for the terrorist bombing that killed former Lebanese Prime Minister Rafiq Hariri and others be identified and brought to justice'. Only to determine the issues necessary to find the case proved against the four named Accused would be 'unforgivable', especially to the victims. They want to know why they were injured or their loved ones were killed. The judgment must be comprehensive, say the whole truth and embrace the circumstances, 'the whys and the wherefores'. Lebanese people wait to hear this judgment to break the vicious circle of silence and indifference. Regardless of whether some findings are necessary for the conviction of the Accused, specific factual and contextual findings are necessary and intrinsic to justice and to the truth. The judgment cannot and should not take into account the political effect that it might or might not have.
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> – Victim representative, as quoted in Judgment, *Prosecutor v Ayyash et al.* (STL-11-01/T/TC), Trial Chamber, 18 August 2020, para 927.

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1 Introduction

After more than a decade and a half since the killing of Lebanon's former prime minister, Rafiq Hariri, and 11 years since the Special Tribunal for Lebanon (STL) began its operations, the Trial Chamber handed down its *Ayyash* judgment in August 2020, where it found one of the four co-accused, Salim Al-Ayyash, guilty on a number of counts under Lebanese law, including committing a terrorist act by means of an explosive device.[1] The Appeals Chamber more recently, in March 2022, reversed some of the Trial Chamber's findings by overturning the acquittals of Hassan Habib Merhi and Hussein Hassan Oneissi on five counts.[2] Whilst recognizing the importance of this later ruling, the following article turns its attention to the 2020 Trial Chamber decision as the most expansive and detailed decision issued by the tribunal throughout its history. Although the STL had planned to complete a separate trial against Ayyash for attacks on prominent political figures Marwan Hamade, Georges Hawi and Elias El-Murr during 2004 and 2005 as well as a number of other offences, budgetary and time constraints have forced the tribunal to cease these proceedings.[3] The burden of creating a positive STL legacy thus falls more heavily on the *Ayyash* judgment itself.

This Trial Chamber judgment was much awaited by the families as well as the victims of a sophisticated and massive blast that took the life of Hariri along with a number of bystanders. While the killing and the creation of the STL had precipitated a political crisis in Lebanon, by the time this judgment appeared, any sense of urgency had faded, especially in the face of far more pressing regional instability arising from Syria's civil as well as a catastrophic port blast in Beirut only two weeks earlier.[4] These moribund fortunes are captured powerfully in Figure 1, which depicts a billboard declaring 'time for justice'. Erected years after the killing during the drawn-out STL proceedings, it had initially sported a ticker counting down the days to 'justice',[5] where the pronouncement of guilt in an *in absentia* trial could realize redress not only for Hariri's death but also for Lebanon's ongoing post-civil war instability. At some undocumented point in time,[6] this ticker stopped working and the billboard itself

[1] Judgment, Prosecutor *v Ayyash et al.* (STL-11-01/T/TC), Trial Chamber, 18 August 2020, especially at 6729. All citations are provided by paragraph unless stated otherwise. Statute of the Special Tribunal for Lebanon (STL Statute), 17 July 1998, 2187 UNTS 90.

[2] These were: being co-perpetrators of a conspiracy with the aim of committing a terrorist act; being an accomplice to the crime of a terrorist act; being an accomplice to an international homicide; and being an accomplice to an attempted international homicide. See Judgment, *Prosecutor v. Hassan Habib Merhi, Hussein Hassan Oneissi* (STL-11-01/A-2/AC), Appeals Chamber, 10 March 2022, paras 634–654.

[3] For further information on the status of this case, see Special Tribunal for Lebanon (STL), www.stl-tsl.org/en/the-cases/stl-18-10.

[4] Muller, 'The UN Special Tribunal for Lebanon (2009–2021)', 31 *Digest of Middle East Studies* (2022) 72.

[5] Kamari Clarke points out that sentimental legalism tends to equate justice with law in pursuit of its mission to protect 'victims' against powerful perpetrators. Clarke, 'Affective Justice: The Racialized Imaginaries of International Justice', 42 *PoLAR* (2019) 244, at 246.

[6] Thanks to my research assistant, Anan AbuShanab, for carrying out an exhaustive Internet search in Arabic and English without locating any information about the precise details of this billboard's demise.

Figure 1: *Supporters of the STL stand in front of a Beirut billboard depicting the assassinated Rafiq Hariri alongside the caption, 'zaman al-'adaala' (time for justice). Hussein Malla / Associated Press image, reproduced in Timour Azhari, '"Justice Delayed": Hariri Trial Verdict to Increase Tension',* Al Jazeera *(18 August 2020), available at www.aljazeera.com/news/2020/8/18/justice-delayed-hariri-trial-verdict-to-increase-tension.*

vanished from Beirut before the STL had a chance to hand down its key decision.[7] While we can only speculate as to the reasons for its premature removal, the presence and then the absence of the billboard metaphorically speaks to the central concern of this article on the nature of narrative judgment.

Hariri's murder occurred during a period of heightened domestic political rivalries fuelled by the US invasion of Iraq and the United Nations Security Council's (UNSC) Resolution 1559, which had called on Syria to withdraw from Lebanon and for its ally, Hizbullah, to disarm.[8] Whilst Hariri had tried to act as a bridge between rival factions, his death precipitated a 'political earthquake', which some domestic and foreign allies saw as requiring an international tribunal.[9] Fierce contestation over the STL's mandate and its political fallout has meant that any judgment would be both over-inclusive and under-inclusive in the face of contradictory expectations.[10] Such tensions are exemplified in this article's opening quotation from the *Ayyash* judgment itself. Here, the Trial Chamber quotes the victim representative expressing the expansive victim desire to arrive at a comprehensive truth that refuses to be restrained in the face of any possible political ramifications. How can any court deliver on such a task,

7 T. Azhari, '"Justice Delayed": Hariri Trial Verdict to Increase Tension', *Al Jazeera* (18 August 2020), available at www.aljazeera.com/news/2020/8/18/justice-delayed-hariri-trial-verdict-to-increase-tension.

8 SC Res. 1559 (2004).

9 Knudsen, 'Special Tribunal for Lebanon: Homage to Hariri', in A. Knudsen and M. Kerr (eds), *Lebanon after the Cedar Revolution* (2012) 219, at 223.

10 M. Osiel, *Making Sense of Mass Atrocity* (2009), at 20.

especially a hybrid court mired in political controversies from its inception? While this novel-length decision of 'twenty chapters' (or over 2,500 pages)[11] is at pains – much of the time – to catalogue the conspiracy leading up to the attack in clinically detached terms, the effect of reading the judgment as a whole pulls the reader in many confusing directions.

Whilst the judgment is driven by the narrow criminal law aim of proving Ayyash's guilt, it does so at times in the style of a murder mystery, presenting the reader with various clues and innuendo. In particular, the story constructed by the Trial Chamber rests on a series of presences and absences developed through a combination of textual and visual genres: Hariri as victim is central to the story, but he is then absent from the trial itself; the co-accused are absent from the trial but are (re)presented throughout the judgment through a combination of technical data and political innuendo; the remaining victims are largely absent but are (re)presented through the words of their agent, the victim representative. Through these absences and presences, the Chamber crafts an account of culpability that rests on a linear textual progression. Yet an unusually large number of visual images syncopate the text's rhythm, providing not only depth but also a disconcerting emotional 'excess'[12] that is far harder to contain than the orderly process of reading from 'the left to the right, line after line'.[13] Furthermore, Linda Mulcahy notes that when 'we observe an image, we may well grasp the simultaneous presence of many disparate things within one frame. The result is that the image has the potential to reveal a "multiplicity of othernesses and differences" which are for the most part silenced in texts'.[14] Highly technical discussions about mobile phone data triangulation that are devoid of the content of conversation sit alongside uncomfortably intimate cameos of victim trauma as well as a range of graphic visual images.

Rather than consider this judgment for its legal determination,[15] this article offers a close reading of the decision to understand how narratives of criminal culpability are constructed through a series of absences and presences. Following James Boyd White, this article suggests that, rather than

> asking what a statute or opinion or constitutional provision 'means' – that is, as if we expected a one-sentence response – we can ask what it means in a different way: how would the ideal reader being constituted by this document understand its bearing in the present circumstances? This requires an understanding of the text in its cultural and political context, in light of the accepted meanings of words and with an understanding of the major purposes.[16]

[11] *Ayyash et al.*, *supra* note 1, at 37.

[12] Bleiker, 'Pluralist Methods for Visual Global Politics', 43 *Millennium* (2015) 872, at 873.

[13] Mulcahy, 'Eyes of the Law: A Visual Turn in Socio-Legal Studies?', 44 *Journal of Law and Society* (2017) S111, at S122; see also Sherwin, 'Visual Jurisprudence', 11 *New York Law School Law Review* (2012) 11, at 14.

[14] Mulcahy, *supra* note 13 (quoting Oren Ben-Dor).

[15] As also advocated by Stolk, 'A Sophisticated Beast? On the Construction of an "Ideal" Perpetrator in the Opening Statements of International Criminal Trials', 29 *European Journal of International Law* (*EJIL*) (2018) 677, at 681–682.

[16] White, 'Law as Language: Reading Law and Reading Literature', 60 *Texas Law Review* (*TLR*) (1982) 415, at 435.

Vividly remembering my colleague in Amman rushing to tell me of the blast only minutes after it occurred in 2005, my reading here is inextricably shaped by my time as an observer of the region's only sustained international criminal justice (ICJ) experiment. After conducting interviews on the STL in Beirut in 2010, I had initially abandoned any hope of writing the required detached academic appraisal due to my experiences of eliciting hopelessly polarized perspectives. The task of repurposing such antagonized opinions into a seamless scholarly account seemed too much of a stretch.[17] Yet, as captured by this article's title, the interrelationship between time and justice slowly provided me with the chance to push beyond a desire to reconcile supporters and detractors of the STL. Instead, the *Ayyash* decision provided me with a particularly fruitful opportunity as a scholar both removed and yet familiar with many aspects of the region to open myself up to the particular interplay of politics and law that emerges while reading the judgment in its volatile context.[18] Such a reading revealed how the promises and pitfalls of ICJ are situated neither solely in the confines of the positive law of judicial decision nor in the political battlegrounds of context but, rather, in the interstitial sites of reception, reflection and, perhaps, rejection of a narrative for multiple audiences.[19] Given that the length and technical detail of the judgment predetermine an extremely select and limited audience, we need to ask for whom it was written and for what end. What is the point now in reading this decision, and is a narrative approach useful in analysing the judgment beyond its narrowly dispositive effect? Here, I develop a lens for reading this judgment not only for approaching the STL and its legacy but also as a way to engage critically and reflexively with other international criminal judgments.

This article comprises three sections. First, I provide an overview of the political context leading to Hariri's killing and its fallout before turning to the institutional parameters of the STL. Second, I develop my theoretical framework, which posits ICJ judgments as narratives structured around a series of absences and presences. I then zoom in on the *Ayyash* judgment itself by examining the nature of the language, imagery/images and structure deployed in the text. Third, I conclude by reflecting on the possible effects that this judgment might have on Lebanon's ongoing struggle for political reconciliation both through and in spite of its recent foray into ICJ. I end by suggesting that narrative analyses grounded in presences and absences are a valuable approach in understanding the limits as well as the limitations of rendering judgment in international criminal trials.

[17] See especially Hedström, 'Confusion, Seduction, Failure: Emotions as Reflexive Knowledge in Conflict Settings', 21 *International Studies Review* (2019) 622, at 663.

[18] My ability to acknowledge the vital role of feminist, self-reflexive research has been strengthened by the seminal work of many scholars in the fields of law, anthropology and international relations, as explored in greater detail in Burgis-Kasthala, 'Researching Secret Spaces: A Reflexive Account on Negotiating Risk and Academic Integrity', 33 *Leiden Journal of International Law* (*LJIL*) (2020) 269. I especially note Al-Hardan, 'Decolonizing Research on Palestinians: Towards Critical Epistemologies and Research Practice', 20 *Qualitative Inquiry* (2014) 61; Biddolph, 'Emotions, De/Attachment, and the Digital Archive: Reading Violence at the International Criminal Tribunal for the Former Yugoslavia (ICTY)', 49 *Millennium* (2021) 530; Hedström, *supra* note 17.

[19] Douglas, 'The Didactic Trial: Filtering History and Memory into the Courtroom', 14 *European Review* (2006) 513, at 520.

2 The Impetus and Mandate of the STL

Lebanon is a notoriously complex society, which comprises 18 officially recognized sects within its confessional system of governance. Tensions over confessional affiliations and their foreign alliances help explain the outbreak of its most bloody and protracted civil war between 1975 and 1990, which saw an estimated 144,000 victims as well as widespread physical and social destruction. To end this war, the 1989 Ta'if Accords modified the confessional balance that would be policed by Syrian troops to prevent any further violence, especially in its highly politicized form of the assassination of prominent individuals.[20] While many ordinary Lebanese citizens sought various forms of truth telling and accountability, the official policy during this period was one of amnesty or 'state-sponsored amnesia'.[21]

As the Trial Chamber suggests in its own background account discussed below, tensions over Syria's presence became more pronounced, especially after the US invasion of Iraq in 2003 and its concomitant realignment of regional alliances. Straddling Christian and Shiite Muslim political blocs, Sunni Muslim Rafiq Hariri occupied the centre ground in Lebanon's tumultuous transition period both as a prominent politician and as a businessman with particular interests in media and construction. Various efforts were made to maintain cordial links between Hariri and Syria, but relations became increasingly strained by 2004, precipitating Hariri's resignation and then his understated shift to an ad hoc Syrian opposition bloc. Perhaps most important was the passing of UNSC Resolution 1559 in September 2004, which indirectly called for the withdrawal of Syrian troops and the disbanding and disarming of Hizbullah.[22] The resolution enraged the Syrian regime and placed Hariri in an impossible position. Amidst increasing tensions over the role of Syria in Lebanon, Hariri was killed in central Beirut on 14 February 2005.

The fallout from the killing was significant at the domestic, regional and international levels. For our purposes, the international dimension is particularly instructive for opening up a space for ICJ intervention. Hariri's killing occurred during the height of the 'war on terror' in an Arab 'failing state' that had been the battleground for various state and non-state regional rivalries for decades.[23] It was not at all surprising then that the attack was swiftly framed by Lebanon's Western allies (especially France and the USA at the UNSC)[24] as a terrorist act requiring some type of ICJ response. An

[20] The National Reconciliation Accord, signed on 22 October 1989 in Ta'if, Saudi Arabia, and ratified by the Lebanese Parliament on 5 November 1989. Available at https://peacemaker.un.org/lebanon-taifaccords89.

[21] Knudsen and Hanafi, 'Special Tribunal for Lebanon: Impartial or Imposed International Justice', 31 *Nordic Journal of Human Rights* (2013) 176. Mughraby refers to the policy as a 'whitewash'. Mugraby, 'The Syndrome of One-Time Exceptions and the Drive to Establish the Proposed Hariri Court', 13 *Mediterranean Politics* (2008) 171, at 176.

[22] While neither Syria nor Hizbullah were named as such in the resolution on these terms, it was clear to all that they were the key targets of this discursive imprimatur. SC Res. 1559 (2004).

[23] Hazbun, 'Assembling Security in a "Weak State": The Contentious Politics of Plural Governance in Lebanon since 2005', 37 *Third World Quarterly* (2016) 1053.

[24] Former French President Jacques Chirac was a personal friend of Hariri and attended his funeral in Beirut.

international investigatory team mandated by the Secretary-General arrived in Beirut only 11 days after the blast. The UNSC soon followed suit under Resolution 1595 and created the International, Independent Investigative Commission,[25] which conducted extensive forensic analysis until 2009 when it was superseded by the STL itself.

While Syria's detractors within the UNSC used this forum both before and after Hariri's death to put pressure on Damascus, an increasing consensus emerged very quickly in the months after February 2005 that an internationalized criminal trial would be at the forefront of such pressure. A treaty signed by the United Nations on 23 January 2007 and the Lebanese government on 6 February 2007 provided the framework for a hybrid tribunal bringing together Lebanese criminal law and a mix of domestic and foreign judges. Yet, and in spite of the wording of the statute itself, this did not come to pass through the formal agreement of the two parties. Opposition to the STL from mainly Shi'ite politicians resulted in the absence of Shi'ite representation within the Lebanese Cabinet, and the (Shi'ite) speaker refused to convene Parliament for the treaty's ratification. Lebanon's Syrian-backed president stood in opposition to its prime minister, Fouad Siniora, who had worked assiduously in trying to finalize the treaty. Accepting Siniora's request for assistance, the UNSC stepped into this void and imposed the STL under Chapter VII through Resolution 1757, which created the tribunal and assigned it jurisdiction over the crime. This resolution was passed during a particularly heightened period of Lebanese civil unrest. Mass protests, assassinations and various armed skirmishes brought the country to the very edge of full-blown conflict. The UNSC's rationale for establishing an internationalized tribunal in The Hague at this time for a single event resulting in relatively few casualties centred on the seeming synchrony of Lebanese and UNSC aspirations: to bring about criminal accountability for those responsible for 'this and other assassinations', understood as 'terrorist act[s]', which constituted 'a threat to international peace and security'.[26] While there was strong support for some type of international criminal trial from most Lebanese factions, the way in which it was ultimately realized almost broke this fragile polity.

The STL has enjoyed fierce support and opposition in equal measure, but, over time, such sentiments have become muted in the face of more pressing events next door in Syria. In some of its early jurisprudence focused on the nature of its jurisdiction and applicable law, the tribunal was at pains to deny this political progeny.[27] Perhaps

[25] SC Res. 1595 (2005).

[26] SC Res. 1757 (2007), at 2.

[27] Burgis-Kasthala, 'Defining Justice during Transition? International and Domestic Contestations over the Special Tribunal for Lebanon', 7 *International Journal of Transitional Justice* (2013) 497, at 512–516; Matthews, 'Reading the Political: Jurisdiction and Legality at the Lebanon Tribunal', in C. Schwöbel (ed.), *Critical Approaches to International Criminal Law: An Introduction* (2014) 138; see especially Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, *Prosecutor v. Ayyash et al.* (STL-11-01) Appeals Chamber, 16 February 2011; Decision on the Defence Challenges to the Jurisdiction and Legality of the Tribunal, *Prosecutor v. Ayyash et al.* (STL-11-01), Trial Chamber, 27 July 2012; Decision on the Defence Appeals against the Trial Chamber's 'Decision on the Defence Challenges to the Jurisdiction and Legality of the Tribunal', *Prosecutor v. Ayyash et al.* (STL-11-01), Appeals Chamber, 24 October 2012. Similarly, see Nouwen and Werner's analysis on this point in relation to the International Criminal Court. Nouwen and Werner, 'Doing Justice to the Political: The International Criminal Court in Uganda and Sudan', 21 *EJIL* (2010) 941.

after a decade of institutional experience, the *Ayyash* judgment reads as less defensive and is able to countenance at least some of the wider political dimensions of the case. However, as I suggest below, the Trial Chamber shies away from any direct engagement about its politicized founding. Such considerations push too much at the fragile foundations of its legalist legitimacy. Adopting a narrative reading of the judgment, however, prevents such obfuscation and provides an opportunity to (re)consider the politics of redress within the criminal trial.

3 Reading the Judgment for Its Presences and Absences

After four years of incidental hearings, the STL issued arrest warrants for five Lebanese nationals – Salim Al-Ayyash, Mustafa Badreddine, Hassan Merhi, Hussein Oneissi and Assad Sabra – in 2011.[28] Badreddine was removed from the list after his death in 2016. Ten years after the case opened, it was finally completed with the finding of guilt under the Lebanese Criminal Code, as incorporated into the Statute of the Special Tribunal for Lebanon, for only Ayyash as one of the purported organizers of a criminal conspiracy to commit a terrorist act that killed Rafiq Hariri along with 21 other individuals and injured 226.[29] In a later judgment, Ayyash was sentenced to five terms of life imprisonment.[30] Although Ayyash's counsel tried to appeal his conviction, this was denied. In a radical re-inscription of absence, the Appeal Chamber held that Ayyash's counsel had no standing to initiate an appeal in his absence. Furthermore, it argued that 'an interpretation of the legal framework that ensures fairness to the accused, on the one hand, while minimizing unreasonable delay, promoting the appearance of an absent accused and avoiding the unwarranted multiplication of proceedings, on the other hand, best accords with the object and purpose of the Tribunal's Statute and Rules'.[31] The realization of 'justice' here requires the presence of the accused, and, in his absence, justice would not be done.

In its voluminous decision of August 2020, the Trial Chamber brought together its appraisal of the prosecution's and defence's evidence, victim testimony and its reading of the background, all of which informed its findings in relation to the applicable law. The judgment is both wide-ranging in its scope and also highly technical with its discussion of mobile phone data. It is both scientific in its scrutiny of the evidence and yet also strangely emotive in the way in which it retells the final days of Hariri's life with a flourish of foreboding. Amidst these different sections, registers, styles and genres, the reader reels from the changes in pace and tone. Although the judgment is admirably

[28] *Ayyash et al.*, *supra* note 1, at 13.

[29] *Ibid.*, at 14; STL Statute, *supra* note 3.

[30] Sentencing Judgment, *Prosecutor v. Ayyash et al.* (STL-11-01/S/TC), Trial Chamber, 11 December 2020.

[31] Decision on Admissibility of 'Notice of Appeal on Behalf of Mr Ayyash Against Conviction and Sentence', *Prosecutor v. Ayyash et al.* (STL-11-01/A-1/AC), Appeals Chamber, 29 March 2021, para. 67. This was reaffirmed by the Appeals Chamber in relation to Ayyash where it expressly notes that a retrial is only possible 'in his presence' (para. 6). This is also the case for Ayyash's accomplices. *Hassan Habib Merhi, Hussein Hassan Oneissi*, *supra* note 2, para. 653.

structured and cross-referenced, it is easy to feel lost not only due to its sheer size but also by the way in which it seeks to satisfy a range of often competing, but all-too-familiar, ICJ drives.

How then can we read such a judgment as a text and as a legal finding? While its legal effects of assessing evidence and pronouncing on guilt beyond reasonable doubt sit eminently within the comfort zone of international criminal lawyers,[32] other aspects of the judgment hint at the difficulties and perhaps unsuitability of containing the case within the tidy confines of lawyerly analysis. Just as the opening quotation recognized the political dimensions at play within and beyond the court and the case itself, the Chamber feels compelled time and again to reiterate its limited remit in the face of the extra-curial pressures of its work.[33] In this section, I develop some literary approaches to reading criminal judgments before turning my attention to four separate sections of the judgment. I demonstrate how each section is structured by the binary of absence and presence.

Legal decisions construct a world of normative commitment through narratives that necessarily entail inclusions as well as exclusions:[34] 'The question is always which narratives we should privilege and which we should marginalize or even silence.'[35] Even the most positivistic act of legal interpretation requires that rules are grounded in a particular reading of a set of facts that themselves are far from uncontested.[36] As events can be plotted in numerous ways, a legal judgment, then, is the result of a decision taken about how to structure a story:[37] '[N]o given set or sequence of real events is intrinsically tragic, comic, farcical, and so on, but can be construed as such only by the imposition of the structure of a given story type on the events, it is the choice of story type and its imposition upon the events that endow it with meaning.'[38] Thus, narratives are far more than a sequence of events;[39] linking such events into a story transforms them into a 'moral drama'[40] replete with a beginning and an end along with a range of actors.[41] Lois Presser's definition captures these various dimensions well in pointing out that for 'most scholars, a narrative is a temporally ordered,

[32] Schwöbel, 'The Comfort of International Criminal Law', 24 *Law and Critique* (2013) 169, at 185–188.

[33] For example, '[t]he Trial Chamber reiterates that the scope of the trial is defined by the amended consolidated indictment, the statutory provisions and the evidence heard. Within these boundaries, the Trial Chamber has made the findings necessary or appropriate to understand the events alleged in the amended consolidated indictment, as comprehensively as possible, and determine whether the Accused's guilt has been established beyond reasonable doubt'. *Ayyash et al.*, *supra* note 1, at 937.

[34] As most eloquently elucidated by Cover, 'Nomos and Narrative', 97 *Harvard Law Review* (1983–1984) 4.

[35] Bandes, 'Empathy, Narrative, and Victim Impact Statements', 63 *University of Chicago Law Review* (1996) 361, at 409; see also S. Stolk and R. Vos, 'Once Upon a Time in International Law', in S. Stolk and R. Vos (eds), *International Law's Collected Stories* (2020) 1, at 6.

[36] See especially Paskey, 'The Law Is Made of Stories: Erasing the False Dichotomy between Stories and Legal Rules', 11 *Legal Communication and Rhetoric* (2014) 51.

[37] In fact, criminal justice *per se* can be seen as a system of decisions. Barrera, 'Narrative Criminal Justice', 58 *International Journal of Law, Crime and Justice* (2019) 35, at 36.

[38] H. White, *The Content of the Form: Narrative Discourse and Historical Representation* (1987), at 44.

[39] White, 'The Value of Narrativity in the Representation of Reality', 7 *Critical Inquiry* (1980) 5, at 9.

[40] *Ibid.*, at 24.

[41] Brooks, 'Narrative Transactions: Does the Law Need a Narratology?', 18 *Yale Journal of Law and the Humanities* (2006) 1, at 25.

morally suggestive statement about events and/or actions in the life of one or more protagonists. Both temporality and moral meaning are essential'.[42]

As a space formulated to permit adversarial narrative contestation before the bench crafts its own 'authoritative narrative',[43] the criminal trial provides judges with much of the material to construct their narrative determinations as judgment. Yet, while trials showcase a range of competing narratives, oftentimes they are (re)presented in piecemeal fragments. According to Peter Brooks, this arises from law's 'suspicion of the force of narratives'.[44] Thus, 'stories are rarely told directly, uninterruptedly … [t]he fragmented, contradictious, murky unfolding of narrative in the courtroom is subject to formulae by which the law attempts to impose rule on story, to limit its free play and extent'.[45] The process of transforming such 'ordinary' stories into an authoritative legal account[46] invariably results in 'flattened narratives'[47] exhibiting – at best – a highly limited scope for alternative accounts. Robert Ferguson thus characterizes the act of judgment as 'profoundly monologic'[48] where the

> courtroom, as forum, takes the complexity of the event – the original disruption that provokes legal action in the first place – and transfers aspects of that complexity into a narrative, the written form of which is a literal transcript of what has been said in court. … The judicial opinion then appropriates, molds, and condenses that transcript in a far more cohesive narrative of judgment, one that gives the possibility of final interpretation by turning original event into a legal incident for judgment. Judgment, in turn, guides a general cultural understanding of the original event for consumption beyond the courtroom. These acts of transference necessarily work to transpose the scene of particular experience into an acceptable figuration of collective life. Every step of the process requires an unavoidable series of simplifications.[49]

While White also recognizes the constraints that legal opinions place on narrative, he reminds us that texts themselves never simply advance one reading or one interpretation. Within any authoritative narrative constructed from the detritus of narrative plurality, there will be a 'range of possible meanings'.[50] In reading a legal text, the reader should be mindful of the world being created through its constitutive force and then assess the extent to which the text succeeds in producing conviction. For Brooks, '"Conviction" – in the legal sense – results from the conviction created in those who judge the story'.[51] As law creates a community through argument, the authoritative

42 Quoted in Pemberton *et al.*, 'Stories of Injustice: Towards a Narrative Victimology', 16 *European Journal of Criminology* (2019) 391, at 392.

43 B. Sander, *Doing Justice to History: Confronting the Past in International Criminal Courts* (2021), at 3.

44 Brooks, *supra* note 41, at 19.

45 *Ibid.*

46 See White, 'Telling Stories in the Law and in Ordinary Life: The *Oresteia* and "Noon Wine"', in H. White, *Heracles' Bow: Essays on the Rhetoric and Poetics of the Law* (1985) 168, at 168–169.

47 A. Zammit Borda, *Histories Written by International Criminal Courts and Tribunals: Developing a Responsible History Framework* (2021), at 159.

48 Ferguson, 'The Judicial Opinion as Literary Genre', 2 *Yale Journal of Law and Humanities* (1990) 201, at 205.

49 *Ibid.*, 211.

50 White, 'Law as Language: Reading Law and Reading Literature', 60 *TLR* (1982) 415, at 415.

51 Brooks, *supra* note 41, at 25.

force of legal narratives will rest on their ability to convince a community of readers – legal scholars/practitioners or ordinary Lebanese citizens – of their 'plausibility'.[52]

The importance of narrative plausibility becomes readily apparent in the case of criminal trials where the stakes for the accused as well as the victim can be very high. In constructing an authoritative narrative account then, international criminal tribunals must rely on a number of textual devices to ensure that the reader will remain convinced of the story advanced by the court. I note two instances here. First and in keeping with domestic law, the categorical parameters of culpability provide a vocabulary as well as a framework for radical narrative abstraction and simplicity.[53] Thus, for Zammit Borda, international criminal law's (ICL) 'focus on proscribing certain categories of criminal conduct and ascribing criminal liability significantly constrains the questions that judges and other actors involved in international criminal proceedings are able to ask and tends to limit broader narratives about a given armed conflict'.[54] This is exemplified by the remit of the STL *tout court*, which was predetermined by the UNSC as being centred on the 'narrative grid' of the crime of terrorism.[55] For Frédéric Mégret, such power to designate certain problems as criminal law problems and the concomitant ability to designate the criminal is hegemonic in its ambitions due to the way in which it relies on the trial to inflict political costs on the tribunal's opponents.[56] Whilst the STL's subject matter jurisdiction provided it with the chance to pursue a range of domestic and foreign actors linked to the crime, ultimately the tribunal's selective mandate encouraged accusations of bias against Syria, Iran and Hizbullah.[57]

Second, no plausible story of suffering is complete without an account that details the individual accused's agency in perpetrating harm.[58] For example, in common law domestic murder trials, a strong, simple moral story about the accused's culpability[59] can be the *sine qua non* for convincing the jury beyond reasonable doubt. In the case of ICL, however, with its emphasis on system criminality and in the absence of a jury to embody a community,[60] bright moral lines of perpetration can become much more

[52] *Ibid.*

[53] Nouwen and Werner, *supra* note 27, at 962.

[54] Zammit Borda, 'History in International Criminal Trials: The "Crime-driven Lens" and Its Blind Spots', 18 (2020) *Journal of International Criminal Justice (JICJ)* 543, at 545.

[55] Sander, *supra* note 43, at 9. Similarly, Kirchheimer employs the notion of 'prearranged rules' in his definition of political trials. O. Kirchheimer, *Political Justice: The Use of Legal Procedure for Political Ends* (1961), at 6. This is developed by Nouwen and Werner, *supra* note 26, at 945–946.

[56] Mégret, 'International Criminal Justice: A Critical Research Agenda', in C. Schwöbel (ed.), *Critical Approaches to International Criminal Law: An Introduction* (2014) 17, at 23; see also Kirchheimer, *supra* note 55, ch. 3.

[57] As exemplified by the press briefings delivered by Hizbullah's leader Hassan Nassrallah between 2005 and 2011. See Burgis-Kasthala and Saouli, 'The Politics of Normative Intervention and the Special Tribunal for Lebanon', 16 *Journal of Intervention and Statebuilding* (2021) 79, at 88–92. The political ramifications of these indictments have been profound. Hillebrecht, 'International Criminal Accountability and the Domestic Politics of Resistance: Case Studies from Kenya and Lebanon', 54 *Law and Society Review* (2020) 543, at 468–473.

[58] For example, see Gevers, 'International Criminal Law and Individualism: An African Perspective', in C. Schwöbel (ed.), *Critical Approaches to International Criminal Law: An Introduction* (2015) 221.

[59] On 'moral simplicity', see Simpson, 'The Sentimental Life of International Law', 3 *London Review of International Law* (*LRIL*) (2015) 3, at 20–21.

[60] On the possible role of juries in international criminal trials, see Powell, 'Three Angry Men: Juries in International Criminal Adjudication', 79 *New York University Law Review* (2004) 2341.

blurred.[61] Out of a morass of complex and entangled complicities, the 'trial truth' of ICL insists on individual criminal responsibility,[62] stipulating that the 'free and self-determined' accused must play a decisive role in the moral drama.[63] Yet context still plays a part, and so as I show in the case of *Ayyash*, there can be strong dissonances between a judgment's 'cult of individualism'[64] with its 'crime-driven lens'[65] and its own construction of a crime's context.[66]

Along with the challenges posed in determining terrorist guilt in this hybridized setting, though, a far greater test arose from the *in absentia* character of the trial itself. All of the literature I have considered above assumes the counterbalancing presence of an accused to act as a legitimating device that is suggestive of narrative plurality within the trial. Kate Leader, for example, notes how the 'live presence of bodies in a courtroom has deep resonances of authenticity in a criminal trial, not because this is fairer or better but because we *believe* it does. These beliefs are what sustains the mystification of what are in practice violent and constraining processes for a defendant'.[67] Even if an accused is rarely provided with a platform to recount their narrative perspective expansively, the simple effect of their body, their voice and their (fragmented) narrative can be a powerful counter to prosecutorial privilege: 'A constrained body, on display, necessitates a degree of openness. Not having this openness is the first significant loss' for both fair trial rights and the legitimacy of the trial *per se*.[68]

The *Ayyash* trial is 'novel' amongst modern international criminal tribunals for its acceptance of *in absentia* proceedings[69] in their most radical iteration of 'last resort'[70] – that is, a trial conducted both in the absence of the accused and in the absence of

61 Mégret, 'The Anxieties of International Criminal Justice', 29 *LJIL* (2016) 197, at 211.

62 Gaynor's discussion of 'trial truth' builds on this notion as explored by Röling and Cassese in relation to the Tokyo Tribunal: Gaynor, 'Uneasy Partners: Evidence, Truth and History in International Trials' 10 *JICJ* (2012) 1257, at 1260.

63 Here, Krever is quoting Karl Marx. Krever, 'Unveiling (and Veiling) Politics in International Criminal Trials', in C. Schwoebel (ed.), *Critical Approaches to International Criminal Law: An Introduction* (2014) 117, at 129.

64 Sander, *supra* note 43, at 62.

65 Zammit Borda, *supra* note 54. See also his discussion on individualism and liberalism in Zammit Borda, *supra* note 47, ch. 3.

66 See especially Mégret, '"Bring Forth the Accused!" Defendant Attitudes and the Intimate Legitimacy of the International Criminal Trial', 36 *Arizona Journal of International and Comparative Law* (2019) 397, at 405.

67 Leader, 'Law, Presence to Absence: The Case of the Disappearing Defendant', M. Saward *et al.* (eds), *The Oxford Handbook of Politics and Performance* (2021) 73, at 83 (emphasis in original).

68 *Ibid.*, at 84.

69 The Trial Chamber notes how this aspect of its trial procedure 'differs from the other international criminal courts and tribunals'. *Ayyash et al.*, *supra* note 1, at 5866. The possibility of *in absentia* proceedings arose from its inclusion within the Lebanese Criminal Code, which informs the STL Statute, *supra* note 3. The STL conducted a number of interlocutory hearings on its *in absentia* jurisdiction, such as Decision to Hold Trial in Absentia, *Prosecutor v. Ayyash et al.* (STL-11/01/I/TC), Trial Chamber, 1 February 2012. This then meant that in its 2020 judgment, very little consideration was given to questions over the nature of its *in absentia* jurisdiction. Whilst *in absentia* trials are legal in many jurisdictions, this does not necessarily overcome concerns about legitimacy as addressed here.

70 Pons, 'Some Remarks on *in Absentia* Proceedings before the Special Tribunal for Lebanon in Case of a State Failure or Refusal to Hand over the Accused', 8 *JICJ* (2010) 1307, at 1320–1321.

their consent to such a step.[71] While each accused was represented by STL-appointed counsel acting in the absence of consultation with their client, the visceral and symbolic absence of the accused cannot be overstated. Such an absence is perhaps most challenging if we follow some of the literature noted above that has explored how (international) criminal trials are a form of drama or 'pedagogical performances that have the capacity to educate audiences on issues as diverse as crime, punishment, morality, normality, personality and social relations'.[72] In such instances, it is 'the defendant [who acts] as the protagonist in [the] criminal trial',[73] even if she tends to take a radically depersonalized and mute role.[74] Most narrowly too, it is the accused who is typically understood to constitute the primary audience of the criminal trial,[75] even when the role of victims is amplified, as is often the case in internationalized trials.[76] In the absence of the co-accused then, and of the possibility of defending them, the fairness of the trial comes into question.[77] The legitimacy[78] – if not the legality[79] – of the trial as well as of the tribunal *per se* is at stake, and the dramatic dimension of the criminal narrative is potentially undermined.

How then was the Trial Chamber able to surmount this narrative deficit and this challenge to its legitimacy? Technically, of course, the chamber performed the task expected of any bench in assessing the evidence led before making a determination on guilt. As I explore in section 3.D, this guilt centred on the intricate pattern of (content-free) mobile phone data that was suggestive of a conspiracy to kill Hariri. Yet such fundamentally disembodied data lacked the moral force and agency that can result from the depiction of individual words and deeds. Thus, in the absence of a visceral defendant to populate the pages of this murder mystery, I suggest that the decision (re)placed and (re)presented the pivotal role of the absent accused with that of the (central) victim – Hariri – to preserve the moralizing force of a highly individual-centred narrative. Furthermore, typically ICL is concerned with high-profile individual defendants who serve as leading figures in the moral drama of atrocity.[80] In the case of Ayyash, this was also reversed so that the accused were largely unknown, 'ordinary' (if aberrant) Lebanese citizens (save for Badreddine and his fame within Hizbullah's military ranks), while the main victim was not the unknown and impoverished Third

71 In general, see Gaeta, 'To Be (Present) or Not to Be (Present): Trials *In Absentia* before the Special Tribunal for Lebanon', 5 *JICJ* (2007) 1165. *In absentia* trials are permitted under Lebanese law.

72 Sander, 'The Expressive Limits of International Criminal Justice: Victim Trauma and Local Culture in the Iron Cage of Law', 19 *International Criminal Law Review* (2019) 1014, at 1016.

73 Leader, 'The Trial's the Thing: Performance and Legitimacy in International Criminal Trials', 24 *Theoretical Criminology* (2020) 241, at 242.

74 Mégret, *supra* note 66, at 402–403.

75 Sander, *supra* note 43, at 32.

76 F. Mégret, 'In Whose Name? The ICC and the Search for Constituency', in C. De Vos *et al.* (eds), *Contested Justice: The Politics and Practice of International Criminal Court Interventions* (2015) 23, at 25.

77 Here, I recognize that such (liberal) constructions of the (present and participating) accused deny the inherent violence of the trial itself. For example, see Leader, *supra* note 67.

78 Mégret, *supra* note 66, at 470.

79 Especially see Jordash and Parker, 'Trials *in Absentia* at the Special Tribunal for Lebanon: Incompatibility with International Human Rights Law', 8 *JICJ* (2010) 487.

80 Sander, *supra* note 43, at 89.

World woman or child[81] but, rather, one of the most prominent political and business figures across the Arab World, Rafiq Hariri.

In the remainder of this section, I explore how the absence/presence binary informs the judgment's narrative. In particular, I suggest that the construction of four key character types as both absent and present highlights the extreme fragility of the moral and legal dimensions of the story: (i) Hariri as the individuated Lebanese tragic victim; (ii) the wider victim community as absent and (re)present within the trial; (iii) the absent accused who are partly re-presented through the Court's ambivalent assessment of wider (political) responsibility at the hands of the Syrian regime and Hizbullah; and (iv) the disembodied mobile phone data as a new type of radically abstracted agent.

4 Contextualizing Victimhood? Narrating Hariri's Final Days

Throughout its decision, the Trial Chamber reminds the reader many times that its central role is to establish guilt beyond reasonable doubt of the four co-accused; broader aims centring on victim redress, transitional justice and history writing seem to be precluded. Yet the Chamber still decides to devote a considerable amount of energy in constructing a highly readable 'background' section to the killing. Here, it situates Hariri's personal and political fortunes within the landscape of post-Ta'if Lebanon. Reading this background section closely is vital in understanding the Chamber's construction both of Hariri and of the accused. Hariri's presence predominates not simply because it is a necessary narrative device presaging his death. As noted above, the figure of Hariri serves as a metonym for Lebanon *per se*. In contrast to Hariri's undeniable presence in these pages of the judgment, few details about the accused are provided. Their absence is palpable in a narrative that personifies Hariri as his country. This lack, however, is overcome by a second metonym in this good versus bad moral drama: the accused as embodiments of those political forces opposing Hariri. Thus, according to the Chamber, '[u]nderstanding the political background to the attack is necessary to form an understanding of why Mr Hariri was targeted in this manner, but only insofar as it relates to whether or not any of the Accused on trial are guilty of any of the counts charged. Similarly, completeness requires placing the attack within a wider historical setting'.[82] While the Chamber thus recognizes the vital role of politics in the case, at no point does it elaborate on what type of politics it envisages or for which polity.

Although there is a rich body of literature in a number of scholarly fields that have explored the nature of post-civil war Lebanon, Hariri's and Syria's role in this new regime as well as familiar ICL and transitional justice accounts about ongoing impunity/

[81] For example, see Schwöbel-Patel, 'Spectacle in International Criminal Law: The Fundraising Image of Victimhood', 4 *LRIL* (2016) 247.

[82] *Ayyash et al.*, *supra* note 1, at 394.

state-sanctioned amnesia, such contributions are altogether absent from the judgment. Yet the Trial Chamber must draw on some kind of material in constructing its 100-page modern historical narrative of Lebanon / biography of Hariri, and it does so by filling this absence with prosecution-led testimony offered by some of the victims who are recast as 'experts'. Consonant with Lebanon's highly divided and divisive political field, these victims/experts (save for one defence-led witness) were closely aligned to Hariri, and many of them were active politicians within his bloc. For example, Marwan Hamade provided evidence in relation to his meetings with Hariri, general contextual background, as well as details about the assassination attempt in which he was involved. This evidence had been 'strongly opposed by counsel for the then five Accused' in a separate earlier hearing.[83] The Chamber dismissed such concerns by pointing to the value that such testimony would provide in understanding the context of the attack, which, according to the prosecution and then affirmed by the Chamber, was carried out by 'the Accused being led by a sophisticated military actor'.[84] It also tried to allay any misgivings about partiality by laying out a number of filtering devices to ensure the credibility of each individual:

> The Trial Chamber must consider on a case-by-case basis factors including: the witness's in-court demeanour; their role in the events in question; the plausibility and clarity of the testimony; any contradictions or inconsistencies in successive statements or between the testimony and other evidence; prior examples of false testimony; any motivation to lie; and the witness's responses during cross-examination. Also relevant could be the existence or absence of corroborating evidence, the witness's relationship to an accused and the witness's criminal history.[85]

While individuals such as Marwan Hamade and Walid Jumblatt undoubtedly were 'experts' on the nature of Lebanese politics at the time, the absence of a diverse witness portfolio that included Hariri's political opponents is suggestive of a highly partisan perspective on a series of events drenched in discord.[86] In addition, the Trial Chamber relied on two media archives: the United Nations Information Centre's Beirut press release (a daily service summarizing various news sources) as well as 'press releases issued by Mr Hariri's *Al-Mustaqbal* newspaper. These press releases were prepared by Mr Hariri's press office at Quraitem Palace and sent to *Al-Mustaqbal* for distribution to other media outlets'.[87] Although the Chamber notes Hariri's ownership of these media outlets, it does not acknowledge how reliance on such material might contribute to the construction of a particular narrative account. It makes no attempt, for example, to counter such sources by interrogating their discursive biases.

Neha Jain has argued that international criminal trials are not well placed to generate accurate or grand narratives,[88] and this is especially so in the case of *Ayyash*

[83] *Ibid.*, at 403 (decision denying request to exclude evidence of Witness PRH038).
[84] Trial Chamber, quoting the prosecution. *Ayyash et al.*, *supra* note 1, at 400.
[85] *Ibid.*, at 294.
[86] The Chamber does note that counsel for Mr. Oneissi alleged that 'the Prosecution's political background witnesses are all allies and friends of Mr Hariri, thus presenting a one-sided view of the situation'. *Ayyash et al.*, *supra* note 1, at 779. This critique is not really taken up by the Chamber in its decision.
[87] *Ibid.*, at 410.
[88] Jain, 'Radical Dissents in International Criminal Trials', 28 *EJIL* (2017) 1163, at 1181.

in the absence of the accused to populate its authoritative narrative. To replace this absence, I suggest that the Trial Chamber exaggerates the presence of Hariri in the pages of its decision not only as a way to elicit sympathy with a murdered individual but also to provide a moral story (in the absence of a direct account of the accused's culpability) recounted in tragic registers. The figure of Hariri thus serves a number of purposes in the text: as the tragic protagonist, Hariri plays the role of the individual victim; his real world role in Lebanese affairs and their retelling by the Chamber transforms Hariri into the victim *per se* in Lebanese society. This is particularly so because, over the decade and a half between the war's end and his killing, Hariri not only served as the country's prime minister twice but also led one if its largest political blocs, which increasingly served as an unofficial opposition to Syria's presence across the territory. Furthermore, Hariri bankrolled a large portion of the country's post-war reconstruction through his construction firm Solidere.[89] The Chamber recounts how Hariri became increasingly convinced that Syrian withdrawal was vital for the full recovery of a post-war Lebanon. As the narrative advances the notion that it was this stance that ultimately got him killed, the Chamber is perhaps suggesting that an attack on Hariri was also an attack on his vision for an independent Lebanon. Providing redress for Hariri would therefore provide redress for the Lebanese polity as a whole.

Juxtaposed with this highly abstracted role of Hariri as the metaphorical victim of Lebanon, the narrative account of Hariri's final days provides the most gripping portions of the decision due to its highly personalized style. I had to remind myself that I was actually reading a judicial determination of guilt and not a murder mystery involving the Middle East's rich and famous. Unlike the extremely dry mobile phone sections to come, this part of the decision was compelling and hard to put down. Various intimate cameos of Hariri's life are reconstructed through a pastiche of witness testimony, news reports and photographs. As the decision itself opens with an image-free overview of the blast, the reader has an inkling of what will transpire, but, visually, this is only confirmed later in the judgment once we are intimately acquainted with Hariri as the main victim. After developing a personalized depiction of Hariri, the judgment later underscores his absence through the undeniable physical destruction visually depicted in the wake of the blast by Figure 2.

Knowing of the future that awaits, it is impossible not to read of Hariri's failures to act in the face of numerous warnings except as tragedy. We are told how, in spite of heightened security concerns following the assassination attempt on 1 October 2004 on his friend and ally Marwan Hamade, Hariri's state-financed security detail is significantly – and unusually – scaled back.[90] While this clearly worries many of those

[89] *Ayyash et al.*, *supra* note 1, at paras 435–438. Informally, this area of the city is referred to as 'Solidere'. For information on new construction projects in Beirut, see *Solidere*, https://www.solidere.com/.

[90] Former prime ministers tended to receive a sizeable security detail of around 30–40 personnel, but once Hariri stepped down in October 2004, his detail was reduced from 30–50 security officers to eight. *Ayyash et al.*, *supra* note 1, at 607. Hariri's reaction to this was contradictory. On the one hand, we are told that he was sometimes 'careless' with his security detail (at 605), but, on the other hand, this decision 'upset' him as it suggested 'they' (meaning the Syrian/Lebanese security apparatus) were targeting him (at 609).

Figure 2: *Photograph of the scene of the explosion provided in the* Ayyash *judgment. Ayyash et al., at p. 322.*

close to him, the Trial Chamber stresses how Hariri was convinced of his own untouchability. For example, he is noted as suggesting on 7 January 2005 'that it would be "suicide" to target him'.[91] Time and again, Hariri is provided with warnings about the risks he is facing. While these are not always spelled out clearly to him, other characters join together the dots and become convinced that his life is in danger. Yet, for Hariri himself, it seems that it is only on the eve of his murder that he finally recognizes the threat he is facing. The Chamber notes that on 13 February he was 'upset' and 'disturbed' after receiving renewed evidence about a threat on his life.[92] These details provide greater narrative impact in the face of the blast that we know is awaiting him.

Yet before recounting the main event in detail, the narrative breaks off and turns to the accused. The reader must first hear quite detailed considerations about the political affiliations of the five defendants along with the participation of the victims before the main story resumes – no longer under the heading of 'background' but now as the 'explosion' itself. We also hear about how efforts are made the following day – the day of the blast – to take extra precautions with the route of his motorcade but that Hariri himself remains defiant in the face of Syrian demands. He is on record that day as reportedly uttering these words inside the Parliament to his ally Member of Parliament Bassem El-Sabeh: 'They think we are afraid … [but] we are going to flash them a wide smile. Let them film us and let them see us like this. We are comfortable and we are at ease.'[93] The judgment (re)presents a photograph of this exchange, Figure 3, which

[91] *Ibid.*, at 717.
[92] *Ibid.*, at 726.
[93] *Ibid.*, at 990.

Figure 3: *Photograph of Hariri and El-Sabeh in parliament, 14 February 2005. Ayyash et al., at p. 311.*

seems to confirm a relatively comfortable and ordinary conversation transpiring between two friends.[94]

This is the second last image provided of Hariri in the judgment. It is hard not to overstate its tragic resonance, especially when juxtaposed with the disembodied images provided of the catastrophic blast zone moments after the attack. While the Trial Chamber cannot be faulted for including materials such as this in constructing its account of the context of the attack, I suggest that its tragic force is of even greater significance in shaping a narrative of a victim and his country in need of (international criminal) 'justice'.

5 (Re)Presenting Victim Trauma in and as a Legal Decision

While the blast silences Hariri forever by (re)inscribing his radical absence from present-day Lebanon, a number of direct and indirect victims populate the pages of the judgment to generate a 'more comprehensive narrative of the events'.[95] Unlike the detailed account of Hariri's final weeks, the rest of the victim group plays a largely symbolic, disembodied role devoid of any individual images to personalize their plight. A full list of the names of the victims appears outside of the judgment itself in the appendix on page 2,647. It is through the inclusion of the victim testimony, however, that there is scope for grasping at individual as well as collective suffering. The Trial Chamber strives to confine each experience as a singular harm, noting how each

[94] *Ibid.*, at 311 (Exhibit P90).
[95] *Ibid.*, at 834.

witness story is 'specific to each victim' and, thus, 'not strictly ... cumulative'.[96] As each account of suffering cannot be translated into an abstract legal truth then,[97] it is difficult to know how to read and react to these parts of the judgment. The inclusion of such testimony creates a discursive dissonance: multiple perspectives are included, but they sit uncomfortably with the monologic, authoritative tone that informs the Chamber's careful and forensic reconstruction of the blast itself. On the one hand, the reader trawls through pages outlining the specificities of blast trajectories and debris, but, on the other hand, he or she confronts a moving account that notes, for example, how Wissam Naji 'could not forget the burned bodies, chaos and screaming at the hospital, or the sadness of the hours after the attack when his family believed him to be dead'.[98] In this instance, is the purpose of the judgment primarily punitive, declarative or even emotive in pronouncing on a truth that is both created and received by the victims?[99] In addition, given that each victim experience is unique, to what extent can such individuated trauma be (re)presented as a collective and collectivized memory through the figure of the victim representative?[100] While a rich literature on the fraught role of victims in ICL trials points to the challenges of reconciling such desires, I simply note here how their simultaneous presence and absence in the judgment disorients the reader, underscoring the competing agendas at play in the act of narrative judgment.

As in the case of Hariri's final days, there is a danger that the judgment will elicit such intense feelings of sympathy in the reader as to be prejudicial to the (absent and, thus, voiceless) co-accused.[101] Some of these victims are named, while others remain anonymous, thus serving as abstractions of trauma and suffering in its radically disembodied and absent form.[102] A total of eight victims came to The Hague to give live testimony, and a further 23 submitted written statements into evidence.[103] The interests of 'judicial economy' persuade the Chamber to rely on the victim representative's 'summary of the views and concerns of the majority of the participating victims',[104] which transforms and (re)presents their suffering into a judicially legible form.[105] This

[96] *Ibid.*, at 838.

[97] Dembour and Haslam, 'Silencing Hearings? Victim-Witnesses at War Crimes Trials', 15 *EJIL* (2004) 151, at 154.

[98] *Ayyash et al.*, *supra* note 1, at 1468.

[99] On this tension between declarative and punitive missions in international criminal trials, see Stolk, 'The Victim, the International Criminal Court and the Search for Truth: On the Interdependence and Incompatibility of Truths about Mass Atrocity', 13 *JICJ* (2015) 973 at 977. Stolk also notes the 'double role' of victims. On this latter point, see also Sander in his discussion on the transformation of victims from objects to subjects. Sander, *supra* note 43, at 34.

[100] Dembour and Haslam, *supra* note 97, at 154; see also Kendall and Nouwen, 'Representational Practices at the International Criminal Court: The Gap between Juridified and Abstract Victimhood', 76 *Law and Contemporary Problems* (2013) 235.

[101] Bandes, *supra* note 35, at 395.

[102] Kendall and Nouwen, *supra* note 100, at 253–258.

[103] *Ayyash et al.*, *supra* note 1, at 822.

[104] *Ibid.*, at 846.

[105] Stolk, *supra* note 99, at 988–989. On the problematic nature of victim representation in the global South, see especially Madlingozi, 'On Transitional Justice Entrepreneurs and the Production of Victims', 2 *Journal of Human Rights Practice* (2010) 208.

agent is not simply a useful resource for the Chamber in managing a large amount of material; in speaking for so many aggrieved voices, the victim representative has tried to amplify their demands of the STL in forging 'the truth'.

There seems to be a fiercely empowered political stance of the victims in calling out (through the voice of their representative) those they see as most responsible – Syria and Hizbullah. While such an act is undeniably political – as it operates through the disembodied voice of the victim representative in the pages of a judgment incapable of exploring such charges directly – the end result is strangely emasculating for 'the victims'.[106] Sara Kendall and Sarah Nouwen remind us that the act of victim (re)presentation and abstraction is also a depoliticizing one as the immediacy of individual agency and interests becomes obscured.[107] Equally, for the objects of this political attack, there is no space for rebuttal or a counter-narrative from non-participating Hizbullah or Syria, and so, at best, such a stance on the part of the victims can only ever be a partial – even if passionate – step within a far wider process of political confrontation and contestation. Ultimately, neither the trial nor the judgment can serve as a forum of engaged and sustained reconciliation. At worst, such unrebutted allegations raise the spectre of a show trial that, for all its visibility, occludes much more than it actually displays.[108] At best, in recognizing its many presences and absences, the judgment instead may serve as a site for initiating some form of future (re)consideration of past and present traumas.

6 The Politics of Absence: (Re)presenting the Accused through (Suspect) Political Affiliations

While the Trial Chamber did not make any formal finding of joint criminal enterprise or command responsibility that could have linked Hizbullah with the five accused, it still chose to end the 'background' section with a relatively detailed consideration of 'alleged associations' between the accused, the Hizbullah.[109] By this stage, the reader is now familiar with Hizbullah's general role in the Lebanese political landscape, largely as a result of the details provided about Hariri's own relationship with its leader, Hassan Nasrallah, particularly as they were captured in a series of cordial, secret meetings that were held before his death. Yet if there is no allegation of direct involvement beyond the five accused, what purpose does a consideration of their political affiliations serve? On the one hand, the Chamber reminds us that prosecution submissions about these links do 'not go to a material fact underpinning any criminal responsibility'.[110] As the prosecution led a 'highly circumstantial case that largely relied upon cell site evidence and its accuracy or reliability' to prove a criminal conspiracy, allegations of a

[106] See Dembour and Haslam, *supra* note 100, on the disempowering dimensions of victim testimony.
[107] Kendall and Nouwen, *supra* note 100, at 261.
[108] Jain, *supra* note 88, at 1185; Koskenniemi, 'Between Impunity and Show Trials', 6 *Max Planck Yearbook of United Nations Law* (2002) 1.
[109] *Ayyash et al.*, *supra* note 1, at 732–786.
[110] *Ibid.*, at 774.

wider network of patronage and support are beyond the core focus of the Chamber.[111] Yet, on the other hand, it concludes the background section with a number of inferences that are highly suggestive of some degree of Syrian and/or Hizbullah involvement in the crime. While it makes sense for the reader to appreciate the important role that is played by both Syria and Hizbullah over the period under examination, the way in which this role is then linked to the accused is troubling.

A sense of suspect political affiliations is developed in the judgment particularly in relation to Badreddine, the accused who was removed from the indictment after his presumed death on the battlefield in Syria in May 2016. Although the Chamber could no longer technically pronounce on his guilt, it nevertheless provides details about his prominent role within Hizbullah not only in life but also in death. Photographs within the judgment such as Figure 4 display a funeral befitting a revered martyr within the highest ranks of Hizbullah.

More images are devoted to Badreddine than any of his co-accused, reminding the reader that, even if absent from the indictment itself, he remains present in the murder mystery being crafted.[112] Badreddine's continuing presence in the trial elicits a separate opinion that is 'not about me the Judge, but the delivery of Justice consistent with

Figure 4: *Video extract of Al-Manar Television's, a Hizbullah Station, broadcast of Badreddine's funeral procession, Beirut, 13 May 2016. Ayyash et al., at p. 225.*

[111] *Ibid.*, at 214, Separate Opinion Judge Re.

[112] The judgment contains no images of Merhi or Sabra and only one each of Ayyash and Oneissi, whereas there are five of Badreddine (four of these in military fatigues) and two from his funeral.

human rights standards'.[113] In her short, but forceful, text, Judge Micheline Braidy is deeply troubled by the way in which the majority's decision relies on Badreddine for its account of the conspiracy: 'I believe that the Trial Chamber should not even have analysed the individual criminal responsibility of someone who is not (anymore) an accused and whose proceedings have been terminated. … Mr Badreddine died with his presumption of innocence. This presumption should not be questioned posthumously.'[114] Whilst she concedes that she is 'not blind to the consequences' of stopping 'short of making any legal findings in relation to Mr Badreddine', this is the only way the Chamber can protect the presumption of innocence.[115] In addition, as the conspiracy comprised 'Mr Ayyash, together with others yet unidentified – namely subjects 5–9 and the suicide bomber', there was 'no need to additionally assess Mr Badreddine's role'.[116]

Why include Badreddine then and give him such (relative) prominence in the judgment? Preserving his presence in the narrative was the clearest way of (indirectly) connecting the conspiracy to Hizbullah, which is underscored by the Trial Chamber when it concludes the background section by pointing out 'that those responsible for co-ordinating the attack had access to what could be described as "military-grade explosives"'.[117] Given the proximate military forces nursing some sort of resentment towards Hariri and his increasing estrangement from Syria, even if ultimately unproven, the decision here points to a larger circle of responsibility for the crime. The difficulty of Badreddine's mortal absence is partly overcome by (re)presenting his prominence within Hizbullah and within the conspiracy itself. The many pages devoted to Hizbullah and Syrian policies cast a shadow over the story and the judgment. The imagery of an overweening foreign power metaphorically strangling Hariri is never challenged through an alternative narrative about the reasons for Syria's continued presence or the support it garnered from many within Lebanon.[118] Instead, the subterfuge tactics of Syria and the hard-to-verify motivations of Hizbullah set up a discursive dichotomy shaping a 'narrative blind spot': between the honest, open and engaged politician embodied by Hariri and his vision for an 'independent' Lebanon versus a state still prey to the vagaries of foreign interests through sectarian armed groups that had once fuelled its protracted civil war.[119] While it was perfectly reasonable for the prosecution to develop this wider narrative of suspect political networks,

[113] *Ibid.*, para. 2, Separate Opinion Judge Braidy.
[114] *Ibid.*, paras 2–3.
[115] *Ibid.*, para. 11.
[116] *Ibid.*
[117] *Ibid.*, at 787.
[118] Most crucially, the Hizbullah's position here would point to the threat posed by Israel and that, in fact, Syrian troops and Hizbullah arms were necessary as a form of defence (Israel had occupied southern Lebanon from 1982 to 2000 and its forces remain in the 'disputed' Sheba'a farms as well as Syria's Golan Heights). When Hizbullah was engaged in domestic debates about the STL and its legitimacy, it presented lengthy dossiers on Israel's alleged links to Hariri's killing in televised presentations. As discussed in Burgis-Kasthala and Saouli, *supra* note 57.
[119] Sander, *supra* note 43, at 22.

the inability to challenge such an account in an *in absentia* trial radically undermines the legitimacy of the proceedings and the decision itself.[120] We have noted above how trials are set up to provide a forum where a range of narratives confront each other before the bench and its ultimate decision through judgment. The *Ayyash* trial proffered an array of documentary and witness evidence as contested by the prosecution, defence counsel and victim representative. Yet, throughout the proceedings, there was a crucial absence: none of the four accused were present. Instead, their court-appointed counsel sought to (re)present this absence. Any scope for even an incomplete alternative narrative from the accused themselves was impossible, especially in relation to the link between their political affiliations and criminal motives.

While proving motive was immaterial to its final determination, I suggest that the imagery of the accused's political connections as advanced by the prosecution and the victim representative and then largely reaffirmed by the Trial Chamber had a powerful narrative effect. First, this largely uncontested account helped to bolster the imagery of Hariri as a bona fide victim prey to violent foreign and domestic actors. Second, while the personalizing of Hariri and, to a lesser extent, the other victims could partly replace the absence of a personalized narrative of culpability from the accused, constructing an account about their (suspect) political sympathies partly revitalized them. This was particularly important as the overwhelming bulk of evidence pointing to Ayyash's guilt in the terrorist conspiracy was highly abstracted, and the de-personalized mobile phone data was devoid of any sense of its speakers or their speech. Pages and pages slowly build an account of how to link the registered private mobile phones and landline phone calls with a large number of calls made on 'burner phones' that are *ipso facto* linked to the surveillance operation. To provide some clarity, the Chamber reproduces the following table contained in the consolidated amended indictment as Figure 5.

Yet the Chamber concedes that, in fact, a 'cursory glance … shows just how difficult it is to unravel who was using the mobiles on each of the days pleaded on which surveillance connected with the assassination occurred'.[121] While there is a wealth of data at hand, neither the reader nor the Chamber itself can be certain of its implications. The main way in which the reader can gain some sense of the individual conspirators involved then is through their political sentiments, sentiments that are discursively framed as emanating from the murky depths of illegitimate violence. For Ralph Riachy, the STL's current vice president, writing in his academic capacity, it is the particular nature of the crime – terrorism – that justifies *in absentia* proceedings because

> unlike these latter crimes [that is, the ICL 'core crimes' of war crimes, genocide and crimes against humanity, terrorism], is more clandestine and complex, with the result that the perpetrators cannot readily be identified, and even if identified they can either not be readily arrested,

[120] Zakerhossein and De Brouwer, 'Diverse Approaches to Total and Partial *In Absentia* Trials by International Criminal Tribunals', 26 *Criminal Law Forum* (2015) 181, at 197, 209.

[121] *Ayyash et al.*, *supra* note 1, at 4275.

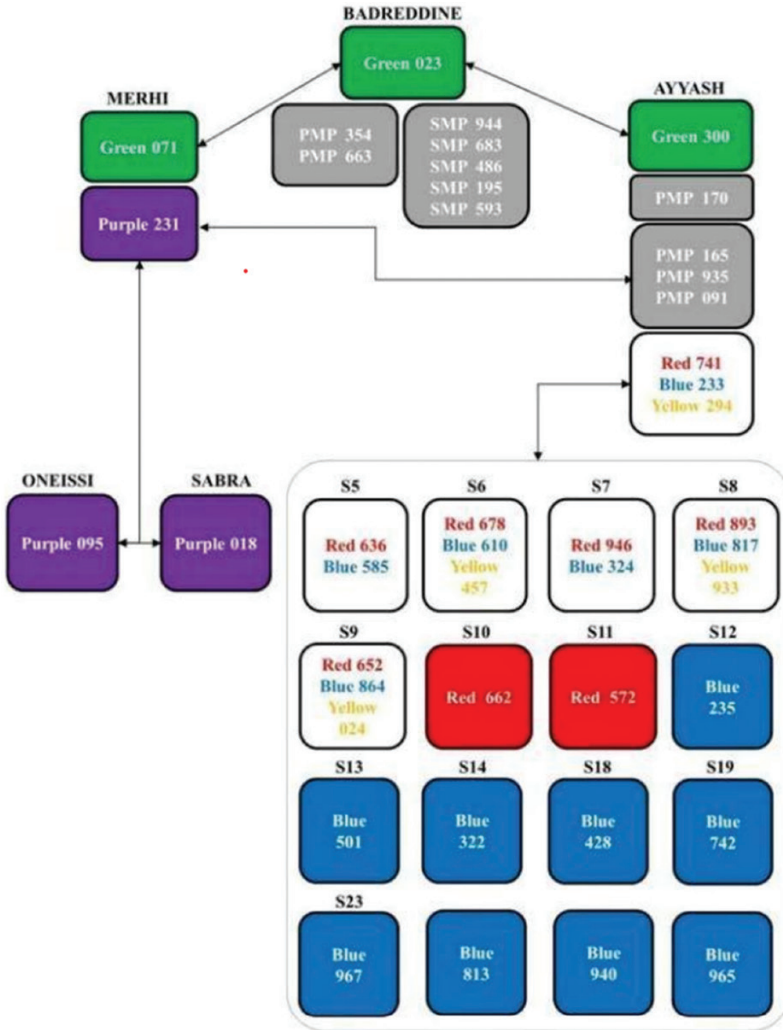

Figure 5: *A diagram from the amended consolidated indictment outlining the structure of the green network under the control of Badreddine, Merhi, and Ayyash. Ayyash et al., at p. 11.*

or the governments of the countries where they reside may not be easily persuaded to turn them over. These difficulties justify the practice of trying them *in absentia*.[122]

The STL has also offered a range of justifications for *in absentia* proceedings largely based on the need to realize justice for the victims in a timely manner.[123] If we approach the absence of the accused through a narrative lens, however, it is hard to read

[122] Riachy, 'Trials *in Absentia* in the Lebanese Judicial System and at the Special Tribunal for Lebanon: Challenge or Evolution?', 8 *JICJ* (2010) 1295, at 1298.

[123] Perhaps the best summarized version of the STL's justifications for its *in absentia* trial is found in its recent decision rejecting Ayyash's right to appeal. *Ayyash et al.*, Decision on Admissibility, *supra* note 30, para. 2.

the decision as a compelling, pluralized account of individualized guilt. The various devices deployed by the Trial Chamber to (re)present this absence fail to convince and to convict.

7 A Deluge of Data: (Re)inscribing the Presence of a Criminal Conspiracy in the Absence of the Accused

Unusually for an international criminal trial, almost half of the judgment is devoted to an excruciatingly detailed analysis of triangulated network mobile phone calls from November 2004 until Hariri's death. The Trial Chamber summarizes its findings as follows:

> On fourteen days between Thursday 11 November 2004 and Monday 14 February 2005, network mobiles 'followed' Mr Hariri's security detail. This showed an unequivocal pattern of the network mobiles shadowing Mr Hariri. On some of these days, and on others in the same period, network mobiles connected to cells providing coverage to locations relevant to Mr Hariri, such as Quraitem Palace [one of his residences]. Some of the surveillance, especially in the weeks before Mr Hariri's death, was clearly connected with the assassination. These network mobiles generally activated cells near Quraitem Palace when Mr Hariri was present there.[124]

Through its careful and sophisticated reconstruction of phone calls made between a set of six networks (red, grey, yellow, purple, green and blue) and the personal mobile phone calls of the five accused, the Chamber is able to delineate a highly sophisticated pattern of surveillance of Hariri that also included the purchase of the vehicle used to store and deliver the explosives, a Mitsubishi Canter.[125] There was a high degree of call activity in the days leading up to the attack, particularly on the morning of the blast itself. The Chamber follows the route of the Canter through CCTV footage, such as the grainy image captured in Figure 6.

Once the explosive charge is detonated by a (suicide) driver whose only remains are the unidentified teeth (re)presented in the judgment, as shown in Figure 7, none of the phones in the red network – the assassination team – was ever used again.[126]

The conspiracy had reached its conclusion.

Although it was only possible for the Trial Chamber to attribute guilt within these networks to one of the accused, Ayyash, the Chamber stresses that 'the only conclusion available from the totality of the evidence is that the network mobiles were engaged in surveillance of Mr Hariri in the months prior to the attack, and that a portion of it was preparatory work for his assassination'.[127] While the reader is thus

[124] *Ayyash et al.*, *supra* note 1, at 4264. For a sustained consideration on these points, see C.H. Wheeler, *The Right to Be Present at Trial in International Criminal Law* (2018).

[125] Especially as developed in Chapter XI. The Chamber also considered evidence in relation to a false claim of responsibility, as in Chapter XII. *Ayyash et al.*, *supra* note 1.

[126] *Ibid.*, at 4265–4266.

[127] *Ibid.*, at 4268.

Figure 6: *Extract from prosecution's chronology PowerPoint presentation, 13–16 February (in this frame, the detonation vehicle, a Mitsubishi Canter, is circled in red). Ayyash et al., at p. 417.*

Figure 7: *Photograph of recovered teeth, March 2005, Ayyash et al., at p. 469.*

left with a rather hollowed out account of the core of the conspiracy, the depiction of the evidence itself by the Chamber is beguiling for its seeming objectivity and irrefutability. This portion of the judgment – that is, half of its total – is filled with complex diagrams, maps, tables and tabulations setting out how the prosecution-led evidence

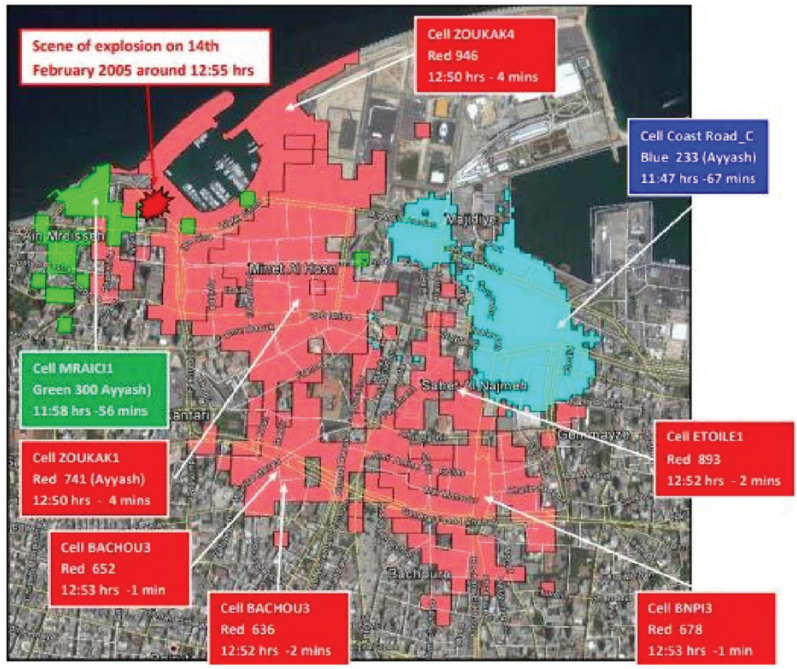

Figure 8: *Map from Mr. Philips' report 'Common Mission Phones?', detailing the call activity leading up to the attack (including Ayyash's green and blue phones). Ayyash et al., at p. 2180.*

built a picture of the mobile phone activity between the five accused, such as the aerial photograph of mobile phone usage in Figure 8. Such a portrayal contrasts with the chaos and confusion depicted in the judgment's account of the immediate period following the blast and local officials' haphazard approaches to evidence collection.[128] Here, instead, is a tribunal distanced from the debris, yet masterful in its handling of highly complex material. Such a discursive dissonance provides the tribunal with a legitimating rationale for overseeing a process that removed the evidence and the trial itself from the disarray of Lebanese soil.

Although it might seem that the neutral nature of the material meant that it could 'speak for itself', the degree of complexity entailed that this evidence had to be reframed and translated by experts,[129] Mr. Platt and Mr. Philips.[130] An '[e]xample of call data records in raw format' in Figure 9 presented by Mr. Phillips illustrates the impenetrability of the evidence at hand and the need for its lay and legal transformation.

According to Kamari Clarke and Kendall, it is best to view such material then not as 'an unmediated device for what transpired … [instead] these … [data] become sites for

[128] Perhaps most infamous was the use of bulldozers to remove the cars on the night of the attack. *Ayyash et al.*, *supra* note 1, at 1045–1047. On general investigatory incompetence, see *ibid.*, at 1069–1092.

[129] Clarke and Kendall, '"The Beauty … Is That It Speaks for Itself": Geospatial Materials as Evidentiary Matters', 23 *Law Text Culture* (2019) 91, at 107.

[130] *Ayyash et al.*, *supra* note 1, at 4276.

Figure 9: *Raw format of cell data records included in Mr. Philips' presentation, 'An Introduction to Call Site Analysis as Applied to GSM Networks'. Ayyash et al., at p. 524.*

critical reading – for reading *in* as much as *from*, of what should be present'.[131] Clarke and Kendall remind us that all forms of evidence emerge out of particular 'contextual conditions of production', whether as a witness statement, a bystander photograph or an expert report on mobile phone azimuths.[132] Furthermore, Eyal Weizman argues that forensic analysis has always been about more than presenting incontestable objects in court. Forensics 'is not only about scientific inquiry but also its associated rhetoric, about science as a tool for persuasion – the way in which a scientific investigation is presented, the techniques and technologies of demonstration, and the methods of theatricality, narrative and dramatization involved'.[133] Although the Chamber sought to present its reasoning in a stereotypically detached and scientific manner, it did so as a way to shore up the legitimacy of a culpability narrative devoid of the defendant himself.

8 How to Narrate a (National) Tragedy through ICL? Concluding Remarks

International criminal trials face an impossible task: to individuate responsibility within highly complex, politicized settings.[134] While the STL perhaps differs somewhat from other ICL trials for its narrower terrorist (rather than atrocity-based) lens, the STL was mindful of the far-reaching impact that the assassination caused: 'The attack was intended to resonate throughout Lebanon and in the region, and its intended effects were not just confined to Mr Hariri's supporters. Rather, the evidence of the political background to the attack shows that it was designed to destabilize Lebanon generally.'[135] Rendering judgment then in this instance was about more than determining culpability of four relatively ordinary men; the STL also provided its own reading of the political context of assassination. The Chamber crafted a narrative that

[131] Clarke and Kendall, *supra* note 129, at 111.

[132] *Ibid.*, at 113.

[133] Weizman, 'Forensic Architecture: Only the Criminal Can Solve the Crime', 184 *Radical Philosophy* (2010) 9, at 11–12.

[134] For Jain, '[t]rials for mass atrocity differ from trials for ordinary crimes in significant ways. The most important of these is that the conduct they prosecute is invariably collective in nature and intimately tied to broader social and political narratives of the imagined identity of a nation'. Jain, *supra* note 88, at 1181.

[135] *Ayyash et al.*, *supra* note 1, at 6340.

presented the STL's contribution as necessary and legitimate in bringing about conviction and concomitant repair.

Ultimately, in navigating a dense matrix of materials, the Trial Chamber constructed a narrative account that could only establish Ayyash's guilt beyond reasonable doubt. This has since been overturned with the Appeals Chamber's finding of culpability for Merhi and Oneissi. Yet, in spite of such legal determinations and the continued limbo of the four accused, the Chamber hinted at other actors throughout the decision. The Chamber gestured to forms of wider responsibility by recognizing its failure to determine who directed the red network mobiles – that is, who ordered the killing. Here, then, without pronouncing on motive, the Chamber nevertheless pointed to the central absence of its decision: not the co-accused in this *in absentia* trial but, rather, those for whom they were working and the 'real' masterminds of the assassination and of Lebanon's instability:

> The Trial Chamber does not believe that the assassination of the former Lebanese prime minister occurred in a vacuum, nor that it was organised by the six core users of the Red network. The extensive political and background evidence points to it being a political act directed by those whose activities Mr Hariri's were threatening. There is no evidence that Mr Ayyash or the other five core Red users fell into this category. The evidence is of their involvement in the conspiracy at least on 14 February 2005 and the immediate period leading to it, but the evidence does not establish affirmatively who directed them to murder Mr Hariri and thus eliminate him as a political opponent.[136]

This extract captures the contradictions faced by the Chamber straddling as it does the victim desire for pronouncing on a whole 'truth' that could inform broader reparatory functions versus its narrow remit as grounded in domestic criminal law. It recognizes the many competing versions of truth at play in this judicialized murder mystery. In a highly – and unusual – self-reflexive section towards the end of the decision, the Chamber notes:

> The Trial Chamber is not a truth and reconciliation commission or a commission of inquiry. It applies rules of evidence … to admit evidence, and also to exclude it when required for a fair trial. These Rules reflect the highest standard of international criminal procedure and must be interpreted in a manner consonant with the Statute and the international standards on human rights. The Trial Chamber, unlike fact-finding missions or commissions of inquiry, is bound by the Statute and international human rights law, to ensure that the Accused's rights to a fair trial are respected. It is not therefore equipped to establish an 'objective truth' – behind what is pleaded in an indictment and is proved by the evidence before it – if in fact an 'objective truth' exists.

Here, the Chamber must settle with a story and a finding that is incomplete and at least a little unconvincing. Ultimately, future uptake of the decision is largely beyond the control of the Chamber itself, especially as it is speaking to multiple and disparate audiences. At best, the decision might serve as a resource to inform dialogue and discussion within Lebanon about how to apportion responsibility within its fragile

[136] *Ibid.*, at 6483.

political system. At worst, it will further destabilize the Lebanese polity and render any positive reading of ICJ suspect and unconvincing. Here, I have suggested that approaching the decision through the narrative device of absence and presence is of value for understanding the limits and limitations of the STL as well as international criminal trials in general.