



CHATHAM HOUSE

Chatham House, 10 St James's Square, London SW1Y 4LE

T: +44 (0)20 7957 5700 E: [contact@chathamhouse.org](mailto:contact@chathamhouse.org)

F: +44 (0)20 7957 5710 [www.chathamhouse.org](http://www.chathamhouse.org)

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## Meeting Summary: International Law and Middle East Programme

# Transitional Justice and the Arab Spring

Rapporteur: Hemi Mistry

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## INTRODUCTION

2011 will be remembered for the revolutionary wave that swept across the Middle East and North Africa. However, while regimes and leaders may have been unseated, in each case the process of determining what they will be replaced by is only just beginning. Although each situation of which the 'Arab Spring' is comprised represents the intersection of a unique set of different factors, common to all the situations are the grave human rights and other violations committed by the former regimes during their hold on power. The role of transitional justice is to enable these societies to determine how best to address the wrongs of the past, when building for the future.

This roundtable was convened to discuss the role of transitional justice mechanisms within these societies, and in particular, to cast light upon the role of *international* mechanisms of justice and the role of international actors in each of these situations. In particular, the discussion focused on whether the Arab Spring has changed the perception of international justice across the region. Looking to the future, discussants examined some of the lessons that are being learned from the events in the region to date, and sought to elaborate upon the factors that could help guide future international justice initiatives when seeking to assist societies in transition.

The participants included representatives of NGOs, embassies, academics and practising lawyers.

The meeting was held under the Chatham House Rule.

## SUMMARY OF MEETING AND DISCUSSION

Transitional justice, broadly speaking, denotes the various policies and strategies implemented by societies in transition that are aimed at addressing gross human rights violations committed in a specific context and at a specific time. Invariably, these mechanisms are established to address wrongs perpetrated by former regimes, typically dictatorial or authoritarian regimes and leaders who have been deposed and are in the process of being replaced. The periods of transition include the replacement of one order with another; in many cases they involve the replacement of all state institutions. Normally these societies are transitioning into democracy. However, this is not necessarily the case – the transitions being experienced across the Middle East and North Africa are not certain, nor are they complete.

### Objectives

The objectives for the adoption of mechanisms of transitional justice are manifold and to a large degree depend on the characteristics of the transition and society in question. Ultimately, transitional justice aims to facilitate the process of societal reconciliation: to address the question of ‘how can one live with one’s neighbour?’ when that neighbour may have been responsible for, or complicit in, often egregious acts of abuse or patterns of violence and oppression under the former regime. Accordingly, a key aspect of transitional justice is accountability: ensuring that those responsible for the wrongs and harms of the past are held accountable for their actions, in accordance with the rule of law. Justice must be brought to the situation, rather than individual acts of vengeance.

Another function of transitional justice is one of truth-seeking: to establish an acceptable historical record of what took place during the previous period, the harm suffered, and committed by, individuals and collective society; and to acknowledge those injustices. Another objective is to restore public trust in the apparatus of the state, by institutional reform and the establishment of the rule of law. In this regard, the two most important institutions of concern are the security services and the justice system including the judiciary.

The concept of transitional justice was historically developed within the paradigm of international human rights: the pursuit of justice for egregious violations of human rights, often of a systematic nature. However, as it emerged from the discussion, there is nothing to preclude transitional justice from addressing the commission of other crimes, such as economic crimes and corruption. The transitional justice strategies adopted in any given

situation depend on the nature of the injustices that the transitional society in question perceives to have been inflicted by the former regime. Corruption is often enmeshed with human rights abuses.

Although the pursuit of these objectives through mechanisms of transitional justice could potentially shape the nature and direction of the transition itself, it is important that transitional justice measures are not adopted before the emergence of a consensus as to the form of political settlement that will be adopted.

### **Mechanisms for transitional justice: an overview**

Mechanisms through which transitional justice can be pursued can take on a number of judicial and non-judicial forms; some may require international involvement, and some do not.

As regards judicial institutions, the first mechanism to note is the system of national courts, either civil or criminal, through which accountability for violations of national law can be determined and prosecuted, and redress sought. However, many societies emerging from potentially decades of authoritarian rule may not have the capacity to ensure that the judicial process will dispense fair and impartial justice. The 'old order' may have infiltrated all organs of government, including the judiciary and the law enforcement agencies. Similarly, a legal culture or culture of accountability may not exist, such that the circumstances are not conducive to the conduct of trials in accordance with internationally recognized standards of due process. Equally, it may be that within the national judicial system it is not possible to ensure that the rights of the accused are protected, and that any prosecutions may constitute little more than victor's justice. Finally, transitional societies may simply not have the resources, infrastructure and capacity to respond to situations of potential mass criminality, or within a post-conflict society which follows severe destruction.

In view of the potential shortfalls of national institutions, it can fall to the 'international community', in its many forms, to provide judicial assistance. As such, the second judicial mechanism to note is the International Criminal Court (ICC), which has jurisdiction over the crimes of genocide, crimes against humanity and war crimes, when national courts are either unwilling or genuinely unable to deal with the cases. Since transitional situations often follow periods of widespread or systematic human rights abuses (for the purposes of crimes against humanity), or periods of armed conflict (for the purposes of war crimes), this could be an appropriate mechanism to pursue.

However, the jurisdiction of the Court is limited. It can only exercise jurisdiction over acts committed on the territory of a State that has ratified the Rome Statute of the ICC or has otherwise accepted its jurisdiction, or over nationals of such a State. The majority of Middle Eastern countries have not acceded to the Rome Statute.<sup>1</sup> The only other way in which the Court can be vested with jurisdiction is if the UN Security Council has made a referral to the Court under its Chapter VII powers under the UN Charter and in accordance with Article 13(b) of the Rome Statute. To date, the Security Council has made two such referrals, the first being the 2005 referral of the situation in Darfur, western Sudan,<sup>2</sup> and the second the 2011 referral of the situation in Libya.<sup>3</sup> The politics of referrals to the ICC by the Security Council are sometimes criticized.

Another judicial mechanism available in the transitional justice context is constituted by the existence of *internationalized* tribunals, such as the Special Tribunal for Lebanon (STL). These tribunals are established by agreement between the Secretary General of the UN and the country concerned; in contrast to the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), the internationalized tribunals are not established by the Security Council.<sup>4</sup> Such tribunals either form part of the national judicial system, or are set up independently of both the international and national judicial systems.

Although the ICTY and ICTR may provide a model for an alternative international judicial mechanism, in the light of the establishment of the ICC with the power to accept referrals by the Security Council and for other reasons, it is suggested that it is unlikely that this model will be replicated in the future.

Non-judicial mechanisms through which to pursue transitional justice can include, but are by no means limited to, investigative or truth-seeking processes such as commissions of enquiry, truth commissions and truth and reconciliation commissions. As their names suggest, these are designed to determine and establish a historical record of what occurred throughout the

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<sup>1</sup> However, it is noteworthy that one of the first measures adopted by the interim government in Tunisia after the fall of President Ben Ali was to ratify the Rome Statute.

<sup>2</sup> UN SC Res 1593, S/RES/1593 (2005).

<sup>3</sup> UN SC Res 1970, S/RES/1970 (2011).

<sup>4</sup> In the case of the Special Tribunal for Lebanon, established to investigate and prosecute those accused of the assassination of the Lebanese Prime Minister Rafiq Hariri in 2005, and related crimes, Security Council involvement was required in order to bring into effect the bilateral agreement between the Lebanese government and the Secretary General.

previous regime, and during the period of transition. Such processes can be designed to provide a platform for victims to speak out about their experiences and the harms they endured – for the wrongs and crimes of the past to be heard and acknowledged. The establishment of a historical record and the memorialization of the past are important aspects of enabling a society to come to terms with its past and to build a reconciled society for the future.

One strategy to effect institutional reform is the process of lustration – the vetting and removal of those in positions of government and the civil service who had been members of the old regime, or who were responsible for crimes committed during the period in question. A recent and extreme example of this is the so-called ‘de-Ba’athification’ of Iraq following the removal of Saddam Hussein’s regime from power in the second Gulf War. In contrast, the situation in Lebanon led to recourse being made to international assistance, in the form of the STL, in the light of the extent of Syrian infiltration of Lebanese authorities and the common perception that those involved in the assassination were connected to the Syrian establishment.

### **Fundamental principles**

In view of the above objectives, and using mechanisms such as those outlined, the determination and implementation of an appropriate transitional justice policy in a given situation must be governed by two key principles: consultation and attention to the needs of the particular society.

It is imperative that transitional justice policy should be derived from a process of consultation with the society in transition; indeed, it was asserted that the process leading to the adoption of a transitional justice measure can be as important as the end result. As became apparent throughout the discussion, consultation is necessary to ensure that the vision of justice pursued through the utilization of specific transitional justice measures accords with the vision of justice as understood by the affected society, provided that this complies with international standards for the rule of law and human rights. Accordingly, consultation processes can assist in determining the temporal period that will be the subject of scrutiny by transitional justice mechanisms, and which kind of crimes or harms will be the focus of attention. Consultation will identify who should be subject to transitional justice mechanisms and, importantly, the extent to which international assistance or intervention is desired and required. Finally, it was argued that such

consultation can help to determine when it is appropriate to begin to undertake measures of a transitional justice nature.

The events of the Arab Spring and the responses to those events, both internally within the conflict-afflicted societies and from the multiplicity of actors comprising the 'international community', demonstrate the need for consultation and process to assist in addressing those issues identified as necessary when developing transitional justice policy. In particular, when considering the role of international actors and mechanisms of international justice, participants discussed the developing trends in transitional justice, the contribution that the Arab Spring could make to the field of transitional justice, and lessons that could be and are being learned from experience to date.

The requirement to pay attention to the needs of different countries leads to a rejection of a 'cookie-cutter' or checklist approach to transitional justice; some international actors appear to come in with a template which they apply to each situation rather than maintaining focus upon the needs of each particular society.

### **The Arab Spring and transitional justice**

When considering any transitional society, not least each of those that comprise the 'Arab Spring', it is crucial to remember that each situation represents a unique set of circumstances requiring a different approach to transitional justice. Accordingly, the discussion focused first upon the transitional justice context within each country, before expanding upon a number of themes that emerge from all or a number of those situations. Included in this discussion was the Lebanese experience of the STL; it provides a useful counterpoint against which to compare the evolution of attitudes towards international justice mechanisms in the region over recent years.

#### *Lebanon*

The Lebanese experience involves many of the traditional debates that come into play when determining the policy to adopt in post-conflict and transitional societies: the compatibility of law and justice, namely whether it is possible to accept the outcome of the legal process even when this is not considered to accord with justice as understood; and the compatibility of justice with reconciliation, in the sense that it is questioned whether 'brushing things under the carpet' is more conducive to lasting peace and reconciliation than pursuing truth-seeking initiatives that may be seen as 'reopening old wounds'.

It was noted that Lebanon has a history of not addressing past wrongs, whereas the international aspect of its own measure of transitional justice – the Special Tribunal for Lebanon – meant that, once set in motion, the process could not be stopped, even if internal actors, including victims, no longer wanted to pursue such measures.

In this context, the deeply political element in the involvement of international actors in such ostensibly internal situations was also noted, in terms both of international politics and of the internal political dynamic, with the former feeding into the latter. Whereas internal advocates are likely to stress the independence of the international Tribunal, opponents are likely to conceive of the Tribunal as international interference in internal affairs, and as being a manifestation of the agendas of external powers.

In reviewing attitudes towards the STL within Lebanon, it was remarked that, increasingly, many of the original advocates of the Tribunal are now starting to question it. Whereas it was once seen as a means for defusing internal political tension to provide a degree of stability, in the absence of any arrests people are beginning to question what, if anything, it will achieve. Yet the Tribunal is still of political utility; it enables emphasis to be placed upon individual responsibility, rather than collective responsibility, in order to alleviate sectarian tension; it enables the government to continue exercising its functions without the question of the assassination hanging over it and impairing its functioning, since that question is left to the Tribunal to resolve; and it has also allowed normal relations to be resumed between the Lebanese and Syrian governments.

### *Tunisia*

Tunisia was held up as the ‘classic’ transitional justice scenario – there has been a complete regime change, with the establishment of newly elected bodies, including a ministry for human rights and the enactment of a basic law that recognizes the need for the adoption of transitional justice mechanisms. Accordingly, there appears to be a political will to carry out transitional justice.

Although in the immediate aftermath of the regime change there were a number of hastily conducted trials of questionable merit, it was suggested that the approach taken by Tunisia towards transitional justice is a healthy one. Few hasty measures have been taken, and it seems that a process of consultation and engagement is under way in order to identify ways in which it can be possible to examine Ben Ali’s regime as a whole, rather than in regard to specific crimes or for a limited temporal period. Importantly, in tandem with the development of a strategy for transitional justice, there is continuing

discourse as to the nature of the political settlement and the extent to which measures of lustration are necessary. For instance, there is currently a debate as to how many members of the former single party should be permitted to stand in future elections.

The initial transitional justice measures implemented within Tunisia demonstrate the risks of acting too quickly. The conduct of trials in the absence of any prosecutorial strategy meant that, for instance, Ben Ali was tried and sentenced *in absentia* for relatively small crimes such as possession of foreign currency without appropriate authorizations, and the possession of illegal substances, rather than for more substantial crimes that address the main issues of the past – such as torture and economic crimes.

#### *Morocco*

Morocco represents a particularly interesting transitional justice experience, in that measures and mechanisms associated with transitional justice have been adopted, but without the actual transition, or change. The Moroccan regime appears to have taken the initiative to enact measures of reform and to address past human rights violations, through initiatives such as a truth commission, and it did so before the onset of the ‘Arab Spring’.

However, questions of credibility of the measures remain; although not as extensive as under the previous monarch, human rights abuses still continue under the present King. Accordingly, there is a question about the extent to which the adoption of transitional justice mechanisms alone can represent a genuine break from the past.

#### *Libya*

The transitional justice mechanisms adopted to date were done without appropriate consultation with local actors. Although the referral of the situation in Libya to the ICC by the Security Council while the conflict was ongoing was with the agreement of the interim authorities, the subsequent tension between the desire of the National Transitional Council (NTC) to try Saif Al-Gaddafi domestically and its obligation to hand him to the ICC pursuant to the arrest warrant highlights a number of challenges facing international justice mechanisms. The ICC referral was made pursuant to the Security Council’s responsibility to maintain international peace and security under Chapter VII of the UN Charter, and can be said to have been part of the ‘responsibility to protect’; as such, the jurisdiction of the Court over the situation was triggered, not in the post-conflict/transitional period, but rather as a mechanism to advance peace. However, this sits uncomfortably with the requirements of

consultation and process with the affected society from the perspective of transitional justice. The experience demonstrates again the role of international institutions within internal political dynamics.

### *Egypt*

In contrast to Tunisia and Libya, the revolution in Egypt is only partly complete. Despite the ousting of President Mubarak from office, the old order is very much represented by the Egyptian military, which appears reluctant to relinquish power.

The handful of trials completed and under way, including that of President Mubarak, although spectacular, lack credibility. These trials lack genuine judicial process in accordance with the basic international standards of due process, investigation and prosecution.

Whereas in Tunisia efforts are being made to explore possible ways to examine the entirety of the Ben Ali regime, in Egypt, perhaps in the light of the military's continuing role in government, there appears to be only appetite for investigations into events *during* the period of protests that led to Mubarak's downfall, and crimes specifically attributable to Mubarak and his family, rather than a more comprehensive enquiry into the broader regime.

However, the situation in Egypt, along with that in Tunisia and elsewhere, could make an innovative contribution to the understanding of transitional justice. In Egypt in particular, the entanglement between human rights violations and economic crimes was particularly strong; for instance, corrupt revenues were being used to fund oppressive security forces. It was suggested that the Egyptian Army's role in the domestic economy was something that needs to be exposed and understood, and this could be a particular objective of transitional justice in Egypt once regime change is more complete.

Although there has been no expressed desire to see international intervention from the perspective of human rights, either through the ICC or otherwise, any resistance to international assistance appears to come from the remaining establishment belonging to the old order. Indeed, the new Egypt has expressed the intention to join the ICC. However, there has been a demand for international assistance, in the form of the cooperation of international financial institutions, in the investigation of economic crimes committed under the Mubarak regime.

### *Bahrain*

In Bahrain, as in Morocco, attempts have been made by the ruling monarchy to initiate what may be considered as transitional justice processes, without any kind of regime change or revolution. Although the 'independent international commission of enquiry' appointed by the King to look into the 2011 violence did make significant findings of serious human rights violations, the failure, or at least inability, of the commission to identify any perpetrators or to attribute responsibility undermined the overall impact of the enquiry.

#### *Yemen*

In Yemen, as in Egypt, the process of regime change is still under way. Although President Saleh has resigned and has left the country, he remains very influential through his aides and family members, such that his resignation has not translated into a radical shift in the balance of power in Yemen.

The transitional justice mechanisms adopted in Yemen do not appear to be the product of a process of consultation, and once again hint at the checklist mentality towards transitional justice. Indeed, it was observed that Yemen's law establishing a truth commission seems to be an exact replica of Morocco's royal decree establishing the Moroccan truth commission, despite the situations being fundamentally different.

The negotiation of the immunity deal for President Saleh by the GCC demonstrates the reactionary nature of responses to fluid situations. While the referral and the immunity deal may have been adopted with a view to procuring the cessation of violence, it then falls to the transitional society to deal with the longer-term implications of those measures.

### **Thematic issues arising from the Arab Spring**

#### *Economic crimes*

Discussion included the role of transitional justice mechanisms to address economic and financial criminality, a characteristic that was common to a number of the 'Arab Spring' societies. Dictators and security institutions have often used accusations of economic crimes as instruments of control and have involved opponents in economic crimes in order to manipulate them. Such manipulation can also be used in the transition period.

Although transitional justice has traditionally focused upon human rights abuses of former regimes, economic abuses should not be neglected. A precedent for the inclusion of economic crimes in transitional justice can be

found in the Peruvian approach to transitional justice in the 1980s, when the former president was initially prosecuted for corruption, and the focus later turned to the human rights abuses of his regime. In the context of the Arab Spring, it was suggested that the degree of mobilization to demand change within a number of the different situations would not have occurred without the revelations of corruption and financial crimes that had been made in recent years, notably via Wikileaks; and in the case of Tunisia, the publication of a handful of books documenting the extent of the economic criminality of the now former regime. Although the human rights abuses of the former regimes weighed heavily on protest movements across the region, the abuses had long been documented and well publicized to little or no avail.

Yet given the systemic nature of corruption in many of the pre-revolution societies, caution must be exercised when establishing transitional justice mechanisms to address economic crime in the absence of a political consensus as to what the future society and settlement will be. For example, it was stated that one of the key challenges holding up the future economic development of Egypt is precisely the lack of any kind of political consensus as to how far economic accountability should be pushed; whether, for instance, it should be reserved for the highest level of crimes, focusing upon Mubarak and his family, or whether it should also include anyone who engaged in some form of corruption to get by when that was the system that operated. To proceed with transitional justice mechanisms ahead of the emergence of such a consensus can risk the politicization of those mechanisms and strategies.

The recovery of assets belonging to former rulers raises the question of how they should be distributed and allocated. Participants drew on the situation arising from the Philippines and the competing claims faced by Swiss authorities to illustrate the difficulties that the investigation of economic crimes in a global financial order can present. In the case of Switzerland, it was faced on one hand with claims to assets within Swiss jurisdiction by the Filipino government following an investigation into corruption, and on the other hand with competing claims for the same assets deriving from civil litigation in US courts. Thus claims brought by individual victims were pitted against claims brought by the new government for the same assets.

The complicity of foreign institutions and companies in economic crimes inevitably results in some degree of internationalization of the justice strategies adopted by transitional societies. Pursuing international institutions, foreign companies and other international or transnational actors requires the cooperation of the international community, in various forms, to facilitate

investigations and, where appropriate, prosecutions, and also jurisdiction in order to recover assets.

### *Timing*

Another important dimension to the debate was the question of timing in regard to when transitional justice mechanisms should be adopted. It was observed that in the aftermath of decades of violence and oppression, culminating in what is often a particularly brutal period of revolution, emotions are running particularly high – with the risk of revenge-seeking rather than transitional justice.

It was considered important that time is taken before the adoption of transitional justice policies for a number of reasons, not least because it creates the space for the necessary consultation and process. However, at the same time it was stressed that there are a number of imperatives that would benefit from the expeditious initiation of transitional justice measures. For example, the investigation of all crimes, whether they be of an economic or a human rights nature, compels the timely conduct of investigations and proceedings, in order to preserve evidence, to obtain witness statements and victim statements, to apprehend the accused and, in the case of economic crimes, to promptly trace and seize assets to prevent wrong-doers from continuing to benefit from their actions. Fair trials require promptness; delayed investigations can endanger the adherence of any transitional justice measures to the principles of the rule of law. Equally, the need for ‘closure’ in order for transitional societies to move on and the need to avoid paralysis also lend support to the timely adoption of transitional justice mechanisms.

### *Sequencing of transitional justice mechanisms*

Closely related to the timing of transitional justice measures is the question of sequencing. The approach adopted in post-Hussein Iraq was to focus attention immediately on the need for trials, and the establishment of the Iraq Special Tribunal. There were wholly unrealistic demands that the criminal justice system would be the appropriate mechanism to respond to every single perpetrator of wrong-doing under the former regime. Instead, it was submitted that in such situations of mass criminality, a more holistic approach, perhaps focusing upon truth-seeking processes, is necessary.

Related to this, discussants addressed questions related to the relationship between individual responsibility and collective responsibility in situations of mass or systemic criminality and the impact of decisions related to these themes on the choice of transitional justice mechanisms adopted, and the

identity of the appropriate actors to implement such measures. Once more it was emphasized that such decisions must be made on a case-by-case basis, depending upon the circumstances of each context. It was suggested that systems that facilitate the telling of a collective narrative are important both to assist individuals to reconcile themselves with wider society, and for wider societal reconciliation.

Finally, on this note, participants were reminded of the limits of criminal justice to address situations of mass atrocity and mass criminality. It was noted that criminal law is designed for when violations of the law are the exception to the norm, whereas in many instances presented by the Arab Spring, violations *were* the norm. In such cases, the utility of the legal process, or at least the criminal justice system, is limited. Building upon previous comments regarding the differences between law and justice, it was suggested that the law should not attempt to deal with all the problems facing transitional societies, since this risks causing further problems and sowing the seeds of greater social division.

*The role of the international community*

There is a new and increasingly prominent actor in the field of transitional justice: the international community, in any one of its manifestations. This includes, and extends beyond, international justice mechanisms (such as the ICC or internationalized tribunals) to include, for example, the intervention of NGOs, intergovernmental organizations and the unilateral actions of individual states or coalitions. In the absence of any coherence or consistency between such actors and the advice they provide and measures they implement, the net effect of this proliferation of actors can be unhelpful. The proliferation of international voices can often mean that attention is diverted away from the specific situation in question and its characteristics, leading to the development of the 'template of transitional justice'. The essence of transitional justice is 'the local', yet increasingly we are seeing the standardization of transitional justice.

Considering the question of when the international community, in its various forms, *should* or *could* provide transitional justice assistance, it was stressed, on the basis of experiences in Iraq and Kosovo, and potentially Libya, that the international community does harm when transitional justice regimes are imposed on post-conflict societies without any consideration of the existing justice system. It can be disastrous to presume that the justice system goes to 'ground zero' in the aftermath of revolution, regime change or conflict;

whatever actions the international community takes, it must do so after careful consideration of how those measures will fit within existing structures.

### *Credibility*

It was observed that in the context of the Arab Spring, the historical failure of Western discourse to address human rights in the region has a significant impact on the legitimacy of any human rights enterprise in the present, and will affect which actors will be appropriate and welcome to provide assistance to the various transitional societies. It was remarked that these transitional societies have long discerned which actors were on the right and wrong sides of history; so while it was true that many European *states* lost a lot of credibility, the 'good actors', the solidarity providers (including but not limited to civil society) are well known to those pursuing transitional justice locally. It was therefore suggested that at present the question is more one of *who* provides assistance and advice, and *how* it is presented, rather than the substantive content of that advice and assistance.

Questions of credibility were also intertwined with those of timing and sequencing. When considering the 'past' that should be investigated, it was observed that if similar kinds of criminality or wrongdoing continue to occur under the interim or new regime but the focus of the transitional justice mechanisms is limited to the old order, then this can affect the legitimacy of the whole transitional justice enterprise in that situation. Outside the Arab Spring context, an example was provided of such a scenario: torture or other serious human rights violations were committed by both the former Ba'athist regime and by the US and UK forces and administration after the fall of the old regime in Iraq.

Credibility can have another angle. The initiation of transitional justice measures by a new or interim regime as soon as the old regime falls can lend important credibility to the new order through its invocation of the rule of law. It was observed, with caution, that in a number of situations across the Middle East and North Africa, transitional justice was almost being used as a metric for the success of the revolution being judged. The effect of this was that in some cases there was a tendency to rush into the adoption of transitional justice measures ahead of the emergence of any consensus on a political settlement.

### *Changing perceptions: The Arab Spring and international justice*

The question of legitimacy is fundamental to any legal order, not least the international legal order. Before the Arab Spring, it was suggested, there was

a widespread perception throughout the region that international criminal justice was nothing more than an instrument of international politics, or more specifically, US policy. The selectivity with which international criminal justice was pursued by the Security Council, as illustrated by the referral of the situation in Darfur while no measures were taken with regard to Israeli violations of international law, had a serious impact upon the credibility of the system as a whole.

However, it was suggested that there has been a change of mood in the Arab region; the acceptance of, indeed demand or even expectation for, international assistance for justice in Libya, Syria and Yemen, as well as the NATO military intervention in Libya, may suggest that the post-colonial suspicion of international intervention as little more than Western imperialism is weakening. However, it was also emphasized that in many of these instances calls for international assistance were strongest when it was necessary in order to advance the internal political struggle during the period of revolution. In the post-conflict period, the appetite for the continuing involvement of the international community through international justice mechanisms is markedly weakened. Although it may be accepted that international justice is a tool that is no longer the sole preserve of 'the West' (or the US), the instrumentalist view of international justice within the region remains.

## Conclusions

When considering questions of transitional justice, it is important to keep the objectives of transitional justice at the forefront of attention. By its very nature, transitional justice should not be a rigid concept; what it means, and substantively involves, varies depending on the circumstances of each transitional society. When formulating transitional justice *policy*, the circumstances and needs of the society concerned should be of paramount concern.

The international community, in its various forms, can contribute to the transitional justice process; but this must be done in conjunction with consultation with local actors. The proliferation of international actors involved in transitional justice is a possible cause for concern, since they may risk losing sight of the fundamental objectives.

The Arab Spring has the potential to be a source of innovation in the field of transitional justice, by also bringing into focus accountability also for economic and financial wrong-doing.