

Transitional Justice: Lessons from Northern Ireland and Their Application to Achieving Peace in the Middle East

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I. INTRODUCTION

Peace in the Middle East has long been sought but thus far remains unattainable. A recent effort to broker peace to end the Israel-Palestine conflict was laid out by the Trump administration, which released a peace proposal in January 2020.¹ This proposal envisioned a two-state solution for peace that would limit a future Palestinian state's right to self-determination by maintaining current Israeli security over Palestinian territories and declaring Israeli sovereignty over occupied areas of the West Bank.² The Trump administration believed this plan could lead to a peace agreement that ends the Israeli-Palestinian conflict, but Palestinians are outraged by the proposal, and analysts are skeptical.³

Tareq Baconi, an Israel-Palestine analyst for the International Crisis Group, criticized the proposal as a recycling of past failed peace efforts.⁴ At its core, the deal is premised on the misguided belief that economic incentives could compel Palestinians to relinquish their political demands.⁵ The Trump proposal offers nothing new to the Middle East's

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1. See generally WHITE HOUSE, PEACE TO PROSPERITY: A VISION TO IMPROVE THE LIVES OF THE PALESTINIAN AND ISRAELI PEOPLE (2020), available at <https://www.whitehouse.gov/wp-content/uploads/2020/01/Peace-to-Prosperity-0120.pdf> (last visited Mar. 21, 2020). Another development, The Abraham Accords, will be discussed later in the paper.

2. Merrit Kennedy, *Trump Says His Mideast Peace Plan Provides a 'Realistic Two-State Solution'*, NPR (Jan. 28, 2020), available at <https://www.npr.org/2020/01/28/800296507/white-house-to-unveil-mideast-peace-plan-despite-palestinian-rejection> (last visited Mar. 21, 2020).

3. *Id.*

4. *Id.*

5. Rami Ayyub, *As Trump Team Prepares Mideast Plan, Palestinians Face Financial Crisis*, REUTERS (May 1, 2019), available at <https://www.reuters.com/article/us-palestinians-usa-money/as-trump-team-prepares-mideast-plan-palestinians-face-financial-crisis-idUSKCN1S73EG> (last visited Mar. 22, 2020).

peace process; it is an extension of decades of preexisting Israeli policy.⁶ Establishing enduring peace that ends the intractable Israel-Palestine conflict requires more than repackaging old, failed solutions.

The Israel-Palestine conflict is one of the world's most persistent, enduring conflicts.⁷ In its most basic form, the conflict's violent, intractable history is centered around the story of two self-determination movements, wherein Jewish Zionists and Palestinian Nationalists compete for control over a shared land.⁸ The structure of this conflict and its history closely mirrors the Troubles in Northern Ireland. Northern Ireland was torn apart by sectarian violence from 1968-1998.⁹ On one side of the conflict were mostly Protestant unionists who sought to maintain colonial ties with Britain.¹⁰ Their adversaries were mainly Catholic nationalists, often referred to as Republicans, who wanted a unified, independent Irish Republic.¹¹

These conflicts are analogous; they originate from self-determination movements over contested land. Since 1998, however, Northern Ireland has emerged as a post-conflict society. Following a formal cease-fire lamented in the Good Friday Agreement, the peace process was decentralized and implemented locally within affected communities. Northern Ireland has not coped with the past by utilizing formal transitional justice initiatives like truth commissions or wartime tribunals. Instead, a network of non-traditional measures, implemented at the local level, are responsible for Northern Ireland's current state of peace.

To better understand the process of achieving peace in the Middle East, this Note will use Northern Ireland as a case study. It will begin by exploring the genealogy and meaning of transitional justice as a legal discipline. This Note will then move through a historical recount of the

6. Yesuda Shaul, *Trump's Middle East Peace Plan Isn't New. It Plagiarized a 40-year-old Israeli Initiative*, FOREIGN POL'Y (Feb. 11, 2020), available at <https://foreignpolicy.com/2020/02/11/trump-middle-east-peace-plan-isnt-new-israeli-palestinian-drobles/> (last visited Mar. 22, 2020).

7. Zack Beauchamp, *Everything You Need to Know About Israel-Palestine*, VOX (Nov. 20, 2018), available at <https://www.vox.com/2018/11/20/18079996/israel-palestine-conflict-guide-explainer> (last visited Mar. 22, 2020).

8. *Id.*

9. See generally *History of the Northern Ireland Conflict*, HISTORY.COM, available at <https://www.history.co.uk/history-of-the-northern-ireland-conflict> (last visited Mar. 22, 2020).

10. Alan Cowell, *50 Years Later: Troubles Still Cast 'Huge Shadow' Over Northern Ireland*, N.Y. TIMES (Oct. 4, 2018), available at <https://www.nytimes.com/2018/10/04/world/europe/northern-ireland-troubles.html> (last visited Mar. 22, 2020).

11. *Id.*

Israel-Palestine conflict and the Troubles in Northern Ireland. Following this historical recount, it will analyze the local transitional justice methods utilized by Northern Ireland and apply them to the Israel-Palestine conflict. This Note aims to explore the alternative transitional justice processes and instruments that can help establish peace in the Middle East. In conclusion, this Note will propose that imposed political structures that lament relationships of interdependence between former adversaries are needed to end intractable conflicts. Following the negotiation of a treaty that establishes this equitable relationship, local transitional justice initiatives will enable a shared identity to emerge that will maintain enduring regional peace.

II. TRANSITIONAL JUSTICE

Transitional justice is a term of recent origin.¹² The term was first popularized in 1995 by the publication of *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*.¹³ The emerging field of study asks the most difficult questions in post-conflict societies about the intersection of law and politics.¹⁴ Consensus surrounding what disciplines converge to form transitional justice varies.¹⁵ However, it is generally accepted that, at its foundation, the field attempts to deal with the past violence faced by societies currently undergoing or attempting to undergo a political, social, and legal transition from mass atrocity.¹⁶ The process incorporates several legal, political, and cultural tools.¹⁷

Transitional justice is a label used to describe justice initiatives taken during periods of political transition.¹⁸ Initially, these initiatives focused on the international community and individual countries' legal responses to acts of wrongdoing that accompanied periods of political transition.¹⁹ Such legal response is rooted, foremost, in accountability and redress for victims.²⁰ The goal of the institutions implemented during times of

12. GERALD GAHIMA, *TRANSITIONAL JUSTICE IN RWANDA: ACCOUNTABILITY FOR ATROCITY I* (Routledge, 1st ed. 2013).

13. *Id.*

14. *What is Transitional Justice?*, ICTJ, available at <https://www.ictj.org/about/transitional-justice> (last visited Dec. 15, 2020) [hereinafter ICTJ].

15. Christine Bell, *Transitional Justice, Interdisciplinary and the State of the 'Field' or 'Non-Field'*, 3 INT'L J. TRANSITIONAL JUST. 5, 7 (2009).

16. *Id.*

17. ANJA MIHR, *AN INTRODUCTION TO TRANSITIONAL JUSTICE* (Olivera Simić ed., 2016).

18. See RUTI G. TEITEL, *TRANSITIONAL JUSTICE* (2000).

19. Bell, *supra* note 15, at 8.

20. ICTJ, *supra* note 14.

transition is to place victims at the forefront of reconciliation efforts as societies work to overcome the challenges of healing after a mass atrocity as a collective society.²¹ The field emerged from the outset to help countries address large-scale, systematic human rights violations as they left behind times of political conflict and oppression.²² Human rights violations in post-conflict societies are typically too numerous and prolific for domestic judicial systems to respond adequately to individuals' needs.²³ At this stage, domestic judicial systems are also typically hindered by a lack of resources and weak government infrastructure.²⁴

Four main legal fields converge to make accountability in post-conflict societies possible.²⁵ These legal fields are international humanitarian law, international human rights law, domestic criminal law, and international criminal law.²⁶ Each of these fields works together to impose legal liability on those who partook in acts of violence that are typically associated with conflict and human rights abuses.

Following periods of conflict, the transitional justice institutions that impose legal accountability, such as criminal tribunals, have become a mainstay of how countries and the international community respond to human rights violations and political instability.²⁷ However, the field has expanded to include reconciliation and truth-gathering measures focused on helping victims deal with the past by offering them closure around unanswered questions.²⁸ This modern approach further departs from traditional court-ordered justice by incorporating local methods of reconciliation.²⁹ Localized methods of reconciliation promote an interrelated process of social learning between individuals who were once opponents in a conflict; they are not methods premised on a larger display and discourse of turning to the past to move on and heal in the future.³⁰

21. *Id.*

22. ICTJ, *supra* note 14.

23. *Id.*

24. *Id.*

25. Bell, *supra* note 15, at 19.

26. *Id.*

27. Andrew G. Reiter, *The Development of Transitional Justice in AN INTRODUCTION TO TRANSITIONAL JUSTICE* 30, 41 (Olivera Simić eds., 2017); *see generally* Ruti G. Teitel, *Transitional Justice Genealogy*, 16 HARV. HUM. RTS. J. 69 (2003).

28. Agete Fijalkowski, *Truth and Reconciliation Commissions in AN INTRODUCTION TO TRANSITIONAL JUSTICE* 91, 94 (Olivera Simić eds., 2017).

29. Nevin T. Aiken, *Rethinking Reconciliation in Divided Societies: A Social Learning Theory of Transitional Justice in TRANSITIONAL JUSTICE THEORIES* 40, 41 (Susanne Buckley-Zistel, Teresa Koloma Beck, Christian Braun & Friederike Mieth).

30. *Id.*

A. Historical Evolution of Transitional Justice

Society has existed contemporaneously with conflict. Even before the advent of modern transitional justice techniques, societies dealt with the process of transitioning away from conflict through various means. Some of the most notable methods utilized include immediate retribution through execution and exile, broad amnesty policies geared toward enabling societies to move on from violence, and the payment of war reparations.³¹ The transitional justice discourse incorporates many of these notable remedial measures.³² However, the focus of most efforts historically centered around crimes that were committed by countries and the processes implemented to hold individual nations accountable for their actions.³³ Following World War II (WWII), that focus shifted as modern transitional justice measures took form.

Modern transitional justice practices began to develop following the devastation and catastrophic loss of human life caused by WWII.³⁴ Transitional justice initiatives found a home situated within the context of a larger body of international justice.³⁵ The Nuremberg and Tokyo Trials were the first examples of collaborative international justice efforts, and they laid the foundation for the formation of international criminal law.³⁶ These trials were necessary to hold high-ranking Nazi German and Japanese military members punitively accountable for their egregious wrongdoings and crimes. One critique of these proceedings, however, was their politicization of the trial process³⁷ and the international community's failure to prosecute the victorious Allied powers for any war crimes that they may have committed.³⁸ Although a necessary act of accountability, the trials following WWII demonstrate

31. Reiter, *supra* note 27, at 30.

32. *Id.*

33. *See id.* at 31.

34. *See id.*

35. JESSICA LINCOLN, *TRANSITIONAL JUSTICE, PEACE, AND ACCOUNTABILITY: OUTREACH AND THE ROLE OF INTERNATIONAL COURTS AFTER CONFLICT* 15 (Routledge, 1st ed. 2011).

36. *Id.*; *see also* Reiter, *supra* note 27, at 31.

37. Charles E. Wyzanski, *Nuremberg: A Fair Trial? A Dangerous Precedent*, *ATLANTIC* (Apr. 1946), available at <https://www.theatlantic.com/magazine/archive/1946/04/nuremberg-a-fair-trial-a-dangerous-precedent/306492/> (last visited Dec. 13, 2020). The indictments resting on principles of *ex post facto* law are an example of how these trials were politicized. However, the punitive measures taken against the individuals prosecuted for their heinous wrongdoing was a necessary act of accountability.

38. Reiter, *supra* note 27, at 32.

the extent to which punishment has dominated our understanding of transitional justice.³⁹

The ad hoc criminal tribunals created for the former Yugoslavia and Rwanda in the 1990s memorialized punitive justice and criminal accountability as the standard practice of international justice's response to mass atrocity.⁴⁰ Legal pieces from the 1990s, written in response to the ongoing fight against impunity in Central and South America, first cataloged the need for post-conflict accountability.⁴¹ As transitional justice continued to evolve as the chosen response to political and violent conflict, a link formed between those who prioritized retributivist justice to hold perpetrators accountable and those whose primary goal was the truth.⁴² A new model of transitional justice developed as a result of this evolution—the restorative model, which focuses on the use of truth commissions to process the broader historical perspectives that underlie a specific conflict.⁴³

South Africa used such truth commissions as a transitional justice tool to move on from the injustice of the apartheid regime.⁴⁴ This strategy stands in stark contrast to the criminal tribunals established in Yugoslavia and Rwanda. Rather than situating the process of reconciliation within the broader narrative of criminal justice, the truth commission in South Africa sought to formulate an impartial historical record of human rights abuses.⁴⁵ Transitional justice in this space took on a different face—it emphasized victims and their experience by seeking the truth behind that past's wrongs to heal in the present.⁴⁶ Documenting crimes and listening to victims' voices are examples of the efforts undertaken by truth commissions to acknowledge individual pain, memory, and right to truth.⁴⁷ Each of these measures plays a critical role in enabling and

39. Teitel, *supra* note 18, at 27.

40. Lincoln, *supra* note 35, at 15.

41. Bell, *supra* note 15, at 7.

42. Teitel, *supra* note 27, at 78.

43. *Id.*

44. See generally Reiter, *supra* note 27.

45. Fijalkowski, *supra* note 28, at 105 (further departing from traditional criminal justice by granting amnesty to perpetrators of mass human rights violations for the sake of moving on from the past).

46. COLLEEN MURPHY, THE CONCEPTUAL FOUNDATIONS OF TRANSITIONAL JUSTICE 113 (2017).

47. Int'l Ctr. for Transitional Justice, *2018-2022 Strategic Plan* (2017), available at https://www.ictj.org/sites/default/files/ICTJ_2018-2022StrategicPlan.pdf (last visited Mar. 22, 2020).

shaping peace negotiations as well as signaling to leaders the need for any additional transitional justice measures once a conflict has ended.⁴⁸

Transitional justice's evolving interdisciplinary nature has broadened the field to include the academic disciplines of sociology, psychology, politics, and history.⁴⁹ Including these academic disciplines in transitional justice's discourse has created a system that provides greater accountability and redress for victims. When traditional legal methods to deal with the past are not politically palatable, the expansive techniques of transitional justice can fill the gaps.⁵⁰ Though legal accountability is still possible, the interdisciplinary approach of transitional justice's myriad of techniques offers those implementing these methods a greater degree of flexibility, which may lead to higher levels of reconciliation within communities.⁵¹

A hallmark of transitional justice is its attempt to simultaneously engage with victims while holding perpetrators accountable for their crimes. However, its application may vary based on the social environment of the affected community. Although the methodology may, and is often encouraged to, adjust to the needs of the community it aims to support,⁵² transitional justice's main goals remain relatively unchanged. The discipline's primary objectives include recognizing individuals' dignity, seeking redress for victims, acknowledging the perpetrators' violations, restoring devastated communities, and implementing preventative measures to decrease the likelihood that a perpetrator would commit a similar crime in the future.⁵³ Community objectives that are focused on legal accountability may occur through criminal tribunals comparable to those established in Rwanda and the former Yugoslavia, while those focused on the process of restoration may turn to reparations, truth commissions, and societal reform as the mode of redress for victims.⁵⁴

48. *Id.*

49. *See id.*

50. Christine Bell, *Transitional Justice, Interdisciplinary and the State of the 'Field' or 'Non-Field'*, 24 INT'L J. TRANSITIONAL JUST. 1, 27 (2009).

51. Susanne Buckley-Zistel, *Narrative Truth: On the Construction of the Past in Truth Commissions*, in TRANSITIONAL JUSTICE THEORIES 66, 73 (Susanne Buckley-Zistel, Teresa Koloma Beck, Christian Braun, & Friederike Mieth ed., 2014).

52. *See generally* U.N. Secretary-General, *Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice* (Mar. 2010) [hereinafter *Guidance Note*].

53. *See generally* ICTJ, *supra* note 14.

54. *See generally* *What is Transitional Justice Factsheet*, ICTJ (2009), available at <https://www.ictj.org/sites/default/files/ICTJ-Global-Transitional-Justice-2009-English.pdf> (last visited Dec. 15, 2020).

The United Nations' (U.N.) acceptance of transitional justice signaled the international community's recognition of the importance of the discipline to mending relations in divided societies. Structurally, within the U.N., the Office of the United Nations High Commissioner for Human Rights is the lead entity that determines how areas transitioning away from conflict should implement transitional justice measures.⁵⁵ The office continually assesses the impact of transitional justice measures by evaluating individual initiatives' strengths and shortcomings.⁵⁶

U.N. Secretary-General Kofi Annan defined the practice as "the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, to ensure accountability, serve justice and achieve reconciliation."⁵⁷ Annan similarly reflected on the rule of law and transitional justice in conflict and post-conflict societies. A report issued by the U.N. Secretary-General recognized that there is no one-size-fits-all plan for reconciliation in post-conflict societies.⁵⁸ However, the measures specific societies adopt must keep in mind the need to advance justice, peace, and democracy as the three central aims of rehabilitation.⁵⁹

U.N. reports that address the promotion of peace and rehabilitation in post-conflict societies focus on the importance of the rule of law. These reports speak generally about the principle of holding those who committed war crimes and other human rights violations accountable through the International Criminal Court or ad hoc hybrid tribunals.⁶⁰ They often fail to acknowledge that the accountability promoted by more traditional legal methods is most effective when supported by the modern interdisciplinary approach incorporated into the field's broader discourse.⁶¹

55. *Transitional Justice and Economic, Social and Cultural Rights*, U.N. HUM. RTS. OFF. OF THE HIGH COMM'R (2014), available at <https://www.ohchr.org/Documents/Publications/HR-PUB-13-05.pdf> (last visited Oct. 11, 2020) [hereinafter *Transitional Justice Report*].

56. *See generally id.* This report focused on how transitional justice deals with violations of economic, social, and cultural rights. It meticulously reviews how truth commissions, judicial and quasi-judicial proceedings, reparations, and institutional reform address these rights. The detail exhibited by the UN in the review of these processes is indicative of the value of transitional justice to international institutions.

57. U.N. Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, ¶ 8, U.N. Doc. S/2004/616 (Aug. 23, 2004).

58. *Guidance Note*, *supra* note 52, at 4.

59. *Id.*

60. *See* U.N. Secretary-General, *supra* note 57.

61. *See id.*

B. Non-Traditional Forms of Transitional Justice

Emergent post-conflict societies have also relied on less traditional transitional justice methods to bring divided communities together.⁶² These soft, local, or non-traditional forms of transitional justice focus less on achieving reconciliation by imposing criminal liability or establishing a national truth commission; these methods emphasize developing relationships between former adversaries at the community level.⁶³ In certain spaces, criminal liability may be crucial for individuals and collective societies to heal, but it stresses a retributivist form of justice that leaves communities unsure of where to turn next.⁶⁴ After a public trial that holds the most culpable people accountable, where does the once war-torn society turn? What will help guide future interactions between the former adversaries of a once violent conflict?

Criminal tribunals, and truth commissions, are one facet of a more complicated system of reconciliation.⁶⁵ Human rights violations may be so grotesque that they require criminal tribunals to hold perpetrators accountable. However, peace and peacebuilding measures will be successful and enduring if they incorporate specialized, local methods tailored to the affected community's specific needs.⁶⁶ Beginning the reconciliation process at the local level enables dexterity in implementation and will lay the foundation for lasting peace.

Local methods, however, will be unsuccessful without a fairly negotiated peace deal that forces adversaries to lay down their arms and cooperate for a shared future.⁶⁷ Flexible, relationship-driven approaches to peace, implemented in communities before engaging in treaty negotiations, may facilitate the process of seeing an adversary as the "other" to deteriorate. However, they are insufficient tools to establish peace independently. These methods of pursuing justice and stability will not solve an intractable conflict, but they will help de-escalate it. Once tensions between former adversaries have de-escalated, a peace treaty may be within reach because relationships and a basic level of respect have formed. Following a peace treaty that is cognoscente to respect both

62. See Aiken, *supra* note 29. Traditional forms of transitional justice refer to the legal and restorative initiatives discussed in the previous section of this paper.

63. See *id.*

64. See *id.* for more information on retributive justice; see generally Michelle Maiese, *Retributive Justice*, BEYOND INTRACTABILITY (May 2004), available at <https://www.beyondintractability.org/essay/retributive.justice> (last visited Dec. 15, 2020).

65. See *id.*

66. *Id.*

67. See Aiken, *supra* note 29.

sides of a conflict's demands and lays out a broad framework for the division of any disputed lands, there is potential for localized forms of transitional justice to create a fragile condition for peace. This peace is less susceptible to reignited violence because it is premised on interconnectedness.

III. HISTORICAL CONTEXT OF THE ISREAL-PALESTINE CONFLICT

The Israel-Palestine conflict is an intractable conflict, with divisions so entrenched that peace seems illusory. Two of the conflict's focal points arise from tensions that surround land sharing and identity politics. From a reductive perspective, the central challenge to solving peace in the Middle East and reconciling the conflict's principal tensions is determining where and how to draw borders around the shared land.⁶⁸ A persistent feature of the conflict is the struggle to define Israeli society and the edges of a modern Jewish state.⁶⁹ Failure to determine the land that will form the present-day Jewish state has created an environment of conditional statehood for Palestine.⁷⁰ The deep entrenchment of disputed land and identity politics has led to a situation where Palestine's future is deeply intertwined with the prospect of drawing definitive borders around Israel.⁷¹

A misperception of the Israel-Palestine conflict is that it is rooted in hundreds of years of religious strife.⁷² Instead, most historians date the conception of the conflict back to the late 1800s and the early 1900s, following the Ottoman Empire's dissolution and coinciding with the Zionist movement's rise.⁷³ At the heart of the conflict is the sentiment embodied in the slogan popularized by members of the Zionist movement, "[a] land without a people for a people without a land."⁷⁴ Members of the Zionist movement, during this time, believed that Judaism was a nationality that deserved an independent nation-state. The persecution faced by Jewish Europeans fueled much of this sentiment.⁷⁵

68. MARTIN BUNTON, *THE PALESTINIAN-ISRAELI CONFLICT: A VERY SHORT INTRODUCTION* xii (Oxford Univ. Press 2013).

69. *Id.* at xv.

70. *See id.*

71. *See id.*

72. *See generally* BUNTON, *supra* note 68.

73. *See id.* at 1.

74. *Id.* at 2.

75. *Id.*

Following years of mistreatment and oppression in Europe, this group began to see an ancestral home in the Middle East as their only hope for security,⁷⁶ which led groups of Jewish Europeans to leave Europe and settle the land of their ancestors.⁷⁷

The Ottoman Empire controlled the land they sought, however, and contrary to their popular message of settling an uninhabited land, Arabic peoples had lived there for centuries.⁷⁸ These groups of Arabic settlers were largely nomadic peoples.⁷⁹ Throughout the early 1900s, as European Jewish settlers moved into this area of Ottoman-controlled land, Arabic settlers began to identify as Palestinian,⁸⁰ differentiating them from the European Jewish settlers.

Before the end of World War I, the British government issued the Balfour Declaration, which promised Zionists a right to settle their ancestral home in the Middle East once the war ended.⁸¹ The Ottoman Empire collapsed following the war, and the British and French empires took control of the Middle East.⁸² The European colonial powers carved up their respective portions of the Ottoman Empire to govern over the territories.⁸³ Britain created mandates, at the center of which system was the British mandate for Palestine, referred to as “British Palestine” by the colonial power.⁸⁴

Initially, Britain allowed Jewish immigration to British Palestine, which kept to the promises made under the Balfour Declaration.⁸⁵ As Jewish Europeans began to emigrate to the region, they settled in the areas with agriculturally fertile lands, which forced many Arabic people, already living here, from their land.⁸⁶ The settlements of Jewish

76. See Zack Beauchamp, *What is Zionism?*, VOX (May 14, 2018), available at <https://www.vox.com/2018/11/20/18080010/zionism-israel-palestine> (last visited Oct. 5, 2020); see also Zack Beauchamp, *How Did Israel Become a Country in the First Place?*, VOX (May 14, 2018), available at <https://www.vox.com/2018/11/20/18080016/israel-zionism-war-1948> (last visited Oct. 5, 2020) [hereinafter *Israel become a country*].

77. *Id.*

78. See *Palestine, Palestine's Early Roots*, HISTORY.COM (Oct. 21, 2019), available at https://www.history.com/topics/middle-east/palestine#section_2 (last visited Oct. 12, 2020).

79. *The Israel-Palestine Conflict: A Brief, Simple History*, VOX (Jan. 20, 2020), available at <https://www.youtube.com/watch?v=iRYZjOuUnIU> (last visited Oct. 12, 2020) [hereinafter *Israel-Palestine Conflict*].

80. *Id.*

81. BUNTON, *supra* note 68, at 19.

82. See *id.* at 11-14.

83. *Id.* at 15.

84. *Id.* at 22-23.

85. *Israel-Palestine Conflict*, *supra* note 79.

86. *Id.*

Europeans generated tension that led to violence between the Jewish European immigrants and the Palestinian Arabs who already occupied the land.⁸⁷ Tensions continued to escalate until Britain began limiting Jewish immigration into British Palestine.⁸⁸ Limiting immigration violated British commitments under the Balfour Declaration and led to the formation of Jewish militias to fight the indigenous Arab opposition for control of the now contested lands.⁸⁹ These Jewish militias also fought British forces, attempting to provoke Britain to reinstate policies that would once again enable immigration.⁹⁰

During WWII, the Holocaust led more Jewish Europeans to flee Europe for British Palestine; they increasingly saw the land as their best chance at safety and security.⁹¹ The increased persecution of Jewish Europeans during WWII led to greater European support for Jewish immigration to British Palestine.⁹² By 1947, the sectarian conflict between indigenous Arabs and Jewish Europeans over claims to the same land brought the dispute before the international community.⁹³ The U.N. became increasingly involved as the conflict between these two groups escalated. To end sectarian violence, the U.N. divided British Palestine into two states: an Arab state and a Jewish state, and Jerusalem would become an internationalized territory.⁹⁴ Jewish leaders accepted the plan, but many Palestinian Arabs openly opposed it, arguing that they represented most of the population in certain regions and should be awarded more territory under the plan.⁹⁵ Refusal to address this concern led Arabs to begin forming volunteer armies throughout Palestine to defend their lands.⁹⁶

In May 1948, less than a year after the U.N. Partition of Palestine, Britain withdrew from the Middle East, and Israel became an independent state.⁹⁷ Arab states in the region, which had also recently gained their independence, viewed the newly independent Israeli nation-state as an extension of Western colonialism.⁹⁸ This tension between the Arab states

87. *Id.*

88. *Id.*

89. Israel-Palestine Conflict, *supra* note 79.

90. *Id.*

91. See BUNTON, *supra* note 66, at 44.

92. Israel-Palestine Conflict, *supra* note 79.

93. Beauchamp, *supra* note 76.

94. *Id.*

95. Palestine, *supra* note 78.

96. *Id.*

97. *Id.*

98. *Id.*

and Israel began the Arab-Israeli War. The Arab states—Jordan, Iraq, Syria, Egypt, and Lebanon—declared war on Israel in an attempt to establish a unified Arab Palestine where the British Palestine mandate had once been.⁹⁹ However, the new Israeli state won the war and pushed beyond the state borders the U.N. established in 1947.¹⁰⁰ By the end of the war, Israel controlled everything but the Gaza Strip and the West Bank, which were controlled by Egypt and Jordan, respectively.¹⁰¹ Many Palestinians were displaced from their homes as a result of the Israeli expansion, creating a large refugee population that was forced to relocate their homes to many of the neighboring Arabic countries.¹⁰²

The next significant standoff between Israel and the Arab states was the Six Days War in 1967.¹⁰³ During the Six Days War, Israel seized the Golan Heights from Syria, the West Bank from Jordan, the Sinai Peninsula and Gaza Strip from Egypt, and the city of Jerusalem.¹⁰⁴ Israel was now solely responsible for governing the Palestinians.¹⁰⁵ To lament peaceful relations after this conflict, Egypt and Israel signed the US-brokered Camp David Accords in 1978.¹⁰⁶

Egypt was the only Arabic state that signed a formal peace treaty with Israel, but other Arab states in the region began to acquiesce to Israel's existence even though they did not sign any similar agreements.¹⁰⁷ After the Six Days War, Israel maintained its occupancy of Palestinian territory in the West Bank and Gaza Strip.¹⁰⁸ At this time, the conflict shifted from focusing on disputes between Israel and the Arabic states in the region to the tension between Israel and the Palestinian territories.¹⁰⁹

In the 1960s, the Palestinian Liberation Organization (PLO) was formed to advocate for Palestinians.¹¹⁰ The PLO claimed the right to the

99. Israel-Palestine Conflict, *supra* note 79.

100. *Id.*

101. *Id.*

102. Bunton, *supra* note 68, at 68.

103. *Id.* at 70.

104. *Id.* This sudden conquest of territory rich in Biblical history would ignite a desire in Israeli expansionism to maintain possession of these holy sites. This desire would remain a contested, central point of the conflict from this point on, making resolution even harder to attain.

105. Bunton, *supra* note 68, at 73.

106. *Id.* at 75-76.

107. Israel-Palestine Conflict, *supra* note 79.

108. *Id.*

109. *Id.*

110. Zack Beauchamp, *What is the Palestinian Liberation Organization? How About Fatah and the Palestinian Authority?*, VOX (May 14, 2018), available at <https://www.vox.com/2018/5/14/17811112/palestinian-liberation-organization>.

land of the former British Palestine, and over time the organization turned to acts of violence to make its point against the Israeli government.¹¹¹ Despite opposition from the PLO, Israel continued to occupy Palestinian territory, and Israeli settlers moved into the West Bank and Gaza Strip.¹¹² The Israeli government claimed the settlement of people into the territories was for religious reasons, and they subsidized the housing to make it affordable to move.¹¹³

Occupation of the territories, which has been condemned by the international community, has become increasingly hostile for members of the Arabic community as more Israeli settlers move to settlements within the territories.¹¹⁴ The Israeli occupation intensified divisions over the land and led to the rapid deterioration of the agricultural lands that once belonged to Palestinian Arabs.¹¹⁵ Persistent occupation and division of territories have made it difficult for Palestine to form a fully realized state.¹¹⁶ Additionally, thousands of Jewish settlers have emigrated to the Palestinian territories since Israel's occupation began, making the possibility of creating a Palestinian state even more difficult.¹¹⁷

The frustrations of Palestinian Arabs grew as Israel's settlements and occupation continued.¹¹⁸ In 1987, this frustration mounted and culminated in the First Intifada.¹¹⁹ The First Intifada began as protests but quickly escalated into violence when the Israeli military forces responded with heavy force.¹²⁰ Hundreds of Israelis and thousands of Palestinians lost their lives during the First Intifada.¹²¹ The First Intifada also created a schism between Palestinian independence fighters, the PLO in the West Bank, and nationalist groups in the Gaza Strip.¹²² Hamas

[//www.vox.com/2018/11/20/18080054/palestinian-liberation-organization-israel-conflict](https://www.vox.com/2018/11/20/18080054/palestinian-liberation-organization-israel-conflict) (last visited Oct. 11, 2020) [hereinafter *PLO*]. The PLO currently runs the Palestinian National Authority, which manages the Palestinian territories until a deal is reached with Israel to acknowledge the independence of the territories.

111. *See id.*

112. *See* Zack Beauchamp, *What Are the Settlements, and Why Are They Such a Big Deal?*, VOX (May 14, 2018), available at <https://www.vox.com/2018/11/20/18080052/israel-settlements-west-bank> (last visited Oct. 11, 2020) [hereinafter *Settlement*].

113. *Id.*

114. *Id.*

115. Israel-Palestine Conflict, *supra* note 79.

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

120. Settlement, *supra* note 112.

121. Israel-Palestine Conflict, *supra* note 79.

122. *Id.*

formed out of the nationalist groups in the Gaza Strip.¹²³ Throughout the history of the conflict, Hamas has seemed more willing to engage in acts of violence against its Israeli adversaries.¹²⁴

In 1993, the next step towards peace was the Oslo Accords.¹²⁵ The Oslo Accords intended to serve as the first step toward Israel withdrawing from the Palestinian territories.¹²⁶ The Oslo Accords' goal was to establish a Palestinian authority that would secure Palestinians' right to govern themselves.¹²⁷ Israeli and Palestinian hardliners both opposed the Accords, seeing them as a concession to the other side, indicative of weakness, and an act of transgression.¹²⁸ Hamas responded to the Accords violently by sending suicide bombers into Israel in a failed attempt to kill the Israeli Prime Minister.¹²⁹ These bombings were unsuccessful, and the Prime Minister ultimately died at the hands of far-right Israeli hardliners who shot and killed him.¹³⁰ Extremists on both sides used violence to derail the peace process and keep the conflict deeply entrenched.¹³¹ Hardliners for Israel and Palestine were on a path of mutual destruction and despised the idea of a negotiated peace that would undermine any of their demands.¹³²

The Second Camp David Accords, in 2000, was another unsuccessful attempt at brokering peace.¹³³ Leaving another round of negotiations empty-handed, many Palestinians believed it was impossible to broker a peace deal between the two sides of the conflict that would eventually lead to their independence.¹³⁴ This frustration manifested in the Second Intifada, which was more violent than the first.¹³⁵ In the Second Intifada, approximately 1000 Israelis and 32,000 Palestinians

123. *Id.*

124. *Id.*

125. *Id.*

126. Zack Beauchamp, *What is the Israeli-Palestinian Peace Process?*, VOX (May 14, 2018), available at <https://www.vox.com/2018/11/20/18080090/israel-palestine-peace-process> (last visited Oct. 11, 2020) [hereinafter *Peace Process*].

127. *Id.*

128. *Id.*

129. BUNTON, *supra* note 68, at 94.

130. *Id.*

131. Israel-Palestine Conflict, *supra* note 79.

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

died;¹³⁶ the uprising lasted from 2000 to 2005, years longer than the First Intifada.¹³⁷

The nature of the conflict changed after the Second Intifada.¹³⁸ The Israeli people also began to believe negotiated peace was unattainable. Previously failed peace negotiations and ensuing violence made Israelis believe the Palestinians would never be satisfied with what Israel was willing to offer.¹³⁹ Many Israelis also felt negotiation efforts forced them into giving up Israeli sovereignty to a group that saw violence as their only constructive recourse.¹⁴⁰ During this time of lost faith, Israel's solution was to build walls and establish checkpoints around the West Bank and Gaza Strip.¹⁴¹ This choice indicated a willingness to manage the conflict rather than solve it through peace talks designed to settle the land disputes.¹⁴² Palestinians felt as if both peaceful negotiations and violence left their demands unheard; none of the outlets they turned to were leading them toward the eventual recognition of a Palestinian state.¹⁴³ Eventually, Hamas took full control over the Gaza Strip and Israel implemented a military blockade in response, which had devastating impacts on the local community.¹⁴⁴ Following the Israeli blockade, unemployment in the Gaza Strip rose to 40%.¹⁴⁵

Presently, conflict periodically breaks out between the Israeli forces and Arabic Palestinians in the West Bank and the Gaza Strip, and Israeli settlement efforts continue.¹⁴⁶ However, this violence is rarely felt within the Israeli state; as occupation continues, so does the distance between the conflict and the general political will of Israelis. As a result of this conflict's history, opposition to the other has become deeply intertwined with the individual identity of Israelis' and Palestinians'. Israeli and

136. Israel-Palestine Conflict, *supra* note 79.

137. *Id.*

138. *Id.*

139. *Id.*

140. *Id.*

141. Israel-Palestine Conflict, *supra* note 79.

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

146. See generally *Israel and Palestine: Events of 2017*, HUM. RTS. WATCH (2018), available at <https://www.hrw.org/world-report/2018/country-chapters/israel/palestine> (last visited Dec. 15, 2020); see also *Israel and Palestine: Events of 2018*, HUM. RTS. WATCH (2019), available at <https://www.hrw.org/world-report/2019/country-chapters/israel/palestine> (last visited Dec. 15, 2020); see also *Israel and Palestine: Events of 2019*, HUM. RTS. WATCH (2020), available at <https://www.hrw.org/world-report/2020/country-chapters/israel/palestine> (last visited Dec. 15, 2020).

Palestinian identities have become negatively interdependent in a manner characterized by exclusivity and disdain for the other.¹⁴⁷ Emotion and its interconnectedness to identity have exacerbated tensions in this conflict to the point of intractability, where peace seems to be an improbable outcome.¹⁴⁸

IV. NORTHERN IRELAND CASE STUDY

The conflict between Israel and Palestine, in many ways, is analogous to the Troubles in Northern Ireland. These conflicts center around two groups of people claiming one land for competing reasons.¹⁴⁹ Walls were erected in the City of Belfast by British soldiers to contain violence, just like the walls built by Israeli forces in the West Bank and Gaza Strip.¹⁵⁰ Graffiti on the peace walls in Belfast lend support to the cause of Arabic Palestinians fighting for the recognition of statehood.¹⁵¹ Both conflicts grew out of competing senses of nationalism and adversarial claims to a shared land.¹⁵² The most significant difference between the two regions is that Northern Ireland has emerged as a post-conflict society,¹⁵³ and Belfast is no longer a paramilitary war zone.¹⁵⁴ On the other hand, Israel and Palestine have not been able to negotiate a peace deal similar to the Good Friday Agreement that would allow both groups of people to share common land.¹⁵⁵ The peace process in Northern Ireland provides a framework to analyze the conflict between Israel and Palestine;¹⁵⁶ it offers clues that indicate what model might work best to achieve lasting peace.¹⁵⁷

147. Herbert Kelman, *The Interdependence of Israeli and Palestinian National Identities: The Role of the Other in Existential Conflicts*, 55 J. SOC. ISSUES 581, 588 (1999).

148. *See id.*

149. *See* Liel Maghen & Eran Tsidkyahu, *What Northern Ireland Can Teach Us About Israel-Palestine*, +972 MAG. (June 16, 2017), available at <https://www.972mag.com/what-northern-ireland-can-teach-us-about-israel-palestine/> (last visited Oct. 9, 2020).

150. *See id.*

151. *See id.*

152. *See id.*

153. *See id.*

154. *See* Maghen & Tsidkyahu, *supra* note 149.

155. *See id.*

156. *See generally* IAN S. LUSTICK, UNSETTLED STATES, DISPUTED LANDS: BRITAIN AND IRELAND, FRANCE AND ALGERIA, ISRAEL AND THE WEST BANK-GAZA (1993).

157. *See generally id.*

A. Historical Context of the Conflict in Northern Ireland

In 1968, the Troubles broke out across Northern Ireland.¹⁵⁸ The Good Friday Agreement replaced years of persistent violence with a formal cease-fire, signaling an end to the Troubles.¹⁵⁹ The conflict arose out of a complex network of nationalist, ethnic, religious, and postcolonial tensions. Deep connections to history enabled each of these dimensions to intensify over time. The colonial history of Ireland and the island's eventual partition created a condition where nationalism could fester. Following the partition of Ireland, Ulster, the northernmost Province of Ireland, found itself at the center of a conflict where divergent national identities competed for a shared land.

Ireland was a part of the British Empire before the three southern Provinces of the island declared their freedom from the colonial power and formed the Republic of Ireland (the Republic).¹⁶⁰ Geographically, four Provinces make up the island in its entirety, but only three form the Republic.¹⁶¹ Ulster, which is now Northern Ireland (the North) and not part of the Republic of Ireland, was the Province where British settlers established their plantations.¹⁶² In the 1600s, people sympathetic to the British Crown moved to the Ulster plantations to farm the incredibly fertile soil.¹⁶³ Those that settled the plantations were predominately Protestant, which set them apart from the mostly Irish Catholic population that already inhabited the land.¹⁶⁴ While the Crown of England was establishing plantations in Ulster, Irish Republicans across the island pushed for their independence.¹⁶⁵ Unlike the wealthy plantation owners in Ulster, Irish Republicans were only loyal to the notion of an independent country, free from their colonial oppressor.¹⁶⁶ Those who referred to themselves as Republicans and pushed for an independent Ireland were mainly Catholic, yet another point of departure from their British counterparts.¹⁶⁷

158. MARC MULHOLLAND, *THE LONGEST WAR: NORTHERN IRELAND'S TROUBLED HISTORY* (2002) [hereinafter *THE LONGEST WAR*].

159. MARC MULHOLLAND, *NORTHERN IRELAND: A VERY SHORT INTRODUCTION* 141 (2002) [hereinafter *NORTHERN IRELAND*].

160. *Id.* at 22.

161. *Id.*

162. *Id.* at 2.

163. *Id.*

164. *NORTHERN IRELAND*, *supra* note 159.

165. *Id.* at 6.

166. *See id.*

167. *NORTHERN IRELAND*, *supra* note 159, at 3-5.

In 1916, the Easter Rising, which took place in Dublin, was the catalyst the Irish needed to gain their independence from the United Kingdom.¹⁶⁸ Removed from the nationalistic protests that engulfed the South of Ireland in 1916, Ulster Unionists in the North were unwilling to engage in any acts that disobeyed the wishes of the Crown.¹⁶⁹ In 1920, the Government of Ireland Act awarded the six counties of Ulster to a parliament that would sit in Belfast, formally recognizing the division between the North and South of Ireland.¹⁷⁰ This parliament operated under the United Kingdom's watchful eye separate from Dublin, the Republic of Ireland's capital.¹⁷¹

The partition of Ireland into the North and the South fueled sectarian tensions in Northern Ireland. This process created an environment where Catholic Nationalists in the North felt cut off from the Republic and resented Ulster Unionists for their role in preventing a unified Ireland from being realized.¹⁷² Sectarian groups formed along nationalistic party lines dominated the discourse around the government's formation. Ulster Unionists began a process of consolidating their political power and became the majority government in the North.¹⁷³ Policies that discriminated against Irish Catholics made the consolidation of political power possible.¹⁷⁴ Examples of the discriminatory policies Ulster Unionists put into place were gerrymandering voting districts, implementing civil service exams for employment, underfunding Catholic schools, and denying the right to universal suffrage.¹⁷⁵ Northern Ireland's formation, following partition, was built upon these contentious civil rights issues.

In the North, one of the most discriminatory practices was policing. Northern Ireland's Parliament passed the Special Powers Act in 1922.¹⁷⁶ This act gave security forces the power to arrest and search homes without a warrant, detain prisoners without trial, and hang and whip offenders.¹⁷⁷ The Special Powers Act gave this power to the Royal Ulster Constabulary (RUC), a majority Protestant police force in Northern

168. NORTHERN IRELAND, *supra* note 159, at 22.

169. *Id.* at 23.

170. *Id.*

171. *Id.*

172. *Id.* at 25.

173. See NORTHERN IRELAND, *supra* note 159, at 33-35.

174. See *id.* at 37-48.

175. NORTHERN IRELAND, *supra* note 159, at 37-48.

176. *Id.* at 26.

177. *Id.*

Ireland, which used that power to disproportionately target Catholic minority populations.¹⁷⁸

The RUC's unreasonable targeting, open practices of discrimination, and rescinding of Catholics' rights led to civil rights protests across the North in 1968.¹⁷⁹ Those who partook in the protests advocated for equality.¹⁸⁰ However, these protests ended violently when the RUC and B-specials, wholly Protestant police auxiliaries, stepped in to disrupt demonstrations.¹⁸¹ Unionist government officials recognized the need to respond to these protests, so they enacted reforms in a half-hearted attempt to eliminate their discriminatory policies; the Catholic community deemed this response inadequate.¹⁸² In response, radical Republicans began the Long March from Derry to Belfast on January 1, 1969, to make their voices heard.¹⁸³ When the marchers crossed through Protestant towns, fierce resistance, violence, and outrage echoed down the streets.¹⁸⁴ This violence began the North's rapid societal deterioration as sectarianism became divisive and led to the deep-seated conflict between the two communities. Paramilitary forces like the Provisional Irish Republican Army (IRA) and the Ulster Volunteer Force (UVF) formed to protect their respective communities from violence, wage a guerilla war against their counterpart, and fight for control over the fate of the contested land.¹⁸⁵

Bloody Sunday, in 1972, ignited Northern Ireland's descent into violence. In Derry/London-Derry, thirteen unarmed civil rights protestors were shot and killed by the British Army.¹⁸⁶ The protesters were all Catholics who were marching in protest of the newly instated policy of British internment for any person suspected of being an Irish

178. *Id.* at 56.

179. *Id.* at 50.

180. NORTHERN IRELAND, *supra* note 159, at 49.

181. *Id.* at 51.

182. *Id.* at 52.

183. *Id.* at 53.

184. *Id.*

185. See generally Jeff Wallenfeldt, *The Troubles: Northern Ireland History*, BRITANNICA (Aug. 21, 2020), available at <https://www.britannica.com/event/The-Troubles-Northern-Ireland-history> (last visited Dec. 14, 2020). The paramilitary forces emerged during the Troubles to defend their cause. The IRA defended the nationalist cause, reunification with the Republic, and the UVF and Ulster Defense Association combated this Republican sentiment.

186. "Bloody Sunday" in Northern Ireland, HISTORY.COM (Feb. 9, 2010), available at <https://www.history.com/this-day-in-history/bloody-sunday-in-northern-ireland> (last visited Dec. 15, 2020).

nationalist sympathetic to the IRA's cause.¹⁸⁷ An additional seventeen people were injured when the shots were fired.¹⁸⁸ In April 1972, the British Government exonerated the soldiers who shot the protestors, and tensions in Northern Ireland became insurmountable.¹⁸⁹ The event outraged citizens across Northern Ireland and the violent struggle that would not end until 1998 began.¹⁹⁰

On April 10, 1998, the Good Friday Agreement was signed and ended nearly thirty years of conflict in the North.¹⁹¹ Most significantly, the agreement created a devolved government in Belfast that was a power-sharing governance system between Northern Ireland and England.¹⁹² The agreement also created integrated political institutions between Northern Ireland and the Republic and between the United Kingdom and the Republic.¹⁹³ The addition of these institutions to the agreement helped address the Republican demand that the agreement recognize the Irish cultural and nationalistic dimensions of the North.¹⁹⁴

Areas of concern that emerged as a byproduct of the conflict were also tackled during the agreement's negotiation, and lamented as compromises in the agreement. The three areas addressed were the decommissioning of weapons, releasing paramilitary soldiers from prison, and restructuring policing practices.¹⁹⁵ Reaching the final terms of this agreement was difficult, but the institutions it created ushered Northern Ireland into a post-conflict world by offering those divided by war an opportunity to come together.¹⁹⁶

While the Good Friday Agreement managed to address certain sensitive topics, many others were left unresolved by this agreement.¹⁹⁷ Two of the most notable missing pieces were the failure to address the peace walls erected by British forces in Belfast to contain violence and the failure to set out a process for how Northern Ireland should begin to

187. *Id.*

188. *Id.*

189. *Id.*

190. *Id.*

191. NORTHERN IRELAND, *supra* note 159, at 142.

192. The Northern Ireland Peace Agreement, Ir.-U.K., Apr. 10, 1998.

193. *See id.*

194. NORTHERN IRELAND, *supra* note 159, at 143.

195. *Id.* at 142.

196. The Good Friday Agreement's detailed negotiation process is beyond the scope of this paper. However, for more information, *see generally* GEORGE J. MITCHELL, MAKING PEACE (2000).

197. The Northern Ireland Peace Agreement, Ir.-U.K., Apr. 10, 1998.

heal as a post-conflict society.¹⁹⁸ The Troubles left Northern Ireland divided and unable to find a common identity.¹⁹⁹ Protestant Unionists wanted to remain connected to the United Kingdom, while Catholic Nationalists wanted Northern Ireland to rejoin the Irish Republic in the South.

B. Successful Transitional Justice Measures Utilized in Northern Ireland

Northern Ireland emerged from the Troubles as a divided society. Although the Good Friday Agreement formally ended the sectarian violence within the country, it was only the beginning of the peace process. Change in Northern Ireland since the Good Friday Agreement has been incremental.²⁰⁰ In this context, transitional justice methods focus on a multi-layered legal and political system of change. The country did not undergo its transition to peace through a single act of transitional justice, such as a truth commission; instead, its peace process is the sum of many smaller actions.²⁰¹

The Good Friday Agreement created a system of interdependence, wherein former adversaries had to set aside their profound mistrust.²⁰² The structural interconnectedness created by the agreement brought together the two sides of the ethno-nationalist conflict, forcing formerly oppositional political traditions to come together.²⁰³ Within the new political landscape created by the Good Friday Agreement, the Troubles' former adversaries became mutually dependent; they had to rely on one another to pass legislation to govern the country.²⁰⁴ The agreement also embodies the ability of two sovereign nations to cooperate in order to resolve a conflict, even if that meant sacrificing some of their power.²⁰⁵ For example, the United Kingdom sacrificed some of its territorial integrity to allow a permeable border between the North and the

198. Cathy Gormley-Heenan, Jonny Byrne & Gillian Robinson, *The Berlin Walls of Belfast*, 8 BRIT. POL. 357 (2013).

199. THE LONGEST WAR, *supra* note 158.

200. Colm Campbell & Fionnuala Aolain, *Local Meets Global: Transitional Justice in Northern Ireland*, 26 FORDHAM INT'L L.J. 871, 883 (2003).

201. *Id.*

202. *Id.* at 886; *see also* GEORGE J. MITCHELL & ALON SACHAR, A PATH TO PEACE: A BRIEF HISTORY OF ISRAELI-PALESTINIAN NEGOTIATIONS AND A WAY FORWARD IN THE MIDDLE EAST 365 (2016) [hereinafter A PATH TO PEACE].

203. Campbell & Aolain, *supra* note 200, at 886.

204. *Id.*

205. *Id.*

Republic, and the Republic placed any desires for Irish reunification behind it.²⁰⁶

Although the agreement allowed for structural reform that transformed Northern Ireland into a modern post-conflict society, it did not address the individual memories of victims. A loose framework for political cooperation was placed at the forefront of the Good Friday Agreement's negotiations so that measures of reconciliation could be added to Northern Ireland's peace process over time.²⁰⁷ As a result, Northern Ireland has addressed the victims in its divided society through more localized initiatives. Civil society and international non-governmental organizations (NGOs) instituted several bottom-up truth recovery projects that adopted the discourse of global transitional justice.²⁰⁸ NGOs also offered victims access to international legal mechanisms by seeking redress in the European Court of Human Rights Judgments.²⁰⁹

One example of a local initiative implemented following the Good Friday Agreement is the Suffolk Lenadoon Interface Group (SLIG). The cornerstone of SLIG's operation is regeneration and peacebuilding through community development.²¹⁰ This community development organization was based in Belfast and is the joint initiative of the Suffolk Community Forum and the Lenadoon Community Forum.²¹¹ These two communities exist on either side of an interface, or peace wall, in Belfast, where violence was once a mainstay in both communities during the Troubles. Suffolk is a Protestant Unionist community and Lenadoon is a Catholic Republican community; before 1996, there was no contact between these communities for over twenty years.²¹² Despite years of violence and mistrust, SLIG created a community space for the divided community to come together.²¹³ This effort has since led to the creation of joint soccer leagues between the communities and other integrated

206. *Id.* at 886-87.

207. *See* Maghen & Tsidkyahu, *supra* note 149.

208. Patricia Lundy, *Paradoxes and Challenged of Transitional Justice at the 'Local' Level: Historical Inquiries in Northern Ireland*, 6 CONTEMP. SOC. SCI. 89, 94 (2011).

209. *Id.* at 95.

210. *Suffolk Lenadoon Interface Group*, BELFAST INTERFACE PROJECT (2013), available at <https://www.belfastinterfaceproject.org/community-group/suffolk-lenadoon-interface-group> (last visited Oct. 16, 2020) [hereinafter *Interface Project*].

211. *Suffolk Lenadoon Interface Group (SLIG)*, PEACE INSIGHT (Jan. 2013), available at <https://www.peaceinsight.org/conflicts/northern-ireland/peacebuilding-organisations/slig/> (last visited Oct. 11, 2020) [hereinafter SLIG].

212. *Id.*

213. *Id.*

community programs.²¹⁴ SLIG is an example of a local effort that brought the community together in the effort to shape a shared identity without a formal wartime tribunal or truth commission.²¹⁵

Historical Enquiry Teams (HETs) were also established by the police department in Northern Ireland. HETs were a bold and innovative way for Northern Ireland to begin healing from local divisions.²¹⁶ Unlike truth commissions, these teams offered an individualized approach that attempted to answer victims' unresolved questions on a personal level.²¹⁷ An imperative goal of the peace process and reconciliation in Northern Ireland was to ensure that the police force addressed their past discriminatory practices through these teams.²¹⁸

During the Troubles, a focus of hostility was the unjust policing practices that disproportionately targeted the Catholic community.²¹⁹ The HETs were established in pursuit of the goal to rebuild trust in the police force.²²⁰ The HETs, however, did not prosecute criminals in a traditional legal sense;²²¹ instead, their focus is on answering the questions of individual families.²²²

Engaging with the memory of trauma this way has enabled reconciliation by allowing members of local communities to acknowledge past traumatic experiences, uncover the details of previously unknown events, and discover answers to questions which, if left unanswered, may have further fostered continued feelings of hostility.²²³ This type of local community engagement can only be achieved through decentralized, local methods of transitional justice. A truth commission or tribunal established by the state may not have had the same success. The HETs, however, were perfectly implemented, although Her Majesty's Inspectorate of Constabulary released a report criticizing the HETs' inconsistent approach to reviewing cases,

214. *Id.*

215. Lundy, *supra* note 208, at 102.

216. *Id.*

217. *Id.*

218. *Id.* at 95.

219. See NORTHERN IRELAND, *supra* note 159, at 30.

220. Lundy, *supra* note 208, at 95; see also Deborah McAleese, 'Destruction' of Historical Enquiries Team Was Massive Mistake, Says Ex-Police Chief Order, BELFAST TEL. (Jan. 22, 2016), available at <https://www.belfasttelegraph.co.uk/news/northern-ireland/destruction-of-historical-enquiries-team-was-massive-mistake-says-ex-police-chief-order-34386735.html> (last visited Dec. 15, 2020). HETs were ultimately disbanded as a result of police service of Northern Ireland budget cuts.

221. *Id.* at 98.

222. *Id.* at 100.

223. *Id.* at 99.

misrepresentation of the law, and belief the system may have more success as an independent commission.²²⁴

Northern Ireland has only conducted one official inquiry into the events surrounding Bloody Sunday. Northern Ireland implemented only one such tribunal because of the economic hardship it imposed on local communities.²²⁵ The British conducted the inquiry from 1998 to 2010, and it cost approximately £200 million.²²⁶ Victims were able to come before the tribunal and the state released the official narratives of the events in their official findings.²²⁷ In the end, the report concluded that the British Army fired the first shot on a group of protesters who posed no threat.²²⁸

The inquiry provided insight into a contentious event, but it did so at a high economic cost. This inquiry was similar to the truth commission implemented in South Africa, which sought to learn the objective facts surrounding a contentious issue. However, these commissions and inquiries should not be the first tool of reconciliation used by transitioning societies because of the economic burden imposed on local communities. Accessible, local methods should primarily be used to create a transcendent community identity, and more robust inquiries should support this initiative when necessary.

C. Weaknesses of the Transitional Justice Methods Utilized in Northern Ireland

Construction of the peace walls began in Belfast during the summer of 1969. Since their initial construction, the number of peace walls in Belfast has grown since the ceasefire, now consisting of nearly ninety walls spread across the city.²²⁹ The British Army and the Northern

224. *Historic Enquiries Team Criticised: Reaction to HMC Report*, BBC (July 3, 2013), available at <https://www.bbc.com/news/uk-northern-ireland-23165015> (last visited Dec. 15, 2020); see generally *Inspection of the Police Service of Northern Ireland Historical Enquiries Team*, HMIC (July 3, 2020), available at <https://www.justiceinspectorates.gov.uk/hmicfrs/media/inspection-of-the-police-service-of-northern-ireland-historical-enquiries-team-20130703.pdf> (last visited Dec. 15, 2020).

225. Campbell, *supra* note 200, at 888.

226. *Bloody Sunday Inquiry: Saville Has 'No Regrets'*, BBC NEWS (Oct. 13, 2010), available at <https://www.bbc.com/news/uk-northern-ireland-11536743> (last visited Oct. 10, 2020).

227. Campbell, *supra* note 200, at 888.

228. Bloody Sunday Inquiry, *supra* note 226.

229. *New Research Pins Down Who Owns the 'Peace Walls'*, BELFAST TEL. (Jan. 26, 2012), available at <https://www.belfasttelegraph.co.uk/news/northern-ireland/new-research-pins-down-who-owns-the-peace-walls-28707623.html> (last visited Dec. 15, 2020).

Ireland Office constructed peace walls along interface areas as a policy response to the eruption of sectarian violence across the city.²³⁰ The walls created physical lines of demarcation between communities, carving up the city of Belfast to counteract local sectarian violence.²³¹ Now, the structures that remain across the city are reminiscent of the feelings of hostility, fear, and violence so characteristic of the Troubles.²³²

Eventually, the government in Northern Ireland began to regard the growing number of peace walls as a political problem that could no longer go unaddressed.²³³ Recognition that a narrative of segregation is perpetuated by the existence of these walls has caused policymakers to push for their removal from Belfast's urban framework.²³⁴ This decision was also prompted by the increased international attention on the city of Belfast as Northern Ireland began to rise on the world stage as a peaceful country with the potential for economic prosperity in the future.²³⁵ Although political integration has occurred as a result of the peace process, reconciliation and acceptance at local levels must branch out from growing acceptance for police practices. To reduce structural violence and put to rest the feelings of territoriality that helped perpetuate the conflict and remain reinforced by the physical presence of these barriers, local transitional justice efforts in Northern Ireland must address the physical separation within the city of Belfast.

Sectarian tension and segregation continue to shape the urban landscape of Belfast. When the Good Friday Agreement failed to address the political policy of building peace walls to diffuse violence, it perpetuated the continuation of segregation within society.²³⁶ Physically, the walls separate communities all over the city, keeping Protestant and Catholic neighborhoods apart.²³⁷ Presently, a lack of certainty stemming mostly from fear-driven emotions has increased among residents, which

230. Cathy Gormley-Heenan, Jonny Byrne & Gillian Robinson, *The Problem with Northern Ireland's Peace Walls*, U. ULSTER (2012).

231. See Julia C. Obert, 'Shared Space': *A Belfast Soundscape Study*, 18 NEW HIBERNIA REV. 13, 14 (2014).

232. Gormley-Heenan, *supra* note 230, at 4.

233. See generally *Reflected Lives: Intergenerational Oral Histories of Belfast's Peace Wall Communities*, BELFAST INTERFACE PROJ. (2013), available at <https://www.belfastinterfaceproject.org/> (last visited Dec. 15, 2020).

234. See Gormley-Heenan, *supra* note 230, at 5.

235. *Id.* at 4.

236. See Steven Grattan, *Northern Ireland Still Divided by Peace Walls 20 Years After Conflict*, WORLD (Jan. 14, 2020), available at <https://www.pri.org/stories/2020-01-14/northern-ireland-still-divided-peace-walls-20-years-after-conflict> (last visited Dec. 15, 2020).

237. See *id.*

plagues attempts to remove the walls.²³⁸ Many attitudinal surveys of Belfast residents suggest that although the walls might come down in the future, there are many security problems that need to be addressed before this point is reached.²³⁹

As a result, integration that transcends this physical barrier must be implemented at the local level to combat the segregation in Northern Ireland and further the peace process. Utilizing neutral spaces to accomplish this goal has been an initiative both promoted by the government and various NGOs.²⁴⁰ Overcoming the division caused by the peace walls could benefit localized transitional justice initiatives.

Despite these walls, people in Belfast have managed to exist in a form of fragile coexistence.²⁴¹ This coexistence was made possible in part by the loose reconciliation process established by the Good Friday Agreement.²⁴² Peaceful proximity has created a city where each side of the sectarian conflict can live together in relative peace, without returning to the sectarian conflict that characterized the landscape of the city for thirty years.²⁴³

It is important to note that peace in Northern Ireland is not guaranteed to last for another thirty years. Brexit, the United Kingdom's exit from the European Union, created an environment in Northern Ireland that may make the country more susceptible to the return of sectarian tensions because of the possibility for a closed border between the North and South of Ireland. Although a return to paramilitary violence may not be the outlet to which those in Northern Ireland, Brexit may stoke the fires of a culture war that the peace process has yet to resolve completely.²⁴⁴ Yet Brexit does not necessarily mean that Northern Ireland's peace will dissolve. The resurgence of the country's culture war to the forefront of Northern Irish politics, though, is a message that the process of peace and reconciliation in a post-conflict

238. *Id.* at 18.

239. See Grattan, *supra* note 236; see also Patricia Mullan, *Peace Walls Attitudinal Survey Summary of Results*, INT'L FUND FOR IR. (2017).

240. See generally Mullan, *supra* note 239.

241. Maghen & Tsidkyahu, *supra* note 149.

242. *Id.*

243. *Id.*

244. Jonathan Gorvett, *Northern Ireland is in a Culture War. Brexit is Making it Worse*, FOREIGN POL'Y (Jan. 31, 2020), available at <https://foreignpolicy.com/2020/01/31/northern-ireland-culture-war-brexit/> (last visited Oct. 11, 2020); see also James Angelos, *Will Brexit Bring the Trouble Back to Northern Ireland?*, N.Y. TIMES (Dec. 30, 2019), available at <https://www.nytimes.com/2019/12/30/magazine/brexit-northern-ireland.html> (last visited Dec. 15, 2020).

society is fragile. Peace can persist in a country for years following a conflict, and one cataclysmic event might end years of that peace and reconciliation. The lesson to learn from the precarious nature of transitional justice and its resulting peace is that it requires attention and adaptation to be sustainable.

V. PEACE FOR THE ISRAEL-PALESTINE CONFLICT

Northern Ireland offers one framework for how to approach the potential resolution of the Israel-Palestine conflict. However, the techniques of transitional justice used in Northern Ireland will not be a cookie-cutter fit for the process of ending conflict in the Middle East and transitioning it to a post-conflict region. Conflicts must be analyzed on a case-by-case basis, and lessons learned from analyzing the peace process of one conflict should be generalized and adapted to fit a conflict in another region of the world.²⁴⁵ The Middle East is a more complicated environment to establish peace in than Northern Ireland in 1998.²⁴⁶ In the Middle East, “[t]he conflict is more entrenched, the hostility is deeper, the mistrust greater, the destruction more widespread, the deaths more frequent.”²⁴⁷ If the two sides of the conflict in the Middle East want peace to work, however, a process similar to the one used in Northern Ireland may create the conditions for that peace to be lasting.²⁴⁸

A. Applying Northern Ireland’s Peace Process to the Israel-Palestine Conflict

To formally end the Israel-Palestine conflict, Israeli and Palestinian political leaders should negotiate a peace treaty. Similar to the Good Friday Agreement between Northern Ireland, the United Kingdom, and the Irish Republic that ended the Troubles, all affected parties must be considered and have equal bargaining power. A treaty or proposal for peace, like the one currently offered by the Trump administration, will not achieve this goal because it fails to conceptualize the political aspirations of the Palestinian community.²⁴⁹ A two-state solution must be sought for this contested land, but it must be a two-state solution that

245. See generally LOUIS KRIESBERG & BRUCE DAYTON, *CONSTRUCTIVE CONFLICTS: FROM ESCALATION TO RESOLUTION* 179-214 (5th ed. 2017).

246. A PATH TO PEACE, *supra* note 194, at 365.

247. *Id.*

248. *Id.*

249. Ayyub, *supra* note 5.

is willing to give both participants, Israel and Palestine, equal access to sovereignty and self-determination.

Palestinian and Israeli identities have become negatively intertwined.²⁵⁰ Historically, the conflict has continued to negatively reinforce a narrative of “the other.”²⁵¹ Former treaties have failed because they refuse to fully acknowledge the aspirations of both groups without being shaded by the history of a long, bitter conflict. Creating a transcendent identity must accompany a bilateral treaty that ends the conflict and creates a network of interconnectedness for future peace between former adversaries.²⁵² This transcendent identity should not threaten the particularistic nature of the identities of each side, but it should serve as the starting point to pursue a path toward commonality.²⁵³ The interdependence of the adversarial identities should be reframed to be positively intertwined.²⁵⁴ A treaty, like the Good Friday Agreement in Northern Ireland, may impose the initial structures that force adversaries to cooperate toward a common goal. This cooperation will begin to reframe the identity of the other in a positive light, which may create a space for the growth of stability in the region. However, “in the end the relationship between [the] Israelis and Palestinians will be determined by Israelis and Palestinians.”²⁵⁵

Local transitional justice measures should form the foundation for reconciliation efforts following treaty negotiations. In time, international criminal law should address human rights abuses; the international community must not condone any grotesque violations of human rights by failure to prosecute them. Yet retribution should not be the singular focus of transitional justice following the Israel-Palestine conflict—focus on prosecuting adversarial criminals too early could cause the negative interdependence of the adversarial identities to re-emerge, which could reignite violence.²⁵⁶

Local measures should focus on historical inquiries for individual community members, like the HETs in Northern Ireland, and community integration programs similar to those implemented by SLIG. The historical inquiry committees should have no prosecutorial function, but should offer individuals answers to questions surrounding the deaths of

250. Herbert C. Kelman, *The Interdependence of Israeli and Palestinian National Identities: The Role of the Other in Existential Conflicts*, 55 J. SOC. ISSUES 581, 583 (1999).

251. *See generally id.*

252. *Id.*

253. *Id.*

254. *Id.* at 598.

255. A PATH TO PEACE, *supra* note 194, at 366.

256. *See generally* Lundy, *supra* note 198.

loved ones. These localized inquiries will be vital in helping the healing of individuals who do not receive their day in court following the formation of criminal tribunals. Further, community integration should follow a model similar to the one implemented by SLIG in Northern Ireland, where former adversaries can come together and begin forming a shared identity.²⁵⁷ Integrated programming for community members that increases contact with “the other” may lessen isolated feelings of hate and stigmatization. Increasing contact may increase the possibility of forming a common identity as an individual’s thinking is continually reframed to reflect positive experiences.²⁵⁸

Importantly, none of these methods will provide immediate relief; they must have time to grow and cultivate community peace. As that occurs, and interconnectedness increases, there may be a space for a national transitional justice narrative such as an ad hoc tribunal or truth commission to establish a national record for the conflict and hold perpetrators accountable for their crimes.

VI. INEFFECTIVENESS OF RECENT DEVELOPMENTS

In September 2020, the Trump Administration brought Israel and the Arab nations, Bahrain and the United Arab Emirates, together to sign accords to normalize their relations.²⁵⁹ The Abraham Accords and bilateral agreements between Israel and these Arab states are the first of any agreement between Israel and an Arab state since 1994.²⁶⁰ President Trump marked the historic moment by stating, “[a]fter decades of division and conflict, we mark the dawn of a new Middle East.”²⁶¹ The Trump administration indicated that other Arab states, like Saudi Arabia, could take similar steps to normalize relations with Israel, though they

257. See generally SLIG, *supra* note 211.

258. See generally Oliver Christ & Mathias Kauff, *Intergroup Contact Theory in SOCIAL PSYCHOLOGY IN ACTION* 145 (Kai Sassenberg & Michael L.W. Vliek eds., 2019). This text supports the hypothesis of the social contract theory, that interconnectedness and contact between groups will reduce prejudices and assist in resolving conflict. It also acknowledges that increased contact alone is insufficient to lead to peace. The many factors associated with successful intergroup contact is beyond the scope of this paper, but contact should support an asymmetric balance of power.

259. Michael Crowley, *Israel, U.A.E. and Bahrain Sign Accords, With an Eager Trump Playing Host*, N.Y. TIMES (Sept. 15, 2020), available at <https://www.nytimes.com/2020/09/15/us/politics/trump-israel-peace-emirates-bahrain.html> (last visited Nov. 22, 2020).

260. *Id.* The last agreement that was signed between Israel and an Arab State was in 1994, when Israel and Jordan established diplomatic relations.

261. *Id.*

have yet to do so.²⁶¹ Israeli Prime Minister Benjamin Netanyahu echoed President Trump's sentiments about the Abraham Accords being a turning point for establishing peace in the Middle East, stating "[t]his peace will eventually expand to include other Arab states, and ultimately it can end the Arab-Israeli conflict"²⁶²

However, the Abraham Accords are missing the Palestinian voice and are, therefore, an incomplete attempt to achieving peace in the Middle East; all affected parties must have an equal opportunity to participate in diplomatic negotiations. Netanyahu's current approach to brokering peace in the Middle East sidesteps Palestinian self-determination and focuses on making peace with other Arab states.²⁶³ For example, Netanyahu was able to fully normalize relations with the United Arab Emirates in return for suspending threats to annex portions of the West Bank,²⁶⁴ where the international community continues to view Israel's occupation as illegal.²⁶⁵ Palestine should be included in peace accords that involve their internationally recognized territories. The structure of the Abraham Accords places Arab states in the Middle East in a position to be power brokers for the future of Palestinian statehood, which ignores the aspirations of the Palestinian people.²⁶⁶ For peace negotiations in the Middle East to represent a true movement toward regional stability, Palestinian aspirations must be adequately represented by their political leaders, not just the surrounding Arab world.

261. *Id.*; see also Joseph Hincks, *Will Saudi Arabia Be Next to Normalize Relations with Israel? Don't Hold Your Breath Experts Say*, TIME (Sept. 18, 2020), available at <https://time.com/5890151/saudi-arabia-israel-abraham-accords/> (last visited Nov. 21, 2020).

262. *Id.*

263. Bilal Y. Saab, *In Historic Deal With the UAE, Israel is the Biggest Winner*, FOREIGN POL'Y (Aug. 13, 2020), available at <https://foreignpolicy.com/2020/08/13/in-historic-deal-with-the-uae-israel-is-the-biggest-winner/> (last visited Nov. 22, 2020).

264. *Id.*

265. See Isabel Kershner, *Are West Bank Settlements Illegal? Who Decides?*, N.Y. TIMES (Nov. 18, 2020), available at <https://www.nytimes.com/2019/11/18/world/middleeast/israel-west-bank-settlements.html> (last visited Nov. 22, 2020). Although the United States altered its foreign policy towards the settlements in the West Bank, claiming Israel had a right to maintain some of its settlements, the International Court of Justice, UN General Assembly, and UN Security Council all agree the settlements violate the Fourth Geneva Convention. Further, most of the world agrees that any annexation of territory in the West Bank would hinder future attempts at Israeli-Palestinian peace.

266. See Goldberg, *supra* note 264.

VII. CONCLUSION

Transitional justice has developed as a discourse to respond to the challenging questions posed by post-conflict societies. It began rooted in legal theory when the Nuremberg Trials were conducted after WWII. Since then, the discipline has evolved into an interdisciplinary field that puts victims first, as once war-torn societies start down a path of collective healing.

The Troubles in Northern Ireland and the Israel-Palestine conflict share many features. At their core, they are about oppositional self-determination movements claiming a contested, shared land. However, there is a major modern difference between these two conflicts—today, Northern Ireland is a post-conflict society while Israel and Palestine are still engaged in conflict. Northern Ireland departed from the typical transitional justice practice of establishing a criminal tribunal or truth commission to address the past. Instead, its peace process imposed political structures that cemented relationships of interdependence between former adversaries. Following the negotiation of a treaty that imposed this equitable relationship, local transitional justice initiatives were utilized to develop a shared identity that assisted in maintaining an enduring regional peace. As a result, Northern Ireland offers insight to how enduring, flexible peace can last in a society where peace was once thought to be unimaginable.