

Seeking the Truth in The Israel/Palestine Conflict: A Means to Reconciliation or Division?

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The Israel-Palestine conflict is a complex and long-standing dispute that centres around competing claims to land and sovereignty as both Palestinians and Israelis claim historical and religious ties to the territory. The conflict has been ongoing for seven decades and its resolution is critical to achieving lasting peace and stability in the region. As of yet, transitional justice measures have been largely absent in resolving the conflict. This article thus seeks to explore the role that transitional justice can play in the conflict, specifically truth commissions, which are a mechanism of restorative justice. It will examine the prospects, advantages and disadvantages of the establishment of an Israeli-Palestinian Truth Commission and will analyse the implications of recent developments of the International Criminal Court (ICC) on its establishment. It argues that due to the ongoing conflict, the establishment of an official truth commission in Israel-Palestine would be premature and rather than achieving the goals of transitional justice, may serve on the contrary to increase division and stir renewed violence.

The first section will introduce the concepts of transitional justice and the right to truth and will define truth commissions. The second section will examine the prospects of the establishment of a truth commission in Israel-Palestine and will argue that given the ongoing conflict and complex political climate, the prospects remain slim. The third section will examine the advantages and disadvantages of a truth commission in the Israel-Palestine conflict whilst the fourth section will examine the implications of recent developments in the ICC.

Transitional Justice and The Right to Truth

Transitional Justice is defined broadly by the International Centre for Transitional Justice as ‘a response to systematic or widespread violations of human rights. It seeks recognition for victims and promotion of possibilities for peace, reconciliation and democracy’². Within the framework of transitional justice exists both retributive justice and

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² International Centre for Transitional Justice, ‘Focus: Transitional Justice - What is Transitional Justice?’ (2009) 1 <<https://www.ictj.org/sites/default/files/ICTJ-Global-Transitional-Justice-2009-English.pdf>> Accessed 01 April 2023

restorative justice mechanisms³. The former focuses on punishing perpetrators primarily through the criminal justice system, whilst the latter is a victim-centred approach that brings together all stakeholders in the conflict and attempts to repair the harm between them whilst restoring the dignity of the victim and reintegrating perpetrators back into the community⁴. The importance of employing both mechanisms holistically has been well established⁵, however, this article will focus solely on the establishment of a truth commission, which is one tool in the restorative justice toolbox.

The right to truth is a critical component of transitional justice and reconciliation processes. It is based on the idea that individuals and societies have the right to know the truth about past events, including human rights violations, atrocities and crimes committed by state or non-state actors⁶. It implies that victims of human rights violations have the right to know what happened to them or their loved ones, who was responsible for the violations, and why they occurred⁷. This right is inextricably linked to the principles of accountability, justice and the rule of law and is recognized by UN treaties including the International Convention for the Protection of All Persons from Enforced Disappearances (ICCPED)⁸. It is also recognised by several General Assembly Resolutions including Resolution 68/165 which explicitly ‘Recognizes the importance of respecting and ensuring the right to the truth so as to contribute to ending impunity and to promote and protect human rights’ and welcomes the establishment of Truth and Reconciliation Commissions to guarantee this right⁹.

Truth Commissions are defined as ‘official, nonjudicial bodies of a limited duration established to determine the facts, causes, and consequences of past human rights violations’¹⁰. Through the collection of testimonies from both victims and offenders, they seek to achieve three fundamental objectives: ‘to establish the facts about violent events that remain disputed

³ Damian Etone, 'The Prospects and Potential Advantages and Disadvantages of a Regional Truth-Seeking Mechanism in the West Balkans' [2016] 2(2) The International Journal of Conflict & Reconciliation 1

⁴ Ibid.

⁵ Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence to the UN Human Rights Council, UN Doc. A/HRC/21/46, (09 August 2012) <http://ictj.org/sites/default/files/A-HRC-21-46_en_de_Greiff.pdf> Accessed 05 April 2023

⁶ Eduardo González and others. ‘Truth Seeking: Elements of Creating an Effective Truth Commission’ (Amnesty Commission of the Ministry of Justice of Brazil and International Center for Transitional Justice 2013) ch 1

⁷ Ibid.

⁸ Ibid.

⁹ United Nations General Assembly Resolution 68/185 (2013) (1) (2).

¹⁰ Eduardo González and others. ‘Truth Seeking: Elements of Creating an Effective Truth Commission’ (Amnesty Commission of the Ministry of Justice of Brazil and International Center for Transitional Justice 2013) ch 2, 9

or denied'¹¹; 'to protect, acknowledge, and empower victims and survivors'¹²; and 'to inform policy and encourage change' through the publishing of final recommendations¹³.

The Prospects of the Establishment of an Israeli/Palestinian Truth Commission

A truth commission is a mechanism of transitional justice, and as the name suggests, it is contingent on a transition. However, in the Israeli-Palestinian context, the conflict is still ongoing with no peace envisioned in the near future. The most recent round of peace talks collapsed in April 2014 after nine months of negotiation failed to produce any joint agreements between the opposing parties.¹⁴ The ensuing decade has been marked by a negotiation stalemate, punctuated by periods of escalations in hostilities. This section will engage in a careful assessment of the prospects of the establishment of a truth commission in Israel-Palestine. It will argue that the prospects remain slim due to the active conflict and political climate, which creates a multitude of complications for the establishment of a truth commission.

Firstly, the particular political climate of Israel-Palestine produces serious complications concerning the institutional capacity to set up a commission. Typically, truth commissions are established within the jurisdiction of a single state, following a peace agreement and as a result of a negotiation between the relevant stakeholders¹⁵. Nevertheless, the situation of Israel-Palestine is particularly unique because it consists of two nations with significant power asymmetry; the State of Israel and the Occupied Palestinian Territories. The situation is further complicated as within the aforementioned states exists three separate Governments; the Israeli Government, the Palestinian Authority (PA) and Hamas Government. Conflict exists both inter-state between the Palestinian governments and the Israeli Government, as well as intra-state between the PA and Hamas. Thus, the existence of three competing political agendas and separate institutions, as well as the stagnation of negotiations¹⁶ means that there is no existing arena in which all governmental entities can come together and

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

¹⁴ Center for Preventative Actions, 'Israeli-Palestinian Conflict', Available at: <https://www.cfr.org/global-conflict-tracker/conflict/israeli-palestinian-conflict>

¹⁵ Priscilla B. Hayner, 'Past Truths, Present Dangers: The Role of Official Truth Seeking in Conflict Resolution and Prevention' in National Research Council, *International Conflict Resolution After the Cold War* (National Academies Press 2000) 338

¹⁶ United States Institute of Peace, 'The Israeli-Palestinian Conflict: The Danger of 'No Solution' Messaging' (2022)

agree upon the establishment of a truth commission. Moreover, it would require the bridging between three separate institutional systems for implementation.

Secondly, the fact that the conflict has been ongoing for over half a decade and has led to the existence of an extensive universe of victims and perpetrators that inhabit a ‘grey zone’¹⁷ further complicates the setting up of a truth commission. According to Hayner¹⁸, the composition of a commission has the greatest impact on the actual work of the commission¹⁹. A commission may be staffed by either nationals, non-nationals or take a hybrid form. In the case de quo, due to the extensive grey zone and a situation where essentially ‘everyone is somehow complicit’²⁰, the task of finding unbiased local staff is rendered especially difficult. Indeed, it is doubtful that the same actors who are being implicated in the investigations would be able to examine the past without any bias²¹. On the other hand, non-nationals may not be able to grasp the complexities of the situation which may inhibit their abilities to design and implement an effective truth commission. Furthermore, it will reduce national ownership of the mechanism which will negatively affect its legitimacy and effectiveness²². Similarly, establishing a mandate will be complex as it would have to contend with questions regarding where the investigation will be carried out, which acts or events will be investigated and over what period of time²³; a seemingly impossible task considering the length of the conflict, the array of human rights abuses that is still ongoing and the endless number of victims and perpetrators.

Thirdly, without a regime change brought about by a transition, the same institutional actors involved in the conflict remain in Government. This has important implications bearing on the political will for the initiative and the ability for final recommendations to be implemented. As regards political will, studies have shown that the prospects of the establishment and ultimate success of a commission depends significantly on the existence of

¹⁷ Ariel Meyerstein, ‘Transitional Justice and Post-Conflict Israel/ Palestine: Assessing the Applicability of the Truth Paradigm’ (2006) 38 Case W. Res. J. Int’l L. 281

¹⁸ Priscilla B. Hayner, ‘Past Truths, Present Dangers: The Role of Official Truth Seeking in Conflict Resolution and Prevention’ in National Research Council, *International Conflict Resolution After the Cold War* (National Academies Press 2000) 338

¹⁹ Ibid.

²⁰ Ariel Meyerstein, ‘Transitional Justice and Post-Conflict Israel/ Palestine: Assessing the Applicability of the Truth Paradigm’ (2006) 38 Case W. Res. J. Int’l L. 281 318

²¹ Jeremy Bracka, *Transitional Justice for Israel/Palestine: Truth Telling and Empathy in Ongoing Conflict* (1st edn, Springer 2021)

²² Priscilla B. Hayner, ‘Past Truths, Present Dangers: The Role of Official Truth Seeking in Conflict Resolution and Prevention’ in National Research Council, *International Conflict Resolution After the Cold War* (National Academies Press 2000) 338

²³ Ibid.

political will²⁴. For example, one of the reasons cited for the relative failure of the Uganda commission was the lack of political will²⁵. As regards the ongoing conflict in Israel-Palestine, there is a clear lack of political will from both sides. As Bracka suggests 'ongoing conflict has rendered both the PA and the Netanyahu government relatively incapable and/or unwilling to officiate transitional justice practice'²⁶. Furthermore, it is noted that a truth commission's enduring legacy is the final report it publishes that summarises its findings and recommendations to bring about institutional reform²⁷. However, a lack of regime change would imply that the same institutional actors which are named or implicated in the final report published by the Truth Commission would be expected to implement its recommendations²⁸.

Fourthly, transitional justice measures implemented during an ongoing conflict can put both victims and those implementing the measures at risk of violence²⁹. In the case at hand, with violence and tension still high, implementing a truth commission in Israel-Palestine can pose serious security risks for all those involved. Moreover, victims may fear retaliation if they testify, especially considering that there has been no change in Government. For example, according to a poll carried out in 2022 by the Palestinian Center for Policy and Survey Research, 62% of people living in the Gaza Strip feel that they cannot criticize Hamas without fear whilst 54% living in the West Bank fear to criticize the PA³⁰.

Finally, it is integral that victims and witnesses are supportive of the establishment of a truth commission and are willing to cooperate³¹. The Office of the United Nations High Commissioner for Human Rights (OHCHR) has stressed that 'a truth commission is not appropriate for every country or every transition, and the decision to have a commission must always be taken by nationals'³². They should only be established following a broad consultation

²⁴ Damian Etone, 'The Prospects and Potential Advantages and Disadvantages of a Regional Truth-Seeking Mechanism in the West Balkans' [2016] 2(2) The International Journal of Conflict & Reconciliation 1

²⁵ Joanna Quinn, 'Constraints: The Un-Doing of the Ugandan Truth Commission' (May 2004) 26 (2) Human Rights Quarterly 401, 417

²⁶ Jeremy Bracka, *Transitional Justice for Israel/Palestine: Truth Telling and Empathy in Ongoing Conflict* (1st edn, Springer 2021) 246

²⁷ The Office of the United Nations High Commissioner for Human Rights, 'Rule-of-Law Tools For Post-Conflict States - Truth Commissions' (HR/PUB/06/1 2006)

²⁸ Zinaida Miller, 'Settling With History: A Hybrid Commission of Inquiry for Israel/Palestine' (2007) 20 HARv. Hum. RTs. J. 293

²⁹ Roger Duthie, 'Justice Mosaics - How Context Shapes Transitional Justice in Fractured Societies' (ICTJ 2017) https://www.ictj.org/sites/default/files/ICTJ_Report_JusticeMosaics_2017_1.pdf#page=203 accessed 09 April 2023

³⁰ Palestinian Center for Policy and Survey Research, 'Public Opinion Poll no (84)' (pspr.org 28 June 2022) <<https://pcpsr.org/en/node/912>> accessed 09 April 2023

³¹ The Office of the United Nations High Commissioner for Human Rights, 'Rule-of-Law Tools For Post-Conflict States - Truth Commissions' (HR/PUB/06/1 2006)

³² Ibid. 5

process with local communities³³. Nevertheless, the Israeli-Palestinian conflict is highly polarised, with deeply entrenched political, religious, and cultural divisions, which could make it difficult to gain broad-based support for the commission. Indeed, neither society appears able or willing to undertake such a formal process amidst sustained hostilities³⁴.

In light of these considerations, the prospects of establishing a truth commission, let alone an effective one, is extremely slim as an ongoing conflict and complex political climate have resulted in: (1) a negotiation stalemate forgoing any potential for talks or institutional bridging; (2) an improbability of selecting unbiased commissioners or establishing an adequate mandate; (3) a lack of political will; (4) an unlikelihood that recommendations would be implemented; (5) security risks for all those involved; and (6) a lack of will from society. As the United States Institute for Peace information handbook on transitional justice suggests: 'If critical resources, political will, or impartiality are lacking, it may be better not to convene a truth commission at all, rather than to initiate a process that will not be able to fulfil its goals'³⁵.

The Advantages and Disadvantages of the Establishment of an Israeli/Palestinian Truth Commission

Advocates of truth commissions have praised their ability to foster healing and reconciliation and to promote truth and accountability, while others have sustained a more sceptical view of their potential to achieve the goals of transitional justice. This section will examine the main arguments surrounding the advantages and disadvantages of the establishment of a truth commission and will apply them to the Israel-Palestine context.

Establishing a Historical Narrative

Truth commissions have been commended for their ability to establish a historical narrative which is of particular relevance to the conflict in Israel-Palestine, as the conflict culture is one based on competing collective narratives of history and overarching ideologies of victimhood that inform the identities of each nation and continue to fuel violence³⁶. The key feature of the conflict is not merely the contested territory of Palestine which both nations lay

³³ Ibid.

³⁴ Jeremy Bracka, *Transitional Justice for Israel/Palestine: Truth Telling and Empathy in Ongoing Conflict* (1st edn, Springer 2021) 238

³⁵ United States Institute of Peace, 'Transitional Justice: Information Handbook' (2008) 8 <https://www.usip.org/sites/default/files/ROL/Transitional_justice_final.pdf> Accessed 09 April 2023

³⁶ Ariel Meyerstein, 'Transitional Justice and Post-Conflict Israel/ Palestine: Assessing the Applicability of the Truth Paradigm' (2006) 38 Case W. Res. J. Int'l L. 281; See also Jeremy Bracka, *Transitional Justice for Israel/Palestine: Truth Telling and Empathy in Ongoing Conflict* (1st edn, Springer 2021)

claim to, but is also existential in nature, deeply rooted in the mutual denial by both sides of each other's narrative³⁷. Bracka identifies three transformative episodes in the conflict of which the opposing meta-narratives continue to define the identity and beliefs of both societies and oil the wheels of the conflict³⁸. Firstly, he identifies Al Nakba (1948) which concerns the disputed Palestinian right of return. Secondly, he identifies the 1967 six-day war which led to significant proportions of Palestinian land annexed by Israel, as well as to the occupation and the emergence of Jewish settlements in Palestinian territory. Whilst Israel views this as the reclamation of their homeland and as necessary defence measures against antisemitism, from the Palestinian view this is a denial of their legitimacy as a nation. Finally, he identifies the Second Intifada (2000-2005) where suicide bombings and arbitrary violence against Israeli citizens led Israel to consider Palestinian authorities as terrorists and thus not suitable diplomatic counterparts, whilst Palestinians viewed their reaction as a justified resistance to the continued occupation. Any effective transitional justice mechanism would thus need to contend with the legacies of the past in order to establish a common narrative as a prerequisite for reconciliation. Truth Commissions are designed precisely to deal directly with the past and to establish a historical record.

Nevertheless, Shaw argues that social memory, rather than constituting a fixed and specific set of facts, is a contested process and it can be extremely problematic for a truth commission to produce a single impartial historical record that will garner unanimous national agreement and heal social divisions³⁹. Indeed, due to the ongoing conflict, it might be difficult for either party to accept a common narrative, and a commission with a limited mandate will not be able to establish a complete truth, leaving many feeling marginalised. Moreover, dealing with the past prematurely, whilst injustices persist and there is limited chance for institutional reform or accountability, may stir renewed violence⁴⁰. However, in the situation where Israel and Palestine manage to reach a peace agreement, the establishment of a truth commission should be revisited as it may be an advantageous tool to promote reconciliation by establishing a common historical narrative which acknowledges and accepts the experiences of both nations.

³⁷ Ibid.

³⁸ Jeremy Bracka, *Transitional Justice for Israel/Palestine: Truth Telling and Empathy in Ongoing Conflict* (1st edn, Springer 2021)

³⁹ Rosalind Shaw, 'Rethinking Truth and Reconciliation Commissions: Lessons from Sierra Leone' (Special Report no 130, United States Institute for Peace 2005)

⁴⁰ Jack Snyder and Leslie Vinjamuri, 'Trials and Errors: Principle and Pragmatism in Strategies of International Justice' (2004) 28 (3) *International Security* 5

Healing

Significantly, truth commissions may support the social and individual healing of Israelis and Palestinians. Indeed, Herman argues that the healing of individual victims can be brought about by the remembrance and speaking out about past atrocities⁴¹. Similarly, Minow identifies the restorative power of truth-telling as a core element of recovery for those who have survived trauma⁴². Whilst truth-telling can promote healing, Shaw states accurately that a truth commission should not be conflated with therapy, and asserts that the healing ability of truth-telling cannot simply be assumed⁴³. Evidence exists that supports such scepticism such as a study carried out by the Trauma Centre for Victims of Violence and Torture in Cape Town which found that over half of the victims it worked with who testified in the South African Truth and Reconciliation Commission (SATRC), regretted doing so afterwards as it resulted in harmful psychological problems⁴⁴. Nevertheless, the evidence remains mixed and the overall view of the SATRC was that it was effective in catalysing personal healing by engaging victims in truth-telling⁴⁵. The same conclusion was reached by the Chilean TRC whilst, in Latin America, memory repression was shown to have adverse psychological effects⁴⁶. Therefore, even though the cathartic effects have been disputed, a great deal of literature and anecdotal data support the fact that truth-telling promotes healing, and it has been demonstrated to bring satisfaction and relief to a great number of people following their testimony.

It is pertinent to note, however, that as no truth commission has been established in the context of ongoing conflict, no studies have been done to assess whether healing is at all possible within this environment. As Hayner observes, truth commissions cannot simply be rolled out in any situation where past atrocities have taken place, as a plethora of contextual factors need to be taken into account⁴⁷. Indeed, it is doubtful that Palestinians suffering daily under the occupation, or those who are outside of the country and not allowed the right of

⁴¹ Judith Herman, *Trauma and Recovery: The Aftermath of Violence--From Domestic Abuse to Political Terror* (Basic Books 2015)

⁴² Martha Minow, 'The Hope for Healing: What Can Truth Commissions Do?' in Dennis Thompson and Robert I Rotberg (eds), *Truth v. Justice* (Princeton University Press 2000) XII 235

⁴³ Rosalind Shaw, 'Rethinking Truth and Reconciliation Commissions: Lessons from Sierra Leone' (Special Report no 130, United States Institute for Peace 2005)

⁴⁴ Ibid.

⁴⁵ Jeremy Bracka, *Transitional Justice for Israel/Palestine: Truth Telling and Empathy in Ongoing Conflict* (1st edn, Springer 2021)

⁴⁶ Ibid.

⁴⁷ Priscilla B. Hayner, 'Past Truths, Present Dangers: The Role of Official Truth Seeking in Conflict Resolution and Prevention' in National Research Council, *International Conflict Resolution After the Cold War* (National Academies Press 2000) 338

return, would be able to heal whilst they continue to suffer injustices. When safety and more vital interests remain an immediate concern, it is unlikely that victims can heal and move forward. On the contrary, engaging with the past whilst the status quo is maintained may contribute to affirming victim ideologies and may stir renewed violence as a result.

Apportioning blame

Unlike trials and tribunals which apportion guilt solely to individuals, truth commissions can attribute responsibility and blame across entire sectors of society and contribute to revealing the multitude of conditions and causes which led to mass atrocities taking place⁴⁸. In this regard, whilst it cannot be denied that a power asymmetry exists between Israel and Palestine, and the collective suffering of Palestinians living under daily occupation cannot be compared to the experience of an average Israeli citizen, a ‘grey zone’ has developed decades of ongoing conflict with both sides internalising a victim ideology⁴⁹. As Meyerstein notes ‘Israel also has the additional complexity of a huge collaborator class’⁵⁰ as due to the existence of mandatory military service, the vast majority of Jewish citizens above the age of eighteen have served in the army and men remain as reservists for the rest of their lives⁵¹. On the other hand, whilst Palestinians under occupation may all be considered to be victims, it is nevertheless noted that both Hamas and the PA have been accused of sponsoring terrorism against the state of Israel and the Jewish population⁵². The international criminal justice system would thus be far less suited to examine culpability in the Israel-Palestine conflict which involves a diverse set of actors extending far beyond high-level perpetrators.

Reconciliation

A normative goal of restorative justice is to foster reconciliation by involving victims, offenders and all other stakeholders in the conflict, and providing an avenue through which to

⁴⁸ Ariel Meyerstein, ‘Transitional Justice and Post-Conflict Israel/ Palestine: Assessing the Applicability of the Truth Paradigm’ (2006) 38 Case W. Res. J. Int’l L. 281 318 See also; Martha Minow, ‘The Hope for Healing: What Can Truth Commissions Do?’ in Dennis Thompson and Robert I Rotberg (eds), *Truth v. Justice* (Princeton University Press 2000) XII 235

⁴⁹ Martha Minow, ‘The Hope for Healing: What Can Truth Commissions Do?’ in Dennis Thompson and Robert I Rotberg (eds), *Truth v. Justice* (Princeton University Press 2000) XII 235

⁵⁰ Ariel Meyerstein, ‘Transitional Justice and Post-Conflict Israel/ Palestine: Assessing the Applicability of the Truth Paradigm’ (2006) 38 Case W. Res. J. Int’l L. 281 315

⁵¹ Ibid

⁵² Ministry of Foreign Affairs. ‘Victims of Palestinian Violence and Terrorism since September 2000’, (2023) <<https://www.gov.il/en/departments/general/victims-of-palestinian-violence-and-terrorism>> Accessed 11 April 2023

repair relations. The significance of reconciliation as a primary aim of truth commissions is reflected in the mandate and name of numerous truth commissions such as the South African Truth and Reconciliation Commission and the Truth and Reconciliation Commission in Sierra Leone. Advocates of truth commissions argue that reconciliation is only possible once the past has been addressed and the truth has been established, as the truth forces people to self-reflect on their role in the conflict and reassess their previously held judgements and beliefs⁵³.

There is no fixed interpretation of reconciliation; it has been interpreted in its most extreme form as forgiveness or more modestly as tolerance⁵⁴. As Bracka suggests, a more modest approach is needed in the Israel-Palestine context⁵⁵. He argues that truth commissions offer Israelis and Palestinians an opportunity to engage in storytelling, through which they can develop empathy and humanisation towards one another, which are key elements of reconciliation⁵⁶. It must be noted that Bracka argues this for the development of non-official grassroots truth commissions, which are outside of the scope of this paper⁵⁷. His argument may be useful within the Israeli territory where Palestinians and Israelis are living side by side. Nevertheless, the prospect of any form of reconciliation through an official truth commission appears out of reach for Palestinians living under the occupation or those since 1948 denied the right of return as they continue to suffer daily the injustices of the conflict. On the contrary, as Van Zyl argues, revealing the truth may amplify bitterness and division⁵⁸. In conclusion, whilst truth commissions may indeed offer the chance of reconciliation in the traditional transitional context, this remains unlikely during an ongoing conflict and should be revisited only once a peace agreement has been reached.

The Implications of Recent Developments in the ICC

Recent developments have been noted with regard to international criminal justice in the case of Israel-Palestine. On 22nd January 2020, a request made by the Office of the

⁵³ James L. Gibson, 'On Legitimacy Theory And The Effectiveness Of Truth Commissions' (2009) 72 Law and Contemporary Problems 123; See also Martha Minow, 'The Hope for Healing: What Can Truth Commissions Do?' in Dennis Thompson and Robert I Rotberg (eds), *Truth v. Justice* (Princeton University Press 2000) XII 235; See also Paul Van Zyl, 'Dilemmas of Transitional Justice: The Case of South Africa's Truth and Reconciliation Commission' (1999) 52 Journal of International Affairs 647

⁵⁴ James L. Gibson, 'On Legitimacy Theory And The Effectiveness Of Truth Commissions' (2009) 72 Law and Contemporary Problems 123

⁵⁵ Jeremy Bracka, *Transitional Justice for Israel/Palestine: Truth Telling and Empathy in Ongoing Conflict* (1st edn, Springer 2021)

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Paul Van Zyl, 'Dilemmas of Transitional Justice: The Case of South Africa's Truth and Reconciliation Commission' (1999) 52 Journal of International Affairs 647

Prosecutor of the International criminal court (ICC) was sent to the Judges of Pre-Trial Chamber I, for a ruling concerning the clarification of the territorial scope of the Court's jurisdiction in the Situation of Palestine⁵⁹. A landmark judgement was made by the Chamber on 5th February 2021 bringing an end to the five-year examination stalemate by the Office of the Prosecutor. The chamber ruled that 'the Court may exercise its criminal jurisdiction in the Situation in Palestine, and that the territorial scope of this jurisdiction extends to Gaza and the West Bank, including East Jerusalem'⁶⁰. Based on this ruling, on 3rd March 2021, a statement was issued by the Office of the Prosecutor, which confirmed the initiation by the Office of an investigation concerning the Situation of Palestine and will cover crimes committed since 13 June 2014⁶¹. At the time of writing, the investigation is still ongoing and no criminal proceedings or prosecutions have been initiated.

What effect this development will ultimately have on the Israeli-Palestinian conflict and efforts to bring war crime victims to justice are still to be seen. Nevertheless, these developments may further limit the prospects of the establishment of an official truth commission. Indeed, the ICC investigation has been met with overt hostility by Israel. Israel's attorney general has claimed that there is 'absolutely no place for the ICC's intervention in matters that are under the jurisdiction of the State of Israel'⁶². Moreover, in a video sent out by the office of the Israeli Prime Minister, Netanyahu refers to the investigation as 'pure antisemitism', asserts that Israel is simply defending itself from terrorists and concludes that the state of Israel 'will fight this perversion of justice with all (their) might'⁶³. This hostility not only confirms the lack of political will on the part of Israel to uncover the truth about human rights violations, or to hold perpetrators accountable, but it has also heightened tensions and division between both states which forecloses opportunities for negotiations concerning the establishment of a truth commission.

⁵⁹ International Criminal Court, 'Statement of ICC Prosecutor, Fatou Bensouda, respecting an investigation of the Situation in Palestine' (March 2021)

⁶⁰ International Criminal Court, 'State of Palestine – Situation in Palestine' <<https://www.icc-cpi.int/palestine>> Accessed 09 July 2023

⁶¹ International Criminal Court, 'Statement of ICC Prosecutor, Fatou Bensouda, respecting an investigation of the Situation in Palestine' (March 2021)

⁶² Ministry of Justice, Statement of Israel's Attorney General concerning the recent decision of the International Criminal Court' (Feb 2021) <https://www.gov.il/en/departments/news/news_11_02_21> Accessed 09 April 2023

⁶³ The Times of Israel, Netanyahu: An ICC investigation of Israel would be 'pure anti-Semitism' (Feb 2021) <<https://www.timesofisrael.com/netanyahu-an-icc-investigation-of-israel-would-be-pure-anti-semitism/>> Accessed 09 April 2023

Conclusion

In the 21st century, Transitional Justice has become a popular and valuable tool that is resorted to in post-conflict or transitioning societies as a means to contend with past human rights atrocities. In particular, truth commissions are a staple of restorative justice which promote truth, healing, reconciliation and accountability. Nevertheless, as this article has argued, they cannot simply be established in any situation without taking into account specific contextual factors. As the Israel-Palestine conflict demonstrates, for a truth commission to be established, the conflict must first come to an end. Indeed, the prospects of establishing a truth commission in Israel-Palestine are extremely slim due to the complex political climate, ongoing conflict and lack of political and national will. Moreover, as civilians are faced with more immediate risks to their safety due to ongoing hostilities, they are unable to attain the typical advantages that may be brought about by a truth commission in a transitional society such as healing and reconciliation. On the contrary, a premature truth commission may increase resentment and division, as well as fuel the cycle of violence. In addition, the initiation of an investigation into the situation of Palestine by the ICC has further limited the prospects of a truth commission as it has aggravated tension between the nations with Israel vehemently opposed to this development. Therefore, the establishment of an Israeli-Palestinian truth commission should be stalled until a peace agreement is reached and should be established only following broad consultation with the affected individuals and communities.