Chapter 17

Promoting Peace in the Middle–East Through the Field of Transitional Justice:
Building a Civil Society Israeli–Palestinian Truth Commission

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ABSTRACT

This chapter examines the role and potential contribution of transitional justice to promoting peace in the Israeli-Palestinian conflict. From the experience of many post-conflict societies, it has now become prevailing wisdom that meaningful peace, requires due regard for justice and a carefully conceived process to re-establish the rule of law and accountability for human rights abuse. Nevertheless, such considerations have been all but absent in political peace efforts in the Middle East. Accordingly, this chapter highlights the unique goals of the transitional justice model, and its capacity to apply a retrospective and restorative approach to peace building. By attaching transitional justice to intractable issues like the Palestinian right of return, the refugees, and the historical record, negotiators could draw on a restorative justice model to defeat the present stalemate. It proposes an unofficial bi-national Israeli-Palestinian truth commission (IPTC) to play a pivotal role in reshaping collective memory and supporting the viability of any future political agreement.

INTRODUCTION

This chapter examines the role and potential contribution of transitional justice for promoting peace in the Israeli-Palestinian conflict. Few fields have gained as much momentum in recent decades as 'transitional justice'. From the experience of many post-conflict societies, it has now become prevailing wisdom that meaningful peace requires due regard for justice, and a carefully conceived process to re-establish the rule of law and human rights, as well as to end impunity by having perpetrators held accountable.

Transitional justice, so defined, is thus future-orientated as well as retrospective, and favors recognition, restitution, and reconciliation over retribution.

Despite the growing popularity of transitional justice it has been all but absent in political peace efforts between Israelis and Palestinians. Thus, Part I begins by exploring the discursive challenges of the existing paradigm of peace, which arguably impedes the conflict's resolution. Indeed, at its core, the Israeli-Palestinian struggle is one waged over history, inextricably tied to notions of collective identity, selfhood and justice. Accordingly, it is contended that reconciliation between the two nations will first require reconciliation with history.

In this light, Part II highlights the unique role of the transitional justice model, and its capacity to apply a retrospective and restorative approach to peacebuilding even whilst a conflict is ongoing. By attaching transitional justice to intractable issues like the Palestinian right of return, the refugees and the historical record of 1948, negotiators might draw on a restorative justice model to defeat the present stalemate. Part III proposes a design for an unofficial bi-national Israeli-Palestinian truth commission (IPTC). Such a grass-roots mechanism could play a pivotal role in reshaping collective memory and supporting the viability of any political agreement. By pursuing the goals of truth-telling, institutional reform and reparations, a locally crafted commission might help forge an authoritative bridging narrative of 'peace' for Israelis and Palestinians.

PART 1: THE EXISTING ISRAELI-PALESTINIAN 'PEACE' PARADIGM: SIDELINING HISTORY, JUSTICE, RECONCILIATION AND HUMAN RIGHTS

Introduction: Sidelining Transitional Justice and the Past

Although *Oslo* marked a significant milestone on the path to peace, transitional justice considerations have been all but absent from the diplomatic efforts. With the initiation of the *Oslo* process, both sides crossed a critical threshold of mutual acknowledgement. The Israeli government officially recognized "the PLO as the representative of the Palestinian people." The PLO, in turn, recognized "the right of the State of Israel to exist in peace and security"' [1] (Weiner, 2006, p.141). To a degree, this ended the rhetorical warfare of mutual denial, under which "…both sides withheld recognition as if it were the ultimate weapon in a peculiar version of mutual deterrence"[2] (Khalidi, 1997, p. 205).

Nevertheless, the normative goals of truth-telling, historical justice and/or reconciliation were conspicuously absent from the diplomatic process, and "proposals for such mechanisms have not been engaged with even in the margins of the political arena"[3] (Dudai, 2007, p.340). Thus, attempted political settlements, including those at Oslo (1993), as well as the Camp David Summit (2000), and the Taba Summit (2001), primarily addressed the territorial dimensions of the conflict, and institutional arrangements, such as the nature of the Palestinian administration, borders and security arrangements[4] (Weiner, 2000, p.245). Several proposals since *Oslo*, including the Arab-Peace Initiative (2002), the Road Map (2002), the Nusseibeh-Ayalon Initiative (2002), the Geneva Initiative (2003), the Bush Initiative (2007), and the Annapolis Peace Conference (2008) continue to mirror this pragmatic approach.

While some plans exhibit attempts to deal with 1948,[5] none of them have sought to fully grapple with the psychological and historical barriers impeding the resolution of the Israeli-Palestinian conflict, nor have they envisaged a transitional justice mechanism. More broadly, "the terms transitional justice and

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