

THE ROADMAP FOR FAILURE: ISRAELI AND PALESTINIAN' DISCOURAGEMENT AND  
MISUNDERSTANDING

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INTRODUCTION

The Middle East has long been a hot bed of conflict, as at least three main religions cite it as their birthplace.<sup>1</sup> While the Christians were intimately involved in the conflicts during the Crusades, the Muslims and Jews have clashed most recently regarding the former British Palestine.<sup>2</sup>

The hostilities have engendered a cycle of violence that has further devolved into disparate acts, which have resulted in crimes against humanity. These include: [1] Murder, [2] Torture, [3] Deportation, and [4] Persecution.<sup>3</sup> These crimes were not simply single acts, but rather they are systematic and widespread attacks that attained a certain level of *mens rea*.<sup>4</sup> In response, both the Palestinian authorities and citizens and what are now the Israeli government and its citizens have grown more intransigent in their beliefs and more desperate in their responses. Peace negotiations have failed repeatedly in the midst of rising humanitarian costs.<sup>5</sup>

Further, a peace process that would help address the perpetration of crimes against humanity in Israel and the Occupied Territories has not been achieved due to a lack of commitment by the parties and the lack of a specific proposal that both sides can

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<sup>1</sup> Arshad Khan, *Judaism, Christianity, and Islam: A Common Tradition*, REV. OF RELIGIONS (Oct. 1992), available at [www.alislam.org/library/links/00000129.html](http://www.alislam.org/library/links/00000129.html) (last visited Apr. 20, 2004).

<sup>2</sup> Gajendra Singh, *Roots of the Palestine Problem and New Road Map*, S. ASIA ANALYSIS GROUP, available at [www.saag.org/papers8/paper727.html](http://www.saag.org/papers8/paper727.html) (last visited Apr. 20, 2004).

<sup>3</sup> Violence to Life, Health, and Physical or Mental well-being of persons (ICTR), Collective Punishments (ICTR), Terrorism (ICTR), Outrages upon personal dignity...humiliating and degrading treatment (ICTR).

<sup>4</sup> JASON S. ABRAMS & STEVEN R. RATNER, *ACCOUNTABILITY FOR HUMAN RIGHTS ATROCITIES IN INTERNATIONAL LAW: BEYOND THE NUREMBERG LEGACY* 70 (2d Ed. 2001).

<sup>5</sup> *Arafat Urged to Act for Peace*, BBC NEWS, May 3, 2002, available at [http://news.bbc.co.uk/1/hi/world/middle\\_east/1963469.stm](http://news.bbc.co.uk/1/hi/world/middle_east/1963469.stm) (last visited Apr. 20, 2004).

agree upon. The commission of crimes against humanity has not slowed since the first Intifada.<sup>6</sup> And, putting a stop to these crimes rests on the possibility of creating a lasting peace, a lasting peace, which may only be brought about with a holistic approach that addresses the peace process, security issues, and system-wide justice for crimes against humanity. The processes used in Northern Ireland can serve as a model in realizing peace under these circumstances.

Northern Ireland has been involved in analogous conflicts for much of recent history. The Northern Irish Catholics have fought what they term as British and Protestant aggression and occupation, while the British and the Protestants have fought what they see as terrorism.<sup>7</sup> The recent successes with the Belfast Agreement<sup>8</sup> can be applied loosely to the Israeli/Palestinian situation as a remedy and answer to these crimes against humanity.

Part I of this paper discusses the background of each situation, which led to the humanitarian dilemmas in both Northern Ireland and Israel. Part II discusses the basis for international and crimes against humanity law. In addition, it describes the crimes that potentially could be proven in a situation arguably wrought with terrorism and governmental aggression, such as the Northern Ireland and Israel experiences. In Part III, this article discusses the breakdown of the peace process in Northern Ireland and in Israel, their similarities, and how these breakdowns have hindered recourse for past

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<sup>6</sup> In Arabic, “Intifada” ( *فِصْافَتِنَا* ) is defined as “abrupt and sudden waking up from sleep or unconcerned status.” *The Intifada in Palestine: Introduction*, INTIFADA.COM, available at <http://intifada.com/palestine.html> (last visited April 30, 2004). In terms of its political meaning, it has come to be associated with the Palestinian uprising against Israeli occupation. *Id.* As an uprising, it began in 1987. Mitchell Bard, *The Intifada*, AMERICAN-ISRAELI COOPERATIVE ENTERPRISE, available at [www.us-israel.org/jsource/History/intifada.html](http://www.us-israel.org/jsource/History/intifada.html) (last visited April 30, 2004).

<sup>7</sup> See *Real Irish Republican Army*, FEDERATION OF AMERICAN SCIENTISTS, available at [www.fas.org/irp/world/para/nira.htm](http://www.fas.org/irp/world/para/nira.htm) (last visited April 30, 2004).

<sup>8</sup> *Remarks by David Trimble, First Minister, Northern Ireland Assembly, to the New Atlantic Initiative*, FED. NEWS SERV. (Nov. 19, 2002).

crimes against humanity and created new ones. Part IV suggests a solution to address crimes against humanity by preventing further crimes, by providing recourse and remedy for past crimes and by permitting reconciliation between the Israeli and Palestinian peoples. Part V concludes that a solution to Israel's havoc is possible, but any plan to achieve lasting peace must address peace, security and justice.

## I. BACKGROUND

### A. *Northern Ireland*

Northern Ireland has been plagued by separation and discrimination since Henry VIII imposed Protestantism on the nation.<sup>9</sup> Religious rebellions destabilized the area throughout the 1600s and again in the late 1700s. Protestants benefited greatly from the Industrial Revolution, while Catholics in Northern Ireland continued to live in an agrarian society.<sup>10</sup> Discrimination was on the rise as a result of the success of the Protestants. From the mid-1800s to the start of World War I, nationalists fought to get a Home Rule Bill passed.<sup>11</sup> Such a bill would remove a measure of British governmental control over Northern Ireland. A Home Rule Bill was finally passed in 1912, but by then home rule was no longer enough to satisfy the nationalists.<sup>12</sup>

Violence broke out under the leadership of Sinn Fein in 1916. The Easter uprising was met with 30,000 British troops to stop 1,200 nationalists.<sup>13</sup> For the most part, Protestants felt no ill effects from the uprising, while Catholics had their church services

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<sup>9</sup> See generally MARCUS TANNER, *IRELAND'S HOLY WARS: THE STRUGGLE FOR A NATION'S SOUL: 1500-2000*, 52-59 (Yale U. Press 2001).

<sup>10</sup> *Wars and Conflict: Origins*, BBC NEWS, available at <http://www.bbc.co.uk/history/war/troubles/origins/origins.shtml> (last visited Apr. 30, 2004).

<sup>11</sup> See generally TANNER, *supra* note 9, at 248-65.

<sup>12</sup> *Id.*

<sup>13</sup> See Tanner, *supra* note 9, at 281.

cancelled and their stores closed.<sup>14</sup> Three years later, Sinn Fein representatives declared that Ireland was a republic.<sup>15</sup> In 1921 a treaty was signed, creating a twenty-six county Irish Free State, while six counties remained a part of the United Kingdom.<sup>16</sup>

Similar to movements in other countries around the world at the time, civil rights demonstrations were being held in Northern Ireland in protest to the never-ending discrimination against Catholics in regards to housing, voting and employment.<sup>17</sup> Riots and violence followed. The Bloody Sunday tragedy occurred in 1972 when British troops shot and killed “13 apparently unarmed civilians” who had been participants in an illegal march.<sup>18</sup> In 1974, there was an attempt at power-sharing, but it lasted a mere five months.<sup>19</sup> Despite that brief period, Northern Ireland remained under direct rule until the Northern Ireland Executive (established in the Belfast Agreement) took over in 1999.<sup>20</sup>

## B. *Israel*

Discussion of the creation of a Jewish state began before the atrocities of World War II. A Jewish state had not existed since the middle of the first century when the Diaspora scattered the Jewish people around the world.<sup>21</sup> The Balfour Declaration of 1917 outlined British dedication to the establishment of a Jewish home in Palestine (which was a British mandate at the time). The declaration also affirmed that such an establishment should not in any way cause detriment to the non-Jewish people living in

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 286.

<sup>16</sup> *Wars and Conflict: Partition and the birth of Northern Ireland*, BBC NEWS, available at <http://www.bbc.co.uk/history/war/troubles/origins/partition.shtml> (last visited Apr. 30, 2004).

<sup>17</sup> See TANNER, *supra* note 9, at 366-67.

<sup>18</sup> See TANNER, *supra* note 9, at 373.

<sup>19</sup> *Wars and Conflicts: Direct Rule*, BBC NEWS, available at <http://www.bbc.co.uk/history/war/troubles/origins/direct.shtml> (last visited Apr. 30, 2004).

<sup>20</sup> *Id.*

<sup>21</sup> L. Michael White, *A Portrait of Jesus' World: The Jewish Diaspora*, PBS, available at <http://www.pbs.org/wgbh/pages/frontline/shows/religion/portrait/diaspora.html> (last visited Apr. 30, 2004).

Palestine.<sup>22</sup> The indigenous population of Palestine was extremely opposed to the “Zionist programme.”<sup>23</sup> Revolts by the Arabs followed, which were brutally crushed by the British.<sup>24</sup>

Years followed without the formation of a Jewish state, but the events that occurred in Europe during World War II set the wheels in motion. The horrors of the Holocaust made the West far more sympathetic to the cause of a Jewish homeland. Locations other than Palestine were considered, but rejected.<sup>25</sup> The Palestinian people “rejected the idea, accepted as natural in the West, that they had a moral obligation to sacrifice their land to compensate for the crimes committed by Europeans against Jews.”<sup>26</sup> The position of the Palestinians was inconsequential to those making the decision and in November 1947 the United Nations General Assembly passed a resolution that called for the division of the Palestinian mandate into two states – one Jewish and the other Arab.<sup>27</sup> General Assembly resolutions are largely regarded as non-binding,<sup>28</sup> but by May 1948 the Jewish state had come into existence. War immediately followed. Armies from the surrounding Arab states invaded the new state, but were defeated. After the war, Israel had claimed more territory than had originally been reserved for it. In 1964, the Palestinian Liberation Organization (PLO) was created to give the Palestinian people an independent voice.<sup>29</sup> Three years later, in 1967, a war

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<sup>22</sup> NOAM CHOMSKY, *FATEFUL TRIANGLE: THE UNITED STATES, ISRAEL & THE PALESTINIANS* 90 (South End Press 1999).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 92.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 94.

<sup>28</sup> *Id.* at 95.

<sup>29</sup> *A History of Conflict: Formation of the PLO*, BBC NEWS, available at [http://news.bbc.co.uk/1/shared/spl/hi/middle\\_east/03/v3\\_ip\\_timeline/html/1964.stm](http://news.bbc.co.uk/1/shared/spl/hi/middle_east/03/v3_ip_timeline/html/1964.stm) (last visited Apr. 30, 2004).

lasting only six days would have a great effect on the region. It was during this war that Israel seized Gaza and Sinai from Egypt and the Golan Heights from Syria, which doubled the amount of land under Israeli control.<sup>30</sup> The region was again destabilized with the Yom Kippur War in 1973. “Unable to regain the territory they had lost in 1967 by diplomatic means, Egypt and Syria launched major offensives against Israel on the Jewish festival of the Day of Atonement or Yom Kippur.”<sup>31</sup> Israel was again successful in defeating their Arab neighbors.

The Israeli army went on the offensive in 1982 with its invasion of Lebanon. The operation was intended to crush Palestinian guerillas.<sup>32</sup> This dealt a huge blow to innocent Palestinians living in refugee camps in neighboring countries. Their safety was far from guaranteed.<sup>33</sup> From the late 1980s to the early 1990s, an Intifada broke out in protest to the Israeli occupation of Gaza.<sup>34</sup> The Intifada is most remembered for the Palestinian protesters who threw stones at the Israeli forces.<sup>35</sup> Several attempts at peace failed following the Intifada. In 2000, Ariel Sharon’s presence at a holy site for Muslims and Jews in Jerusalem propelled the region into another Intifada.

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<sup>30</sup> *A History of Conflict: The 1967 War*, BBC NEWS, available at [http://news.bbc.co.uk/1/shared/spl/hi/middle\\_east/03/v3\\_ip\\_timeline/html/1967.stm](http://news.bbc.co.uk/1/shared/spl/hi/middle_east/03/v3_ip_timeline/html/1967.stm) (last visited Apr. 30, 2004).

<sup>31</sup> *A History of Conflict: The Yom Kippur War*, BBC NEWS, available at [http://news.bbc.co.uk/1/shared/spl/hi/middle\\_east/03/v3\\_ip\\_timeline/html/1973.stm](http://news.bbc.co.uk/1/shared/spl/hi/middle_east/03/v3_ip_timeline/html/1973.stm) (last visited Apr. 30, 2004).

<sup>32</sup> *A History of Conflict: Israel Invades Lebanon*, BBC NEWS, available at [http://news.bbc.co.uk/1/shared/spl/hi/middle\\_east/03/v3\\_ip\\_timeline/html/1982.stm](http://news.bbc.co.uk/1/shared/spl/hi/middle_east/03/v3_ip_timeline/html/1982.stm) (last visited Apr. 30, 2004).

<sup>33</sup> *Id.*

<sup>34</sup> *A History of Conflict: Palestinian Intifada*, BBC NEWS, available at [http://news.bbc.co.uk/1/shared/spl/hi/middle\\_east/03/v3\\_ip\\_timeline/html/1987.stm](http://news.bbc.co.uk/1/shared/spl/hi/middle_east/03/v3_ip_timeline/html/1987.stm) (last visited Apr. 30, 2004).

<sup>35</sup> *Id.*

## II. CRIMES AGAINST HUMANITY

### A. *Basis for Crimes Against Humanity*

“The principle of *nullum crimen sine lege* requires that the crimes at issue be judged solely from the perspective of the law in force” at the time of their commission.<sup>36</sup> This notion has been at odds with that of crimes against humanity from the time of their first application during the Nuremberg Trials. At that time, crimes against humanity embarked on a journey from the ivory towers of universities to the lookout towers of battlefields, as a natural law idea developed in the wake of the atrocities of World War II (WWII). Crimes against humanity have been said to be “deemed unjustifiable at all times and in all circumstances.”<sup>37</sup>

The Nuremberg Trials were established by the Charter of the International Military Tribunal, in 1945, at the close of WWII,<sup>38</sup> for “just and prompt trial and punishment of the major war criminals of the European Axis.”<sup>39</sup> This Charter defined crimes against humanity as:

Murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.<sup>40</sup>

Subsequently, international tribunals were instituted in order to prosecute persons responsible for serious violations of international humanitarian law within the former

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<sup>36</sup> See RATNER, *supra* note 4, at 310.

<sup>37</sup> Jonathan Grebinar, *Responding to Terrorism: How Must A Democracy Do It? A Comparison of Israeli and American Law*, 31 *FORDHAM URB. L. J.* 261, 270 (2003).

<sup>38</sup> See generally, *Charter of the International Military Tribunal*, AVALON PROJECT (1945), available at [www.yale.edu/lawweb/avalon/imt/proc/imtconst.htm](http://www.yale.edu/lawweb/avalon/imt/proc/imtconst.htm) (last visited April 20, 2004) [hereinafter *International Military Tribunal*].

<sup>39</sup> *International Military Tribunal*, *supra* note 38, at Art. 1.

<sup>40</sup> Ronald, C. Slye, *Apartheid as a Crime Against Humanity: A Submission to the South African Truth and Reconciliation Commission*, 20 *MICH. J. INTL'L L.* 267, 274 (1999) (quoting *International Military Tribunal*, *supra* note 38, at Art. 6(c)).

Yugoslavia (ICTY) and Rwanda (ICTR).<sup>41</sup> Both of the tribunals utilized the following litany of offenses in terming crimes against humanity as acts “when committed in armed conflict, whether international or internal in character, and directed against any civilian population:

- (a) murder;
- (b) extermination;
- (c) enslavement;
- (d) deportation;
- (e) imprisonment;
- (f) torture;
- (g) rape;
- (h) persecutions on political, racial and religious grounds;
- (i) other inhumane acts.”<sup>42</sup>

Additional expansion of the codified law, through customary international law, has eliminated the requirement of “a nexus to armed conflict”<sup>43</sup> in the context of crimes against humanity.<sup>44</sup> However, the ICTR Statute replaced that phrase with a requirement that “crimes be committed in a widespread or systematic manner” and be “motivated by ‘national, political, ethnic, racial or religious grounds’” to meet the crimes against humanity standard.<sup>45</sup> For example, a person accused of a crime against humanity must have done so “with the requisite intent and he must be aware of the context within which his acts are committed.”<sup>46</sup>

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<sup>41</sup> *Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993)*, art. 5, at 13, U.N. Doc. S/25704 (1993) [hereinafter ICTY Statute]; *Statute of the International Criminal Tribunal for Rwanda*, 33 I.L.M. 1598, 1603 (1994) [hereinafter ICTR Statute].

<sup>42</sup> See ICTY Statute *supra* note 41, at Art. 5 with ICTR Statute, at Art. 3.

<sup>43</sup> Slye, *supra* note 40, at 275, 286 (stating that “by the late 1960s little doubt remained that the overwhelming majority of states no longer insisted that acts be connected to an armed conflict in order to qualify as crimes against humanity under international law.” *Id.*).

<sup>44</sup> General humanitarian law, under the Geneva Conventions and its Protocol I, is limited to violations occurring in armed conflict; however these do not rise to the level of crimes against humanity. Gabor Rona, *Interesting Times for International Humanitarian Law: Challenges from the “War on Terror,”* 27 FLETCHER F. WORLD AFF. 55, 58 (2003).

<sup>45</sup> Slye, *supra* note 40, at 278.

<sup>46</sup> Slye, *supra* note 40, at 283.

In addition, the International Law Commission, in its Draft Code of Crimes against the Peace and Security of Mankind, further augmented the definition of crimes against humanity by specifying as a criminal in Art. 5(f), “institutionalized discrimination on racial, ethnic or religious grounds involving the violation of fundamental human rights and freedoms and resulting in seriously disadvantaging a part of the population” and “arbitrary deportation or forcible transfer of population.”<sup>47</sup>

Crimes against humanity would be the likely charge with regard to Northern Ireland and Israel/Occupied Territories, even with the original limited definitions. In both cases, an armed conflict has raged for decades. Even if the United Kingdom is correct in its assertion that no armed conflict exists in Northern Ireland,<sup>48</sup> crimes against humanity are independent of international covenants, being derived from customary and universal international law. Thus, as was recognized by the International Criminal Court for Yugoslavia and International Criminal Court for Rwanda, a widespread or systematic commission of these crimes should propel them to the international stage, regardless of national law. At the very least, the questions become arguable and should be addressed by all parties involved in order to reach a resolution that would be amenable to most and reparative to all.

The most likely suspects in the “subjugated populace/terrorist”—“hegemonic government/terrorist” environment include murder, torture, deportation and persecutions and institutional discrimination.

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<sup>47</sup> Draft Code of Crimes against the Peace and Security of Mankind, in Report of the International Law Comm’n on the Work of its Forty-Eighth Session, U.N. GAOP, 51st Sess., Supp. No. 10, at 93 [art. 5(f)], U.N. Doc. A/51/10 (1996) [hereinafter Code of Crimes].

<sup>48</sup> See Rona, *supra* note 44, at n. 38.

## 1. MURDER

In general, the Geneva Conventions seem to require “parties to any ‘armed conflict not of an international character’ to apply, ‘as a minimum’, certain standards to ‘persons taking no active part in the hostilities’.”<sup>49</sup> This includes “murder of all kinds.”<sup>50</sup> While murder in general would merely be a humanitarian violation, systematic or widespread murder recently has been elevated to a crime against humanity. This should include systematic suicide bombings, car bombings, and assassination attempts, which seem to have become commonplace in Israel/Occupied Territories.<sup>51</sup> The International Criminal Tribunals in both Rwanda and Yugoslavia included this crime in their statutes.<sup>52</sup> In fact, in both statutes, it is the first crime listed.

## 2. TORTURE

Torture has long been held a violation of customary law by virtue of its universally atrocious nature. However, as a separate crime against humanity, it remains relatively new. It appears on the lists of crimes against humanity and war crimes now, thanks in part to the 1975 adoption of the Declaration on Protection from Torture by the General Assembly of the United Nations.<sup>53</sup> Each signatory must make torture a crime under its penal code, and it must prosecute offenders.<sup>54</sup> Conventional law status was

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<sup>49</sup> See RATNER, *supra* note 4, at 95.

<sup>50</sup> Geneva Conventions, Common Art. 3(a) (1949).

<sup>51</sup> *Annan Condemns Yassin Assassination*, ALJAZEERA.COM, Mar. 22, 2004, available at [http://www.aljazeera.com/cgi-bin/news\\_service/middle\\_east\\_full\\_story.asp?service\\_id=919](http://www.aljazeera.com/cgi-bin/news_service/middle_east_full_story.asp?service_id=919) (last visited Apr. 30, 2004); *Israel: Bus bombing vindicates West Bank barrier*, ALJAZEERA.COM, available at [http://www.aljazeera.com/cgi-bin/news\\_service/middle\\_east\\_full\\_story.asp?service\\_id=71](http://www.aljazeera.com/cgi-bin/news_service/middle_east_full_story.asp?service_id=71) (last visited Apr. 30, 2004).

<sup>52</sup> See ICTY Statute, *supra* note 41, at Art. 5 with ICTR Statute, at Art 3.

<sup>53</sup> See RATNER, *supra* nte 4, at 117.

<sup>54</sup> *Id.*

attached to the act with the 1984 promulgation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>55</sup> Torture is defined as:

...[A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.<sup>56</sup>

The physical and mental integrity of the person is often cited as a reason against employing torture as an information gleaning device, as is the belief that evidence obtained through its utilization would be unreliable.<sup>57</sup> The Convention also states that “no exceptional circumstances...may be invoked as a justification for torture...”<sup>58</sup> In 1987, the Landau Report recommended that security agents in Israel “exercise the use of moderate physical and psychological pressure” on Palestinians suspected of security offenses,<sup>59</sup> but it was not until 1999 that the Israeli Supreme Court admonished the practice. Israel was the last democratic country in the world to officially sanction the use of torture.<sup>60</sup>

### 3. DEPORTATION

The International Criminal Court as well as the ICTY and ICTR require a widespread or systematic “attack” for an act to be considered a crime against humanity. This expands the scope of “crime against humanity” to include acts outside of armed

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<sup>55</sup> *Id.*

<sup>56</sup> CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, Pt. I, Art. 1(1) (opened for ratification, Dec. 10, 1984), *available at* [www.unhchr.ch/html/menu3/b/h\\_cat39.htm](http://www.unhchr.ch/html/menu3/b/h_cat39.htm) (last visited Apr. 30, 2004) [hereinafter Torture Convention].

<sup>57</sup> *See* Grebinar, *supra* note 37, at 271.

<sup>58</sup> *Id.* at 270; RATNER, *supra* note 4, at 118.

<sup>59</sup> *See* Grebinar, *supra* note 37, at 271.

<sup>60</sup> *Id.*

conflict as had been the case in the past. This attack, however, is not limited to a “military attack and can include laws and administrative measures.”<sup>61</sup> International law has developed to “protect conquered and occupied populations against forced relocation and internal displacement, obligations heightened during times of internal conflict.”<sup>62</sup>

Deportation includes “forcing people to leave an area in which they are lawfully present, without grounds permitted under international law; deportation involves crossing national frontiers and forcible transfers take place within national borders.”<sup>63</sup>

#### 4. PERSECUTION/INSTITUTIONALIZED DISCRIMINATION

According to the ICTY, “persecution is an act or omission committed against someone on account of his or her race, religion, politics or ethnicity.”<sup>64</sup> The ICTY statute spoke required the offense be “‘political, racial *and* religious grounds’ (emphasis added), whereas previous definitions required that an act be committed either on political, racial or religious grounds.”<sup>65</sup> However, the ICTY has refused to acknowledge the difference in conjunction use.<sup>66</sup> And the Code of Crimes adopted even broader perceptions of persecution in Art. 5(f).

Moreover, the Nuremberg tribunals attempted to focus the blurred conception, to which “persecution” gives rise by including: “deprivation of the rights to citizenship, to teach, to practice professions, to obtain education, and to marry freely; arrest and confinement, beatings, mutilation, and torture; deportation to ghettos; slave labor; and

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<sup>61</sup> AMNESTY INTERNATIONAL, THE INTERNATIONAL CRIMINAL COURT: FACT SHEET 4: PROSECUTING CRIMES AGAINST HUMANITY 1, *available at* [www.amnestyusa.org/icc/factsheet\\_4.pdf](http://www.amnestyusa.org/icc/factsheet_4.pdf).

<sup>62</sup> William Bradford, *With a Very Great Blame on Our Hearts: Reparations, Reconciliation, and an American Indian Plea for Peace with Justice*, 27 AM. INDIAN L. REV. 1, n. 548 (citing UN ECOSOC Res. 1999/47, E/CN.4/RES/1999/47 (Apr. 27, 1999) (confirming forced relocation and “ethnic cleansing” as matters of grave international concern). *Id.*

<sup>63</sup> See Amnesty, *supra* note 61, at 2.

<sup>64</sup> Prosecutor v. Dusko Tadic a/k/a “Dule”: Opinion and Judgment, U.N. Doc. IT-94-1-T, P697 (1997).

<sup>65</sup> See ICTY Statute, *supra* note 41.

<sup>66</sup> See Slye, *supra* note 40, at fn. 22 (citing *Tadic*, U.N. Doc. IT-94-1-T, at P713).

extermination.”<sup>67</sup> Also, incorporated into the definition of persecution were acts that seemed ‘Nazi-like.’ Concentration camps and “aryanization” were amongst those acts.<sup>68</sup>

## B. *Crimes Against Humanity in Northern Ireland*

### 1. APPLICABLE STATE LAW

Currently, Northern Ireland has its own court system and parliament, but being part of the United Kingdom permits the British government to exercise its sovereign right to promote the security of its borders.<sup>69</sup> The British government has used this justification in order to derogate from accepted international law and agreements, namely the International Covenant on Civil and Political Rights.<sup>70</sup>

The British government has also promulgated its Terrorism Act of 2000, which is its latest attempt to route out terrorism throughout the kingdom and its protectorates.<sup>71</sup> This act extends and amends the Northern Ireland (Emergency Provisions) Act of 1996.<sup>72</sup> The amendments attempt to strengthen evidence collection protections to citizens and also attempt to increase the ability of the authorities to control terrorism.<sup>73</sup> Terrorism is defined as the use or threat of action “designed to influence the government or to intimidate the public or a section of the public, and...the use or threat is made for the

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<sup>67</sup> Slye, *supra* note 40, at 281 (quoting United States v. von Weizsaecker (The Ministries Case), in 14 Trials of War Criminals before the Nuernberg Military Tribunals under Control Council Law No. 10 471 (1946-49 with Telford Taylor, *Final Report to the Secretary of the Army on the Nuernberg War Crimes Trials under Control Council No. 10, at 64-65 (1949)*)).

<sup>68</sup> See Slye, *supra* note 40, at fn. 37.

<sup>69</sup> See RATNER, *supra* note 4, at 161.

<sup>70</sup> Diane Marie Amann, *Guantanamo*, 42 COLUM. J. TRANSNAT’L L. 263, 309 (2004) (citing John Mintz, *U.S. Adds Legal Rights in Tribunals; New Rules Also Allow Leeway on Evidence*, WASH. POST, Mar. 21, 2002, at A-1).

<sup>71</sup> See generally Terrorism Act (2000 c. 11), Sch 1.

<sup>72</sup> Terrorism Act (2000 c. 11), Sch 1, Para 6.

<sup>73</sup> Terrorism Act (2000 c. 11), Sch 1, Para 11 (providing that a court must give process to any person whose property might be affected or forfeited by information collection actions).

purpose of advancing a political, religious or ideological cause.”<sup>74</sup> This includes violence against any person, damage to property, endangerment of persons, or the creation of the risk to health or safety of the public.<sup>75</sup> Any action that would cause a persons property to be forfeited through an information collection procedure can be heard by a court, and the information collection cannot be implemented until that person has exhausted all means of appeal.<sup>76</sup>

The act also proscribes certain organizations, such as the Irish Republican Army, the Ulster Freedom Fighters, The Loyalist Volunteer Force, Al-Qa’ida, Islamic Jihad, Hizballah, Hamas, etc.<sup>77</sup> Membership in such organization subjects an individual to criminal sanctions.<sup>78</sup> These organizations are granted appeal rights; a special commission acts with regard to these appeals.<sup>79</sup> In addition, the Anti-terrorism, Crime and Security Act supplements this act.<sup>80</sup>

Any property that is in the possession of a person when they are convicted of a terrorism-related act is subject to forfeiture if the convicted person had intended to use or had reasonable cause to suspect that his property would be used for terrorism.<sup>81</sup> However, if another person makes a claim that the property in question is his, he must be given the opportunity to be heard by the court before it makes its final order.<sup>82</sup>

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<sup>74</sup> Terrorism Act (2000 c. 11), Pt. I § 1(1).

<sup>75</sup> Terrorism Act (2000 c. 11), Pt. I § 1(2).

<sup>76</sup> Terrorism Act (2000 c. 11), Sch 1, Para 11.

<sup>77</sup> Terrorism Act (2000 c. 11), Sch 2, Para 1.

<sup>78</sup> Terrorism Act (2000 c. 11), Pt. II § 11(1), § 13 (stating that wearing clothing or carrying an article that would arouse reasonable suspicion of membership in a proscribed organization is an offence).

<sup>79</sup> Terrorism Act (2000 c. 11), Sch 3, Para 7.

<sup>80</sup> Anti-terrorism, Crime and Security Act (2001 c.24), Sch. 2(3), Para. 5.

<sup>81</sup> Terrorism Act (2000 c. 11), Pt. III § 23.

<sup>82</sup> Terrorism Act (2000 c. 11), Pt. III § 23.

Further, any area may be cordoned off by a member of the Royal Ulster Constabulary who is of the rank of superintendent or greater.<sup>83</sup> This may be done if the constable believes the measure “expedient for the purposes of a terrorist investigation.”<sup>84</sup> This will only remain in effect for 28 days, but it may be extended by written request.<sup>85</sup>

In addition, if a person knows he might be of assistance to a terrorist investigation, he must disclose that information to the authorities as soon as reasonably practicable and failure to abide by this rule may subject that person to a prison term of up to six months.<sup>86</sup>

The Terrorism Act of 2000 further permits arrest without warrant of an individual reasonably suspected of being a terrorist.<sup>87</sup> It permits the search of persons reasonably believed to be terrorists<sup>88</sup> as well as the search of premises if it is reasonably suspected that a terrorist is to be found there<sup>89</sup> or if it would be necessary for the preservation of peace.<sup>90</sup> Additionally, it would be an offense if one provided instruction or training in making or use of firearms or explosives or if he received that training.<sup>91</sup> And, it would be an offense to collect information likely to be useful to a person committing or preparing for an act of terrorism.<sup>92</sup>

However, some safeguards have been extended. Thus, a suspect may only be held up to four hours if no charge is forthcoming.<sup>93</sup>

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<sup>83</sup> Terrorism Act (2000 c. 11), Pt. IV § 34.

<sup>84</sup> Terrorism Act (2000 c. 11), Pt. IV § 33.

<sup>85</sup> Terrorism Act (2000 c. 11), Pt. IV § 35(3),(5).

<sup>86</sup> Terrorism Act (2000 c. 11), Pt. IV § 38B(2); Pt. III § 19.

<sup>87</sup> Terrorism Act (2000 c. 11), Pt. V § 41.

<sup>88</sup> Terrorism Act (2000 c. 11), Pt. V § 43.

<sup>89</sup> Terrorism Act (2000 c. 11), Pt. VII § 81.

<sup>90</sup> Terrorism Act (2000 c. 11), Pt. VII § 90.

<sup>91</sup> Terrorism Act (2000 c. 11), Pt. VI § 54.

<sup>92</sup> Terrorism Act (2000 c. 11), Pt. VI § 58.

<sup>93</sup> Terrorism Act (2000 c. 11), Pt. VII § 83.

## 2. ALLEGATIONS

Murder, torture and deportation have been the crimes against humanity most often alleged as occurring in Northern Ireland. Throughout much of the last forty years, various forms of republican paramilitary organizations, such as the Real Irish Republican Army, have carried out what have been described as widespread and systematic bombing campaigns directed at protestant northern Irish civilians.

These groups have been involved in many bombings like the 1998 bombing in Omagh, which is now the subject of a police inquiry.<sup>94</sup> Loyalist groups have also been engaged in murder campaigns (although not bombings), such as cutting republican civilians into small pieces.<sup>95</sup> And, there have been reports of widespread governmental aggression that has led to unarmed protesters being gunned down. Bloody Sunday is one such incident.<sup>96</sup>

Additionally, the British army was arguably involved in the torturing of terrorist suspects. It “used a combination of five ‘techniques’ (hooding, extended wall standing in painful postures, loud noises, sleep deprivation, and deprivation of food and drink) to interrogate suspects in an effort to obtain information to use against IRA terrorists.”<sup>97</sup> The European Court for Human Rights classified these actions as inhumane and degrading, yet not torture under the European Convention on Human Rights.<sup>98</sup> However,

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<sup>94</sup> *Nally Report Dismissed by Ombudsman*, REPUBLICAN NEWS, Dec. 23-29, 2003, available at <http://republican-news.org> (last visited Apr. 30, 2004).

<sup>95</sup> *Republican Anger as Prison Leave Denied*, REPUBLICAN NEWS, Dec. 23-29, 2003, available at <http://republican-news.org> (last visited Apr. 30, 2004).

<sup>96</sup> See TANNER, *supra* note 9, at 373.

<sup>97</sup> Seth F. Kreimer, *Too Close to the Rack and the Screw: Constitutional Constraints on Torture in the War on Terror*, 6 U. PA. J. CONST. L. 278, n.10 (2003).

<sup>98</sup> *Id.*

both are prohibited by the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>99</sup>

Moreover, complaints have arisen regarding deportation of suspected terrorists, and there is a current possibility that a systematic deportation of civilian's from the United States to the United Kingdom could be classified as a crime against humanity. The question revolves around whether these persons being deported due to suspicion of the British government are singled out due to political ties and beliefs or due to true terrorist activity.<sup>100</sup> The act could be seen as systematic in that the British government has recently concluded a treaty of alteration with the United States whereby judicial review of deportation decisions would not be required.<sup>101</sup> In the past there were systematic attempts to cleanse Northern Irish neighborhoods of Catholics, to the extent that some areas near Belfast were virtually Catholic-free.<sup>102</sup>

The point here is that whether these acts amounted to crimes against humanity has not been addressed adequately by the European Court for Human Rights, as there is wide disagreement as to whether the acts amounted to widespread murder, torture or deportation. Northern Ireland and the United Kingdom have recognized this; the Belfast Agreement and the Bloody Sunday Inquiry attempt to resolve the question through full community participation and discourse. These disagreements strongly parallel those in

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<sup>99</sup> John T. Parry, *What is Torture, Are We Doing It, and What if We Are?*, 64 U. PITT. L. REV. 237, 241 (2003) (citing the Convention Against Torture and Other Cruel, Inhumane, or Degrading Treatment or Punishment, pt. 1, art. 1, para. 1 (1984), available at <http://www.un.org/documents/ga/res/39/a39r046.htm> (last visited Apr. 30, 2004).

<sup>100</sup> Letter from Laura W. Murphy (Director, Washington Legislative Office, ACLU) to the Senate Foreign Relations Committee, Dec. 18, 2003 ("urging opposition to ratification of the revised United States-United Kingdom Extradition Treaty signed by Attorney General John Ashcroft and Home Secretary David Blunkit), available at [www.aclu.org/ImmigrantsRights/ImmigrantsRights.cfm?ID=14610&c=22#\\_ftnref5](http://www.aclu.org/ImmigrantsRights/ImmigrantsRights.cfm?ID=14610&c=22#_ftnref5) (last visited Apr. 30, 2004).

<sup>101</sup> *U.S. Extradition Treaty "Violates Civil Liberties,"* REPUBLICAN NEWS, Dec. 23-29, 2003, available at <http://republican-news.org> (last visited Apr. 30, 2004).

<sup>102</sup> See generally TANNER, *supra* note 9.

Israel and the Occupied Territories, and the implementation of a plan of action has strongly favored resolution.

C. *Crimes Against Humanity in Israel*

1. APPLICABLE STATE LAW

Israeli domestic law provides broad powers to military commanders who operate within the occupied territories of Palestine.<sup>103</sup> Those commanders can respond in a flexible manner to “terrorist acts that impair the security of the population or threaten public order.”<sup>104</sup> Those who advocate such powers say,

...[E]ven a democratic state, finding itself in a grave predicament, such as the state of war, must equip its commanders with effective tools to provide an immediate response to terrorist acts—including not only ‘sophisticated weaponry’, but also legal tools that can provide for the immediate deterrence of potential terrorists.<sup>105</sup>

And, the Israeli government has subscribed to this belief for much of the state’s existence. It may be legitimate since Israel has been struggling against terrorism since it was established.<sup>106</sup>

Israeli law permits administrative detention, as the occupied territories are governed, not by civil/judiciary bodies, but by a Military force that has maintained the states sovereignty since it expanded its territory following the Arab-Israeli and Six-days wars.<sup>107</sup> The military force is governed by a broad range of rules known as the Defense (Emergency) Regulations of 1945.<sup>108</sup>

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<sup>103</sup> See Grebinar, *supra* note 37, at 274.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.* at 275.

<sup>106</sup> *Id.* at 261.

<sup>107</sup> See generally *id.*

<sup>108</sup> *Id.* at 265.

Regulations 108 and 111 authorized the military commander to detain a person if he “believed it necessary for maintaining public order or securing public safety or state security.”<sup>109</sup> The Emergency Powers (Detention) Law of 1979 confined the commanders authority slightly by requiring a detention be the “sole” means of achieving a result; a judge would invalidate it otherwise.<sup>110</sup>

Further limitations were promulgated in *Annon v. Minister of Defence*, when the Supreme Court of Israel announced that every military administrative action would be subject to judicial review.<sup>111</sup>

In addition, the Regulations also permit demolition of houses because the military commander can confiscate land.<sup>112</sup> The Supreme Court of Israel has held that international law is irrelevant to the discharge of Regulation 119, which permits the demolition and confiscation of property<sup>113</sup> because it is part of domestic law. The court required the military to respect proportionality and reasonableness when acting in accordance with the Regulations.<sup>114</sup>

## 2. ALLEGATIONS

Israeli interrogation practices parallel those of the British army in regard to suspected terrorists; they include “prolonged standing or uncomfortable sitting positions, tight hand or ankle cuffing, loud noise, sleep deprivation, hooding, cold rooms, and violent shaking.”<sup>115</sup> “The U.N. Committee Against Torture and the Special Rapporteur

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<sup>109</sup> *Id.*

<sup>110</sup> *Id.* at 266.

<sup>111</sup> *Annon v. Minister of Defence*, 54(1) P.D. 721, 743 (Isr. 2000) (stating that a democratic society may hold a person in administrative detention only if such person poses a “direct threat and real danger to the State.”).

<sup>112</sup> Defence (Emergency) Regulations (1945), Reg. 119.

<sup>113</sup> *See Grebinar, supra* note 37, at 276.

<sup>114</sup> *Id.*

<sup>115</sup> *See Parry, supra* note 99, at 242.

on Torture concluded that these practices are torture.”<sup>116</sup> The Supreme Court of Israel prohibited these acts, which until that point had been legal by Military Regulation.<sup>117</sup>

Thus, even if, as the European Court for Human Rights determined, these interrogation tactics are merely inhumane and demeaning, a system must be established to give a final determination and to give redress. That redress should go beyond the military’s response, which was to cease promoting explicitly the physical extraction of information. The point of a peace building mechanism is to answer questions heretofore unanswerable and to bring recompense (if needed) and renewal. The Supreme Court of Israel’s pronouncement provided none of this because the Palestinians are excluded from the system, from which the court pronounces.

Because they are excluded from this system, widespread and systematic attacks have been perpetrated by fringe-elements that see murder as the only option. Murder would be classified as a crime against humanity in this instance because of the systematic means that the fringe-groups use.

As the Geneva Conventions attempt to identify, collective punishment will not effect change in this course of action, but it will provide a basis for prosecution of those attempting to route-out this “terrorism.” A “state of emergency” with curfews, bypass roads, educational controls, and economic restraints, for forty years, might reach the level of an Apartheidic governmental structure.

“Since Apartheid was a state-wide system of racial discrimination, it is reasonable to conclude that apartheid constitutes a crime against humanity under this category.”<sup>118</sup>

The Nazis followed a similar path by:

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<sup>116</sup> *Id.*

<sup>117</sup> *See id. with Kreimer, supra* note 97, at n. 10. Israel had been the only country to explicitly employ physical and demeaning means to gather information

contributing to the process for singling out Jews for persecution by imposing collective fines on the Jewish community; for signing decrees extending anti-Semitic legislation to the newly occupied territories; for drafting and administering various decrees excluding Jews from the social and economic sectors of German society...for signing a series of decrees requiring...the deportation of Jews from occupied territory.<sup>119</sup>

“The prohibition against racial discrimination is found in all the major international human rights treaties and is universally recognized as a rule of customary international law.”<sup>120</sup>

Further, Nuremberg Tribunal also included “offences against personal property as would amount to an assault upon the health and life of a human being (such as the burning of his house or depriving him of ... his paid employment).”<sup>121</sup> This seems to be what happened in the Israeli/Palestinian case. Necessity has been cited, but as we have seen, that is not a defense to crimes against humanity. These issues should be addressed so both the Israeli and Palestinian peoples can achieve a sense of solace and begin to reconnect their societies.

### III. BREAKDOWN OF THE PEACE PROCESSES

#### A. *Northern Ireland*

Attempts at reaching a peace agreement between the parties of the Northern Ireland conflict reach almost as far back as the beginning of the conflict itself.<sup>122</sup> The road to peace has been complicated, with one side or another pulling out of talks nearly

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<sup>118</sup> Slye, *supra* note 40, at 280.

<sup>119</sup> Slye, *supra* note 40, at 281.

<sup>120</sup> Slye, *supra* note 40, at 289,90.

<sup>121</sup> Slye, *supra* note 11, at 282 (citing Tadic, *supra* note 19, at P707 (quoting Trial of Fredrich Flick and Five Others (“Flick Case”), Vol. IX, Law Reports of Trials of War Criminals 51 (U.N. War Crimes Commission London, 1949))).

<sup>122</sup> *Northern Ireland: The Search for Peace*, BBC NEWS, Jul. 13, 1999, available at [http://news.bbc.co.uk/1/hi/events/northern\\_ireland/history/default.stm](http://news.bbc.co.uk/1/hi/events/northern_ireland/history/default.stm) (last visited Apr. 20, 2004).

every time. In June 1973 the Northern Ireland Assembly was established.<sup>123</sup> Protestants and Catholics decided in the Sunningdale Agreement<sup>124</sup> to share power on a new Executive to address affairs within Northern Ireland.<sup>125</sup> The agreement was rejected by the Unionists<sup>126</sup> and the Ulster Workers' Council<sup>127</sup> organized strikes upon its approval.<sup>128</sup> Eventually, resignations led to the downfall of the Executive.<sup>129</sup> In 1985, talks again led to an agreement, this time it was the Anglo-Irish Agreement.<sup>130</sup> British Prime Minister Margaret Thatcher and Irish Taoiseach Garret Fitzgerald signed the agreement in November 1985 that gave the Irish Republic a consultative role in Northern Ireland.<sup>131</sup> After the agreement was signed, loyalist paramilitaries started a campaign of violence in protest against it.<sup>132</sup> A few months later, the Northern Ireland Assembly dissolved.<sup>133</sup>

Talks between several political parties recommenced in 1992, but Unionists withdrew from them after eight months.<sup>134</sup> The Unionists also greatly opposed a meeting in 1993 between then Prime Minister John Major and Social Democratic and Labour Party leader John Hume.<sup>135</sup> That meeting led to the Downing Street Declaration that

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<sup>123</sup> 1972-75: *The Failure of Sunningdale*, BBC NEWS, Mar. 18, 1999, available at [http://news.bbc.co.uk/1/hi/events/northern\\_ireland/history/64733.stm](http://news.bbc.co.uk/1/hi/events/northern_ireland/history/64733.stm) (last visited Apr. 20, 2004).

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> 1985-87: *The Anglo-Irish Agreement*, BBC NEWS, Mar. 18, 1999, available at [http://news.bbc.co.uk/1/hi/events/northern\\_ireland/history/68824.stm](http://news.bbc.co.uk/1/hi/events/northern_ireland/history/68824.stm) (last visited Apr. 20, 2004).

Agreement

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> 1990-92: *Start of the Talks Process*, BBC NEWS, March 16, 1999, available at [http://news.bbc.co.uk/1/hi/events/northern\\_ireland/history/69117.stm](http://news.bbc.co.uk/1/hi/events/northern_ireland/history/69117.stm) (last visited Apr. 20, 2004).

<sup>135</sup> 1993-94: *The Downing Street Declaration and the IRA Ceasefire*, BBC NEWS, March 16, 1999, available at [http://news.bbc.co.uk/1/hi/events/northern\\_ireland/history/69283.stm](http://news.bbc.co.uk/1/hi/events/northern_ireland/history/69283.stm) (last visited Apr. 20, 2004).

stated that Sinn Fein (which had previously been left out of negotiations) could join future talks on Northern Ireland only if the IRA renounced violence.<sup>136</sup> On August 31, 1994 the IRA announced a “complete cessation of military operations.”<sup>137</sup> And according to the agreement, Sinn Fein met with British officials in the months that followed.<sup>138</sup> The year that followed was marked by constant battle over decommissioning. The British refused to hold talks unless the republicans agreed to disarm and the republicans refused to do so before talks were held.<sup>139</sup> The IRA’s ceasefire ended in 1996.<sup>140</sup> Any discussions were bound to fail unless the IRA announced another ceasefire, which they did in 1997.

Finally, in October 1997 all sides to the conflict sat down for talks at Stormont.<sup>141</sup> During these talks, Prime Minister Tony Blair announced that an independent judicial inquiry would be established to investigate the events of Bloody Sunday in 1972.<sup>142</sup> This move by Blair undoubtedly helped to relieve some of the distrust among the parties. While the inquiry has yet to promulgate its conclusions, it is clear that such an effort to discover the truth has improved upon the peace process. What ensued was the Belfast Agreement (commonly referred to as the Good Friday Agreement).<sup>143</sup> From this agreement, the Northern Ireland Assembly was established to address relations within

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<sup>136</sup> *Id.*

<sup>137</sup> *Id.*; *The Cease-fires: Republican and Loyalist*, BBC1, available at <http://www.bbc.co.uk/history/war/troubles/agreement/ceasefires.shtml> (last visited Apr. 20, 2004).

<sup>138</sup> *1993-94: The Downing Street Declaration and the IRA Ceasefire*, BBC NEWS, March 16, 1999, available at [http://news.bbc.co.uk/1/hi/events/northern\\_ireland/history/69283.stm](http://news.bbc.co.uk/1/hi/events/northern_ireland/history/69283.stm) (last visited Apr. 20, 2004).

<sup>139</sup> *1995-96: Clinton’s Visit and the End of the IRA Ceasefire*, BBC NEWS, Mar. 16, 1999, available at [http://news.bbc.co.uk/1/hi/events/northern\\_ireland/history/70221.stm](http://news.bbc.co.uk/1/hi/events/northern_ireland/history/70221.stm) (last visited Apr. 20, 2004).

<sup>140</sup> *Id.*

<sup>141</sup> *1997-98: Second IRA Ceasefire to the Nobel Prize*, BBC NEWS, Mar. 16, 1999, available at [http://news.bbc.co.uk/1/hi/events/northern\\_ireland/history/70267.stm](http://news.bbc.co.uk/1/hi/events/northern_ireland/history/70267.stm) (last visited Apr. 20, 2004).

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

Northern Ireland.<sup>144</sup> Decisions made by this body are to reflect the positions of both sides of the society.<sup>145</sup> The North-South Ministerial Council was also created in the agreement.<sup>146</sup> This entity handles relations between Northern Ireland and the Republic of Ireland. Finally, the British-Irish Inter-Governmental Conference was established to maintain open communications between the United Kingdom and Ireland.<sup>147</sup> Also included in the Belfast Agreement was a pact that called for immediate decommissioning.<sup>148</sup>

The Agreement also established the Equality and Human Rights Commissions and called for full examinations of criminal justice and policing in Northern Ireland.<sup>149</sup> According to the agreement, all segments of the community are to participate in the Assembly.<sup>150</sup> The parties also agreed to an early release of terrorist prisoners from both sides.<sup>151</sup> The agreement was put to a referendum in May 1998 and overwhelmingly approved; Assembly elections were held in September.<sup>152</sup>

The approval of the agreement has not meant a cure for the issues that have plagued Northern Ireland for decades. Implementing the agreement has been difficult at best and it is far too early to know if this agreement is the solution to Northern Ireland's problems. Bombings have not stopped altogether since the agreement was made and the decommissioning process has been painfully slow. The IRA has occasionally decided that

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<sup>144</sup> *Key Issues: The Agreement*, NORTHERN IRELAND OFFICE ONLINE, available at <http://www.nio.gov.uk/issues/agreemain.htm> (last visited Apr. 20, 2004).

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> *The Agreement*, NORTHERN IRELAND OFFICE ONLINE, available at [www.nio.gov.uk/issues/agreelinks/agreement.htm](http://www.nio.gov.uk/issues/agreelinks/agreement.htm) (last visited Apr. 20, 2004).

<sup>152</sup> *Political Progress Leading to Devolution*, NORTHERN IRELAND OFFICE ONLINE, available at [www.nio.gov.uk/issues/agreelinks/implem.htm](http://www.nio.gov.uk/issues/agreelinks/implem.htm) (last modified Dec. 1999).

they would not disarm.<sup>153</sup> Recently, they finally began the process of decommissioning. Each side has frequently accused the other side of not fulfilling its portion of the agreement.<sup>154</sup> The release of prisoners has caused further controversy and delays.<sup>155</sup>

In addition, a truth commission known as the Bloody Sunday Inquiry was created to determine the true cause of the 1972 slaying of 13 unarmed protesters by British forces.<sup>156</sup> The Inquiry is to “explore what really happened during the Troubles.”<sup>157</sup> The process of making amends for crimes against humanity that occurred during the Troubles has taken hold and the families of victims “still want to learn the full facts of what happened.”<sup>158</sup>

The crimes were committed over such a long period and the lives of civilians in Northern Ireland were disrupted for so long that there is a belief that an “over-arching process to look into the whole violent history would be the best way to deal with the past.”<sup>159</sup>

#### B. *Israel and the Occupied Territories*

Crimes against humanity take place every day in Israel and the Occupied Territories. Whenever the Israeli army destroys Palestinian homes in attempt to find terrorists, they are committing persecutions as well as property crimes. Each time a

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<sup>153</sup> *Decommissioning*, NORTHERN IRELAND OFFICE ONLINE, available at [www.nio.gov.uk/issues/decomm.htm](http://www.nio.gov.uk/issues/decomm.htm) (last visited Apr. 20, 2004).

<sup>154</sup> *Peace Challenge “Lies with PMs,”* BBC NEWS, Apr. 11, 2004, available at [http://news.bbc.co.uk/1/hi/northern\\_ireland/3618367.stm](http://news.bbc.co.uk/1/hi/northern_ireland/3618367.stm) (last visited Apr. 20, 2004).

<sup>155</sup> Mark Devenport, *UDA Move “Unlikely” to Alter Peace Plan*, BBC NEWS, Feb. 22, 2003, available at [http://bbc.co.uk/1/hi/northern\\_ireland/2790879.stm](http://bbc.co.uk/1/hi/northern_ireland/2790879.stm) (last visited Apr. 20, 2004).

<sup>156</sup> Ross Smith, *Are We Ready for Truth?*, BELFAST NEWSLETTER, Apr. 26, 2004, at 28.

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

Palestinian straps a bomb to his (and now her<sup>160</sup>) chest and wanders into a crowded marketplace, they are committing murder. Deportation is another crime against humanity that is at the center of this conflict.

In 2003, the Israeli army began a large-scale destruction of Palestinian homes at a refugee camp in Rafah, Gaza Strip.<sup>161</sup> The action caused hundreds to be without homes.<sup>162</sup> It was taken in the name of security, but searches following the devastation have turned up no weapons.<sup>163</sup>

There have been several attempts at forming a peace plan between the Israelis and Palestinians. The Oslo I agreement was signed in 1993 and was composed of two stages.<sup>164</sup> The first stage was designed to build good faith between the parties through mutual recognition, Israeli withdrawal from the occupied territories, Palestinian administration in specific areas and a cessation of violence by the Palestinians.<sup>165</sup> After such conditions were maintained for a period of five years final negotiations could begin that would confirm borders for the Palestinian state, settle the question of Jerusalem, deal with Israeli settlements and Palestinian refugees.<sup>166</sup> Unfortunately, neither side honored its part of the deal.<sup>167</sup>

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<sup>160</sup> Ferry Biedermann, *The Palestinians' First Female Bomber*, SALON.COM, Jan. 31, 2002, available at [www.salon.com/mwt/feature/2002/01/31/female\\_bomber/](http://www.salon.com/mwt/feature/2002/01/31/female_bomber/) (last visited April 20, 2004).

<sup>161</sup> Molly Moore, *Gaza Operation by Israel Leaves Many Houses: Effort to Find Tunnels in Refugee Camp is Called Most Destructive Incursion*, WASH. POST, Oct. 15, 2003, at A16.

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> THE DECLARATION OF PRINCIPLES ON INTERIM SELF-GOVERNMENT ARRANGEMENTS (Sept. 13, 1993), available at [www.usembassy-israel.org.il/publish/peace/decprinc/htm](http://www.usembassy-israel.org.il/publish/peace/decprinc/htm) [hereinafter Oslo I].

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> Fionnuala Sweeney, *No Sign of Cooling Between Israelis, Palestinians*, CNN NEWS, Oct. 24, 2000, available at [www.cnn.com/2000/WORLD/meast/10/24/mideast.02/index.html](http://www.cnn.com/2000/WORLD/meast/10/24/mideast.02/index.html) (last visited Apr. 20, 2004).

The Oslo II agreement was signed in 1995 and intended to increase Palestinian autonomy.<sup>168</sup> Unfortunately, before any parts of the agreement could be implemented, then Israeli Prime Minister Yitzhak Rabin was assassinated by an orthodox Jew who was against the Israeli withdrawal from the West Bank.<sup>169</sup> Bus bombings by Palestinians then reinitiated.<sup>170</sup>

The Roadmap to Peace in the Middle East was drawn up in 2003 by the United States, European Union, the Russian Federation and the United Nations and those four players would assist in the implementation of the peace plan.<sup>171</sup> The two-state solution was broken into three phases. The first phase, initially planned to be completed by May 2003, was to include an end to the violence and terrorism that has plagued the region, a normalization of Palestinian life and the creation of Palestinian institutions.<sup>172</sup> These measures involved the Israeli government improving the humanitarian crisis that the Palestinians find themselves in. And, this phase also called for Israel to dismantle settlement outposts established since March 2001 within the Occupied Territories.<sup>173</sup> The second phase of the roadmap was to create an independent Palestinian state with temporary borders and a certain level of sovereignty by December 2003.<sup>174</sup> Statehood was to be contingent upon the Palestinians having strong leadership opposed to terrorist

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<sup>168</sup> Judy Dempsey & Mark Huband, *Egypt Lifts Hopes for Middle East Peace*, FIN. TIMES, JUN. 13, 1997, at In't 6.

<sup>169</sup> *Timeline: Recent Mid-East Peace Process*, BBC NEWS, available at [http://news.bbc.co.uk/1/hi/world/middle\\_east/2988739.stm](http://news.bbc.co.uk/1/hi/world/middle_east/2988739.stm) (last modified May 5, 2003).

<sup>170</sup> *Israel's History of Bomb Blasts*, BBC NEWS, Mar. 28, 2001, available at [http://news.bbc.co.uk/1/hi/world/middle\\_east/1160792.stm](http://news.bbc.co.uk/1/hi/world/middle_east/1160792.stm).

<sup>171</sup> Washington, D.C. Office of the Spokesman, *A Performance-based Roadmap to a Permanent Two-state Solution to the Israeli-Palestinian Conflict*, UNITED STATES STATE DEPARTMENT, Apr. 30, 2003, available at [www.state.gov/r/pa/prs/ps/2003/20062.htm](http://www.state.gov/r/pa/prs/ps/2003/20062.htm) (last visited Apr. 20, 2004).

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

activity.<sup>175</sup> The problem with this requirement is that it is completely subjective. Israeli authorities could easily suggest that one suicide bombing indicates that the Palestinian leadership supports terrorism. Finally, the third phase of the roadmap offers permanent status to the Palestinian state, a solution to the refugee issue that has been created throughout the conflict and end to the conflict by 2005; a tidy presumption.<sup>176</sup> The timeline for the roadmap is completely arbitrary. It is nearly impossible to put such time limits on such a volatile conflict.<sup>177</sup> This is not to mention the fact that many requirements within the roadmap are vague and subject to the interpretation of the parties involved. It would be difficult for Palestinian leaders to agree to a peace plan with vague terms for statehood since they would have no idea what the Palestinian state would entail.

The roadmap has failed to work mainly because the Israeli government will have nothing to do with the plan until the suicide bombings stop, which they have not. The cyclical nature of this conflict is the most significant obstruction to protecting residents of both Israel and the Occupied Territories from crimes against humanity. Since 2000, when Israeli Prime Minister Ariel Sharon visited the Noble Sanctuary (as it is known to Muslims) or the Temple Mount (as it is known to Jews), suicide bombings have been followed Israeli strikes which again have been followed by suicide bombings.<sup>178</sup> It appears as if the suicide bombings will never cease since they are always in response to Israeli force, which is exercised after a previous suicide bombing. If the cycle never

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<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> See Lee Keath, Bremer: *Iraqi Security Forces Not Ready as Evidenced by US Timeline for withdrawal in IRAQ*, HOUS. CHRON., Apr. 19, 2004, at 10 (explaining the unanticipated delays in transferring power in Iraq) with Christopher Cooper & Gregg Hitt, *Democrats in An Odd Position on Iraq --- Kerry, Critical of the War, Has Done Little to Differentiate His Approach from Bush's*, WALL ST. J., Apr. 7, 2004, at A-4 (identifying Sen. Kerry's (D., Mass.) remark that suggested that President Bush's deadline of June 30, 2004 for turnover of power was arbitrary and untenable).

<sup>178</sup> JEREMY PRESSMAN, VISIONS IN COLLISION, WHAT HAPPENED AT CAMP DAVID AND TABA?, INT'L SECURITY (Center for Strategic and Int'l Studies and the Mass. Institute for Tech, Fall 2003).

stops, peace will never be achieved and both sides will continue to use excessive force and illegal tactical manoeuvres.

#### IV. MODEL FOR ISRAELI/PALESTINIAN RECOVERY

##### A. *Proposal for Israel/Occupied Territories*

The crimes against humanity that have occurred during the most recent years in Israel and the Occupied Territories have been horrendous. The cycle of violence and degradation that exists between these two peoples seems to have no end in sight. Unless a concrete peace agreement can be established that outlines the exact specifications for a Palestinian state and unless the Palestinian suicide bombings are stopped, the crimes against humanity will continue.

Regardless of the fact that war crimes may have been committed within Ireland/Northern Ireland or Israel/Occupied Territories, their divergent political climates have produced greatly variant reactions by both the international community and national agendas. However, a common legal mechanism must be adopted.

To some extent, the Irish process has progressed further than the Middle East's. Although there have been conflicts amongst and between groups in both of these localities for extended periods of time, true, widespread conflict did not erupt until the late 1960s and early 1970s.<sup>179</sup> They proceeded through times of greater and lesser tension, only to arrive at peace agreements, which were then disrupted by violence (often from every faction).

Recent peace agreements, the Belfast Agreement and the Roadmap for Peace have had varying levels of success. And, as the opposing forces sing self-laudatory praises for

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<sup>179</sup> See generally TANNER, *supra* note 9 compare CHOMSKY, note 22.

their successes and cast dismal rebukes of their adversaries for their failures, war crimes have been perpetrated, justified and repeated.<sup>180</sup>

The solution is clear. Any plan must provide increased avenues of open communication, a sense of solace with a coordinate sense of security for victims, and specific, precise structure to address Israeli/Palestinian relations for the future. An approach combining the Belfast Agreement together with the Bloody Sunday Inquiry will serve as a useful, but imperfect, four-part model as both have attempted to address problems of security, mutual understanding and rights of victims. This proposal includes: 1) a combination Truth Commission/Quasi-National War Crimes Tribunal (Commission); 2) an Equality and Human Rights Council (Council); 3) an Executive Assembly (Assembly); and 4) Community Building Bodies (CBBs).

## B. *Alternative Mechanisms*

### 1. NATIONAL TRIALS

“Domestic legal systems remain the primary fora for holding individuals accountable” for crimes against humanity.<sup>181</sup> This is probably so because it is the closest administrative level to the occurrences. The national court system in a state where a crime against humanity purportedly occurred can be better equipped to obtain evidence and witnesses because it controls the police powers at the local level to provide enforcement.

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<sup>180</sup> EEtta Prince-Gibson & Ariel Jerozolinski, *Taking Terror to Court*, JERUSALEM POST, Mar. 21, 2003, at 7B; *c.f.* *Address by Yassar Arafat Before the Palestinian Legislative Council*, PALESTINIAN SATELLITE CHANNEL TV (Mar. 10, 2003).

<sup>181</sup> See RATNER, *supra* note 4, at 160.

In addition, national trials fit well with the international law concepts of jurisdiction. If a crime occurred within a state or its effect was immediately felt within the state, the general rule is that the state should have jurisdiction.<sup>182</sup> And, states have jurisdiction over offenders who are their nationals and in cases where “extraterritorial conduct would have an actually or potentially harmful effect on important interests of the state.”<sup>183</sup>

However, states that wish to try these cases themselves must have domestic criminal law statutes implementing their obligation to prosecute.<sup>184</sup> A judiciary is only as good as its ability to operate, and while greater access to evidence, witnesses, victims, and perpetrators<sup>185</sup> might be encouraging, the system has to function in order to realize any gain from that advantage. Israeli law is just that, Israeli. Because the proper functioning of the system is dependent on an agreeable corpus of law, it would be difficult to get Palestinian cooperation with trials prosecuting laws which they might feel would strongly favor Israelis. This is bolstered by the fact that the Occupied Territories function under military regulations and minor local rules rather than any type of national law.

Under normal circumstances, a national judiciary would be able to try these types of cases in a more cost-effective manner; however, the Occupied Territories are ruled by military commanders whose decisions are merely subject to review by Israeli courts. In order for trials to have legitimacy, they would have to include Palestinian systems. This

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<sup>182</sup> *Id.* at 161.

<sup>183</sup> *Id.*

<sup>184</sup> *Id.* at 167.

<sup>185</sup> *See* RATNER, *supra* note 4, at 182.

necessity makes national courts no more cost-effective than a hybrid Israeli/Palestinian judiciary.

Furthermore, national trials would normally permit more of a connection with the proceedings to be felt by the population,<sup>186</sup> but there are two nations involved here: Palestinian and Israeli. Israelis would not feel connected to a Palestinian system because they probably would not feel comfortable traveling within those territories and might feel the court is skewed against them. Palestinians, on the other hand, would have a similar reaction to Israeli national trials and these could fragment the society more by inciting fringe elements who might think their cause was not being preserved.

Finally, since “serious violations are usually committed on behalf of or with the complicity of the state,” truly independent judiciaries and political cultures less tolerant of human rights abuses must be developed.<sup>187</sup> This can make a national judiciary truly ineffective and it parallels the dysfunction that a mere Palestinian national court would face in that it would be lacking in appropriate numbers of trained judges and attorneys, adequate infrastructure and a “culture of respect for the fairness and impartiality of the process and rights of the accused.”<sup>188</sup>

## 2. INTERNATIONAL TRIBUNALS

If a crime is so “heinous” as to be harmful to the world population in general, it is said that any state can take jurisdiction to prosecute it.<sup>189</sup> Crimes against humanity would be included in the list of offenses that justify this “universal jurisdiction.”<sup>190</sup> Most states

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<sup>186</sup> See generally RATNER, *supra* note 4.

<sup>187</sup> *Id.* at 183.

<sup>188</sup> *Id.*

<sup>189</sup> See RATNER, *supra* note 4, at 161.

<sup>190</sup> *Id.* at 162.

believe that offenses relating to their persons, territory, or security should be tried by their courts.

However, because crimes against humanity are subject to universal jurisdiction, that does not necessitate their prosecution within in an international arena. A national, international, or hybrid court system can function properly as well. The main force behind the choice of jurisdiction is whether it can ensure the crimes, attempts to commit them, and complicity in their commission are offenses that carry punishment by the appropriate penalties.<sup>191</sup>

In the case of Israel and the Occupied Territories legitimacy of the court is very important due to the politically charged debates surrounding the situation. A tribunal with international character would exude a perception of legitimacy. Crimes against humanity have been developing through customary and conventional law for the better part of a century, and using them in a case as high profile as the Israeli/Palestinian question would provide a much needed foundation of support, which would be looked upon well by the international community since it has worked hard to define more clearly crimes against humanity law.

Also, as pointed out above, national trials in this context would most likely be ineffective and possibly detrimental. However, the United Nations may be “suffering from tribunal fatigue.”<sup>192</sup> This would make it more difficult to get the momentum of the international political machine churning. And, as some have noted, situations with a high

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<sup>191</sup> See generally RATNER, *supra* note 4, at 165.

<sup>192</sup> See RATNER, *supra* note 4, at 221.

level of political significance may make it impossible for the Security Council to take any action.<sup>193</sup>

Further, if the necessary political machinery were geared up, legitimacy would again be challenged as to the impartiality of a system so politically charged. The question would have to be asked whether the court would have the ability to acquit a defendant. If the international community is truly concerned about the legitimacy of international law over that of the court's legitimacy, an acquittal might just bring down the house of cards that international crimes against humanity law and enforcement might be.

A hybrid court on the other hand, would have less political machinery to move. It could save legitimacy by maintaining an all inclusive atmosphere and it would have the ability to enforce its judgments, which is lacking in international courts.

### C. *Benefits of Truly Holistic and Comprehensive Plan*

#### 1. TRUTH COMMISSION/QUASI-NATIONAL WAR CRIMES TRIBUNAL

As with the Bloody Sunday Inquiry, a truth commission would be established. This would serve to elicit facts of underreported, unreported, and previously unknown incidents of war crimes and crimes against humanity. It would work in conjunction with a quasi-national war crimes tribunal. The war crimes tribunal would be composed of four justices, two Palestinians and two Israelis, and they should decide cases based on international and national law by simple majority, with particular procedures in the case of a stalemate. The composition of the tribunal justices would ensure fair and unbiased trials. The injured persons and injured societies need to see that justice is being done in the same vein as security is being restored, and an equal number of justices from each

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<sup>193</sup> *Id.*

camp (and without foreign intervention) will ensure magnanimous results, which each side would see as fair and free of prejudice.

In addition, the tribunal would hear and try cases addressing war crimes perpetrated by and upon both sides, and it would investigate and prosecute suspected war criminals of every rank. This process would function in conjunction with the truth commission. Further, and in an effort to promote the collection of knowledge regarding the war crimes and crimes against humanity caused during the past 60 years, the truth commission would have amnesty granting powers. Individuals could voluntarily discuss their experiences that involved war crimes, or suspected war criminals could petition the commission for amnesty from prosecution by the tribunal or reduced sentences in exchange for clear, probative information.

Although potentially a political stumbling block, amnesty granting power remain necessary as an information gathering tool, just as they were in South Africa's Truth and Reconciliation Commission.<sup>194</sup> Reconciliation is a process; one mechanism will not create cross-community legitimacy.<sup>195</sup> As in Northern Ireland, there are weaknesses in the criminal justice system that need to be supplemented, as the courts cannot be skewed or seen as skewed toward any one side. Also, as in Northern Ireland, there was no "clear" discrediting of a government or system of government that brought about the commission.<sup>196</sup> Thus, this new tactic should effectively supplement the process that the trials commence.

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<sup>194</sup> See Smith, *supra* note 156.

<sup>195</sup> *Id.*

<sup>196</sup> *Id.*

## 2. EQUALITY AND HUMAN RIGHTS COUNCIL

An equality and human rights council would be established. Similar to the Belfast Agreement, it would examine the criminal justice and policing mechanisms available and in use in the Occupied Territories. In many cases, the war crimes perpetrated against Palestinians by Israeli troops and against Israelis by Palestinian militants were precipitated by harsh conditions that prior “one-size-fits-all” security arrangements created. The commission would attempt to judge security threats based on competent information and would hold impartiality as its cornerstone in order to limit the role of politics in its reactions to certain situations.

The Belfast Agreement concentrated its beginning stages on lessening the violence in Northern Ireland before proceeding further towards peace.<sup>197</sup> And, likewise, the Roadmap for Peace required that violence stop before normalization of life for Palestinians could occur.<sup>198</sup> While this process has seemed to work in Northern Ireland, it has been a long straining course of developments, which have, in a number of instances, required great strength in moving forward despite deadly bombing attacks by forces opposed to the peace process.<sup>199</sup> The Roadmap’s Phase I, which requires cessation of violence before Palestinian life can be terminated is a *non sequitur* as the great majority of the Palestinian populace is not involved in terrorist attacks. The Occupied Territories, however dangerous and insecure, require detailed and particularized assessments which do not trample on the rights of residents. The Roadmap’s Phase I acknowledges the war

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<sup>197</sup> *The Agreement*, NORTHERN IRELAND OFFICE ONLINE, available at [www.nio.gov.uk/issues/agreelinks/agreement.htm](http://www.nio.gov.uk/issues/agreelinks/agreement.htm) (last visited Apr. 20, 2004).

<sup>198</sup> See *Performance-Based Roadmap*, *supra* note 171.

<sup>199</sup> Breaking News, Sinn Fein Urged to Keep Peace on Course, TCM ARCHIVES, Sept. 30, 2001, available at <http://archives.tcm.ie/index.asp> (last visited April 20, 2004) (quoting Pallo Jordan, of the African National Congress party in South Africa, saying “I strongly urge the Sinn Fein leadership to stay on course (despite) those people who would like to see the peace process end and see this country descend into some kind of bloodbath.”).

crimes of over-aggressive tactics, persecution, and property crimes in addition to the fact that it arguably violates the Fourth Geneva Convention and the Covenant on Civil and Political Rights, which circumscribe the use of collective punishment.<sup>200</sup>

The Equality and Human Rights Commission would attempt to ensure that the rights and liberties of a collective population are not withheld, that their lives are not made “non-normal,” as a result of certain sporadic and vindictive militant elements. Because terrorist activity is recognized to come from extreme factions within a society,<sup>201</sup> it is unwarranted and impedes the peace process to react with “politically correct” ruthlessness to attacks. The commission would attempt to react in the most reasoned and reserved manner practicable without political influence.

### 3. EXECUTIVE ASSEMBLY

Northern Ireland’s Assembly was created by the Belfast Agreement in order to devolve some governmental powers to both the Protestants and Catholics.<sup>202</sup> In the past, much of the controversy arose over demographic problems, such as protestant attempts to exclude the Catholic majority from political power through strategic gerrymandering.<sup>203</sup> The new Assembly attempted to create some level of power sharing. This proposal would attempt to promote mutual respect and collective functioning amongst the Israelis and the Palestinians. They would not necessarily live in the same communities (although the ultimate goal is mutual inclusion), but they would be able to make collaborative efforts to make positive changes in the region. The Palestinian occupied regions of the

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<sup>200</sup> See *Performance-Based Roadmap*, *supra* note 171.

<sup>201</sup> Jennifer Loewenstein, *Occupation and Suicide: Meggido & the Legac of Jenin*, PALESTINIAN MONITOR (June 2002), available at [www.palestinianmonitor.org/Special%20Section/occupation\\_and\\_suicide.htm](http://www.palestinianmonitor.org/Special%20Section/occupation_and_suicide.htm) (last visited Apr. 20, 2004).

<sup>202</sup> See *The Agreement*, *supra* note 188.

<sup>203</sup> *Sinn Fein Angry at “Exclusion,”* BBC NEWS, Jul. 22, 2003, available at [http://news.bbc.co.uk/1/hi/northern\\_ireland/3087249.stm](http://news.bbc.co.uk/1/hi/northern_ireland/3087249.stm) (last visited Apr. 20, 2004).

Territories have been estimated to have two-thirds to three-quarters of the population unemployed, with most of those persons living under the UN designated poverty line of \$2 per day.<sup>204</sup> Such a collaborative effort as a Joint Assembly for the Occupied Territories would alleviate such problems to a degree as well as assist Israel and Jewish settlers in obtaining much needed water in Palestinian Occupied soils. This proposed assembly would make mutual decisions on local issues that currently are made by Israeli Military Administrators on a “cookie cutter” basis, which has failed to work in any truly effective way.

#### 4. COMMUNITY BUILDING BODIES

Joint Palestinian/Israeli relations in the future are even more important than those in place at the time of the agreement. A community atmosphere will not merely appear because an agreement is made. Bodies must be established which would take this reality into account and assist the above mentioned Assembly in cultivating mutual respect for one another as well as cultivating a system whereby an agreement reached between the parties will survive in its functional capacity.

The Roadmap for Peace provided certain protections and procedures, but they were set in a subjective light.<sup>205</sup> Each side determined whether the other was complying on its own accord. In fact, a recent suicide bombing on March 15, 2004 prompted Ariel Sharon, Israel’s current Prime Minister to refuse to negotiate with the Palestinians.<sup>206</sup> The Roadmap permits Israel to walk away from negotiations if it feels, in its own political scheme, that the Palestinian cause is led by terrorist forces (indirectly or

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<sup>204</sup> Ken Lee, *Gaza’s Women Bear Heavy Burden*, BBC NEWS, Jun. 18, 2003, available at [http://news.bbc.co.uk/1/hi/world/middle\\_east/2991838.stm](http://news.bbc.co.uk/1/hi/world/middle_east/2991838.stm) (last visited Apr. 20, 2004).

<sup>205</sup> *U.N. Endorses Mid-East Roadmap*, BBC NEWS, Nov. 19, 2003, available at [http://news.bbc.co.uk/1/hi/world/middle\\_east/3283949.stm](http://news.bbc.co.uk/1/hi/world/middle_east/3283949.stm) (last visited Apr. 20, 2004).

<sup>206</sup> *Highlights of the AAP Worldwire at 15:00 March 16*, AAP NEWSFEED, Mar. 16, 2004

directly).<sup>207</sup> Vague requirements such as this would have to be eliminated to the best of the factions' abilities, but when writing an agreement prospectively it is nearly impossible to eliminate all vagaries. To combat this, the bodies created to shepherd the Israelis and the Palestinians to lasting peace would be able to make declaratory judgments regarding agreement language and interpretation as well as foster ongoing negotiations in order to work through troubles. The Belfast Agreement is more time conscious than the Roadmap. Problems have persisted in Northern Ireland,<sup>208</sup> but the parties have persisted in their commitment for peace over the long term.<sup>209</sup> However, the Roadmap for Peace, signed in 2003, projected peace by 2005.<sup>210</sup> A limitation on time cannot be placed on the attainment of lasting peace, which is, after all, the ultimate goal here.

In order to get Israel and the Occupied Territories prompted for a lasting peace and implementation of a peace agreement, a timeline might be used as a guideline, but it cannot be proclaimed. Beyond the impact of a timeline, however, the parties have to be truly ready to commit to the agreement; to commit to peace. Evidence of this is that war crimes and crimes against humanity need to be discontinued. This applies to all sides in the matter; the Israelis cannot expect the Palestinians (however few of them) to lay down their arms without an actual commitment from the Israeli Military Administration of life normalization. There needs to be some degree of trust (or a leap of faith) on both sides in order for an agreement to be implemented effectively. There cannot be collective

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<sup>207</sup> See *Performance-Based Roadmap*, *supra* note 171.

<sup>208</sup> *NI Political Talks Postponed*, BBC NEWS, Apr. 20, 2004, available at [http://news.bbc.co.uk/1/hi/world/middle\\_east/3640841.stm](http://news.bbc.co.uk/1/hi/world/middle_east/3640841.stm) (last visited Apr. 20, 2004).

<sup>209</sup> See *Performance-Based Roadmap*, *supra* note 171.

<sup>210</sup> *Sharon Plan Tops Press Agenda*, BBC NEWS, Apr. 19, 2004, available at [http://news.bbc.co.uk/1/hi/world/middle\\_east/3639021.stm](http://news.bbc.co.uk/1/hi/world/middle_east/3639021.stm) (last visited Apr. 20, 2004).

punishment, there cannot be suicide bombings, there cannot be hostage takings, there cannot be internment. Both sides must release the prisoners they hold which are “thought maybe to have possibly been involved” in a war crime. To accomplish this there must be a return to the rules of law enforcement and an end to the rules of war. Deportations must stop and decommissioning must begin.

Difficulties do remain, however. One of the main weaknesses of finding an agreement with the necessary independence to be effective is that it must find financial support. Who will pay for the investigations, trials, commissions and community building bodies? That question has to be worked out in the negotiations, but it is sure to be a central point as the Occupied Territories are some of the poorest regions in the world. Israel’s long-time supporter, the United States,<sup>211</sup> may need to continue its assistance, but that limits Israel’s ability to react to terrorists (especially since September 11, 2001) in a manner other than through force.

In addition, mere truth commissions and war crimes tribunals might not seem sufficient to the Jewish settlers or Palestinian residents who feel they were wronged by their opposition. They may clamor for reparations or some other form of restitution; however, it is unlikely that any agreement or peace plan would include these, as both sides have felt their actions were justified to some degree. Furthermore, asking for reparations or aid might re-ignite an already shaken and volatile community’s emotions.

## V. CONCLUSION

The Israeli/Palestinian situation is complicated. To that end, any solution for the allegations of crimes against humanity requires a multi-faceted approach. The

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<sup>211</sup> See generally CHOMSKY, *supra* note 22.

heinousness of widespread or systematic murder, torture, deportation, and persecution require specific plans to route out their perpetrators, provide solace to victims, and to provide reconciliation. Regardless of whether these crimes can be proven, their allegation necessitates reaction and resolution. Hardly a time comes when it is perfectly clear whether a crime has in fact been committed.

Thus, following the model of Northern Ireland's process of addressing allegations of crimes against humanity, one is able to develop a structure that does the same for Israel and the Occupied Territories. Both situations revolved around violence in light of religion, politics, and property rights. And, each had a marginalized people desperate for change. A truth commission, quasi-national tribunal, equality and human rights council, executive assembly and community building bodies may provide the necessary building blocks to accompany the two nations on their path toward survival, reconciliation and prosperity.