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## **ABSTRACT**

## **Transitional Justice: A Conceptual and Normative Framework for Combating Terrorism in Occupied Territories**

*Pr. Carmen Quesada Alcalá*

*Pr. Mehdi Zakerian*

Transitional justice generally refers to a range of approaches, judicial and non-judicial, that States may use to build the transition from violence and repression to societal stability and peace. The term “transitional justice” has recently received ever greater attention with respect to the Occupied Territories, especially in relation to terrorism and its consequences. The purpose of this paper is to establish a normative and conceptual framework for transitional justice in the fight against terrorism in the Occupied Territories. We will focus our attention in the possible ways of transitional justice for the Occupied Territories, and in its essential elements related to terrorism: Truth Commissions, International or Hybrid Tribunals, and the International Criminal Court. Our principal aim is to make a proposal relating a specific profile of transitional justice that is appropriate and feasible for the Occupied Territories, in light of the experience of other international tribunals. But this proposal must be done to ensure that the rights to truth and to the identification of the perpetrators of terrorism are effectively guaranteed and the harm suffered by victims is recognized. And this is a big challenge that must be met if this region of the world is to have a peaceful future.

**Keywords:** Transitional Justice, Human rights, Occupied Territories.

## **La lutte contre le terrorisme et la justice globale : une harmonie difficile à conjuguer ?**

*Pr. MARTA IGLESIAS BERLANGA*

Il est bien connu que le terrorisme est un grave phénomène délictueux qui préoccupe profondément la communauté internationale. Néanmoins, les mesures anti-terroristes de certains États sont en train d'éroder, de nos jours, ce haut degré de priorité que tant d'un point de vue structurel que conceptuel ont les Droits de l'Homme dans la Charte des Nations Unies. Défiant l'accomplissement du Droit International au nom de la sécurité nationale, le contexte de la « guerre contre le terrorisme » est en train d'investir les Droits de l'Homme d'une charge qui excède de très loin leur capacité d'influence. À ce point, ma contribution cherche à examiner la répercussion de ces mesures à l'égard de la population civile dans les territoires palestiniens occupés suite à l'opération « Plomb durci » déclenchée par le gouvernement israélien, le 27 décembre 2008, contre les tirs de roquettes du Hamas. Comment conjuguer, en somme, la lutte efficace contre le terrorisme et la sauvegarde du Droit International des Droits de l'Homme ?

**Mots Clés:** Droits de l'Homme, Terrorisme, Justice, plomb durci.

**Reparations for Victims as a Key Element of Transitional Justice in the Middle East Occupied Territories: A Legal and Institutional Approach**

*Pr. Fernando Val-Garijo*

Victims of gross human rights violations derived from terrorist acts and victims of serious violations of international humanitarian law are entitled to obtain reparation for the harm suffered, a right that is being increasingly recognized and enforced in international law and practice. The Basic Principles and Guidelines on the Right to a Remedy and Reparation adopted by the UN General Assembly can be regarded as a systematic and comprehensive framework for the design and implementation of reparation schemes and programmes that operate through five basic forms of reparation, such as restitution, compensation, rehabilitation, satisfaction and guarantees of non repetition. Based on the premise of an international peace treaty between Israel and Palestine containing a general settlement of the conflict in the Occupied Territories, this paper outlines the basic features of a Trust Fund that would be created by both States, with support from the international community, for the benefit of the victims of this conflict. This contribution is a first approach to the structure, funding, types of reparation activities and links to other mechanisms of transitional justice that an institution like the Trust Fund would have. Considering it a catalyst of the reparation process, especially in areas such as rehabilitation and satisfaction, the Trust Fund is presented as one of the possible elements of an overall transitional justice scheme that would consider the redress of victims as a major concern. Effective and just victim reparation helps communities walk towards genuine reconciliation once a peace settlement has been reached.

**Keywords:** Reparations, Victims, Transitional Justice, Middle East, Occupied Territories.

## **Terrosim and Justice in the Occupied Territories: A Case Studies Research**

*Pr. Milena Costas Trascasas*

This paper gives a general overview of the legal and political situation of the Occupied Territories vis à vis the terrorism. The first question to solve in this context refers to the content of right to self-determination belonging to the Palestinian people and the limits that the international law imposes to its exercise. Difficulties encountered for adopting a universally accepted definition of terrorism, do not prevent from identifying which acts can be qualified as terrorism. Distinguishing between different types of terrorism (terrorism of state, private terrorism, national or international terrorism) may be also useful to better understand the implications of this phenomenon in the Israel-Palestine conflict. In second place, it is important to determine the legal framework that is applicable to the parties confronted in such a complex conflict. Particularly relevant is to determine to what extent international human rights law and international humanitarian law do apply. In taking into account the national and international case-law, the paper concludes with a critical view of the international community's lack of ideas for facilitating a fare and durable peace process in Middle East. Nevertheless, the author proposes some interesting instruments which could help to favour the process towards the transitional justice, especially after the recent escalation of the crisis.

**Keywords:** Occupied Territories, Transitional Justice, International Humanitarian Law.

## **The Participation of Womens in Transitional Justice**

*Pr. Teresa Marcos Martin*

The question of the protection of rights of women within the scope of the transitional justice has been, quite often, forgotten during the different procedures of the transitional periods. That is why the International Center for Transitional Justice is making increasing efforts in order to include this question in the different institutions and organs that deal with the subject of transitional justice. Different approaches have been made in order to include the question of sexual crimes in the procedures of the so-called Truth Commissions. In our opinion, the best one is the approach that proposes the influence of the question of sexual violations in all the activities of these Commissions, because it implies that it has become a principle that inspires all the functions of these institutions. Taking into account that these proposals are relative recent, we have to conclude that we should keep on analysing the future developments of the functioning of the Truth Commissions in order to know if the different approaches, and the efforts of the International Centre are functioning successfully in the question of sexual violations during the armed conflicts and its appropriate reparation.

**Keywords:** Women, Transitional Justice, War, Gender, Human Rights.

## **Transitional Justice and Gender Questions in Occupied Territories**

*Pr. Ruth Abril Stoffels*

As soon as transitional justice mechanisms are instruments to address the problems of "justice" that any peace process pose, it is important to choose the most appropriate one for each different situation. This is the reason why we need to know about the situation in the country or territory concerned, which are the crimes that must be addressed and what is the social context to which it should be applied. The paper starts from the special situation of vulnerability in which women are in many of the countries affected by armed conflicts or situations of serious social crisis, including the occupied territories. Gender-based violence and crimes targeted specifically against women increase in these contexts and this has been especially dramatic in recent years. Women have been invisible in peace processes throughout the twentieth century and, of course, only after the 90ties, transitional justice mechanisms have had a gender perspective. The twenty-first century seems to begin with hope in this field and UNSC Resolution 1325 (2000) is an example of the fact that International Community is waking up to this question. Women must have a very important role in building peace and, transitional justice should have a gender perspective.

If the mechanism selected to solve the problems of transitional justice in the occupied territories is not the appropriate for the punishment of such crimes, it will be necessary to know their strengths and weaknesses to address gender questions. Once this is done, we will be able to make the necessary institutional reforms in order to meet the needs of women. Therefore it is our goal to make a review of the main mechanisms of transitional justice (International Criminal Courts, Mixed Courts, Truth Commissions, Internal Courts) identifying, with specific cases, the benefits and challenges of their use for the punishment of crimes of gender.

**Keywords:** Gender, Transitional Justice, Occupied Territories, Human Rights.



## **Terrorism and Transitional Justice in the Palestinian Occupied Territories**

*Dr. Thomas Hill*

This paper discusses persistent and increasing Israeli resistance to any conception of transitional justice as a solution to terrorism in the Occupied Palestinian Territories (oPt). Further, it queries the very notion that the Israeli national narrative and official discourse ultimately perceive Palestinian terrorism as a ‘problem’ greater than serious engagement with Palestinian demands for a process of transitional justice concerning both events since 1967 and those of 1948 would be. It considers whether Israel’s systematic representation of any and all violent manifestations of Palestinian resistance to the occupation of the West Bank and Gaza as terrorism can be deemed sustainable in the long-term given the distinctive status of the oPt in general and the Gaza Strip since 2005 in particular. It has been a key premise of mainstream Israeli discourse since at least the creation of the state in 1948 that no Palestinian violence against Israel or Israelis can be understood as legitimate – much less as a reaction to Israeli state violence towards Palestinians. The very concept of Palestinian retaliation for Israeli actions is excluded since, in Israeli discourse, no equivalence can be drawn between the two forms of violence, and, international law notwithstanding, no Palestinian right to violent resistance can be contemplated. Israel has only, however, been able to use counter-terrorism and ‘security reasons’ as catch-all justifications for all its actions in the oPt by sustaining a discourse arguing for its own persistent – indeed, permanent – existential insecurity – a paradigm which the establishment of a Palestinian state, however devoid of substance in practice, might, in theory at least, put under some stress ; and which the disproportionate death tolls of Israel’s recent military interventions in Lebanon (the ‘Second Lebanon War’ of summer 2006) and Gaza (‘Cast Lead’ in December 2008 and January 2009) may have put under some strain.

This paper thus explores the key elements of this evolution, largely by examining Israeli policy and discourse surrounding ‘Cast Lead’ as it happened, analyzed as a test case of the new status of the Gaza Strip in the wake of Israeli “disengagement” in 2005, and the paradigms and dynamics of representations of ‘terrorism’ this has engendered. Centrally, it asks whether Israel might prefer to continue its occupation indefinitely than to confront a Palestinian state arising through negotiation – or whether future “disengagements” on the Gaza model would undermine its discourse on Palestinian resistance as terrorism to an extent that Israel itself might ultimately have to deem unviable, forcing it against its will into a scenario in which transitional justice would be the only discursive option left for preventing ‘terrorism’ – and thus for resolving the Palestinian-Israeli conflict.

**Keywords:** Palestine, Transitional Justice, Israel, Terrorism.

## **Transitional Justice: Lessons from the Past**

*Pr. Kenneth Christie*

This paper will examine some of the lessons we have learned from the experience of countries in transition that have had to deal with their traumatic and fractured past. The focus will be on the South African Truth and Reconciliation Commission and will have direct bearing on how and why any peace settlement in Palestine and the occupied territories must come to an understanding of the past in a shared sense and how that must be translated into justice and reconciliation for the settlement to work in practice.

Truth Commissions have emerged as one way in which countries with difficult, conflict torn pasts seek to procure justice and heal wounds. They are seen as a mechanism which might enable societies to move forward without any more serious rupture or strife. Most of these societies have endured terrorism in one form or another (state or individual) which have left bitter memories and scars. Overcoming these is crucial to the development of nation-building and reconciliation between different sections of often divided political communities. There are few places in the world where this is more relevant to than the Palestine and the occupied territories. Such lessons will prove crucial to attaining transitional justice and the protection of human rights in the future.

**Keywords:** Transitional Justice, Human Rights, Truth Commissions, Palestine, Occupied Territories.

## **Droits de l'homme et justice transitionnelle**

*Claribel de Castro Sánchez*

Respect for human rights constitutes one of the essential elements for social reconciliation in a post-conflict situation. Therefore, it must be one of the pillars of Transitional Justice. Thus the first task will be to analyze which rights have been violated during an "institutional crisis". The second task should be to determine the mechanisms and measures to be used in order to build political systems that respect human rights. This is the first step towards enforcing the right to reparation of victims of human rights violations.

In this paper, the focus is on the violations of human rights committed by Israel against the Palestinian population of the occupied territories, with special reference to the Gaza strip. The fact that this is the adopted focus does not mean, however, that human rights violations have not been committed by the different Palestinian political factions. Nevertheless, it is an established fact that the protracted character of the occupation and the outbreak of different armed conflicts throughout a period of almost forty years have created a dramatic humanitarian situation for the Palestinian population in the area.

A transversal idea inspires this paper throughout: peace, human rights and development are inseparable and interconnected elements. Lastly, sustainable peace demands respect for human rights with a view to the future, but it also calls for the healing of past wounds. A definitive solution to the conflict requires a more humane conduct on the part of both Israelis and Palestinians.

**Keywords:** Human Rights, Victims, Transitional Justice, Palestine.