

“Imagining Transitional Justice in Israel/Palestine”: Experiential Collaborative Learning at Tel Aviv University’s Minerva Center for Human Rights

Sigall Horovitz

THE PRESENT contribution discusses a project that brought together Israeli, Palestinian, and South African law students for the purpose of considering whether transitional justice approaches can help transform the Israeli-Palestinian conflict. For context purposes, the contribution also includes a brief discussion of the concept of transitional justice, and relevant background about the Israeli-Palestinian conflict.

The project was initiated and coordinated by the author, under the Minerva Center for Human Rights at Tel Aviv University’s Faculty of Law. It was academically supervised by the Center’s director, Prof Leora Bilsky, and implemented through a partnership with Prof Mia Swart of the University of Johannesburg (Faculty of Law) and Prof Mutaz Qafisheh of the University of Hebron (Dean of Law). The project was funded by the German Minerva Foundation, under a special grant for the project Imagining Transitional Justice in Israel/Palestine. The Minerva Foundation was also a source of inspiration throughout the implementation. Additional financial assistance was provided by Prof Hennie Strydom of the University of Johannesburg, and the Cegla Center for Interdisciplinary Research of the Law at Tel Aviv University. The venue of the Johannesburg workshop, the project’s main component, was made available by Prof Strydom and adapted to the project by Prof Swart and her teaching assistant, Ms. Karin Krisch. The project could not have materialized without the support of the above-mentioned persons and institutions, and especially the remarkable efforts and enthusiasm of Prof Leora Bilsky and Prof Mia Swart.

The Project

Can transitional justice approaches help transform the Israeli-Palestinian conflict? This was the central question animating the project Imagining Transitional Justice in Israel/Palestine. The project’s guiding principles were



Project participants with Justice Richard Goldstone (front row, fifth from left).

that students from Israel and Palestine must consider this question together to ensure that all perspectives are taken into account, and that an effective consideration of this question requires not only an understanding of transitional justice theories but also empirical knowledge of how these theories play out in reality. Following a competitive selection process, twenty law students from the Israeli Tel Aviv University, the Palestinian Hebron University, and the South African University of Johannesburg were chosen to participate in the project. They were taught transitional justice theories on campus, and were then sent to “experience” transitional justice “in action” in a special workshop in Johannesburg. The transition from Apartheid to democracy in South Africa was accompanied by a variety of transitional justice processes, some of which continue to take place today, and the country therefore offers unique opportunities to observe firsthand transitional justice processes and their effects. The project thus combined two approaches that are still uncommon in Israeli law schools: experiential learning and Israeli-Palestinian collaboration.

The workshop in South Africa was dedicated to assessing that country’s transitional justice experiences, including from critical perspectives, and drawing lessons for Israel/Palestine. The workshop lasted two weeks and combined lectures, study sessions, site visits, film screenings, and discussions with activists. Traveling to South Africa enabled the Israeli and

Palestinian students to observe ongoing transitional justice practices, critically assess past transitional justice processes, meet relevant experts, and study with local students who were “beneficiaries” of transitional justice. The trip also allowed the Israelis and Palestinians to interact with each other, a rare occurrence given the current political climate in Israel/Palestine. Drawing on the workshop, the students wrote research papers on possible transitional justice approaches for Israel/Palestine. The project culminated with academic conferences in Tel Aviv and Hebron, where the students presented their papers and discussed them with local and international scholars. Before addressing the project in further detail, in order to understand it in context, the following paragraphs provide an overview of the field of transitional justice and background information about the Israeli-Palestinian conflict.

Conceptual Framework: Transitional Justice

Transitional justice is an interdisciplinary field of study and practice concerned with addressing legacies of human rights abuses in the context of transitions to peace and democracy. Transitional justice theories posit that acknowledging and rectifying past injustices helps foster conditions for peace, reconciliation and democracy. Transitional justice approaches can be judicial or non-judicial, and they include criminal trials, institutional and legal reforms, truth commissions, reparation schemes and memorialization programs. These approaches are considered both normatively required (as a response to human rights violations) as well as pragmatically important for consolidating peace and democracy in the aftermath of conflict and repression. The victim-centeredness and backward-looking aspects of transitional justice distinguish it from fields such as conflict resolution and peace building.

The field of transitional justice started attracting international attention, among both scholars and practitioners, after the operation of the South African Truth and Reconciliation Commission in the 1990s. Transitional justice approaches are most commonly invoked in transitions from civil wars and repressive regimes, where former rival groups seek to consolidate peace within one political system. However, transitional justice is increasingly discussed in connection with post-conflict transitions involving two or more political systems. For example, post-World War II accountability

and reparation mechanisms, such as the Nuremberg trials and the German-Israeli Reparations Agreement, have been examined from a transitional justice perspective. Dealing with the past through these approaches can be conducive to reconciliation between peoples.

Another important development in the field is the initiation of transitional justice approaches when the conflict is still active, in an attempt to bring it to an end. For example, accountability and reparation mechanisms have been adopted in Colombia as part of an effort to foster conditions for an effective peace agreement. Transitional justice approaches are sometimes adopted in times of conflict due to the “shadow effect” of a new global justice actor that could intervene in active conflicts – the International Criminal Court (ICC). The ICC, established by an international treaty in July 2002, adjudicates atrocities that states do not investigate. States can thwart ICC interventions by addressing their conflict-related abuses domestically, including through transitional justice mechanisms.

Background: The Israeli-Palestinian Conflict

The Israeli-Palestinian conflict revolves around competing claims by Jews and Palestinians to historical rights over the land between the Mediterranean Sea and the Jordan River. The conflict started in the early 20th century, when the relevant land was referred to as “Palestine” and was governed by the British under a League of Nations mandate. The majority of the inhabitants at the time were Arab Muslims, but there was also a Jewish presence. Jews fleeing from persecution in Europe immigrated to mandatory Palestine, which they considered their historical land and where they sought to establish a national homeland. Competing national interests of the Arab and Jewish populations of mandatory Palestine escalated into violent riots in 1929 and again in 1936-1939. Jews continued to immigrate to the area, especially during and immediately after World War II and the Holocaust.

In November 1947, the UN issued a resolution ending the British mandate over Palestine and dividing the area into two states – one Jewish and one Arab. This partition plan was met with local resistance and a civil war erupted between the Jews and Arabs of Palestine. The Jewish forces won the war and, in May 1948, established the State of Israel in the area defined today by the “green line”. In response, the surrounding Arab nations attacked Israel and sparked a war which lasted until July 1949. The local and inter-

national hostilities are considered by Jews as different stages of Israel's War of Independence, while Palestinians refer to them as the "Nakba" (which in Arabic means "catastrophe") because of their mass displacement and dispossession. Some commentators refer to the hostilities as the 1948 Arab-Israeli War.

During the 1948 Arab-Israeli War, approximately 700,000 Palestinians fled or were forced out of the green line. Most of them settled in refugee camps in Gaza and the West Bank, areas that were controlled by Egypt and Jordan. Another war between Israel and the surrounding Arab nations broke out in 1967, ending with the occupation by Israel of Gaza and the West Bank, territories inhabiting large Palestinian populations. Today, the West Bank remains under Israeli occupation although the Palestinian Authority controls parts of it. The Jews who settle in the West Bank are known as "settlers." Gaza is under Israeli blockade and is effectively controlled by Hamas, an Islamist fundamentalist party.

In addition to competing land claims, the Israeli-Palestinian conflict is fueled by the parties' mutually exclusive narratives of the past, their denial of each other's nationhood and national aspirations, and their competition over victimhood. While Jews blame the Palestinians for resorting to violence in 1947-1948 and for terrorist attacks ever since, Palestinians blame Israel for their 1948 displacement and dispossession and for occupying their lands and using force against them to this day.

In 2012, the UN recognized the existence of a State of Palestine within Gaza and the West Bank. Having been recognized as a state, Palestine joined a number of international treaties including the Rome Statute of the ICC. Recently, the Palestinian Authority requested the ICC to investigate and prosecute alleged war crimes committed by Israelis against Palestinians in the West Bank and Gaza.

Relevance of Transitional Justice to Israel/Palestine

Many argue that transitional justice is inapplicable to the situation in Israel/Palestine, because the conflict is still ongoing and since the sought resolution is one of separation rather than unification. Indeed, thus far, transitional justice approaches aimed at officially acknowledging and addressing historical injustices – most notably events around the 1948 Israeli-Arab War and their consequences – have not been adopted in connection with the

Israeli-Palestinian conflict. The idea of addressing past injustices in Israel/Palestine was rejected in the Oslo peace process and in many of the peace initiatives since then. However, as explained earlier, transitional justice approaches can be initiated when the conflict is active, and in connection with transitions involving two or more political systems.

In this light, it is worth considering the relevance of transitional justice to the Israeli-Palestinian conflict. For example, could transitional justice institutions such as truth commissions or reparation programs, or other responses that acknowledge and address historical injustices, help resolve the Israeli-Palestinian conflict? Could they provide some measure of justice? Could they at least help determine to whom justice is owed and for what? Are there any transitional justice theories or lessons from transitional justice practices that could be helpful to Israel/Palestine? Absent official transitional justice measures, can civil society actors advance alternative forms of transitional justice through bottom-up initiatives? These were the questions confronting the students participating in the project *Imagining Transitional Justice in Israel/Palestine*.

Collaborative Transitional Justice Project

Imagining Transitional Justice in Israel/Palestine involved law students from Tel Aviv, Hebron and South Africa, and encouraged them to collaboratively consider transitional justice's applicability to the Israeli-Palestinian conflict. The participants were chosen following interviews and a competitive selection process that took into account their merits, interests and personality. The project had three stages: (1) The preparatory stage, in which the students gained relevant theoretical knowledge by completing a transitional justice course at their respective universities; (2) The experiential stage, in which the students traveled to South Africa to study transitional justice "in action" through a special workshop designed for this purpose; (3) The concluding stage, in which the students wrote research papers on possible transitional justice approaches for Israel/Palestine and presented these papers in academic conferences in Israel and Palestine.

The preparatory courses were taught in parallel in Tel Aviv, Johannesburg and Hebron, in accordance with a syllabus developed especially for the project. These were conventional university courses focusing on transitional justice theories, but they were also designed to prepare the students for the trip



Israelis, Palestinians and South Africans studying together.

to South Africa. The students participating in these courses were delighted to discover a new approach to conflict resolution, one that simultaneously focuses on the individual and the collective, and has justice as a central element. In addition, the Israeli and Palestinian students were enthusiastic about the idea of traveling to South Africa, and the prospects of meeting students from the “other side” of the conflict. Given the strong social pressure on both sides to refrain from engaging in such collaborative projects, and the prevailing mutual stigmas, we were quite impressed by the students’ interest in meeting and studying with their counterparts from the other side.

It should be mentioned in this context that Israelis and Palestinians are prohibited by law from entering each other’s cities. This lack of direct contact entrenches mutual fears and stigmas that fuel the conflict. It also makes it very difficult for students from both sides to engage in collaborative programs in Israel or Palestine. Israeli-Palestinian interaction in third states is also quite limited, given the financial and logistical difficulties involved in traveling abroad (especially for Palestinians, whose international travel is severely restricted by the Israeli authorities). Another obstacle to such interactions is the policy of “anti-normalization”, a grassroots movement in Palestine that urges Palestinians to refrain from collaborating with Israelis, as a form of non-violent resistance to the occupation.

We decided to carry out the project despite these challenges. Sadly, every step of the way revealed how the Israeli-Palestinian conflict itself obstructs any efforts to transform it. Within weeks of receiving the grant for

the project, our original Palestinian counterparts withdrew from the project. The Johannesburg workshop was two months away. Determined to go ahead with the plans, we welcomed an initiative to involve a student delegation from Hebron University's College of Law. The new group of Palestinian students made great efforts to complete the on-campus transitional justice course in a very short period. The project was saved. Or so it seemed.

Days before the start of the Johannesburg workshop, three young Israeli settlers were abducted by Palestinians near Hebron. This led to serious political tensions and the imposition of a travel ban on Hebron residents by the Israeli Defense Forces. Without special permits, the Palestinian students would be prohibited from traveling to the airport to catch their flight to Johannesburg. The chances of getting such permits were slim. Believing in the importance of the workshop for the future of Israelis and Palestinians, the South African Ambassador to Israel decided to intervene. Addressing top Israeli government and military officials, the Ambassador explained how important it was that Israelis and Palestinians learn from his country's experience with peace and justice. The Israeli officials listened, and eventually granted the Palestinian students special travel permits. The workshop in Johannesburg would take place after all.

Experiential Workshop In South Africa

South Africa was chosen as the trip's destination because this country demonstrated how transitional justice mechanisms, such as the Truth and Reconciliation Commission (TRC) and a new Constitution and Constitutional Court, can help a society transition from conflict and repression to peace and democracy. The South African society still engages with transitional justice today, as discussions continue to take place regarding the opening of criminal investigations and the delivery of reparations for Apartheid-related crimes. South Africa's intensive and continuous engagement with transitional justice in the last twenty years makes it an exciting place to observe transitional justice processes "in action." While many lessons can be learned from South Africa's transitional justice practices, important insights can also be gained from the weaknesses and failures of these experiences. For example, some argue that the endemic corruption, high crime rates and extreme racial inequalities in today's South Africa suggest that reconciliation and the rule of law have not entirely been attained.



Group photo at workshop venue.

The activities in South Africa were organized under a special workshop held at the University of Johannesburg. Twenty law students from Israel, Palestine and South Africa participated in the workshop. The Israelis and Palestinians met each other for the first time in Johannesburg, as all attempts to organize a meeting of the two groups in Israel/Palestine failed due to the political realities. The involvement of South African students allowed the Israelis and Palestinians to study and interact with youth who were raised under Apartheid but have since become part of a racially mixed democratic society. The South African students enriched the program by sharing their perspectives as beneficiaries of transitional justice processes. They also extended a warm welcome to the Israeli and Palestinian students, making them feel at home at every stage of the program.

The workshop was designed especially for our project, and was dedicated to assessing South Africa's transitional justice experiences and drawing lessons for Israel/Palestine. It combined didactic approaches with experiential learning methods. Both the experiential and the didactic parts of the workshop were designed to encourage extensive interactions among the participants. The workshop was based at a beautiful villa with spacious

classrooms, charming gardens, and a dining room. While the villa belonged to the University of Johannesburg, it was removed from the main campus and thus offered an intimate and informal setting that was conducive to our interactive program.

During the workshop, the students met inspiring South Africans such as retired Constitutional Court Justice Richard Goldstone and TRC Commissioner Pumla Gobodo-Madikizela. The students also received lectures from over a dozen leading South African scholars, who covered topics ranging from the history of Apartheid, to the South African Constitution and Constitutional Court, the TRC and its amnesty regime, post-Apartheid prosecutions, reparations, land reforms, restitution, memorialization, the African Ubuntu philosophy, reconciliation, forgiveness, and gender equality. Some of the scholars presented critical perspectives on South Africa's transitional justice processes. For example, it was argued that transitional justice failed as far as its economic dimensions were concerned. Every lecture was followed by a Q&A session and a group discussion. In addition, the students discussed transitional justice with Apartheid victims who are members of the famous "Khulumani Support Group," and with activists



Group photo at the Apartheid Museum.



Students at Regina Mundi (site of South Africa's TRC).

from the Ahmed Kathrada Foundation, the International Center for Transitional Justice, the Johannesburg Holocaust and Genocide Centre, Liliesleaf Trust, and the Helen Suzman Foundation.

In addition to lectures and discussions, the workshop included study sessions, film screenings, and site visits. During the study sessions, the students split into small multi-national teams of three or four individuals and together explored certain topics from the various national and academic perspectives of the group members. The students chose their respective topics at the beginning of the workshop, and were asked to research these topics by posing relevant questions during the workshop meetings and study sessions. After the workshop they were asked to develop their initial research into an academic paper, which they later presented at university conferences in Israel and Palestine.

Some of the documentary films shown during the workshop focused on the Israeli-Palestinian conflict. The films addressed unique aspects of the conflict, which presented opportunities for justice and reconciliation. The screenings were followed by group discussions, and supplemented with lectures by Israeli and Palestinian experts, including historian Dr Adel Manna of the Jerusalem Van Leer institute. These activities provided a structure for the participants to deliberate on different perspectives of the Israeli-Palestinian conflict. The participation of both Jewish and Palestinian students generated rich discussions about each group's interpretation of the past and visions of the future. Heated debates revolved around competing perceptions of past injustices and the appropriate reparations. As discussed below, agreements were not always reached but the discussions promoted empathy and understanding among the participants. Interesting and non-obvious perspectives were offered by the two members of the Tel Aviv University group who were Palestinian citizens of Israel, and who represent a minority in Israel that has a tense relation with Jews and is separated geographically from their Palestinian brothers in the West Bank.

The sites visited during the workshop included the South African Constitutional Court as well as a number of relevant museums and memorials such as the Women's Prison, Liliesleaf Farm, the Apartheid Museum, the Hector Peterson Museum, Mandela House, the Regina Mundi church, and Museum Africa. At some of these venues, special activities were organized for the students. For example, during their visit at the Apartheid Museum, the students met the museum's curator and heard from her about the creation, purposes, programs and development of the museum. The students also went to the landmark Market Theatre, where they watched John Kani's latest political play "Missing." These special programs exposed the students not only to transitional justice processes in South Africa but also to the very injustices these processes were supposed to remedy. The site visits were stimulating and allowed the students to "experience" South Africa with all their senses rather than merely hearing or reading about it. These excursions also provided great opportunities for social interactions (especially the bus trips they entailed).

The workshop was an eye-opener for the students. They not only acquired special insights into South Africa and its transitional justice mecha-



Students attending lecture at the Constitutional Court of South Africa.



Students at Hector Pieterse Museum.

nisms, but they also began thinking about new approaches that could help transform the Israeli-Palestinian conflict. South Africa's experience shows that local context is critical for the design of transitional justice processes. But this did not deter the students from considering the relevance of these processes back home; instead, it made them think creatively about ways to adapt transitional justice approaches to Israel/Palestine, whether in connection with land reforms, collective apologies, education programs, etc.

Another significant lesson from South Africa concerned the role of civil society. While national involvement was critical for the success of transitional justice processes in South Africa, civil society bottom-up initiatives that took place for about a decade prior to the TRC were essential for building the legitimacy of later official transitional justice institutions. This is an important lesson for Israel/Palestine, where any official involvement in transitional justice is far from sight. The students also reflected on the value and challenges of compromise. Interestingly, while the Israel-Apartheid analogy was raised, it was not central to the discussions, which rather focused on ways to address and rectify the respective experiences of injustice in Israel and South Africa.

At the end of the workshop, one of the Israeli participants considered that “just as they teach about the Holocaust, they should teach about apartheid. I find apartheid to have universal significance, and the fact that we got to listen, know, meet and learn about apartheid, and not just from an ‘academic’ perspective, but really closely, was for me an experience that changed me and my way of thinking ... reality is complex, but it does not change the fact that the apartheid legal regime has ended, and therein lies an enormous power that inspires confidence and hope.” A Palestinian student noted that the workshop had filled him with hope for “a new beginning in which we can engage in a genuine reconciliation process” in Israel/Palestine.

Meeting the Other

In addition to the above-mentioned lessons and insights, the workshop had another important achievement: It forced the students to meet and listen to each other. This had a transformative impact on their perception of the other, the conflict and themselves. A Palestinian student admitted that this was the first time she saw Israelis without army uniform, and was glad to meet them and hear their views. An Israeli student added that this was “one of very few incidents in my life that I had the opportunity to deeply discuss the situation in Israel-Palestine not from within the Jewish-Israeli perspective, but with Palestinians who are not citizens of Israel.” Another participant, a Palestinian citizen of Israel, repeatedly noted how grateful he was for the unique opportunity to study with Palestinians from the West Bank. A Jewish-Israeli student noted that “meeting with the Palestinian students, and especially in South Africa, caused me a kind of split personality. On the one hand I felt the hurt and anger of the Palestinian side, but on the other hand I could not completely erase my Israeli side and it was hard to feel that my voice lacked legitimacy ... it took me a while to digest the complexity and transform it into something positive rather than threatening.”

Students were also affected on a more personal-individual level. For example, one participant explained that “above all, the journey made me realize that it’s ultimately all about men and women. The interpersonal relationship that was forged, even if for a short time, was the most significant thing for me.” Another student described the workshop as “eye-opening because there is so much that goes into making Palestinians the ‘other’ that it came as somewhat of a shock to see that they are exactly the same in more ways

than can be imagined". A Palestinian participant boldly acknowledged that the workshop had taught him that he could change.

Throughout the two-week workshop, despite the conflict back home, the Israeli and Palestinian students interacted freely and easily. They expressed different views and opposing narratives about the conflict, but were still able to voice their own perspectives and listen to the others. While some of the discussions in class were heated, they were always civil, and after class the students often enjoyed light conversations over dinner and at the dormitories. They spent many hours together, from brushing their teeth every morning in the communal bathrooms, to classroom activities, bus trips, site visits, sharing meals, and watching the occasional soccer game on TV. One of the female participants recalled that "hanging out with the girls in the dormitory housing provided ample opportunities to have informal conversations about the normal stuff girls talk about in dormitories." The students maintained their solidarity even when the harsh reality back home knocked on our door. This was stressed by a participant who described one evening in Johannesburg: "I will never forget sitting at one of our last dinners together while every single person in the room was on their phone, checking for news updates on the status of the three missing Israeli students [who were abducted near Hebron before the workshop]. There were rumors that their bodies had been found, and each of us checked our own preferred source ... news bulletins in English, Arabic, and Hebrew were compared one against the other. There was a collective sense of anger, disbelief, sadness, and tension about what was to come."

Conferences in Israel/Palestine

After two weeks together in Johannesburg, the Israeli and Palestinian students were sad to part ways. Unfortunately, they returned home to a very tense environment. The violence in and around Gaza had blown into full-scale war. There was very little email-interaction between the groups, despite their earlier intentions to remain in touch. After returning home, one of the students noted that "coming back from South Africa to some of the most violent months the Israeli-Palestinian conflict has seen in years was extremely frustrating, and reminded me how far the political discourse that took place in the workshop was from the current discourse in Israel-Palestine." Other participants experienced things differently. For example, one Israeli student noted that "the war had more depth and context for me because of the weeks



Conferences in Israel/Palestine.

I spent with Israeli, Palestinian, and South African students. I was able to more easily personalize and humanize the people on the ‘other side’, and I felt that maybe the other students were able to do the same.”

In any event, during and after the Gaza war, the students continued working on their project research papers. These papers addressed possible transitional justice approaches for Israel/Palestine and were based on the students’ experiences in South Africa, the multinational study sessions, and complementary individual research. Thus, in a way, the students continued their joint learning experience despite the lack of direct Israeli-Palestinian communication. This was an important legacy of the workshop.

The project culminated with two academic conferences in Tel Aviv and Hebron, where the students presented their research papers and discussed their insights from South Africa. The conferences also brought together international and local scholars from various disciplines, who shared their perspectives on the potential and pitfalls of transitional justice processes in Israel/Palestine. International participants included Prof Kai Ambos of Goettingen University, Prof Mark Osiel of the University of Iowa, Dr Regula Ludi of the University of Bern, and Dr Annette Weinke of the University



Lecture session.

of Jena. These world-renowned scholars not only presented their own research projects, but also took the time to review the students' papers and offer detailed comments. One of the students later noted that this "was the first time I wrote an academic paper which was totally mine, and presented it like a 'real' academic at a conference where professionals treated me as an equal, expressed their interest, and conveyed their honest reviews. I learned a lot from this process and I am grateful for the opportunity I was given to take part in this program." The conferences were open to the public. They were held in November 2014. The Johannesburg workshop was conducted in June-July 2014.

Concluding Thought

Restoring inter-group relations does not require groups to achieve consensus or agree on all contentious issues. But it does require them to accept members of the other group as human, and their collective narrative as legitimate. South Africans have proved it possible to achieve these goals. Over the course of two weeks in Johannesburg, Israeli and Palestinian law students have also achieved these goals. For them, the workshop was a transitional justice process on its own right. For all, it demonstrated that dialogue and even reconciliation between Israelis and Palestinians is possible.