

THE GRASS IS GREENER ON THE OTHER SIDE: FINDING A REMEDY FOR PALESTINIAN FARMERS FOR HARMS CREATED BY THE ISRAELI SECURITY WALL

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I. INTRODUCTION

Despite the various positions and arguments surrounding the Israeli-Palestinian conflict, it should be conceded that one group in particular has suffered harms and injuries that should be remedied. From the confiscation of Palestinian occupied lands to the Intifadas, many Palestinian farmers have suffered economic hardships due to this conflict. Their despondent circumstances have worsened since the construction of the Israeli Security Wall. Ideological debates and conversations regarding human rights may be important, but can lead to abstracting human lives. Thus, the conversations surrounding the impact of this conflict are causing the neglect of actual circumstances and human lives these conversations purport to consider. Palestinian farmers are a subset of a population who have greatly suffered and are left without a remedy to rectify their harms.

Because the international community seeks peace in this conflict, a mechanism or program should be established to compensate Palestinian farmers for the harms they have suffered. This Note first examines the harms that Palestinian farmers have suffered and concludes that their harms require a specific program to ensure they are not susceptible to suffering the same harms repeatedly. Next, it establishes that procedural justice is a theory that should be the foremost mechanism or program in compensating these farmers. With this objective in mind, we can then evaluate international and domestic models that implement judicial or extrajudicial schemes and conclude that domestic models and extrajudicial programs are the most

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effective method to ensure procedural justice for Palestinian farmers. Finally, this Note provides an exemplary new model for Palestinian farmers that would justly compensate Palestinian farmers by exploring the components and aspects of previous systems that have been proven to uphold procedural justice.

II. BACKGROUND

A. *The Israeli Security Wall*

The construction of the Israeli Security Wall began in the West Bank in June 2002.¹ The Security Wall is planned to be 736 kilometers in length.² The Security Wall is planned to be built according to the Green Line, which is the border that was established between Israel and Palestine in 1949.³ The Israeli Security Wall has yet to be completed, but in 2010, 180 kilometers (113 miles) had been constructed.⁴ Of the 5,640 square miles that comprise the area known as the West Bank, 10 to 16 percent of the West Bank has been appropriated by the Wall.⁵ This portion of the West Bank is agriculturally significant as it is among the most fertile land in the West Bank.⁶ For example, thirty wells, which were used to irrigate the land, were appropriated by the Israeli Security Wall.⁷

B. *The Impact of the Israeli Security Wall*

¹ Andrew Malone, *Water Now: The Impact of Israeli's Security Fence on Palestinian Water Rights and Agriculture in the West Bank*, 36 CASE W. RES. J. INT'L L. 639, 645 (2004).

² Ahmad H. Sa'di, *The Borders of Colonial Encounter: The Case of Israel's Wall*, 38 ASIAN J. SOC. SCI. 46, 52 (2010).

³ Malone, *supra* note 1, at 648.

⁴ Sa'di, *supra* note 2, at 52.

⁵ Salem A. Thawaba et al., *Jerusalem Walls: Transforming and Segregating Urban Fabric*, 10 AFRICAN & ASIAN STUD. 121, 124 (2011).

⁶ Malone, *supra* note 1, at 642.

⁷ *Id.* at 645.

In the portion of the West Bank that has been appropriated to construct the wall, both the environment and Palestinian farmers cultivating the land have been impacted. For example, in the Jayyous Village, the construction of the wall uprooted 2,500 olive trees.⁸ This is not unique to the Jayyous Village, as it has been estimated that approximately 100,000 olive trees were removed for the construction of the Wall.⁹

The completion of the Wall will impact Palestinians more directly as approximately 400,000 Palestinians will need to pass through the Wall in order to reach their farmlands and jobs.¹⁰ Israel has established checkpoints along the wall.¹¹ As of 2017, there are twenty-seven checkpoints in the West Bank, which are located on the Green Line or in the Israeli Security Wall.¹² In order for Palestinians in the West Bank to be granted entry through a checkpoint in the Security Wall, they must have a permit.¹³ This has deprived many farmers access to their farms that were expropriated by the Security Wall.

For example, in the Jayyous Village, farmers traditionally left their village to work on their farms.¹⁴ However, with the Wall's construction, farmers must now pass through the North Gate of the Wall.¹⁵ This gate is open three times a day during the morning, midday, and before sunset.¹⁶ These official openings are frequently not observed, which causes farmers attempting to access their land to wait for hours for the gate to open.¹⁷

Furthermore, merely 40 percent of farmers from the Jayyous Village have permits to pass through the security wall.¹⁸

⁸ Maurice Hopper, *Geography and Security: Citizenship Denied?*, 30 TEACHING GEOGRAPHY 130, 133 (2005).

⁹ *Id.*

¹⁰ *Id.* at 135.

¹¹ *Restriction of Movement: Statistics on Checkpoints and Roadblocks*, B'TSELEM (Jan. 1, 2017), http://www.btselem.org/freedom_of_movement/old/copy%20of%20checkpoints [https://perma.cc/6ZZN-K4EC].

¹² *Id.*

¹³ *Id.*

¹⁴ Hopper, *supra* note 8, at 132.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 135.

Many farmers cannot qualify for a permit due to the requirement of showing a purchase of an Israeli deed to their farmland.¹⁹ Therefore, farmers with Ottoman or Jordanian deeds cannot receive a permit.²⁰ This issue is compounded by a demoded Ottoman law found in Israeli law stating that land that is not cultivated for three years returns to the state.²¹ Consequently, those farmers without permits may lose their farmland due to the restrictions on the access to their farmland.²² From 2006 to 2009, the percentage of permits allowing farmers in the West Bank to access their land decreased by 90 percent.²³

There is also the insidious harm of land degradation. Land use changes can be a cause of degradation, specifically in the form of urban expansion.²⁴ The result of land degradation is the decline in productivity and usability of the land.²⁵ For example, in a small portion of the West Bank that is northeast of Ramallah, urban expansion in this area has increased by fifty-one-times since the 1940s.²⁶ This urban expansion has increased pollution of the land and water, increased the stress on other available land resources, and caused overgrazing, which has diminished the amount of coverage for other plants, and thereby, has caused soil erosion.²⁷

The urbanization in the region northeast of Ramallah is caused by the pressure on farmers to move to urban areas or commit their land to other economic activities other than agriculture.²⁸ Farmers are pressured by extreme poverty, as the

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Israel: Palestinians Cut Off from Farmlands*, HUM. RTS. WATCH (Apr. 5, 2012, 5:49 PM), <https://www.hrw.org/news/2012/04/05/israel-palestinians-cut-farmlands> [<https://perma.cc/5H3C-MPNJ>].

²⁴ A. Abu Hammad & A. Tumeizi, *Land Degradation: Socioeconomic and Environmental Causes and Consequences in the Eastern Mediterranean*, 23 LAND DEGRADATION & DEV. 216 (2012).

²⁵ *Id.*

²⁶ *Id.* at 220.

²⁷ *Id.* at 221.

²⁸ *Id.* at 220.

poverty rate in this area reached 57 percent of all households by 2007.²⁹ This has caused 75 percent of farmers in this area to sell their land for construction purposes.³⁰ In addition, the use of herbicides by farmers is becoming a common practice.³¹ This reduces the time required to prepare the land, replacing the traditional, time-consuming method of ploughing for weed control.³²

Although the Israeli Security Wall is not a significant cause of land degradation, it is clearly a cause for the greater detriment suffered by Palestinian farmers. As Maurice Hopper describes a typical day of work for farmers attempting to pass through the Security Wall, “The erratic pattern of gate opening makes life very difficult for farmers trying to access their farmland, with much time being wasted simply waiting for the Gate to open.”³³ He continues by stating, “Over one year, the collective loss of hours can be measured in the thousands.”³⁴ The amount of time that is spent waiting for gates to open causes farmers to turn to alternative farming practices, such as the use of herbicides and overgrazing. Because farmers cannot access their farms with adequate time to prepare the land, farmers are pressured to sell their land for urbanization projects.³⁵ The Israeli Security Wall has caused the farming profession to become an inviable method of obtaining sustenance.

Farmers may be able to utilize certain farming techniques in order to restore the fertility of the soil on their farms, but the farmers need more access and time to utilize these methods. First, diagnosing the soil on a farm would be the initial step in order to determine which techniques to utilize.³⁶ Although many farmers in Palestine do not have the resources necessary to diagnose the fertility of the soil, if Palestinian farmers did have these capabilities, they would be able utilize certain techniques

²⁹ *Id.* at 222.

³⁰ *Id.* at 222–23.

³¹ *Id.* at 225.

³² *Id.*

³³ Hopper, *supra* note 8, at 133.

³⁴ *Id.* at 133, 135.

³⁵ Hammad, *supra* note 24, at 223.

³⁶ Bekunda Mateete et al., *Restoring Soil Fertility in Sub-Sahara Africa*, 108 ADVANCES AGRONOMY 183, 192 (2010).

involving the planting of legumes or other soil-enriching plant varieties³⁷ Until the farmers are provided the opportunity to work on their farms for substantial periods of time, their farmland will be degraded and continuously damaged as they are unable to employ techniques to restore the fertility in the soil.

Palestinian farmers share many of the same harms that other Palestinians have suffered due to the construction of the Israeli Security Wall. Palestinian farmers, however, have greatly suffered in their professions as farmers. Palestinian farmers lost past profits due to the construction of the Security Wall, and they will incur future lost profits as the productivity of their farms will decrease. There is an established solution to the issue of the Israeli Security Wall, yet the solution fails in two aspects: the solution has no binding authority and it fails to redress past losses that Palestinian farmers have suffered and will suffer due to the construction of the Security Wall.

C. The Opinion of the International Court of Justice on the Israeli Security Wall

The International Court of Justice issued an advisory opinion on the Israeli Security Wall on July 9, 2004.³⁸ The International Court of Justice ruled that the Security Wall violated international law and that construction of the Wall should cease.³⁹ The International Court of Justice further demanded that the parts of the wall that were constructed must be dismantled.⁴⁰ This ruling was followed by a United Nations resolution demanding that Israel comply with the legal ruling of the International Court of Justice.⁴¹ 150 countries voted in favor of the resolution; whereas, six countries did not vote in favor of

³⁷ *Id.* at 193–94.

³⁸ Richard A. Falk, *Toward Authoritativeness: The ICJ Ruling on Israeli's Security Wall*, 99 A.J.I.L. 42, 193 (2005).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

the resolution.⁴² Among those countries was the United States.⁴³ The Security Council has binding authority in the UN—which the United States is a member—while the General Assembly does not.⁴⁴ Thereby, the ruling of the International Court of Justice was not implemented. However, even if it had, Palestinian farmers would still be unable to recover for lost profits.

No legal system has established a compensatory scheme that would allow Palestinian farmers to recover for the harms suffered. Because Israel voted against the resolution proposed by the UN to enforce the ruling of International Court of Justice, it is unlikely that Israel would establish a legal mechanism for Palestinian farmers to recover for losses arising from the construction of the Wall.⁴⁵ If a Palestinian farmer brought a claim for damages, it would be unlikely that an Israeli court would enter judgment in favor of the farmer. Palestine's poverty rate indicates that Palestine lacks the resources necessary to compensate farmers for their losses. A system implemented to allow the farmers to recover losses, therefore, needs to be established through the United Nations under a reparations scheme.

III. MODELS FOR A NEW COMPENSATORY MECHANISM FOR PALESTINIAN FARMERS

A. *Theories of Justice*

When analyzing examples of compensatory mechanisms, it is necessary to comprehend the different theories in justice that underlie the compensatory scheme and mechanism. While there are numerous theories of justice, the prevailing theories in compensatory schemes include retributive justice, corrective justice, distributive justice, and procedural justice.⁴⁶ These theories are not competing in application to a compensatory

⁴² *Id.*

⁴³ *Id.*

⁴⁴ ANTHONY S. WINER ET AL., INT'L LAW LEGAL RESEARCH 58–59 (2013).

⁴⁵ Falk, *supra* note 38, at 42.

⁴⁶ Lindy Rouillard-Labbé, *Justice Among the Ashes: How Government Compensation Facilities Can Bring Justice to Disaster Victims*, 38 FORDHAM INT'L L.J. 245, 258–61 (2015).

scheme and mechanism, but rather they are competing with one another in the prioritization of those who are seeking compensation. A theory of justice may be regarded or perceived as important, however, it may be secondary to another theory in the perception of the person seeking compensation.

A victim punishing a violator is known as retributive justice.⁴⁷ Retributive justice punishes the violator for causing emotional harm to the victim and surfaces largely in criminal laws as a person endures a punishment for the harm they have committed.⁴⁸ Although a state may not be motivated to punish a criminal actor for the emotional and psychological harms against a victim, the victim may perceive that the criminal actor should be punished for those harms. Theories of justice may apply to various actors in a particular circumstance, which is dependent upon their relationship with the criminal and their role in the criminal proceeding. While a state may be motivated to punish a criminal to due to its obligation to uphold the law, an individual may be motivated to participate in a trial because they feel obligated to seek justice for their emotional and psychological suffering.

Another similar fault-based theory is corrective justice. Instead of imposing a punishment on the violator, corrective justice aims to restore justice by providing monetary compensation to the victim.⁴⁹ This type of justice is found in tort regimes, as it requires a wrongful actor, or tortfeasor, to pay the victim for the harm they have caused.⁵⁰ A predominant principle in the tort doctrine is to restore the status or position of a victim to her original status before suffering the harm.⁵¹ This principle, however, does not further corrective justice in certain instances. The establishment of liability insurance removes the requirement

⁴⁷ *Id.* at 258.

⁴⁸ *Id.* at 258–59.

⁴⁹ *Id.*

⁵⁰ Peter Cane & Joanne Conaghan, *Civil Liability, Theories of*, NEW OXFORD COMPANION TO L. (2009), <http://www.oxfordreference.com.ezproxy.uky.edu/view/10.1093/acref/9780199290543.001.0001/acref-9780199290543-e-289?>

⁵¹ *Id.*

for tortfeasors to pay for the damages incurred by the victims of their tortious conduct.⁵² In certain compensatory schemes, corrective justice is not applied.

There may be, however, a more prominent tort doctrine than corrective or retributive justice known as distributive justice. This theory of justice emphasizes the fairness of the distribution of goods.⁵³ Distributive justice is concerned with allocations of goods based on needs, equality, or equity concerns based on a recipient's merits or contributions.⁵⁴ Distributions made on the basis of need prioritize the needs of the poorest recipients first.⁵⁵ Equal distributions allocate resources in equal shares to the recipients.⁵⁶ Equity distributions based on a recipient's merit or contribution will be based on effort, sacrifice, ability, and performance.⁵⁷ Conversely, distributive justice is solely concerned with a victim's harm and their harm in relation to another victim. Distributive justice is primarily used when there is more than one victim.

Overwhelmingly, procedural justice is the highest in priority for victims seeking compensation.⁵⁸ Procedural justice pertains to the fairness in the decision-making process.⁵⁹ This theory balances the inequality of power between the government or legal authority and the individual seeking compensation.⁶⁰ When victims are attempting to promote accountability, gain information, effectuate change, and obtain acknowledgement of their harms, procedural justice ensures their desires manifest.⁶¹ Procedural justice is solely focused on the method and process to achieve an outcome.⁶² Standing, trust, and neutrality are factors that influence the perceptions of procedural justice.⁶³ Standing is the opportunity, or lack thereof, that allows victims to express

⁵² *Id.*

⁵³ Rouillard-Labbé, *supra* note 46, at 260.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.* at 261–62.

⁵⁹ *Id.* at 259.

⁶⁰ *Id.*

⁶¹ *Id.* at 259–60.

⁶² *Id.* at 260.

⁶³ *Id.*

their perspective in relation to their harms.⁶⁴ Trust is based upon individual interactions between the victim and the decision-makers.⁶⁵ If a victim is treated disrespectfully or in an undignified manner, they will have less trust in the decision-maker.⁶⁶ Honesty, consistency, and unbiased treatment allow victims to view a decision-maker as neutral, which legitimizes the decision-maker.⁶⁷

As procedural justice appears to be the primary theory in the perception of victims, the government bears the responsibility of ensuring justice and being just in the process of procuring justice for the victims. If the victims suffer further injustice due to the schemes and mechanisms established by the government, then the government may be perceived as a new violator, and the victim may seek additional compensation or attribute more accountability towards the government. When constructing a new compensatory scheme or mechanism for Palestinian farmers, however, it is necessary to examine and analyze previously established schemes and mechanisms. They will serve as examples and be useful to discern which measures are effective in applying the various theories of justice.

B. International Compensatory Mechanisms

i. Reparation schemes in the United Nations

In the United Nations, there are mechanisms for compensating indigenous peoples for harms they have suffered. Palestinians have not been legally classified as “indigenous”, and they are, therefore, unable to take advantage of those procedures.⁶⁸ If Palestinians fell under this classification, their

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Ryan Bellerose, *UN Guidelines: Jews are indigenous to Israel*, ISR. & STUFF, <https://www.israelandstuff.com/under-un-guidelines-jews-are-indigenous-to-israel-palestinians-are-not> (last updated Apr. 3, 2017) [<https://perma.cc/5HKJ-VDGX>].

harms would most likely be left unresolved or uncompensated. There are three bodies in the United Nations and two primary treaty-based mechanisms devoted to indigenous peoples' issues.

First, the United Nations Permanent Forum on Indigenous Issues advises other councils in the United Nations about indigenous issues.⁶⁹ Additionally, representatives of indigenous groups have the ability to raise their issues and present recommendations in the public forum sessions.⁷⁰ The Expert Mechanism mainly focuses on advice based on studies and research. Similar to the United Nations Permanent Forum on Indigenous Issues, indigenous groups can communicate with the Special Rapporteur, which was established to examine the circumstances of indigenous peoples around the world.⁷¹ This is executed through communications or visits to the countries.⁷² The primary failure of these bodies is their lack of jurisdiction in the international community, as well as the legally, non-binding status of their advice and recommendations against states.⁷³

There are two primary treaties that are utilized by indigenous peoples. The International Labor Organization Conventions ("ILO") established mechanisms that allow for labor unions to file complaints.⁷⁴ Indigenous groups cannot directly file a complaint with the ILO, but they can file a complaint through a participating labor union.⁷⁵ Unlike the previous bodies mentioned, the ILO is legally binding upon the states that are a party to the convention.⁷⁶ Still, when implementing a remedy, the ILO committee that is adjudicating the complaint usually gives deference to domestic procedures.⁷⁷

Also, the International Covenant on Civil and Political Rights ("ICCPR") carries little authority in the international community. The ICCPR reviews reports from state parties on the

⁶⁹ IG. Agung Made Wardana, *Access to Justice for Indigenous Peoples in International Law*, 9 *INDONESIAN J. INT'L L.* 309, 316 (2012).

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.* at 316–17.

⁷³ *Id.* at 317.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.* at 318.

compliance of the covenant.⁷⁸ Indigenous groups can submit information as well.⁷⁹ Under the Optional Protocol, individuals can submit communications, which act as a complaint, but the Committee is not required to review the communication submitted. Like the previous bodies mentioned, the ICCPR does not have the authority to issue sanctions against a state party, nor are decisions of the Committee legally binding on state parties.⁸⁰

ii. Regional compensatory regimes

Contrary to the bodies of the United Nations, regional bodies and human rights regimes have binding authority in the jurisdiction that is being served. There are two predominant regional human rights regimes. While there are other regional bodies in the international community, the Inter-America system along with the African Commission on Human and People's Rights ("ACHPR") are effective and exemplary models for compensatory regimes under regional bodies. A new compensatory mechanism must be constructed as these established regimes do not have jurisdiction over Palestine.

The Inter-America system consists of the Inter-America Commission on Human Rights and the Inter-American Court of Human Rights.⁸¹ A petition or communication can be submitted from an individual, group, or non-governmental organization ("NGO") to the Inter-America Commission on Human Rights concerning violations of the American Convention, but before the petition or communication is submitted, domestic remedies must have been exhausted.⁸² Moreover, the Inter-America Commission on Human Rights recommends that a violation is to be presented to the Inter-America Court of Human Rights.⁸³ The Inter-

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.* at 318–19.

⁸¹ *Id.* at 320.

⁸² *Id.*

⁸³ *Id.*

American Court of Human Rights, contrarily, has jurisdiction to adjudicate cases that are submitted.⁸⁴ These bodies have jurisdiction to legally bind the state parties.⁸⁵

The Inter-America System is effective in allowing petitions from individuals, groups, or NGOs. This allows petitioners who are marginalized and have little power in society and in politics to file petitions in order to seek the enforcement of their rights. This procedural fairness ultimately is undermined by requiring a petitioner to exhaust the domestic remedies. The procedural fairness of the Inter-America system can be compromised by the procedural injustices of the domestic remedies of the target-country. Although the Inter-America system has allowed marginalized groups, such as Inuit peoples, to bring petitions, there is no legal exception to override the procedural requirement of exhaustion.

Similar to the Inter-America system, the ACHPR provides complaint procedures for communications from states or individual communication.⁸⁶ In addition, NGOs can submit communications as well.⁸⁷ Although there is no requirement that domestic remedies be exhausted in order to submit communications, they must be unduly prolonged.⁸⁸ The ACHPR promotes and monitors human rights implementation in the jurisdiction as well. The ACHPR does not have the procedural requirement of exhaustion, as the Inter-America System did, yet, there is still a requirement to prove the domestic procedure is unduly long. This requirement is more lenient than the requirement imposed by the Inter-America system, but it effectively imposes the same process for petitioners to bring their claims to the ACHPR.

These regional regimes are effective for only some peoples, as their jurisdiction is regional.⁸⁹ The Inter-America system has jurisdiction over the countries in the Americas who have signed

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.* at 321.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

and ratified the convention.⁹⁰ Similarly, the ACHPR is limited to African nations in its jurisdiction, and, thus, Palestine cannot utilize these supranational organizations.⁹¹ Furthermore, these regional bodies require a petitioner to exhaust the domestic remedies in their home countries, which can lead to an arduous and extensive process to bring a claim to the regional body. This could lead to victims perceiving a failure in the procedure to be fair, promote accountability, and obtain acknowledgment for their harms.

iii. The International Criminal Court's Victims' Trust Fund

A prominent reason for procedural justice to not be effectuated for Palestinian farmers in a regional regime is the process of adjudicating claims. A purely judicial regime can allow for injustice to occur as a result of unduly long delays and effectively arbitrary decisions. A different mechanism with extrajudicial aspects for Palestinian farmers may be more effective in redressing the harms created by the construction of the Israeli Security Wall. For example, the International Criminal Court ("ICC") utilizes a trust fund for victims of international crimes and human rights violations.⁹² There are other funds for victims of crimes in the international community, but the Trust Fund of the ICC is robust and flexible.

The Rome Statute, an international convention, established the ICC in 2002.⁹³ Before the sixtieth ratification in July of 2002, the Preparatory Commission established the legal

⁹⁰ *Multilateral Treaties*, ORG. AM. STATES, http://www.oas.org/dil/treaties_central_authorities_by_membes_states.htm (last visited Jan. 23, 2017) [https://perma.cc/7X8P-67GX].

⁹¹ *African Charter on Democracy, Elections and Governance*, AFRICAN COMMISSION ON HUM. & PEOPLE'S RTS., <http://www.achpr.org/instruments/charter-democracy/> (last visited Jan. 23, 2017) [https://perma.cc/YV22-KHLA].

⁹² Peter G. Fischer, *The Victims' Trust Fund of the International Criminal Court: Formation of a Functional Reparations Scheme*, 17 EMORY INT'L L. REV. 187, 202 (2003).

⁹³ WINER, *supra* note 44, at 130.

principles of the ICC.⁹⁴ Upon the sixtieth ratification of the Rome Statute, the Assembly of State Parties (“ASP”) became responsible for drafting the functional elements of the ICC.⁹⁵ In the “Road Map,” established by the ASP, the Victims’ Trust Fund of the ICC was planned to be established.⁹⁶

The ICC’s Trust Fund operates in conjunction with the principles of remedies within the ICC. The International Criminal Court utilizes financial restitution as a punishment against one who commits a crime.⁹⁷ The ICC does not burden the state of the criminal actor with compensating the victims.⁹⁸ When the ICC orders reparations to be made to the Victims’ Trust Fund, the money is transferred directly from the criminal actor to the fund.⁹⁹ Nevertheless, the Victims’ Trust Fund does not control the money that is transferred from the criminal actor, as the ICC determines the amount and form of reparations along with the time that payments are to be made.¹⁰⁰ The ICC can order for the reparations to be made to the affected individual or order lump sums to be distributed to a group of affected individuals through the Victims’ Trust Fund.¹⁰¹

Reparations from people who are convicted by the ICC is merely one manner in which the Victims’ Trust Fund receives money. States, non-state organizations, and private individuals can provide monetary contributions to the Trust Fund.¹⁰² Also, the fund may receive the fines and forfeitures that are levied against criminals by the ICC.¹⁰³ With respect to money that has not been awarded by the ICC, the Victims’ Trust Fund has discretion in the distribution of funds to the victims.¹⁰⁴ Still, there are severe issues concerning financing the fund, such as the compensation made to victims and logistically giving the compensation to the victims.

⁹⁴ Fischer, *supra* note 92, at 187–88.

⁹⁵ *Id.* at 189.

⁹⁶ *Id.*

⁹⁷ *Id.* at 200.

⁹⁸ *Id.*

⁹⁹ *Id.* at 205.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.* at 207.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

First, voluntary contributions are a primary source of funding, along with fines and forfeitures.¹⁰⁵ Fines and forfeitures that are levied against a criminal, however, might not be collected in a timely manner.¹⁰⁶ For example, in the cases of *In re Marcos & Doe v. Karazdic*, substantial amounts of fines and forfeitures were issued against the criminal actor, but merely a small portion of those amounts have been collected.¹⁰⁷ Little of the amount levied against the criminals has been collected because the corresponding states have not made significant efforts to enforce the judgment.¹⁰⁸ Thus, the amount of funding is trammled by the lack of collecting fines and forfeitures.

Moreover, fines and forfeitures paid to the Victims' Trust Fund may not compensate the initial victims as adequately as later victims.¹⁰⁹ As litigation proceeds, more compensation is awarded, whereas those amounts are much less in the initial stages of the litigation.¹¹⁰ Consequently, when recipient victims receive their compensation, it will be from a smaller amount of funds.¹¹¹ This is because the sources of funding are considered to be more reliable.¹¹²

As seen previously with collecting fines and forfeitures, distributing compensation awards does not consistently reach the victims. In the ICC's Victim's Trust Fund, there is no procedure that allows for awards to be directly transferred from the Fund to the victims.¹¹³ For example, during the antebellum period in Kosovo, where victims of crimes could be awarded compensation, there were no judicial or administrative bodies that were able to distribute the funds.¹¹⁴ Administrative procedures in Kosovo were

¹⁰⁵ *Id.* at 215, 217.

¹⁰⁶ *Id.* at 219.

¹⁰⁷ *Id.* at 218–19.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 218.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.* at 227.

¹¹⁴ *Id.* at 228.

inadequate to distribute identification cards.¹¹⁵ In countries with weak infrastructures, distributing compensation awards to the victims can be logistically impossible.

The ICC's Victims' Trust Fund embodies the principles of corrective and distributive justice. The criminal actor is forced to pay compensation to the victims, and when there are numerous victims, the fund distributes and manages the compensation in a manner as to increase the effectiveness of the compensation. The ICC has failed to establish a procedure to securely and consistently provide the compensation to the victims, which undermines the attempt to preserve principles of the corrective and distributive justice in the ICC. Furthermore, the ICC Victims' Trust Fund fails in procedural justice as the state of the criminal actor is not held accountable, and in some instances, the state completely disregards its obligation to enforce the requirement of compensation on the criminal actor.

This is primarily a result of the immense judicial process of the ICC. A remedy that provides compensation with less potential to compromise the principles of the various theories of justice would entail a scheme and mechanism that is predominantly extrajudicial. While there may be judicial procedures, there are examples that have been more efficient and effective in providing compensation to victims.

C. Domestic Compensatory Mechanisms

Extrajudicial domestic programs and mechanisms have shown to be more successful than international and regional judicial courts and conventions. One reason is that domestic programs do not encompass the large geographic regions international and regional bodies cover. Another contributing factor is that domestic programs are largely utilized in response to incidents, such as terrorist attacks or natural disasters, whereas international and regional bodies are dedicated to overarching goals and principles. These factors are more incidental, as the primary effectiveness of a domestic program is its ability to ensure the various theories of justice are

¹¹⁵ *Id.*

implemented throughout the programs. Two primary examples of a domestic program is the 9/11 Victims' Fund and the Lake Manitoba Financial Assistance Program.

i. 9/11 Victims' Fund

After the tragedy of 9/11, the Air Transportation Safety and System Stabilization Act ("ATSSSA") was signed into law on September 22, 2001, eleven days after it was introduced.¹¹⁶ The act was initially proposed to prevent the airline industry from collapsing, and within a day of its proposal, a compensation program for the victims of 9/11 was added to the bill.¹¹⁷ According to the ATSSSA, a Special Master was to be appointed by the Attorney General to administer the program.¹¹⁸ This position was unprecedented, as the position was not a judicial officer or administrative agent.¹¹⁹ Kenneth Feinberg was appointed as the Special Master, due to his experience as a special master in other circumstances.¹²⁰

Before other actions were taken, regulations were established to administer the fund.¹²¹ The initial section of the ATSSSA established the definition of a "claimant".¹²² Section 405 states that a claimant is an individual who was present at any of the targeted sites or a member of the flight crew or a passenger of any of the flights that were hijacked by the terrorists.¹²³ A claimant must also have suffered physical harm or death as a result of the plane crash.¹²⁴ Section 405 did not provide

¹¹⁶ Robyn K. Brown, *In Case Terror Strikes America Again: Considering a Permanent Fund for Victims of Terrorism*, 9 U. ST. THOMAS L.J. 869, 872 (2012).

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 873.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.* at 874.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

compensation for those who suffered psychological harm or latent injuries caused by exposure to toxins.¹²⁵

Upon determining the eligibility of a victim seeking compensation, the ATSSSA established the calculations for determining monetary awards. The calculation for monetary awards was based on the economic loss, noneconomic loss, and funds that are recoverable from collateral sources, such as life insurance and death benefits, that can offset the awards.¹²⁶ Though a maximum award was not specified, the award to one person would not diminish the award of another claimant.¹²⁷ According to Feinberg, minimal disparity between monetary awards was an objective.¹²⁸

In order to receive a monetary award from the Fund, a claimant was required to submit a thirty-one-page application.¹²⁹ During the application process, claimants could choose between two tracks. Under Track A, claimants would receive an award determination within forty-five days of their submission.¹³⁰ The claimant would then be able to accept the award or request a hearing.¹³¹ Contrarily, Track B would allow for claimants to proceed into a hearing upon establishing their eligibility.¹³² If a claimant proceeded with a hearing, they would be given the opportunity to be represented by counsel, submit evidence, and call witnesses.¹³³ Once the hearing was concluded, the Fund was required to notify the claimant, in writing, of the award determination within 120 days.¹³⁴ Submitting an application required claimants to waive their right to bring later claims in tort litigation.¹³⁵

Additionally, families were given the opportunity to meet with Feinberg in order to receive an estimate regarding the range

¹²⁵ *Id.*

¹²⁶ *Id.* at 875.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.* at 876.

¹³⁰ *Id.*

¹³¹ *See id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

of the award they may possibly receive.¹³⁶ This allowed families to discern whether to file an application or bring a claim in tort litigation.¹³⁷ If claimants were in need of immediate funds, they could request emergency funds.¹³⁸ If a claimant utilized emergency funds, then the advance on the benefits would be deducted from the awards to be received in the future.¹³⁹ Claimants were allowed to file their claims until December 22, 2003.¹⁴⁰

However, there were some issues and criticisms of the Fund. Firstly, the Fund was established to prevent the collapse of the airline industry. Although victim compensation was an objective, its primary purpose was to protect the airline industry from a torrent of litigation by precluding claims if applicants chose immediate funds. The effect of this was a feeling of dehumanization as claimants interacted with the Fund.¹⁴¹ Moreover, the Fund did not provide the healing that claimants and their families were seeking.¹⁴² The claim process worsened family conflicts in some instances.¹⁴³ Claimants largely criticized the arduous and complex process of submitting an application, as well.¹⁴⁴

Therefore, while the 9/11 Fund had positive features, it was not sufficient to entirely implement procedural justice. Along with dehumanization, applicants felt the Fund did not provide adequate compensation for psychological and emotional harms. These factors show that the 9/11 Victims' Fund struggled to implement procedural justice. Ensuring procedural justice was not a primary goal of the Fund, but rather it was an ancillary objective that was limited to physical harms. Canada has

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at 877.

¹⁴² *Id.* at 878.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

implemented a compensation program that is similar to the 9/11 Fund but with significant differences.

ii. Lake Manitoba Financial Assistance Program

In 2011, the Manitoba Province in Canada experienced a year of high soil moisture freeze-up, above-average snowfall, heavy rains, and severe winds.¹⁴⁵ Rivers across the province were flooding and lakes were rising to hazardous levels.¹⁴⁶ As a result, there were more than 7,100 evacuees in the First Nations Community.¹⁴⁷ Still, after two years of the floods, approximately 2,000 people remained displaced from their homes, as they were uninhabitable.¹⁴⁸ In addition to residential damage, 3 million acres of farmland was unseeded in 2011.¹⁴⁹ Approximately 500 provincial and municipal roads and nearly 500 bridges were damaged.¹⁵⁰ Within two years of the floods, the costs associated with preparing for and battling flooding, repairing to infrastructure, and disaster payments reached \$1.2 billion.¹⁵¹

In 1987, the Canadian province of Manitoba established a disaster financial assistance fund.¹⁵² This program was expanded into six special programs in the midst of floods that occurred in 2011.¹⁵³ One of the special programs established to mitigate flood damage was the Lake Manitoba Financial Assistance Program (“Lake Manitoba FAP”). The Lake Manitoba FAP was dedicated to assisting crop and livestock producers with transporting livestock and to alleviate the effects of the flooding, meet feed requirements, mitigate damage to agricultural infrastructure, and other assistance efforts in the agricultural sector.¹⁵⁴

¹⁴⁵ *Manitoba 2011 Flood Review Task Force Report*, MANITOBA 2011 FLOOD REV. TASK FORCE at 1 (Apr. 2013), https://www.gov.mb.ca/asset_library/en/2011flood/flood_review_task_force_report.pdf [<https://perma.cc/X7ZE-FWQK>].

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 2.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² Rouillard-Labbé, *supra* note 46, at 251.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

Moreover, the Lake Manitoba FAP Program provided compensation to residents for damages incurred directly from the high water levels during the floods.¹⁵⁵ Small businesses were reimbursed for their property damage and loss of income as a result of the flooding by the Lake Manitoba FAP Program as well.¹⁵⁶ This program also compensated residents for damages incurred due to the high levels of water.¹⁵⁷

Individual, residential claimants were reimbursed for emergency flood measures, property damage to residences, incremental living costs that were incurred from temporary relocation, and measures utilized to reduce vulnerability to future flood damage.¹⁵⁸ Nonetheless, not all expenses were recovered under the Lake Manitoba FAP. Costs that could be covered by insurance were not included along with intangible losses, medical expenses, loss of income, and loss of market value.¹⁵⁹ Contrary to the 9/11 Fund, claimants applying for assistance from the Lake Manitoba FAP were not required to waive their tort claims.¹⁶⁰

However, the Lake Manitoba FAP had a deadline similar to that of the 9/11 Victims' Fund. In order to receive compensation, residents were required to file an application form no later than November 30, 2011.¹⁶¹ Applicants had to provide sufficient evidence and documentation verifying the amount of losses incurred.¹⁶² The amount of compensation was determined by the Lake Manitoba FAP Administrator.¹⁶³ The Administrator determined the amount based on evidence, documentation that was submitted, and an on-site inspection.¹⁶⁴ Unlike the 9/11 Victims' Fund, the Lake Manitoba FAP did not provide claimants

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* at 252.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.* at 253.

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

with a right to a hearing.¹⁶⁵ Deadlines for decisions made by the Administrator were not implemented as opposed to the 9/11 Fund.¹⁶⁶ Still, claimants had the option to appeal the award to the Building and Recovery Action Plan Appeals Commission.¹⁶⁷ If an appeal was made, the Commission held non-public hearings allowing for claimants to present new evidence.¹⁶⁸

If a claimant's application was deemed ineligible, it would have been based on several determinations. For example, an applicant could have been determined to be in an area that was not covered by the program.¹⁶⁹ Another reason ineligibility was that a claimant applied for a program inadvertently.¹⁷⁰ Consequently, an applicant would be redirected to the appropriate program.¹⁷¹ In other instances, there were administrative mistakes, such as a claimant filing multiple applications, or the administrator of the program created duplicate claims for one claimant.¹⁷²

By September 30, 2012, 5,573 individuals and small businesses filed a claim with the Lake Manitoba FAP.¹⁷³ In total, CAN \$79,772,511 were distributed to claimants.¹⁷⁴ Out of 6,472 claims, 809 claims were deemed ineligible.¹⁷⁵ Furthermore, there were 256 appeals made after claimants received an award from the Lake Manitoba FAP.¹⁷⁶ 208 appeals remained unheard by September 30, 2012.¹⁷⁷ The Disaster Financial Assistance ("DFA") program, which includes the Lake Manitoba FAP, was overwhelmed with administrative blunders.¹⁷⁸ There was a lack of staff in the DFA, paperwork from claimants was lost, and rural citizens felt discrimination, as they were required to travel to

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ MANITOBA 2011 FLOOD REV. TASK FORCE, *supra* note 146, at 107.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ Rouillard-Labbé, *supra* note 46, at 253.

¹⁷⁴ MANITOBA 2011 FLOOD REV. TASK FORCE, *supra* note 146, at 107.

¹⁷⁵ *See id.*

¹⁷⁶ *See id.*

¹⁷⁷ *See id.* at 108.

¹⁷⁸ *Id.*

major centers for their claims.¹⁷⁹ Also, there was little effort from the Aboriginal Affairs and Northern Development Canada department to work closely with the Emergency Measures Organization to ensure that First Nations communities would understand the DFA program and its relation to disaster management.¹⁸⁰

Ultimately, the compensation distributed by the DFA program was largely criticized by a majority of the claimants. A study conducted by Lindy Rouillard-Labbe, counsel for the Canadian Department of Justice, surveyed perceptions and reflections on the DFA program that was implemented in the Lake Manitoba region. It showed that 68 percent of 176 people perceived the amount of compensation awarded to them was unfair.¹⁸¹ Moreover, in a sample size of 171 people, 71 percent found the criteria utilized to assess the value of incurred damages were unfair.¹⁸² Contrastingly, 53 percent of 171 people perceived that the procedure of the DFA program allowed them to participate to their desired extent.¹⁸³

After the flooding, over 75 percent of the respondents involved in the study conducted by Rouillard-Labbe attributed their losses to government action.¹⁸⁴ While the reflections on the government's actions were critical, they were not condemnatory.¹⁸⁵ Respondents largely considered the losses that resulted from the floods to be caused by the government's actions and felt the government should bear the burden of compensating individuals who suffered due to the government's response to the flood.¹⁸⁶ Along with bearing the responsibility of compensation, a recurring theme was iterated by respondents demanding the

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* at 109.

¹⁸¹ Rouillard-Labbé, *supra* note 46, at 297.

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.* at 270.

¹⁸⁵ *Id.* at 271.

¹⁸⁶ *Id.*

government to admit the causal relationship between the government's actions and the damages incurred by citizens.¹⁸⁷

This perception did burden the government with the duty of compensation, but the perception largely stems from the principles of procedural justice. Rouillard-Labbe explains that respondents with more salient harms were dissatisfied because of the limited opportunities to express their complaints regarding the program.¹⁸⁸ Overall, Rouillard-Labbe's study showed that respondents who received higher compensation awards were more dissatisfied with the Lake Manitoba FAP.¹⁸⁹ Those who suffered more from the floods prioritized their desire to express their complaints and harms suffered.¹⁹⁰ Thus, compensation amounts were a secondary priority for those who suffered, and the attribution of responsibility and expression were a primary priority in the perceptions of the respondents.¹⁹¹

According to the respondents, the Lake Manitoba FAP failed to justly compensate. The majority of the respondents did not understand the reasoning behind the outcome.¹⁹² Furthermore, the predominant purpose of the Lake Manitoba FAP was to compensate, and with respondents overwhelmingly feeling that their compensation was unfair, the program failed.

Therefore, the 9/11 Victims' Fund and the Lake Manitoba Financial Assistance Program were more successful in ensuring justice than the schemes and mechanisms in the United Nations and regional regimes. However, these domestic programs still failed to completely ensure justice as many of those utilizing these programs felt that they were not given procedural justice. In constructing a compensatory scheme or mechanism for Palestinian farmers, it is necessary to implement the many theories of justice, but procedural justice should be of the highest priority.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.* at 287.

¹⁸⁹ *Id.* at 288.

¹⁹⁰ *Id.*

¹⁹¹ *See Id.*

¹⁹² *Id.*

IV. A NEW COMPENSATORY MODEL FOR PALESTINIAN FARMERS

As mentioned previously, Israel has refused to accept responsibility for the negative effects caused by the Israeli Security Wall. Moreover, the Israeli Supreme Court in the case of *Beit Sourik Village Council v. Israel* found that the Israeli Security Wall complied with international law.¹⁹³ The Israeli Supreme Court ruled that the wall must be moved to reduce the burden upon Palestinians. Yet, the Supreme Court still held that Israel had the authority to build the Wall. Clearly, since this opinion was issued, there was still Palestinian land appropriated by the Israeli Security Wall. In order to establish a new compensatory mechanism for Palestinian farmers, there must be another body – not Israel – that will bear the duty to compensate the farmers. Although there are models for judicial bodies to adjudicate claims brought by Palestinian farmers, extrajudicial bodies will be more effective in ensuring procedural justice.

A. *Judicial Mechanisms*

Because Israel refuses to be held accountable for the harms that the Israeli Security Wall has caused to Palestinian farmers, it would be unlikely for a judicial body to be established to redress the harms. Requiring a state that did not cause the harms to compensate the farmers would be antithetical to a theory of justice. In the unlikely circumstance that Israel accepts the burden of compensating the farmers by signing a convention or agreeing to comply with the international community's requests pertaining to the Wall, a judicial body could be constructed similar to that of other UN bodies. Moreover, this may not be conflicting with the advisory opinion of the International Court of Justice regarding the Israeli Security Wall, as the opinion deems the wall to be illegal, but it does not provide a method of compensation to the Palestinians who have suffered losses. In this scenario, the structure of a claim is

¹⁹³ Malone, *supra* note 1, at fn. 152.

dependent on the body that establishes the procedure for adjudicating claims.

The United Nations Permanent Forum on Indigenous Issues, the Expert Mechanism, and the Special Rapporteur cannot adjudicate claims, since these bodies are not legal authorities, but a body similar to the International Labor Organization (“ILO”) or International Covenant on Civil and Political Rights may be effective in adjudicating claims. Like the ILO, a body could be established that allows Palestinian farmers to file claims for compensation through a labor union. Palestinian farmers would have the opportunity to file a claim on behalf of an entire group. Instead of filing claims for adjudication through a labor union, the population of Palestinian farmers could file as a group to a body similar to the International Covenant on Civil and Political Rights. The primary difference between this procedure and the ILO is that farmers would not be required to act within a labor union. Both models still require farmers to form an organized group in order to bring a claim. With the model in the International Covenant on Civil and Political Rights, there is a review process of the country that ensures compliance with the covenant. This procedure is significant as it would allow Israel to be monitored to ensure that compensation is, in fact, being distributed to petitioners.

A judicial mechanism could be established through a regional body as well. The Inter-America system and the ACHPR allowed individuals, groups, and NGOs to file communications in order to be adjudicated. Like the Inter-America system, there could be a commission that reviews a communication in order to establish that it is not frivolous and should be sent for adjudication by a court. The Inter-America system can sanction a non-compliant state, which the new regional court for Palestinians could then implement to ensure compliance with the convention. Because Palestinians have no domestic remedies, the requirement of exhausting domestic remedies, or establishing that domestic procedures are unduly found in the Inter-America system and ACHPR should not be included in a new regional body for Palestinians.

A judicial body modeled from the previous examples may be too burdensome on the state of Israel. A mechanism structured similarly to the International Criminal Court may ease the

financial and administrative weight on Israel. In a similar procedure, the Palestinian farmers would file their claims, and if they are awarded compensation, the compensation could be distributed to a trust fund established by the court. In order to avoid the ICC Victim's Trust Fund's inability to ensure that compensation is distributed, the new court could utilize the aforementioned enforcing procedures to ensure the farmers are properly compensated.

While there are viable models for a judicial body to redress the harms suffered by Palestinian farmers due to the construction of the Israeli Security Wall, the establishment of such a body is contingent on numerous factual circumstances that are unlikely to occur. Also, seeking compensation through judicial adjudication can be extraneous and arduous, which may cause other recipients to receive compensation much later than that of previous recipients. This would lead to a frustration of procedural justice principles. Lastly, many Palestinian farmers may be unable to pay for the costs of filing claims and representation in a court.

B. The Extrajudicial Mechanism

Judicial bodies may fail to ensure efficiency and procedural justice, but extrajudicial mechanisms will be more successful. As seen with the 9/11 Fund and the Lake Manitoba FAP, claimants were able to submit an application to establish their qualification for compensation for their harms. A body could be established under the United Nations or a regional convention that implements an extrajudicial program. Israel could administer this program, but the likelihood of Israel ensuring procedural justice for Palestinians seems low. Thus, it would be prudent to administer the program through a UN or regional body established solely for the purpose of compensating Palestinian farmers.

Under this program, Palestinian farmers would submit an application and a special master or administrator would determine whether the farmer qualified for compensation. Also, a requirement for a timely decision should be required in order to

provide notice to claimants. Thereafter, if claimants are dissatisfied with their compensation, or lack thereof, they could file for an appeal. The appeal process should also be subject to a deadline to provide timely adjudication. The program should include a fund or a trust fund similar to the ICC's Victims' Trust Fund, but the predominant financial issue for this program is the source of funding. The UN may be able to require Israel to pay a large compensation sum to the program, and the compensation awards are distributed from that payment. However, if a compensatory payment is the only source of funding, a compensation award to one claimant will decrease depending on the compensation awarded to another claimant. Because this would cause procedural injustice, the 9/11 Victims' Fund intentionally avoided this outcome.

Therefore, funding must come from other sources, but it is not unlikely that other countries in the UN or the regional body would fail to provide charitable contributions to the program. A more reliable source of income would be to require a membership fee to the convention, which would be distributed to the program. Member states to the convention may be easily persuaded to pay a membership fee if the convention provides useful resources to the member states. These are important and necessary matters to consider, but the foremost issue is the determination of the award and the involvement of claimants in the process. The determining the amount of compensation can be based on numerous factors, such as the value of the property when it was purchased, the decrease in value over time since the construction of the Israeli Security Wall, the change in income since the construction of the Wall, and the decrease in productivity of the farm and its relation to potential future profits. Emotional harms can be considered as the application can request claimants to describe their living situations and financial insecurities. The application may, in addition, inquire as to the amount that the claimant reflects they should be awarded. Lastly, the program could establish routine hearings for claimants to express their complaints and reflections as to whether the program ensures procedural justice. Clearly, this program would provide more procedural justice to the Palestinian farmers compared to a judicial program.

V. CONCLUSION

The Israeli-Palestinian conflict is arguably the most divisive, long-standing conflict facing our international institutions today. It is a conflict that has lasted for generations and will continue well into the foreseeable future. This conflict has spilled into other countries affecting international relations and global dynamics throughout the world. For a global community to peacefully exist, there must be resolutions made to ensure there is justice in the Israeli-Palestinian conflict. In redressing extensive and expansive harms, a smaller harm can be redressed: Palestinian farmers are a subset of a population that is discernable and manageable in applying a remedy.

There are numerous remedies that could be applied through various schemes, mechanisms, and bodies. It is critical that a just compensatory remedy is applied in order to ensure that more harm does not occur and the conflict does not engulf more people. A perfect remedy cannot be applied to Palestinian farmers, but there are effective compensatory schemes and mechanisms that can be utilized as models. As seen from the extensive analysis of the various bodies, mechanisms, regimes, and models, the most effective and procedurally just mechanism to compensate Palestinian farmers would be a program established under the United Nations or a regional convention ensuring the claimants are compensated justly and treated respectfully. If procedural justice is ensured by a compensatory program, then a peaceful solution may begin to be unearthed from the Israeli-Palestinian conflict.