

2024

Amnesty Laws in Modern Peace Agreements: An Analysis of the Northern Ireland Legacy Act Under International Law

McKenzie Gallagher

American University Washington College of Law, mg4917b@american.edu

Follow this and additional works at: <https://digitalcommons.wcl.american.edu/auilr>



Part of the [International Humanitarian Law Commons](#), and the [International Law Commons](#)

Recommended Citation

Gallagher, McKenzie (2024) "Amnesty Laws in Modern Peace Agreements: An Analysis of the Northern Ireland Legacy Act Under International Law," *American University International Law Review*: Vol. 39: Iss. 2, Article 4.

Available at: <https://digitalcommons.wcl.american.edu/auilr/vol39/iss2/4>

This Comment or Note is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in American University International Law Review by an authorized editor of Digital Commons @ American University Washington College of Law. For more information, please contact kclay@wcl.american.edu.

COMMENTS

AMNESTY LAWS IN MODERN PEACE AGREEMENTS: AN ANALYSIS OF THE NORTHERN IRELAND LEGACY ACT UNDER INTERNATIONAL LAW

MCKENZIE GALLAGHER*

In September 2023, the United Kingdom passed the Northern Ireland Troubles (Legacy and Reconciliation) Act (“Legacy Act”), which grants amnesty to anyone who discloses information regarding murders, disappearances, or other unsolved crimes during the period known as “The Troubles” in Northern Ireland. The Legacy Act’s amnesty provision is expected to hinder the peace process in Northern Ireland and in turn, avert accountability for serious international crimes. This Comment considers to what extent the Legacy Act’s amnesty provision violates the Good Friday Agreement, the peace accord ending decades of conflict in Northern Ireland, the European Convention on Human Rights, the United Nations Convention Against Torture, and the Geneva Convention’s humanitarian law provisions. Further, this Comment analyzes an emerging international human rights custom prohibiting amnesty laws in peace agreements and the Legacy Act’s position within that paradigm. Finally, this Comment contemplates how the European Court of Human Rights may rule in the case lodged by the Republic of Ireland against the United Kingdom. It also considers the possibility of an individual complaint

* McKenzie Gallagher is a 2L at American University Washington College of Law (“WCL”) and holds an LLM in International Human Rights Law and Public Policy from University College Cork. She also is a staff writer on WCL’s Human Rights Brief, and her legal interests include international human rights and humanitarian law. Many thanks to Professor Paul Williams, the note and comment team, and the editors on the journal for their support and guidance throughout the writing and publication process.

against the United Kingdom to ensure that accountability is enshrined in the peace process. Alternatively, the United Kingdom should consider drafting a new law or amend the Legacy Act to exclude the existing amnesty provision.

I. INTRODUCTION	329
II. BACKGROUND	332
A. THE TROUBLES	332
B. THE GOOD FRIDAY AGREEMENT	333
C. THE NORTHERN IRELAND TROUBLES (LEGACY AND RECONCILIATION) ACT 2023	336
D. AMNESTIES AND PEACE AGREEMENTS	338
E. INTERNATIONAL HUMAN RIGHTS LAW	340
1. Inter-American Court on Human Rights	340
2. European Convention on Human Rights	342
3. United Nations Convention Against Torture and Other Cruel, Inhumane, or Degrading Treatment or Punishment	344
F. INTERNATIONAL HUMANITARIAN LAW	345
III. ANALYSIS	347
A. THE LEGACY ACT'S AMNESTY PROVISION AND TRANSITIONAL JUSTICE	348
B. COMPARISON OF LEGACY ACT'S AMNESTY PROVISIONS TO OTHER INTERNATIONAL AMNESTY LAW	351
C. AMNESTY CASES FROM THE INTER-AMERICAN COURT OF HUMAN RIGHTS AND IMPACT ON THE LEGACY ACT	354
D. LEGACY ACT VIOLATES GOOD FRIDAY AGREEMENT AND THE EUROPEAN CONVENTION ON HUMAN RIGHTS	355
E. LEGACY ACT'S AMNESTY PROVISION VIOLATES THE CONVENTION AGAINST TORTURE	358
F. LEGACY ACT'S AMNESTY VIOLATES HUMANITARIAN LAW	359
IV. RECOMMENDATIONS	362
A. DECISION BETWEEN <i>IRELAND V. UNITED KINGDOM</i> IN THE EUROPEAN COURT OF HUMAN RIGHTS	362
B. INDIVIDUALS VERSUS THE UNITED KINGDOM IN THE EUROPEAN COURT OF HUMAN RIGHTS	363
C. THE UNITED KINGDOM SHOULD AMEND THE LEGACY	

ACT	364
V. CONCLUSION	365

I. INTRODUCTION

The Northern Ireland Troubles (Legacy and Reconciliation) Act of 2023 (“Legacy Act”) was passed into law in the United Kingdom after Royal Assent on September 18, 2023.¹ The Legacy Act grants individuals immunity from prosecution for offenses which happened during The Troubles where those persons come forward with information about the crime.² Although the United Kingdom justified passing the Legacy Act under the guise of promoting truth and reconciliation, in actuality, the Legacy Act primarily shields British security forces, United Kingdom government officials, and any other egregious actors from criminal prosecution or civil liability.³ By effectuating these protections, the Legacy Act forecloses the opportunity for Troubles’ victims and their families to adjudicate their harms. The widespread condemnation by the United Nations Commissioner for Human Rights, political parties in the Republic of Ireland, and American politicians during the legislative process and after the act passed into law is telling of its significant human rights impediments.⁴ In agreement with the Legacy Act’s critics, the amnesty

1. See *Troubles Legacy Bill Enters Law After Receiving Royal Assent*, BBC (Sept. 19, 2023), <https://www.bbc.com/news/uk-northern-ireland-66853499> (noting that the bill received Royal Assent to enter into law).

2. Northern Ireland Troubles (Legacy and Reconciliation) Act 2023, c. 41 (UK) [hereinafter Northern Ireland Legacy Act]; see also *Understanding Northern Ireland’s “Troubles”*, COUNCIL ON FOREIGN RELS. (May 25, 2023), <https://world101.cfr.org/understanding-international-system/conflict/understanding-northern-irelands-troubles> (defining the Troubles, or Northern Ireland Conflict, as an intense period of political violence from the 1960s to 1998 in Northern Ireland stemming from, among other things, tension between Protestants and Catholics).

3. See *UK’s Controversial Northern Ireland ‘Legacy’ Bill: All You Need to Know*, AL JAZEERA (Sept. 4, 2023), <https://www.aljazeera.com/news/2023/9/4/uk-controversial-northern-ireland-legacy-bill-all-you-need-to-know> (discussing the controversial conditional immunity proposed by the Bill and the underlying impunity of perpetrators in the aftermath of the Troubles).

4. See Newton Emerson, *Everyone Opposes the Troubles Legacy Bill but the Conservatives May Get Away With It*, THE IRISH TIMES (May 26, 2022), <https://www.irishtimes.com/opinion/2022/05/26/everyone-opposes-the-troubles-legacy->

provision has potential to significantly deprive Troubles' victims and their families of important judicial remedies, all in violation of the United Kingdom's obligations under the Good Friday Agreement, the European Convention on Human Rights, the United Nations Convention Against Torture, and the Geneva Conventions.⁵ Accordingly, this Comment will analyze how the Legacy Act's amnesty provision denies victims and their families the right to hold Troubles' criminals accountable through legal proceedings; therefore, showing how the United Kingdom is in effect neither protecting or ensuring victims' full human rights guarantees.⁶

Part II of this Comment outlines the history of the political tensions and violence in Northern Ireland during The Troubles.⁷ It will then provide an overview of the peace process which resulted in signing the Good Friday Agreement.⁸ Next, the United Kingdom's human rights obligations under the Good Friday Agreement and the European Convention on Human Rights will be explored.⁹ Lastly, amnesties laws in post-conflict States, humanitarian law obligations, and relevant international and regional human rights instruments will be discussed with a particular focus on comparing the Legacy Act to

bill-but-the-conservatives-may-get-away-with-it (discussing the domestic and global opponents to the Legacy Bill); Letter from United States Congress to Rishi Sunak, Prime Minister of the United Kingdom (Jan. 20, 2023) (imploping Prime Minister Sunak to consider the impact of the Legacy Act specifically upon victims whose cases are ongoing who have sought justice without success); *see also UK's Controversial Northern Ireland 'Legacy' Bill: All You Need to Know*, *supra* note 3 (indicating that Sinn Féin, the republican left-winged party in the Republic of Ireland, is the Legacy Bill's strongest opponent).

5. *See* Deirbhile Clenaghan, *A Barrier to Transitional Justice: Critique of the Northern Ireland Troubles (Legacy and Reconciliation) Bill 2022*, 26 TRINITY C. L. REV. 12, 26–27, 31 (2023) (arguing that the Legacy Bill, once law, would violate the European Convention on Human Rights, which was incorporated into Northern Irish Law through the Good Friday Agreement, and the U.N. Convention Against Torture); Press Release, Off. of the U.N. High Comm'r for Hum. Rts. (OHCHR), UK: Flawed Northern Ireland "Troubles" Bill Flagrantly Contravenes Rights Obligations, Say UN Experts (Dec. 15, 2022), <https://www.ohchr.org/en/press-releases/2022/12/uk-flawed-northern-ireland-troubles-bill-flagrantly-contravenes-rights> (stating that the Bill gives immunity to persons accused of grave human rights violations).

6. *See infra* Part II.

7. *See infra* Part II.

8. *See infra* Part II.

9. *See infra* Part II.

amnesty laws enacted and examined in other States.¹⁰

Part III will examine the United Kingdom's obligations to promote and ensure accountability during the peace process under international humanitarian and human rights law.¹¹ Specifically, this part will explain how the Legacy Act violates the United Kingdom's obligations under the European Convention on Human Rights and the United Nation's Convention Against Torture.¹² Next, it will discuss the United Kingdom's obligations under international humanitarian law, and the role of the Geneva Conventions.¹³ Accordingly, this Comment assesses the extent to which the United Kingdom's Legacy Act violates the Good Friday Agreements, the European Convention on Human Rights, the Convention Against Torture, and the Geneva Conventions, all of which address States that grant amnesties to perpetrators of international crimes and disregard accountability, an essential piece of the peace process.¹⁴ Finally, Part III will compare the Legacy Act to other amnesty laws enacted during peace processes and will look to jurisprudence from other international human rights courts, namely the Inter-American Court of Human Rights, to inform and guide a determination on the United Kingdom's duties and obligations.¹⁵

Part IV predicts how the European Court of Human Rights will rule in the case between the Republic of Ireland and the United Kingdom which was brought before the European Court in early 2024.¹⁶ The far reaching impact this case will have on future peace agreements is yet to be determined, though, it will likely be an important model for future peace agreements and the legality of amnesties, especially in the European context. Part IV further recommends that individual victims of Trouble related offenses should bring their claims against

10. *See infra* Part II.

11. *See infra* Part III.

12. *See infra* Part III.

13. *See infra* Part III.

14. *See* Human Rights Watch, *Selling Justice Short: Why Accountability Matters for Peace* 3, 4, 8, 9 (2009) (arguing that peace cannot be sustainable if accountability is forgone by using country-specific examples of vacated accountability due to amnesty laws).

15. *See infra* Part III.

16. *See infra* Part IV.

the United Kingdom in the European Court of Human Rights.¹⁷ An individual complaint would only help strengthen this jurisprudence and expand State practice. Lastly, Part IV recommends the United Kingdom amend the Legacy Act to exclude any amnesty provision as to be in line with their human rights duties and obligations.¹⁸

II. BACKGROUND

The subsequent section will begin with a brief overview of The Troubles in Northern Ireland and the events leading up to the Good Friday Agreement. It will then discuss the legislative history and provisions of the Legacy Act, with a specific magnification on its amnesty provision. Next, a short introduction on peace, justice, and accountability will be explored in conjunction with an explanation of amnesties within this context. Finally, the section ends with a survey of relevant provisions within international human rights law and international humanitarian law and the United Kingdom's obligations under each.

A. THE TROUBLES

The Troubles in Northern Ireland marked years of violent sociopolitical and religious conflict, still embedded in Northern Ireland today.¹⁹ The conflict arose between the Protestant Loyalists, who wanted Northern Ireland to remain part of the United Kingdom, and the Roman Catholic Republicans, who wished to be united with the Republic of Ireland.²⁰ During the Troubles, more than 3,600 people were killed, more than 300,000 were wounded, and countless others still bear the psychological scars of living in a constant war zone.²¹

17. See *infra* Part IV.

18. See *infra* Part IV.

19. See Jeff Wallenfeldt, *The Troubles: Northern Ireland History*, ENCYC. BRITANNICA, <https://www.britannica.com/event/The-Troubles-Northern-Ireland-history> (last updated Mar. 21, 2024) (noting that the period known as The Troubles was officially between 1968 and 1998).

20. See *id.* (noting that the Republic of Ireland and the United Kingdom were not the only parties to the conflict, as multiple paramilitary groups from both sides were heavily involved).

21. See Douglas Woodwell, *The "Troubles" of Northern Ireland: Civil Conflict in an Economically Well-Developed State*, UNDERSTANDING CIVIL WAR: EVIDENCE AND ANALYSIS 161, 161 (Paul Collier & Nicholas Sambanis eds., 2005) (describing

Murders, forced disappearances, bombing of buildings, and car bombings were the most grave crimes committed during this period and happened almost on a daily basis.²² As the atrocities raged on across decades, both the United Kingdom and the Republic of Ireland sought to end the turmoil, thus beginning the peace process.²³ By signing the Good Friday Agreement, the Republic of Ireland and the United Kingdom made a public agreement to officially end The Troubles after years of negotiations, but the formal agreement did not cease the deeply entrenched animosity among the parties in Northern Ireland.²⁴

B. THE GOOD FRIDAY AGREEMENT

After three decades of conflict, the Good Friday Agreement was signed on April 10, 1998 and entered into force December 2, 1999.²⁵ Along with ending hostilities, the Good Friday Agreement set out to uphold certain civil and human rights for the citizens of Northern

the casualty figures and damage resulting from the conflict); *see also* Malcom Sutton, *An Index of Deaths from the Conflict in Ireland: Status of the Person Killed*, CAIN ARCHIVE, <https://cain.ulster.ac.uk/sutton/tables/Status.html> (indicating that among the 3,532 persons killed, around 1,785 were civilians).

22. *See* Republic of Ireland Department of Justice: Independent Comm'n for the Location of Victims Remains, *The Disappeared*, <https://www.iclvr.ie/en/iclvr/pages/thedisappeared> (providing information on seventeen individuals who “disappeared” during the conflict and were likely murdered by republican paramilitaries, including four victims who have yet to be recovered).

23. *See* James B. Steinberg, *The Good Friday Agreement: Ending War and Ending Conflict in Northern Ireland*, 2 TEX. NAT'L SEC. R. 89, 90 (2019) (highlighting that peace talks began as an effort to break the stalemate and after the Irish Republican Army announced a ceasefire in 1994).

24. *See* Charles Landow & James McBride, *Moving Past the Troubles: The Future of Northern Ireland Peace*, COUNCIL ON FOREIGN RELS. (Feb. 16, 2024), <https://www.cfr.org/backgrounder/moving-past-troubles-future-northern-ireland-peace> (providing background on The Troubles and the Good Friday Agreement).

25. Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland, Ir.-U.K., Oct. 4, 1998, 2114 U.N.T.S. 473 [hereinafter Good Friday Agreement]; *see also* Lisa O'Carroll, *How Did the Good Friday Agreement Come About and Why Is It so Significant?*, THE GUARDIAN (Apr. 7, 2023), <https://www.theguardian.com/world/2023/apr/07/how-did-the-good-friday-agreement-come-about-and-why-is-it-so-significant> (noting that the agreement's name stems from its date, the Friday before Easter, otherwise known as Good Friday).

Ireland.²⁶ Specifically, the United Kingdom agreed to incorporate the European Convention on Human Rights into Northern Irish law, which was later accomplished through the Human Rights Act of 1998.²⁷ The Human Rights Act of 1998, among other provisions, incorporates Article 2, the right to life, and Article 3, freedom from torture, of the European Convention on Human Rights into Northern Ireland's domestic law.²⁸ Thus, ensuring all people in Northern Ireland were protected by international human rights law and holding the United Kingdom to their promises in the Good Friday Agreement.

Although the Good Friday Agreement was in part focused on civil and human rights, the only provision that resembled an agreement to tackle the legacy and truth issues proceeding The Troubles was an agreement releasing paramilitary prisoners in Northern Ireland, which was accomplished with the Human Rights Act of 1998.²⁹ The Human Rights Act provided that any prisoner who served a fixed term and agreed to a complete cease fire was eligible for release.³⁰ Thus, providing what might be described as a *de facto* amnesty for the paramilitary prisoners involved in Trouble related offenses.³¹

The question of how to deal with crimes and unsolved murders from

26. See Good Friday Agreement, *supra* note 25, at 475 (stating throughout that both parties agree to reaffirm the protection of civil, political, economic, and cultural rights).

27. Human Rights Act 1998, c. 42, § 1 (UK); see also Lynn Wartchow, *Civil and Human Rights Violations in Northern Ireland: Effects and Shortcomings of the Good Friday Agreement in Guaranteeing Protections*, 3 NW. J. INT'L HUM. RTS. ¶¶ 20–21 (2005) (highlighting the failures in upholding and promoting human rights and asserting that durable peace will only be achieved if political parties understand and respond to this).

28. Human Rights Act 1998, *supra* note 27, §§ 2, 3.

29. See Northern Ireland (Sentences) Act 1998, c. 35, § 3(7) (UK) (legitimizing the agreement to release paramilitary prisoners in Northern Ireland).

30. *Id.* § 3; see also Daniel F. Mulvihill, *The Legality of the Pardoning of Paramilitaries Under the Early Release Provision of Northern Ireland Good Friday Agreement*, 34 CORNELL INT'L L. J. 227, 228, 237–38 (2001) (indicating that over 400 prisoners were released from both sides under this provision, but that this release was one of the most controversial aspects of the agreement).

31. See OFF. OF THE UNITED NATIONS HIGH COMM'R FOR HUM. RTS., RULE OF LAW TOOLS FOR POST CONFLICT STATES: AMNESTIES, at 8, U.N. Doc. HR/PUB/09/1, U.N. Sales No. E.09.XIV.1 (2009) (explaining that although *de facto* amnesties do not explicitly rule out criminal prosecution or civil remedies, the state practice evades prosecution).

The Troubles remained long after the Good Friday Agreement was signed, and there has been many attempts by both the United Kingdom and Ireland to address the issue; the most recent legislation from the United Kingdom on the topic was in 2014 with the Stormont Agreement.³² The Stormont Agreement's aim was to promote reconciliation and justice through the rule of law and ensure information recovery while aligning with the United Kingdom's human rights obligations; however, the Agreement was slow to deliver such promises.³³

To replace the Stormont Agreement, the United Kingdom introduced the Legacy Act, which was fueled by misleading rhetoric claiming Troubles litigation was targeting British army personnel.³⁴ The United Kingdom's justification for this is misguided because since 2015 only seventeen legacy prosecutions in Northern Ireland have occurred, eight against Republicans/Unionist, four against Loyalists, and five against British Soldiers.³⁵ History further shows the United Kingdom has shown little, if any, action or inclination to investigate or prosecute British military actions during the Troubles.³⁶

32. See Northern Ireland Office & Lord Calne, *Legacy: The False Claim of Consensus Regarding the Stormont Agreement*, GOV.UK (Jan. 11, 2024), <https://www.gov.uk/government/news/legacy-the-false-claim-of-consensus-regarding-the-stormont-house-agreement> (noting that the agreement, meant to address Trouble-related offenses and legacy issues, was signed by the United Kingdom, the Republic of Ireland, and four of the five main political groups in Northern Ireland).

33. See Stormont House Agreement 2014, ¶¶ 21–40 (acknowledging the need to transition to long-term peace and stability, establish an Oral History Archive to share Trouble-related stories, and legislate for the creation of an independent historical investigation unit); *Legacy Cases: Stormont House Agreement Must Not Be 'Rewritten'*, BBC (June 25, 2021), <https://www.bbc.com/news/uk-northern-ireland-57614908> (implying there has been a delay in implementing the Stormont Agreement).

34. See Anne Cadwallader, *The Northern Ireland 'Amnesty': Hiding Britain's 'Misdeeds'?*, AL JAZEERA (Sept. 23, 2021), <https://www.aljazeera.com/features/2021/9/23/the-northern-ireland-amnesty-hiding-britains-misdeeds> (reporting that the United Kingdom scrapped the Stormont House Agreement through the Legacy Act and characterized court proceedings against English military personally as “witch-hunts”).

35. See Kieran McEvoy, *10-Minute Talks: Dealing with the Past in Northern Ireland*, THE BRITISH ACAD. (Mar. 24, 2021), <https://www.thebritishacademy.ac.uk/podcasts/10-minute-talks-dealing-past-northern-ireland> (noting that no prosecutions happened from 1970 to 1974, the early stages of the conflict).

36. See Juliana Van Hoeven, *Counter-Terrorism Measures and International*

Furthermore, the United Kingdom has failed to take account of judgments from the European Court of Human Rights regarding an obligation to investigate and prosecute military crimes during the Troubles.³⁷

C. THE NORTHERN IRELAND TROUBLES (LEGACY AND RECONCILIATION) ACT 2023

The Legacy Act, first introduced in The House of Commons in May 2022, passed into law on September 18, 2023.³⁸ The Legacy Act attempts to repair legacy issues left behind after the Troubles, bridge investigatory gaps, and uncover truths.³⁹ The United Kingdom's stated principal objective was to promote reconciliation, "draw a line under the Troubles," and to further peace promises made in the Good Friday Agreement.⁴⁰

The United Kingdom additionally claims the Legacy Act is an attempt to implement the unfulfilled promises left behind in the Stormont House Agreement.⁴¹ Specifically, the government asserts the

Humanitarian Law: A Case Study of the "Troubles" in Northern Ireland, 37 U. PA. J. INT'L L. 1092, 1127–29, 1133–41 (2016) (quoting Kevin Connolly's argument that the United Kingdom's political entities have no reason or incentive for investigation because it would only expose its institutions and actors).

37. See *id.* at 1129–42 (showing the United Kingdom's unwillingness to adhere to the decision of the European Court of Human Rights in the case of Patrick Finucane and Pearse Jordan).

38. Northern Ireland Legacy Act, *supra* note 2.

39. See *id.* preamble ("An Act to address the legacy of the Northern Ireland Troubles and promote reconciliation by establishing an Independent Commission for Reconciliation and Information Recovery, limiting criminal investigations, legal proceedings, inquests and police complaints, extending the prisoner release scheme in the Northern Ireland (Sentences) Act of 1998, and providing for experiences to be recorded and preserved and for events to be studied and memorialized, and to provide for the validity of interim custody orders").

40. See Jayne McCormack & Eimear Flanagan, *Troubles Legacy: Controversial Bill Passes Final Stages in Lords*, BBC (Sept. 12, 2023), <https://www.bbc.com/news/uk-northern-ireland-66787057>; Enda McClafferty, *Troubles Legacy: Controversial Bill 'Better Than What Went Before'*, BBC (Sept. 28, 2023), <https://www.bbc.com/news/uk-northern-ireland-66940441> (quoting Prime Minister Rishi Sunak saying that the new legislation attempts to "get people the information they need and they justice they deserve").

41. See Northern Ireland Troubles (Legacy and Reconciliation) Bill 2022-23, Explanatory Notes ¶ 6 (UK) (stating that the Legacy Bill "seeks to address practical implementation issues with the Stormont House Agreement which have been

Legacy Act adequately tackles the extensive and complex difficulties faced by the investigation and prosecution of a high number of historical cases which slipped through the cracks after the Stormont Agreement.⁴² The Republic of Ireland, all Northern Ireland's major political parties, and international human rights entities strongly opposed the Legacy Act throughout the legislative process.⁴³

Predominately, the Legacy Act establishes the Independent Commission for Reconciliation and Information Recovery ("ICRIR"), a body of commissioners tasked with determining whether to grant individuals immunity after certain criteria are met.⁴⁴ First, a person must request the immunity from the ICRIR.⁴⁵ Second, the ICRIR must be satisfied that the information given describes conduct forming part of The Troubles, and that such information "is true to the best of the person's knowledge."⁴⁶ Lastly, the ICRIR must be satisfied that the actions disclosed "would extend to expose the person to a criminal investigation of, or to the prosecution for, one or more of the serious or connected Trouble-related offenses."⁴⁷ If the ICRIR is satisfied all three conditions are met, a person may be granted specific or general immunity.⁴⁸ After the immunity designation has been made, and the

identified since the consultation").

42. *See id.* (providing that one aim of the Legacy Act is to expedite the Trouble case load).

43. *See* Jill Lawless, *Despite Opposition, Britain Passes Law to Curb Prosecutions for Northern Ireland 'Troubles' Violence*, AP NEWS (Sept. 13, 2023), <https://apnews.com/article/northern-ireland-troubles-reconciliation-prosecutions-legacy-51ca9c0e29b9dbd4dbfa12082f6cf2a5>.

44. *See* Northern Ireland Legacy Act, *supra* note 2, § 2 (creating the ICRIR and listing the criteria the ICRIR must assess to determine immunity from prosecution for Trouble related crimes).

45. *Id.* § 19(2).

46. *Id.* § 19(3).

47. *Id.* § 19(5).

48. *Id.* § 19(7)–(9) (defining specific immunity as "immunity from prosecutions for all of the identifiable offenses" and general immunity as "immunity from prosecutions for all serious or connected Trouble-related offenses which are within the description determined by the immunity request panel."); *see id.* § 1(5) (defining an offense as Troubles-related if "it is an offence under the laws of Northern Ireland, England, and Wales or Scotland, and the conduct was to any extent conduct forming the Troubles" and defining serious Trouble-related offenses as "(i) murder, manslaughter, or other culpable homicide, (ii) another offence committed by causing the death of a person, and (iii) was committed by causing a person to suffer serious physical or mental harm.").

information is gathered, the ICIR will publish a report containing relevant findings, which will be shared with the victims or victims' families.⁴⁹ Since the Legacy Act passed into law, the United Kingdom's High Court has heard multiple legal challenges to it, mostly from victims' families.⁵⁰ Many of the victims and their families also intend to lodge case applications directly to the European Court of Human Rights.⁵¹ Amnesty laws, like the Legacy Act, are not a new phenomenon in post-conflict States and the next section will explore how enacting amnesty laws as a way to implement and further the peace process may not be such a legitimate tool as States once thought.

D. AMNESTIES AND PEACE AGREEMENTS

Post-conflict transitional justice must balance implementing accountability mechanisms while also ensuring peace.⁵² Historically, States have implemented amnesty laws as an attempt to achieve this balance, but the laws have seldom come without controversy.⁵³ In

49. *Id.* § 17.

50. See James Joseph, *UK High Court Hears Legal Challenges to Recently Enacted Northern Ireland Troubles Bill*, JURIST (Sept. 20, 2023), <https://www.jurist.org/news/2023/09/uk-high-court-hears-legal-challenges-to-recently-enacted-northern-ireland-troubles-bill> (reporting judicial review applications challenge the Legacy Bill's compatibility with international human rights standards); see also Julian O'Neill, *NI Troubles: Legacy Act Immunity Clause 'Breaches' Human Rights*, BBC (Feb. 28, 2024), <https://www.bbc.com/news/uk-northern-ireland-68419238> (noting the High Court in Belfast on a challenge from victims' families in February 2024 ruled the Act's immunity provision breaches European human rights law).

51. See *id.* (indicating victims are considering lodging an individual complaint against the United Kingdom in the European Court of Human Rights); see generally Convention for the Protection of Human Rights and Fundamental Freedoms, art. 25, Nov. 4, 1950, 213 U.N.T.S. 221 [hereinafter ECHR] (allowing applications from "any person, non-governmental organization, or group of individuals claiming to be the victim"); *Vallianatos and Others v. Greece*, App. Nos. 29381/09 & 32684/09, ¶ 47 (Eur. Ct. H.R. Nov. 7, 2013) (defining a victim, who can bring a claim, in the context of the European Convention on Human Rights as "a person or persons directly or indirectly affected by the alleged violation.").

52. See generally PAUL R. WILLIAMS & MICHAEL P. SCHARF, *PEACE WITH JUSTICE?: WAR CRIMES AND ACCOUNTABILITY IN THE FORMER YUGOSLAVIA 23* (2002) (explaining transition justice concepts in the context of Yugoslavia).

53. See Jeremy Sarkin, *Book Review*, 20 CRIM. L.F. 389, 390–91 (2009) (reviewing LOUISE MALLINDER, *AMNESTY, HUMAN RIGHTS AND POLITICAL TRANSITIONS: BRIDGING THE PEACE AND JUSTICE DIVIDE* (2008)) (stating that

particular, blanket amnesty laws and self-amnesties have been criticized harshly in many States.⁵⁴ Many examples of severely criticized amnesties come from Latin America.⁵⁵ For example, in Chile in 1987, General Augusto Pinochet issued a self-amnesty decree precluding himself and other military officials from prosecutions for human rights abuses during his dictatorship.⁵⁶ The government justified issuing the self-amnesty as necessary to stabilize Chile after dictator rule.⁵⁷ Pinochet was nonetheless arrested in the United Kingdom in 1998 and extradited to Spain on human rights charges, thus the United Kingdom effectively stripped him of his self-granted amnesty.⁵⁸ This demonstrates the United Kingdom's willingness to disregard Pinochet's amnesty to uphold criminal accountability for human rights violations.⁵⁹

Outside of Latin America, another highly scrutinized amnesty law came in the form of South Africa's Truth and Reconciliation Commission, which granted amnesty to perpetrators for "acts, omissions and offenses associated with political objectives."⁶⁰ The

amnesties granted for international crimes, such as war crimes, crimes against humanity, breaches of the Geneva Conventions, genocide and torture are seen as unacceptable).

54. See generally FRANCESCA LESSA AND LEIGH A. PAYNE, *AMNESTY IN THE AGE OF HUMAN RIGHTS ACCOUNTABILITY: COMPARATIVE AND INTERNATIONAL PERSPECTIVES* 1–16 (2012) (analyzing amnesties in multiple countries and their impact on accountability and access to justice).

55. See *id.*

56. See Edward C. Snyder, *The Dirty Legal War: Human Rights and the Rule of Law in Chile 1973–1995*, 2 *TULSA J. COMP. & INT'L L.* 253, 268–69 (1995); Gwen K. Young, Comment, *Amnesty and Accountability*, 35 *U.C. DAVIS L. REV.* 427, 441 (2002) (stating the crimes from which the self-amnesty protected the government officials included murder, forced disappearances, and torture).

57. See Young, *supra* note 56, at 441 (citing Jorge Mera, *Chile: Truth and Justice Under the Democratic Government*, in *IMPUNITY AND HUMAN RIGHTS IN INTERNATIONAL LAW AND PRACTICE* 171, 179 (Naomi Roht-Arriaza ed., 1995)).

58. See *The Pinochet Precedent: How Victims Can Pursue Human Rights Criminals Abroad*, HUM. RTS. WATCH (Nov. 1, 1998), <https://www.hrw.org/report/1998/11/01/pinochet-precedent/how-victims-can-pursue-human-rights-criminals-abroad> (exploring how the Pinochet case impacted extradition norms and rejected the validity of self-granted amnesty for heads of state).

59. See generally Michael Byers, *The Law and Politics of the Pinochet Case*, 10 *DUKE J. COMP. & INT'L L.* 415, 415–16, 423 (2000) (explaining the Pinochet case and the United Kingdom's role in extraditing General Augusto Pinochet).

60. Promotion of National Unity and Reconciliation Act No. 34 of 1995 § 20 (S.

South African amnesty shielded perpetrators of human rights abuses from criminal and civil liability.⁶¹ The amnesty was not without conditional safeguards, but the threshold to overcome the conditional safeguards was rather low as perpetrators only had to make an omission to the government of their crime during the conflict.⁶² The South African amnesty, albeit controversial, is often labeled as a success.⁶³ Although amnesty laws post-conflict have been used as a tool to foster peace, gain stability, and uncover truth, as seen in the Chilean and South African examples, there has been a gradual shift in the tendency of the international community to question the validity of amnesties in peace agreements under international human rights law, most notably in the Inter-American Court of Human Rights.⁶⁴

E. INTERNATIONAL HUMAN RIGHTS LAW

The proceeding sections will examine how international human rights courts, particularly the Inter-American and European courts have dealt with the question of amnesty laws. Other human rights instruments, namely the Convention on Torture, will be explored to indicate a State's obligations in relation to amnesty laws under the Convention.

1. *Inter-American Court on Human Rights*

Within the last few decades, amnesty laws in Latin American have been enacted more frequently, given the widespread political instability and transitions into democracy.⁶⁵ The Inter-American

Afr.).

61. *See id.* § 18.

62. *See id.* § 3(1)(b).

63. *See* Brandon Hamber, *Rights and Reasons: Challenges for Truth Recovery in South Africa and Northern Ireland*, 26 *FORDHAM INT'L L. J.* 1074, 1078 (2002) (indicating the Commission was viewed, at least in part, as a success despite beginning "a process it could not complete").

64. *See* Christina Binder, *The Prohibition of Amnesties by the Inter-American Court of Human Rights*, 12 *GER. L. J.* 1203, 1208–09 (2011) (demonstrating that the shift began after the holding in *Barrios Altos v. Peru*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 75 (Mar. 14, 2001) that 1995 Peruvian amnesty violated the American Convention on Human Rights).

65. *See generally id.* at 1207–08 (indicating amnesty laws enacted in Latin America were the direct product of transitional democracies after a history of military dictatorships and gross human rights violations).

Commission was the first international human rights entity to announce that amnesty laws were incompatible with a State's human rights obligation, and the Inter-American Court of Human Rights, the judicial body of the Commission, confirmed this holding.⁶⁶ The Inter-American Court has reiterated that amnesties for gross human rights abuses are incompatible with Inter-American human rights law.⁶⁷ As with any international human rights body; however, the Inter-American Court of Human Rights has not acted in a vacuum.

In this context, the Inter-American Court of Human Rights and the European Court of Human Rights continue to strengthen their ties and increase cooperation by relying on each other's case law as persuasive.⁶⁸ In the area of amnesty law, for example, the European Court of Human Rights in *Marguš v. Croatia*, held general amnesties are incompatible with State obligations and relied on language from *Gelman v. Uruguay*, where the Inter-American Court announced amnesties precluding prosecutions of serious human rights violations are in contrast to the State's positive human rights obligation.⁶⁹ Thus, showing a mutual respect and understanding between the courts in the area of amnesty laws, which should continue to be relied on and strengthened.

66. See *Consuelo et al. v. Argentina*, Cases 10.147, 10.181, 10.240, 10.262, 10.309 and 10.311, Inter-Am. Comm'n H.R., Report No. 28/92, OEA/Ser.L/V/II.83 doc. 14 at 41 ¶¶ 6, 30, 39–41 (1993) (setting the Inter-American stage to consider amnesty laws); see also *Barrios Altos*, ¶ 44 (stating the Court considered all amnesty provisions inadmissible because the amnesty laws intended to prevent investigation and punishment for serious human rights abuses).

67. See Juan-Pablo Pérez-León-Acevedo, *The European Court of Human Rights (ECtHR) vis-à-vis Amnesties and Pardons: Factors Concerning or Affecting the Degree of ECtHR's Deference to States*, 26 INT'L J. HUM. RTS. 1107, 1111 (2002) (citing Jorge Contesse, *Resisting the Inter-American Human Rights System*, 44 YALE J. INT'L L. 179 (2019)).

68. See generally *Dialogue Between Regional Human Rights Courts*, INTER-AM. CT. HUM. RTS., 7–8 (2020), <https://www.corteidh.or.cr/sitios/libros/todos/docs/dialogo-en.pdf> (exemplifying cross references to judgements of the Inter-American Court in the European Court are plentiful).

69. See *Marguš v. Croatia*, App. No. 4455/10 ¶ 64 (Eur. Ct. H.R. Nov. 13, 2012) (quoting from *Gelman v. Uruguay*, Case 438-06, Report No. 30/07, Inter-Am. C.H.R., OEA/Ser.L/V/II.13 Doc. 22, rev. 1 (2007) (holding even an amnesty passed by a voting referendum violates a State's human rights obligations)).

2. *European Convention on Human Rights*

In 1998 the United Kingdom incorporated the European Convention on Human Rights into Northern Ireland's law.⁷⁰ Under the European Convention on Human Rights, State Parties are obliged, *inter alia*, to uphold the right to life and to ensure freedom from torture.⁷¹ While the European Court of Human Rights, the judicial body of the Convention, has not explicitly or directly prohibited States from enacting amnesties, the cases below provide examples of the Court's consideration of the viability of amnesty laws under the Convention.⁷²

In *Dujardin v. France*, ten French individuals brought a case against France for failure to prosecute perpetrators of murder after the 1990s general amnesty law.⁷³ The question was whether the general amnesty infringed on the right to life protected by Article 2 of the Convention.⁷⁴ The European Court of Human Rights held, "The State was justified in adopting, any amnesty laws it might consider necessary," but must balance the legitimate interests of the State against the interests of individuals' right to life.⁷⁵

Similarly, in 2012, a petitioner contested his detention under a general amnesty for lack of a fair trial in *Tarbuk v. Croatia*.⁷⁶ The petitioner challenged the effects of amnesty precluding the recovery of civil damages from Croatia after being wrongly detained.⁷⁷ The

70. Human Rights Act 1998, *supra* note 27, §§ 4(5)(e), 18(c).

71. See ECHR, *supra* note 51, art. 2, 3 (providing protections to the right to life and against torture or to human or degrading treatment or punishment).

72. See generally Pérez-León-Acevedo, *supra* note 67, at 1109–10 (reporting on Inter-American cases regarding amnesty laws and the potential influence the decisions may have in the European Court).

73. See *Dujardin v. France*, App. No. 16734/90 (Eur. Ct. H.R. Sept. 2, 1991) (stating that the applicants allege a violation of Articles 2 and 6 of the European Convention of Human Rights).

74. See ECHR, *supra* note 51, art. 2 ("Everyone's right to life shall be protected by law and no one shall be deprived of his life. . . ." and "deprivation of life shall be regarded as inflicted in contravene of this Article when it results from the use of force which is no more than absolutely necessary.").

75. *Dujardin*, App. No. 16734/90.

76. See *Tarbuk v. Croatia*, App. No. 31360/10, ¶ 24 (Eur. Ct. H.R. Dec. 11, 2012) (stating that the applicant complained that he did not have a fair trial as provided for in Article 6 § 1 of the European Convention on Human Rights).

77. See *id.*, ¶¶ 24, 36 (detailing that the applicant contended that the way the

Court held, similar to *Dujardin*, the State was justified in enacting the amnesty law, but must maintain a balance between State and individual interests.⁷⁸

Nonetheless, the Court in *Ould Dah v. France*, in a case brought by a Mauritanian national who allegedly committed acts of torture while working as an intelligence officer, stated the absolute prohibition on torture places an obligation on States to prosecute such acts.⁷⁹ Further, the Court considered an “amnesty is generally incompatible with the duty incumbent on the State to investigate such acts.”⁸⁰ Further, it held “the obligation to prosecute criminals should not therefore be undermined by granting impunity to the perpetrator in the form of an amnesty, a law that may be considered contrary to international law.”

⁸¹ Likewise, in 2012, in *Marguš v. Croatia*, when examining an amnesty law which granted immunity to a Croatian Army officer who committed war crimes, the European Court concluded, general amnesties are incompatible with the State obligation to prosecute international crimes.⁸²

In conclusion, the European Court has not explicitly ordered a Member State to repeal an amnesty law, perhaps because of the margin of appreciation doctrine, a doctrine used in the European Court on Human Rights.⁸³ Nonetheless, the above cases indicate the European

Croatian courts had applied the laws regulating the right to compensation in respect of detention to his case had been unfair).

78. See *id.*, ¶¶ 48–50 (stating that the Convention organs have already held that, even in such fundamental areas of the protection of human rights as the right to life, this balance between state and individual interests is legitimate).

79. See *Ould Dah v. France*, App. No. 13113/03, 11, 14, 16 (Eur. Ct. H.R. Mar. 17, 2009) (providing that Article 3 of the ECHR enshrines one of the basic values of democratic societies, and no derogation from it is permissible).

80. *Id.* at 17.

81. *Id.*

82. See *Marguš v. Croatia*, App. No. 4455/10 ¶ 139 (Eur. Ct. H.R. Nov. 13, 2012) (noting specifically, “the growing tendency in international law is to see such [general] amnesties as unacceptable because they are incompatible with the unanimously recognized obligation of States to prosecute and punish grave breaches of fundamental human rights.”).

83. See Pérez-León-Acevedo, *supra* note 67, at 1108 (stating the European court’s deference creates flexibility for State Parties); see also Pablo Contreras, *National Discretion and International Deference in the Restriction of Human Rights: A Comparison Between the Jurisprudence of the European and Inter-American Court of Human Rights*, 11 NW. J. INT’L HUM. RTS. 28, 30–31 (2012)

Court's willingness to consider amnesty law, and the potential for the Court to strike down an amnesty law that is inconsistent with a State's human rights obligations, especially the obligation to prosecute.⁸⁴ The United Kingdom's Legacy Act presents such a case for the European court to declare this. State obligations under other human rights instruments, like the Convention Against Torture, will be discussed next.

3. *United Nations Convention Against Torture and Other Cruel, Inhumane, or Degrading Treatment or Punishment*

The United Kingdom and the Republic of Ireland are party to the United Nations Convention Against Torture and Other Cruel, Inhumane, or Degrading Treatment ("UNCAT"), thus, are duty bound by its provisions.⁸⁵ Of particular significance is Article 4, ensuring a State Party makes offenses of torture punishable, and Article 14, ensuring victims have accurate redress and right to fair trial for acts of torture.⁸⁶ Under Article 14, an adequate redress includes an effective remedy and reparation for victims.⁸⁷ The prohibition of torture is non-

(explaining the margin of appreciation doctrine in the European Court of Human Rights, that gives European countries deference, allows for wider discretion in the restriction of human rights compared to the Inter-American system which has no deference to domestic authorities).

84. See *Ould Dah*, App. No. 13113/03, at 17 (stating that the European Court of Human Rights considers that an amnesty is generally incompatible with the duty incumbent on the States to investigate such acts); *Marguš*, App. No. 4455/10, ¶¶ 130–31 (assessing the Inter-American Court of Human Rights' exclusion of the application of amnesty to perpetrators of war crimes and crimes against humanity).

85. *Ratification Status for United Kingdom of Great Britain and Northern Ireland*, UN TREATY BODY DATABASE, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=185; *Ratification Status for Ireland*, UN TREATY BODY DATABASE, <https://tbinternet.ohchr.org/layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=83&Lang=EN>.

86. Convention Against Torture and Other Cruel, Inhumane, or Degrading Treatment or Punishment, art. 4, 14(2), Dec. 10, 1984, 1465 U.N.T.S. 113 [hereinafter Convention Against Torture].

87. See Comm. Against Torture, *Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, General Comment No. 2: Implementation of Article 17 by States Parties*, U.N. Doc. CAT/C/GC/3 (Dec. 13, 2012), ¶¶ 1–2 [hereinafter General Comment No. 3] (clarifying an effective remedy and reparation must entail the full scope of measures required which includes restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition).

derogate with no exceptions whatsoever, even in states of war, internal political instability or public emergency, including threats of terrorist acts or violent crimes in armed conflict.⁸⁸ Therefore, the United Kingdom is obligated to adhere to UNCAT's principles of redress and prosecution for such acts, even during times of war, unrest, or threats of terrorist acts, which are linked to international humanitarian law and addressed thoroughly below.

F. INTERNATIONAL HUMANITARIAN LAW

International Humanitarian Law ("IHL") governs the law of armed conflict and applies to States, armed groups, and civilians.⁸⁹ IHL is codified in the four Geneva Conventions which forbid States from absolving themselves of liability incurred with respect to grave breaches of humanitarian law.⁹⁰ IHL is also guided by Protocol I of the Geneva Conventions, when the conflict is international in nature, and Protocol I requires State Parties engaged in international armed conflict to impose effective penal sanctions for persons committing or ordering to be committed grave breaches.⁹¹ In contrast, Protocol II, applying in conflicts of a non-international nature, encourages States

88. See Comm. Against Torture, *Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, General Comment No. 2: Implementation of Article 2 by States Parties*, U.N. Doc. CAT/C/GC/2 (Jan. 24, 2008), § 16 [hereinafter General Comment No. 2] (noting also State Parties have an obligation to take effective measures to prevent acts of torture in any territory under its jurisdiction, which includes all areas where the State exercises, directly or indirectly, in whole or in part, de jure or de fact effective control).

89. See *What is International Humanitarian Law?*, INT'L COMM. OF THE RED CROSS (Apr. 6, 2022), <https://www.icrc.org/en/document/what-international-humanitarian-law> (noting the provisions apply in non-international armed conflict and international armed conflict).

90. See, e.g., Geneva Convention Relative to the Protection of Civilian Persons in the Time of War, art. 147–48, Aug. 12, 1949, 75 U.N.T.S. 287 [hereinafter Geneva Convention IV] (defining grave breaches as, "willful killing, torture, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly").

91. Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the protection of victims of international armed conflicts (Protocol I), art. 86, June 6, 1977, 1125 U.N.T.S. 3 [hereinafter Protocol I].

engaged in non-international conflicts to grant amnesties.⁹² Nonetheless, the International Committee of the Red Cross clarified Protocol II's amnesty provision only applies to combatant immunity; that is, immunity for actors directly participating in the hostilities, not civilians.⁹³

In the context of Northern Ireland, the United Kingdom refused to label The Troubles as an armed conflict, but rather called the paramilitary groups terrorists, most likely with the intention of avoiding humanitarian obligations under the Geneva Conventions.⁹⁴ Although the Troubles were not labeled as a humanitarian crisis at the time, the period did pose humanitarian consequences because of specific factors such as targeting of civilians based on religious or political identities, the use of lethal force, and the deployment of security forces.⁹⁵ Therefore, The Troubles, while at the time not labeled as an armed conflict, did have the same characteristics as an armed conflict, and should have been governed under IHL.⁹⁶ Whether The Troubles falls in the category of non-international armed conflict

92. See Protocol Additional to the Geneva Convention of 12 August 1949 and relating to the protection of victims of non-international armed conflicts (Protocol II), art. 6(5), Dec. 7, 1978, 1125 U.N.T.S. 609 [hereinafter Protocol II] (encouraging states to grant amnesties).

93. See Colm Campbell, *Peace and the Laws of War: The Role of International Humanitarian Law in the Post-Conflict Environment*, 82 INT'L REV. RED CROSS 627, 632 (2000) (noting the Protocol II art. 6(5) does call for states to grant the broadest possible amnesty at the end of hostilities, but this provision only refers to offenses which amnesty was possible and not to the most serious breaches and the immunity corresponds to those who would have "combat immunity" in international armed conflicts, not everyone).

94. See generally Van Hoeven, *supra* note 36, at 1108 (giving background on the conflict and role of IHL); see also Steve Haines, *Northern Ireland 1968-1998*, in INTERNATIONAL LAW AND THE CLASSIFICATION OF CONFLICTS 130-31 (Elizabeth Wilmshurst ed., 2013) (noting the Republic of Ireland nor the United Kingdom issued an official statement classifying the conflict but the Republic of Ireland did not see British occupation legitimate).

95. See Geoff Leone, *A New Challenge or a New Role? The ICRC in Northern Ireland*, 94 INT'L R. RED CROSS. 1481, 1482 (2012) (explaining the role of the Committee of the Red Cross and humanitarian law in Northern Ireland).

96. See Natasha Balendra, *Defining Armed Conflict*, 29 CARDOZO L. REV. 2461, 2468-70 (2008) (stating no single definition of an armed conflict exists, but characteristics of international armed conflict include violence between High Contracting Parties to the Geneva Conventions and non-international armed conflict characteristics include the nature, intensity, and duration of violence).

or international armed conflict may be up for debate; nonetheless, what is important, is armed conflict was present in Northern Ireland and IHL provisions should have applied.⁹⁷ An analysis of the obligations while engaged in armed conflict, either a non-international or an international will be further explored in the proceeding section.

The next section will analyze the Legacy Act under international human rights and humanitarian law while arguing the United Kingdom is in violation of their obligations under both. Further, the section compares the Legacy Act to other amnesty laws, from Chile, from South Africa, and to Inter-American case law. Lastly, it argues the European Court of Human Rights should follow the same approach as the Inter-American Court of Human Rights in striking amnesty laws which grant immunity for serious international crimes.

III. ANALYSIS

To what extent the Legacy Act violates the United Kingdom's obligations under international human rights law, specifically the European Convention on Human Rights, the United Nations Convention Against Torture, under humanitarian law, and the Geneva Conventions will be discussed in this section. Further, how the Legacy Act fails to consider transitional justice, rooted in human rights law, during the peace process will be reviewed.⁹⁸ The Legacy Act allows criminals to act with impunity, making future perpetration of the crimes permissible and setting an international standard which may encourage human rights abusers.⁹⁹ Further, the Legacy Act's blatant violation of international human rights and humanitarian norms through its amnesty provision disregards justice and accountability during the peace process, therefore placing the United Kingdom in

97. See Samantha Anne Caesar, *Captive or Criminal? Reappraising the Legal Status of IRA Prisoners at the Height of the Troubles under International Law*, 27 DUKE J. COMP. & INT'L L. 323, 342–43 (2017) (making the argument The Troubles should be classified as an international armed conflict for arguments relating to prisoner of war status).

98. See Rep. of the S.C., at 3–4, U.N. Doc. S/2004/616 (2004) (noting justice and accountability are required to build strong societies in post-conflict states and for the promotion and protection of human rights).

99. See WILLIAMS & SCHARF, *supra* note 52, at 33 (stating amnesties will perpetuate rogue regimes to think they have nothing to lose because they can always bargain amnesties for peace).

violation of its human rights obligations and humanitarian law obligations.¹⁰⁰

A. THE LEGACY ACT'S AMNESTY PROVISION AND TRANSITIONAL JUSTICE

Truth commissions precluding any criminal prosecution fall short of ensuring justice and accountability, and “to redress human rights violations, amnesty law and truth commissions must provide for an effective accountability mechanism.”¹⁰¹ Post-conflict transitional justice approaches encompass a wide variety of methods for promoting and maintaining lasting peace.¹⁰² Nonetheless, implementing peace should take into consideration the unique context of the parties involved in conjunction with the duty to implement an accountability and punishment mechanism for human rights abuses.¹⁰³ Above all, transitional justice must consider victims’ needs for closure whether by reparations, prosecution, or truth.¹⁰⁴ The United Kingdom’s current approach to transitional justice, the Legacy Act, has fallen short of these expectations because wide spread and easily attainable impunity sends a clear message that the United Kingdom places human rights violators above the law, even if the violators are

100. See OHCHR Press Release, *supra* note 5 (arguing allowing impunity for crimes in the hopes of achieving reconciliation disregards legal accountability, an essential pillar in transitional justice).

101. Milena Sterio, *Rethinking Amnesty*, 34 DENV. J. INT’L L. & POL’Y 373, 399 (2006).

102. See WILLIAMS & SCHARF, *supra* note 52, at 23 (stating that transitional justice approaches often include a mix of accountability, accommodation, economic inducement, and use of force efforts, but the mixture depends on the specific situation).

103. See Diane F. Orentlicher, *Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime*, 100 YALE L. J. 2537, 2551–52 (1991) (discussing a State’s duty to punish violations of international law when a State impedes on an individual’s human rights).

104. See Lisa J. LaPlante, *Outlawing Amnesty: The Return of Criminal Justice in Transitional Justice Schemes*, 49 VA. J. INT’L L. 915, 931 (2009) (citing RICHARD A. WILSON, *THE POLITICS OF TRUTH AND RECONCILIATION IN SOUTH AFRICA: LEGITIMIZING THE POST-APARTHEID STATE* 167–70 (2001) (indicating that, for many victims, pressing charges against their perpetrators is a critical step in the closure process); see also Van Hoeven, *supra* note 36, at 1128 (drawing an example from the case of Patrick Finucane, whose family was not satisfied by the knowledge of the circumstances of Patrick’s death alone).

State officials or soldiers.¹⁰⁵

Currently, the Legacy Act's amnesty provision sends a clear message that since the Good Friday Agreement, the United Kingdom has not considered taking a victim centered approach to peace, but has rather sought to cover up misdeeds.¹⁰⁶ Thus, indicating the United Kingdom does not and has not taken victims' human rights or human rights obligations seriously post Good Friday Agreement.¹⁰⁷ The Legacy Act will continue to perpetuate this sentiment through its amnesty provision if unchallenged.

Further, the Legacy Act's amnesty provision has potential to function like a blanket amnesty, allowing broad exemption from prosecution without having to satisfy preconditions.¹⁰⁸ Thus, although a person must satisfy three criteria, broadly, asking for immunity, telling the truth "to the best of the persons knowledge," and conveying information pertaining to crimes committed during the Troubles, the ICRIR has broad discretion to determine if these criteria are met.¹⁰⁹ Therefore, the ICRIR has the potential to grant amnesty to anyone, acting as a *de facto* amnesty.¹¹⁰ As legal measures that effectively

105. See Rep. of S.C., *supra* note 98 (indicating that transitional justice should include accountability mechanisms).

106. See Anna Bryson, *Good Friday Agreement: 25 Years on, the British Government is Seeking to Undo Key Terms of the Peace Deal*, THE CONVERSATION (Apr. 6, 2023), <https://theconversation.com/good-friday-agreement-25-years-on-the-british-government-is-seeking-to-undo-key-terms-of-the-peace-deal-203208> (noting that the Good Friday Agreement did center victims' needs and that the subsequent decades failed to deal effectively with Trouble-related offenses).

107. See Shawn Pogatchnik, *Victims 'Want' no Amnesty' for Troubles-era Killers, Irish tell UK*, POLITICO (May 17, 2022), <https://www.politico.eu/article/victims-want-no-amnesty-for-troubles-era-killers-irish-tell-uk> (highlighting the reluctance of the United Kingdom to investigate Trouble-related incidents, even after Irish government requests).

108. See RULE OF LAW TOOLS FOR POST CONFLICT STATES: AMNESTIES, *supra* note 31, at 8 (noting that "blanket amnesties" are rarely defined); see also Garth Meintjes & Juan E. Méndez, *Reconciling Amnesties with Universal Jurisdiction*, 2 INT'L L.F. D. INT'L 76, 84 (2000) (defining blanket amnesties as amnesties that apply across the board without requiring any application on the part of the beneficiary or an inquiry into the facts).

109. Northern Ireland Legacy Act, *supra* note 2, cl. 41.

110. See Press Release, Amnesty Int'l UK, Northern Ireland Legacy Bill: Victims' Rights Sacrificed to Shield Perpetrators (May 17, 2022) (highlighting the statement of Grannie Teggart, Campaigns Manager for Amnesty in Northern

foreclose prosecution, de facto amnesties do not explicitly rule out criminal prosecution or civil remedies, but in practice have the same effect as an explicit blanket amnesty.¹¹¹ Granting de facto amnesties historically leads to an increased abuse of human rights and a risk of regenerating violence in post-conflict States.¹¹² Furthermore, these types of amnesties have been severely criticized and prohibited under international law in many States.¹¹³ The Legacy Act's de jure conditional amnesty, in theory, has the potential to function as a de facto blanket amnesty because the conditions attached to immunity are so sparse they are in fact not real criteria at all.¹¹⁴

The Legacy Act's denial of accountability and justice through its immunity scheme labeled as promoting 'truth and reconciliation' has potential to reopen old wounds or reignite animosity between parties in Northern Ireland, the Republic of Ireland, and the United Kingdom.¹¹⁵ Granting amnesty disregards the role of accountability in maintaining long lasting peace and respecting human rights, and granting immunity to anyone responsible for grave human rights violations places them above the law.¹¹⁶ Ultimately, granting amnesties for grave international crimes can lead to denial of accountability and justice for victims and their families, and is often

Ireland, "Despite thinly veiled attempts to dress this up as something new, there is no real departure from the government's intention to legislate for a de facto amnesty.").

111. See RULE OF LAW TOOLS FOR POST CONFLICT STATES: AMNESTIES, *supra* note 31, at 8 (defining how de facto amnesties differ from de jure amnesties).

112. See Michael P. Scharf, *The Amnesty Exception to the Jurisdiction of the International Criminal Court*, 32 CORNELL INT'L L. J. 507, 512–13 (1999) (stating that Chile and El Salvador reported continued human rights abuses after implementing amnesty or de facto impunity).

113. See generally Naomi Roht-Arriaza & Lauren Gibson, *The Developing Jurisprudence on Amnesty*, 20 HUM. RTS. Q. 843, 844–61 (1998) (exploring domestic rulings on amnesties in Chile, El Salvador, Guatemala, Honduras, Peru, South Africa, Argentina, and Hungary).

114. See Northern Ireland Legacy Act, *supra* note 2, cl. 19(1)(c) (indicating an applicant need only come forth with information "to the best of their knowledge" to be granted immunity).

115. See Scharf, *supra* note 112, at 512–13 (stating that Chile and El Salvador reported continued human rights abuses after implementing amnesty or de facto impunity).

116. See Cadwallader, *supra* note 34 (condemning the Legacy Act for averting accountability).

impermissible under international law.¹¹⁷ The Legacy Act's amnesty provision replicates this type of amnesty.

B. COMPARISON OF LEGACY ACT'S AMNESTY PROVISIONS TO OTHER INTERNATIONAL AMNESTY LAW

Amnesty laws are commonly enacted to stabilize and promote democracy during transitional justice periods after conflict.¹¹⁸ As explained above, the self-amnesty enacted by Pinochet in Chile functioned as such amnesty.¹¹⁹ Pinochet justified the political self-amnesty as essential to stabilize Chile after authoritarian rule, and he further knew the amnesty would be unchallengeable at the domestic level.¹²⁰ It would be nearly impossible for the Chilean courts to overturn the self-amnesty, which provided protection to government and military personnel, without being punished or ousted by the very government that enacted the amnesty.¹²¹

The United Kingdom publicly disregarded the Chilean amnesty by arresting Pinochet, indicating to the rest of the world the amnesty had no legal impact at the international level.¹²² The United Kingdom's

117. See Kieran McEvoy & Louise Mallinder, *Amnesties in Transition: Punishment, Restoration, and the Governance of Mercy*, 39 J. L. & SOC'Y 410, 417–18 (2012) (discussing that critics posit that post-conflict transitional justice is synonymous with unaccountability); see also RULE OF LAW TOOLS FOR POST CONFLICT STATES: AMNESTIES, *supra* note 31, at 2, 11 (stating that amnesties are impermissible if they prevent prosecution of those responsible for war crimes, crimes against humanity, or gross violations of human rights; interfere with a victims' right to an effective remedy; or restrict a victim or societies' right to know the truth about violations of human rights or humanitarian law).

118. See Patrick Lenta, *Amnesties, Transitional Justice and the Rule of Law*, 15 HAGUE J. RULE L. 441, 455 (2023) (noting the wide use of amnesties in states with post-authoritarian regimes and arguing that amnesty laws may be permissible or necessary to end an authoritarian regime).

119. See Rebecca Evans, *Pinochet in London—Pinochet in Chile: International and Domestic Politics in Human Rights Policy*, 28 HUM. RTS. Q. 207, 216–19 (2006) (describing the evolution and political background of Chile's amnesty law).

120. Young, *supra* note 56, at 440–41 (describing Pinochet's self-amnesty acts in 1978 as an example of when governmental transitions are used to justify self-amnesty).

121. *Id.*

122. See LaPlante, *supra* 104, at 931 (citing Andreas O'Shea, *Pinochet and Beyond: The International Implications of Amnesty*, 16. S. AFR. J. HUM. RTS. 642, 643. (2000)) (discussing the impact of Pinochet's proceedings on the legalities of

actions also served as a catalyst for the reexamination of amnesties and the use of universal jurisdiction in international law under a human rights lens.¹²³ Furthermore, by extraditing Pinochet to Spain, the United Kingdom exemplified to the international community a willingness to disregard domestic amnesties for human rights abusers.¹²⁴

While the amnesty law in Chile was justified as necessary to create political stability, South Africa's amnesty law, the Truth and Reconciliation Act of 1995, focused on collecting facts or truth after apartheid.¹²⁵ The South African model was also justified on grounds of impracticality, high costs, and exponential time that would be spent on litigation, which would all hinder growth in the newly democratized country.¹²⁶ Notably, the South African model did allow victims to apply for reparations if they were believed to be victims of gross human rights violations, thus giving hope and agency to some victims.¹²⁷

The Legacy Act has similar characteristics to both the Chilean and South African amnesty laws.¹²⁸ Specifically, like Chile's self-amnesty law, applicable to military and political leaders' actions, the Legacy Act grants protections for British military and political leaders who committed crimes during the Troubles.¹²⁹ The Legacy Act covers all

national amnesties).

123. See Warren Hoge, *Britain's High Court Supports Move to Release Pinochet*, N.Y. TIMES (Feb. 1, 2000), <https://archive.nytimes.com/www.nytimes.com/library/world/americas/020100pinochet-extradite.html> (discussing the United Kingdom's handling of Pinochet's release).

124. See *id.* (explaining the precedent the United Kingdom set by not granting immunity for heads of state charged with crimes against humanity).

125. See Young, *supra* note 56, at 444 (stating that the South African model considered three conditions to receive amnesty: (1) whether the act was proportional to political objectives, (2) whether individuals disclosed facts fully, and (3) the nature of the atrocity).

126. See Emily H. McCarthy, *South Africa's Amnesty Process: A Viable Route Toward Truth and Reconciliation*, 3 MICH. J. RACE L. 183, 186–89 (1997) (explaining the practical justifications for the South African Truth Commission instead of a criminal tribunal).

127. See *id.* at 192, n. 49 (explaining that victims would not receive the same type of reparation as they would from a court).

128. *Infra* sec. III(B).

129. See Ministry of Defense, *Statement on the Introduction of the Northern Ireland Legacy Bill*, GOV.UK (May 18, 2022), <https://www.gov.uk/government/>

actors, but has been justified on the premise of protecting British military personnel, and this is evident since it was granted by the United Kingdom government for the protection of the United Kingdom government.¹³⁰ Further, the United Kingdom's justification for the Legacy Act's amnesty is comparable to South Africa's, since both amnesties were enacted to seek truth, and conditioned on voluntarily confessions to the government.¹³¹ In fact, the United Kingdom cited to the South African amnesty law during debates and drafting of the Legacy Act.¹³² Unlike the South African model's justification of precluding prosecution based on the high cost to a country trying to rebuild, the United Kingdom is an established country with enough resources to prosecute.¹³³ Furthermore, the Legacy Act does not have any mechanism for victims of gross human rights to ask the committee for reparations.¹³⁴

Additionally, unlike the South African model, which demands full disclosure of all relevant facts of an act associated with a political objective, the Legacy Act only requires relaying facts a person believes are true to the best of their knowledge.¹³⁵ Thus, requiring a lesser standard for disclosure of facts than the South African amnesty

news/statement-on-the-introduction-of-the-northern-ireland-legacy-bill (stating that the bill will give peace to veterans and former service personnel that have "lived in fear of prosecution" and will provide the veterans the protection they deserve).

130. See Freya McClements, *What is the Northern Ireland Troubles Legacy Bill?*, THE IRISH TIMES (Sept. 7, 2023), <https://www.irishtimes.com/politics/2023/09/06/northern-ireland-troubles-legacy-bill-what-it-means-for-victims-families> (explaining Parliament's rationale to end reinvestigations that did not serve veterans and the motivation for them is primarily for the protection of British soldiers and intelligence secrets).

131. See Promotion of National Unity and Reconciliation Act, No. 34 of 1995 § 3(1)(b) (S. Afr.).

132. See Clenaghan, *supra* note 5, at 23 (citing QUB/CAJ Model Bill Team, Model Bill Team Initial Response to Northern Ireland Troubles (Legacy and Reconciliation) Bill).

133. See Rory Carroll, *Ballymurphy Massacre: MoD to Pay Damages to Bereaved Relatives*, THE GUARDIAN (June 13, 2022), <https://www.theguardian.com/uk-news/2022/jun/13/ballymurphy-massacre-bereaved-to-receive-damages-from-mod-belfast-northern-ireland> (showing the ability of the United Kingdom's legal system to provide damages for Trouble related deaths).

134. See Northern Ireland Legacy Act, *supra* note 2, cl. 16 (indicating that the only type of reparation victims or families will receive is a final report of the ICIR's findings).

135. Promotion of National Unity and Reconciliation Act, § 19.

law.¹³⁶ Therefore, even though the South African Truth Commission was seen mostly as a success, the Legacy Act should not be held in such regard.¹³⁷ The Legacy Act should be held to be incompatible with the United Kingdom's human rights obligations, like in the case of Pinochet's self-amnesty. Regional human rights courts have also considered the legality of amnesty laws within the last few decades, and some of those findings, discussed next are compared to and could be applicable to the Legacy Act.

C. AMNESTY CASES FROM THE INTER-AMERICAN COURT OF HUMAN RIGHTS AND IMPACT ON THE LEGACY ACT

Unlike the European Court of Human Rights, the Inter-American Court of Human Rights has directly ruled and condemned the use of amnesties in furtherance of the peace process.¹³⁸ The consensus from the Inter-American Court is, "case law has maintained that amnesties for gross human rights abuses are incompatible with Inter-American human rights law, especially a State's international obligation to investigate, prosecute, and punish."¹³⁹ Although the Inter-American Court is not binding on the European Court of Human Rights, it may be used as persuasive authority in this less developed area of law; however, there are differences in each court's approach that must be considered.¹⁴⁰ Further, "cross-references [between human rights

136. See *id.* § 20 (requiring an amnesty applicant to prove the disclosed act was politically motivated, was committed during the past, and disclosed all relevant facts, and furthermore, any person convicted of a crime or awaiting trial will have their proceedings voided once they come forth with information).

137. See generally Hamber, *supra* note 63, at 1078 (explaining although the South African model was not without flaws, it was viewed largely as successful).

138. See *Barrios Altos v. Peru*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 75, ¶ 44 (Mar. 14, 2001) (considering all amnesty provisions inadmissible because they intend to prevent investigation and punishment for serious human rights abuses).

139. See Pérez-León-Acevedo, *supra* note 67, at 1111 (citing Jorge Contesse, *Resisting the Inter-American Human Rights System*, 44 YALE J. INT'L L. 179 (2019)).

140. See Andreas Follesdal, *Exporting the Margin of Appreciation: Lessons for the Inter-American Court of Human Rights*, 15 INT'L J. CONST. L. 359, 359–71 (2017) (arguing the Inter-American Court would benefit from adoption of the margin of appreciation doctrine and noting the Inter-American Court does not adhere to the margin of appreciation doctrine, granting states more discretion, like the European Court of Human Rights does).

courts] are most likely to be made in those instances in which a Court goes beyond its prior jurisprudence.”¹⁴¹ Therefore, because the Inter-American Court of Human Rights has explicitly ruled on the legality of amnesty laws, the European Court on Human Rights can legitimately look to the Inter-American Court’s jurisprudence to guide its decision on the Republic of Ireland’s challenge to the Legacy Act’s amnesty provision.¹⁴² A ruling by the European Court holding the Legacy Act is inconsistent with the United Kingdom’s human rights obligations would have a heavy impact on future peace agreements across the world.

D. LEGACY ACT VIOLATES GOOD FRIDAY AGREEMENT AND THE EUROPEAN CONVENTION ON HUMAN RIGHTS

The Good Friday Agreement incorporated the Human Rights Act of 1998 into Northern Ireland’s law.¹⁴³ Therefore, the United Kingdom has a duty to uphold and promote all human right guarantees in the 1998 Act, both in the United Kingdom and in Northern Ireland.¹⁴⁴ Article 2, the right to life, and Article 3, prohibition of torture, of the 1998 Act mirrors Article 2 and Article 3 of the European Convention on Human Rights.¹⁴⁵ Further, through the 1998 Act, the United Kingdom must ensure all legislation subsequently passed into law is in line with these human rights obligations.¹⁴⁶ The Legacy Act contrasts with the United Kingdom’s obligation under Article 2 and Article 3 because it does not require the United Kingdom to take effective investigation measures.¹⁴⁷ Thus, placing the United Kingdom

141. *Dialogue Between Regional Human Rights Courts*, *supra* note 68, at 181.

142. *See* Margaš v. Croatia, App. No. 4455/10 ¶ 64 (Eur. Ct. H.R. Nov. 13, 2012) (citing to the Inter-American case of *Gelman v. Uruguay*, case 438-06, Report No. 30/07, Inter-Am. C.H.R., OEA/Ser.L/V/II.13 Doc. 22, rev. 1 (2007)); Press Release, ECtHR, New Inter-State Application Brought by Ireland Against the United Kingdom, ECHR 014 (2024) (Jan. 19, 2024), <https://hudoc.echr.coe.int/eng-press?i=003-7854820-10910604> (describing Ireland’s argument against the United Kingdom).

143. Human Rights Act 1998, *supra* note 27.

144. *Id.*

145. *Id.* §§ 2–3; ECHR, *supra* note 51, art. 2–3.

146. *See* Human Rights Act 1998, *supra* note 27, §§ 3–4 (stating the 1998 Act allows persons to take grievances to domestic courts and requires Parliament to make sure new laws are compatible with the European Convention on Human Rights).

147. *See* Clenaghan, *supra* note 5, at 26–27 (arguing the Legacy Bill violates

in violation of not only their domestic human rights laws, but also the European Convention on Human Rights. To date, the European Court on Human Rights has addressed amnesties under Article 2 and Article 3, but has not outlawed them outright.¹⁴⁸

In a 1991 case, *Dujardin v. France*, the European Court of Human Rights held States could justify an amnesty law, but only after exploring a balancing test between State interest in enacting the amnesty, and an individual's interest in their right to life.¹⁴⁹ Thus, the Court neither prohibited nor allowed the amnesty laws, but rather required taking a holistic balancing approach. This was also the approach taken in *Tarbuk v. Croatia*, where the European Court determined, like in *Dujardin*, a balancing test of State and personal interests must be invoked when examining an amnesty law's viability under the European Convention on Human Rights.¹⁵⁰

The European Court then decided the case *Ould Dah v. France* and declared a Member State's duty to investigate is generally in contrast to such amnesty laws.¹⁵¹ The Court further emphasized the importance of the duty to prosecute under international law for grave crimes of international nature.¹⁵² Likewise, in *Marguš v. Croatia*, the European Court held that the international community in general, viewing amnesties as incompatible with a State's obligation to punish grave human rights abuses.¹⁵³ *Marguš* and *Ould Dah* are cases that exemplify the awareness of the European Court of Human Rights on the question of whether amnesties are in conflict with a State's human rights obligations.¹⁵⁴ Therefore, the four cases in the European Court of Human Rights effectively show how amnesties at the domestic level are becoming increasingly incompatible with State obligations under Article 2 and 3 of the European Court on Human Rights.

Article 2 and Article 3 of the European Convention on Human Rights).

148. *Dujardin v. France*, App. No. 16734/90, 240, 244 (Eur. Ct. H.R. Sept. 2, 1991); *Ould Dah v. France*, App. No. 13113/03, 1, 17 (Eur. Ct. H.R. Mar. 17, 2009); *Marguš v. Croatia*, App. No. 4455/10, ¶ 64 (Eur. Ct. H.R. Nov. 13, 2012).

149. *Dujardin*, App. No. 16734/90, at 244.

150. *Tarbuk*, App. No. 31360/10, ¶ 50.

151. *Ould Dah*, App. No. 13113/03, at 17.

152. *Id.*

153. *Marguš*, App. No. 4455/10, ¶ 64.

154. *Id.*

Precisely, the European Court of Human Rights jurisprudence suggests a balancing test to consider the State's interests and the interest of the individual members of the public.¹⁵⁵ Additionally, the Court considers the modern trend in invalidating amnesties because they are incompatible with the State's obligation to punish crimes of grave nature.¹⁵⁶ Thus, both a balancing test and an invalidation of amnesties for grave crimes is the current consensus in the European Court of Human Rights.¹⁵⁷ Therefore, leaving European Member States without a clear answer as to if amnesty laws are permitted under the European Convention on Human Rights.

In the case lodged by the Republic of Ireland, or a potential individual case in the European Court of Human Rights against the United Kingdom, *Marguš* and *Ould Dah* would provide support legal claims that the Legacy Act is incompatible with the United Kingdom's obligations.¹⁵⁸ Both cases declare amnesties are incompatible with a State's obligation to prosecute international crimes or grave breaches.¹⁵⁹ The amnesty provided by the Legacy Act directly hinders the prosecution of perpetrators of international crimes or grave breaches committed during The Troubles, and put the United Kingdom in violation of their human rights obligations.

The United Kingdom would likely rely on *Tarbuk* or *Dujardin* to counter argue that the State's interest to uncover the truth regarding Trouble related offenses outweighs the interests of individual member of public.¹⁶⁰ Most likely the United Kingdom's argument would point to the backlog of cases left over from The Troubles and would further argue the amnesty law would obtain and disseminate more information in a shorter period of time than pursuing more

155. See *Tarbuk*, App. No. 31360/10, ¶ 50 (citing to *Dujardin v. France*, App. No. 16734/90 (Eur. Ct. H.R. Sept. 2, 1991)).

156. *Ould Dah*, App. No. 13113/03, at 17; *Marguš*, App. No. 4455/10, ¶ 64.

157. *Dujardin*, App. No. 16734/90, at 244; *Ould Dah*, App. No. 13113/03, at 17; *Tarbuk*, App. No. 31360/10, ¶ 64; *Marguš*, App. No. 4455/10, ¶ 64.

158. *Marguš*, App. No. 4455/10, ¶ 64; *Ould Dah*, App. No. 13113/03, at 17.

159. See *Ould Dah*, App. No. 13113/03, at 17 (“[O]bligations to prosecute criminals should not therefore be undermined by granting impunity to the perpetrator in the form of an amnesty, a law that may be considered contrary to international law.”).

160. *Dujardin*, App. No. 16734/90, at 244; *Tarbuk*, App. No. 31360/10, ¶¶ 45, 48, 50.

prosecutions would.¹⁶¹ In conjunction with the European Court on Human Rights, United Nations treaties, such as the Convention Against Torture, impose obligations on Member States directly related to amnesty laws.

E. LEGACY ACT'S AMNESTY PROVISION VIOLATES THE CONVENTION AGAINST TORTURE

The United Kingdom and Republic of Ireland both signed and ratified UNCAT, thus binding themselves to its obligations.¹⁶² The Legacy Act is in violation of Article 4 of UNCAT, which states, "Each party shall ensure that acts of torture are offenses under its criminal law, and should make these offences punishable by appropriate penalties which take into account their grave nature."¹⁶³ The Legacy Act's amnesty provision blocks legal redress for torturous acts or other inhumane and degrading treatment and would preclude such acts as offences under criminal law.¹⁶⁴

The Legacy Act is also in violation of Article 14(1), which holds, "parties must ensure victims of an act of torture obtain redress and has an enforceable right to fair and adequate compensation and in the event of the death of victims as a result of an act of torture, his dependents shall be entitled to compensation."¹⁶⁵ The Legacy Act's amnesty provision bars redress or compensation to victims and their families, many of whom were victims of what would be considered torture.¹⁶⁶ Therefore, the Act violates the United Kingdom's obligation under Article 14 to ensure adequate remedies in the form of

161. See Julian O'Neill, *PSNI Chief 'Surprised' at Troubles Proposals*, BBC (Sept. 2, 2020), <https://www.bbc.com/news/uk-northern-ireland-54000436> (noting in 2020, the Police Service of Northern Ireland spent about 15 million pounds on Trouble related investigations, is looking into 200 historical murders, and estimate it would take over 20 years to investigate all legacy cases).

162. *Ratification Status for United Kingdom of Great Britain and Northern Ireland*, *supra* note 85; *Ratification Status for Ireland*, *supra* note 85.

163. Convention Against Torture, *supra* note 86, art. 4.

164. For example, murder during the Troubles would not be litigated or punished like a murder that happened outside of The Troubles period because the act is blocked by the amnesty provision under the Legacy Act. See Northern Ireland Legacy Act, *supra* note 2 (defining acts which can receive immunity broadly).

165. Convention Against Torture, *supra* note 86, art.14(1).

166. See Northern Ireland Legacy Act, *supra* note 2 (including no language which gives victims the choice to receive compensation or redress).

compensation from a court of law.¹⁶⁷ The Legacy Act provides only truth reports to victims and victims' families, not direct compensation or other legal redress.¹⁶⁸ Not only is the United Kingdom in violation of their international human rights obligations, but are potentially in violation of their obligations under international humanitarian law.

F. LEGACY ACT'S AMNESTY VIOLATES HUMANITARIAN LAW

Granting amnesties for grave breaches under the Geneva Conventions is counter to the very values the Geneva Conventions were created to foster; accountability and rule of law during war.¹⁶⁹ Amnesties for grave breaches under the Geneva Conventions would be unlawful because a "blanket non-prosecution policy" runs counter to the essential core of the Geneva Conventions: to redress grave breaches.¹⁷⁰ Many unsolved crimes committed during The Troubles could be labeled grave breaches under the Geneva Conventions because of the nature of the crime, the impact, and targeting of civilians.¹⁷¹ Civilians, as protected people under the Geneva Conventions, cannot be targeted or killed, but during The Troubles, civilians made up the largest percentage of persons killed or injured.¹⁷²

167. See Convention Against Torture, *supra* note 86, art. 4, 14 (placing an obligation on State Parties to implement adequate forms of compensation through the rule of law).

168. See Northern Ireland Legacy Act, *supra* note 2, cl. 17 (showing the Legacy Act does not provide direct compensation or other legal redress to victims or their families).

169. See generally Campbell, *supra* note 93, at 632 (indicating the Geneva Conventions were created to hold states accountable during war).

170. *Id.* (noting the 1977 Protocol II art. 6(5) does not call for states to grant the broadest possible amnesty at the end of hostilities. Instead, this provision only refers to offenses where amnesty was possible – not to the most serious breaches. Also, the immunity corresponds to those who would have "combat immunity" in international armed conflicts, not everyone); see also McEvoy & Mallinder, *supra* note 117 at 418 (discussing amnesty laws and international humanitarian laws).

171. Parties to a conflict must always distinguish between civilians and combatants because civilians have special protections under IHL. See *What is IHL?*, INT'L COMM. OF THE RED CROSS (Sept. 18, 2015), <https://www.icrc.org/en/document/what-ihl>; see also Geneva Convention IV, *supra* note 90, art. 148 (defining grave breaches under the Geneva Convention include willful killing, willfully causing great suffering or serious injury to body or health, and destruction of property).

172. See *Fact Sheet on the Conflict In and About Northern Ireland*, CAIN ARCHIVES (June 21, 2007), https://cain.ulster.ac.uk/victims/docs/group/htr/day_

Further, the crimes committed during The Troubles included grave breaches, such as willful killing, torture, willfully causing great suffering, and extensive destruction of property, which were not justified by military necessity.¹⁷³ Thus, as parties to an armed conflict, the actors in The Troubles are bound to abide by the Geneva Convention and refrain from committing grave breaches.

Further, under the United Nations Principles to Combat Impunity, adopted in 2005, “states shall . . . take appropriate measures in respect of the perpetrators, particularly in the area of criminal justice, by ensuring that those responsible for serious crimes under international law are prosecuted, tried and duly punished.”¹⁷⁴ The Legacy Act’s very purpose, to grant amnesty to serious crimes, is in contrast with the notion set out by the principles of ensuring prosecution for international crimes.¹⁷⁵

In addition, Additional Protocol I to the Geneva Conventions requires State Parties to impose effective penal sanctions for persons committing or ordering to be committed any grave breach of the Geneva Conventions.¹⁷⁶ The Legacy Act’s amnesty provision’s entire purpose is to eliminate penal sanctions for anyone who comes forth with information about crimes, many of which constitute grave breaches, like willful killing; therefore, violating the United Kingdom’s obligations under Protocol I to impose penal sanctions.¹⁷⁷

Conversely, Protocol II, encourages States to enact “the broadest possible amnesty” at the end of casualties, but the International Committee of the Red Cross, adopted by State Parties to the Geneva Conventions, indicates granting amnesties are not permissible if they

of_reflection/htr_0607c.pdf (stating as of 1998, 54% of the Trouble related deaths were civilians and 68% of those injured were civilians).

173. See *What is IHL?*, *supra* note 171 (defining military necessity as permitting violent acts during armed conflict but “only that degree and kind of force required to achieve a legitimate purpose of a conflict . . .”).

174. United Nations Comm’n on Hum. Rts., 61st Sess., *Report of the Independent Expert to Update the Set of Principles to Combat Impunity*, principle 19, E/CN.4/2005/102/Add.1 (Feb. 8, 2005).

175. See Northern Ireland Legacy Act, *supra* note 2, cl. 1(5)–(7) (explaining the acts protected by immunity include murder, manslaughter, culpable homicide, or any other offense causing death).

176. See Protocol I, *supra* note 91, art. 86.

177. See Northern Ireland Legacy Act, *supra* note 2, cl. 1(5)–(7).

bar investigation or prosecution.¹⁷⁸ As mentioned earlier, the classification of The Troubles as either a non-international armed conflict or international armed conflict would determine which Protocol is guiding.¹⁷⁹

Because of the Legacy Act's infancy and the fact that no person has been granted amnesty under the law yet, it is hard to precisely predict the number of amnesties that will be granted and in what context. But, given the clear purpose of the Legacy Act set forth earlier in this Comment, and the low threshold for granting such amnesties, it is reasonable to conclude that nearly every person seeking an amnesty will be granted one, thus leaving victims without a legal remedy.¹⁸⁰

Overall, the United Kingdom's Legacy Act amnesty provision violates the European Convention on Human Rights, the Good Friday Agreement, the Convention Against Torture, and potentially the Geneva Conventions. Additionally, granting amnesties to perpetrators of international crimes evades prosecutorial accountability, which is important to the peace process.¹⁸¹ Jurisprudence from the Inter-American Court indicate amnesty laws enacted post-conflict are in contrast with a State's obligation and duty to prosecute under international human rights law.¹⁸² In the case between Ireland and the United Kingdom, the European Court of Human Rights should look to the Inter-American Court for guidance to determine when an enacted amnesty places a State in violation of its human rights and humanitarian law obligations. Next, this Comment discusses the potential outcome in the case between the Republic of Ireland against

178. See Protocol II, *supra* note 92, art. 6(5); see also *Amnesties and International Humanitarian Law: Purpose and Scope*, 101 INT'L R. RED CROSS 357, 359–60 (2019).

179. See *supra*, section II(f).

180. *Contra Truth Commission: South Africa*, U.S. INST. OF PEACE (Dec. 1, 1995), <https://www.usip.org/publications/1995/12/truth-commission-south-africa> (indicating the South African Truth and Reconciliation Commission received more than 7,000 amnesty applications, but only granted 849).

181. See WILLIAMS & SCHARF, *supra* note 52 at 33 (stating successful transitional justice approaches post-conflict usually include a mix of accountability, accommodation, economic inducements, and use of force, but must take conflict into consideration).

182. See LaPlante, *supra* note 104, at 939–42 (explaining international bodies, like the Inter-American court have gradually seen amnesties as contrary to basic human rights principles).

the United Kingdom in the European Court of Human Rights.¹⁸³ It will further suggest that an individual victim of Trouble related violence should also lodge a case against the United Kingdom, or alternatively, that the Legacy Act is amended to exclude the amnesty clause so that the United Kingdom may align themselves with their international obligations.¹⁸⁴

IV. RECOMMENDATIONS

A. DECISION BETWEEN *IRELAND V. UNITED KINGDOM* IN THE EUROPEAN COURT OF HUMAN RIGHTS

The Republic of Ireland lodged a case in the European Court of Human Rights against the United Kingdom in December 2023 arguing violations of the right to life, prohibition of torture and inhumane or degrading treatment, right to fair trial, right to an effective remedy, and prohibition of discrimination.¹⁸⁵ This is the Republic of Ireland's second case against the United Kingdom relating to The Troubles under Article 3.¹⁸⁶ Ireland is authorized to bring an inter-State complaint under Article 33 of the European Convention on Human Rights.¹⁸⁷ Although most complaints are filed by individuals, inter-State complaints have seen an increase in this Court in recent years.¹⁸⁸ Further, the jurisdiction of the European Court in inter-State cases is

183. See *infra* Part VI.

184. *Id.*

185. See European Court of Human Rights Report, *supra* note 142 (explaining Ireland claims violations under Articles 2, 3, 6, 13, and 14); see also Press Release, Department of Foreign Affairs, Statement by the Tánaiste, Micheál Martin, on the Government Decision to Initiate An Inter-State Case Against the United Kingdom (Dec. 20, 2023), <https://www.gov.ie/en/press-release/82232-statement-by-the-tanaiste-micheal-martin-on-the-government-decision-to-initiate-an-inter-state-case-against-the-united-kingdom/> (supporting the stated proposition).

186. See *Ireland v. United Kingdom* App. No. 5310/71 ¶ 150 (Eur. Ct. H.R. Jan. 18, 1978).

187. See ECHR, *supra* note 51, art. 45 (permitting states to lodge inter-State cases); but see Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Restructuring the Control Machinery established thereby, E.T.S. 155, 2061 A-2889 U.N.T.S. 7, art. 33 (1994) (moving the inter-State complaints in the European Convention to Article 33).

188. See EUR. CT. OF HUM. RTS., Q & A ON INTER-STATE CASES (Jan. 2024) (noting since 1953, the Court has heard 30 inter-State cases and currently has 14 cases pending).

compulsory, and in this case, the exhaustion of domestic remedies is likely to be deemed ineffective, thus, the case will pass the admissibility stage.¹⁸⁹ If the case passes the admissibility stage, then the Court will rule on its merits.¹⁹⁰ In the merits stage, by using previous amnesty cases in the European Court of Human Rights and relying on the Inter-American Court on Human Rights as persuasive authority, the European Court may likely find the Legacy Act's amnesty provisions are a violation of the European Convention on Human Rights.¹⁹¹ A ruling like this will create precedent in prohibiting amnesties during the peace process and will have far reaching impacts on how peace agreements are drafted in the future. There is no indication when the Court may make a ruling on the case and given the European Courts large backlog, it may be months or years.

B. INDIVIDUALS VERSUS THE UNITED KINGDOM IN THE EUROPEAN COURT OF HUMAN RIGHTS

Besides bringing an interstate case, individuals, either direct victims or victims' families, should lodge cases in the European Court of Human Rights. To make an individual complaint, two criteria must be satisfied; (1) the person must fall into the category of petitioner under article 34, and (2) they must be able to show that they are a victim of a violation of the Convention.¹⁹² Victims or victims' families should

189. See Geir Ulfstein & Isabella Risini, *Inter-State Applications under the European Convention on Human Rights: Strengths and Challenges*, EJIL:TALK! (Jan. 24, 2020), <https://www.ejiltalk.org/inter-state-applications-under-the-european-convention-on-human-rights-strengths-and-challenges> (noting even with the exhaustion requirement, all inter-State cases before the Court have passed the admissibility stage and most often accept the case based on the fact a domestic remedy would not be effective).

190. See EUR. CT. OF HUM. RTS., *THE ECHR IN 50 QUESTIONS 7* (2021) (stating an application before the European Court of Human Rights must first be deemed admissible before the Court decides on the merits of the case).

191. See generally Pérez-León-Acevedo, *supra* note 67, at 1109, 1112–13 (highlighting and analyzing the Inter-American Court of Human Rights and European Court of Human Rights jurisprudence on amnesty laws).

192. See ECHR, *supra* note 51, art. 34 (stating a petitioner must be a person, non-governmental organization or group of individuals claiming to be the victim); see also *Vallianatos et al. v. Greece*, App. Nos. 29381/09 & 32684/09, ¶ 47 (Eur. Ct. H.R. Nov. 7, 2013) (defining the term “victim” in the context of admissibility in European Court of Human Rights and setting the two criteria).

rely on the same argument the Republic of Ireland would in its case; that the jurisprudence from past amnesty cases supports the notion the United Kingdom is in violation of their human rights obligations by enacting the Legacy Act.¹⁹³ Like inter-State cases, there is a domestic remedy exhaustion admissibility requirement for individuals, but there are many exceptions.¹⁹⁴ Furthermore, individual cases lodged in the Court will strengthen precedent prohibiting amnesties and show a shift in international law towards prohibition of amnesties in peace agreements when such amnesties prohibit investigation and redress.

C. THE UNITED KINGDOM SHOULD AMEND THE LEGACY ACT

Lastly, the United Kingdom should amend the Legacy Act to exclude the amnesty provision or place further safeguards to protect the victim. During the legislative process, the House of Lords suggested a version of the Legacy Act with the amnesty provision taken out, thus ensuring the victims and survivors were empowered to seek justice for the harms they endured.¹⁹⁵ If a complete ban on the amnesty is not feasible, a version of the Legacy Act or an amendment which only grants immunity to perpetrators if the victims or victims' families give consent to the immunity would be favorable.¹⁹⁶ Alternatively, an act implementing amnesties could be used, but it should require rehabilitation, apology to victims and their families, or a full-fledged investigation as to whether what immunity holders told was true or not.¹⁹⁷ These last two approaches still use an amnesty to prevent prosecution, while at the same time giving victims and their

193. See *Ould Dah v. France*, App. No. 13113/03, 17 (Eur. Ct. H.R. Mar. 17, 2009); see also *Marguš v. Croatia*, App. No. 4455/10 ¶ 64 (Eur. Ct. H.R. Nov. 13, 2012) (supporting the stated proposition).

194. See *Practical Guide on Admissibility Criteria*, EUR. CT. HUM. RTS, ¶¶ 150, 154–61 (Aug. 31, 2023), https://www.echr.coe.int/documents/d/echr/admissibility_guide_eng (noting exceptions to exhausting domestic remedies when a domestic remedy is non-existent, the procedure is unduly delayed, the procedure is unfair or not impartial, or the available remedy cannot redress the violation).

195. See Northern Ireland Legacy Act, *supra* note 2 (indicating the House of Lords considered an alternative to the amnesty provision while legislating).

196. See *id.* (noting this amendment regarding victim consent to immunity was proposed while debating and drafting the Legacy Bill).

197. See McEvoy & Mallinder, *supra* note 117, at 427–34 (indicating these factors, among others, are critical components when considering transitional justice).

families the ability to choose to litigate if they wish.

V. CONCLUSION

The Northern Ireland Troubles (Legacy and Reconciliation) Act of 2023 violates the United Kingdom's obligations under international law because granting amnesties in peace agreements, while historically legal, has gradually shifted and is now prohibited under current international human rights law and international humanitarian law. The Legacy Act is not in line with the United Kingdom's human rights obligations under the European Convention on Human Rights, specifically Article 2, the right to life, and Article 3, the prohibition on torture. Nor does the United Kingdom's Legacy Act comply with the State's duty to investigate and prosecute grave breaches under the Geneva Conventions. Furthermore, the amnesty provision in the Legacy Act disregards victims and their needs for closure and justice, effectively circumventing an important pillar of justice in post-conflict States. For these reasons, the European Court of Human Rights should rule in favor of the Republic of Ireland in the case brought against the United Kingdom. Further, the European Court of Human Rights may legitimately rely on the jurisprudence from the Inter-American court, which shows an emerging norm of striking down amnesty laws for being incompatible with a State's international human rights obligations. A decision like this from the European Court will have a far reaching impact on the future of amnesty laws in peace agreements, and serve as a guiding post for future State practice during the peace process.

* * *