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**Geopolitical Power Asymmetries and Transitional Justice in Ongoing Conflicts:
A Comparative Study of Ukraine and Gaza**

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Abstract

Transitional Justice has historically focused on political transitions from authoritarian rule to democracy and on conflict settings where hostilities have ceased. In recent years however, the paradigm of transitional justice with a backward-looking approach has come under increasing scrutiny. Scholars have expanded its scope to contexts of consolidated democracies and ongoing violent conflicts. Despite the outstanding impact of power dynamics for the implementation and effectiveness of transitional justice mechanisms in ongoing conflicts, the tension between law and politics, which places transitional justice under cross pressures is often overlooked. This thesis asks in what extend transitional justice in the ongoing conflicts of Ukraine and Gaza is shaped by these power dynamics.

Taking the critiques of international criminal law and transitional justice into consideration, the thesis adopts a comparative approach structured around three key variables: legal accountability, geopolitical and diplomatic support and narrative framing. The analysis draws on domestic and international legal and policy documentation from international organizations, states and political statements.

The outcomes indicate that while both conflict settings have experienced approaches to transitional justice, the implementation and effectiveness remain unbalanced and are frequently limited by the politicisation of certain transitional justice measures. Gaza continues to be marginalized and to face political obstacles, while Ukraine enjoys a broad geopolitical and material support.

Table of Content

CHAPTER 1. INTRODUCTION	1
1.1 RESEARCH BACKGROUND	1
1.2. RESEARCH PURPOSE AND RESEARCH QUESTIONS	4
CHAPTER 2. THEORETICAL FRAMEWORK	7
2.1. THE CONCEPT OF TRANSITIONAL JUSTICE	7
2.2. THE CONCEPT OF INTERNATIONAL CRIMINAL LAW	10
2.3. ICL AND TJ: RETRIBUTIVE VS. RESTORATIVE JUSTICE	12
CHAPTER 3. CRITIQUES OF INTERNATIONAL CRIMINAL LAW AND TRANSITIONAL JUSTICE	13
3.1. SELECTIVITY, POLITICAL BIAS AND DOUBLE STANDARDS	13
CHAPTER 4. TRANSITIONAL JUSTICE IN ONGOING CONFLICTS	19
4.1. TJ MECHANISMS IN ONGOING CONFLICTS	19
4.2. ADVANTAGES AND CHALLENGES OF TJ ADMITS CONFLICT	20
4.2.1 ADVANTAGES	20
4.2.2. CHALLENGES	22
4.2.3. CONCLUSION	24
CHAPTER 5. WITHIN-CASE ANALYSIS OF GAZA AND UKRAINE	24
5.1. UKRAINE	25
5.1.1 HISTORICAL CONTEXTUALIZATION	25
5.1.2. ANALYSIS OF DEPENDENT VARIABLES	26
5.2. GAZA STRIP	30
5.2.1. HISTORICAL CONTEXTUALIZATION	30
5.2.2. ANALYSIS OF DEPENDENT VARIABLES	31
6.1. LEGAL ACCOUNTABILITY	36
6.2 GEOPOLITICAL AND DIPLOMATIC SUPPORT	38
6.3. NARRATIVE FRAMING	40
6.4. EXPLAINING DIVERGENCE	41
6.5. EVALUATION OF CRITICAL APPROACHES	43
6.5.1. SELECTIVITY, POLITICAL BIAS AND DOUBLE STANDARDS	43
6.5.2. TWAIL AND POSTCOLONIAL CRITIQUES OF ICL AND TJ	46
6.6. ANSWERING RESEARCH QUESTIONS	48
CHAPTER 7. CONCLUSION	50

CHAPTER 1. Introduction

The concept of transitional justice (TJ) first emerged out of attempts to provide theoretical meaning to the conception of justice adopted as part of broader processes of political change in Latin America, Eastern Europe, the former Soviet Union and Africa. It refers to the view of justice associated with ad-hoc accountability policies to confront the wrongdoings of repressive predecessor regimes with the aim of establishing a lasting and stable state of peace and contributing to reconciliation in a given society.¹ Traditionally, TJ is applied in post-conflict settings, where hostilities and violence have already ceased and a transition process from authoritarianism or conflict to peace and democracy is pending.² However, in recent years a trend toward TJ interventions in ongoing conflicts has been noted. The establishment of the International Criminal Court (ICC) in 2002 and the increasing involvement of the International Court of Justice (ICJ) in active warfare signify a new era where legal accountability is pursued while bombs are still falling. Additionally, current conflict settings, such as Gaza or Ukraine, demonstrate arising demands for TJ processes already during ongoing conflicts, which must include truth-telling about the violations endured and the roots of the conflict, criminal accountability, reparations, memorialization and robust guarantees of non-repetition.³ As a result state and non-state actors more often employ TJ mechanisms while hostilities still take place.⁴ This paradigm shift to real time justice challenges the usual framework of TJ that entails dealing with the past. Consequently, new questions arise as to how can TJ mechanisms be applied in ongoing conflicts and how the implementation is affected by the role of prevailing power structures. These questions encompass the core of what this thesis seeks to understand.

1.1 Research Background

In many parts of the world armed conflicts accompanied by massive violations and abuses of international humanitarian law and international human rights law grind on. In the cases of Gaza and Ukraine, the UN declared that war crimes, crimes against humanity and genocide have taken place.⁵ According to the Lancet Global Health research more than 75.000

¹ Teitel, R.G.: *Transitional Justice* (2000) p. 3; Engstrom, P.: *Transitional Justice and Ongoing Conflict*, (2012) pp. 4-18.

² E.g. in South Africa, Kenya, Argentina, Chile, Algeria, Iraq, the former Yugoslavia.

³ United Nations Special Procedures, *Gaza: Peace demands justice, accountability and dignity says UN expert* 15.10.2025 <https://www.ohchr.org/en/press-releases/2025/10/gaza-peace-demands-justice-accountability-and-dignity-says-un-expert> accessed: 19.05.2026; International Center for Transitional Justice: *Myths and Ways Forward: Transitional Justice for Ukraine* 13.05.2026 https://www.ictj.org/sites/default/files/2026-05/ICTJ_Report_Ukraine_TJ-Myth-Ways-Forward.pdf accessed: 19.05.2026.

⁴ e.g. international judicial interventions by the ICC, reports and investigations by human rights organizations about alleged war crimes.

⁵ A/HRC/60/CRP.3; A/78/540.

Palestinians were killed between October 7th, 2023 and January 5th, 2025.⁶ Thousands more are injured or forcibly displaced. Starvation, the destruction of homes, hospitals and infrastructure and the use of systematic torture have become a defining instrument of the ongoing genocide.⁷ In Ukraine violence against civilians, including sexual violence, air strikes outside the militarized zone or forcible transfers and deportations of civilians have marked Russia's aggression.⁸ Yet, both conflicts are far from resolved and human rights atrocities have become endemic. Hence, several questions arise as to what can be done in these circumstances to subside the conflict or at least to reduce violence and human rights abuses. One approach to address the injustices committed, to ensure that victims find some measure in their suffering and to contribute to reconciliation is the field of TJ. As mentioned before, in the cases of Gaza and Ukraine a composition of judicial and non-judicial TJ mechanisms is already implemented, although there has been no transition from conflict. Taking therefore the expansion of scope and ambition of the field into account new questions and tensions arise. First, it is unclear whether TJ can be effectively and legitimately implemented under conditions of ongoing violence. And secondly, the application of TJ in ongoing conflicts exacerbates existing tensions in the field of TJ and international (criminal) law.⁹ If the implementation of TJ mechanisms will be effective or not will depend to substantial extent on the needs of the affected communities and whether the respective mechanisms function in order to reduce violence and human rights abuses. The aim must be to allow societies to reconcile with (past) atrocities and thereby to address the grievances. Additionally, the achievement of the objectives of deterrence, victim recognition and the prevention of conflict resumptions serve as indicators to determine the effectiveness. Another way to measure effectiveness is to examine whether TJ has a transformative impact, which can be confirmed if the applied TJ mechanisms lay essential

⁶ The Lancet Global Health, 2026; 14, e552-e559.

⁷ Pursuant to the Genocide Convention, art. II and the Rome Statute, art. 6, genocide is committed when one or more of the following five categories of underlying acts are committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group. These acts are: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group. A number of leading rights organizations and genocide scholars have declared that Israel's war on Gaza meets this legal definition of genocide. See on this *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Human Rights Council: A/HRC/60/CRP.3; Human Rights Watch: Extermination and Acts of Genocide – Israel Deliberately Depriving Palestinians in Gaza of Water; B'Tselem: *Our Genocide* https://www.btselem.org/publications/202507_our_genocide accessed: 04.05.2026; Nader, E.: *Israel committing genocide in Gaza, world's leading experts say* (2025) <https://www.bbc.com/news/articles/cde3eyzdr63o> accessed: 04.05.2026.

⁸ <https://www.amnesty.org/en/projects/russias-aggression-in-ukraine/> accessed: 05.04.2026.

⁹ The debates about peace vs. justice; the distinction between restorative and retributive justice and power asymmetries and selective application of international justice will be further expounded.

foundational work for the future and make later implementation more likely or easier.¹⁰ Today, international law and international criminal justice are considered universal in their geographic scope and application and resemble the normative center and the “legitimizing code of conduct for international society”.¹¹ However, scholars from the Global South argue, that international law is not neutral or universal but a product of colonialism.¹² Thus, international law is considered as “Eurocentric in its geographic origin, Christian in its religious basis, imperia in its political objectives and mercantilist in its material underpinnings.”¹³ It is a “crucial site for the production of ideology and the perpetuation of power.”¹⁴ International law therefore is the reflection of the hypercritical character of international society, which affects the way in which international legal concepts, categories, norms and doctrines are produced and understood.¹⁵ Especially the project of international criminal justice has increasingly been the subject of criticisms of bias and political selectivity.¹⁶ The ICC, which promises universal justice irrespective of a perpetrator’s position, ethnicity, nationality or political status,¹⁷ has mainly launched investigations and indictments with focus on African defendants.¹⁸ It claims to be universal, but in reality, it often operates in a politically selective manner where charges are mostly saved for soldiers, powerless former generals or leaders who can be held accountable at low political cost.¹⁹ Barley, any of those most responsible for torture in Guantánamo, the ill-treatment in Abu Ghraib or war crimes in Afghanistan have faced a proceeding. Moreover, massive human rights violations committed by Western colonial powers took place in full impunity.²⁰ The idea of international criminal law has been therefore depicted as a “toll of Western domination” whose purport to be universal is nothing more than an empty ideological

¹⁰ Sarkin, J.: *Refocusing Transitional Justice to Focus Not Only on the Past, But Also to Concentrate on Ongoing Conflicts and Enduring Human Rights Crises*, (2016) p. 307 f.

¹¹ Mutua, M.: *Critical Race Theory and International Law: The View of an Insider-Outsider* (2000) p. 849.

¹² See on this Ba, O.: *Constructing an international legal order under the shadow of colonial domination* (2023); Reynoldy, J.; Xavier, S.: *“The Dark Corners of the World”: TWAİL and International Criminal Justice* (2016).

¹³ Gathii, J.: *International Law and Eurocentricity*, (1998) p. 187.

¹⁴ Gathii, J.T.: *“Rejoinder: Twailing International Law* (2000) pp. 2066-2071.

¹⁵ Eslava, L.; Pahuja, S.: *Between Resistance and Reform: TWAİL and the Universality of International Law*, (2011) pp. 104 f.

¹⁶ See on this a.o. Leebaw, B.: *The Politics of Impartial Activism: Humanitarianism and Human Rights* (2007); Mutua, M.: *Critical Race Theory and International Law: The View of an Insider-Outsider* (2000); Steiger, D.: *Das Völkerrecht in der “multipolaren Weltordnung”: Stärkere Rolle nötig – und möglich* (2024); Kaleck, W.: *Double Standards: International Criminal Law and the West* (2015).

¹⁷ International Criminal Court Promises Universal Justice, Secretary-General Tells International Bar Association, Press Release SG/SM/6257 12. June 1997 <https://press.un.org/en/1997/19970612.sgsm6257.html> last accessed: 27.05.2026.

¹⁸ Pelpel, V.; Laroche, C.: *Overview of International Criminal Court investigations since 2002* <https://www.iris-france.org/en/overview-of-international-criminal-court-investigations-since-2002/> accessed: 27.05.2026.

¹⁹ Steinke, R.: *Selektive Strafverfolgung: Über ein wachsendes Problem der Straffjustiz* (2014) pp. 207-215; Kaleck, W.: *Double Standards: International Criminal Law and the West* (2015) p. 2.

²⁰ Kaleck, W.: *Double Standards: International Criminal Law and the West* (2015) p. 2.

superstition.²¹ These legacies of an “Eurocentric” world view, selectivity and ongoing racial injustice are reflected in the concept of TJ. Its origins can be traced down to the ideas of “Western civilization” and an international system which was created by centers of global powers.²² Hence, it has become a field which fulfills underlying assumptions and confirms a certain world view of justice and universal human rights.²³ Scholars argue, that its mechanisms and objectives serve to legitimize inequality and structural violence.²⁴ While minimizing systemic violence, the focus of TJ is on physical abuse; rather than social, economic and cultural rights, civil and political rights are prioritized; rather than the violation of groups, individual victims are centered; rather than groups who benefit, individual perpetrators are held accountable; rather than examining the historical injustices that created these conditions, only the recent conflict dynamics are taken into account; rather than local or indigenous conceptions of justice, Western legal conceptions of justice processes are implemented.²⁵ These foundational conventions of TJ limit the ability to reveal racism and establish a decolonial approach to justice. Moreover, they represent prevailing power structures. In the context of this thesis, “prevailing power structures” refer to structural selectivity and hierarchical distribution of authority within the global political order. This includes institutional asymmetries within international organizations, Security Council dynamics, Western dominance in international law and great power influence. By analyzing the conflict settings of Gaza and Ukraine, the thesis aims to reveal these structures in order to demonstrate that TJ mechanisms are not neutral outcomes but they are deeply embedded in geopolitical interests.

1.2. Research Purpose and Research Questions

Within the international academic and practical discourse of international law, international criminal justice and transitional justice, many scholars have documented structural and political selectivity based on an “Eurocentric” or “Westernized” approach.²⁶ However, the use of TJ in ongoing conflicts as an additional way of conflict resolution is either often overlooked at all or the political context in determine the motives and consequences of justice efforts remains unmentioned. In particular the literature does not assess how prevailing power structures affect the implementation of TJ in ongoing conflicts. To illustrate that the effectiveness of TJ in

²¹ Ibid.

²² Van der Merwe, H.; Lykes Brinton, M.: *Racism and Transitional Justice* (2020) p. 415 f.

²³ Ibid.

²⁴ Nagy, R.: *Transitional Justice as Global Project: critical reflections* (2008) pp. 275-289; Sirleaf V.S. M.: *Palestine as Litmus Test for Transitional Justice* (2024) pp. 162-188; Bell, C.: *Transitional Justice and Political Settlements* (2015) pp. 1-20.

²⁵ Van der Merwe, H.; Lykes Brinton, M.: *Racism and Transitional Justice* (2020) p. 417.

²⁶ supra note 11 and 15.

ongoing conflicts does not only depend on the duration or severity of the conflict itself but on broader political calculations, implemented TJ mechanisms in Gaza and Ukraine are taken into account. By choosing these two particular cases the thesis aims to demonstrate that the same TJ mechanisms applied in different ongoing conflicts settings become instrumentalized by geopolitical interest and therefore challenge the universalist assumptions within international justice. Building on this complex dilemma, this thesis investigates the following research question:

To what extent do prevailing power structures shape the implementation and effectiveness of transitional justice mechanisms in the ongoing conflicts of Gaza and Ukraine?

To break this down further, the research addresses the following sub-questions

1. Has the framework of TJ evolved beyond from its post-transitional and post-crisis role to a field, that engages with ongoing conflicts?
2. What challenges are faced by the implementation of TJ in ongoing conflicts?
3. What TJ mechanisms are currently being pursued in Gaza and Ukraine and how is the implementation affected by prevailing power structures?

By addressing these question, this thesis seeks to visualize the politicization of TJ in ongoing conflicts, which results in the selective application of justice and international law

1.3. Structure and Methodology

This thesis employs a comparative qualitative case study in combination with a most different system design, that enables the systematic comparison of cases, in this instance Ukraine and Gaza, to identify patterns of similarity and difference across key variables. Using the most different system design, two cases were selected that differ in significant ways such as in terms of statehood, international recognition, institutional capacity, geopolitical setting, and conflict dynamics, yet share a common variable of interest which is the presence of ongoing conflict. Ukraine represents a state-to-state war while Gaza is considered as an asymmetric war within a blockaded territory. Further, Ukraine is internationally recognized as a sovereign, independent state whereas Gaza itself is only a constituent territory of Palestine but not recognized as an independent state. However, by selecting Ukraine and Gaza as case studies, two landscapes are chosen in which hostilities are still active and similarities exist: both conflicts are punctuated with accusations of genocide and crimes against humanity; both conflicts are being waged by

leaders wanted by the ICC; both conflicts are generating strong political confrontations and finally, both conflicts are creating broad international concern and moral outrage. Additionally, both are armed conflicts where TJ already has been implemented and hence presented two practicable examples to be able to analyze what has been done and what can be improved. In Gaza, judicial and truth telling initiatives were introduced as part of international justice peacebuilding efforts, but challenges persist due to inter-group conflict, institutional weakness and missing political support.²⁷ Ukraine addresses the question of TJ by the development of a transitional justice framework which consists of domestic and international criminal prosecutions truth seeking missions, reparations and institutional reforms.²⁸ The fact that Ukraine and Gaza differ in key terms but simultaneously share the characterization as ongoing conflicts, is a deliberate and important feature of this comparison and not a limitation. The disparities help to contribute to a more nuanced understanding of how global power asymmetries influences the selection and implementation of TJ mechanisms in ongoing conflicts, that in reality should be applied universal. In this sense, the contrast offers useful insight to how political context mediates the approaches to and the outcomes of TJ. In particular, it allows the thesis to examine whether the effectiveness of TJ depends not only on the existence of a functioning and recognized state but also on broader institutional and political support. The thesis examines three different variables across the two cases in order to identify political, institutional and economic conditions that shape the implementation and effectiveness of TJ in the ongoing conflicts of Ukraine and Gaza. It assumes linear relationships between one independent and three dependent variables. The impact of prevailing power structures is defined as the independent variable, while legal accountability, geopolitical and diplomatic support, and narrative framing are considered as dependent variables. The dependent variables were selected based on their description and discussion in existing literature on the topic. Each variable helps to understand how prevailing power structures shape the implementation and effectiveness of TJ. The first variable towards legal accountability includes the scope and practical operation of domestic and international accountability and justice efforts. It reveals how power dynamics affect the existence or non-existence of judicial and restorative measures. Second, geopolitical and diplomatic support look at how global power dynamics enable, constrain or obstruct TJ endeavors by providing or preventing political, financial, humanitarian, military and diplomatic initiatives. This variable is central in order to point out how material

²⁷ International Center for Transitional Justice, *Israel and the Occupied Palestinian Territory* <https://www.ictj.org/where-we-work/israel-and-occupied-palestinian-territory> accessed: 20.05.2026.

²⁸ International Center for Transitional Justice, *Ukraine* <https://www.ictj.org/where-we-work/ukraine> accessed: 20.05.2026.

and political conditions affect the existence and effectiveness of TJ mechanisms beside legal responses. Ultimately, narrative framing consists of how public discourse, legal-political rhetoric and official statements contribute to the implementation of TJ mechanism's itself and how they shape the effectiveness of implemented measures. It makes visible that power dynamics also operate through discourse, which is crucial for public support, acknowledgment and durable justice efforts. To ensure a clear and systematic comparative analysis, these variables are operationalised through empirical normative measurements (See Appendix A). Data for this study is drawn from a combination of primary and secondary sources. Primary sources include ICC statements and official government documents from both states. Secondary sources consist of academic literature, policy reports from international organizations such as the European Union and the United Nations, publications from human rights organizations and political statements. The free version of Grammarly (1.132.1.0) and use.ai (GPT 5.4) were used to revise and correct the entire body of this thesis to ensure that the academic English in this work is flawless. DeepL Translator was used to assist with the translation of some passages of theoretical literature for better understanding and to help with linguistic formulation. All assistance was critically reviewed and finally revised by the author of this thesis. The research primarily examines the period from 2014 to now in Ukraine, and the period from October 7th to the end of June 2026 in the case of Gaza. The thesis is structured in 7 chapters. The second chapter explores the theoretical framework of transitional justice and international criminal law, illustrating meaning, evolution and key debates. The third chapter engages with contemporary critiques of ICL and TJ. The fourth chapter deals with the question in how far the application of TJ measures in ongoing conflicts could play an enhanced role in preventing human rights atrocities and what challenges are faced. The fifth chapter provides case specific analyses of Gaza and Ukraine, examining how prevailing power structures shape determined key variables. The sixth chapter offers a comparative analysis of the two cases. The final part concludes.

CHAPTER 2. THEORETICAL FRAMEWORK

2.1. The Concept of Transitional Justice

In the report on *the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies* provided by the Secretary General of the United Nations in 2004, TJ is described as “the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-

seeking, institutional reform, vetting and dismissals, or a combination thereof”.²⁹ Based on this definition TJ serves as an umbrella for measures such as jurisprudence through international, hybrid and national war tribunals; the investigation of the extent of crimes by international hybrid and national truth and reconciliation commissions; reparations for victims of human rights violations, including compensation, rehabilitation, and symbolic redress; reform of institutions such as the police, military, and judiciary, and the vetting or dismissal of corrupt and criminal state officials maintaining positions of authority, as well as the construction of memorials and museums to commemorate the violent past in societies that are undergoing or seeking political transition in order to pave the way for a democratic future.³⁰ Consisting of the five pillars, justice, truth, reparations, guarantees of non-repetition, and memorialization, specifically, the following objectives of TJ can be summarized: the truth about crimes should be uncovered, those responsible identified and held accountable, the dignity of the victims restored, reconciliation and peaceful coexistence encouraged, and future conflicts and crimes prevented.³¹ In order to achieve these objectives and to be considered effective, all different tools of TJ can and should be combined and supplemented in accordance with the specific circumstances³² of a post-conflict setting.³³ The origins of modern TJ can be traced to World War I and World War II.³⁴ Within its use in the Western world the Allied-run Nuremberg Trials (1945) became the most recognized symbol of post-World War II justice, reflecting the precedent of the possibility of international legal responses to war crimes and mass atrocity.³⁵ Following the failed justice attempts of World War I, a shift from national justice to international justice and an extension of its focus beyond the state to individual judgement and responsibility was intended.³⁶ Post-World War II TJ reflected a policy of international legal responses dominated by the rule of law.³⁷ With the beginning of the Cold War in the 1950s, the bipolar world order and the resulting stabilization of authoritarian regimes, the development of

²⁹ *Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, UN Doc S/2004/616, 24 August 2004, p.4.

³⁰ *Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, UN Doc S/2004/616, 24 August 2004, p.4; International Center for Transitional Justice, “What is transitional justice?”, <https://www.ictj.org/what-transitional-justice> last accessed: 23.04.2026.

³¹ Paul, Seils, *The Place of Reconciliation in Transitional Justice*, (2007) p. 2.

³² including the extent of crimes, the dynamics of hostilities, the stability of the respective state, the resources available to society, and the policies of the new government.

³³ Hafner, D.L., King E.B.L.: *Beyond Transitional Notions of Transitional Justice: How Trials, Truth Commissions, and other tools for accountability can and should work together* (2007) p. 92 f.; Sarkin, J.: *Refocusing Transitional Justice to Focus Not Only on the Past, But Also to Concentrate on Ongoing Conflicts and Enduring Human Rights Crises*, (2016) p. 323.

³⁴ Teitel, R.: *Transitional Justice* (2000) pp. 39-40.

³⁵ McGonigle Leyh B.: *Nuremberg's Legacy Within Transitional Justice: Prosecutions Are Here to Stay* (2016) p. 559 f.

³⁶ Teitel, R.: *Transitional Justice Genealogy* (2003) p. 72 f.

³⁷ Ibid.

international legal approaches to addressing violent conflict was put on hold, leading to a policy of amnesties and repression.³⁸ Following the collapse of repressive military regimes and the occurrence of political transitions in the 1980s, questions arose how and to what extent the culture of impunity should be addressed. Unlike in the post-World War II era, TJ moved away from international legal justice to domestic trials and the establishment of truth and reconciliation commissions.³⁹ The focus, which has previously been directed at criminal and retributive justice turned toward restorative, more contextual and societal approaches in order to enhance nation-building and legitimate the following regime.⁴⁰ Since then, a.o. manifested in the establishment of the International Criminal Court in The Hague and a series of ad hoc tribunals, the prosecutorial and retributive purpose of TJ has regained momentum.⁴¹ However, concerns and claims of victims, including trauma work, rehabilitation and reparation gained attention in modern TJ mechanisms.⁴² And moreover, TJ has become a normal part of foundational conventions that states in the process of political transition must implement.⁴³ This brief historical overview shows that the development of the concept of TJ is closely linked to political and global historical events. It is therefore not a timeless paradigm but rather a construct that continues to evolve. The global trend toward democratization since the early 1990s has been decisive in shaping the current state of TJ.⁴⁴ Democratization not only makes it possible to critically examine violent pasts, but also enables those who advocate for such an approach to regard this step as a core element of the rule of law. In the light of globalization, political instability and violence TJ has moved from the exception to the norm.⁴⁵ And, with the globalization of liberal norms and normative progress, the protection of human rights is no longer the sole responsibility of one single state but has become a universal principle, as exemplified by concepts such as human security and the responsibility to protect.⁴⁶ Moreover, besides in the common transition from authoritarianism to democracy, TJ mechanisms are nowadays applied in a range of different settings such as in countries still torn apart by war, in

³⁸ See for historical examples Brazil's Amnesty Law of 1979, Uruguay's Naval Club Agreement of 1984 or the "Punto Final" in Argentina 1987.

³⁹ See Roht-Arriaza N.: *Truth Commissions and Amnesties in Latin America: The Second-Generation* (1998) pp. 313-316.

⁴⁰ Teitel, R.: *Transitional Justice Genealogy* (2003) pp. 75-85.

⁴¹ E.g. the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda.

⁴² Arthur, P.: *How „Transitions“ Reshaped Human Rights: A Conceptual History of Transitional Justice* (2009) p. 324, pp. 356 ff.

⁴³ Greiff, P.: *Some thoughts on Transitional Justice* (2012) p. 1.

⁴⁴ Political Science Institute: *Trends in Global Political Regimes: A Shift Towards Democracy and Authoritarianism*, 18.08.2025 <https://polsci.institute/civil-society-political-regimes-conflict/trends-global-political-regimes-democracy-authoritarianism/> accessed: 16.04.2026.

⁴⁵ Teitel, R.: *Transitional Justice Genealogy*, (2003) p. 71.

⁴⁶ Engstrom, P.: *Transitional Justice and Ongoing Conflict*, (2012) p. 14.

those emerging from conflict or repression and in developed democracies dealing with unaddressed human rights violations associated with systematic racism and marginalization.⁴⁷

2.2. The Concept of International Criminal Law

International criminal law (ICL) is a branch of public international law, which deals with the criminal liability of individuals for the most serious violations of international human rights and humanitarian laws.⁴⁸ It is based on the idea that crimes of a certain extent affect the international community as a whole, which is therefore obliged to prevent the occurrence of such crimes and to hold the perpetrators accountable, especially if these crimes are not being sufficiently addressed in the states in which they were committed.⁴⁹ The elements of the crimes enshrined in international criminal law are based on customary law⁵⁰ and on international treaties such as the Geneva Conventions, the Genocide Convention and the Convention against torture. The four core crimes under international law are war crimes,⁵¹ crimes against humanity,⁵² genocide⁵³ and the crime of aggression.⁵⁴ Criminal accountability for these “core crimes” is considered of fundamental value with regard to respect to the rule of law, deterrence of future violations and retributive justice for victims. ICL therefore, aims to protect peace, security, stability and the well-being of the world through equal application.⁵⁵ The modern history of international criminal law can be traced to the International Military Tribunal (IMT) in the aftermath of the Second World War.⁵⁶ The objective of the IMT, based on the London agreement and sitting in Nuremberg, was to prosecute German political, economic and military leaders responsible for the commission of “crimes against peace,” “war crimes” and “crimes against humanity.”⁵⁷ The Nuremberg Trials represented the first large scale international effort to impose criminal liability on individuals under international law and removed Head of State immunity and other forms of immunity for core international crimes. Other fundamental principles introduced by the Nuremberg trials, which influence ICL until today, were the

⁴⁷ International Center for Transitional Justice, “What is transitional justice?”, <https://www.ictj.org/what-transitional-justice> last accessed: 23.04.2026.

⁴⁸ Kaleck, W.: *Double Standards: International Criminal Law and the West* (2015) p. 5.

⁴⁹ Ibid.

⁵⁰ Shared legal practice followed by states on the assumption that this is required by international law.

⁵¹ Serious violations of international humanitarian law which forbids certain methods of warfare, see Article 8 of the Rome Statute on the International Criminal Court (2002), hereinafter ICC, Rome Statute.

⁵² Murder, torture, rape and other acts carried out as part of a widespread or systematic attack against civilian population, see Article 7 of the ICC, Rome Statute.

⁵³ See for a definition of genocide *supra* note 7.

⁵⁴ Most serious and dangerous form of illegal use of force by a state against the sovereignty, territorial integrity or political independence of another state, see Article 8 bis of the ICC, Rome Statute.

⁵⁵ See on this the *Preamble* of the ICC, Rome Statute.

⁵⁶ Aston, J.: *Genesis of International Criminal Law* (2011) pp. 3-6.

⁵⁷ Ibid.

emphasis of fair trial rights for the accused in international criminal proceedings and that superior orders are not a defense provided a moral choice was possible to the accused.⁵⁸ Responding to the atrocities in the former Yugoslavia and Rwanda, two ad hoc tribunals were created. The International Criminal Tribunal for the former Yugoslavia (ICTY),⁵⁹ formed in 1993, and the International Criminal Tribunal for Rwanda (ICTR),⁶⁰ founded in 1994. Both tribunals operated from 1994 to 2015 and more than 150 individuals were convicted for international crimes committed in the two countries.⁶¹ Both tribunals have made crucial progress by acknowledging the role of sexual violence in ethnic cleansing and genocide, prosecuting sexual violence as an act itself as crimes against humanity and recognizing the relationship between sexual violence in ethnic cleansing in Yugoslavia and between sexual violence and genocide in Rwanda.⁶² To shift from temporary and conflict specific tribunals to a permanent international criminal court with global jurisdiction, the ICC came to existence on 1. July 2002 with the entry into force of the Rome Statute. The creation of the ICC established a framework to systematically prosecute mass atrocities, guaranteeing individual accountability for international core crimes irrespective of official capacity, nationality or political standing.⁶³ It has jurisdiction over those individuals responsible for committing crimes listed in the Rome Statute, as well as others who might be indirectly responsible, such as military commanders, political leaders or other superiors.⁶⁴ and over the “core crimes” mentioned above. Under the Rome Statute the ICC prosecutor can initiate cases without a referral from a State Party or the UN Security Council.⁶⁵ Hence, an independent prosecutor with the authority to initiate investigations was created. Proponents envisioned an international court that would facilitate prosecutions based purely on principles of law and justice, rather than of self-interest, power dynamics or political priorities of individual states.⁶⁶

⁵⁸ Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal (1950), https://legal.un.org/ilc/texts/instruments/english/draft_articles/7_1_1950.pdf accessed: 02.06.2026.

⁵⁹ The International Criminal Tribunal for the former Yugoslavia (ICTY) was created pursuant to Resolution 827, the ICTY Statute. See UN Security Council, Resolution 827 (1993), 25. May 1993.

⁶⁰ The International Criminal Tribunal for the former Rwanda (ICTR) was created pursuant to Resolution 955, the ICTR Statute. See UN Security Council Resolution 955 (1994), 8 November 1994.

⁶¹ Szpak, A.: *Legacy of the ad hoc International Criminal Tribunals in Implementing International Humanitarian Law* (2013) p. 527.

⁶² Ibid.

⁶³ International Criminal Court: *Trying individuals for genocide, war crimes, crimes against humanity, and aggression* <https://www.icc-cpi.int/about/the-court> accessed: 02.06.2026.

⁶⁴ Art. 25 and 27-28, ICC, Rome Statute.

⁶⁵ Art. 13(c), 15, ICC, Rome Statute.

⁶⁶ Hafetz, J.: *Fairness, Legitimacy, and Selection Decisions in International Criminal Law* (2017), p. 113

2.3. ICL and TJ: Retributive vs. Restorative Justice

ICL is a form TJ in order to promote international criminal justice. The integration of international war crime tribunals into post-conflict societies as a pillar of TJ is fundamentally premised on the belief that formal justice fosters reconciliation for victims and their communities. Proponents of these tribunals maintain that judicial proceedings can aid the reconciliation process by seeing that justice is done.⁶⁷ Justice, in relation with war crime tribunals is mainly conceptualized in a purely retributive sense, meaning that justice is about punishing the perpetrators of crimes.⁶⁸ Retributive justice therefore, is a traditional approach to justify punishment that focuses on the crime committed, and in that sense, is primarily retrospective.⁶⁹ However, in recent years restorative justice as a purpose of war crime tribunals gained meaning in order to prevent frustration on side of the victims and to contribute to durable peace.⁷⁰ Restorative justice aims to restore social relationships between the conflict parties in order to overcome the violence of the past.⁷¹ Such an approach requires focusing not only on the crime committed, but also on the harm suffered by the victims. In this sense, restorative justice is understood as forward-looking.⁷² ICL aims to address the most serious human rights violations and threats to international peace and security. While deterrence, rehabilitation and, above all, retribution remain among the traditional goals of criminal justice,⁷³ broader objectives are increasingly discussed. These include combating a culture of impunity, creating a historical record of the most serious crimes, providing compensation for victims, and promoting a process of reconciliation.⁷⁴ Moreover, demands arise to focus not only on the crimes themselves but also on the social context, and to acknowledge the experiences and needs of the victims.⁷⁵ With this adaption of restorative approaches, ICL reflects the objectives of TJ and contributes to their success.

⁶⁷ Wenzel, M., Okimoto G.T., Feather T.N., Platow J.M.: *Retributive and Restorative Justice* (2008) pp. 375-389.

⁶⁸ Ibid.

⁶⁹ Ambos, K.; Aboueldahab, S.: *Vergeltende und Wiedergutmachende Gerechtigkeit – Wo steht das Völkerrecht heute?* (2025) p.44.

⁷⁰ Ibid.

⁷¹ Wenzel, M., Okimoto G.T., Feather T.N., Platow J.M.: *Retributive and Restorative Justice* (2008) pp. 375-389.

⁷² Clark, J.N.: *The three Rs: retributive justice, restorative justice, and reconciliation* (2008) p. 339 f.

⁷³ See on this the *Preamble* of the ICC, Rome Statue.

⁷⁴ Ambos, K.; Aboueldahab, S.: *Vergeltende und Wiedergutmachende Gerechtigkeit – Wo steht das Völkerrecht heute?* (2025) p.46.

⁷⁵ Ibid.

CHAPTER 3. CRITIQUES OF INTERNATIONAL CRIMINAL LAW AND TRANSITIONAL JUSTICE

While the concepts of ICL and TJ aim to achieve ambitious objectives, their practice and implementation, however, remain rooted in international systems of prevailing power structures and Western approaches. Beside the Western origin of both concepts, the authority that shape ICL and TJ are, still largely concentrated within global institutions dominated by the Global North. Consequently, the claim of ICL and TJ, that judicial proceedings can restore violated norms and the dignity of victims, condemn atrocities and sanction offenders neutral and universal, remains highly contested. Rather, the past and current practice of prosecuting crimes, shows that the application of ICL remains selective. By obstructing accountability for their own transgressions and complicity, as well as for their allies, Western nations cultivated a highly selective justice regime that disproportionally targets leaders in the Global South, thereby securing legal victories at minimal political cost. Especially the ICC, which is based on the concept of universality is often perceived as hypocritical. Additionally, the efficacy of international criminal prosecutions is frequently challenged due to their limited and poorly researched resonance within post-conflict societies. A central critique is, that Western-centric proceedings often alienate local populations, overlooking the tangible and intangible needs of victims as well as indigenous understandings of justice. Questions have also been raised as to how significant it is to pursue the punishment of individuals in the context of severe crimes against humanity. ICL and TJ, it is argued, hold the risk of instrumentalizing criminal proceedings against individuals for broader political end and to endanger peace efforts.

3.1. Selectivity, Political Bias and Double Standards

ICL has been persistently criticized for its selectivity and political bias. Critics argue that the selective enforcement of ICL, weaken its institutional legitimacy and its foundational claims to universality. The selection of cases and individuals for prosecution is inherently political, strategic and shaped by the situation at hand, inevitably resulting in a profound degree of horizontal and vertical selectivity.⁷⁶ Horizontal selectivity arises when “severe crimes are committed in a number of comparable settings throughout a given historical period, but only some of these are prosecuted as crimes against international law”, while vertical selectivity refers to “the decision as to which of the individuals involved in a situation should be singled out for prosecution.”⁷⁷ The critique of selectivity has historically manifested across multiple

⁷⁶ Kaleck, W.: *Double Standards: International Criminal Law and the West* (2015) p. 7.

⁷⁷ Ibid.

intersecting dimensions. Traditionally, these forms of selectivity have included victor's justice, the geopolitical insulation of hegemonic powers, a structural tendency to scapegoat lower perpetrators, while excluding senior leadership, and an asymmetric regional focus.⁷⁸ Victor's justice is defined as "the claim that the winning side of a conflict is not prosecuted" and can be traced to the Nuremberg trials.⁷⁹ Exemplifying this definition, the tribunal's architecture was fundamentally asymmetrical: German defendants were judged exclusively by nationals of the victorious powers and potential allied atrocities, such as the bombing of Dresden, were shielded from any legal scrutiny.⁸⁰ Although contemporary international tribunals demonstrate a greater commitment to prosecuting crimes regardless of the perpetrators nationality, many Serbs perceive the ICTY as a manifestation as victor's justice. They argue that the ICTY disproportionately targeted Serb forces and that its geographically restricted mandate effectively guaranteed impunity for Western actors, such as NATO, the US, and the UK for their alleged war crimes.⁸¹ The decision not to pursue NATO officials also reflects broader concerns regarding the insulation of major powers from prosecutions.⁸² However, the most profound critique regarding selection decisions and proximity to the interests of powerful state, are leveled against the ICC. Critics frequently highlight the ICC's pronounced geographic bias toward the Africa continent,⁸³ which stands in stark contrast to its deferential treatment of hegemonic powers. Historically, the Court has failed to prosecute officials from Western UN Security Council members, thereby insulating alleged atrocities by US forces in Afghanistan and UK troops in Iraq from legal accountability.⁸⁴ This asymmetry is exacerbating by the hypocritical stance of Western states, which selectively champion ICC interventions that align with their geopolitical interest while actively obstructing investigations into their own allies.⁸⁵ This practice of powerful geopolitical state and not-state actors instrumentalizing international law mechanisms and human rights discourse either in peacetime or in situations of armed conflict by weaponizing financial and political capital, is described as "Western lawfare".⁸⁶

⁷⁸ Hafetz, J.: *Fairness, Legitimacy, and Selection Decisions in International Criminal Law* (2017), p. 1137.

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ Clark, J.N.: *The three Rs: retributive justice, restorative justice, and reconciliation* (2008) p. 337 f.

⁸² See on this Hafetz, J.: *Fairness, Legitimacy, and Selection Decisions in International Criminal Law* (2017), p. 1139.

⁸³ Pelpel, V.; Laroche, C.: *Overview of International Criminal Court investigations since 2002* <https://www.iris-france.org/en/overview-of-international-criminal-court-investigations-since-2002/> accessed: 27.05.2026.

⁸⁴ Kaleck, W.: *Double Standards: International Criminal Law and the West* (2015) p. 109 f; Hafetz, J.: *Fairness, Legitimacy, and Selection Decisions in International Criminal Law* (2017), p. 1142.

⁸⁵ Mehta, K.: *International Criminal Law of "the West"? Why the Eurocentric Critique My Have Reached Its Limit*, Verfassungsblog 11.02.2026 <https://verfassungsblog.de/international-criminal-law-of-the-west/> accessed: 05.06.2026.

⁸⁶ The term "lawfare" is defined as "the strategy of using or misusing law as a substitute for traditional military means to achieve a warfighting objective" See on this Dunlap, C. J.: *Lawfare Today ... and Tomorrow*, (2011) pp.

This strategy seeks not only to secure legal victories but also to gain moral advantage. It utilizes institutional frameworks to isolate and delegitimize global adversaries, while simultaneously deploying aggressive counter-lawfare to shield strategic allies.⁸⁷ Furthermore, this political interference permeates the Court's internal architecture: powerful nations routinely leverage their diplomatic and financial weight to influence the election of judges, shape prosecutorial priorities, stipulating the acts to be defined as criminal and manipulate the complementary framework to preempt international justice.⁸⁸ This bias is closely linked to structural inequalities and the preservation of major power influence admits the ICC. Although the ICC prosecutor can initiate cases without a referral from a State Party or the UN Security Council⁸⁹, the Security Council can, by adopting a resolution under Chapter VII of the UN Charter, request that the ICC defer any investigation or prosecution for renewable periods of twelve months.⁹⁰ Additionally, the five permanent members of the Security Council can veto any Security Council referral to the ICC, thus exposing investigations to political influence in order to exclude their respective officials and those of their allies from accountability while targeting opponents.⁹¹ The political bias is significantly exacerbated by the fact that three of the five permanent members⁹² are not state parties to the Rome Statute.⁹³ Beyond political selectivity, the ICC is constrained by crucial operational realities. Its limited budget restricts its institutional capacity, while its lack of executive power renders it entirely dependent to the cooperation of powerful states for vital tasks as arresting suspects, gather evidence, secure witness testimony and enforcing its judgment.⁹⁴ These practical limitations paralyze the Courts core objectives of combating impunity, reveal atrocities and treat officials of states whether from the Global North and their allies or the Global South equally. The impact of the described selectivity and political bias, rooted in contemporary power dynamics, can easily be applied to the field of TJ. The selection of cases constitutes the exercise of political power and confers moral legitimacy on

315-323; Abgaryan, N.: *Lawfare: The Mortal Kombat of Jurisprudence*, Völkerrechtsblog, 17.03.2025 doi: 10.17176/20250318-000805-0 <https://voelkerrechtsblog.org/lawfare-the-mortal-kombat-of-jurisprudence/> accessed: 02.06.2026.

⁸⁷ Abgaryan, N.: *Lawfare: The Mortal Kombat of Jurisprudence*, Völkerrechtsblog, 17.03.2025 doi: 10.17176/20250318-000805-0 <https://voelkerrechtsblog.org/lawfare-the-mortal-kombat-of-jurisprudence/> accessed: 02.06.2026.

⁸⁸ Vinjamuri, L., Snyder J.: *Law and Politics in Transitional Justice* (2015) p. 304.

⁸⁹ Art. 13(c), 15, ICC, Rome Statute.

⁹⁰ Art. 16, ICC, Rome Statute.

⁹¹ Müller, L.E.: *Referrals, Deferrals and Many Double Standards: Recapitulating the History of the SC-ICC Relationship*, Völkerrechtsblog, 12.07.2022 doi: 10.17176/20220712-233331-0 <https://voelkerrechtsblog.org/referrals-deferrals-and-many-double-standards/> accessed: 03.06.2026.

⁹² Russia, China and the US.

⁹³ International Criminal Court: *The States Parties to the Rome Statute* <https://asp.icc-cpi.int/states-parties> accessed: 03.06.2026.

⁹⁴ Kaleck, W.: *Double Standards: International Criminal Law and the West* (2015) p. 75 f.

one side of the conflict while depriving the other side of that legitimacy.⁹⁵ Moreover, international criminal proceedings endow historical truth with judicial legitimacy, which in turn lends legitimacy, to those who support that perspective.⁹⁶ Consequently, criminal proceedings shape truth-seeking efforts and historical narratives, which on one hand can contribute to reconciliation and on the other reinforce existing social divisions. Additionally, the selective application of ICL can undermine the legitimacy of TJ processes and end in inconsistent approaches to accountability. The selection of specific justice mechanisms is heavily dictated by political power and strategic interests.⁹⁷ Whether a state pursues criminal trials, grants amnesties, or delays justice is rarely a purely legal decision; rather, it's a strategic calculation. When potential peace spoilers are weak, trials are swiftly established, whereas amnesties become convenient when spoilers are strong enough to threaten stability. This dynamic inherently breeds selectivity, ensuring that trials routinely target defeated opponents rather than powerful states or their allies.⁹⁸ International criminal justice, is therefore shaped by political strategy and interest, implemented as tool for the most powerful nations to maintain their hegemony.

3.2. TWAIL⁹⁹ and Postcolonial Critiques of ICL and TJ

Third-World Approaches to International Law is a critical intellectual movement dedicated to uncovering the systematic injustices, structural imbalances, and inherent contradictions within international law that actively disadvantage the Global South.¹⁰⁰ Operating as a deconstructive tool, TWAIL challenges the façade of legal neutrality, fairness and objective order. It aims to dismantle the colonial, hegemonic, and Eurocentric frameworks that masquerade as universal truths within global legal discourse and practice. Simultaneously, as a reconstructive endeavor, TWAIL seeks to embedding the democratic ethos and norms that should govern relations within and between the Global North and South to provide a new paradigm for conceptualizing and practicing international (criminal) law and international justice.¹⁰¹ At the heart of theoretical debates lies the postcolonial critique, which claims that while ICL and TJ guarantee sovereign equality and self-determination, both fields perpetuate the legacies of colonialism, imperialism

⁹⁵ Steinke, R.: *Selektive Strafverfolgung: Über ein wachsendes Problem der Straffjustiz* (2014) p. 208 f.

⁹⁶ Ibid.

⁹⁷ Vinjamuri, L., Snyder J.: *Law and Politics in Transitional Justice* (2015) p. 315.

⁹⁸ Ibid.

⁹⁹ TWAIL = Third World Approaches to International Law.

¹⁰⁰ Appiagyei-Atua, K.: *Ethical Dimensions of Third-World Approaches to International Law (TWAIL): A Critical Review* (2015) p. 210 f.

¹⁰¹ Ibid.

and Western hegemony.¹⁰² From this perspective, ICL and TJ mechanisms are not universal and objective tools but they are shaped by geopolitical asymmetries between the Global North and the Global South, implemented to maintain the prevailing power structures.¹⁰³ Scholars argue, that asymmetries are still constructed in ICL and TJ predominantly through the fact that issues of historical and systematic inequality and social injustices never were included in their objectives or interventions.¹⁰⁴ Furthermore, it is important to take the Western liberal roots of both fields and their civilizing mission into account.¹⁰⁵ During the colonial era, the subjugation of the Global South was frequently legally and morally justified by the necessity to missionize and Christianize “barbaric” and “primitive” societies.¹⁰⁶ Moreover, states from the Global North perceived themselves as “saviors”, who “protects, vindicates, civilizes, restraints and safeguards” while the “savages” and victims are generally non-white and non-Western who could not to be left for their own and need to be rescued from local “savages”.¹⁰⁷ Based on this origin the fields of ICL and TJ mainly aim to promote democracy and free trade.¹⁰⁸ Additionally, retributive justice is elevated as the “civilized” standard.¹⁰⁹ Within this paradigm, “civilized” states are characterized as those that embrace TJ and internalize human rights norms, whereas the “rogue” state actors are depicted as inherently illiberal, anti-democratic, violent and authoritarian.¹¹⁰ By upholding the Western understanding of justice and favoring democracy as the ultimate goal for every society, regardless of their respective history, ICL and TJ contribute to maintain asymmetries. Another crucial critique refers to the standardization of TJ. It is argued that the standard TJ toolkit of criminal trials, reparations, institutional reforms, and truth telling exercises often fail to address the specific cultural and historical realities in conflict ridden societies within the Global South.¹¹¹ Especially the advantages of Western criminal proceedings remain controversial. Western criminal proceedings focus on individual guilt, following a retributive approach.¹¹² Yet, conventional paradigms of retributive and adversarial notions of justice contain severe limitations, and may fail to secure grassroots legitimacy among affected societies. Hence, some scholars consider criminal proceedings to be

¹⁰² Ibid.

¹⁰³ Sirleaf, M.; Tendayi Achiume, E.: *Reflecting on Race, Racism and Transitional Justice* (2024); Van der Merwe, H.; Lykes Brinton, M.: *Racism and Transitional Justice* (2020).

¹⁰⁴ Van der Merwe, H.; Lykes Brinton, M.: *Racism and Transitional Justice* (2020) p. 417.

¹⁰⁵ Sirleaf, M.; Tendayi Achiume, E.: *Reflecting on Race, Racism and Transitional Justice* (2024) p. 5.

¹⁰⁶ Mutua, M.: *Savages, Victims, and Saviors: The Metaphor of Human Rights* (2001) p. 212 f.

¹⁰⁷ Mutua, M.: *Savages, Victims, and Saviors: The Metaphor of Human Rights* (2001) pp. 208, 212.

¹⁰⁸ Kaleck, W.: *(Völker)- Strafrecht und Menschenrechtsschutz* (2014) p. 245.

¹⁰⁹ Mutua, M.: *A Critique of Rights in Transitional Justice: The African Experience* (2011) pp. 38-44.

¹¹⁰ Sirleaf, M.; Tendayi Achiume, E.: *Reflecting on Race, Racism and Transitional Justice* (2024) p. 5.

¹¹¹ Destrooper, T.; Evrard E.: *The (Many) Afterlives of Transitional Justice: Practice-based Insight on Continuity, Impact and Evolving Justice Struggles* (2025) p. 154.

¹¹² Wenzel, M., Okimoto G.T., Feather T.N., Platow J.M.: *Retributive and Restorative Justice* (2008) pp. 375-389.

inherently ill-suited to address the deep-rooted, systemic injustices prevalent in post-conflict, post-colonial situations.¹¹³ By attributing guilt to individuals and held perpetrators accountable, the rest of the community is implicitly absolved of guilt. Collective guilt is transformed into individual guilt, the perpetrators are given a face, and the rest of the community is acquitted of all guilt, thereby making the exoneration of all the innocent possible.¹¹⁴ However, this aspect of justice is based on an understanding of guilt that is limited exclusively to individual crimes. The political guilt of those who legitimized the perpetrators in their roles, the moral guilt of those who stood by and watched, and the material guilt of those who survived without doing everything in their power to prevent the crimes remain unaddressed.¹¹⁵ For post-conflict societies where violence occurred systematically at the local and community level and victims, perpetrators and people who took advantage of human rights violations, often have to coexist. This means that the majority of those who knew or watched neither need to question nor acknowledge their role and responsibility. Hence prejudices, intolerance and antipathy remain unchallenged and can hinder the improvement of relations between the parties of the conflict. Additionally, criminal proceedings are limited in terms of the kind of actions that are prosecuted and in terms of the kind of justice, which is addressed. While human rights violations are analyzed from a phenomenological perspective focusing on civil rights and physical abuse in order to achieve criminal justice, the violation of social, political and economic rights, which caused the conflict in the first place, is overlooked.¹¹⁶ Similarly, collective and community rights, which are deeply embedded in the culture of the Global South remain unaddressed.¹¹⁷ However, adopting a more restorative approach that shift away from criminal justice and individual guilt, moving instead toward a more holistic restorative approach that actively pursue socio-economic, political and cultural justice is of crucial magnitude, particularly in violent conflicts triggered by persistent discrimination, marginalization, and structural violence.¹¹⁸ Moreover traditional local justice practices are essential to put victims at the center and to deal with the realities of the affected communities.¹¹⁹ Ultimately, racial justice that is about the removal not simply of physical violence but also of structural violence must be taken into account to address the needs of societies from the Global South.¹²⁰ By refusing to confront the

¹¹³ Mutua, M.: *A Critique of Rights in Transitional Justice: The African Experience* (2011) p. 38.

¹¹⁴ Clark, J.N.: *The three Rs: retributive justice, restorative justice, and reconciliation* p. 336 f.

¹¹⁵ Jaspers, K.: *The question of German Guilt* (2000) p. 25 f.

¹¹⁶ Kaleck, W.: *(Völker)- Strafrecht und Menschenrechtsschutz* (2014) p. 245; Franzki, H.: *Zur Kritik von Transitional Justice als Projekt historischer Gerechtigkeit* (2012) p. 67 f.

¹¹⁷ Mutua, M.: *A Critique of Rights in Transitional Justice: The African Experience* (2011) p. 36.

¹¹⁸ Mutua, M.: *A Critique of Rights in Transitional Justice: The African Experience* (2011) p. 41; Franzki, H.: *Zur Kritik von Transitional Justice als Projekt historischer Gerechtigkeit* (2012) p. 67 f.

¹¹⁹ Vinjamuri, L., Snyder J.: *Law and Politics in Transitional Justice* (2015) p. 312 f.

¹²⁰ Sirleaf, M.; Tendayi Achiume, E.: *Reflecting on Race, Racism and Transitional Justice* (2024) p. 5.

systematic legacy of colonialism and imperialism and by ignoring the root causes of conflict, TWAIL scholars argue, that TJ mechanisms, accompanied by contemporary power dynamics, serve to legitimize and maintain the global world order consisting of inequality and structural violence.¹²¹

CHAPTER 4. TRANSITIONAL JUSTICE IN ONGOING CONFLICTS

Transitional justice, as already stated, has traditionally focused on political transitions from authoritarian rule to democracy and on conflict settings where hostilities have ceased. However, the lingering existence and effects of present armed conflicts raise substantive challenges that require a more deliberate method towards justice admits conflicts. In addition, large-scale abuses with massive civilian casualties and the speed of those violations intensify through modern warfare¹²² provoked international moral outrage and a global demand for the extension peace efforts. In this context this section of the thesis seeks to explore following questions: Should peace and justice efforts already be carried out admits conflicts or should victims wait for justice until peace is secured years or decades later? Which TJ mechanisms can be adopted during hostilities? And, what advantages and challenges could emerge in ongoing conflicts?

4.1. TJ Mechanisms in ongoing Conflicts

Depending on the context, not all TJ mechanisms can be applied in each conflict or location. However, the following TJ mechanisms occur the most in ongoing conflicts to subside the conflict or at least to reduce violence and human rights abuses: truth and reconciliation commissions (TRC) to acknowledge and reconcile war atrocities, amnesties¹²³ to provide incentives for perpetrators to end abuses, trials to punish and for deterrence and guarantees of non-repetition to ensure non-reoccurrence and secure a more peaceful future.¹²⁴ Due to different implementation mechanisms and objectives, each application of these TJ measures requires a context-sensitive approach taking conflict severity, conflict duration and international

¹²¹ Van der Merwe, H.; Lykes Brinton, M.: *Racism and Transitional Justice* (2020) p. 417.

¹²² For e.g. in Gaza: Abraham, Y.: *A Mass Assassination Factory: Inside Israel's Calculated Bombing of Gaza*, +972 Magazine, <https://www.972mag.com/mass-assassination-factory-israel-calculated-bombing-gaza/> accessed: 27.04.2026.

¹²³ Legal device that blocks the criminal prosecutions of combatants, see on this Dancy, G.: *Deals with the Devil? Conflict Amnesties, Civil War, and Sustainable Peace* (2018) pp. 387-421.

¹²⁴ Reiter, A.G.; Olsen, T.D.; Payne L.A.: *Transitional Justice and Civil War: Exploring New Pathways, Challenging Old Guideposts* (2012) pp. 137-160; Moffett, L.; Narayan, N.: *Provisional justice in protracted conflicts: The place of temporality in bridging the international humanitarian law and transitional justice divide* (2024) pp. 1222-1249.

interventions into account.¹²⁵ It is argued, that societies of conflicts with high levels of human rights abuses, repression and “deaths resulting from conflicts” would rather demand accountability than amnesties, while societies “exhausted from long wars” more likely select amnesties and TRC, than risking peace through criminal trials.¹²⁶ In addition, the presence of international actors and their demands to hold perpetrators accountable seem to lead to prosecutions rather than to amnesties.¹²⁷ Other factors that are crucial in relation to the question of what can be attempted and achieved, are the interests and needs of both conflict-parties and the situation on the ground. Besides the type of conflict, the government, politics, legal system, demographics, infrastructure, culture, social and economic conditions as well as its history must be evaluated to provide the most durable and potentially successful transition mechanism.¹²⁸ The implementation of TJ measures seems to be overall more accessible in conflict settings, where the conflict is not of a high intensity level and therefore not deeply rooted between the conflict parties.¹²⁹ Grievances and trauma on one or both sides can create major obstacles in achieving peace and justice. Therefore, the special needs of affected societies and the root causes of conflicts must be put into spotlight to prevent reoccurrence and retribution.

4.2. Advantages and Challenges of TJ admits Conflict

4.2.1 Advantages

The implementation of TJ mechanisms in ongoing contemporary armed conflicts can enhance the possibility to durable peace and justice in different ways. Key arguments made by advocates of TJ in the midst of conflicts in support of this claim are the deterrence effect of judicial punishment, upholding the rule of law despite war, the recognition of victims and their suffering, early evidence preservation and global awareness.¹³⁰ For proponents, the deterrence effect of judicial intervention in the form of criminal trials might affect the cycle of violence by stopping armed combatants from committing human rights violations if abusers know they

¹²⁵ Ibid.

¹²⁶ Ibid.

¹²⁷ Ibid.

¹²⁸ Sarkin, J.: *Refocusing Transitional Justice to Focus Not Only on the Past, But Also to Concentrate on Ongoing Conflicts and Enduring Human Rights Crises*, (2016) p. 303.

¹²⁹ Ibid.

¹³⁰ Engstrom, P.: *Transitional Justice and Ongoing Conflict*, (2012) p. 8; Sarkin, J.: *Refocusing Transitional Justice to Focus Not Only on the Past, But Also to Concentrate on Ongoing Conflicts and Enduring Human Rights Crises*, (2016) pp. 294-329; Reiter, A.G.; Olsen, T.D.; Payne L.A.: *Transitional Justice and Civil War: Exploring New Pathways, Challenging Old Guideposts* (2012) pp. 137-160; Moffett, L.; Narayan, N.: *Provisional justice in protracted conflicts: The place of temporality in bridging the international humanitarian law and transitional justice divide* (2024) pp. 1222-1249; Winter, S.: *Theorising Transitional Justice in Ongoing Conflicts* pp. 200-216.

might be punished, even in the absence of immediate enforcement.¹³¹ The prospect of future prosecution therefore has an intimidation purpose, which could lead to the reduction of violations or to the end of hostilities at all. In addition, through the frequently involvement of external actors, such as the ICC in criminal trials,¹³² the attention of the general public as well as that of the international community is commonly attracted, which can cause the loss of reputation or international backup. Consequences, which are feared by the majority of states.¹³³ Another approach in serving justice and peace is the uphold of the rule of law symbolized by such trials. Both victims and armed combatants are reminded that even war has rules and that every breach of international law can be punished, regardless of who committed the violation. It signals that no party to an armed conflict is above international law. Promoting accountability and rule of law strategies on an international level during ongoing conflicts is therefore essential for managing and maintaining international peace and security and avoiding further escalations or the spread of conflict.¹³⁴ Similarly emphasizing the relationship between recognition, justice and reconciliation maintains. It is argued, that one part of peacebuilding consists on the acknowledgment of the experiential and subjective realities of victims.¹³⁵ Addressing suffering and injustices while the conflict is still taking place can validate the experiences of victims and reduce the sense of marginalization that often contributes to more grievance and harden positions. Moreover, international criminal investigations endow victim's perspectives with judicial legitimacy, combat narratives of the stronger side and reaffirm victims as right holders.¹³⁶ Ignoring the fact, that certain crimes were committed, is a common obstacle to durable peace and a reason for the maintenance of narratives and hate. Official recognition on the other hand can contribute to social cohesion, nation building and reconciliation.¹³⁷ A victim centered approach in ongoing conflicts also provides alternative ways, then reacting with violence and hate caused through frustration and anger. Community dialogues, truth-telling initiatives or peace projects can be a significant step towards mutual understanding between divided societies and path the way to reconciliation.¹³⁸ A further significant benefit of TJ during ongoing conflicts affects the evidence preservation. Early, systematic and independent documentation of human rights violations are crucial because memories fade, perpetrators and

¹³¹ Dancy, G.; Wiebelhaus-Brahm: *The impact of criminal prosecutions during intrastate conflict* (2018) p. 58.

¹³² Unger, T; Wierda M.: *Pursuing Justice in Ongoing Conflict: A Discussion of Current Practice* (2009).

¹³³ Sarkin, J.: *Refocusing Transitional Justice to Focus Not Only on the Past, But Also to Concentrate on Ongoing Conflicts and Enduring Human Rights Crises*, (2016) pp. 320.

¹³⁴ Engstrom, P.: *Transitional Justice and Ongoing Conflict*, (2012) p. 6.

¹³⁵ Clark, J.N.: *The three Rs: retributive justice, restorative justice, and reconciliation* (2008) p. 346.

¹³⁶ Steinke, R.: *Selektive Strafverfolgung: Über ein wachsendes Problem der Strafjustiz* (2014) p. 208 f.

¹³⁷ Sarkin, J.: *Refocusing Transitional Justice to Focus Not Only on the Past, But Also to Concentrate on Ongoing Conflicts and Enduring Human Rights Crises*, (2012) pp. 315 ff.

¹³⁸ Standing Together, <https://www.standing-together.org/en> accessed: 28.04.2026.

witnesses die and physical evidence can be destroyed or manipulated.¹³⁹ Preservation efforts are not only vital for future proceedings but also for the victims right to know what happened, why and by whom.¹⁴⁰ Furthermore, early documentation can counter misinformation and competing narratives. In summary, the application of TJ mechanisms in ongoing conflicts provides a good tool to lay a solid foundation to path the way for further mechanisms after hostilities have ceased.

4.2.2. Challenges

Yet ongoing conflict settings present particular challenges for TJ. One of the main difficulties of pursuing TJ in the midst of ongoing conflicts is the absence of effective or legitimate authority over the whole of the state due to the common involvement of external actors. Foreign approaches to reduce human rights abuses and achieve justice therefore often suffer from legitimacy crises.¹⁴¹ Israel for example has not signed the Rome Statute and challenges the jurisdiction of the ICC.¹⁴² As a consequence such states don't feel obliged to court's rulings and continue to breach international (criminal) law. Additionally, in ongoing conflicts, the ICC is frequently weaponized and used for "Western lawfare".¹⁴³ States use legal mechanisms as a strategic tool, deployed against geopolitical opponents but suppressed to protect themselves or allies. This tactic allows states to utilize the moral authority of ICL to criminalize political opposition, construct a one-sided historical narrative of the conflict, and secure de facto impunity for state-sponsored war crimes.¹⁴⁴ Moreover, court officials have faced threats, intimidation and sanctions from opponents of the ICC, which prevail political power structures and can cause the criminalization of witnesses and hinder investigations.¹⁴⁵ The establishment of criminal trials hence offers no security guarantees.¹⁴⁶ Two other important points must be made in relation to the limitation of criminal trials in ongoing conflicts. First, the impact of

¹³⁹ Ibid.

¹⁴⁰ Moffett, L.; Narayan, N.: *Provisional justice in protracted conflicts: The place of temporality in bridging the international humanitarian law and transitional justice divide* (2024) pp. 1227 f.

¹⁴¹ Moffett, L.; Narayan, N.: *Provisional justice in protracted conflicts: The place of temporality in bridging the international humanitarian law and transitional justice divide* (2024) pp. 1240 f.

¹⁴² *Decision on Israel's challenge to the jurisdiction of the Court pursuant to article 19 (2) of the Rome Statute*, <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd180a0ebd8.pdf> accessed: 28.04.2026.

¹⁴³ Coalition for the International Criminal Court: Criminalising Accountability: The US lawfare against the international justice system pp. 1-88 https://coalitionfortheicc.org/sites/default/files/cicc_documents/Criminalising%20Accountability%20-%20202026_0.pdf accessed: 04.06.2026.

¹⁴⁴ Ibid.

¹⁴⁵ *Sanctioning ICC Judges Directly Engaged in the Illegitimate Targeting of Israel*, Press Statement Marco Rubio, Secretary of State December 18, 2025, <https://www.state.gov/releases/office-of-the-spokesperson/2025/12/sanctioning-icc-judges-directly-engaged-in-the-illegitimate-targeting-of-israel> accessed: 28.04.2026.

¹⁴⁶ e.g. even though the ICTY was established in 1993, the genocide in Srebrenica took place in 1995.

criminal trials on the affected society must be considered. Particular societies in non-industrialized or rural areas, often live far from legal proceedings and, in some cases have barely even been aware of their existence. Their needs and their understanding of justice therefore might differ from Western liberal norms and definitions. In some situations, legal responses are thus far from lived realities and a much harder and detailed analysis of implemented TJ mechanisms is needed in order to be effective.¹⁴⁷ Secondly, and this counts for all TJ mechanisms, the respective setting of the crises at hand must be examined. Not every location or conflict has the same conditions for the implementation of TJ measures. Due to demolished infrastructure, trauma, different ethnicities, differing international support and funding, the intensity level of the conflict or a high number of perpetrators among conflict ridden societies, the needs of each affected community vary. Therefore, a much harder contextualized approach is needed to secure peace and justice efforts. A further challenge of TJ in ongoing conflicts is how do we deliver justice while pursuing peace and security.¹⁴⁸ This debate centers the question as to what extent international criminal procedures are perceived as an obstacle to peace processes.¹⁴⁹ While advocates of criminal trials admits conflicts use the argument of deterrence, opponents warn against the danger of accountability measures. Accountability mechanisms can be viewed as victor's justice and threaten peace negotiations since peace accords might involve comprises with serious human rights perpetrators and war criminals. State officials, who face potential prosecuting might become less willing to relinquish power or participate in peace negotiations, if doing so increases the likelihood of judicial consequences.¹⁵⁰ Therefore, pragmatic peace and conflict resolution requires compromises, also on criminal accountability and human rights. Amnesties, partial or conditional could serve the interests of both conflict parties and can create incentives to end hostilities.¹⁵¹ However, also the use of amnesties is controversial among scholars. It is argued, that amnesties contradict the obligation to prosecute crimes under international law. Through the prevention of proper investigations and prosecution of perpetrators, access to civil remedies and reparations is blocked, which can lead to grievances among victims and will end in cycles of violence. Hence, human rights advocates, argue that there can be no lasting peace without justice and the question how to deliver justice

¹⁴⁷ Destrooper, T.; Evrard E.: *The (Many) Afterlives of Transitional Justice: Practice-based Insight on Continuity, Impact and Evolving Justice Struggles* (2025) p. 154.

¹⁴⁸ Baumgartner, E.; Bernath, J.: *Im luftleeren Raum? Völkerstrafrecht im Kontext von Konflikt und Transformation* (2018) p. 537.

¹⁴⁹ Merkel K.: *Peace vs. Justice: A false Dichotomy? Mapping Tensions and Complementarities between Conflict Resolution and Human Rights Advocacy in Afghanistan* (2013) pp. 19-20.

¹⁵⁰ Baumgartner, E.; Bernath, J.: *Im luftleeren Raum? Völkerstrafrecht im Kontext von Konflikt und Transformation* (2018) p. 537.

¹⁵¹ Ibid.

while pursuing peace and security remains.¹⁵² To prevent the reoccurrence of conflicts which is often driven by inequality and poverty and to ensure guarantees of non-repetition, institutional reforms are necessary ongoing conflicts. Structural injustice and systematic human rights violations can only be addressed and therefore prevented in the futures when the political culture and practice by actors responsible for those violations is changed. Education for society and training for military and security forces are much needed in order to be successful. However, due to the lack of political will and deeply rooted narratives public commitments of transformation are hardly implemented.¹⁵³ The lack of political will also plays a role in the context of evidence preservation. States involved of armed conflicts frequently limit the ability of independent journalists, human rights organizations, and international investigators to enter conflict zones.¹⁵⁴ In doing so the opportunity for independent documentation of atrocities, war crimes and human rights abuses is reduced, raising concerns regarding censorship, reliability and selectivity.¹⁵⁵ Moreover, obstacles for later criminal prosecutions and TRC are created. Ultimately, to establish certain TJ mechanisms conflict parties must work together. In the light of ongoing conflicts which are highly unpredictable and complex, co-working is not always possible.

4.2.3. Conclusion

While the number of human rights violations around the world increases, the application of TJ mechanisms in ongoing conflicts offers a broad range of opportunities. Simultaneously several challenges remain. As showed a much harder and detailed analysis of the respective ongoing crises is needed. TJ admits conflicts aims not simply to ignore the human rights abuses while waiting for hostilities to end, but actually start doing something to protect such rights. TJ in the midst of conflicts is therefore not only the reaction to past atrocities but prevention of future human rights abuses. Even if the impact is limited, a step away from conflict and towards peace, justice and reconciliation is desirable.

CHAPTER 5. WITHIN-CASE ANALYSIS OF GAZA AND UKRAINE

After illustrating the theoretical framework of ICL and TJ, this chapter aims to apply the results on contemporary empirical reality. To do so, it provides an analysis of two of the most highly

¹⁵² Moffett, L.; Narayan, N.: *Provisional justice in protracted conflicts: The place of temporality in bridging the international humanitarian law and transitional justice divide* (2024) pp. 1231 f.

¹⁵³ Ibid.

¹⁵⁴ Committee to Protect Journalists: *CPJ challenges Israel's ban on international media access to Gaza in Israeli Supreme Court Press Releases* October 16, 2025, <https://cpj.org/2025/10/cpj-challenges-israels-ban-on-international-media-access-to-gaza-in-israeli-supreme-court/> accessed: 04.06.2026.

¹⁵⁵ Ibid.

visible ongoing and controversial contemporary conflicts: the Russian invasion of Ukraine and the genocide in Gaza. Within this chapter the historical context of Gaza and Ukraine will be outlined which will delineate both contexts as ongoing conflicts in which certain TJ mechanisms are already implemented. Additionally, in order to link the impact of prevailing power structures on the application and effectiveness of TJ mechanisms in ongoing conflicts, the differing significance of dependent variables will be examined and a comparative study is being conducted.

5.1. Ukraine

5.1.1 Historical Contextualization

The Russo-Ukrainian War has evolved through two distinct temporal phases. The first phase was the initial 2014-2021 invasion, which included Russia's annexation of the Crimean Peninsula and armed conflict in its eastern Donbas region.¹⁵⁶ The conflict entered its second phase on February 24, 2022, when the Russian Federation launched a full-scale invasion of Ukraine, this time escalating to a full-scale war that resulted in hundreds of thousands of deaths and millions of people having to flee to safety in nearby countries.¹⁵⁷ Official Kremlin rhetoric justified the escalation under the pretext of a “special military operation” necessary to “demilitarize and denazify” Ukraine, alongside unconfirmed claims of preventing an ongoing genocide against Russians living in Ukrainian territory.¹⁵⁸ In reality, the invasion escalated into a devastating war that displaced millions and caused massive civilian suffering. Throughout both phases of the armed conflict, Russian forces have been implicated in widespread and systematic violations of international humanitarian law, including indiscriminate and disproportionate bombing and shelling of civilian areas that hit homes and healthcare and educational facilities.¹⁵⁹ Furthermore, in temporarily occupied territories, investigative mechanisms have documented severe war crimes, including torture, summary executions, sexual and gender-based violence, enforced disappearances, arbitrary detention, and looting of

¹⁵⁶ See on this Center for Preventive Action: *War in Ukraine* <https://www.cfr.org/global-conflict-tracker/conflict/conflict-ukraine> accessed: 11.06.2026.

¹⁵⁷ EBSCO: Russo-Ukrainian War (2022) <https://www.ebsco.com/research-starters/military-history-and-science/russo-ukrainian-war> accessed: 11.06.2026.

¹⁵⁸ Center for Preventive Action: *War in Ukraine* <https://www.cfr.org/global-conflict-tracker/conflict/conflict-ukraine> accessed: 11.06.2026.

¹⁵⁹ Human Rights Watch: “*Tanks on the Playground*” *Attacks on Schools and Military Use of Schools in Ukraine* November 9, 2023 <https://www.hrw.org/report/2023/11/09/tanks-playground/attacks-schools-and-military-use-schools-ukraine> accessed: 11.06.2026; Ohchr: *In Ukraine overnight Russian attack leaves dozens dead and injured* 2 June 2026 <https://ukraine.ohchr.org/en/In-Ukraine-Overnight-Russian-Attack-Leaves-Dozens-Dead-and-Injured> accessed: 11.06.2026.

cultural property.¹⁶⁰ By early 2026, both sides had experienced substantial casualties, with an estimated 55.000 Ukrainian soldiers and nearly half a million Russian soldiers killed.¹⁶¹ Despite diplomatic overtures, including a comprehensive, immediate and unconditional ceasefire proposed by Ukraine more than one year ago, Russia has rejected these terms, leaving active hostilities and the accompanying humanitarian crisis ongoing.¹⁶²

5.1.2. Analysis of Dependent Variables

5.1.2.1. Legal Accountability

Ukraine's commitment with legal accountability mechanisms began long before Russia's invasion in February 2022 and can be traced back to Russia's occupation of the Crimean Peninsula in 2014.¹⁶³ Originally, Ukraine aimed for a multilayered legal strategy, bringing conflict-related violations before a range of international arbitration and adjudication bodies, including the ICJ, the European Court of Human Rights, the ICC and the Arbitral Tribunal of the United Nations Convention on the Law of the Sea.¹⁶⁴ Simultaneously, Ukraine pursued domestic reforms aimed at enhancing its criminal legislation and improving the capability of local investigators, prosecutors, and judges to address atrocities.¹⁶⁵ Ukraine's engagement to seek international legal accountability is marked by exceptional rapidity and intensity. Within two days of Russia's invasion, Ukraine launched proceedings before the ICJ.¹⁶⁶ Similarly, the jurisdiction of the ICC was activated with remarkable speed. In March 2022, Lithuania initiated the situation in Ukraine to the Office of ICC Prosecutor, soon followed by a joint referral of 38 additional State Parties.¹⁶⁷ The ICC Prosecutor opened an investigation the following day, which ultimately led, to the issuance of two arrest warrants against President Putin and Maria Lvova-Belova on 17 March 2023. Since then, the court has issued further arrest warrants against additional Russian nationals.¹⁶⁸ At the European Court of Human Rights, Ukraine submitted an

¹⁶⁰ Human Rights Watch: Russia-Ukraine War <https://www.hrw.org/tag/russia-ukraine-war> accessed 11.06.2026.

¹⁶¹ Reinsford, S.; Kola, P.: *55,000 Ukrainian soldiers killed in war with Russia, Zelensky says* 05.02.2026 <https://www.bbc.com/news/articles/cvgn2dzwd1do> accessed: 11.06.2026; Gardner, F.; Moore, H.: *Almost 500.000 Russian soldiers killed in Ukraine war, GCHQ says* 27.05.2026 <https://www.bbc.com/news/articles/c4g44gprnnvo> accessed: 11.06.2026.

¹⁶² Permanent mission of France to the United Nations in New York, Statement by Jaraud-Darnault, J.: *A ceasefire is needed now* <https://onu.delegfrance.org/a-ceasefire-is-needed-now> accessed: 11.06.2026.

¹⁶³ Busol, K.: *Mariupol and the Origins and Avenues of Ukraine's Transitional Justice and Process* (2022).

¹⁶⁴ Ibid.

¹⁶⁵ Ibid.

¹⁶⁶ Kuc, O.: *The Empire Strikes Back: Russia's Procedural Offensive Before International Courts and Tribunals* (2026) <https://www.ejiltalk.org/the-empire-strikes-back-russias-procedural-offensive-before-international-courts-and-tribunals/> accessed: 11.06.2026.

¹⁶⁷ International Criminal Court: *Ukraine* ICC-01/22 02.03.2022 <https://www.icc-cpi.int/situations/ukraine> accessed: 11.06.2026.

¹⁶⁸ International Criminal Court: *Situation in Ukraine: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova* 17.03.2023 <https://icc-cpi.int/news/situation-ukraine->

inter-state application against the Russian Federation on 28 February 2022, asserting mass and grave human-rights violations committed during Russian military operations.¹⁶⁹ These proceedings were later joined with *Ukraine and the Netherlands v. Russia* and twenty-six Member States were granted to intervene.¹⁷⁰ Although the ICC can investigate war crimes, crimes against humanity, and genocide in Ukraine, it lacks jurisdiction over the crime of aggression in this context.¹⁷¹ With support of the European Union, efforts were undertaken to establish the *Special Tribunal for the Crime of Aggression against Ukraine*. This tribunal allows to still prosecute senior political and military leaders for the crime of aggression against Ukraine.¹⁷² Alongside these international initiatives, Ukraine has developed an extensive domestic accountability framework. The Office of the Ukrainian Prosecutor General has registered 173,946 crimes linked to Russia's aggression of which 168,744 are classified as war crimes.¹⁷³ To strengthen institutional expertise, specialized War Crime Units were created within the Office of the Ukrainian Prosecutor General, that are supported by the Atrocity Crimes Advisory Group (ACA).¹⁷⁴ Established in May 2022 by the United States, the EU, and the United Kingdom, the ACA has provided strategic and operational assistance to Ukraine's Prosecutor General, that has significantly enhanced Ukraine's capability to document and prosecute war crimes in real-time.¹⁷⁵ Civil society organizations also played a crucial role in shaping justice endeavors. Human rights organisations have actively collaborated submissions to the ICC Ukraine's prosecution and exerted sustained pressure on the government to reform the Criminal Code in order to ensure comprehensive domestic criminalization of war crimes and crimes against humanity.¹⁷⁶ Parallel to prosecutorial efforts, the United Nations Independent International Commission of Inquiry on Ukraine was established in 2022, to investigate the facts, root causes, and gender dimensions of human rights violations, and to recommend systemic accountability measures.¹⁷⁷ Supported by the UN Human Rights

icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and-maria-alekseyevna-lvova-belova accessed: 11.06.2026.

¹⁶⁹ European Court of Human Rights Application no. 11055/22.

¹⁷⁰ Kuc, O.: *The Empire Strikes Back: Russia's Procedural Offensive Before International Courts and Tribunals* (2026) <https://www.ejiltalk.org/the-empire-strikes-back-russias-procedural-offensive-before-international-courts-and-tribunals/> accessed: 11.06.2026.

¹⁷¹ See on this Art. 15 bis (4), (5), ICC, Rome Statute.

¹⁷² Council of Europe: *Special Tribunal for the Crime of Aggression against Ukraine*, <https://www.coe.int/en/web/special-tribunal-ukraine> accessed: 12.06.2026.

¹⁷³ Klamburg, M.: *War Crimes Trials Before Domestic Courts in Ukraine – Making the Case for a Differentiated Approach to International Law* (2026) p. 163 f.

¹⁷⁴ Nuridzhanian, G.: *Prosecuting war crimes: are Ukrainian courts fit to do it?* (2022) <https://www.ejiltalk.org/prosecution-war-crimes-are-ukrainian-courts-fit-to-do-it/> accessed: 12.06.2026.

¹⁷⁵ Sherpa, C. N.; Van der Lugt R.: *Navigating Pathways toward Transitional Justice in Ukraine* (2024) p. 7.

¹⁷⁶ Ibid.

¹⁷⁷ Sherpa, C. N.; Van der Lugt R.: *Navigating Pathways toward Transitional Justice in Ukraine* (2024) p. 6.

Monitoring Mission and by local non-governmental organisations, these processes have also contributed to truth-seeking by providing spaces for victims to submit evidence, testify, and share their experiences.¹⁷⁸

5.1.2.2. Geopolitical and diplomatic support

In the context of Ukraine, an unprecedented coalition of Western states and international institutions has mobilized multifaceted support to ensure the state's structural survival and enable future justice processes. The European Union has deployed an extraordinary €108.8 billion in financial, economic, and humanitarian assistance.¹⁷⁹ Disbursed through a combination of grants, loans, guarantees, and direct budget support, this funding has been vital in preserving Ukraine's economic stability and financing its immediate administrative needs.¹⁸⁰ Parallel to economic and institutional stabilization, Western allies have massively bolstered the country's defense infrastructure. The EU has allocated €75.2 billion in military aid, prominently featuring the launch of the EU Military Assistance Mission in support of Ukraine in November 2022, which provides specialized, collective training to the Ukrainian armed forces.¹⁸¹ Complementing this European effort, the United States has provided over \$188 billion in financial assistance, cementing a unified transatlantic strategy to prevent the collapse of the Ukrainian state.¹⁸² Beyond state survival, geopolitical support has been central in mitigating the ensuing humanitarian catastrophe and protecting victims of the conflict. The EU and its 27 member states collectively stand as the largest donor of humanitarian aid, systematically providing food, healthcare, shelter, and financial assistance to internally displaced persons and those fleeing to neighboring countries.¹⁸³ Crucially, the diplomatic consensus enabled the historic activation of the *Temporary Protection Directive* on March 4, 2022. This legal mechanism rapidly alleviated pressure on national asylum systems by granting displaced Ukrainians immediate sanctuary and harmonized rights across the continent, supported by the

¹⁷⁸ Ibid.

¹⁷⁹ European Council: *EU financial assistance to Ukraine* <https://www.consilium.europa.eu/en/policies/ukraine-solidarity-financial-support/> accessed: 19.06.2026.

¹⁸⁰ Ibid.

¹⁸¹ See on this *EU Military Assistance Mission in support of Ukraine* <https://www.eeas.europa.eu/eumam-ukraine/en?s=410260> accessed: 19.06.2026; European Commission: *EU military support to Ukraine* https://commission.europa.eu/topics/eu-solidarity-ukraine/eu-assistance-ukraine/eu-military-support-ukraine_en accessed: 19.06.2026.

¹⁸² Masters, J.; Merrow, W.: *Here's How Much aid the Unites States Has Sent Ukraine* <https://www.cfr.org/articles/how-much-us-aid-going-ukraine> accessed: 10.06.2026.

¹⁸³ European Council: *How the EU helps refugees from Ukraine* <https://www.consilium.europa.eu/en/policies/ukraine-solidarity-refugees-from-ukraine/> accessed: 19.06.2026.

identification of up to €17 billion in EU funds.¹⁸⁴ Finally, this geopolitical alignment extends deeply into coercive diplomacy and the formal institutionalization of post-conflict justice. Alongside implementing comprehensive economic sanctions, individual sanctions, diplomatic and visa measures and assets freezing designed to cripple Russia's war-making capacity,¹⁸⁵ the international community has actively constructed the scaffolding for future restorative justice. A landmark achievement in this regard is the creation of *the Register of Damage for Ukraine*, established by the Council of Europe on May 12, 2023.¹⁸⁶ This institution systematically archives evidentiary claims regarding damage, loss, and injury incurred since the full-scale invasion on February 24, 2022.¹⁸⁷ By comprehensively recording these claims, the international community is laying the indispensable groundwork for adjudication by a future international compensation mechanism.

5.1.2.3. Narrative Framing

Since the full-scale invasion in February 2022, the international discourse surrounding the war in Ukraine has been defined by a highly cohesive narrative strategy. Ukraine and its Western allies portrayed the conflict as "unprovoked and unjustified military aggression," firmly establishing Russia's use of force as both: unlawful under international law and morally indefensible.¹⁸⁸ However, the narrative framing extends far beyond a traditional territorial dispute, rather it has been discursively elevated into an existential ideological struggle between democracy and authoritarianism.¹⁸⁹ Within this paradigm, Ukraine is portrayed not merely as a sovereign state defending its own freedom, sovereignty and territorial integrity, but as the geopolitical frontline safeguarding the broader European and Western architecture in order to maintain democratic values, human rights, and the international rule of law.¹⁹⁰ This profound ideological alignment cultivates an unambiguous dichotomy between the aggressor and the

¹⁸⁴ Ibid.

¹⁸⁵ European Council: *EU sanctions against Russia: questions and answers* <https://www.consilium.europa.eu/en/policies/sanctions-against-russia-explained/> accessed: 19.06.2026; Moiseienko, A.: *Frozen Russian State Assets: The Key to Enforcing the Largest Financial Debt Of Our Times*, VerfBlog, 2025/4/04, <https://verfassungsblog.de/frozen-russian-state-assets/>, DOI:10.59704/8b6611ae95a1a8be accessed: 19.06.2026.

¹⁸⁶ See on this *Register for Damage for Ukraine* <https://rd4u.coe.int/en/> accessed: 19.06.2026.

¹⁸⁷ Ibid.

¹⁸⁸ European Union: *EU Statement on the Russian unprovoked and unjustified invasion in Ukraine* 15.03.2022 https://www.eeas.europa.eu/eeas/eu-statement-russian-unprovoked-and-unjustified-invasion-ukraine_en accessed: 20.06.2026.

¹⁸⁹ Tsuruoka, M.: *Why the War in Ukraine is not about Democracy versus Authoritarianism* 27.06.2022 <https://www.rusi.org/explore-our-research/publications/commentary/why-war-ukraine-not-about-democracy-versus-authoritarianism> accessed: 21.06.2026.

¹⁹⁰ Council of Europe: *The Council of Europe's Support for Ukraine* <https://www.coe.int/en/web/portal/war-in-ukraine> accessed: 20.06.2026; *ibid.*

victim. Russia is universally condemned as a revisionist power seeking to dismantle the post-1945 international rules-based global order through military coercion.¹⁹¹ Conversely, the suffering of Ukrainian citizens is universally acknowledged, politically uncontested, and perceived as a noble sacrifice in defense of shared Western, democratic values.¹⁹² Framing Ukraine as an exceptional, global crisis of democracy has catalyzed unprecedented international empathy and solidarity. This unified discourse directly mobilized massive financial and military resources, facilitated uniquely generous refugee protection frameworks,¹⁹³ and generated the immense political capital required to rapidly operationalize international justice mechanisms.¹⁹⁴

5.2. Gaza Strip

5.2.1. Historical Contextualization

On 7 October 2023, thousands of armed Hamas and Islamic Jihad militants invaded Israel by land, sea and air and murdered estimated 1200 people, mostly civilians. Hamas fighters launched thousands of rockets into Israel, breached the security fence between Israel and Gaza, and infiltrated into more than 20 Israelis communities along the border. Militants killed men, women, children and elderly people, sexually assaulted, and mutilated women and men. Another 251 were forcibly taken hostage.¹⁹⁵ More than 4.000 people were injured, and hundreds of homes and civilian structures were destroyed or rendered uninhabitable.¹⁹⁶ In response to the deadliest attack in its 75-year history, the Israeli government declared war on Hamas on 8 October 2023 in order to destroy the military and governing capabilities of Hamas and the Palestinian Islamic Jihad in Gaza, return the hostages to Israel, and prevent future attacks against Israel from the Gaza Strip.¹⁹⁷ On 9 October 2023, Israel launched a “total siege” on the

¹⁹¹ Pellet, A.: *War in Ukraine: Mutation or Resilience of the Principles of the United Nations Charter?* June 2023 <https://geopolitique.eu/en/articles/war-in-ukraine-mutation-or-resilience-of-the-principles-of-the-united-nations-charter/> accessed: 21.06.2026.

¹⁹² Yaroshenko, O.: *Perspectives of invasion: media framing of the Russian war in Ukraine*, July 26, 2025 <https://en.ejo.ch/media-politics/perspectives-of-invasion-media-framing-of-the-russian-war-in-ukraine> accessed: 21.06.2026.

¹⁹³ Hargrave, K.; Bryant J.: *Narratives and the Ukraine response: implications for humanitarian action and principles*, 08 November 2024 <https://odi.org/en/publications/narratives-and-the-ukraine-response-implications-for-humanitarian-action-and-principles/> accessed: 21.06.2026.

¹⁹⁴ See on this 5.1.2.1. and 5.1.2.2.

¹⁹⁵ Bloxham, D.: *The 7 October Atrocities and the Annihilation of Gaza: Causes and Responsibilities*, (2026) p. 294; Amnesty International: *Targeting Civilians: Murder, Hostage-Taking and other Violations by Palestinian Armed Groups in Israel and Gaza*, p. 8.

¹⁹⁶ Ibid.

¹⁹⁷ U.S. Department of State: *Country Reports on Terrorism 2023: Israel, The West Bank and Gaza* <https://www.state.gov/reports/country-reports-on-terrorism-2023/israel-the-west-bank-and-gaza> accessed: 11.06.2026.

Gaza Strip, blocking the entry of food, water, medicine, fuel and electricity.¹⁹⁸ In the conflict to date more than 75.000 Palestinians in Gaza have been killed and another 172.485 got injured. Additionally, about 90% of Gaza's 2.1 million residents have been displaced, with most facing unsanitary, overcrowded conditions alongside acute shortages of food, water, medical care and other essential supplies and services.¹⁹⁹ The Israeli military attacks are characterized by intensified airstrikes in densely populated areas, attacks on humanitarian workers and journalists, forced displacement and hunger as a weapon of war through the denial and restriction of aid operations.²⁰⁰ Despite a ceasefire that took effect on 10 October 2025 and led to the return of all hostages,²⁰¹ Israeli military operations maintain. Since October 2025, the Israeli army killed at least 978 Palestinians and no signs of transitions are visible. About 90% of Palestinians in Gaza are still displaced, infrastructure destroyed and no or very little schooling is taking place. Hence, Gaza has not been given the means and materials to reconstruct a viable economy and supply chains.²⁰²

5.2.2. Analysis of Dependent Variables

5.2.2.1. Legal Accountability

Following the escalation of hostilities on October 7, 2023, the pursuit of accountability for violations of international humanitarian and human rights law in Gaza has been forced almost entirely into international judicial arenas and the realm of civil society. The devastating military offensive resulted in the total collapse of the Palestinian domestic governance and judicial infrastructure, eradicating any local capacity to investigate and prosecute high-level political and military officials.²⁰³ State-led domestic justice efforts have been entirely replaced by legal proceedings at the highest international level, coupled with decentralized, high-risk evidence preservation by non-governmental organizations and civil tribunals. Together, these external avenues function as the only viable conduits for accountability, serving as the necessary

¹⁹⁸ Le Monde: *Israeli army seals off Gaza Strip in a „complete siege“* <https://www.lemonde.fr/en/international/article/2023/10/09/israel-defense-minister-orders-complete-siege-on-gaza-strip> accessed: 11.06.2026.

¹⁹⁹ Sharp, J.M.; Zanolli, J.: *Israel and Hamas Conflict In Brief: Overview, U.S. Policy, and Options for Congress* (2024) p. 4; The Lancet Global Health, 2026; 14, e552-e559.

²⁰⁰ CooperasSalud: *Israel's unprecedented humanitarian blockade of the Occupied Palestinian Territory* (2024) <https://www.cooperasalud.org/monographs/israel-s-unprecedented-humanitarian-blockade-of-the-occupied-palestinian-territory> accessed: 11.06.2026.

²⁰¹ Reuters: *Details of the Gaza ceasefire agreement* <https://www.reuters.com/world/middle-east/details-gaza-ceasefire-agreement-2025-10-10/> accessed: 11.06.2026.

²⁰² Shea, J.: *Gaza, the Strip of the broken promises* (2026) <https://www.friendsofeurope.org/insights/critical-thinking-gaza-the-strip-of-the-broken-promises/> accessed: 11.06.2026.

²⁰³ OCHA: *Humanitarian Situation Report 24 April 2026* <https://www.ochaopt.org/content/humanitarian-situation-report-23-april-2026> accessed: 16.06.2026.

preparatory groundwork for any future TJ processes. At the pinnacle of this externalized architecture are formal international courts addressing both state and individual responsibility. On December 29, 2023, South Africa initiated a historic case at the ICJ accusing Israel of violating the Genocide Convention in the Gaza Strip.²⁰⁴ The second court operating is the ICC. Building upon an ongoing investigation initiated in 2021 regarding the occupied Palestinian territories, the ICC extended its scope to encompass the atrocities committed since October 2023.²⁰⁵ This culminated on November 21, 2024, when the ICC issued arrest warrants for Israeli Prime Minister Benjamin Netanyahu and former Defense Minister Yoav Gallant. Arrest warrants were also issued for senior Hamas leaders, Yahya Sinwar, Mohammed Deif, and Ismail Haniyeh, though they have since been confirmed killed.²⁰⁶ Complementing these judicial bodies, is the UN Independent International Commission of Inquiry on the Occupied Palestinian Territory (COI), which focuses on structural state responsibility and truth-telling. Established by the UN Human Rights Council, the COI possesses a unique, open-ended mandate to investigate not only immediate war crimes but also the structural root causes of the conflict, such as systematic discrimination and prolonged occupation.²⁰⁷ By aggregating remote witness testimonies, satellite data, and NGO reports, the Commission bridges the gap between active conflict documentation and formal legal proceedings, effectively serving as an internationally mandated truth commission in the absence of a domestic equivalent.²⁰⁸ Finally, because independent UN investigators and the ICC Prosecutor have been systematically locked out of Gaza, the immense burden of on-the-ground documentation has fallen to civil society and alternative justice models. Local organizations such as Al-Haq, the Palestinian Centre for Human Rights and Al Mezan operate under extreme lethal threat to record civilian casualties and catastrophic infrastructure loss.²⁰⁹ They are critically supported by international technical groups, including Forensic Architecture, which utilize advanced Open-Source Intelligence to technologically bypass the physical blockade and supply international courts with rigorous

²⁰⁴ See on this International Court of Justice: *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip* (South Africa v. Israel) <https://www.icj-cij.org/case/192> accessed: 16.06.2026.

²⁰⁵ International Criminal Court: *State of Palestine – Situation in the State of Palestine* ICC-01/18 <https://www.icc-cpi.int/palestine> accessed: 16.06.2026.

²⁰⁶ United Nations: *ICC issues arrest warrants for Netanyahu, Gallant and Hamas commander* 21 November 2024 <https://news.un.org/en/story/2024/11/1157286> accessed: 16.06.2026.

²⁰⁷ United Nations Human Right Council: *The Independent International Commission of Inquiry on the Occupied Territory, including East Jerusalem and Israel* <https://www.ohchr.org/en/hr-bodies/hrc/co-israel/index> accessed: 16.06.2026.

²⁰⁸ Ibid.

²⁰⁹ United Nations: *UN experts dismayed by US sanctions against Palestinian human rights organisations* 22 September 2025 <https://www.ohchr.org/en/press-releases/2025/09/un-experts-dismayed-us-sanctions-against-palestinian-human-rights> accessed: 16.06.2026.

spatial evidence.²¹⁰ A striking manifestation of how civil society navigates the structural gridlock of formal international law is the establishment of the *Gaza Tribunal*. Frustrated by the political constraints and slow pace of formal institutions, coalitions of international legal scholars, human rights defenders, and prominent civil society actors convened this independent, unofficial tribunal.²¹¹ While it lacks legally binding state authority and the power to incarcerate, the *Gaza Tribunal* serves a profound function within TJ "from below." It provides a vital, immediate public platform for victims to testify, assesses the legality of military actions and state complicity absent geopolitical vetoes, and delivers moral and historical accountability. Such tribunals democratize international law, ensuring that the legal narrative is not exclusively owned by sovereign states.²¹²

5.2.2.2. Geopolitical and diplomatic support

The war between Hamas and Israel sparked diverse reactions from the international community and changed over time. Initially, the United States and its primary European allies reacted with unequivocal solidarity for Israel, framing the subsequent military campaign predominantly through the legal and political lens of Israel's right to self-defense.²¹³ This rhetorical alignment quickly translated into unconditional backing of the United States and western European States, who have blocked any attempt to bring pressure to bear on the Israeli government. In effect, the United States exercised its veto power several times on binding resolutions demanding a ceasefire or formal accountability measures,²¹⁴ while the EU has constrained its reaction to repeated official statements voicing "disquiet" and "concern", actively refraining from deploying coercive diplomatic tools.²¹⁵ Moreover, rather than leveraging international pressure to enforce compliance with international humanitarian law, Western states maintained an uninterrupted flow of military transfers to Israel, and the EU conspicuously abstained from suspending the EU-Israel Association Agreement, despite persistent calls invoking its human rights conditionality clauses.²¹⁶ Instead of enacting punitive political measures, the EU and its

²¹⁰ See on this Osint Forensic Architecture <https://forensic-architecture.org/methodology/osiint> accessed: 16.06.2026.

²¹¹ See on this *Gaza Tribunal* <https://gazatribunal.com> accessed: 16.06.2026.

²¹² Ibid.

²¹³ Waldo, C.; Epstein, G.; Hilbush S.; Aaron Y. Z.: *International Reactions to the Hamas Attack on Israel* Oct. 11, 2023 <https://www.washingtoninstitute.org/policy-analysis/international-reactions-hamas-attack-israel> accessed: 16.06.2026.

²¹⁴ United Nations: *Security Council: US votes against resolution on Gaza ceasefire* 18 September 2025 <https://news.un.org/en/story/2025/09/1165881> accessed: 16.06.2026.

²¹⁵ Ruck, I.: *The Shifting Sands of European Diplomacy: The EU's Evolving Alignment with Israel* June 24, 2025 <https://arabcenter.org/resource/the-shifting-sands-of-european-diplomacy-the-eus-alignment-with-israel/> accessed: 16.06.2026.

²¹⁶ Amnesty International: *Suspend EU-Israel Trade Agreement* <https://www.amnesty.org/en/petition/suspend-eu-israel-trade-agreement/> accessed: 16.06.2026.

member states channeled their engagement primarily through humanitarian intervention and economic assistance for the Gaza Strip.²¹⁷ Following the overarching reluctance of major Western powers to impose economic or diplomatic sanctions against the State of Israel, several states recognized the State of Palestine, seeking to elevate Palestinian political equivalence on the global level. Most notably, Spain, Ireland, and Norway formally recognized the State of Palestine in May 2024.²¹⁸ Followed by Canada, the United Kingdom, Australia, Belgium and France among others in September 2025.²¹⁹ Ultimately, the EU emphasizes its support for a two-state solution.²²⁰ In stark contrast to limited support of the Global North, nations from the Global South mobilized rapidly in solidarity with Palestinians in Gaza. Moving beyond mere diplomatic demands for a ceasefire and an end to the blockade, the Global South transitioned into active judicial intervention.²²¹ This global mobilization catalyzed the formation of prominent civil and diplomatic coalitions, such as *The Hague Group*²²² or *the Gaza Tribunal*, which emerged with the explicit aim of defending international law, enforcing the ICJ's findings, and challenging the impunity facilitated by Western allies.²²³

5.2.2.3. Narrative Framing

The Gaza-Israel war is defined by sharply conflicting global and local narratives, enhanced by media coverage and official statements. Israeli deaths are widely framed as attacks on life, and even on the right of the state to exist.²²⁴ This framing is powerfully condensed in the repeated characterization of the 7 October attacks as “the deadliest massacre against Jews since the

²¹⁷ European Council: *EU humanitarian support for Palestinians* <https://www.consilium.europa.eu/en/policies/eu-humanitarian-support-to-palestinians> accessed: 16.06.2026.

²¹⁸ United Nations: *Recognition of Palestine: a long history* 22/09/2025 <https://unric.org/en/recognition-of-palestine-a-long-history> accessed: 16.06.2029.

²¹⁹ Ibid.

²²⁰ European Union: *The EU and the Middle East Peace Process* 02.05.2024 https://www.eeas.europa.eu/eeas/eu-and-middle-east-peace-process_en accessed: 16.06.2026.

²²¹ McMahon, K.: *To End the Gaza Genocide, the Global South takes Justice into its own Hands* 18 July 2025 <https://newint.org/peace/2025/end-gaza-genocide-global-south-takes-justice-its-own-hands> accessed: 16.06.2026; Law for Palestine: *Justice Beyond Power: The Hague Group and the Future of International Law – The Legal Resistance of the Global South* September 18, 2025 <https://law4palestine.org/justice-beyond-power-the-hague-group-and-the-future-of-international-law-the-legal-resistance-of-the-global-south/> accessed: 16.06.2026.

²²² The Hague Group is a collation of non-western states campaigning for the enforcement of international law and court adjunctions against Israel.

²²³ McMahon, K.: *To End the Gaza Genocide, the Global South takes Justice into its own Hands* 18 July 2025 <https://newint.org/peace/2025/end-gaza-genocide-global-south-takes-justice-its-own-hands> accessed: 16.06.2026; Law for Palestine: *Justice Beyond Power: The Hague Group and the Future of International Law – The Legal Resistance of the Global South* September 18, 2025

²²⁴ See on this The Washington Institute for Near East Policy: *Tracking International Reactions to the Hamas-Israel War*, <https://www.washingtoninstitute.org/policy-analysis/series/tracking-international-reactions-to-hamas-israel-war> accessed: 21.06.2026; Babu, P.: *Constructing Legality: Delegation Diplomacy and the Politics of Narrative in International Law*, June 12, 2025 <https://www.ejiltalk.org/constructing-legality-delegation-diplomacy-and-the-politics-of-narrative-in-international-law/> accessed: 21.06.2026.

Holocaust.²²⁵ By anchoring the event to the Holocaust, the phrase situates Israeli suffering within a frame of existential exceptionalism. It elevates the violence to a singular historical register that demands unconditional urgency, suspends contextual inquiry, and authorizes extraordinary measures.²²⁶ The framing justifies the use of force, portraying that Israel has a right to respond, effectively transforming a massacre into “strikes” and a war crime into “self-defense”. This narrative is further solidified by a number of Western States, led by the United States, with their accompanying corporate, media and intellectual elite support, championing Israel as the so-called “only democracy in the Middle East” and a partner with “shared values “surrounded by hostile forces.”²²⁷ In stark contrast, the narrative representation of Palestinian casualties is systematically subjected to a filter of profound suspicion and linguistic distancing. When civilians, humanitarian workers, or journalists are killed in Gaza, the discourse frequently pivots to the rhetoric of “human shields” and collateral damage.²²⁸ Palestinian victimhood is constantly subjected to intense moral and forensic scrutiny: questioning the geographic proximity of militants, debating the precision of the airstrikes, and publicly doubting the validity of local casualty figures.²²⁹ Furthermore, Western media and political architecture frequently employ the passive voice when describing the devastation in Gaza. Phrasings such as “buildings collapsed” or “lives were lost” structurally obscure the active agents of destruction and their intent, turning deliberate, state-led military violence into an abstract, passive tragedy.²³⁰ Moreover, framing the events post-October 7 merely as another episode in a continuous “cycle of violence” strips the conflict of its root causes, effectively normalizing and erasing the structural asymmetry of the prolonged military occupation.²³¹ This dominant narrative actively delegitimizes and criminalizes Palestinian endeavors to seek redress, even when utilizing rights enshrined in international law. The use of force is uniformly condemned as terrorism, non-violent diplomatic engagement framed as diplomatic terrorism and the

²²⁵ El Mahmoud, K.: Editorial #50: *De-Fetishizing Crisis through an Affective Approach to International Law*, Völkerrechtsblog, 11.03.2026, doi:10.17176/20260311-144926-0 <https://voelkerrechtsblog.org/editorial-50-de-fetishizing-crisis-through-an-affective-approach-to-international-law/> accessed: 21.06.2026.

²²⁶ Ibid.

²²⁷ Imseis, A.: *On Palestine and the Death of the West's International Legal Order*, November 26, 2025 <https://www.ejiltalk.org/on-palestine-and-the-death-of-the-wests-international-legal-order/> accessed: 21.06.2026.

²²⁸ Ali, A.; Khan, M.; Riaz, M.: *Examining The Framing Of The Israel-Palestine Conflict: A Textual Analysis Of International Media News Coverage* pp. 1212-1223; Elgindy, K.; Lurie-Pardes, E.: *Human shields or shielding Israel from accountability?* May 10, 2024 <https://mei.edu/publication/human-shields-or-shielding-israel-accountability/> accessed: 21.06.2026.

²²⁹ Ibid; Zreiq, J.: *Rewriting Gaza: Narrative as Control*, September 04 2025 <https://www.palestine-studies.org/en/node/1657786> accessed: 21.06.2026.

²³⁰ Zreiq, J.: *Rewriting Gaza: Narrative as Control*, September 04 2025 <https://www.palestine-studies.org/en/node/1657786> accessed: 21.06.2026.

²³¹ United Nations: *Secretary-General's remarks to the Security Council on the Middle East* 24 October 2023 <https://www.un.org/sg/en/content/sg/statements/2023-10-24/secretary-generals-remarks-the-security-council-the-middle-east-delivered> accessed: 21.06.2026.

invocation of ICL and international humanitarian law is derided as lawfare, shifting the narrative from a pursuit of justice to an abuse of the legal system.²³² Finally, the strategic conflation of legitimate legal or political criticism of Israel state policies with antisemitism, intimidates civil society's, international institutions and individuals from action.²³³

CHAPTER 6. COMPARATIVE ANALYSIS

The following chapter conduct a systematic variable-by-variable comparison, assessing differences and similarities in how the independent variable, shaped each dependent variable. The comparison identifies the differing significance of the analyzed dependent variables and shows that in the analyzed cases, prevailing power structures had a huge impact on international legal accountability, geopolitical and diplomatic support and narrative framing in context of the conflicts in Ukraine and Gaza.

6.1. Legal Accountability

The analysis of legal accountability mechanisms reveals an architectural difference between Ukraine and Gaza: the presence or absence of a domestic legal justice system and the presence or absence of supported legal accountability measures. These differences moderate the effectiveness of ICL in shaping criminal justice, reconciliation and future reparations. Ukraine's TJ framework is characterized by its domestic judicial system, which ensures the prosecution of war crimes committed in Ukraine and provides regional instruments for dealing with human rights violations. In contrast, Gaza lacks a domestic judicial infrastructure. Although approaches to international legal accountability can be found in both conflict settings, the initial operationalization of variables, reveals that the primary divergence is not the presence or absence of domestic or international legal accountability measures, but the international support. Ukraine enjoys huge financial and diplomatic support by its primarily Western allies. Dozens of states championed the ICC's jurisdiction and its arrest warrants against Russian

²³² Imseis, A.: *On Palestine and the Death of the West's International Legal Order*, November 26, 2025 <https://www.ejitalk.org/on-palestine-and-the-death-of-the-west-international-legal-order/> accessed: 21.06.2026; The Guardian: "Reward for terrorism": Israeli politicians unite to condemn ICC arrest warrant for Netanyahu, 21. November 2024 <https://www.theguardian.com/law/2024/nov/21/israel-politicians-condemn-icc-arrest-warrants-netanyahu-gallant> accessed: 21.06.2026.

²³³ Michaelson, J.; Tamkin, E.: *The Dangerous Impact of Antisemitism and its Weaponization* <https://nexusproject.us/nexus-resoruces/the-dangerous-impact-of-antisemitism/> accessed: 21.06.2026; Deutschlandfunk Kultur: *Wegen Antisemitismus Vorwurf: Absage von Fotografie-Biennale* 21.11.2023 <https://www.deutschlandfunkkultur.de/wegen-antisemitismus-vorwurf-absage-von-fotografie-biennale-100.html> accessed: 21.06.2026; Amnesty International: *Deutschland: Absage von Veranstaltungen mit UN-Sonderberichterstatteerin gefährdet Debattenräume*, 19. Februar 2025 <https://www.amnesty.de/pressmitteilung/deutschland-absage-veranstaltungen-un-sonderberichterstatteerin-francesca-albanese> accessed: 21.06.2026.

nationals.²³⁴ Investigations into alleged war crimes committed by Israel on the contrary, faced huge backlash from many of the same countries. While countries such as the United States and Germany or institutions like the EU welcomed the ICC arrest warrants against Putin, saying it was “justified” and that “it makes a very strong point” the same countries condemned the court’s decision to go after Netanyahu and Gallant.²³⁵ Moreover, state officials accused the court of being biased in prosecuting the Israeli government and delegitimized its authority.²³⁶ Additionally, Israel claims that the court has no jurisdiction over the situation in Palestine, stating that Palestine is not a sovereign state capable of being party to the Rome Statute.²³⁷ Efforts to hold Israeli leaders accountable met huge restrictions. Shortly after Donald Trump came into office, the US issued sanctions on the prosecutor of the ICC predicated on his pursuit of accountability in the context of the Palestine situation and on ICC officials involved in investigations of Israeli nationals.²³⁸ These sanctions include asset freezes, travel bans, and restrictions on services from U.S. companies. Up to date, at least 11 ICC officials, including nine judges and the chief prosecutor face sanctions.²³⁹ Additionally, the United States sanctioned UN Special Rapporteur Francesca Albanese, for “Lawfare that targets U.S and Israeli Persons”.²⁴⁰ This fundamental support disparity directly influences the implementation and ultimate effectiveness of criminal justice as a core pillar of TJ. The contrast between Ukraine and Gaza reveals how ICL functions powerfully when backed by state cooperation, but how it is reduced to a symbolic exercise when such support is withheld. In the case of Ukraine, legal accountability is highly synchronized and actively facilitated by Western states. The ICC, special tribunals and European domestic courts operating under universal jurisdiction, function as a cohesive enforcement network. States are politically committed to enforce arrest

²³⁴ European Commission: *Holding Russia accountable* https://commission.europa.eu/topics/eu-solidarity-ukraine/holding-russia-accountable_en accessed: 16.06.2026; U.S. Department of State: *Supporting Justice and Accountability in Ukraine*, Fact Sheet February 18, 2023 <https://2021-2025.state.gov/supporting-justice-and-accountability-in-ukraine/> accessed: 16.06.2026.

²³⁵ Jorgensen, M.: *A “Democratic Exception” to ICC Jurisdiction: The Law and Politics of Double Standards*, Verfassungsblog, 2024/12/06, <https://verfassungsblog.de/exception-to-icc-jurisdiction/>, DOI: 10.59704/3c8e72e87d82d677 accessed: 16.06.2026.

²³⁶ See on this Ingber, R.: *Mapping State Reactions to the ICC Arrest Warrants for Netanyahu and Gallant* (2025) <https://www.justsecurity.org/105064/arrest-warrants-state-reactions-icc/> accessed: 16.06.2026.

²³⁷ See on this Ministry of Foreign Affairs: *Israel rejects the ICC’s decision regarding the scope of its territorial jurisdiction on the Israeli-Palestinian conflict* 07.02.2021 <https://www.gov.il/en/pages/Israel-rejects-icc-decision-7-february-2021> accessed: 16.06.2026.

²³⁸ The White House: *Imposing Sanctions on the International Criminal Court* (2025) <https://www.whitehouse.gov/presidential-actions/2025/02/imposing-sanctions-on-the-international-criminal-court/> accessed: 16.06.2026.

²³⁹ Young, S.: *Targeting the bench? Harvard Law experts discuss recent U.S. sanctions against International Court officials* (2026) <https://hls.harvard.edu/today/u-s-sanctions-against-the-international-criminal-court/> accessed: 16.06.2026.

²⁴⁰ U.S. Department of State: *Sanctioning Lawfare that Targets U.S. and Israeli Persons*, Press Statement, Marci Rubio July, 9 2025 <https://www.state.gov/releases/office-of-the-spokesperson/2025/07/sanctioning-lawfare-that-targets-u-s-and-israeli-persons> accessed: 16.06.2026.

warrants and execute court rulings, entailing international justice endeavors into actionable retributive justice. Moreover, the early and unified legal mobilization has profoundly shaped the broader framework of TJ. By securing the legal narrative surrounding the war, Ukraine and its allies created a global moral imperative.²⁴¹ Court decisions in this context have transcended mere judicial outcomes: they catalyze non-judicial TJ mechanisms by generating the political consensus required to isolate the aggressor diplomatically and fund future reparations. Finally, because state infrastructure remains intact, domestic Ukrainian prosecutions can focus on individual guilt even while the conflict is ongoing, successfully creating real-time justice. Conversely, the realization of criminal justice regarding Gaza, is systematically obstructed by the same Western states that champion it in Ukraine. While interventions by the ICC and the ICJ perform a vital archival function in documenting violations and contributing to future truth-seeking and reconciliation by collecting evidence and acknowledging atrocities committed against Palestinians, they are stripped of their coercive power. Because essential global actors refuse to cooperate in enforcing arrest warrants or applying diplomatic pressure, the perpetrators are effectively insulated from any consequences. Consequently, despite the profound historical and symbolic impact of these international rulings, the outcomes remain strictly declarative. Without the geopolitical backing required to execute arrests or compel state compliance, the mechanisms of criminal justice are paralyzed, leaving victims in a permanent state of suspended accountability. Ultimately, this selective implementation threatens the foundational integrity of TJ. When criminal accountability operates as a robust, enforceable tool in one context, but is structurally suppressed and reduced to purely symbolic gestures in another, it exposes a two-tiered system of ICL and limits the deterrence effect of criminal trials. This double standard actively undermines the normative legitimacy of TJ, proving that its current mechanisms are less a universally applicable guarantee of human rights, and more a reflection of global geopolitical asymmetries. In this sense the comparative analysis highlights, that criminal proceedings function not only as instruments of international criminal justice but as tools of strategic constraint.

6.2 Geopolitical and Diplomatic Support

The analysis of geopolitical and diplomatic support demonstrates that while Western actors have rushed to support Ukraine and to impose all manner of forcible and non-forcible measures

²⁴¹ Kuc, O.: *The Empire Strikes Back: Russia's Procedural Offensive Before International Courts and Tribunals* (2026) <https://www.ejiltalk.org/the-empire-strikes-back-russias-procedural-offensive-before-international-courts-and-tribunals/> accessed: 11.06.2026.

against Russia, in Gaza profound Western support is missing. Dozens of states have voluntarily provided financial and military assistance, seconded legal experts and shared intelligence for Ukraine.²⁴² Additionally, sanctions were imposed against Russia with the aim of weakening Russia's economic base, depriving it of critical technologies and markets and significantly curtailing its ability to wage wars.²⁴³ In order to achieve diplomatic isolation, several states declared to arrest Putin if he enters their respective state territory and to hand him over to the ICC.²⁴⁴ This pro-active support undermines the intent to force Russia into compliance in ending the war and to maintain Ukraine's institutional stability. In comparison, after the ICC issued an arrest warrant for Netanyahu many Western states refused to enforce it.²⁴⁵ Moreover, despite findings by the ICJ, that Israel is breaching international law, the EU has not suspended its association agreement with Israel²⁴⁶ or has imposed economic or political sanctions against Israel for its atrocities in the Gaza Strip.²⁴⁷ While Western nations continue to supply critical military support and UN Security Council veto's shield Israel, Western donors suspended crucial funding for humanitarian aid following Israeli allegations that several employees of the UN Relief and Works Agency (UNRWA) had participated in the October 7 attacks.²⁴⁸ This disparity in geopolitical and diplomatic support heavily influences the implementation and the effectiveness of TJ mechanisms in the context of reconstruction, reparations and reconciliation in both conflict settings. In the case of Ukraine, the geopolitical and diplomatic support has safeguarded the states institutional capacity and socioeconomic architecture. By holding domestic criminal prosecutions and centralized evidentiary databases, Ukraine is able to proactively enforce TJ in real-time. Furthermore, unified diplomatic backing, has enabled and

²⁴² Europol's solidarity with Ukraine <https://www.europol.europa.eu/europol-solidarity-ukraine> accessed: 16.06.2026.

²⁴³ EU Sanctions Map <https://www.sanctionsmap.eu/#/main/details/26/> accessed: 16.06.2026.

²⁴⁴ Gurmendi, A.: *Tracking State Reactions to the ICC's Arrest Warrant against Vladimir Putin* 29.03.2023 <https://opiniojuris.org/2023/03/29/tracking-state-reactions-to-the-iccs-arrest-warrant-against-vladimir-putin> accessed: 17.06.2026.

²⁴⁵ Jorgensen, M.: *A "Democratic Exception" to ICC Jurisdiction: The Law and Politics of Double Standards*, Verfassungsblog, 2024/12/06, <https://verfassungsblog.de/exception-to-icc-jurisdiction/>, DOI: 10.59704/3c8e72e87d82d677 accessed: 16.06.2026; Reuters: *US rejects ICC arrest warrants for Israeli officials, White House spokesperson says* November 21, 2024 <https://www.reuters.com/world/us-rejects-icc-arrest-warrants-israeli-officials-white-house-spokesperson-says-2024-11-21/> accessed: 17.06.2026.

²⁴⁶ International Court of Justice: *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip* (South Africa v. Israel) <https://www.icj-cij.org/case/192> accessed: 16.06.2026; Amnesty International: *Suspend EU-Israel Trade Agreement* <https://www.amnesty.org/en/petition/suspend-eu-israel-trade-agreement/> accessed: 16.06.2026.

²⁴⁷ The EU is implementing sanctions against violent Israeli settlers and their organizations in the West Bank, for supporting and financing settler violence and violations of Palestinian human rights in the West Bank but there are no Gaza related EU sanctions, see on this European Union External Action: *EU sanctions extremist settlers and entities undermining the Two-State Solution* 28.05.2026 https://www.eeas.europa.eu/eeas/eu-sanctions-extremist-settlers-and-entities-undermining-two-state-solution_en accessed: 15.06.2026.

²⁴⁸ By now the majority of donors restored their contributions following independent internal reviews. See on this UN Watch: *Updated: List of Countries Suspending and Reinstating UNRWA Funding* May 26, 2024 <https://unwatch.org/updated-list-of-countries-suspending-unwra-funding/> accessed: 16.06.2026.

legitimized sophisticated international restorative frameworks such as *the Register of Damage*, which systematically archives compensation claims during the conflict, building the foundation for future reparations. Consequently, geopolitical support guarantees the formal acknowledgement of atrocities and endured suffering, providing the necessary material preconditions for long-term post conflict reconciliations. Contrary in Gaza, the complete destruction of its infrastructure, coupled with a lack of protective geopolitical support complicates the implementation of TJ. The absence of coercive diplomatic measures backed Israel's military offensive, resulting in the complete destruction of local courts and civil registries. With the loss of important data any future justice process is made difficult. Moreover, physical reconstruction and recovery remain entirely dependent on volatile, politically conditioned humanitarian assistance. Because there is no institutionalized internationally backed reparation mechanisms for Gaza, Palestinian victims are structurally denied a formalized legal pathway to redress. Due to the lack of international Western state support, efforts to secure legal accountability for war crimes in the context of Gaza has been largely outsourced to the Global South and civil societies. However, their attempts and influence is not as successful. States from the Global South are neither part of the UN Security Council nor do they have the same financial resources and influence. Hence, without the geopolitical will of Western states to enforce restitution and maintain (or rebuild) domestic administrative capacity, the core pillars of TJ cannot be achieved. In this sense, this comparison highlights that TJ is a highly politicized tool whose enforcement is fundamentally dictated by global geopolitical asymmetries and Western strategic interest.

6.3. Narrative Framing

The analysis of narrative framings reveals a profound asymmetry in perceiving conflict parties as aggressors or victims. While Western media and state officials portray Ukraine as the unquestioned victim of Russia's aggression, Palestinians in Gaza lack this clear, uncontested distribution of roles. In the context of Ukraine, a narrative of solidarity emerged, legitimizing the funding of domestic courts, international accountability efforts and endeavors to seize Russian assets for future reparations without facing severe political resistance. In Gaza however, the competing narratives consist of terrorism, self-defense, collateral damage, unlawful occupation and lawful resistance, often leading to the dehumanization of Palestinians and to the perception that Israel's actions in Gaza comport with its purported right of self-defense, even though the ICJ has determined that Israel, may not rely on Article 51 of the UN

Charter to use force in relation to attacks that emanate from within Gaza.²⁴⁹ This weaponization of rhetoric obstructs the formation of the global consensus required to mobilize and enforce comprehensive material TJ measures. Further, truth seeking mechanisms face profound challenges, due to the absence of a universally accepted truth. TJ is not limited to document atrocities, entail reconstruction and secure accountability; it also seeks to establish a shared understanding of what occurred, why it occurred, and who bears responsibility. This process is crucial for reconciliation, as reconciliation depends on the acknowledgment of harm. In the case of Palestinians, however, the dominant narrative undermines this recognition by framing that Palestinians cannot be innocent.²⁵⁰ In this sense narratives help to constitute which lives count as lives, whose destruction demands legal redress, and which deaths are absorbed into the logic of collateral damage. It shapes not only who is heard but also who is mourned and how. Crucially, it is about the who is allowed to live beyond the frame of suffering. These obstacles are further reinforced by the political or societal consequences of public critic of Israeli military operations. In many contexts, criticism is associated with antisemitism, which narrows the political space for diplomatic measures and shield Israelis state violence from meaningful accountability efforts.

6.4. Explaining Divergence

The comparison of Ukraine and Gaza across three dependent variables demonstrates how prevailing power structures affect the realization of TJ in ongoing conflicts. A key finding is that this impact depends on structural selectivity and hierarchical distribution of authority within the global political order. As a result, institutional asymmetries within international organizations, Security Council dynamics, Western dominance in international law and great power influence, determine whether the implementation of TJ is possible and contributes to justice, peace and reconciliation or limits its effectiveness. Additionally, the analysis reveals that political support significantly affects the outcome of implemented TJ measures. Based on this, I argue that TJ processes are crucially shaped by politics and are used in an exclusive way. The differences between Ukraine and Gaza stem not primarily from conflict disparities, but from the fundamentally different Western support that underlines their TJ implementation. This contrasting support can be explained by geopolitical interests, historical alliances and racism. Both, Ukraine and Israel have enormous strategic and economic significance for the United

²⁴⁹ See on this International Court of Justice: *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip* (South Africa v. Israel) <https://www.icj-cij.org/case/192> accessed: 16.06.2026.

²⁵⁰ Sirleaf V.S. M.: *Palestine as Litmus Test for Transitional Justice* (2024) pp. 180-181.

States and Europe. Supporting Ukraine enables the United States and Europe to isolate Russia, mitigate its influence and to contribute to the security of the entire Euro-Atlantic area.²⁵¹ Similarly, Israel is helping the United States to secure control over the Middle East's critical trade corridors and energy resources. It functions as security partner, with shared values in order to defend the West's interest.²⁵² Moreover, Western support for Israel is shaped by historic responsibility and diplomatic protection.²⁵³ Ultimately, the comparison between Ukraine and Gaza revealed that not all victims are equally visible within the international legal and political imagination and that a hierarchy of whose suffering is recognized exists.²⁵⁴ However, the divergent implementation of TJ in Ukraine and Gaza cannot be explained by prevailing power structures alone. Additional case-specific factors also influence the feasibility and effectiveness of TJ measures. Included factors are: state capacity, institutional resilience, territorial control, domestic judicial structures, and the conflict typ. As already stated, Ukraine has retained a functioning sovereign state apparatus with domestic judicial structures despite the ongoing war. This institutional continuity allows Ukraine to pursue real-time justice consisting of domestic prosecutions, centralized documentation of atrocities, victim registration, and preparation for future reparations. Moreover, the fact that Ukraine remains an internationally recognized sovereign state with effective control over substantial parts of its territory, enables Ukrainian authorities to access settings of war crimes, conduct forensic investigations, collect witness statements, and coordinate with international institutions.²⁵⁵ In this sense, direct preservation of evidence for future proceedings is possible. The characterization as an inter-state war of aggression, uncontested international recognition and material access to resources through extensive support by Western states facilitated a rapid TJ mobilization as well. Gaza on the contrary, lacks intact state institutions or domestic judicial structures. Also, the territorial

²⁵¹ Mendelbaum, M.: The Wars in Gaza and Ukraine are the Same War, September 2024 <https://jstribune.com/mandelbaum-the-wars-in-gaza-and-ukraine-are-the-same-war/> accessed: 27.06.2026; North Atlantic Treaty Organization: *NATO Deputy Secretary General highlights innovation and support for Ukraine at Recovery Conference*, 25 June 2026 <https://www.nato.int/en/news-and-events/articles/news/2026/06/25/nato-deputy-secretary-general-highlights-innovation-and-support-for-ukraine-at-recovery-conference> accessed: 27.06.2026.

²⁵² Ziadah, R.: *Geopolitics of genocide*, 4 February 2025 <https://www.tni.org/en/article/geopolitics-of-genocide> accessed: 26.06.2026.

²⁵³ Die Bundesregierung: *Deutschland steht in tiefer Freundschaft an der Seite Israels* 11.03.2026 <https://www.bundesregierung.de/breg-de/aktuelles/unterstuetzung-israel-2228198> accessed: 26.06.2026.

²⁵⁴ Al Jazeera: „Double standards“: Western coverage of Ukraine war criticised <https://www.aljazeera.com/news/2022/2/27/western-media-coverage-ukraine-russia-invasion-criticism> accessed: 26.06.2026.

²⁵⁵ Williamson, H.: *Racing to Document War Crimes in Ukraine* April 5, 2022 <https://www.hrw.org/news/2022/04/05/racing-document-war-crimes-ukraine> accessed: 01.07.2026; European Parliament: *Russian war crimes in Ukraine: Commission welcomes European Parliament's adoption of Eurojust's reinforced mandate* May 19, 2022 https://enlargement.ec.europa.eu/news/russian-war-crimes-ukraine-commission-welcomes-european-parliaments-adoption-eurojusts-reinforced-2022-05-19_en accessed: 01.07.2026.

control is more constrained. Ongoing military operations, blockade, displacement and denial of access for independent investigators make evident collection far more difficult. These access restrictions, destruction of war crime settings and the potential killing of witnesses lead to the fact that the documentation of atrocities either depends on local journalists or organizations and on medical personnel within the Gaza Strip or on external satellite imagery and human rights organizations,²⁵⁶ making accountability more contested. Further, the complex political and legal context affects the implementation of TJ in Gaza. Although, Palestine is recognized as a state by several countries, it lacks full sovereign control over its territory and still faces international diplomatic limitations. As a result, there is no political consensus about the future of Gaza. Yet, the demonstrated case specific factors do not replace power dynamics endlessly. Rather, they illustrate that local conditions and prevailing power structures are deeply interconnected. Ukraine's state capacity and institutional resilience has been actively supported through extensive Western support, while comparable support for Gaza has been largely absent.

6.5. Evaluation of critical approaches

6.5.1. Selectivity, Political Bias and Double Standards

The comparative analysis of Ukraine and Gaza strongly confirms the critique outlined in Chapter 3, particularly the claim that ICL and TJ are shaped by selectivity, political bias, and double standards, rather than by impartiality or universality. The cases do not merely illustrate isolated inconsistencies rather, they reveal how the structural weaknesses identified in the literature operate in practice. The comparison confirms the critique of horizontal selectivity. Both Ukraine and Gaza involve large-scale allegations of war crimes, crimes against humanity, and grave breaches of international humanitarian law. Yet, the institutional response to the two conflicts has differed in speed, intensity, and enforceability. In Ukraine, legal and political support for accountability was mobilized with exceptional speed: international investigations, domestic prosecutions, evidence preservation, and reparative frameworks such as the *Register of Damage* were established and financed while the conflict was ongoing. In Gaza, by contrast, although international courts, UN mechanisms, and civil society organizations have also documented serious violations, the broader accountability architecture remains far weaker in practical terms. International investigations exist, but they have not been embedded within a

²⁵⁶ Amnesty International: *Satellite imagery reveals total razing of Khuzaa in May 2025 in further evidence of Israel's wanton destruction and genocide in Gaza* 13 June 2025 <https://www.amnesty.org/en/latest/news/2025/06/satellite-imagery-reveals-total-razing-of-khuzaa-in-may-2025-in-further-evidence-of-israels-wanton-destruction-and-genocide-in-gaza/> accessed: 01.07.2026; Durgham, N.: *Loss, Destruction, and a Will to Keep Going: The Regional Outlets Reporting on Gaza* April 29, 2024 <https://gijn.org/stories/regional-outlets-reporting-gaza/> accessed: 01.07.2026.

comparable enforcement structure. This demonstrates horizontal selectivity in the clearest sense: two broadly comparable settings of mass violence have not generated comparable legal and political responses. The comparative analysis also substantiates vertical selectivity, particularly with regard to who must face meaningful accountability. In Ukraine, arrest warrants against senior Russian officials, including Putin, were backed by broad diplomatic support, sanctions regimes, and efforts to isolate the accused internationally. By contrast, in Gaza, although arrest warrants and international legal scrutiny were applied to senior Israeli officials, including Netanyahu, these measures have not been accompanied by equivalent coercive pressure from major Western powers. The result is that formal legal exposure does not result in the same degree of practical vulnerability. This confirms the critique that international justice does not simply decide whether to prosecute, but also selectively determines whose prosecution will carry real consequences and whose will remain largely symbolic. Furthermore, the comparison validates the critique concerning the insulation of hegemonic powers and their allies. One of the central arguments in the literature is that powerful states and their strategic partners are often shielded from accountability, whether through Security Council dynamics, political interference, or the selective use of diplomatic and financial leverage. This pattern is clearly visible in Gaza. Israel's close alliance with the United States and its broader integration into Western security and political structures have significantly limited the willingness of Western states to impose the kinds of costs that were rapidly imposed on Russia. The issue is not only that investigations are slower or more contested, but that the wider political environment systematically protects Israel from the level of coercive enforcement that would be necessary for meaningful TJ. This strongly supports the argument that international criminal justice is not applied equally across the international system, but is mediated by power and alliance structures. Also, the analysis strongly corroborates the critique of Western double standards and "Western lawfare." In Ukraine, Western governments invoked the language of international law, sovereignty, territorial integrity, aggression, and accountability with great force. They mobilized sanctions, financial assistance, evidence-sharing, diplomatic isolation, and reparative planning. In Gaza, many of the same states continued to invoke international humanitarian concerns, yet refrained from applying comparable pressure to Israel. In some cases, they even obstructed or politically delegitimized international legal efforts directed at Israeli conduct. This reflects precisely the pattern described in the literature: international law is used aggressively against geopolitical adversaries, while counter-lawfare is deployed to shield strategic allies. The comparative analysis therefore confirms that law is not merely a forum for neutral adjudication, but also a tool through which powerful states pursue moral and

political advantage. The cases of Ukraine and Gaza illustrate how institutional asymmetries within international organizations, especially those linked to the UN Security Council and the broader power of major Western states, shape the implementation of justice. The critique in the literature emphasizes that international criminal accountability is vulnerable to political influence because of referral and deferral mechanisms, veto powers, and the broader dependency of international courts on state cooperation. The Ukraine-Gaza comparison confirms this argument at the level of practice. In Ukraine, accountability mechanisms benefited from a cooperative political environment and broad Western support. In Gaza, by contrast, legal efforts have been constrained by diplomatic shielding, weak enforcement, and the absence of robust state cooperation. This confirms that the formal existence of institutions is insufficient, what matters is whether the political conditions allow these institutions to act effectively. Additionally, the comparison supports the argument that operational constraints reinforce political bias. The literature points out that the ICC's budgetary limits, lack of executive power, and dependence on state cooperation make it especially vulnerable to geopolitical inequality. This is clearly borne out in the two cases. In Ukraine, these structural limitations were partly offset by extensive support from Western states: evidence was shared, political legitimacy was reinforced, and arrest warrants were embedded in broader diplomatic measures. In Gaza, the same institutional limitations became far more debilitating because the political support necessary to overcome them was largely absent. This shows that operational weakness is not neutral in its effects, it amplifies existing power differentials and makes accountability far more feasible against isolated adversaries than against well-protected allies. Perhaps most important for TJ, the analysis confirms that criminal proceedings shape truth, legitimacy, and reconciliation unevenly. As the literature argues, the selection of cases is never merely technical, it confers moral legitimacy on some narratives while withholding it from others. In Ukraine, international and domestic justice efforts have reinforced a widely shared narrative of unlawful aggression, victimhood, and the right to repair and reconstruction. In Gaza, by contrast, the absence of equivalent enforcement and the continued contestation of Palestinian victimhood have limited the capacity of legal proceedings to generate a stable, internationally accepted truth. This is crucial because TJ depends not only on legal decisions, but on their ability to support truth-seeking, victim recognition, reparations, and reconciliation. Where legal mechanisms are selectively applied or politically obstructed, they risk reinforcing division rather than fostering shared acknowledgment. Finally, the comparison confirms the broader claim that TJ itself is shaped by political strategy and interest rather than solely by legal principle. The literature argues that decisions about whether to pursue trials, amnesties, delayed

justice, or alternative mechanisms are often determined by calculations of power. The comparison between Ukraine and Gaza supports this view. In Ukraine, where accountability aligns with Western strategic interests, criminal justice has been strongly supported and integrated into a broader political project of state defense and reconstruction. In Gaza, where meaningful accountability would directly confront a close Western ally, justice has been fragmented, externalized, and largely deprived of enforcement. This confirms that the field of TJ is not insulated from geopolitics. Rather, its implementation is often conditioned by the interests of those states most capable of enabling or obstructing it. Taken together, the case analysis powerfully substantiates the critique presented in the literature. It shows that selectivity is not an accidental by-product of limited capacity, but a structural feature of international criminal justice and transitional justice as they currently operate. In that sense, the Ukraine-Gaza comparison provides strong empirical support for the argument that international criminal justice remains deeply entangled with geopolitical power and continues to function, at least in part, as a mechanism through which dominant states preserve their influence.

6.5.2. TWAIL and Postcolonial Critiques of ICL and TJ

The comparative analysis of Ukraine and Gaza also confirms TWAIL and postcolonial critiques, which claim that ICL and TJ are shaped by geopolitical asymmetries, Eurocentric assumptions, and the preservation of prevailing power structures in order to privilege the Global North and its allies. In this sense, the comparison illustrates that international law continues to reproduce colonial and civilizing approaches, even when expressed in contemporary liberal language. In the Ukrainian case, Western discourse framed support not only as assistance to a sovereign state, but as a defense of democracy, the rule of law, and European civilization against authoritarian aggression. Ukraine was narratively incorporated into the moral and political community of the West and its struggle was understood as a struggle for “our” values. In the case of Gaza, by contrast, Palestinian suffering was not granted the same unconditional moral intelligibility. Instead, it was repeatedly filtered through securitized discourses of terrorism, extremism, and disorder. Palestinian victimhood was often rendered conditional, contested, or subordinated to broader narratives of Israeli self-defense. This asymmetry reflects the TWAIL concern that non-Western populations are too often approached through paternalistic or suspicious lenses, rather than as equal bearers of legal and political agency. The case analysis further supports TWAIL’s critique of the Western liberal roots of ICL and TJ, particularly retributive criminal justice as the primary objective of accountability. In Ukraine, this understanding was strongly implemented: criminal prosecutions, arrest warrants, evidence

databases, and the *Register of Damage* were all developed within a state-centered, legal framework supported by Western institutions. This response reflected a classic liberal model of justice, centered on sovereign institutions, individual criminal responsibility, and formal reparations. In Gaza, however, the limitations of this understanding became far more visible. Because domestic institutions were destroyed and because meaningful enforcement against Israel lacked geopolitical support, criminal justice could not function in the same way. Accountability was externalized to international courts, UN mechanisms, and civil society documentation. This revealed a point emphasized by TWAIL scholars: the standard toolkit of trials, truth-telling, reparations, and reform cannot equally be applied in all contexts and may be profoundly ill-suited where violence is embedded in prolonged occupation, structural inequality, and colonial domination. The cases of Ukraine and Gaza therefore confirm, that TJ mechanisms often presuppose a certain kind of political order, infrastructure and justice perception that does not exist in many Global South contexts. In Ukraine, the justice response has been heavily internationalized but still linked to a functioning state with sufficient institutional capacity to absorb legal and reparative mechanisms. In Gaza, by contrast, the destruction of local institutions and the absence of a political transition mean that the conventional TJ toolkit has little domestic grounding. There is no functioning space for institutional reform, no stable sovereign authority capable of implementing reparations, and no realistic short-term pathway toward reconciliation in the conventional sense. When those background conditions are absent, the liberal TJ model cannot address the lived realities of affected communities. In addition, the claim of post-colonial critics that mainstream ICL and TJ focus excessively on episodic physical violence, while neglecting the historical, socio-economic, and structural conditions that enable conflict in the first place, was confirmed especially in relation to Gaza. Although international legal attention has increasingly addressed atrocities committed since October 7, the broader structural context, consisting of prolonged occupation, blockade, dispossession, systematic and structural discrimination, and the denial of Palestinian self-determination, has often remained politically marginalized within mainstream Western responses. Even where legal institutions such as the ICJ or the UN Commission of Inquiry have addressed structural dimensions, these findings have not been translated into equivalent political consequences. This confirms the argument that international justice often treats atrocities in the Global South as a series of violent incidents, while leaving the underlying root causes of domination intact. In other words, the symptoms of violence are documented, while the deeper legacies of colonialism, occupation, and systemic inequality, which enabled the conflict in the first place, remain insulated from meaningful transformation. Similarly, the

analysis also supports the argument that conventional international criminal proceedings are often too narrowly focused on individual guilt, thereby failing to address broader political, collective, and structural responsibility. In both Ukraine and Gaza, criminal justice mechanisms are centered on identifying perpetrators and attributing liability to named individuals. In Gaza in particular, a purely individualizing approach cannot capture the full reality of prolonged occupation, institutionalized discrimination, military-administrative control, and the cumulative effects of structural deprivation. The question is not only which individuals committed specific crimes, but how political systems, institutions, publics, and international enablers sustain conditions of violence and profit from these structures over time. The same point applies, in a different way, to the international response. Western support structures materially shape the conditions under which violence continues or accountability is blocked. Yet, these broader forms of responsibility are not easily captured by a narrow criminal framework centered on individualized guilt. This demonstrates why TWAIL scholars argue for a more expansive approach that includes structural, socio-economic, and historical justice. The case analysis further substantiates TWAIL's claim that international justice is shaped by racialized hierarchies of recognition. Ukrainian lives were rapidly framed as lives whose destruction required urgent legal, political, and moral response. Refugees were welcomed, victims were individualized, and state destruction was translated into a framework of immediate restitution and solidarity. Palestinians in Gaza, by contrast, were far more frequently represented through suspicion, securitized qualification, and administrative abstraction. This difference supports the argument that international law does not merely distinguish between legal categories; it also operates through hierarchies of whose suffering is fully grievable and whose deaths are more easily normalized. In TWAIL terms, this is not incidental. It reflects the enduring imprint of a global order in which race, geography, and proximity to Western power continue to shape access to protection, recognition, and reconstruction.

6.6. Answering research questions

This thesis is guided by one main research question aimed at exploring the relationship between prevailing power structures and TJ in ongoing conflicts. This section provides answers to this research questions.

Answer to the Research Question:

There are significant differences between Ukraine and Gaza towards the implementation and effectiveness of TJ mechanisms. However, these differences do not primarily manifest in the different character of the conflicts. Instead, they are rooted in prevailing power structures. Therefore, geopolitical interests, institutional hierarchies and racism heavily influence TJ in ongoing conflicts.

In the case of Ukraine, TJ mechanisms were implemented in a robust and coordinated framework, backed by Western political, financial, military and legal support. This support enabled domestic prosecutions, international investigations, truth-seeking, evidence preservation, reconstruction and reparative mechanisms. As a result, TJ is implemented in real-time, adapting to the temporal realities of ongoing conflict. However, some challenges remain, particular due to the characterization of an ongoing conflict. First, the traditional “peace vs. justice” tension manifests as a stark choice between “just” and “unjust” peace. While a just resolution demands full territorial reclamation to pre-2014 borders and international security guarantees, an unjust peace would necessitate territorial concessions to halt armed hostilities. Yet, any sustainable resolution dictates that victims’ rights to truth, accountability, and reparations cannot be marginalized, regardless of the political outcome.²⁵⁷ Second, Ukraine faces the operational paradox of real-time justice. The state is forced to simultaneously manage immediate wartime security demands, protect human right norms and address the urgent needs of survivors. Navigating this dynamic critical, the immediate responses to atrocity must be managed without eroding the institutional foundations required for long-term democratic stability, the rule of law, and post-war reconciliation.²⁵⁸ Further, practical enforcement challenges exist. While the Supreme Court of Ukraine has issued rulings awarding compensation to victims, mandating that costs be endured by the frozen Russian assets, the actual realization of these judgments remains highly unlikely without Russian compliance.²⁵⁹ Moreover, Ukraine’s intensive focus on prosecuting Russian atrocities remains sharply contradicted by a persistent failure to investigate and hold its own armed forced and volunteer battalions accountable.²⁶⁰

In Gaza, the implementation of TJ mechanisms remains fragmented, externalized and mainly declaratory. The destruction of domestic institutions, the absence of diplomatic pressure on

²⁵⁷ Sherpa, C. N.; Van der Lugt R.: *Navigating Pathways toward Transitional Justice in Ukraine* (2024) p. 3.

²⁵⁸ Ibid.

²⁵⁹ Sherpa, C. N.; Van der Lugt R.: *Navigating Pathways toward Transitional Justice in Ukraine* (2024) p. 9.

²⁶⁰ Sherpa, C. N.; Van der Lugt R.: *Navigating Pathways toward Transitional Justice in Ukraine* (2024) p. 7.

Israel, the contested jurisdiction of international legal bodies, and the persistent narrative destabilization of Palestinian victimhood, all severely hinder the implementation of TJ. Although international legal accountability mechanisms such as the ICC and the ICJ, and civil society initiatives perform important evidence preservation, truth-seeking and accountability endeavors, their practical effect remains limited. Without meaningful enforcement, political backing and a shared international recognition of committed war crimes against Palestinians in Gaza, TJ efforts remain symbolic and cannot contribute to durable peace and transition.

In summary, the comparison of Ukraine and Gaza demonstrates that prevailing power structures determine which conflicts receive legal and political support, which victims are granted full recognition, and which accountability processes are materially enforceable rather than merely symbolic.

CHAPTER 7. CONCLUSION

The thesis has tried to approach the expansion of the field of TJ and the gap in the modern discourse that remains between TJ and prevailing power structures during ongoing armed conflicts. Traditional TJ frameworks, which deal with the past, are no longer sufficient in the face of contemporary ongoing protracted conflicts. In order to promote peace and stability, TJ must broaden its scope to focus much more on the crises of the present. This means that it's necessary to respond to human rights violations and mass atrocities in real time rather than to wait until hostilities have ceased and to establish a much more contextualized approach. Moreover, TJ must evolve to meet the challenges of prevailing power structures and their impact on the implementation and the effectiveness of TJ measures. While scholars, mainly from the Global South, have begun to analyze the limitations of ICL and TJ towards the needs and perceptions of affected communities in the Global South, the whole framework of Western hegemony can no longer be ignored. As demonstrated in Chapter 3, ICL and TJ have their origin in Western spheres. As a result, ICL and TJ are based on a Western understanding of justice and enforced by Western dominated institutions. This discrepancy must be addressed. ICL and TJ are tools, which should be universal in their geographic scope and application, irrespective of a perpetrator's position, ethnicity, nationality or political status or a victim's affiliation to certain ethnicities and nationalities or geographical areas. For ICL and TJ to fulfill these roles, both its doctrinal structure and normative orientation must be adapt. A reconceptualization that acknowledges social, economic and cultural rights, as well as systematic inequality and social injustices as root causes for conflicts is necessary. This

demands an inclusive and critical perspective that considers the dynamics of power, representation and systemic oppression. TJ must go beyond Western conceptions and recognize that its current paradigm can reproduce and even intensify patterns of subordination and exploitation. If TJ is to remain a meaningful approach to deal with atrocities in order to achieve transition, it must respond to critiques from the Global South.

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APPENDIX A
Operationalisation of Variables

Variable	Type of measurement	Means of Measurement
Legal Accountability	Empirical	Assessment of the presence and scope of domestic legal frameworks on accountability, international criminal investigations before the ICJ and ICC and civil society initiatives; assessing actual outcomes as reflected in case studies
Geopolitical and diplomatic support	Empirical	Examining evidence of commitment based on public statements by the United States, the EU and other Western states regarding political and diplomatic strategies, sanctions, political backing and arrest warrants; contents analysis of implemented support or obstructions; assessing actual outcomes as reflected in case studies
Narrative Framing	Empirical	Discourse analysis of used rhetoric and representation of certain notions e.g. of self-defense, terrorism, aggression, legitimacy; assessing actual outcomes as reflected in case studies