

DOI: 10.46340/eppd.2024.11.3.2

TRANSITIONAL JUSTICE AS AN EFFICIENT MECHANISM FOR OVERCOMING THE CONSEQUENCES OF ARMED CONFLICTS: WORLD EXPERIENCE

Svitlana Naumkina¹, ScD in Political Science; Oleksii Kokoriev², ScD in Political Science;
Hanna Yatvetska³, PhD in Social Science

¹ The State Institution "South Ukrainian National Pedagogical University named after K. D. Ushynsky", Odesa, Ukraine

² State University of Intellectual Technologies and Communications, Odesa, Ukraine

³ State University of Intellectual Technologies and Communications, Odesa, Ukraine

Corresponding author: Svitlana Naumkina; Email: svetlana.naumkina@gmail.com

Citation: Naumkina, S., Kokoriev, O., & Yatvetska, H. (2024). Transitional Justice as an Efficient Mechanism for Overcoming the Consequences of Armed Conflicts: World Experience. *Evropsky Politicky a Pravni Diskurz*, 11, 3, 13-23. <https://doi.org/10.46340/eppd.2024.11.3.2>

Abstract

Transitional justice mechanisms can take many forms, including truth commissions, local courts and traditional methods of justice, as well as the creation of a Special Tribunal for the Crime of Aggression against Ukraine. International tribunals and special courts for past crimes are neglected because of their less significant role at the moment. A feature of modern armed conflicts is their cross-border nature, and the regional and global character of the displacement of population fleeing the Russian-Ukrainian conflict vividly demonstrates this tendency. Attempts to introduce a regional approach to restorative transitional justice, which takes the form of extrajudicial mechanisms such as truth commissions, should be acknowledged. Considering the experience of five countries, it is important to ensure the active participation of victims in the process, strengthen reparations measures, ensure the implementation of recommendations and increase the transparency and accountability of commissions. Amnesty laws can also play an important role in restoring public confidence in the justice system. National legislation should be improved as much as possible in the conditions of armed conflict and meet the expectations of victims and civil society. The approach to transitional justice in Ukraine includes various mechanisms aimed at ensuring justice, reconciliation and restoration. It is appropriate to borrow the experience of Colombia, where special amnesty conditions were created for criminals after the conflict. They rebuilt schools, hospitals and other infrastructure facilities, substituting criminal liability for participation in the restoration of what they themselves had destroyed. Amnesty can be applied to persons who have committed minor offences, but in the case of serious crimes, amnesty cannot be considered as a possible option and the opinion of the affected persons must be taken into account. The lack of jurisdiction of the ICC over the crime of aggression in the case of Russia's invasion of Ukraine and the impossibility of bringing the military and political leadership of the aggressors to justice exclusively through national mechanisms prompted the establishment of the Special Tribunal. The use of national, hybrid and international institutions will contribute to the formation of national narratives and the strengthening of the rule of law. The implementation of these mechanisms will ensure the inevitability of punishment, help in the reintegration of the occupied territories and the restoration of the sovereignty of Ukraine. The dynamics of public opinion in Ukraine demonstrate growing support for international and national justice mechanisms for prosecution of war crimes, as well as skepticism about the possibility of receiving

reparations from Russia. These processes have a significant impact on the political system of Ukraine and the world order, contributing to stability and peaceful resolution of conflicts.

Keywords: transitional justice, Transitional Justice Models, war crimes, armed conflicts, international law, public opinion, justice, world order, political process, world political system.

Introduction

Transitional justice plays a critical role in post-conflict recovery processes, enabling societies to transition from war to peace. In today's world, when numerous armed conflicts and their devastating consequences constantly challenge the international community and the world order, the importance of effective mechanisms for overcoming these consequences is becoming more and more urgent. Transitional justice encompasses a wide range of interventions aimed at restoring justice, reconciliation and social order, including war crimes trials, truth-seeking, reparations and institutional reforms. World experience shows that transitional justice can be an effective tool for overcoming the consequences of armed conflicts, contributing to the stabilization of the situation and ensuring lasting peace. The research of successful cases from different countries such as South Africa, Rwanda, Colombia and others provides valuable lessons and models that can be adapted to the specific conditions of each country.

Various studies have highlighted the diverse mechanisms and their effectiveness in different contexts. Kiss (2008) explores the reconstruction of memory in post-communist countries, emphasizing the importance of addressing historical injustices to build a democratic future. The process of transitional justice in these regions often involves confronting deeply entrenched memories and narratives that shape national identity and collective memory (Kiss, 2008). Szablewska and Bachmann (2015) provide a comprehensive overview of current issues and future challenges in transitional justice. They argue that while significant progress has been made, the field faces ongoing challenges such as the need for context-specific approaches and the integration of international standards with local practices (Szablewska & Bachmann, 2015). Ceva and Murphy (2022) introduce a dynamic framework for interactive justice within transitional justice, highlighting the importance of dialogue and participation of affected communities in the justice process. This approach aims to create more inclusive and effective mechanisms by incorporating the perspectives and needs of victims (Ceva & Murphy, 2022). David (2017) presents a survey and experimental evidence on what is known about transitional justice, underscoring the complexity of measuring its effectiveness. The study suggests that while transitional justice mechanisms can lead to positive outcomes, they must be carefully designed and implemented to address specific local contexts and challenges (David, 2017). Kovalko (2022) examines the state and fundamental principles of peacebuilding in the context of the Russian-Ukrainian war, emphasizing the role of transitional justice in addressing the consequences of ongoing conflicts. The study highlights the need for comprehensive strategies that include legal, social, and political dimensions to achieve lasting peace (Kovalko, 2022). Kuzmenko & Kuzmenko (2024) discuss the harmonization process of Ukrainian law with EU law, focusing on protecting the rights of violent crime victims. They argue that aligning national laws with international standards is crucial for the effective implementation of transitional justice mechanisms (Kuzmenko & Kuzmenko, 2024). Gissel (2022) addresses the standardization of transitional justice, cautioning against a one-size-fits-all approach. The study advocates for flexibility and adaptation to local contexts to ensure the effectiveness and legitimacy of transitional justice processes (Gissel, 2022). Krotoszynski (2014) explores different models of transitional justice and the justifications for various means of dealing with past atrocities. The study provides a critical analysis of the strengths and limitations of different approaches, emphasizing the importance of context-specific solutions (Krotoszynski, 2014). Villa-Vicencio and Doxtader (2004) compile key concepts on reconciliation and transitional justice, offering insights into the theoretical and practical aspects of the field. Their work serves as a valuable resource for understanding the multifaceted nature of transitional justice and its role in post-conflict societies (Villa-Vicencio & Doxtader, 2004). Cantú Rivera (2014) examines the restoration of Mexico's social fabric through transitional justice, focusing on human rights and the credibility of institutions. The study highlights the challenges and successes in rebuilding trust and legitimacy in a society marked by violence and corruption (Cantú Rivera, 2014). De Assis (2023) discusses the failures in institutional reforms within the context of Brazil's transitional justice, particularly in military and public security sectors. The study underscores the need for comprehensive and effective reforms to prevent the recurrence of abuses and ensure sustainable peace (De Assis, 2023). Revkin, Alrababah, and Myrick (2024) emphasize the importance of incorporating public opinion into transitional justice processes. Their study on Iraq and Ukraine demonstrates how evidence-

based approaches that consider public sentiments can enhance the legitimacy and effectiveness of transitional justice mechanisms (Revkin et al., 2024). Kasapas (2008) provides an introduction to the concept of transitional justice in the Western Balkans and its linkage to EU conditionality. The study highlights the role of international actors in shaping transitional justice processes and the importance of aligning domestic practices with international norms (Kasapas, 2008). Robins et al. (2022) explore collective reparations and Tunisia's Truth and Dignity Commission, illustrating how marginalized communities can benefit from targeted transitional justice measures. The study highlights the significance of addressing collective harms and providing reparations to foster national reconciliation (Robins et al., 2022). Suh (2023) reviews transitional justice experiences from the Philippines, South Korea, and Indonesia, focusing on human rights and corruption. The study examines how different countries address past abuses and the role of transitional justice in promoting accountability and reform (Suh, 2023). Horne (2023) discusses the gender dimensions of transitional justice in Ukraine, advocating for the inclusion of gender perspectives to ensure comprehensive and inclusive justice processes. The study highlights the unique impacts of conflicts on women and the importance of addressing these issues in transitional justice frameworks (Horne, 2023). Asaala and Dicker (2013) examine transitional justice in Kenya, emphasizing the role of the UN Special Rapporteur on Truth and Justice. The study highlights the challenges and opportunities in implementing transitional justice measures in Kenya, underscoring the importance of international support (Asaala & Dicker, 2013). Finally, *Avocats Sans Frontières* (2021) discuss the challenge of providing reparations to victims of international crimes in the Democratic Republic of Congo. The study emphasizes the need for effective mechanisms to address impunity and support victims in their recovery process (*Avocats Sans Frontières*, 2021). The literature on transitional justice underscores the importance of context-specific approaches, inclusive processes, and the integration of international standards with local practices. The diverse experiences and challenges highlighted in these studies provide valuable insights into the complex and multifaceted nature of transitional justice.

In the modern conditions of geopolitical confrontation, which has intensified after the full-scale invasion of Russia into Ukraine, as well as the exacerbation of armed conflicts in the Middle East, the decrease in the effectiveness of international legal norms and mechanisms established after the Second World War, more and more researchers pay attention to the study of experience and improvement of approaches to transitional justice.

The experience of countries where transitional justice was implemented allows us to identify four mechanisms of activity: 1) it is criminal prosecution, which includes the effective prosecution of persons guilty of war crimes and gross violations of human rights, ensuring legal protection of victims of armed conflicts, as well as improving legislation, judicial and investigative practice; 2) compensation, which involves the creation of national mechanisms to compensate victims, pay compensation for physical and mental damage, restore the violated rights of victims, as well as provide them with medical, psychological, legal and social assistance; 3) establishing the truth, which includes objective and impartial documentary reconstruction of events, declassification of archives and creation of a national archive of photo and video documents of conflict events, as well as investigation of cases of disappearance of persons; 4) institutional reforms as a guarantee of non-repetition, which provide for the verification of civil servants for involvement in human rights violations during the conflict, reform of the security sector, law enforcement and judicial bodies, as well as the education sector and mass media (Martynenko & Semorkina, 2020, p. 8-9).

Kiss notes that “transitional justice generally focuses on the dilemma between the administration of justice, on the one hand, and potential conflicts with the principles of democracy and the rule of law, on the other” (Kiss, 2008, p. 2). Krotoszynski (2014) proposes to distinguish three main models of transitional justice. The first model is the retribution model, with sanctions, without disclosing the connections of persons with the enemy. The second model is the historical clarification model, which involves revealing the nature of the conflict without applying formal sanctions. The third model is the “thick line” model, which involves neither formal sanctions nor disclosure (Krotoszynski, 2014, p. 589). We believe that this classification for the conflicts of the 21st century is extremely narrow, and the models proposed by the author do not reveal and do not ensure the protection of human rights and the rule of law, the protection of victims of armed conflict. Note that this classification is based on such areas of transitional justice as: criminal responsibility; amnesty and pardon; administrative mechanisms; mechanisms of truth telling (Laplante, 2009). We remind you that the purpose of our research is to study the experience of transitional justice as overcoming the consequences of armed conflicts. Transitional justice mechanisms can take many forms, including “international criminal courts, international tribunals, special courts, truth commissions, local courts,

and traditional methods of justice” (Mobekk, p. 261-262). The article will examine truth commissions, local courts and traditional methods of justice, as well as the establishment of the Special Tribunal for the Crime of Aggression against Ukraine, while international tribunals and special courts for past crimes will be left out of the spotlight due to their less significant role at this time.

Methodology

In the study of transitional justice as an effective mechanism for overcoming the consequences of armed conflicts, a methodology focused on the analysis of global experience was applied. The study was based on qualitative and quantitative data from various sources, including secondary data analysis. First, a comprehensive literature review is conducted to identify and synthesize existing research on transitional justice mechanisms such as prosecution, reparations, truth commissions, and institutional reforms. The review covered successful country examples and their relevance to the Ukrainian context.

The next step is to analyze cases from countries where transitional justice mechanisms have been implemented, including the National Commission on Disappeared Persons (CONADEP) in Argentina, the National Truth and Reconciliation Commission in Chile, the Truth and Reconciliation Commission in South Africa, and the Special Jurisdiction for Peace in Colombia. For each case, the goals and mandates of transitional justice mechanisms, implementation processes and challenges, outcomes and impacts on justice, reconciliation and societal healing are reviewed.

Comparative analysis helped to compare the results of the cases with the data collected in Ukraine. This will allow identification of common challenges and effective strategies that can be adapted to the Ukrainian context. The importance of studying world experience and taking into account the unique challenges arising in connection with the current conflict with Russia was emphasized.

Following this methodology, the study aims to provide a comprehensive and contextually relevant approach to transitional justice, drawing on global lessons and adapting them to specific country needs and conditions.

Global Case Studies of Transitional Justice

A feature of modern armed conflicts is their cross-border nature (Kostovicova, 2018) – the mass movement of the population both within states and across borders to neighboring states, as well as to "third" states and the creation of conflict-generated diasporas around the world. The regional and global nature of population displacement from the Russian-Ukrainian conflict clearly demonstrates this trend. Moving beyond the site of violence can also affect the bodies of victims (not just living refugees). The case of Serbian authorities using refrigerated trucks to transport the corpses of ethnic Albanians from Kosovo to Serbian territory to cover up their crimes during the 1999 conflict is particularly infamous (Thorpe, 2001). Mass expulsions and displacements of civilians result in the physical, spatial and legal separation of victims and evidence from the sites of crimes and human rights violations. Meanwhile, criminals often avoided accountability by simply crossing borders (Kostovicova, 2018).

Attempts to implement a regional approach to restorative transitional justice in practice, which takes the form of extrajudicial mechanisms such as truth commissions, should be recognized. As noted by Cuevas, Ortiz Rojas, and Baeza (2002), truth commissions have played a significant role in establishing the truth, restoring justice, and promoting reconciliation in societies emerging from periods of violence and repression. Ortiz Rojas and Baeza (2002) analyzed the experience of truth commissions in Argentina, Chile, El Salvador, Guatemala and South Africa and their contribution to transitional justice processes.

The truth commissions in Argentina, Chile, El Salvador, Guatemala and South Africa had a common goal – to establish the truth about past human rights violations, to acknowledge the suffering of the victims and to promote national reconciliation. Despite the different contexts in which they worked, these commissions faced similar challenges and achieved significant results in their respective countries (Cuevas, Ortiz Rojas & Baeza, 2002). The National Commission on Missing Persons (CONADEP) in Argentina was created in 1983 after the fall of the military dictatorship. The main task of the commission was to investigate the cases of forced disappearances, kidnappings, torture and murders that took place between 1976 and 1983. The commission collected more than 50,000 testimonies and identified about 9,000 cases of enforced disappearances (Cuevas, Ortiz Rojas & Baeza, 2002). The National Truth and Reconciliation Commission in Chile was created in 1990 after the fall of the Pinochet regime. Its task was to investigate cases of kidnappings, torture, murders and enforced disappearances that took place between 1973 and 1990. The commission collected testimony from thousands of victims and their relatives and produced a detailed report on human

rights violations in the country (Cuevas, Ortiz Rojas & Baeza, 2002). Also, one of the key mechanisms for ensuring transitional justice is reparation for victims of armed conflict, which is one of the fundamental elements of achieving justice in a period of crisis. A successful international example in this context is the Republic of Chile. According to public sources, the Chilean government has invested approximately US\$3.2 billion in reparations programs. These programs covered, among others, 3,225 victims of enforced disappearances, 114,225 victims of political dismissals from public service, and 38,254 victims of political imprisonment and torture (International Centre for Transitional Justice, 2013).

The Truth Commission in El Salvador was established in 1992 after the signing of a peace agreement that ended the civil war. The commission was tasked with investigating cases of human rights violations committed during the conflict. The commission collected testimony from thousands of victims and produced a report that included recommendations for reparations and non-repetition measures (Cuevas, Ortiz Rojas & Baeza, 2002). The Commission for Clarification of Historical Facts in Guatemala was created in 1994 after the signing of a peace agreement between the government and guerrilla forces. Its task was to investigate human rights violations committed during the 36-year conflict. The commission collected testimony from victims and produced a report that included recommendations for reparations and reconciliation efforts (Cuevas, Ortiz Rojas & Baeza, 2002). The South African Truth and Reconciliation Commission was established in 1995 after the end of apartheid. Its task was to investigate human rights violations committed between 1960 and 1994. The commission collected testimony from thousands of victims and their relatives, held public hearings, and produced a report that included recommendations for reparations, amnesty, and reconciliation efforts (Cuevas, Ortiz Rojas & Baeza, 2002).

Victims and their relatives generally praised the work of the truth commissions, recognizing their important contribution to establishing the truth and facilitating the reconciliation process. However, some victims expressed frustration with the limited implementation of the commissions' recommendations and insufficient support from the government (Cuevas, Ortiz Rojas & Baeza, 2002).

Reparations include both material and non-material measures aimed at restoring justice to victims and their relatives. All commissions recommended various forms of reparations, including financial compensation, medical and psychological assistance, educational programs, and measures to perpetuate the memory of the victims through the creation of memorials and museum exhibits (Cuevas, Ortiz Rojas & Baeza, 2002).

Thus, based on the experience of the five countries, it is important to ensure the active participation of victims in the process, strengthen reparations measures, ensure the implementation of recommendations and increase the transparency and accountability of commissions. This may include consultation at all stages of the commission's work, financial assistance, medical and psychological support, educational programs, publication of reports and recommendations, and ensuring access to information for all stakeholders (Cuevas, Ortiz Rojas & Baeza, 2002).

Truth commissions have played an important role in the process of establishing the truth and promoting reconciliation in many countries. Despite the serious limitations and challenges they faced, their work was an important step towards restoring justice for victims of human rights violations. Building on the experience of the five countries, it is important to ensure the active participation of victims in the process, strengthen reparations measures, ensure the implementation of recommendations and increase the transparency and accountability of commissions (Cuevas, Ortiz Rojas & Baeza, 2002).

The experience of Bosnia and Herzegovina on the way to establishing truth and reconciliation demonstrates a combination of national and international bodies whose work was aimed at a comprehensive and systematic investigation of war crimes (Lutsenko, 2023, p. 279). Obviously, assessments of such work vary over time, but in general "The work of the Chamber for the Investigation of War Crimes and the relevant Department of the Prosecutor's Office – together with the work of the ICTY – undoubtedly influenced the judicial and political system and Bosnian society in general and, at least in theory, paved the way for the establishment of truth and reconciliation." (Open Society Justice Initiative, 2019).

The criminal justice system also plays an important role in addressing past injustices and transforming potentially violent conflict into a peaceful settlement. There is a growing international consensus, supported by international law, on the need to investigate and punish gross violations of human rights, genocide, war crimes and crimes against humanity. However, sometimes criminal prosecutions cannot be carried out immediately, or they can provoke renewed violence or new injustices if procedural standards are not met. It should also be recognized that the impact of criminal prosecution on truth-telling and conflict transformation is likely to be limited (Osiel, 1997).

Due to the inability or unwillingness of national criminal justice systems to prosecute for genocide, war crimes and crimes against humanity, the UN Security Council established the International Criminal Tribunals for the former Yugoslavia and Rwanda (Theissen), and hybrid courts such as the Special Court for Sierra Leone, the Extraordinary Court Chambers of Cambodia, etc. In addition, significant progress has been made in establishing a permanent International Criminal Court to try the most heinous crimes (Cassese, 1999). For example, the experience of Sudan shows that the prosecution of war criminals is hampered by political instability and a weak judicial system. Reforming the civil courts is a long-term goal, but they currently lack the institutional capacity to properly prosecute. The Juba Peace Agreement proposes the use of traditional courts to resolve conflicts, particularly in Darfur, but the application of customary law to crimes such as sexual violence may conflict with international women's rights. Three conditions are necessary for the successful prosecution of war criminals: the presence of demands for justice, the political will to prosecute, and independent and competent courts. Currently in Sudan, there are only demands for justice. The political situation remains divided, and the courts do not have sufficient institutional strength to properly perform their functions.

Amnesty laws can also play an important role in restoring public confidence in the justice system (Theissen). However, the approach we actually agree with today hints at "a growing tendency in international law to consider amnesty unacceptable ... certain concessions to justice are no longer acceptable, even if they are accepted to ensure peace and prevent new atrocities" (Freeman, 2022). We believe that national legislation should be maximally improved in the conditions of armed conflict and meet the expectations of victims and civil society.

Ukrainian "Scenario" of Transitional Justice

Transitional justice in Ukraine is a complex process aimed at overcoming the consequences of the armed conflict with Russia, which began in 2014 and continues to this day. The approach to transitional justice in Ukraine includes various mechanisms aimed at ensuring justice, reconciliation and restoration.

Ukraine is not the first country to face issues of amnesty and forgiveness as part of transitional justice after the end of an armed conflict. We should start discussing these issues now, develop relevant legislation, analyze the experience of other countries and adopt the best practices for implementation in the Ukrainian context.

First of all, we should note that since the Russian-Ukrainian war is ongoing, it is worth laying the foundation for greater effectiveness of transitional justice after the end of the armed conflict. For example, in our opinion, it is appropriate to borrow the experience of Colombia – after the conflict, special conditions for amnesty were created for criminals. They restored schools, hospitals, and other infrastructure facilities. That is, criminal liability was replaced by participation in the restoration of what they destroyed (JustTalk, 2022). In our opinion, it is necessary to differentiate crimes according to the degree of severity. Amnesty can be applied to persons who have committed minor offenses. However, in the case of serious crimes, amnesty cannot be considered as a possible option, and special conditions and consideration of the opinion of the victims are required. The main categories of crimes, in relation to which it will be necessary to decide on the applicability of amnesty, and which are particularly dangerous and sensitive for amnesty are genocide; crimes against humanity; war crimes; crime of aggression; high treason; collaborative activity; assistance to the aggressor state; sabotage; espionage; premeditated murder; torture; rape and sexual violence; desertion; looting (Ukrainian Helsinki Union for Human Rights, 2023), etc.; Truth and Reconciliation Commission of South Africa (the Commission collected testimony and recommended what compensation the victims should receive) (JustTalk, 2022).

The institutional component of transitional justice in Ukraine involves the creation of new mechanisms. This is due to the need to replace the functions of the state in the sphere of justice due to the corruption and weakness of the political power of the transitional regimes. Non-judicial mechanisms, such as truth commissions, can contribute to the creation of national narratives about past events by recording the testimonies of victims and producing a national version of memory that will take into account different perspectives on the conflict (Bahinskyi, 2019, p. 74). The Kampala amendments (Amendments on the crime of aggression..., 2010) to the Rome Statute made the International Criminal Court's jurisdiction over the crime of aggression real. The lack of jurisdiction of the ICC over the crime of aggression in the case of Russia's invasion of Ukraine and the impossibility of bringing the military and political leadership of the aggressors to justice exclusively through national mechanisms prompted the establishment of the Special Tribunal. This decision is an important prerequisite for the responsibility of the aggressor at the international level.

The idea of creating a special international tribunal for the Russian Federation for crimes of aggression against Ukraine is based on the fact that the tribunal is the highest form of international justice in the modern world. It ensures public and inevitable punishment and guarantees the inviolability of the international legal order. The creation of such a tribunal for Russia stimulates new approaches to expanding the jurisdiction of the International Criminal Court to prosecute acts of aggression. The process of establishing an international tribunal is complex and requires new solutions to many legal and practical problems, creating the basis for universally applicable jurisdiction in the future (Koruts, 2023). We believe that, on the one hand, taking into account public opinion, the expectations of Ukrainian society and the peculiarities of transitional justice in Ukraine in the conditions of the existing armed conflict, the creation of a Special Tribunal is an appropriate transitional justice mechanism, and on the other hand, the model of a special tribunal for crimes of aggression can become a precedent that objectivity and legitimacy of judgments can be applied in any situation, even in authoritarian states, then the mixed tribunal model can become an effective solution. This will allow to achieve fairness and justice in different jurisdictions. Therefore, transitional justice in Ukraine, aimed at overcoming the consequences of the armed conflict with Russia, requires the creation of effective mechanisms for ensuring justice and restoration. The application of international practices, such as amnesty for low-level criminals and the establishment of a special tribunal for crimes of aggression, are important components of this process. The use of national, hybrid and international institutions will contribute to the formation of national narratives and the strengthening of the rule of law. The implementation of these mechanisms will ensure the inevitability of punishment, help in the reintegration of the occupied territories and the restoration of the sovereignty of Ukraine.

Public Opinion on Transitional Justice in Ukraine

Revkin et al. (2024) in a scientific article considered transitional justice taking into account public opinion in this area with new data from Ukraine.

Researchers collaborated with the Kyiv International Institute of Sociology to conduct a public opinion poll on transitional justice in the Donbas region, which borders Russia and has been controlled by pro-Russian separatists since 2014 (Revkin et al., 2024). The survey, conducted in 2017, covered a random sample of 1,621 respondents in two administrative districts of eastern Ukraine, Donetsk and Luhansk. The sample was divided into two parts: territories occupied by pro-Russian separatists (873 respondents) and territories remaining under the control of the Ukrainian government (748 respondents) (Revkin et al., 2024).

At the beginning of the survey, respondents were asked about their attitude towards the separatist movement in eastern Ukraine. They then reviewed a hypothetical end-of-conflict scenario and evaluated three transitional justice mechanisms relevant to Ukraine. In all options, the outcome of the conflict was described as a stalemate, reflecting the status quo at the time of the survey in 2017. This was done to prevent the introduction of new power dynamics that could influence respondents' attitudes toward transitional justice options (Revkin et al., 2024).

Hypothetical scenarios attributed most war crimes to separatists, pro-Russian forces or both sides equally. Three mechanisms of transitional justice have been proposed: international courts, national courts, and an amnesty policy that would exclude the possibility of bringing alleged perpetrators of war crimes to justice. The results of the survey showed that Ukrainians generally trust international law more. In particular, they believed that international law would lead to justice and peace more quickly than amnesty policies or Ukrainian law. The exception was separatist territories, where respondents believed that amnesty policies would bring peace more quickly than international law (Revkin et al., 2024). The study also found that people who had lost family members during the conflict in eastern Ukraine exhibited more "war fatigue" and were more likely to support amnesty policies compared to other respondents (Revkin et al., 2024).

However, we considered public opinion after 2017 and highlighted the specifics of society's expectations of transitional justice. Public opinion in 2020 was divided almost in half regarding the option of restoring control over the occupied territories in accordance with the text of the Minsk agreements (special status, amnesty, elections to restore control). For 38.8% of respondents, this option looks desirable (13.4%) or acceptable (25.4%). At the same time, 43.9% consider this option unacceptable. There is a noticeable difference in the evaluations of this option by residents of the South and East of Ukraine, where more than 50% of respondents agreed with it (Razumkov Center, 2020).

A sociological study conducted by the Kyiv International Institute of Sociology with the support of UNDP, highlighting the attitude of Ukrainians to transitional justice in the context of the Russian-

Ukrainian conflict in 2021, showed that 49% of respondents strongly feel the war, and more than 50% support the transitional justice plan before deoccupation. 74% of respondents are in favor of maintaining relations with the residents of the occupied territories, and the majority believe that the president should be the initiator of the plan. Also, 75% support the access of residents of the occupied territories to public services. Evaluating the steps taken after the liberation of the territories, 37% of respondents consider it important to bring perpetrators to justice for serious crimes (Myrnyi, 2021).

In June 2023, the Democratic Initiatives Foundation named after Ilko Kucheriv, together with the Center for Political Sociology, conducted a face-to-face survey that revealed key findings regarding the attitude of Ukrainians to war, peace and the future. According to the survey, 70% of Ukrainians consider the liberation of all territories from the enemy an important condition for victory, 60% – the return of all prisoners and deportees, and 51% – the punishment of Russian war criminals. The majority of citizens, 78%, consider that all Russians are responsible for aggression, and 57% want to see all those involved in war crimes punished. At the same time, 68% support the prosecution of criminals within the framework of national and international law, although 25% consider it necessary to punish them extrajudicially. 16% of Ukrainians witnessed war crimes, and 5% may have witnessed such actions, but only 50% of them are ready to testify in court. 95% of respondents expect that the state will seek compensation from Russia for the damage caused, but only 40% believe in the possibility of real reparations (Opora, 2023).

The results of the survey by the Razumkov Center, which was conducted from January 19 to 25, 2024 on the topic: "Citizens' assessment of the government's foreign policy, the effectiveness of international support and the influence of foreign policy factors on Ukraine", indicate a wide and deep negative attitude towards Russia among the population of Ukraine, which is distributed practically throughout the country. This attitude is explained by the long conflict between Russia and Ukraine, which affected a large part of Ukrainian society. The high level of negative attitude in the western regions (98.5%) can be explained by historical, cultural and linguistic factors that traditionally support Ukrainian identity. On the other hand, even in the eastern regions, where greater proximity to Russia and a higher share of the Russian-speaking population have historically existed, the level of negative attitude is also very high (91%), which indicates a significant impact of recent events on public opinion (Razumkov Center, 2024). Such attitudes in society (accordingly, war crimes committed by the Russian Federation) significantly reduce the effectiveness of the proposed reconciliation in the traditional sense.

A study conducted by the Kharkiv Institute of Social Research "Human rights in the process of overcoming the consequences of war: the results of the 2024 survey" revealed that more than 80% of respondents support criminal responsibility for cooperation with Russians in the occupied territories, although opinions differ on the punishment of teachers, doctors and utility workers. Regarding reparations, 61% of respondents do not believe in the possibility of receiving them from Russia, 26% believe it is possible in the long term, and only 6% believe that reparations will be made in the coming years (Ukrainian Helsinki Human Rights Union, 2024).

The dynamics of public opinion in Ukraine demonstrate growing support for international and national justice mechanisms for prosecution of war crimes, as well as skepticism about the possibility of receiving reparations from Russia. These results highlight the importance of institutional support and the implementation of international standards and expectations of civil society in the process of transitional justice during and after armed conflict.

Conclusions

Summarizing the above, it is possible to come to a conclusion about the uniqueness and inimitability as of the conflicts so the ways of their resolution. The study of the evolution of transitional justice and the practice of its application will serve as a theoretical basis for building one's own model of transitional justice from war to peace. Analysis of successful cases in other countries will help to develop effective mechanisms for Ukraine. It is also important to take into account the specifics of the Ukrainian conflict and the peculiarities of the national legal system. The use of institutional mechanisms such as truth commissions, special tribunals and reparations programs will promote justice and reconstruction. The implementation of individual measures of international experience in the context of the de-occupation of the territory of Ukraine will ensure national security, the restoration of the country's sovereignty and territorial integrity, as well as the reintegration of temporarily occupied territories. The role of civil society and public opinion is extremely important, as they can become the driving force behind the implementation of these processes, providing legitimacy and support among broad sections of the population. Civil society

can contribute to monitoring the transparency of processes and protecting the rights of victims, and taking into account public opinion will help to better understand the needs and expectations of society, making transitional justice processes more inclusive and effective.

Acknowledgements. None.

Conflict of Interest. None.

References:

- Asaala, E., & Dicker, N. (2013). Transitional justice in Kenya and the UN Special Rapporteur on Truth and Justice: where to from here? *African Human Rights Law Journal*, 13(2), 324-355.
https://web.archive.org/web/20240630175025/https://scielo.org.za/scielo.php?pid=S1996-20962013000200005&script=sci_abstract
- Avocats Sans Frontières (2021). *Reparation to Victims of International Crimes in the Democratic Republic of Congo, a Major Challenge to Fight Against Impunity*. Brussels: Avocats Sans Frontières.
<https://web.archive.org/web/20231202153150/https://asf.be/reparation-to-victims-of-international-crimes-in-the-democratic-republic-of-congo-a-major-challenge-in-the-fight-against-impunity/>
- Bahinskyi, A. V. (2019). Pravosuddia perekhidnoho periodu: poniattia ta funktsii [Transitional Justice: Concepts and Functions]. *Visnyk NTUU «KPI». Politolohiia. Sotsiolohiia. Pravo* [Bulletin of NTUU "KPI". Politicalology. Sociology. Law], 4 (44), 74-78. DOI: [https://doi.org/10.20535/2308-5053.2019.4\(44\).199361](https://doi.org/10.20535/2308-5053.2019.4(44).199361) [in Ukrainian].
- Cantú Rivera, H. (2014). Transitional Justice, Human Rights and the Restoration of Credibility: Reconstructing Mexico's Social Fabric. *Mexican Law Review*, 7(1), 57-81.
 DOI: [https://doi.org/10.1016/S1870-0578\(16\)30008-7](https://doi.org/10.1016/S1870-0578(16)30008-7)
- Cassese, A. (1999). The Statute of the International Criminal Court: Some Preliminary Reflections. *European Journal of International Law*, 10, 144-171. <https://web.archive.org/web/20240414204507/http://ejil.org/pdfs/10/1/570.pdf>
- Ceva, E., & Murphy, C. (2022). Interactive Justice in Transitional Justice: a Dynamic Framework. *American Journal of Political Sciences*, 66, 3, 762-774. DOI: <https://doi.org/10.1111/ajps.12663>
- CMI (n.d.). *Introduction to Transitional Justice. Lessons for Sudan*. <https://www.cmi.no/resources/181-the-courts-and-transitional-justice>
- Cuevas, V. E., Ortiz Rojas, R. L., & Baeza, P. R. (2002). *Executive Summary by Claudia Gerez Czitrom. Truth Commissions: an Uncertain Path? Comparative study of truth commissions in Argentina, Chile, El Salvador, Guatemala and South Africa from the perspectives of victims, their relatives, human rights organizations and experts*. Geneva. https://www.files.ethz.ch/isn/103018/Truth_Comm_Executive_Summary.pdf
- David, R. (2017) What we know about transitional justice: survey and experimental evidence. *Advances in Political Psychology*, 38(1), 151-177. DOI: <https://doi.org/10.1111/pops.12395>
- De Assis, E. F. (2023). Transitional Justice, Military Forces and Public Security in Brazil: Failures in The Institutional Reforms Dimension. *SciELO Preprints*. DOI: <https://doi.org/10.1590/SciELOPreprints.6884>
- Freeman, M. (2022). Negotiating Amnesties, Peace and Justice: a New Path. *IFIT*.
<https://web.archive.org/web/20231210071919/https://ifit-transitions.org/commentaries/negotiating-amnesties-peace-and-justice-a-new-path/>
- Gissel, L. E. (2022). The Standardisation of Transitional Justice. *European Journal of International Relations*, 28(4), 859-884. DOI: <https://doi.org/10.1177/13540661221120980>
- Horne, C. M. (2023). Accountability for Atrocity Crimes in Ukraine: Gendering Transitional Justice. *Women's Studies International Forum*, 96. DOI: <https://doi.org/10.1016/j.wsif.2022.102666>
- International Centre for Transitional Justice (2013). *ICTJ Program Report: Reparative Justice*.
<https://web.archive.org/web/20231010104127/https://www.ictj.org/news/ictj-program-report-reparative-justice>
- JustTalk (2022). *Amnistiia i proshchennia yak elementy rozbudovy myru pislia zbroinoho konfliktu | justtalk_context* [Amnesty and Forgiveness as Elements of Building Peace after an Armed Conflict Yusttalk_Tsontekht].
https://web.archive.org/web/20240224063630/https://justtalk.com.ua/post/amnistiya-i-proschennya-yak-elementi-rozbudovi-miru-pislya-zbrojnogo-konfliktu--justtalk_context-tekstova-versiya [in Ukrainian].
- Kasapas, G. (2008). An Introduction to the Concept of Transitional Justice: Western Balkans and EU Conditionality. *UNISCI Discussion Papers*, 18.
<https://web.archive.org/web/20221024150204/https://www.ucm.es/data/cont/media/www/pag-72511/UNISCI%20DP%2018%20-%20KASAPAS.pdf>
- Kiss, C. (2008). We Are Not Like Us Transitional Justice: The (Re)construction of Post-communist Memory. *IWM Junior Visiting Fellows' Conference Proceedings, XXI*, 1-15.
https://web.archive.org/web/20240630170843/https://files.iwm.at/jvfc/21_2_Kiss.pdf

- Koruts, U. (2023). Legal Aspects of Creating Special International Tribunal for the Crime of Russian Aggression against Ukraine. *Political and Legal Studies*, 2 (1), 11-17.
<https://web.archive.org/web/20240630170549/https://czasopisma.marszalek.com.pl/images/pliki/cpls/5/cpls501.pdf>
- Kostovicova, D. (2018). Transitional Justice and Conflict Studies: Bridging the Divide. *Journal of Global Security Studies*. <http://eprints.lse.ac.uk/89710/>
- Kovalko, N. (2022). Myr: otsinka stanu ta osnovopolozhnykh pryntsyviv rozbudovy (na prykladi rosiisko-ukrainskoi viiny) [Peace: Assessment of the State and Fundamental Principles of Development (on the Example of The Russian-Ukrainian War)]. *Evropský Politický a Právní Diskurz* [European Political and Law Discourse], 9, 6, 5-12.
DOI: <https://doi.org/10.46340/eppd.2022.9.6.1> [in Ukrainian].
- Krotoszynski, M. (2014). The Transitional Justice Models and the Justifications of Means of Dealing with the Past. *Oñati Socio-Legal Series*, 6(3), 584-606. <https://opo.iisj.net/index.php/osls/article/view/463>
- Kuzmenko, V., & Kuzmenko, H. (2024). Problems of Protecting Rights of Violent Crimes Victims: Aspects of the Harmonization Process of Ukrainian Law with EU Law. *Evropský Politický a Právní Diskurz* [European Political and Law Discourse], 11, 2, 51-61. DOI: <https://doi.org/10.46340/eppd.2024.11.2.5>
- Laplane, L. J. (2009). Outlawing Amnesty: The Return of Criminal Justice in Transitional Justice Schemes. *Journal of International Law*, 49(4), 915-984.
https://web.archive.org/web/20221122170018/http://www.antonioacasella.eu/restorative/Laplane_2009.pdf
- Lutsenko, B. (2023). Zarubizhnyi dosvid realizatsii okremykh elementiv perekhidnoho pravosuddia v konteksti kryminolohichnoho zabezpechennia deokupatsii terytorii Ukrainy [Foreign Experience in the Implementation of Certain Elements of Transitional Justice in the Context of Criminological Support for the De-Occupation of the Territory of Ukraine]. *Visnyk Kryminolohichnoi asotsiatsii Ukrainy* [Bulletin of the Criminological Association of Ukraine], 30(3), 273-284. DOI: <https://doi.org/10.32631/vca.2023.3.23> [in Ukrainian].
- Martynenko, O., & Semorkina, O. (2020). *Amnistiia ta liustratsiia: mekhanizmy perekhidnoho pravosuddia dlia maibutnoho Ukrainy. Ohliad mizhnarodnoi praktyky ta natsionalnoho zakonodavstva* [Amnesty and Lustration: Mechanisms of Transitional Justice for the Future of Ukraine. Overview of International Practice and National Legislation]. Kyiv: National Platform.
<https://web.archive.org/web/20240214215039/http://www.ucipr.org.ua/publicdocs/amnesty2020.pdf> [in Ukrainian].
- Mobekk, E. (2009). Chapter 9. Transitional Justice in Post-Conflict Societies – Approaches to Reconciliation. In: *After Intervention: Public Security Management in Post-Conflict Societies – From Intervention to Sustainable Local Ownership*. Geneva: Geneva Centre for the Democratic Control of Armed Forces.
https://web.archive.org/web/20220120233124/https://www.bundesheer.at/pdf_pool/publikationen/10_wg12_psm_100.pdf
- Myrnyi, M. (2021). Yak ukraintsi stavliatsia do perekhidnoho pravosuddia – sotsiolohichne doslidzhennia [How do Ukrainians Feel about Transitional Justice – A Sociological Study]. *Zmina* [Change].
<https://web.archive.org/web/20240529161912/https://zmina.info/articles/doslidnyky-rozpovily-pro-stavlennya-ukrayinciv-do-perehidnogo-pravosuddya/> [in Ukrainian].
- Open Society Justice Initiative (2019). *Vybir zarady spravedlyvosti: posibnyk zi stvorennia mekhanizmiv prytiahnennia do vidpovidalnosti za naitiazhchi zlochyny* [Choices for Justice: A Guide to Creating Accountability Mechanisms for the Most Serious Crimes].
https://web.archive.org/web/20221015130613/https://www.irf.ua/wp-content/uploads/2020/06/tom_ii_web.pdf [in Ukrainian].
- Opora (2023). *Analitichnyi zvit za pidsumkamy opytuvannia «Viina, myr, peremoha, maibutnie»* [Analytical Report Based on the Results of the Survey "War, Peace, Victory, Future"].
<https://web.archive.org/web/20240507100032/https://www.oporaua.org/viyna/analitichnyi-zvit-za-pidsumkami-opituvannia-viina-mir-peremoga-maibutnie-24828> [in Ukrainian].
- Osiel, M. (1997). *Mass Atrocity, Collective Memory, and the Law*. New Jersey: Transaction Publishers.
- Razumkov Center (2020). *Faktor hromadskoi dumky u formuvanni polityky vrehuliuvannia rosiisko-ukrainskoho konfliktu: mozhlyvosti ta ryzyky* [The Factor of Public Opinion in the Formation of the Russian-Ukrainian Conflict Settlement Policy: Opportunities and Risks].
https://web.archive.org/web/20240524173109/https://razumkov.org.ua/uploads/article/2020_donbas.pdf [in Ukrainian].
- Razumkov Center (2024). *Otsinka hromadianamy zovnishnoi polityky vlady, efektyvnosti mizhnarodnoi pidtrymky ta vplyvu zovnishnopolitychnykh chynnykiv na Ukrainu (sichen 2024 r.)* [Citizens' Assessment of the Government's Foreign Policy, the Effectiveness of International Support and the Impact of Foreign Policy Factors on Ukraine (January 2024)].
<https://web.archive.org/web/20240624192143/https://razumkov.org.ua/napriamky/sotsiologichni-doslidzhennia/otsinka-gromadianamy-zovnishnoi-polityky-vlady-efektyvnosti-mizhnarodnoi-pidtrymky-ta-vplyvu-zovnishnopolitychnykh-chynnykiv-na-ukrainu-sichen-2024r> [in Ukrainian].
- Revkin, M., Alrababah, A., & Myrick, R. (2024). Evidence-Based Transitional Justice: Incorporating Public Opinion into the Field, with New Data from Iraq and Ukraine. *The Yale Law Journal*, 133, 1582-1675.

- <https://web.archive.org/web/20240629025320/https://www.yalelawjournal.org/feature/evidence-based-transitional-justice-incorporating-public-opinion-into-the-field-with-new-data-from-iraq-and-ukraine>
- Robins, S., et al. (2022). Transitional justice from the margins: Collective reparations and Tunisia's Truth and Dignity Commission. *Political Geography*, 94. DOI: <https://doi.org/10.1016/j.polgeo.2021.102565>
- Suh, J. (2023). Human Rights and Corruption in Settling the Accounts of the Past: Transitional Justice Experiences from the Philippines, South Korea, and Indonesia. *Bijdragen tot de taal-, land- en volkenkunde* [Journal of the Humanities and Social Sciences of Southeast Asia], 179(1), 61-89. DOI: <https://doi.org/10.1163/22134379-bja10049>
- Szablewska, N., & Bachmann, S. D. (2015). Current Issues and Future Challenges in Transitional Justice. In: Szablewska, N., & Bachmann, S. D. (eds). *Current Issues in Transitional Justice. Springer Series in Transitional Justice*, 4. Springer, Cham. DOI: https://doi.org/10.1007/978-3-319-09390-1_14
- Theissen, G. (2004). Supporting Justice, Co-existence and Reconciliation after Armed Conflict: Strategies for Dealing with the Past. *Berghof Research Center for Constructive Conflict Management*. https://berghof-foundation.org/files/publications/theissen_handbook.pdf
- Thorpe, N. (2001). Atrocity Bodies Come Back To Haunt Serbs. *The Guardian*. <https://web.archive.org/web/20240611063908/https://www.theguardian.com/world/2001/jun/22/warcrimes>
- Ukrainian Helsinki Union for Human Rights (2023). *Pisliavoienna amnistii v Ukraini: yaki zlochyny ne maiut zvilniatysia vid pokarannia?* [Post-War Amnesty in Ukraine: what Crimes are Exempt from Punishment?] <https://web.archive.org/web/20231128105825/https://www.helsinki.org.ua/articles/pisliavoienna-amnistii-v-ukraini-iaki-zlochyny-ne-maiut-zvilniatysia-vid-pokarannia/> [in Ukrainian].
- Ukrainian Helsinki Union for Human Rights (2024). *Doslidzhennia «Prava liudyny v protsesi podolannia naslidkiv viiny: rezultaty opytuvannia 2024»* [Studies "Human Rights in the Process of Overcoming the Consequences of War: Results of the 2024 Survey"]. <https://web.archive.org/web/20240609133549/https://www.helsinki.org.ua/publications/doslidzhennia-prava-liudyny-v-protsesi-podolannia-naslidkiv-viiny-rezultaty-opytuvannia-2024/> [in Ukrainian].
- UN (2010). *Amendments on the crime of aggression to the Rome Statute of the International Criminal Court*. https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10-b&chapter=18&clang=_en
- Villa-Vicencio, Ch., & Doxtader, E. (2004). Pieces of the Puzzle Edited by Preface by Richard Goldstone Keywords on Reconciliation and Transitional Justice. *Institute for Justice and Reconciliation*. <https://web.archive.org/web/20240307160040/https://africanminds.co.za/wp-content/uploads/2012/05/Pieces%20of%20the%20Puzzle%20-%20Keywords%20on%20Reconciliation%20and%20Transitional%20Justice.pdf>