

**TRANSITIONAL JUSTICE AND INTERNATIONAL LAW:
COMPARATIVE INSIGHTS FROM THE YUGOSLAV WARS AND
ADAPTATIONS FOR THE RUSSIA-UKRAINE CONFLICT**

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ABSTRACT

This Paper analyzes the application of transitional justice in international law through a comparative study of the Yugoslav Wars and the ongoing Russia-Ukraine conflict. By examining both the effectiveness and limitations of transitional justice mechanisms used during the Yugoslav Wars, it highlights how these frameworks are being tested and adapted in response to the complexities of the Russia-Ukraine conflict, including modern warfare and state aggression. Drawing on lessons from both conflicts, the study emphasizes the need for a continuous evolution of legal frameworks to better address the challenges posed by contemporary warfare.

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INTRODUCTION

In the heart of Eastern Europe, the echoes of past conflicts are heard as new crises emerge. One such moment occurred on February 24, 2022, when the world watched in shock as Russia launched a full-scale invasion of Ukraine.¹ This event, much like the crises of the Yugoslav Wars, reinforces the relevance of transitional justice. Transitional justice is a process designed to address past atrocities arising from armed conflicts or authoritarian regimes, encompassing both judicial and non-judicial

1. See, e.g., Austin Ramzy, *The Invasion of Ukraine: How Russia Attacked and What Happens Next*, N.Y. TIMES (Feb. 24, 2022), <https://www.nytimes.com/2022/02/24/world/europe/why-russia-attacked-ukraine.html>.

mechanisms.² It is not a distinct form of justice but rather an adaptation tailored to societies transitioning from periods of widespread injustices and violations.³ These measures not only address past wrongs, but also aim to prevent future abuses by tackling the root causes of conflicts.⁴

In the ongoing Ukraine conflict, systematically documenting human rights violations is critical.⁵ This documentation supports accountability and reveals the truth, guiding appropriate responses. Incorporating transitional justice elements into peace agreements is crucial,⁶ demonstrating a commitment from all parties to address past atrocities and prioritize victims and survivors.⁷

Historically, governments have employed various transitional justice strategies, including criminal prosecutions, truth commissions, reparation programs, security reforms, and memorialization efforts.⁸ Addressing past abuses is complex and requires more than a single approach. Judicial measures like trials are necessary but insufficient alone. A combination of initiatives is essential to rebuild a damaged societal fabric effectively. Experience has shown that transitional justice is most effective when various measures are implemented together, enhancing the impact beyond what any single action could achieve.⁹

2. See U.N. Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, ¶ 8, U.N. Doc. S/2004/616 (Aug. 23, 2004); Juan E. Méndez, *Accountability for Past Abuses*, HUM. RTS. Q. 255, 257–58 (1997); see also Elisenda Calvet-Martínez, *Transitional Justice in the Context of the War in Ukraine*, REVUE EUROPÉENNE DU DROIT (June 2023), <https://geopolitique.eu/en/articles/transitional-justice-in-the-context-of-the-war-in-ukraine/>; Martina Fischer, *Transitional Justice and Reconciliation: Theory and Practice*, in 2 ADVANCING CONFLICT TRANSFORMATION: THE BERGHOF HANDBOOK 405, 407 (Beatrix Austin, Martina Fischer & Hans J. Giessmann eds., 2011).

3. See Kora Andrieu, *Transitional Justice: A New Discipline in Human Rights*, SCIENCES PO (Jan. 18, 2010), <https://www.sciencespo.fr/mass-violence-war-massacre-resistance/fr/document/transitional-justice-new-discipline-human-rights-0.html>.

4. Juan Méndez, *Lou Henkin, Transitional Justice and the Prevention of Genocide*, 38 COLUM. HUM. RTS. L. REV. 477, 481 (2007).

5. The UN Report by the Independent International Commission of Inquiry on Ukraine identified severe violations of international humanitarian law by Russian forces. See Press Release, United Nations Office of the High Comm'r, Ukraine: UN Commission Concerned by Continuing Patterns of Violations of Human Rights and International Humanitarian Law (Mar. 15, 2024).

6. University of Cambridge has developed The Cambridge Initiative on Peace Settlements (CIPS) in collaboration with Harvard Law School's Negotiation Project. CIPS supports conflict parties and mediators by developing pathways towards peace. See *About Cambridge Initiative on Peace Settlements*, CAMBRIDGE INITIATIVE ON PEACE SETTLEMENTS, <https://cambridgepeace.org/about/> (last visited Oct. 27, 2024).

7. See Calvet-Martínez, *supra* note 2.

8. See, e.g., *id.*

9. See Paul Gready & Simon Robins, *Transitional Justice and Theories of Change: Towards Evaluation as Understanding*, 14 INT'L J. TRANSITIONAL JUST. 280 (2020). The authors argue for a shift in transitional justice evaluation from a results-focused and linear

The disintegration of Yugoslavia in the early 1990s, characterized by widespread violence, was significant for international law.¹⁰ The establishment of transitional justice mechanisms, especially the International Criminal Tribunal for the former Yugoslavia (“ICTY”), signaled a shift toward individual criminal accountability for international law violations.¹¹ This period highlighted the consensus that justice and accountability are central for lasting peace and reconciliation in post-conflict societies.

In the 21st century, the Russia-Ukraine conflict presents a renewed challenge. Starting in 2014 with the annexation of Crimea¹² and evolving into a prolonged conflict in Eastern Ukraine,¹³ this crisis tests the resilience and adaptability of international legal mechanisms in a new geopolitical context. Unlike the Yugoslav Wars, which took place in a post-Cold War era seeking order, the Russia-Ukraine conflict occurs in a globalized, multipolar world with layered legal and moral dilemmas.¹⁴

Rather than relying on a single theoretical framework, this analysis incorporates multiple disciplinary perspectives. From a legal standpoint, the study explores the role of international law in establishing judicial mechanisms and applying universal jurisdiction for war crimes. Political science insights are leveraged to understand how political dynamics influence the success of transitional justice measures, including peace settlements and governance reconstruction. Additionally, sociological and human rights perspectives are employed to address the social

approach to one that emphasizes process, interaction, and complexity. *Id.* at 299. This approach is posited to enhance the relevance and effectiveness of transitional justice initiatives by grounding them in empirical evidence and inclusive, participatory processes. *Id.* at 282–83.

10. See, e.g., LENARD J. COHEN, *BROKEN BONDS: YUGOSLAVIA’S DISINTEGRATION AND BALKAN POLITICS IN TRANSITION* 227–40 (2d ed., Routledge 2018) (1993).

11. See RACHEL KERR, *THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA: AN EXERCISE IN LAW, POLITICS, AND DIPLOMACY* 3 (2004); Richard Ashby Wilson, *Judging History: The Historical Record of the International Criminal Tribunal for the Former Yugoslavia*, 27 *HUM. RTS. Q.* 908, 909–10 (2005); Patrick L. Robinson, *Ensuring Fair and Expeditious Trials at the International Criminal Tribunal for the Former Yugoslavia*, 11 *EUR. J. INT’L L.* 569, 573 (2000).

12. See Thomas D. Grant, *Annexation of Crimea*, 109 *AM. J. INT’L L.* 68, 68–69 (2015); Jure Vidmar, *The Annexation of Crimea and the Boundaries of the Will of the People*, 16 *GERMAN L.J.* 365, 365–66 (2015).

13. See David Mandel, *The Conflict in Ukraine*, 24 *J. CONTEMP. CENT. & E. EUR.* 83, 83–84 (2016).

14. See Anne Orford, *Regional Orders, Geopolitics, and the Future of International Law*, 74 *CURRENT LEGAL PROBS.* 149, 152–54 (2021). Orford argues that the traditional state-centric international law framework did not entirely supplant earlier frameworks influenced by empires and regional orders suggesting that a clearer focus on regional orders can open new perspectives on international law’s role in global governance and geopolitics, particularly in understanding the interactions between major powers. See *id.*

dimensions of transitional justice, focusing on building community trust and social cohesion. These interdisciplinary perspectives collectively form a comprehensive framework that guides the comparative analysis. The study aims to analyze the establishment and operation of transitional justice mechanisms during the Yugoslav Wars and evaluate the applicability of similar strategies to the Russia-Ukraine conflict. By identifying lessons learned from the Yugoslav experience, this research seeks to inform current and future approaches to transitional justice in evolving global conflicts.

This Paper is organized as follows: Part One analyzes the historical implementation and outcomes of transitional justice post-Yugoslav Wars. Part Two examines the ongoing conflict in Ukraine, exploring current applications of transitional justice and identifying unique challenges presented by the geopolitical and legal context. Part Three explores the region-specific dynamics that shape transitional justice in the contexts of the Yugoslav Wars and the Russia-Ukraine conflict. Part Four offers a comparative analysis of the transitional justice mechanisms utilized in the Yugoslav Wars and the ongoing Russia-Ukraine conflict. It explores the parallels and distinctions between these conflicts, drawing critical lessons and proposing forward-looking adaptations. Finally, Part Five focuses on the role of emerging technologies in enhancing transitional justice mechanisms to address contemporary conflict dynamics and improve the effectiveness of transitional justice processes.

I. THE YUGOSLAV WARS

The Yugoslav Wars, spanning from 1991 to 2001, involved ethnic conflicts, wars of independence, and insurgencies within the former Yugoslavia.¹⁵ These conflicts involved severe violations of international law, fundamentally challenging the international community's capacity for response and intervention.

A. *Establishment and Impact of the ICTY*

In response to these atrocities, the United Nations Security Council established the International Criminal Tribunal for the former Yugoslavia ("ICTY") in 1993, marking a significant evolution in international criminal law.¹⁶ As the first war crimes court created by the

15. See CATHERINE BAKER, *THE YUGOSLAV WARS OF THE 1990S* 1–2 (Sarah Badcock et al. eds., 2015).

16. KERR, *supra* note 11, at 12–13, 39.

United Nations since the Nuremberg and Tokyo tribunals,¹⁷ the ICTY set a precedent for individual accountability over state responsibility.¹⁸ The tribunal prosecuted several high-profile cases,¹⁹ contributing to the development of international criminal law,²⁰ clarifying legal definitions of genocide²¹ and crimes against humanity, and establishing the mechanisms for enforcing international norms.²²

17. JOHN HAGAN, *JUSTICE IN THE BALKANS: PROSECUTING WAR CRIMES IN THE HAGUE TRIBUNAL* 28 (William O'Barr & John M. Conley eds., 2003); *About the ICTY*, UNITED NATIONS: INT'L CRIM. TRIBUNAL FOR THE FORMER YUGOSLAVIA, <https://www.icty.org/en/about> (last visited Oct. 27, 2024) (examining the workings of the ICTY and its impact on international law).

18. See MICHAEL P. SCHARF, *BALKAN JUSTICE: THE STORY BEHIND THE FIRST INTERNATIONAL WAR CRIMES TRIAL SINCE NUREMBERG* 216–28 (1997) (focusing on the efforts to hold leaders accountable for war crimes by detailing the legal strategies and the broader implications for international criminal law).

19. See Barbora Hola & Olivera Simic, *ICTY Celebrities: War Criminals Coming Home*, 28 INT'L CRIM. JUST. REV. 285, 288 (2018); Jelena Subotić, *Legitimacy, Scope, and Conflicting Claims on the ICTY: In the Aftermath of Gotovina, Haradinaj and Perišić*, 13 J. HUM. RTS. 170, 170–71 (2014); Scott Grosscup, *The Trial of Slobodan Milosevic: The Demise of Head of State Immunity and the Specter of Victor's Justice*, 32 DENV. J. INT'L L. & POL'Y 355, 359–62 (2004).

20. See Jonathan I. Charney, *Progress in International Criminal Law?*, 93 AM. J. INT'L L. 452, 452–54 (1999); Gideon Boas, *A Code of Evidence and Procedure for International Criminal Law? The Rules of the ICTY*, in INTERNATIONAL CRIMINAL LAW DEVELOPMENTS IN THE CASE LAW OF THE ICTY 1, 1–2 (Gideon Boas & William A. Schabas eds., 2003); Gideon Boas, *Creating Laws of Evidence for International Criminal Law: The ICTY and the Principle of Flexibility*, 12 CRIM. L. F. 41, 41–42 (2001); Micaela Frulli, *The Contribution of International Criminal Tribunals to the Development of International Law: The Prominence of Opinio Juris and the Moralization of Customary Law*, 14 L. & PRAC. INT'L CTS. & TRIBUNALS 80, 89–93 (2015); William J. Fenrick, *The Development of the Law of Armed Conflict Through the Jurisprudence of the International Criminal Tribunal for the Former Yugoslavia*, 3 J. ARMED CONFLICT L. 197, 197–99 (1998).

21. See Carsten Stahn, *ICTY and the New Law on Genocide*, in NEW CHALLENGES TO INTERNATIONAL LAW: A VIEW FROM THE HAGUE 126, 130, 139–40 (Steven van Hoogstraten ed., 2018); Michelle Jarvis & Alan Tieger, *Applying the Genocide Convention at the ICTY: The Influence of Paradigms Past*, 14 J. INT'L CRIM. JUST. 857, 859–60 (2016); Cécile Tournaye, *Genocidal Intent Before the ICTY*, 52 INT'L & COMPAR. L. Q. 447, 454–55 (2003).

22. See Patrice C. McMahon & Jennifer L. Miller, *From Adjudication to Aftermath: Assessing the ICTY's Goals Beyond Prosecution*, 13 HUM. RTS. REV. 421, 423 (2012); Antonio Cassese, *The ICTY: A Living and Vital Reality*, 2 J. INT'L CRIM. JUST. 585, 587 (2004); Kelly D. Askin, *Reflections on Some of the Most Significant Achievements of the ICTY*, 37 NEW ENG. L. REV. 903, 905 (2002); Gabrielle Kirk McDonald, *Problems, Obstacles and Achievements of the ICTY*, 2 J. INT'L CRIM. JUST. 558, 559–60 (2004); Theodor Meron & Fatou Bensouda, *Twenty Years of International Criminal Law: From the ICTY to the ICC and Beyond*, 107 INT'L L. MULTIPOLAR WORLD 407, 407 (2013).

B. *Limitations of the ICTY*

Despite its achievements, the ICTY faced several criticisms.²³ One major critique was its perceived selective justice;²⁴ the tribunal was accused of inconsistent sentencing and bias, particularly in its prosecutorial decisions, allegedly influenced by political considerations.²⁵ This perception raised questions about the fairness and impartiality of the ICTY's proceedings.²⁶

While the Tribunal secured convictions in significant cases, the quality of judicial processes often faced scrutiny.²⁷ Prolonged trials sometimes detracted from the perceived efficacy and fairness of proceedings, leading to mixed reactions from the communities and victims directly impacted by the conflict.²⁸

Witness protection emerged as another considerable challenge.²⁹ The tribunal struggled to protect witnesses from intimidation and retaliation, a factor that complicated the prosecution of cases and, in some instances, led to the reluctance of witnesses to testify.³⁰ This issue revealed the difficulties inherent in prosecuting war crimes and the importance of effective witness protection mechanisms.³¹

23. See Ajla Škrbić, *The Legacy of the International Criminal Tribunal for the Former Yugoslavia*, 2 SEER J. FOR LAB. & SOC. AFFS. E. EUR. 241, 246–48 (2015).

24. A critique centered on the perception that the Tribunal disproportionately targeted certain ethnic groups, potentially exacerbating ethnic tensions rather than ameliorating them. See Jenia Iontcheva Turner, *Defense Perspectives on Law and Politics in International Criminal Trials*, 48 VA. J. INT'L L. 529, 577–79 (2008); Elies van Sliedregt, *One Rule for Them - Selectivity in International Criminal Law*, 34 LEIDEN J. INT'L L. 283, 283–84 (2021).

25. van Sliedregt, *supra* note 24, at 283–84 (noting the Tribunal's inability to prosecute leaders from all sides of the conflict equally).

26. Michael Mandel, *Politics and Human Rights in International Criminal Law: Our Case Against NATO and the Lessons to Be Learned from It*, 25 FORDHAM INT'L L.J. 95, 99 (2001).

27. Stuart Ford, *Fairness and Politics at the ICTY: Evidence from The Indictments*, 39 N.C. J. INT'L L. & COM. REG. 45, 47 (2013).

28. *Id.* at 58.

29. The Council of Europe Report stresses the need for improvements due to threats, intimidation, and even the murder of potential witnesses. Eur. Parl. Ass., *The Protection of Witnesses as a Cornerstone for Justice and Reconciliation in the Balkans*, Doc. 12440 rev, at 3 (Jan. 12, 2011), <https://www.refworld.org/reference/regionalreport/coepace/2011/en/78176>.

30. Witnesses often faced threats and retaliation, and the measures in place to protect them were sometimes inadequate. See generally Anne-Marie de Brouwer, *The Problem of Witness Interference Before International Criminal Tribunals*, 15 INT'L CRIM. L. REV. 1, 32 (2015).

31. David Tolbert & Frederick Swinnen, *The Protection of, and Assistance to, Witnesses at the ICTY*, in THE DYNAMICS OF INTERNATIONAL CRIMINAL JUSTICE: ESSAYS IN HONOUR

Furthermore, the ICTY's impact on reconciliation within the former Yugoslavia remains debated. Critics argue that the tribunal's focus on legal prosecutions, without parallel efforts to foster reconciliation, may have exacerbated ethnic divisions.³² The effectiveness of the ICTY in contributing to lasting peace and reconciliation is still a contested issue, with opinions varying widely among scholars, practitioners, and the affected communities.³³

These criticisms outline broader implications for transitional justice, emphasizing the balance between legal processes and the socio-political dimensions of post-conflict recovery. From the ICTY's operation, several lessons can be applied to other conflicts undergoing transitional justice processes.

First, the importance of designing tribunals that are perceived as impartial, and representative cannot be overstated. Ensuring that such bodies prosecute individuals from all sides of a conflict equitably is integral for their legitimacy. Second, the integration of broader restorative justice measures can complement traditional retributive justice mechanisms. These lessons suggest that future international responses to mass atrocities should prioritize flexibility in tribunal design, allowing for adaptations that align with specific cultural and societal contexts. This analysis reaffirms the complicated legacy of the ICTY in transitional justice. While it made unprecedented strides in international criminal law, the Tribunal also faced significant challenges and criticisms that have informed the ongoing evolution of transitional justice theory and practice.

OF SIR RICHARD MAY 193, 197–98 (2006); see Bojan Perović, *The Collapse of Transitional Justice in Serbia*, 6 BALKAN SOC. SCI. REV. 43, 43–44 (2015).

32. See, e.g., Janine Natalya Clark, *The ICTY and the Challenges of Reconciliation in the Former Yugoslavia*, E-INT'L RELS. (Jan. 23, 2012), <https://www.e-ir.info/2012/01/23/the-icty-and-the-challenges-of-reconciliation-in-the-former-yugoslavia/> (arguing that the ICTY has solidified divisive ethnic narratives that often exclude inconvenient truths, and that true reconciliation requires mutual recognition of each group's suffering).

33. See Refik Hodžić, *A Long Road Yet to Reconciliation: The Impact of the ICTY on Reconciliation and Victims' Perceptions of Criminal Justice*, in ASSESSING THE LEGACY OF THE ICTY 115, 119 (2011); JANINE NATALYA CLARK, INTERNATIONAL TRIALS AND RECONCILIATION: ASSESSING THE IMPACT OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA 1, 6 (2014); James Meernik & Jose Raul Guerrero, *Can International Criminal Justice Advance Ethnic Reconciliation? The ICTY and Ethnic Relations in Bosnia-Herzegovina*, 14 SE. EUR. & BLACK SEA STUD. 383, 383–85 (2014).

II. THE RUSSIA-UKRAINE CONFLICT

The Russia-Ukraine conflict, which began with the annexation of Crimea in 2014 and extended into the conflict in Eastern Ukraine,³⁴ poses considerable obstacles to the international legal order. This conflict encompasses issues of international law, such as state sovereignty, territorial integrity, and human rights.³⁵ It challenges the established frameworks and methodologies of international law and transitional justice developed in response to earlier conflicts like the Yugoslav Wars.

A. *International Legal Responses*

The international community's response to the annexation of Crimea and the ongoing conflict in Eastern Ukraine has been diverse. Measures have included economic³⁶ and other sanctions³⁷ against Russia, diplomatic efforts to de-escalate the situation,³⁸ and attempts to apply international legal principles to address the crisis.³⁹ The UN General Assembly passed resolutions affirming Ukraine's territorial integrity and condemning Russia's annexation of Crimea as illegal.⁴⁰ However, the effectiveness of international legal mechanisms in resolving the conflict or holding perpetrators accountable has been limited.⁴¹ One of the

34. See Center for Preventive Action, *War in Ukraine*, COUNCIL ON FOREIGN RELS.: GLOB. CONFLICT TRACKER, <https://www.cfr.org/global-conflict-tracker/conflict/conflict-ukraine> (Oct. 16, 2024).

35. Ingrid Wuerth Brunk & Monica Hakimi, *Russia, Ukraine, and the Future World Order*, 116 AM. J. INT'L L. 687, 687–97 (2022).

36. Alan Rappeport & David E. Sanger, *Seizing Russian Assets to Help Ukraine Sets Off White House Debate*, N.Y. TIMES (May 31, 2022), <https://www.nytimes.com/2022/05/31/us/politics/russia-sanctions-central-bank-assets.html>; see also Anton Moiseienko, *Trading with a Friend's Enemy*, 116 AM. J. INT'L L. 720, 720 (2022); JEFFREY J. SCHOTT, ECONOMIC SANCTIONS AGAINST RUSSIA: HOW EFFECTIVE? HOW DURABLE? 1 (Peterson Inst. for Int'l Econ. 2023).

37. Many countries—especially in Europe—seek to limit their dependence on Russian energy. Anatole Boute, *Weaponizing Energy: Energy, Trade and Investment Law in the New Geopolitical Reality*, 116 AM. J. INT'L L. 740, 750–51 (2022) (arguing for reforms that would allow greater flexibility in the European Union's energy, trade, and investment laws to secure its energy infrastructure against geopolitical risks).

38. See Robert Skidelsky, *The Lost Peace?* NATION (Feb. 20, 2024), <https://www.thenation.com/article/world/ukraine-russia-war-peace-diplomacy/>.

39. See Elena Chachko & Katerina Linos, *International Law After Ukraine: Introduction to the Symposium*, 116 AM. J. INT'L L. UNBOUND 124, 125–26 (2022) (arguing that despite the dire circumstances, the response has been robust, with renewed affirmation of international laws and strengthening of global partnerships and alliances).

40. See, e.g., G.A. Res. ES-11/1 ¶ 1 (Mar. 2, 2022).

41. See Alireza Nourani-Dargiri, *World's Response to Russia's Invasion of Ukraine Illuminates the International Community's Double Standard in Addressing International Law Violations*, 100 U. DET. MERCY L. REV. 529, 529 (2023) (arguing that while there is

primary obstacles has been enforcing international law against a powerful state like Russia, which holds a permanent seat on the United Nations Security Council.⁴² This position enables Russia to wield substantial influence over international responses and complicates efforts to achieve a consensus on punitive measures or legal actions.⁴³

B. Current Developments

As of 2024, the conflict has seen continued escalation with far-reaching impacts on the civilian population.⁴⁴ The international community has increased sanctions on Russia, and the International Criminal Court (“ICC”) has intensified its investigations into alleged war crimes. The European Union (“EU”)⁴⁵ and the United States⁴⁶ have imposed additional sanctions targeting various sectors of the Russian economy, including energy, defense, and finance. These measures aim to increase economic pressure on Russia to cease its aggressive actions in Ukraine.

The ICC has been actively investigating alleged war crimes in Ukraine.⁴⁷ In March of 2023, the ICC issued arrest warrants for individuals accused of committing war crimes, highlighting the ongoing efforts to hold perpetrators responsible.⁴⁸ These investigations are supported by new evidence and testimonies from conflict zones, reinforcing the necessity for accountability.⁴⁹

significant international action against Russia’s actions in Ukraine, similar breaches elsewhere, particularly in cases involving non-white countries, do not receive equivalent attention or response).

42. See Devika Hovell, *Council at War: Russia, Ukraine and the UN Security Council*, EJIL:TALK! (Feb. 25, 2022), <https://www.ejiltalk.org/council-at-war-russia-ukraine-and-the-un-security-council/>.

43. See Pål Røren, *The Belligerent Bear: Russia, Status Orders, and War*, 47 INT’L SEC., Spring 2023, at 7, 47 (arguing that while war led to Russia being increasingly recognized as a great power within U.S. public discourse, it damaged Russia’s status within the G-8 and had little impact on its standing in the UN Security Council).

44. See *Ukraine*, OCHA, <https://www.unocha.org/ukraine> (last visited Oct. 27, 2024).

45. *EU Response to Russia’s War of Aggression Against Ukraine*, COUNCIL OF THE EUROPEAN UNION, <https://www.consilium.europa.eu/en/policies/eu-response-ukraine-invasion/> (last visited Oct. 27, 2024).

46. See generally *Russia-Related Sanctions*, U.S. DEPT OF THE TREASURY: OFF. OF FOREIGN ASSETS CONTROL, <https://ofac.treasury.gov/sanctions-programs-and-country-information/russia-related-sanctions> (last visited Oct. 27, 2024).

47. See *Ukraine*, INT’L CRIM. CT., <https://www.icc-cpi.int/situations/ukraine> (last visited Oct. 27, 2024).

48. *Id.* See generally George Wright, *ICC Issues Arrest Warrants for Top Russian Commanders*, BBC (Mar. 5, 2024), <https://www.bbc.com/news/world-europe-68483012>.

49. See *Ukraine: New Findings on Russia’s Devastation of Mariupol*, HUM. RTS. WATCH (Feb. 8, 2024, 12:00 AM), <https://www.hrw.org/news/2024/02/08/ukraine-new-findings->

C. Mechanisms of International Law and Their Effectiveness

The mechanisms of international law currently in place, including the International Criminal Court and various human rights treaties, face formidable hurdles in addressing the Russia-Ukraine conflict. While the ICC has opened a preliminary examination into the situation in Ukraine,⁵⁰ questions remain about its jurisdiction and the feasibility of prosecuting state actors. The challenges are heightened by issues of access, evidence collection, and the political dimensions of international law enforcement.⁵¹

Additionally, allegations of human rights abuses, such as targeted attacks on civilians,⁵² use of banned weapons,⁵³ and arbitrary

russias-devastation-mariupol; Center for Preventive Action, *War in Ukraine*, COUNCIL ON FOREIGN RELS.: GLOB. CONFLICT TRACKER, <https://www.cfr.org/global-conflict-tracker/conflict/conflict-ukraine> (Oct. 16, 2024); *Ukraine: "Callous Disregard for Human Life" of Russian Forces' Response to Kakhovka Dam Destruction Compounded by Its Disastrous Effects Upstream*, AMNESTY INT'L (June 15, 2023), <https://www.amnesty.org/en/latest/news/2023/06/ukraine-callous-disregard-for-human-life-of-russian-forces-response-to-kakhovka-dam-destruction-compounded-by-its-disastrous-effects-upstream/>; *Ukraine: Russian Forces Executed Surrendering Ukraine Soldiers*, HUMAN RTS. WATCH (May 2, 2024, 12:00 AM), <https://www.hrw.org/news/2024/05/02/ukraine-russian-forces-executed-surrendering-ukraine-soldiers>; Emmanuel Grynspan, *Human Rights Watch Accuses Russian Forces of Executing Ukrainian Troops*, LE MONDE, https://www.lemonde.fr/en/international/article/2024/05/02/human-rights-watch-accuses-russian-forces-of-executing-surrendering-ukraine-troops_6670174_4.html# (May 2, 2024, 9:24 AM).

50. Jaime Lopez & Brady Worthington, *The ICC Investigates the Situation in Ukraine: Jurisdiction and Potential Implications*, LAWFARE (Mar. 10, 2022, 10:08 AM), <https://www.lawfaremedia.org/article/icc-investigates-situation-ukraine-jurisdiction-and-potential-implications>. Neither Ukraine nor Russia is a party to the Rome Statute. *Id.* Consequently, neither state possesses the capacity to refer alleged crimes to the court. Nevertheless, Ukraine has made two declarations accepting the ICC's jurisdiction over crimes committed within its borders. *Id.*

51. Cuno Jakob Tarfusser & Giovanni Chiarini, *Without a Specific Declaration of Jurisdiction and Ratification: Procedural Weaknesses of the International Criminal Court's Investigation into the Russo-Ukrainian War*, 56 TEX. TECH L. REV. 171, 180–84 (2023). See generally Micaela Frullí, *International Criminal Justice at the Russia-Ukraine Crossroads*, 32 ITALIAN Y.B. INT'L L. 231, 239–47 (2023); Bernard Ntahiraja, *The ICC's Investigation into the Situation in Ukraine on the Basis of Referrals by Third States Parties to the Rome Statute: A Commentary*, 23 INT'L & COMPAR. L. REV. 11, 25–26 (2023).

52. See *Ukraine: Russian Forces Fired on Civilian Vehicles*, HUM. RTS. WATCH (May 2, 2022, 12:00 AM), <https://www.hrw.org/news/2022/05/02/ukraine-russian-forces-fired-civilian-vehicles>.

53. See generally *Weapon Transfers, Including Banned Cluster Munitions, Spike in Ukraine*, UN NEWS (Aug. 17, 2023), <https://news.un.org/en/story/2023/08/1139852>; Lorenzo Tondo, *Russia Using Cluster Bombs to Kill Ukrainian Civilians, Analysis Suggests*, GUARDIAN (Apr. 21, 2022, 11:10 AM), <https://www.theguardian.com/world/2022/apr/21/russia-using-banned-weapons-to-kill->

detentions,⁵⁴ underscore the need for effective international legal responses. This conflict also exposes the limitations of current mechanisms in preventing human rights violations and ensuring accountability in real time.

The disparity between the structured legal response seen in the Yugoslav Wars and the fragmented, politically charged responses to current conflicts suggests a strong impetus for the evolution of international law. Drawing direct comparisons to the ICTY's mechanisms, the international legal response to the Russia-Ukraine conflict indicates both an evolution and significant gaps. While the ICTY provided a clear framework for accountability and set precedents in international criminal law, the ongoing conflict points to the need for further development in law concerning non-state actors and state-sponsored hybrid warfare. The ongoing Russia-Ukraine conflict further challenges the international community to adapt and strengthen legal frameworks to manage modern conflicts, ensure accountability, and protect human rights in a rapidly changing global environment.

III. REGION-SPECIFIC DYNAMICS IN TRANSITIONAL JUSTICE

The regional dynamics and responses to conflict and transition in the Balkans during the Yugoslav Wars, and subsequently in Eastern Europe amid the Ukraine crisis, provide critical insights into the roles that regional organizations can play in conflict resolution and post-conflict reconstruction.⁵⁵ The European Union's engagement in the Balkans post-Yugoslav Wars provides an example for examining the potential influence and effectiveness of regional organizations in managing conflict

ukrainian-civilians-pictures-suggest; *Russian Forces are Using Weapons Widely Banned Across the World, Says Harvard Law Expert*, HARV. L. TODAY (Mar. 3, 2022), <https://hls.harvard.edu/today/russian-forces-are-using-weapons-widely-banned-across-the-world-says-harvard-law-expert/>; Natasha Bertrand & Haley Britzky, *US to Send Cluster Munitions Banned by over 100 Nations to Ukraine After Months of Debate*, CNN, <https://www.cnn.com/2023/07/07/politics/cluster-munitions/index.html> (July 8, 2023, 6:28 PM).

54. See Franziska Exeler, *Filtration Camps, Past and Present, and Russia's War Against Ukraine*, 25 J. GENOCIDE RSCH. 426, 429–30 (2023).

55. See generally Press Release, Security Council, In Times of Global Crises, Collaboration between Regional Organizations, United Nations Has 'Grown Exponentially', Secretary-General Tells Security Council, UN Press Release SC/14498 (Apr. 19, 2021) (encouraging enhanced cooperation between the United Nations and regional and subregional organizations to strengthen global conflict prevention and resolution); SARAH SMILES PERSINGER, REGIONAL ORGANIZATIONS AND PEACEBUILDING: THE ROLE OF CIVIL SOCIETY 1 (2014) (exploring the increasing importance of regional intergovernmental organizations and civil society organizations in managing regional peace and security issues).

zones.⁵⁶ The roles and impacts of regional organizations such as the EU and the Organization for Security and Co-operation in Europe (“OSCE”) in transitional justice efforts in the Balkans and Eastern Europe demonstrate the significant influence these organizations can exert on both the process and outcomes of transitional justice, contextualizing their roles within the broader contexts of the Yugoslav Wars and the ongoing Russia-Ukraine conflict.

A. *The Balkans and the EU’s Role*

In the aftermath of the Yugoslav Wars, the European Union emerged as a central force in the Balkans, focusing on promoting stability, reconciliation, and integration into the European framework.⁵⁷ The EU’s involvement included diplomatic initiatives, economic aid, and the prospect of EU membership as incentives for reform and cooperation among the newly independent states.⁵⁸ This approach showcased the potential for regional organizations to facilitate post-conflict recovery and political integration, leveraging economic and political incentives to encourage adherence to international norms and standards. The EU’s role in the Balkans illustrates the importance of a comprehensive strategy that combines political, economic, and legal tools to address the root causes of conflict and support the transition toward stability and democracy.⁵⁹

56. See generally Soeren Keil & Zeynep Arkan, *Theory and Practice of EU Member State Building in the Western Balkans*, in *THE EU AND MEMBER STATE BUILDING: EUROPEAN FOREIGN POLICY IN THE WESTERN BALKANS* 235 (Soeren Keil & Zeynep Arkan eds., 2015).

57. See generally Gentjan Skara, *The Role of the EU as a Peacebuilder in the Western Balkans*, 14 *ROMANIAN J. EUR. AFFS.* 26 (2014) (arguing that the EU has played a significant peacebuilding role in the Western Balkans through crisis management operations and the enlargement policy); *THE EUROPEANISATION OF THE WESTERN BALKANS: A FAILURE OF EU CONDITIONALITY?* (Jelena Džankić et al. eds., 2019).

58. It is estimated that ninety percent of all indictees brought to justice before the ICTY resulted directly from the conditionality enforced by the EU. Florence Hartmann, *The ICTY and EU Conditionality*, in *WAR CRIMES, CONDITIONALITY AND EU INTEGRATION IN THE WESTERN BALKANS* 67, 67 (Jelena Obradovic & Judy Batt eds., 2009).

59. The EU’s rigorous criteria for membership meant that countries were compelled to implement comprehensive legal reforms, which included adopting measures for judicial transparency, accountability, and the rule of law. See generally, e.g., Eur. Comm’n, *Bosnia and Herzegovina*, EUR. NEIGHBOURHOOD POLY & ENLARGEMENT NEGOTS., https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/bosnia-and-herzegovina_en#key-documents (last visited Oct. 27, 2024).

B. Eastern Europe and the Ukraine Crisis

The Ukraine crisis presents unique challenges for regional organizations, particularly due to strategic tensions between Russia and the West.⁶⁰ The EU and other regional entities like the OSCE have been involved in diplomatic efforts and monitoring missions.⁶¹ However, the effectiveness of these organizations in resolving the conflict has been limited by the overlapping issues of national sovereignty, territorial integrity, and geopolitical interests.⁶² The situation in Ukraine highlights the limitations faced by regional organizations in conflict zones where major powers are directly involved, raising questions about the capacity of these entities to enforce international norms and contribute to conflict resolution in the face of intense political and military obstacles.⁶³

To enhance the role of regional organizations in transitional justice, these bodies should adapt their strategies to be more resilient against global pressures and responsive to modern conflicts. Additionally, better integration of regional efforts with global transitional justice initiatives could amplify their impact. These organizations can act as both mediators and facilitators of comprehensive transitional justice

60. DMYTROD NAUMENKO ET AL., WESTERN BALKANS ACCESSION TO EU: LESSONS FOR UKRAINE 36–40 (2022). Direct comparisons between the EU's successful strategies in the Balkans and the OSCE's current engagements in Ukraine illustrate the potential and limits of regional organizations in influencing transitional justice outcomes. *See id.*; *infra* note 61. The unique geopolitical challenges, notably the direct involvement of a major power like Russia present hurdles that were less significant in the Balkan context. This includes resistance to international legal and peacekeeping efforts, complicating the role of organizations like the OSCE and limiting their effectiveness.

61. The OSCE focuses on conflict prevention and management, particularly in Eastern Europe and the Caspian region. However, it has been limited in areas like Chechnya, where it withdrew upon Russia's request. INT'L PEACE ACAD., THE REGIONALIZATION OF CONFLICT AND INTERVENTION 5 (2003). The EU, under its Common Foreign and Security Policy, has developed capacities for peacekeeping and conflict resolution, leveraging incentives such as potential EU integration to enhance compliance with peace processes and contributing substantial resources to post-conflict reconstruction. *Id.* These regional bodies often provide more efficient and targeted responses to conflicts, utilizing their rapid deployment capabilities and detailed local knowledge. *Id.*

62. *See, e.g.*, KHRYSTYNA PARANDII, EASTERN EUROPE JOINS THE WESTERN BALKANS: A NEW START FOR THE EU'S ENLARGEMENT POLICY 21 (2023). Triggered by Russia's invasion of Ukraine in 2022, the EU has reinvigorated its enlargement policy, previously in a stalemate, by granting candidate status to Moldova and Ukraine and recognizing Georgia as a potential candidate. *Id.* at 5.

63. In light of Ukraine's application for EU candidate status amidst its conflict with Russia in February 2022, some argue that the accession pathway necessitates nuanced strategic considerations. NAUMENKO ET AL., *supra* note 60, at 4.

strategies, using their respective strengths to address the nature of today's conflicts.

C. Contextualizing Under the International Rule of Law

Building on these regional perspectives, it is relevant to contextualize the discourse of transitional justice within the ongoing Russia-Ukraine conflict in relation to the international rule of law.⁶⁴ This structure, a cornerstone of the post-World War II order, and situated at the intersection of law and politics,⁶⁵ mandates adherence to established legal norms, ensuring that all parties to a conflict, irrespective of their nature, are bound by the principles of international humanitarian law, human rights law, and the foundational precepts of the United Nations Charter.⁶⁶ The situation in Ukraine brings into focus both the compliance with and breaches of international law, resulting in a challenging situation that warrants analysis.⁶⁷

The international rule of law insists on the importance of bringing those responsible for egregious breaches—be it war crimes, crimes against humanity, or acts of aggression—to justice. This discussion centers on examining the avenues through which such accountability can be realized, spotlighting the role of international tribunals and the potential for national courts to exercise universal jurisdiction, ensuring that justice is both sought and served.⁶⁸

Central to this discourse is the principle of legal certainty and the assurance of due process. The international rule of law emphasizes the necessity for judicial and administrative proceedings to adhere to

64. See generally William W. Bishop, *The International Rule of Law*, 59 MICH. L. REV. 553 (1961) (discussing the concept and significance of the rule of law on a global scale). Bishop questions whether a true international rule of law exists and how closely it aligns with the realities of international relations during that era. *Id.* at 564–65.

65. See generally C. WILFRED JENKS, *THE PROSPECTS OF INTERNATIONAL ADJUDICATION* (1964).

66. Recognizing the need for universal adherence to and implementation of the rule of law at both the national and international levels, we:

(a) Reaffirm our commitment to the purposes and principles of the Charter and international law and to an international order based on the rule of law and international law, which is essential for peaceful coexistence and cooperation among States

G.A. Res. 60/1, ¶ 134 (Sept. 16, 2005). See generally Simon Chesterman, *An International Rule of Law?*, 56 AM. J. COMP. L. 331 (2008) (exploring the applicability and challenges of applying the concept of the rule of law at the international level).

67. Robert McCorquodale, *Defining the International Rule of Law: Defying Gravity?*, 65 INT'L & COMP. L. Q. 277, 289 (2016) (arguing that international rule of law requires active enforcement and leadership).

68. See Arthur Watts, *The International Rule of Law*, 36 GERMAN Y.B. INT'L L. 15, 44–45 (1993).

established procedures that promote fairness, impartiality, and consistency. Within the transitional justice context, this principle ensures that the mechanisms for addressing past atrocities are anchored in these fundamental legal standards.⁶⁹

The role of international bodies and institutions in upholding the international rule of law is indispensable. In the Russia-Ukraine conflict, entities such as the United Nations and the International Criminal Court play important roles. Their involvement, effectiveness, and the challenges they face in addressing the conflict and its aftermath illustrate the collective effort to safeguard international law.⁷⁰ This also extends to evaluating the function and impact of regional organizations in mediating and potentially resolving the conflict.

However, the international rule of law operates in a space heavily influenced by power dynamics and geopolitics.⁷¹ Acknowledging the impact of global power imbalances on the enforcement of international law and the pursuit of transitional justice provides a realistic understanding of the constraints faced by the international legal system in its quest to uphold justice and accountability. The UN Report highlights the UN's role in "assist[ing] countries [to] establish[] the rule of law by ensuring accountability . . . , building confidence in justice and security institutions, and promoting gender equality."⁷² It affirms the importance of multilateral efforts, political will, and national ownership in improving the predictability, accountability, and effectiveness of rule of law initiatives.⁷³

A dichotomy emerges when contemplating the functioning and limitations of the post-World War II international legal architecture in the face of the Russia-Ukraine conflict. The successes and obstacles in

69. Elizabeth Andersen, *Transitional Justice and the Rule of Law: Lessons from the Field*, 47 CASE W. RES. J. INT'L L. 305, 307 (2015) (emphasizing that these are generally viewed as two separate fields, both in theory and practice where the origins of each field come from distinct academic and practical backgrounds: transitional justice primarily involves international human rights lawyers, whereas rule of law development is managed by a combination of development experts, political scientists, and comparative law specialists).

70. See generally James Crawford, *International Law and the Rule of Law*, 24 ADEL. L. REV. 3 (2003) (examining the importance of the rule of law as a stabilizing force in international relations).

71. See Jacob Katz Cogan, *Noncompliance and the International Rule of Law*, 31 YALE J. INT'L L. 189, 207 (2006) (discussing the phenomenon of states occasionally violating international law and how such actions can, paradoxically, help maintain the overall system of international law by filling in operational gaps where international mechanisms fail to effectively address issues).

72. U.N. Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, ¶ 4, U.N. Doc. S/2011/634 (Oct. 12, 2011).

73. *Id.*

applying international criminal law, the role of international institutions, the evolution of humanitarian law, and the mechanisms for dispute resolution expose both the strengths and weaknesses of the current system. This analysis reflects on the achievements in establishing a global order predicated on legal norms and addresses the shortcomings exposed by recent international crises.⁷⁴

Addressing the challenges of the Russia-Ukraine conflict through transitional justice and the international rule of law reveals the priority for continuous evolution and adaptation. This Paper argues that adopting a strategic and proactive approach to transitional justice is instrumental for laying the groundwork for effective post-conflict recovery and long-term peace. Early engagement in transitional justice can not only prepare for the demands of reconciliation and institutional rebuilding but also serve as a deterrent against further atrocities by establishing a culture of accountability. Emphasizing transitional justice early on, international bodies and policymakers signal a strong commitment to justice and human rights, which is critical for maintaining the trust and support of affected communities. Moreover, integrating transitional justice into ongoing political and diplomatic discussions can influence negotiations and ensure that issues of justice and accountability are central to peace processes. Learning from past conflicts and implementing timely interventions informed by these lessons are essential for enhancing the effectiveness of post-conflict recovery efforts and establishing a stable, peaceful, and just society.

IV. COMPARATIVE ANALYSIS: BRIDGING HISTORICAL INSIGHTS AND CONTEMPORARY CHALLENGES

The comparative analysis provides a perspective to examine the evolution of international law and its responsiveness to global conflicts. This section explores the parallels and distinctions between the two scenarios, extracting critical lessons and proposing forward-looking adaptations.

74. See Stéphane Beaulac, *An Inquiry into the International Rule of Law* 1–2 (Eur. Univ. Inst., Working Paper No. 2007/14, 2007); IAN BROWNIE, *THE RULE OF LAW IN INTERNATIONAL AFFAIRS: INTERNATIONAL LAW AT THE FIFTIETH ANNIVERSARY OF THE UNITED NATIONS* 3–4 (1998); Matthias Kumm, *International Law in National Courts: The International Rule of Law and the Limits of the Internationalist Model*, 44 VA. J. INT'L L. 19, 25 (2003); Jeremy Waldron, *Are Sovereigns Entitled to the Benefit of the International Rule of Law?*, 22 EUR. J. INT'L L. 315, 320–22 (2011). See generally HAKEEM O. YUSUF, *TRANSITIONAL JUSTICE, JUDICIAL ACCOUNTABILITY AND THE RULE OF LAW* (Routledge 2010).

A. *Parallels Between the Conflicts*

1. Accountability and Individual Responsibility

A cornerstone of the ICTY's legacy was its focus on individual responsibility for war crimes, setting a precedent for international criminal law.⁷⁵ This principle remains highly relevant to the Russia-Ukraine conflict, where allegations of war crimes and human rights violations persist.⁷⁶ The need for mechanisms to hold individuals accountable, irrespective of their status or affiliation, is a common thread linking both conflicts. This principle is mirrored in the Russia-Ukraine conflict, where the international community faces the challenge of holding individuals accountable amid allegations of war crimes and human rights abuses. The necessity of developing mechanisms for individual accountability across different contexts reflects a core principle of transitional justice that transcends specific conflicts.⁷⁷

2. International Legal Responses and the Role of International Community

Both conflicts prompted international legal responses to address violations of international law.⁷⁸ In the Yugoslav Wars, the

75. See Statute of the International Criminal Tribunal for the Former Yugoslavia art. 7, U.N. Secretary-General, *Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993)*, at 38–39, U.N. Doc. S/25704, annex (May 3, 1993), adopted by S.C. Res. 827, at 2 (May 25, 1993).

76. Marlise Simons, *International Court Accuses 2 Russian Officers of War Crimes in Ukraine*, N.Y. TIMES (Mar. 5, 2024), <https://www.nytimes.com/2024/03/05/world/europe/international-court-russia-ukraine.html>; Mark Landler, *Arrest Warrant From Criminal Court Pierces Putin's Aura of Impunity*, N.Y. TIMES (Mar. 17, 2023), <https://www.nytimes.com/2023/03/17/world/europe/icc-putin-ukraine-war.html>.

77. See EMILY PREY ET AL., CONFLICT-RELATED SEXUAL VIOLENCE IN UKRAINE: LESSONS FROM BOSNIA AND HERZEGOVINA AND POLICY OPTIONS FOR UKRAINE, THE UNITED STATES, AND THE INTERNATIONAL COMMUNITY 12–13 (2023); Beth Van Schaack, *Anticipating Justice and Accountability Around the World*, U.S. DEPT OF STATE (Aug. 29, 2023, 1:30 PM), <https://www.state.gov/briefings-foreign-press-centers/anticipating-justice-and-accountability-around-the-world>.

78. The United States has expressed multiple times its support to Ukraine. During his State of the Union address, President Biden emphasized the critical role of U.S. leadership in confronting Putin and advocated for urgent security assistance to Ukraine. See *Full Transcript: Read President Joe Biden's 2024 State of the Union Address*, TIME (Mar. 7, 2024, 10:00 PM), <https://time.com/6898705/read-president-joe-bidens-2024-state-of-the-union-address-full-transcript/>; *Remarks by Vice President Harris at the Munich Security Conference*, WHITE HOUSE (Feb. 16, 2024, 2:38 PM), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2024/02/16/remarks-by-vice-president-harris-at-the-munich-security-conference->

establishment of the ICTY represented an innovative approach to transitional justice. Similarly, the Russia-Ukraine conflict has seen attempts to leverage international legal avenues,⁷⁹ such as the International Criminal Court and United Nations resolutions.⁸⁰ These efforts demonstrate the international community's reliance on legal frameworks to address conflicts. However, the effectiveness of transitional justice mechanisms is greatly influenced by the political will and cooperation of the international community.

The Yugoslav Wars make clear the risks of international complacency and the tendency for attention to drift among global crises.⁸¹ This pattern illustrates a persistent challenge in international relations and conflict resolution—the risk that ongoing peace processes will be neglected once a new crisis emerges. This was evident when global focus moved to the events of 9/11, the War on Terrorism, and conflicts in Darfur and Congo, leaving the Balkans' fragile recovery sidelined.⁸² In 2022, the world was in shock as it witnessed Russia's full-scale military aggression. The immediate Western response was strong, defined by unprecedented sanctions and support for Ukraine. However, as time progresses, the intensity of this focus has begun to fade, paralleling the decline in attention seen after the Yugoslav Wars. This fading attention is

munich-germany/; Jim Garamone, *Harris Emphasizes Moral, Strategic Importance of Support to Ukraine*, U.S. DEPT OF DEF. (Feb. 18, 2023), <https://www.defense.gov/News/News-Stories/Article/Article/3302594/harris-emphasizes-moral-strategic-importance-of-support-to-ukraine/>. Similarly, the European Union has been on the same track. *EU Solidarity with Ukraine: The EU Stands United with Ukraine*, EUR. COMM'N, https://eu-solidarity-ukraine.ec.europa.eu/index_en (last visited Oct. 27, 2024).

79. See Pietro Bomprezzi et al., *Ukrainian Support Tracker*, IFW KIEL, <https://www.ifw-kiel.de/topics/war-against-ukraine/ukraine-support-tracker/> (last visited Oct. 27, 2024). The Kiel Institute for the World Economy, a leading German research institute on globalization, maintains the Ukraine Support Tracker, a database to quantify and compare aid to Ukraine across donor countries. *Id.*

80. See Press Release, General Assembly, General Assembly Overwhelmingly Adopts Resolution Demanding Russian Federation Immediately End Illegal Use of Force in Ukraine, Withdraw All Troops, U.N. Press Release GA/12407 (Mar. 2, 2022); *Ukraine: General Assembly Passes Resolution Demanding Aid Access, by Large Majority*, U.N. NEWS (Mar. 24, 2022), <https://news.un.org/en/story/2022/03/1114632>. During the conflicts in the former Yugoslavia, several significant UN resolutions were adopted. See generally S.C. Res. 713 (Sept. 25, 1991) (imposing an arms embargo on Yugoslavia); S.C. Res. 743 (Feb. 21, 1992) (establishing the UN Protection Force (UNPROFOR)); S.C. Res. 827 (May 25, 1993) (establishing the International Criminal Tribunal for the former Yugoslavia (ICTY)). These resolutions illustrate the varied approaches and mechanisms employed by the international community, through the UN.

81. See Bojan Perović, *The Collapse of Transitional Justice in Serbia*, 6 BALKAN SOC. SCI. REV. 43, 50 (2015).

82. Alex Whiting, *In International Criminal Prosecutions, Justice Delayed Can Be Justice Delivered*, 50 HARV. INT'L L.J. 323, 333–34 (2009).

occurring even as new crises begin to divert global focus further. This cycle reinforces the importance of sustained engagement and the need to avoid the pitfalls of redirecting focus too soon, as witnessed after the Yugoslav Wars.⁸³

3. Challenges of Enforcement and Compliance

A critical lesson from both conflicts is the difficulty of enforcing international law and securing compliance from powerful states or non-state actors.⁸⁴ The limitations of the ICTY in securing arrests and the challenges in holding Russia accountable for its actions in Ukraine reflect the complexities of international politics and the limitations of current international legal mechanisms.⁸⁵ Many ICTY-indicted individuals evaded capture for years due to the lack of cooperation from the states where they were hiding.⁸⁶ The ICTY's reliance on the voluntary compliance of states to arrest and transfer suspects exposed a major enforcement gap in international criminal justice.⁸⁷ This situation revealed the inherent weakness of international tribunals, which often depend on the political will and cooperation of states that may have conflicting interests or may be unwilling to surrender their nationals.⁸⁸

The ongoing conflict in Ukraine presents a similar set of challenges. As a permanent member of the United Nations Security Council, Russia wields extensive political and diplomatic power, allowing it to evade or deflect international legal accountability.⁸⁹ As a result, efforts to hold Russia accountable through international legal mechanisms, such as the

83. Alexander Baunov, *The Dangers of Losing Focus on Russia's War Against Ukraine*, CARNEGIE ENDOWMENT FOR INT'L PEACE (Jan. 17, 2024), <https://carnegieendowment.org/politika/91398>.

84. See Gerald G. Fitzmaurice, *The Foundations of the Authority of International Law and the Problem of Enforcement*, 19 MODERN L. REV. 1, 6 (1956).

85. Kuniko Ozaki, *The Role of the UN Security Council in International Criminal Law Revisited*, in GLOBAL IMPACT OF THE UKRAINE CONFLICT 431, 442–43 (Shuichi Furuya et al. eds., 2023).

86. See Kenneth Roth & Joanna Weschler, *Action Urged Regarding Non-Cooperation with ICTR and ICTY*, HUM. RTS. WATCH (Oct. 25, 2002, 8:00 PM), <https://www.hrw.org/news/2002/10/25/action-urged-regarding-non-cooperation-ictr-and-icty>; Julie Kim, *Balkan Cooperation on War Crimes Issues*, CONG. RSCH. SERV., <https://crsreports.congress.gov/product/pdf/RS/RS22097/19> (July 25, 2008).

87. See *id.*

88. See THEODOR MERON, *The Challenges Facing the International Criminal Tribunal for the Former Yugoslavia*, in THE MAKING OF INTERNATIONAL CRIMINAL JUSTICE: A VIEW FROM THE BENCH: SELECTED SPEECHES 115, 119–20 (2011).

89. See Anjali Dayal & Caroline Dunton, *The U.N. Security Council Was Designed for Deadlock — Can it Change?*, U.S. INST. OF PEACE (Mar. 1, 2023), <https://www.usip.org/publications/2023/03/un-security-council-was-designed-deadlock-can-it-change>.

ICC, have been limited.⁹⁰ Russia's refusal to recognize the jurisdiction of the ICC and its use of veto power in the UN Security Council⁹¹ to block resolutions aimed at addressing these actions further complicate enforcement efforts. This points to the limitations of current international legal mechanisms in dealing with powerful states that can resist compliance.⁹² These issues reflect the nature of international politics, where legal mechanisms are often undermined by political realities. The limitations encountered by the ICTY and the ongoing struggles to hold Russia accountable signal the need for stronger and more effective international legal frameworks. There is a growing recognition that existing mechanisms need to be reformed to ensure greater compliance and enforcement, including potential measures to enhance the jurisdiction and operational capacity of international courts and tribunals.⁹³

4. Impact on Civilian Populations

Both conflicts have had devastating impacts on civilian populations, raising issues of displacement, human rights abuses, and the need for humanitarian assistance.⁹⁴ These situations bring forward the importance of addressing affected populations' immediate and long-term needs and support for rebuilding efforts. In the former Yugoslavia, ethnic cleansing campaigns led to the forced displacement of millions of people.⁹⁵ Civilians were subjected to brutal violence, including

90. *See id.*

91. Shelby Magid & Yulia Shalomov, *Russia's Veto Makes a Mockery of the United Nations Security Council*, ATL. COUNCIL (Mar. 15, 2022), <https://www.atlanticcouncil.org/blogs/ukrainealert/russias-veto-makes-a-mockery-of-the-United-nations-security-council/>.

92. *See generally* Ilinca Drondoe & Ismar Volić, *Reforming the United Nations Security Council: A Quantitative and Political Analysis* (Dec. 15, 2022) (unpublished paper, Wellesley College) (on file with the Wellesley College Digital Repository).

93. *See* Paul W. Grimm et al., *Playing the Long Game: The Role of International Courts and Tribunals in the Russo-Ukrainian War*, JUDICATURE INT'L (June/July 2023), <https://judicature.duke.edu/articles/playing-the-long-game-the-role-of-international-courts-and-tribunals-in-the-russo-ukrainian-war/>.

94. *See* Diana Roy, *How Bad Is Ukraine's Humanitarian Crisis a Year Later?*, COUNCIL ON FOREIGN RELS., <https://www.cfr.org/in-brief/ukraine-humanitarian-crisis-refugees-aid> (June 8, 2023, 11:40 AM); *Ukraine: Europe's Largest Displacement Crisis in Decades*, INT'L RESCUE COMM. (Apr. 10, 2023), <https://www.rescue.org/article/ukraine-europes-largest-displacement-crisis-decades>. *See generally* TRANSITIONAL JUSTICE AND RECONCILIATION: LESSONS FROM THE BALKANS (Martina Fischer & Olivera Simić eds., 2016) [hereinafter LESSONS FROM THE BALKANS].

95. Martina Fischer, *Struggling with the Legacy of War – Croatia, Serbia and Bosnia-Herzegovina, 1995–2015*, in LESSONS FROM THE BALKANS, *supra* note 94, at 3–4.

massacres, sexual violence, and other gross human rights violations.⁹⁶ These events resulted in severe psychological and physical trauma for survivors and created a massive refugee crisis that required extensive international humanitarian intervention.⁹⁷

Similarly, the Russia-Ukraine conflict has caused large-scale civilian displacement and suffering. Reports of human rights abuses, including indiscriminate shelling of civilian areas, arbitrary detentions, and torture, have been documented by various international organizations.⁹⁸ The ongoing conflict has also disrupted essential services, leading to shortages of food, water, and medical supplies, exacerbating the humanitarian crisis.⁹⁹

The impact of conflicts on civilian populations demonstrates the necessity of sustained international engagement. Addressing both the immediate humanitarian needs and the long-term challenges of recovery and reconciliation is essential for achieving lasting peace. The experiences of the Yugoslav Wars and the Russia-Ukraine conflict reaffirm the importance of learning from past conflicts in developing more effective and integrated responses to future crises.

B. Distinctions and Evolving Challenges

1. Nature of the Conflicts (State vs. Non-State Actors)

A notable distinction arises in the nature of the belligerents. The Yugoslav Wars primarily involved newly formed states emerging from the disintegration of Yugoslavia.¹⁰⁰ These wars involved multiple ethnic groups and were characterized by ethnic cleansing and internecine violence.¹⁰¹ The belligerents included various state and non-state actors, such as ethnic militias and paramilitary groups, contributing to the conflict dynamics.¹⁰²

96. *Id.*

97. See, e.g., COHEN, *supra* note 10, at 294, 314, 291; see also MY NEIGHBOR, MY ENEMY: JUSTICE AND COMMUNITY IN THE AFTERMATH OF MASS ATROCITY 149 (Eric Stover & Harvey M. Weinstein, eds., 2004).

98. ANDREW S. BOWEN & MATTHEW C. WEED, CONG. RSCH. SERV., R47762, WAR CRIMES IN UKRAINE 3–4 (2023).

99. *Id.*

100. See Olivera Simić, *Young Adults' Perspective of Social Reconstruction in Three Post-War Communities*, in LESSONS FROM THE BALKANS, *supra* note 94, at 169, 173.

101. See Fischer, *supra* note 95, at 3–4.

102. See *id.* (noting how the Bosnian War saw clashes between Bosniaks, Croats, and Serbs, each supported by different state and non-state actors, leading to severe humanitarian crises and war crimes).

In contrast, the Russia-Ukraine conflict features a powerful state (Russia) engaged in actions against a sovereign nation (Ukraine), raising issues of state sovereignty and international law not as prominently featured in the Yugoslav context.¹⁰³ Russia's actions, including the annexation of Crimea and support for separatist movements in Eastern Ukraine, disrupt the established norms of international relations and the post-World War II international order.¹⁰⁴

These contrasts illustrate the different challenges faced in each conflict. The Yugoslav Wars required managing internal divisions and fostering reconciliation among ethnic groups, while the Russia-Ukraine conflict involves addressing the actions of a powerful state violating another state's sovereignty.¹⁰⁵

2. Geopolitical Context and International Influence

The geopolitical context of the Yugoslav Wars and the Russia-Ukraine conflict further differentiates these two scenarios. The post-Cold War environment of the Yugoslav Wars¹⁰⁶ differed from the current multipolar world order affecting the Russia-Ukraine conflict.¹⁰⁷ The Yugoslav Wars occurred in the post-Cold War climate during a period of major transformations as Eastern Europe transitioned away from communism.¹⁰⁸

103. See Cordula Droege, *Armed Conflict in Ukraine: A Recap of Basic IHL Rules*, HUMANITARIAN L. & POL'Y BLOG (Mar. 17, 2022), <https://blogs.icrc.org/law-and-policy/2022/03/17/armed-conflict-in-ukraine-a-recap-of-basic-ihl-rules/>; *International Armed Conflict in Ukraine*, GENEVA ACAD. OF INT'L HUMANITARIAN L. & HUM. RTS., <https://www.rulac.org/browse/conflicts/international-armed-conflict-in-ukraine#collapse1accord> (June 7, 2023).

104. See generally Sassan Gholiagha & Mitja Sienknecht, *Between (Ir)responsibility and (In)appropriateness: Conceptualizing Norm-Related State Behaviour in the Russian War Against Ukraine*, GLOB. CONSTITUTIONALISM (2023).

105. See *supra* notes 100, 103 and accompanying text.

106. See JAMES B. STEINBERG, *THE ROLE OF EUROPEAN INSTITUTIONS IN SECURITY AFTER THE COLD WAR: SOME LESSONS FROM YUGOSLAVIA* 4 (1992).

107. See generally Sven Biscop et al., *Putin is Creating the Multipolar World He (Thought He) Wanted*, EGMONT ROYAL INST. FOR INT'L RELS. (Mar. 7, 2022), <https://www.egmontinstitute.be/app/uploads/2022/03/spb156-sven.pdf?type=pdf>; Michael A. Peters, *The Emerging Multipolar World Order: A Preliminary Analysis*, 55 EDUC. PHIL. & THEORY 1653 (2023); Sven Biscop, *How the War in Ukraine Shapes the Multipolar World*, EGMONT ROYAL INST. FOR INT'L RELS. (June 13, 2022), <https://www.egmontinstitute.be/how-the-war-in-ukraine-shapes-the-multipolar-world/>; Stefan Lehne, *After Russia's War Against Ukraine: What Kind of World Order?*, CARNEGIE EUR. (Feb. 28, 2023), <https://carnegieeurope.eu/2023/02/28/after-russia-s-war-against-ukraine-what-kind-of-world-order-pub-89130>.

108. See generally *Geopolitical Upheavals in Europe After 1989*, CVCE (July 7, 2016) [hereinafter *Geopolitical Upheavals*], https://www.cvce.eu/obj/geopolitical_upheavals_in_europe_after_1989_full_text-en-073dc145-b774-4901-8920-5f95cb8e0192.html.

Today's geopolitical scene, with its complex web of alliances and interests, presents new challenges for implementing and enforcing international law, particularly given Russia's strategic position and veto power in the UN Security Council.¹⁰⁹ This comparison reflects the different global dynamics at play in each conflict. The Yugoslav Wars took place in a relatively unipolar world dominated by Western influence, whereas the Russia-Ukraine conflict occurs in a more fragmented and competitive international system.¹¹⁰

3. Evolution of Warfare

The nature of warfare has evolved dramatically. In the Yugoslav Wars, the conflicts were characterized by conventional warfare and ethnic cleansing.¹¹¹ The atrocities committed during these wars, such as massacres and systematic rape, required powerful humanitarian and judicial responses.¹¹² The focus was on physical acts of violence and the need for traditional military and peacekeeping interventions.¹¹³

The Russia-Ukraine conflict exemplifies the evolution of modern warfare, incorporating cyber operations, disinformation campaigns, and other forms of hybrid warfare.¹¹⁴ Cyberattacks on critical infrastructure, information warfare aimed at destabilizing societies, and covert military operations blur the lines between state and non-state actions. The

109. See Edward Howell, *Russia's Veto on UN Sanctions Monitoring Will Further Embolden North Korea*, CHATHAM HOUSE, <https://www.chathamhouse.org/2024/04/russias-veto-un-sanctions-monitoring-will-further-embolden-north-korea> (May 14, 2024).

110. See generally *Geopolitical Upheavals*, *supra* note 108.

111. See Stephen J. Blank, *Yugoslavia's Wars: The Problem from Hell*, U.S. ARMY WAR COLL. PRESS i, 1–5, 30 (1995), <https://press.armywarcollege.edu/monographs/226>; Norman Naimark, *Ethnic Cleansing*, SCIENCES PO (Nov. 4, 2007), <https://www.sciencespo.fr/mass-violence-war-massacre-resistance/en/document/ethnic-cleansing-0.html> (last visited Oct. 27, 2024).

112. See Council of Europe Commissioner for Human Rights, *Post-War Justice and Durable Peace in the Former Yugoslavia*, at 20, 24, 32–33 (Feb. 2012), <https://www.refworld.org/reference/themreport/coechr/2012/en/82264>; Blank, *supra* note 111, at 14, 27, 101. For access to various resources and records produced by The International Criminal Tribunal for the former Yugoslavia (ICTY), see the ICTY website, <https://www.icty.org/> (last visited Nov. 13, 2024).

113. See generally Nicholas H. Coleman, *Terror in the Balkans: The Croatian War and Operation Storm* (Fall 2023) (unpublished paper, Bard College) (on file with Bard Digital Commons); Russell Schimmer, *Conflict & Genocide in Former Yugoslavia, 1991-1995*, (Yale Univ. Genocide Stud. Program, Working Paper No. 30, 2007), <https://gsp.yale.edu/case-studies/yugoslavia-former/conflict-genocide-former-yugoslavia-1991-1995>.

114. See SASCHA-DOMINIK DOV BACHMANN ET AL., HYBRID WARFARE AND DISINFORMATION: A UKRAINE WAR PERSPECTIVE 858, 859–60 (2023). See generally Michael S. Baker et al., *Russia's Hybrid Warfare in Ukraine Threatens Both Healthcare & Health Protections Provided by International Law*, 89 ANNALS GLOB. HEALTH 1 (2023).

evolution of warfare presents new pressures for international legal frameworks, which must adapt to address non-traditional forms of aggression and ensure accountability in a rapidly changing security environment.¹¹⁵

4. The Complex Role of NGOs in Transitional Justice: A Comparative Insight

In the field of transitional justice, International Non-Governmental Organizations (“NGOs”) have emerged as important actors, exerting broad influence over documentation, advocacy, and the provision of relief in post-conflict settings. While their contributions are often invaluable, the involvement of NGOs introduces a series of obstacles that can impact the effectiveness and impartiality of transitional justice mechanisms.¹¹⁶ This is evident in the contexts of both the Yugoslav Wars and the Russia-Ukraine conflict, where NGOs have played diverse roles, from documenting human rights abuses to influencing international policy and public opinion.¹¹⁷

NGOs played a crucial role in the Yugoslav Wars by recording human rights abuses and bringing international attention to the conflict.¹¹⁸ Their work demonstrated the importance of civil society in transitional justice processes, providing a voice for victims and a counterbalance to official narratives.¹¹⁹

115. See generally DIGIT. FORENSIC RSCH. LAB, UNDERMINING UKRAINE: HOW RUSSIA WIDENED ITS GLOBAL INFORMATION WAR IN 2023 (2024) (detailing Russia’s efforts to damage Ukraine’s international standing and morale amid the ongoing war with propaganda through various mediums including social media platforms like TikTok, Telegram, and X, targeting audiences worldwide, particularly in Latin America, Africa, and the Middle East).

116. See generally David Backer, *Civil Society and Transitional Justice: Possibilities, Patterns and Prospects*, 2 J. HUM. RTS. 297 (2003); Eric Brahm, *Transitional Justice, Civil Society, and the Development of the Rule of Law in Post-Conflict Societies*, 9 INT’L J. NOT-FOR-PROFIT L. 62 (2007).

117. See generally Jelena Subotić, *The Transformation of International Transitional Justice Advocacy*, 6 INT’L J. TRANSITIONAL JUST. 106 (2012). Transitional justice has shifted from a pure focus on human rights advocacy to forming a network of international entities and individuals crafting transitional justice frameworks globally. See *id.* at 107. This evolution has not only transformed how international transitional justice NGOs function and interact with donors and political elites but also elevated the political stakes of their work in post-conflict reconstruction. See *id.*

118. Iavor Rangelov & Ruti Teitel, *Global Civil Society and Transitional Justice*, in GLOB. CIV. SOC’Y 162, 166 (2011).

119. *Id.* at 166–68. Civil society, including NGOs and victims’ groups, played a large role in shaping the transitional justice landscape in the former Yugoslavia. See *id.* The interactions between local NGOs and international bodies like the EU and UN helped pressure local governments. See *id.*

Similarly, in the Russia-Ukraine conflict, NGOs have been central in cataloging ongoing violations and advocating for the rights of those affected.¹²⁰ The use of digital platforms and social media¹²¹ has enabled broader dissemination of evidence and facilitated international advocacy campaigns.¹²² However, concerns include ensuring the credibility and neutrality of the information provided and protecting the safety of those collecting evidence in volatile environments.

NGOs' involvement is not without complications. Issues of bias, legitimacy, and the politicization of humanitarian aid can arise, potentially skewing the narrative of conflicts and affecting the perceived neutrality of justice processes.¹²³ In the Yugoslav Wars, NGOs were instrumental in bringing international attention to the atrocities committed, yet their reports were sometimes criticized for emphasizing particular ethnic or national perspectives, which could influence the trajectory of international responses and legal proceedings.¹²⁴

120. See Paul Gready & Simon Robins, *Rethinking Civil Society and Transitional Justice: Lessons from Social Movements and 'New' Civil Society*, 21 INT'L J. HUM. RTS. 956, 958–60 (2017).

121. See Magdalene Karalis, *The Information War: Russia-Ukraine Conflict Through the Eyes of Social Media*, GEO. J. INT'L AFFS. (Feb. 2, 2024), <https://gjia.georgetown.edu/2024/02/02/russia-ukraine-through-the-eyes-of-social-media/>; Ronald Niezen, *International Criminal Court is Using Digital Evidence to Investigate Putin – But How Can It Tell If a Video or Photo is Real or Fake?*, CONVERSATION (May 16, 2023, 8:40 AM), <https://theconversation.com/international-criminal-court-is-using-digital-evidence-to-investigate-putin-but-how-can-it-tell-if-a-video-or-photo-is-real-or-fake-204338>; Lily Hyde, *Meet the Ukrainians Documenting Russian War Crimes, in Real-Time*, POLITICO (May 19, 2022, 4:00 AM), <https://www.politico.eu/article/ukraines-sprawling-unprecedented-campaign-to-document-russian-war-crimes/>.

122. This includes campaigns such as: Center for Civil Liberties (CCL), USAID's Justice for All Activity, Atrocity Crimes Advisory Group (ACA), United Nations Human Rights Monitoring Mission in Ukraine (HRMMU), Joint Investigation Team (JIT) on Ukraine, The University of Michigan's Weiser Center for Europe and Eurasia (WCEE) with the international NGO The Reckoning Project (TRP), Public International Law & Policy Group and others.

123. See Jonathan Goodhand, *Research in Conflict Zones: Ethics and Accountability*, FORCED MIGRATION REV. 12–16 (2000). See generally Chris Engels, *Prosecuting War Crimes Symposium – Evidentiary Challenges*, LIEBER INST. WEST POINT (Feb. 6, 2023), <https://lieber.westpoint.edu/evidentiary-challenges/>; Shourjya Deb & Virginie Baudais, *The Challenges of Data Collection in Conflict-Affected Areas: A Case Study in the Liptako-Gourma Region*, No. 2022/7 SIPRI INSIGHTS ON PEACE AND SEC. (Oct. 2022), <https://www.sipri.org/publications/2022/sipri-insights-peace-and-security/challenges-data-collection-conflict-affected-areas-case-study-liptako-gourma-region>.

124. Despite their contributions, the effectiveness of civil society was often hampered by ethnic and national divisions that emerged during the 1990s, reflecting the complex social and political landscapes of the region. See Ivaor Rangelov & Ruti Teitel, *Global Civil Society and Transitional Justice*, in GLOBAL CIVIL SOCIETY: GLOBALITY AND THE ABSENCE OF JUSTICE 162, 166 (2011).

Similarly, in the Russia-Ukraine conflict, NGOs have active in tracking ongoing human rights violations and advocating for international action.¹²⁵ While their work has been key in bringing attention to the conflict's humanitarian impact, the diverse political agendas of NGOs can complicate matters, influencing both local and international perceptions and responses.¹²⁶

Despite the distinct contexts of the Yugoslav Wars and the Russia-Ukraine conflict, the comparative analysis identifies several overarching themes and lessons that are important for shaping future approaches to transitional justice.¹²⁷ These insights not only inform our understanding of past interventions, but also offer a crucial foundation for developing more effective strategies moving forward.

V. FUTURE IMPLICATIONS AND RECOMMENDATIONS

Building upon the comparative analysis, this section focuses on extrapolating actionable recommendations. These recommendations aim to fortify international legal frameworks and optimize transitional justice approaches in contemporary conflict settings, guided by the lessons distilled from historical precedents.

A. *Adapting Legal Frameworks and Enhancing Enforcement*

The experience of the ICTY shows the importance of adapting legal frameworks to the realities of contemporary warfare. The international legal community must evolve to address the complexities of hybrid

125. See, e.g., Justin Hendrix, *Ukraine May Mark a Turning Point in Documenting War Crimes*, JUST SECURITY (Mar. 28, 2022), <https://www.justsecurity.org/80871/ukraine-may-mark-a-turning-point-in-documenting-war-crimes/>; *How to Hold Russia Accountable for War Crimes in Ukraine*, OPEN SOC. FOUNDS. (July 2022), <https://www.opensocietyfoundations.org/explainers/how-to-hold-russia-accountable-for-war-crimes-in-ukraine>; *Russia-Ukraine War*, HUM. RTS. WATCH, <https://www.hrw.org/tag/russia-ukraine-war> (last visited Oct. 27, 2024).

126. See, e.g., ORYSLA LUTSEVYCH, *AGENTS OF THE RUSSIAN WORLD: PROXY GROUPS IN THE CONTESTED NEIGHBOURHOOD 2* (2016); STAFF OF S. COMM. ON FOREIGN RELS., 115TH CONG., *PUTIN'S ASYMMETRIC ASSAULT ON DEMOCRACY IN RUSSIA AND EUROPE: IMPLICATIONS FOR U.S. NATIONAL SECURITY* 47–49, 142 (Comm. Print 2018) (prepared for the use of the Committee on Foreign Relations, U.S. Senate); ALINA POLYAKOVA ET AL., *THE KREMLIN'S TROJAN HORSES 3.0*, ATL. COUNCIL 9 (2018), <https://www.atlanticcouncil.org/in-depth-research-reports/report/the-kremlins-trojan-horses-3-0/>.

127. Some authors explore how historical narratives, identity discourses, and legal frameworks from the Yugoslav context can offer insights into the dynamics and potential outcomes of the Ukraine conflict. See Loïc Tregoures & Bruno Tertrais, *From Sarajevo to Mariupol: What the Yugoslav Wars Can Teach Us About Ukraine's Fate*, INSTITUT MONTAIGNE (Apr. 21, 2022), <https://www.institutmontaigne.org/en/expressions/sarajevomariupol-what-yugoslav-wars-can-teach-us-about-ukraines-fate>.

warfare,¹²⁸ cyber operations, and the involvement of state and non-state actors in conflicts.¹²⁹ This includes developing new norms and mechanisms that can effectively address these issues while ensuring accountability and justice. International law must expand its purview to include cyber aggression and hybrid warfare tactics as actionable offenses under international humanitarian law.¹³⁰ This adaptation will require concerted efforts to forge consensus among international actors, setting clear definitions and thresholds for new types of warfare.¹³¹

Additionally, the jurisdiction and enforcement capabilities of institutions like the ICC must be strengthened, potentially through the establishment of specialized chambers designed to address specific contemporary conflict dynamics.¹³² For instance, the ICTY's success in adapting its legal processes to address crimes in the Balkans provides a model that could be expanded to include contemporary forms of warfare.¹³³ Refining these frameworks ensures that legal responses remain relevant and effective against evolving threats in modern conflicts.¹³⁴

B. Integrating Restorative Justice and Community Engagement

The mixed outcomes of reconciliation efforts in the Yugoslav Wars exemplify the necessity for transitional justice mechanisms to extend beyond legal prosecutions. Future approaches must prioritize community

128. See HYBRID WARFARE: SECURITY AND ASSYMETRIC CONFLICT IN INTERNATIONAL RELATIONS 5–8 (Mikael Weissmann et al. eds., 2021), <https://library.oapen.org/bitstream/handle/20.500.12657/58862/9781786736550.pdf?sequence=1>.

129. See James K. Wither, *Defining Hybrid Warfare*, 10 PER CONCORDIAM: J. EUR. SEC. & DEF. ISSUES, no. 1, 2020, at 7.

130. See MICHAEL SCHMITT, TALLINN MANUAL 2.0 ON THE INTERNATIONAL LAW APPLICABLE TO CYBER OPERATIONS 328–37 (2017).

131. See Andres B. Munoz Mosquera & Sascha D. Bachmann, *Lawfare in Hybrid Wars: The 21st Century Warfare*, 7 J. INT'L HUMANITARIAN LEGAL STUD. 63, 86–87 (2016).

132. Howard Varney & Katarzyna Zduńczyk, *Advancing Global Accountability: The Role of Universal Jurisdiction in Prosecuting International Crimes*, INT'L CTR. FOR TRANSITIONAL JUST. 4–7 (2020), https://www.ictj.org/sites/default/files/ICTJ_Report_Universal_Jurisdiction.pdf.

133. Morten M. Fogt, *Legal Challenges or “Gaps” by Countering Hybrid Warfare—Building Resilience in Jus Ante Bellum*, 27 SW. J. INT'L L. 28, 35 (2020).

134. A recent UK Command Paper highlights the importance of adapting to technological advances and emerging threats, and is exemplified by Russia's full-scale invasion of Ukraine. See *Defence's Response to a More Contested and Volatile World Presented to Parliament by the Secretary of State for Defence by Command of His Majesty*, MINISTRY OF DEF. 2 (July 18, 2023), https://assets.publishing.service.gov.uk/media/64b55dd30ea2cb000d15e3fe/Defence_Command_Paper_2023_Defence_s_response_to_a_more_contested_and_volatile_world.pdf.

engagement and truth-telling initiatives that address the underlying causes of conflicts and support genuine reconciliation. Initiatives must be culturally tailored, involving local leaders and affected individuals to ensure relevance and effectiveness.¹³⁵

This approach not only aids in the healing process but also fosters a sense of ownership and active participation among local populations in the journey toward peace and justice. For instance, the lack of victim and community involvement in certain ICTY processes sometimes led to skepticism and reluctance toward reconciliation efforts.¹³⁶ Enhanced public engagement in transitional justice mechanisms could mitigate these issues and foster broader societal support.¹³⁷

C. Leveraging Technology and Innovation

In today's digital and information-rich environment, the challenges faced by traditional transitional justice methods are magnified.¹³⁸ As conflicts grow in sophistication, incorporating advanced technologies into transitional justice mechanisms becomes imperative.¹³⁹ These technologies can enhance the integrity, efficiency, and effectiveness of judicial and non-judicial processes by providing innovative solutions to longstanding challenges. By leveraging these advancements, transitional

135. See Anna Triponel & Stephen Pearson, *What Do You Think Should Happen? Public Participation in Transitional Justice*, 22 PACE INT'L L. REV. 103, 122 (2010); JENNIFER TSAI & SIMON ROBINS, GLOB. INITIATIVE FOR JUST., TRUTH & RECONCILIATION, STRENGTHENING PARTICIPATION IN LOCAL-LEVEL AND NATIONAL TRANSITIONAL JUSTICE PROCESSES: A GUIDE FOR PRACTITIONERS 52–54 (June 2018), <https://www.sitesofconscience.org/wp-content/uploads/2018/06/Strengthening-Participation-Toolkit-online.pdf>; GLOB. INITIATIVE FOR JUST., TRUTH & RECONCILIATION, PATHWAYS OF INNOVATION: CIVIL SOCIETY ADVANCING TRANSITIONAL JUSTICE 77 (Simon Robins ed., Jan. 2020), <https://www.sitesofconscience.org/wp-content/uploads/2020/03/Pathways-of-Innovation-Toolkit-2.pdf>.

136. Louise Hogan, *Seeking Justice Through the ICTY: Frustration, Skepticism, Hope*, WOMEN'S MEDIA CTR. (Sept. 23, 2013), <https://womensmediacenter.com/women-under-siege/seeking-justice-through-the-icty-frustration-skepticism-hope>.

137. See Nicole Bryan, *Reconciliation in Former Yugoslavia: Underlying Motivations and Reasons for Resistance* 77 (Oct. 2010) (Ph.D. dissertation, Rutgers University) (on file with RUCore: Rutgers University Community Repository); Raffaele Mastorocco, *OSCE and Civil Society in the Western Balkans: The Road to Reconciliation*, in TRANSFORMATION AND DEVELOPMENT: STUDIES IN THE ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE (OSCE) MEMBER STATES 83, 89–90 (Ariane Mihr ed., 2020).

138. See Phuong N. Pham & Jay D. Aronson, *Technology and Transitional Justice*, 13 INT'L J. TRANSITIONAL JUST. 1, 1–6 (2019).

139. See Federica D'Alessandra & Kirsty Sutherland, *The Promise and Challenges of New Actors and New Technologies in International Justice*, 19 J. INT'L CRIM. JUST. 9, 33–34 (2021).

justice mechanisms can adapt to the demands of current conflicts, ensuring that justice is served more comprehensively and effectively.

One of the most promising areas for enhancing transitional justice mechanisms in conflicts like the Russia-Ukraine war is the integration of emerging technologies.¹⁴⁰ These technologies can serve an important function in evidence collection, accountability, and reconciliation processes. Although artificial intelligence (“AI”) tools have the potential to revolutionize the field, there is a need for deeper engagement and exploration of how these technologies can be best utilized to close the impunity gap.¹⁴¹ This section explores how advancements in technology can be harnessed to respond to issues seen in both the Yugoslav Wars and the ongoing Russia-Ukraine conflict. Emerging technologies such as AI, machine learning, and blockchain can improve the collection, analysis, and preservation of evidence related to war crimes and human rights abuses.¹⁴²

1. Artificial Intelligence and Machine Learning

AI and machine learning algorithms can analyze large volumes of data from various sources, such as satellite imagery,¹⁴³ social media, and video footage, to identify patterns of abuse and corroborate eyewitness accounts.¹⁴⁴ These technologies can help investigators detect and

140. See Saman Rejali & Yannick Heiniger, *The Role of Digital Technologies in Humanitarian Law, Policy and Action: Charting a Path Forward*, 102 INT’L REV. RED CROSS 1, 20 (2020).

141. Christopher K. Lamont & Medlir Mema, *Digital Transitional Justice: Unpacking the Black Box*, in HANDBOOK ON THE POLITICS AND GOVERNANCE OF BIG DATA AND ARTIFICIAL INTELLIGENCE 139, 139, 160–61 (2023). The authors emphasize the need for a deeper engagement with these issues to ensure that AI tools are used effectively and ethically in truth-seeking and accountability processes. *Id.* at 161.

142. See Ana Beduschi, *Harnessing the Potential of Artificial Intelligence for Humanitarian Action: Opportunities and Risks*, 104 INT’L REV. RED CROSS 1149, 1149 (2022).

143. Satellite imagery has evolved from a tool primarily used by military strategists and private companies to a crucial resource for investigating and prosecuting war criminals. See Victor Vilisov, *Logging a War: How Digitalization Has Changed the Perception of Modern Warfare and the Documentation of War Crimes*, INSIDER (May 27, 2022), <https://theins.ru/en/society/251631>. Satellite imagery has provided visibility into atrocities committed in regions such as the Central African Republic, Sudan, South Sudan, Congo, Myanmar, and the Niger Republic. *Id.* It has also exposed the existence of camps for Uighurs and other Turkic minorities in Xinjiang as well as camps for hundreds of thousands of political prisoners in North Korea. *Id.*

144. *Id.* See also LISA PARKS, CULTURES IN ORBIT: SATELLITES AND THE TELEVISUAL 77–109 (Duke Univ. Press 2005). The author explored this topic in her book, where she discusses the U.S. military’s production of satellite images of the war in Bosnia. *Id.*

document war crimes more efficiently and accurately.¹⁴⁵ For example, AI-driven tools have been used to review satellite images to track movements and identify mass graves, providing critical evidence in war crimes investigations.¹⁴⁶

Recent advancements in satellite technology and artificial intelligence have further enhanced the capabilities for remote monitoring in conflict zones.¹⁴⁷ The progress in deep learning has made automated analysis of satellite images more viable, providing a scalable and transferable method for monitoring armed conflicts.¹⁴⁸ This approach offers more scalable and impactful applications for human rights and humanitarian actors, making it possible to monitor conflict events continuously.¹⁴⁹

In 2024, Ukrainian law enforcement officials have begun using AI tools to document and investigate potential war crimes committed by Russian troops, aiming to efficiently manage the massive amount of data from over 107,000 proceedings initiated since the full-scale invasion, with the prosecutor general's office developing a comprehensive database and implementing websites and chatbots to assist citizens in categorizing and submitting digital evidence.¹⁵⁰

145. See Laura Oliver, *Tips for Using Satellite Imagery in Forensic Investigations*, from *Amnesty International's Evidence Lab*, GLOB. INVESTIGATIVE JOURNALISM NETWORK (May 8, 2023), <https://gijn.org/stories/tips-for-using-satellite-imagery-in-forensic-investigations-from-amnesty-internationals-evidence-lab/> (outlining the strategic use of satellite imagery in identifying critical locations and how it can effectively corroborate testimonies and document human rights abuses).

146. *Id.* Recently, on February 28, 2024, UNITAR-UNOSAT, the Asser Institute, the Geneva Science-Policy Interface, and IUSTICOM launched an innovative training course on using satellite imagery as evidence in international judicial proceedings. *Using Satellite Imagery as Evidence in International Judicial Proceedings*, UN INST. FOR TRAINING & RSCH. (Feb. 28, 2024), <https://unitar.org/about/news-stories/news/using-satellite-imagery-evidence-international-judicial-proceedings>.

147. See Valerie Sticher et al., *Toward the Remote Monitoring of Armed Conflicts*, 2 PNAS NEXUS, no. 6, 2023, at 1–2.

148. See *id.* at 1.

149. *Id.* at 4–8.

150. Olga Golovina, *Artificial Intelligence and War Crimes Investigations*, INST. FOR WAR & PEACE REPORTING (Jan. 30, 2024), <https://iwpr.net/global-voices/artificial-intelligence-and-war-crimes-investigations>. This initiative has identified over 400 suspects and resulted in around fifty convictions. *Id.* With support from the EU, the prosecutor general's office developed a system for electronic criminal proceedings, including digital communication channels. *Id.* Collaborating with over forty-five NGOs and the European Union Agency for Criminal Justice Cooperation, Ukraine is also developing the Core International Crimes Evidence Database (CICED), set to be operational by November 2024, to streamline joint investigations. *Id.* These advancements highlight the potential of AI and innovative technologies in addressing war crimes, though challenges in legalizing and standardizing such evidence remain. *Id.*

2. Blockchain and Transitional Justice

Blockchain technology offers benefits for transitional justice by enabling secure, decentralized transactions and data storage. This technology can enhance transparency, reduce corruption, and ensure the integrity of information exchange, which are beneficial for effective transitional justice efforts.¹⁵¹ By providing decentralized control, a shared truth, and cross-border collaboration, blockchain can reduce reliance on potentially untrustworthy government machinery and improve transparency in transitional justice.¹⁵²

Blockchain technology can be employed to help the integrity and chain of custody of digital evidence. By creating immutable records of evidence collected in conflict zones, blockchain can prevent tampering and contribute to the credibility of the evidence presented in international courts.¹⁵³ The practical application of blockchain in preserving evidence has been explored in various legal contexts. For instance, in Ukraine¹⁵⁴, blockchain technology has been combined with photogrammetry to document and preserve evidence of war crimes. Furthermore, blockchain's potential extends to supporting international judicial processes. For example, the UK's Ministry of Justice has proposed using blockchain to secure large quantities of body camera footage for use in court.¹⁵⁵

151. Renato Gomide Martinez de Almeida, *Is Blockchain an Emerging Tool Able to Provide Assistance to Transitional Justice Processes?* 82 (Nov. 2020) (L.L.M. dissertation, Nova School of Law) (ProQuest).

152. *Id.*

153. *Starling Lab and Hala Systems File Cryptographic Submission of Evidence of War Crimes in Ukraine to the International Criminal Court*, USC SHOAH FOUND. (June 10, 2022, 12:00 PM), <https://sfi.usc.edu/news/2022/06/33571-starling-lab-and-hala-systems-file-cryptographic-submission-evidence-war-crimes>. In June 2022, Starling Lab (a joint Stanford University–USC Shoah Foundation research center) and Hala Systems made a groundbreaking legal and technical contribution by submitting a cryptographic dossier of war crimes evidence in Ukraine to the ICC. *Id.* This submission represents the first instance of registering and preserving digital evidence across seven decentralized web protocols for any court globally. *Id.*

154. See Vera Bergengruen, *How Ukraine Is Crowdsourcing Digital Evidence of War Crimes*, TIME (Apr. 18, 2022, 6:00 AM), <https://time.com/6166781/ukraine-crowdsourcing-war-crimes/>. Ukraine has developed a unique system for collecting digital evidence of war crimes through its government mobile app, “e-Enemy,” which allows verified users to report Russian troop movements and submit footage of alleged war crimes. *Id.* By leveraging blockchain technology and crowdsourcing, Ukraine aims to ensure the integrity and chain of custody of digital evidence, enhancing its credibility in international courts. *See id.* This approach is unprecedented in modern warfare. *See id.*

155. Al Davidson, *Increasing Trust in Criminal Evidence with Blockchains*, JUST. DIGIT. (Nov. 2, 2017), <https://mojdigital.blog.gov.uk/2017/11/02/increasing-trust-in-criminal-evidence-with-blockchains/>.

Almeida suggests that blockchain technology can be practically adapted to various functions within transitional justice, including digital identification, document registration, and the management of reparations and amnesty processes.¹⁵⁶ Beyond these functions, blockchain can also facilitate financial aid distribution in reparation processes.¹⁵⁷

Despite its promise, the application of blockchain in evidence preservation or in strengthening democratic institutions is not without challenges.¹⁵⁸ These risks include malign foreign actors, accessibility issues due to technological barriers, high costs, and insufficient digital literacy, as well as the potential misuse of blockchain by authoritarian regimes to manipulate information and create false transparency.¹⁵⁹ Additionally, the high energy consumption associated with blockchain technology poses environmental concerns.¹⁶⁰

Addressing these challenges involves creating comprehensive regulatory frameworks, improving digital infrastructure, and promoting digital literacy to ensure the benefits of democratic governance are realized while mitigating its risks.¹⁶¹ In conclusion, while blockchain is not a panacea for all issues related to evidence integrity, its strategic application can enhance the credibility and reliability of digital evidence in international courts.¹⁶² In any case, while blockchain should not be seen as a standalone solution, it can be a valuable component, integrating international communities and local populations in a transparent and secure system.

3. Developing International Guidelines and Standards

The integration of advanced technologies like AI and blockchain into transitional justice mechanisms requires developing thorough international guidelines to ensure their responsible and ethical use. Such

156. de Almeida, *supra* note 151, at 15.

157. *Id.* at 27.

158. Renato Gomide M. de Almeida, *What Are the Limits of Blockchain? Considerations on the Use of Blockchain in Transitional Justice Processes*, in *BLOCKCHAIN AND THE LAW: DOGMATICS AND DYNAMICS* 29, 39–42, 46–48 (Francisco Pereira Coutinho et al. eds., 2023).

159. Noam Unger et al., *Analyzing the Role of Blockchain Technology in Strengthening Democracies*, *CTR. FOR STRATEGIC & INT'L STUD.* (Oct. 25, 2023), <https://www.csis.org/analysis/analyzing-role-blockchain-technology-strengthening-democracies>.

160. *Id.*

161. *Id.*

162. *See generally* William Crumpler, *The Human Rights Risks and Opportunities in Blockchain*, *CTR. FOR STRATEGIC & INT'L STUD.* (Dec. 14, 2021), <https://www.csis.org/analysis/human-rights-risks-and-opportunities-blockchain>.

guidelines will help mitigate potential risks and establish best practices, thereby strengthening the overall impact of these technologies. This Paper contends that creating these guidelines is essential for the effective, secure, and ethical application of AI and blockchain in this sensitive field.

To accomplish this, a multilateral task force (experts' group) should be formed, composed of representatives from international organizations (e.g., United Nations, International Criminal Court), human rights groups, legal experts, technology specialists, ethicists, and affected communities. The primary objective of this task force would be to develop a robust framework that outlines principles, technical standards, and implementation protocols for the use of AI and blockchain in transitional justice.

For blockchain, the proposed guidelines should be founded on principles and ethical considerations such as transparency, accountability, security, privacy, and inclusivity. Training and capacity building are crucial components, along with a legal and regulatory framework to facilitate international cooperation and ensure compliance with existing international laws.¹⁶³

Similarly, international guidelines should be developed for the use of AI in transitional justice. However, the standards for AI would differ from those for blockchain due to the unique nature and implications of AI technology. For AI, the primary focus should be on safeguarding privacy and ethics, addressing bias and fairness in AI algorithms, and implementing transparency in AI decision-making processes. High-quality data standards are essential to prevent misinformation, and mechanisms for algorithmic accountability should be established to ensure responsibility for AI decisions.¹⁶⁴ Additionally, AI standards must include strict requirements for human oversight, especially in critical decision-making scenarios, to guard against potential errors or biases in AI systems. Continuous monitoring and capacity building are essential to maintain the efficacy and ethical compliance of AI applications.¹⁶⁵

163. See de Almeida, *supra* note 158, at 37.

164. The International Association of Privacy Professionals (IAPP) has developed a tracker that provides an overview of global AI legislation. *Global AI Law and Policy Tracker*, INT'L ASS'N OF PRIVACY PROS., <https://iapp.org/resources/article/global-ai-legislation-tracker/> (Feb. 2024).

165. ELLEN P. GOODMAN, ARTIFICIAL INTELLIGENCE ACCOUNTABILITY POLICY REPORT, NAT'L TELECOMM. & INFO. ADMIN.: U.S. DEP'T OF COM. (Mar. 2024) (emphasizing the role of human oversight, continuous monitoring, and independent evaluations in maintaining the integrity and trustworthiness of AI applications); see also Eleanor Bird et al., *The Ethics of Artificial Intelligence: Issues and Initiatives*, EUR. PARL. RSCH. SERV., 36 (2020), [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/634452/EPRS_STU\(2020\)634452_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/634452/EPRS_STU(2020)634452_EN.pdf).

Existing frameworks from various organizations offer valuable models.¹⁶⁶ For example, the Council of Europe’s guidelines on AI,¹⁶⁷ which emphasize the protection of human dignity, human rights, and fundamental freedoms, provide a framework for developing guidelines in transitional justice.¹⁶⁸ These guidelines should address the specific challenges and requirements of each technology, ensuring their ethical and effective application in this sensitive field. By drawing inspiration from existing frameworks, policymakers can create rigorous standards that promote transparency, accountability, and human rights protection, ultimately strengthening the efficacy and integrity of transitional justice processes.

4. Enhancing Communication Strategies in Transitional Justice

Technology can also play an important role in reconciliation efforts by facilitating communication, education, and healing processes.¹⁶⁹

166. The 2019 OECD AI Principles provide a comprehensive framework consisting of ten principles, divided into five values-based principles and five governmental recommendations, aimed at fostering the responsible stewardship of trustworthy AI. A recent report from the OECD AI Policy Observatory, as of May 2023, reviews global efforts to implement these principles, highlighting national AI strategies, oversight mechanisms, expert advisory groups, and various regulatory frameworks. These include ethics frameworks, AI-specific regulations, and regulatory sandboxes. *See generally The State of Implementation of the OECD AI Principles Four Years On* (OECD Artificial Intelligence Working Paper No. 3, 2023), <https://www.oecd.org/publications/the-state-of-implementation-of-the-oecd-ai-principles-four-years-on-835641c9-en.htm>.

167. Eur. Consult. Ass., *Guidelines on Artificial Intelligence and Data Protection*, Doc. No. T-PD (2019)01 (2019), <https://rm.coe.int/guidelines-on-artificial-intelligence-and-data-protection/168091f9d8>.

168. *Ethics Guidelines for Trustworthy AI*, EUR. COMM’N (Apr. 8, 2019), <https://digital-strategy.ec.europa.eu/en/library/ethics-guidelines-trustworthy-ai>. These guidelines emphasize that trustworthy AI should be lawful, ethical, and robust. *Id.*

169. CLARA RAMIREZ-BARAT & MARTINA SCHULZE, TRANSITIONAL JUSTICE AND EDUCATION: ENGAGING YOUNG PEOPLE IN PEACEBUILDING AND RECONCILIATION 89–90 (2018); *Program on Education for Sustainable Peace Publication*, GEORG ECKERT INST., <https://www.gei.de/en/institute/career/georg-arnhold-program> (last visited Oct. 27, 2024). Online platforms can aid in dialogue between conflicting parties and public education on transitional justice. *See* Patrick Vinck, *Transitional Justice in the Age of Social Media*, 13 INT’L J. TRANSITIONAL JUST. 105, 109–11 (2019). Similarly, telemedicine offers psychological support to war crime victims, aiding in trauma recovery and long-term healing. The Center for Victims of Torture (“CVT”) Transitional Justice Initiative aimed to integrate mental health support into transitional justice. *Transitional Justice Initiative*, CTR. FOR VICTIMS OF TORTURE, <https://www.cvt.org/what-we-do/movement-building/building-resilience/transitional-justice-initiative/> (July 19, 2023). *See* BRANDON HAMBER, RENEWING THE UNITED NATIONS APPROACH TO TRANSITIONAL JUSTICE: TRANSITIONAL JUSTICE, MENTAL HEALTH AND PSYCHOSOCIAL SUPPORT 48 (2021); Lucas Miotto & Himani Bhakuni, *Justice in Transitioning Health Systems*, 25 HEALTH & HUM. RTS. J. 83, 84 (2023).

Transitional justice mechanisms must not only address legal and factual determinations but also effectively communicate these findings and their significance to both local and international audiences. Drawing from O'Connell's perspective¹⁷⁰, it is necessary that truth commissions and international criminal tribunals develop communication strategies that reach and resonate with both the public and elite groups to ensure the success of their missions.

The importance of public outreach and media relations should be recognized as core components of transitional justice. Analyzing the ICTY's outreach efforts reveals a blueprint of pitfalls to avoid,¹⁷¹ as these efforts were largely unsuccessful in positively influencing perceptions of justice and reconciliation in the Balkans.¹⁷² This analysis highlights the need for thoughtfully designed and well-executed communication strategies to support the success of transitional justice processes.¹⁷³ By prioritizing these strategies, transitional justice mechanisms can make their efforts not only judicially sound but also socially impactful. These

170. Jamie O'Connell, *Transitional Justice as Communication: Why Truth Commissions and International Criminal Tribunals Need to Persuade and Inform Citizens and Leaders, and How They Can*, 73 S. C. L. REV. 101, 103 (2021) (arguing that the effectiveness of truth commissions and international criminal tribunals hinges significantly on their ability to change the knowledge and beliefs of the affected country's citizens and elites).

171. See, e.g., Elizabeth Cole, *Shortcomings of ICTY Outreach in Bosnia-Herzegovina: A Case Study*, 3 OWL 4, 5–6 (2013) (examining how the tribunal's outreach was perceived as insufficient and often too late to effectively engage the local population and foster reconciliation among the diverse ethnic groups in Bosnia). This failure resulted in a lack of acceptance of the tribunal's rulings and a continuation of ethnic tensions. It also discusses errors in the ICTY's approach, including its distance from the local language and culture, which allowed local leaders and media to manipulate the tribunal's image negatively. See James Gow et al., *Space Capsule Justice: The ICTY and Bosnia—Image, Distance and Disconnection*, 91 SLAVONIC & E. EUR. REV. 818, 838–41 (2013) (arguing that while visual documentation (like televised court proceedings and media coverage) intended to make the tribunal's processes transparent and accessible, it often emphasized the physical and psychological distance between the tribunal and the affected communities in Bosnia).

172. Ebru Demir, *Examining the Role of Outreach Work in the International Criminal Justice System: The Case of ICTY*, 12 INONU U. L. REV. 100, 111 (2021) (pointing to the ICTY's challenges and suggesting the necessity of timely and coordinated outreach activities that complement other justice measures, serving as lessons for other tribunals, including the ICC); see also Patrice C. McMahon & David P. Forsythe, *The ICTY's Impact on Serbia: Judicial Romanticism Meets Network Politics*, 30 HUM. RTS. Q. 412, 433–35 (2008) (commenting on ICTY's struggles to achieve broader political and social change directly in Serbia and suggesting that the tribunal's role is more about contributing to a network that influences Serbia indirectly rather than driving direct change within the country).

173. Clara Ramírez-Barat, *Making an Impact: Guidelines on Designing and Implementing Outreach Programs for Transitional Justice*, INT'L CTR. FOR TRANSITIONAL JUST. 6–7 (Jan. 2011), <https://www.ictj.org/sites/default/files/ICTJ-Global-Making-Impact-2011-English.pdf>.

strategies must be ingrained in the operational ethos of transitional justice initiatives to reinforce their legitimacy and effectiveness in achieving lasting peace and justice.¹⁷⁴

As the transitional justice environment continues to evolve in response to the changing nature of global conflicts and the international community's response, these recommendations provide a roadmap for future initiatives. They emphasize innovation, inclusivity, and global support, aiming to move the international legal community towards more effective and enduring solutions for conflict-affected societies. By integrating these practical strategies into the fabric of transitional justice efforts, we advocate for a recommitment to upholding human rights and democratic values in an increasingly divided world.

CONCLUSION

This Paper has examined the application and implications of transitional justice mechanisms through a comparative analysis of the Yugoslav Wars and the ongoing Russia-Ukraine conflict. The findings highlight the essential role of transitional justice in addressing atrocities, ensuring accountability, and encouraging reconciliation within affected communities. Both the Yugoslav Wars and the Russia-Ukraine conflict have tested the resilience and adaptability of international legal frameworks, emphasizing the need for continuous evolution in legal doctrines to effectively address contemporary warfare.

Looking forward, the lessons drawn from past and current transitional justice efforts should inform the creation of a more robust and responsive international legal system. By proactively addressing the shortcomings identified through comparative analysis and leveraging the strengths of regional and international cooperation, the global community can work toward a future where transitional justice is a cornerstone of international relations and peacekeeping.

In conclusion, this Paper not only reaffirms the importance of transitional justice and international law in resolving conflicts but also advocates for their evolution to meet the demands of a polarized world. By adopting a proactive, adaptable, and inclusive approach, the international legal community can adeptly navigate the dynamics of contemporary conflicts, fostering a just and peaceful global order.

174. See generally DIANE ORENTLICHER, SOME KIND OF JUSTICE: THE ICTY'S IMPACT IN BOSNIA AND SERBIA (2018) (commenting on the ICTY's impacts from the perspectives of the communities most affected by its judgments and how the ICTY's long-term effects evolved and were perceived differently in Bosnia and Serbia over the years).

