

# Gender Justice During Conflict

An examination of the UN and the EU's response to the Ukrainian  
Conflict from a feminist institutionalist and transitional justice  
perspective

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## **Abstract**

The aim of this thesis is to answer the research question: How does the EU and the UN articulate their understanding of Gender Justice in their response to the Ukrainian Conflict? This research question problematises that the two institutions' understanding of gender justice and how it is articulated in their response to the war in Ukraine is capable of affecting informal institutions in society, such as gender norms, practices and relations, and can have a negative effect on gender equality by reproducing gendered stereotypes. The two theories used in this project are transitional justice theory and feminist institutionalism. Within transitional justice theory, there are different mechanisms depending on whether it is during-conflict justice or post-conflict justice. Gender justice can arguably be a part of any of these mechanisms, but traditionally and historically it has mostly been applied in criminal justice and reparations. Feminist institutionalism views institutions to be gendered. As an approach, it is interested in the relationship between formal and informal institutions and how the two affect each other. In this thesis, the two theories have been combined because they both give an insight into the discursive responses of the UN and the EU and what effect these responses might have on formal and informal institutions.

The method used for both choosing and analysing data is content analysis. The criteria for the scope of the analysis resulted in nine responses to the war that included gender, from both the UN and the EU. Keywords were identified based on the theory and used to fill out a table in Appendix 1. These findings were then discussed in relation to the different transitional justice mechanisms and gender justice in the analysis. Despite there being six during-conflict justice mechanisms and six post-conflict transitional justice mechanisms, only two during-conflict and one post-conflict transitional justice mechanisms were prevalent in the data and discussed in depth in the analysis. An extra miscellaneous category was added in order to mention any other transitional justice-related contexts found in the data. The last part of the analysis discusses how the found mechanisms specifically relate to gender justice as well as the general criticism that feminist scholars have of gender justice. Following this, the discussion section considers the larger discourse of the UN's practice of gender justice through the Women, Peace and Security agenda and how this framework has been criticised for equating gender with women and prioritising sexual violence as the worst harm women can experience, without actually asking what women need. Within this discussion, there is also an exploration of how the findings of the analysis compare to this larger discourse.

The conclusion of this thesis and answer to the research question is that both the UN and the EU articulate a very strong understanding of gender justice as justice for victims of sexual violence,

primarily women, in their response to the Ukrainian conflict. This understanding fits with the larger gender justice discourse from the two institutions that have been in place since 2000 when the Women, Peace and Security agenda was introduced. Despite this apparent lack of development in the understanding of gender justice, this project also concludes that there are attempts at nuances from actors and organisations within the UN and EU that could eventually change the formal and informal understanding of gender justice. Lastly, the conclusion briefly touches on the limitations of the project, and what other approaches could have been considered.

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# 1. Introduction

The contemporary idea of transitional justice can be traced back to the Nuremberg Trials in 1945, where the political conditions of the time resulted in international nation-building, interstate cooperation, war crime trials, sanctions and the creation of the United Nations (UN). The end of the Second World War and the Nuremberg Trials was the first historical precedent for the criminalisation of a state's abuse as part of a larger universal rights scheme and formed the basis of modern human rights law and transitional justice (Teitel, 2014, p. 50). At the beginning of the Cold War, there was a rather stable balance of power between the two superpowers, and as a result no need for the concept of transitional justice. However, at the end of the Cold War, the political transitions that took place in Eastern Europe, Africa and Central America raised the question of transitional justice, the rule of law and accountability. This second phase of transitional justice was primarily concerned with nation-building and holding the political elite accountable, but at the end of the 20<sup>th</sup> century, transitional justice became characterised by globalisation and an international human rights norm that is considered to be continuously in use in order to keep the international peace and stability (Teitel, 2014, pp. 50-51). With the Russian invasion of Ukraine in early 2022, this stability in the international community was disturbed and has generally been dubbed as 'the return of geopolitics' (Auer, 2022).

Because of current events and the war in Ukraine, this thesis is interested in how the UN and the European Union (EU) understand transitional justice, specifically gender justice, and how this is articulated in their responses to the Russian invasion and subsequent war in Ukraine. As such, the research question of this project is *How does the EU and the UN articulate their understanding of Gender Justice in their response to the Ukrainian Conflict?*

I am specifically interested in gender justice because of the contemporary understanding of transitional justice as an international human rights norm, which, according to the UN's Human Rights Office, has gender equality at its core (UN OHCHR, n.d. a). Furthermore, this project takes a social constructivist approach and as such considers the discursive construction of gender justice in the institutions' responses to the war as capable of having gendered effects on the normative shift in post-conflict society, including negative ones such as reinforcing gendered stereotypes that result in discrimination.

The importance of gender in the context of conflict and war has long been acknowledged and examined by feminist scholars in international relations, sociology, anthropology, history and

geography among others. Since the 1980s, there has been an evolution in feminist understanding of the gendered dimensions of war. At first, it was an issue of making women visible in the context of war and how they are affected by it (Sharoni and Welland, 2016, p. 1). Jean Elshtain (1987) highlighted the dominant war narratives of the 'protector' and 'protected', where men take up arms and become warriors (the protector) in order to defend the vulnerable women and children (the protected), actively ignoring women's agency during war as victims, opponents, perpetrators, fighters and so on. Cynthia Enloe further explored the effect of war on women's lives as well as the relevance of gender in understanding international politics (for more, see *Bananas Beaches and Bases: Making Feminist Sense of International Politics*, 1989, second edition 2014).

In the 1990s, the feminist scholarship surrounding gender and war evolved into a more complex understanding of 'gender' that did not equate to 'women'. As such, academics started researching the gendered effects of war and tried to move beyond the essentialist understanding of 'men' and 'women' (Sharoni and Welland, 2016, p. 2). It was also during this time that 'masculinity studies' as a sub-genre of gender studies gained ground, introduced by Raewyn Connell in her book *Masculinities* from 1995 (Nascimento and Connell, 2017). Later, in *Male roles, masculinities and violence: a culture of peace perspectives*, Breines et al. expanded upon the relationship between gender and war to include men and militarisation and how war also has gendered effects on men.

The last step of the feminist understanding of gender and war is the contemporary one. It is no longer a question of contrasting and comparing men and women and their experiences in war, but rather how gender relates to identity formation and transformation as well as divisions of power and labour and as such contributes to the understanding of both war and its aftermath (Sharoni and Welland, 2016, p. 2). Within this understanding also lies the many aspects of the impact of war. While early theorising was concerned with violence, specifically violence towards women, current theorising emphasises how direct physical violence is not the only consequence of war, and certainly not the only gendered impact. There are many hidden harms in the aftermath of war that affects different genders in different ways. Wars are still predominately fought by men (Basham, 2016, p. 29), and as such, men often struggle with the specific physical and psychological scars that war leaves behind, if they manage to survive the conflict. These scars often affect the survivors in negative ways that may then have an impact on employment, income, or on the partner/family they return to (Howell and Wool, 2016). Women are in return often disproportionately affected by loss of partners, forced migration, lack of access to resources and healthcare, gender-based violence and so on (Steiner, 2016, p. 169). No matter the specific gender one focuses on, and these examples do

not even include other gender and sexual minorities, the point is that *gender matters* and especially an understanding of *how* war and its aftermath are gendered. In this project, the emphasis is specifically on this understanding of the gendered dimensions of war in the context of transitional justice and what impact such an understanding might have on gender norms and practices in a post-conflict, post-transitional society.

## **2. Theory**

### **2.1 Transitional Justice Theory**

At the end of the twentieth century, a wave of liberalization swept the world and brought political transitions to both Latin America and Eastern Europe. As a result, a debate emerged on how to deal with transgressions that had taken place during the democratic transitions, and especially how to effectively address systematic abuses of former regimes without derailing the new political systems (Teitel, 2000, p. vii; United Nations, 2008, p. 1). The term ‘transitional justice’ was coined by Ruti G. Teitel in 1990 in a background paper prepared for the Council of Foreign Relations in New York where this exact issue was discussed. At the time, Teitel concluded that there are useful alternatives to the idea of punishment that can help “the normative message of political transformation and the rule of law, with the aim of furthering democracy” (Teitel, 2000, p. vii).

Today, transitional justice is a big multi-disciplinary academic field that has resonated with both social justice movements, conflict resolution, peacebuilding, and others and remains ever-relevant as societies continue to go through transitions. Various events and conflicts, such as the Yugoslav wars and the democratic transitions of many African countries have expanded the boundaries of the field to include aspects that were not initially thought of as relevant, such as a focus on how socio-economic, racial or gender inequality are also parts of systemic abuse that need redress (United Nations, 2008, pp. 1-2).

Within international law, in 1988 the legal basis for transitional justice was inspired by the Inter-American Court of Human Rights and the case of *Velásquez Rodríguez v. Honduras*, where it was decided that states have four fundamental obligations in the area of human rights. Those are “to take reasonable steps to prevent human rights violations, to conduct a serious investigation of violations when they occur, to impose suitable sanctions on those responsible for the violations; and to ensure reparation for the victims of violations” (United Nations, 2008, p. 2). The essence of these obligations has since been affirmed and endorsed by both the European Court of Human Rights and

the United Nations' Human Rights Committee. Furthermore, transitional justice has been incorporated in many important UN documents ever since, as well as reports by UN special rapporteurs and the Secretary-General in their 2004 report on *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*. When the International Criminal Court was created in 1988, the Rome statute also underlines the importance of states' obligations to fight against impunity and respect the rights of victims (United Nations, 2008, pp. 2-3).

The UN define transitional justice as “an approach to systemic or massive violations of human rights that both provides redress to victims and creates or enhances opportunities for the transformation of the political systems, conflicts, and other conditions that may have been at the root of the abuses” (United Nations, 2008, p. 1). As a theory, Teitel originally defines it as “a distinctive conception of law and justice in the context of political transformation” that explores “an array of legal responses” (Teitel, 2000, p. 4). She further explores how the role of the law during periods of political change can be categorised into different forms such as punishment, historical inquiry, reparations, purges and constitution-making (Teitel, 2000, p. 4). As part of her theorising, she discusses how the meaning of transition in a contemporary setting equals change in a liberalizing direction that includes a normative component, that of a state going from being less to more democratic (Teitel, 2000, p. 5). “Transition” also implies a paradigm shift, which, when combined with the idea of “justice” becomes paradoxical since justice is often found based on jurisprudence, which is foundational, yet the function of jurisprudence during political transformation can be unstable (Teitel, 2000, p. 215). Teitel theorises in her original work from the 90s that justice during political change is "extraordinary and constructivist. It is constituted by and constitutive of the transition. Contextualised and partial. What is considered just is contingent on and informed by prior injustice" (Teitel, 2000, p. 6). In many ways, the legal responses represent the actual transition of society because they can help delegitimise or legitimise both the former regime and the new political system (Teitel, 2000, pp. 4-6). Furthermore, Teitel (2000) states how the legal responses during periods of political change help construct a normative shift within the society (p. 7).

In her collection of essays from 2014, Teitel brings the field of transitional justice further by discussing how globalization has affected and expanded the concept. Originally, the field was focused on regimes and their political transformation into democracy. Now, because of globalisation, political transformation engages both state and non-state actors, changing norms through both civil society and institutions. Transitional justice as a concept has also become



normalised as the practice of accountability for serious systemic wrongs, including crimes against humanity (Teitel, 2014, pp. xiii-xv). She also adds that the discourse of transitional justice is playing a bigger role in conflict studies today and that as a global approach, transitional justice has moved away from purely being a question of state security to a question of human security (Teitel, 2014, p. xxi). As a field, it crosses disciplines and invokes a wide range of mechanisms (Teitel, 2014, pp. xiii-xv). Furthermore, it is considered a key component of both humanitarian and development interventions, especially within the UN system (Mora, 2020, p. 215).

Because of transitional justice's contextuality, there is a debate on what approach should be taken in praxis. Some scholars advocate for a holistic approach that takes the specific context into account and makes use of local justice institutions, while others argue for 'best practices' (Teitel, 2000, p. xvi). However, how do you determine what is 'best practice'? Especially when periods of transition and political transformation look very different depending on the context and conflict. During the 80s and 90s, the best practice could possibly have been determined by the transition from an authoritarian regime to a democracy, where transitional justice was then 'practised' post-conflict in a criminal court. But today, transitional justice takes place in many scenarios, including during conflict and goes beyond criminal court justice (Teitel, 2014, p. xvi; UN OHCHR, n.d. b.). The United Nations advocate for a holistic approach that takes local context into consideration, including interdependent institutions and the needs of key groups, while building national and domestic justice capabilities (Secretary-General, 2004, p. 1).

Transitional justice in practice is a range of instruments that are often used in combination. These instruments include “truth-telling and truth commissions, public apologies and forgiveness, memorialization and commemoration, pardons and amnesties, compensation, restoration, restitution (of land and property), international and regional criminal courts and tribunals, lustration and vetting, and legal and institutional reforms” (Mora, 2020, p. 216) and are enshrined in domestic and international human rights law (Mora, 2020, p. 216). Truth-telling and truth commissions are temporary investigative bodies that inquire about a pattern of abuse over a specific time period. Usually, they involve evidence gathering and the hearing of testimonies and then the findings are publicly released. They are commonly used for investigating a systematic pattern of abuse across multiple individuals rather than for a single crime (Loyle, 2017, pp. 4-5). Public apologies and forgiveness are very straightforward tools for the perpetrator (often the regime, government or nation-state) to use in an attempt to move on from the atrocities committed. However, as a transitional justice instrument, it needs a transformative element or to be combined with other

transitional justice instruments to become something more than a ‘simple apology’ that victims then might feel forced to accept and as a response forgive the abuse (Tarusarira, 2019, p. 210).

Memorialisation and commemoration are done through symbolic gestures such as monuments, statues and museums that remember and commemorate human rights violations in order to help heal the victims and the general public from a violent past. It allows recognition for those who have suffered as a result of the conflict and creates a space to address the conflict where those affected by the abuse can share their narratives. In practice, this process should promote civic engagement, critical thinking and a discussion of the past as well as contemporary challenges (Light and Young, 2015, p. 233; United Nations, n.d.).

Pardons and amnesties are promises from the authorities that the wrongdoer or alleged violator of human rights or laws will not be prosecuted or punished for the crime. They are one of the instruments that turn the focus of transitional justice away from being purely a punitive process. Compensation, restoration and restitution are all aspects of reparatory justice and are instruments used for redressing victims of systemic abuse (Teitel, 2000, p. 119). Reparations can be monetary, a question of property transfer or skills training for both individuals or communities as a whole as a way to both repent for the past and prepare them for the future (Loyle, 2017, p. 5). According to the International Center for Transitional Justice, “[i]t is important to remember that compensation—or the payment of money—is only one of many different types of material reparations” (ICTJ, n.d., n. p.). They can also include “the restitution of civil and political rights; physical rehabilitation; and granting access to land, housing, health care, or education” (ICTJ, n.d., n. p.). Reparations can also be intertwined with other transitional justice mechanisms. Truth-telling and a guarantee that the violation will not be repeated is also a form of reparation, along with memorisation and commemorations although these are of a more symbolic nature (ICTJ, n.d.).

International and regional criminal courts and tribunals, lustration and vetting, and legal and institutional reforms are all aspects of what we might consider more classic judicial instruments, an institutionalised form of justice. They are part of administrative and criminal justice where the law is driving the political transformation, either in the form of punishment and judgement from criminal courts or as an institutional reform that creates a new system with new laws to follow (Teitel, 2000, p. 149).

What these instruments demonstrate is how transitional justice is a process that is both backwards-looking and forward-looking, combining measures that help heal the past – compensating victims, remembering the crimes or punishing perpetrators – while also driving the

political change in order to move on from the conflict – such as pardoning wrongdoers, apologising for the crimes to receive forgiveness and introducing new laws and reforms. During ordinary times, the law's function is forward-looking as a driver of political change, however, during transitional periods, law is "both backward-looking and forward-looking, retrospective and prospective, continuous and discontinuous" (Teitel, 2000, p. 215).

Another important aspect of transitional justice is the peacebuilding and prevention element. According to the UN Secretary-General, "prevention is the first imperative of justice" (as quoted in Duthie, 2022). By addressing the different grievances, facilitating the inclusion of social groups who have suffered from human rights violations, and promoting reform of institutions, both formal and informal (such as ideologies), transitional justice can contribute to the prevention of violence and abuse which is a key part of peacebuilding (Duthie, 2022). Especially the relationship between civil society and the state can help facilitate peace and further prevention of violence because civil society often helps magnify marginal voices that are being discriminated against and in need of justice processes (Duthie, 2022).

Some of the most well-known examples of transitional justice processes are the South African Truth and Reconciliation Commission, the Special Court for Sierra Leone, the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia (Mora, 2020, p. 216; United Nations, n.d.). Especially the International Criminal Tribunals for Rwanda and the Former Yugoslavia have made history in prosecuting rape and sexual violence as war crimes (Bluen, 2016, p. 214).

## **2.2 Transitional Justice During Conflict**

Although Teitel's original conception of transitional justice focuses on post-conflict justice mechanisms, Cyanne E. Loyle and Helga Malmin Binningsbø expand the concept to include justice during armed conflict, which they call during-conflict justice (DCJ) and consider a part of transitional justice overall (Loyle & Binningsbø, 2018, p. 443). Their definition of DCJ "refers to a judicial or quasi-judicial process initiated during an armed conflict that attempts to address wrongdoings that have taken or are taking place as part of that conflict" (Loyle & Binningsbø, 2018, p. 443) and includes institutions we already know from post-conflict justice processes. Loyle and Binningsbø's (2018) study examine six mechanisms for addressing wrongdoing during conflicts, those being trials, truth commissions and commissions of inquiry, reparations, amnesties,

purges, and exiles (p. 445). According to the authors, these six different forms of DCJ "represent the most central judicial or quasi-judicial options for governments and challengers to address violence" (Loyle & Binningsbø, 2018, p. 445). As a result of their study, Loyle & Binningsbø found that although the field is under-researched and under-analysed compared to post-conflict transitional justice processes, over 60 per cent of conflicts since World War II have included at least one of the six forms of DCJ processes, although whether that is intentional or not as a transitional justice tool remains to be seen (p. 444).

Besides the factual evidence that transitional justice processes take place during conflict, Loyle (2017) also asks the questions of under what condition these processes are implemented during conflict, why they are put in place and what the likely effect of their implementation on the conflict itself will be (p. 3). These questions are important for understanding actors' behaviours during conflict and broadening our understanding of the use of judicial and quasi-judicial processes when there is no transition taking place (Loyle, 2017, p. 3).

Transitional justice is believed to advance human rights and accountability, as well as promote reconciliation, the rule of law and democracy. The idea behind it is that for a nation to build a new democracy that follows the rule of law, the systematic abuse, crimes and wrongdoings related to the transition or conflict must be transparent and held accountable (Loyle, 2017, p. 4). DCJ does not necessarily have the same clear motivations. Some DCJ processes do indeed advance democracy and the rule of law, but they can also be used as a show of military strength. Unlike post-conflict transitional justice processes, DCJ can be used by all parties during the conflict, be it rebel groups, the government, or others to hold groups and individuals accountable for perceived wrongdoings (Loyle, 2017, p. 4).

Truth commissions and commissions of inquiry, reparations and amnesties are already expanded upon in the section on *Transitional Justice Theory*. Trials are a formal examination of the supposed crime, often within the realm of human rights. They are done within either a legal or a quasi-legal structure and can include prosecutions of war crimes (most likely at domestic courts during conflict), military courts or ad hoc tribunals. Unlike truth commissions, trials focus on due process or the burden of proof and hold individuals accountable for actions committed during the conflict (Loyle, 2017, p. 4). Reparations and amnesty function basically in the same way whether it is during the conflict or after the conflict, however, combining them during the conflict can also be a way to end the conflict and reintegrate e.g., combatant groups into the political system by offering them both amnesty and an incentive (such as cash, land or food) for the future (Loyle, 2017, p. 5).

Purges and exiles are both instruments that target individuals or groups in order to limit their influence during the conflict or transition. Purging is done by removing individuals such as politicians or members of the armed forces etc. from a position of power because they are suspected of wrongdoings. Exile works in much the same way, however, instead of simply being removed from a position of power, it is a forced absence from the country and is mostly used by governments since they are the ones who have the organizational capacity to remove individuals from a country (Loyle, 2017, pp. 5-6).

These six forms are not the only transitional justice measures that can be engaged during an ongoing conflict. Other examples are those encouraging combatants to surrender and disarm, helping displaced persons, refugees and other victims in the form of financial, medical and legal support as well as documenting human rights violations, which is important for raising awareness and advocacy which can also help in the post-conflict transitional justice process. It is of course important to remember that the objectives of transitional justice during conflict can be strained by official capacity and political will and sometimes come secondary to military objectives or peacebuilding processes (Mallinder, 2022).

## **2.3 Gender Justice**

War and conflict are often male-dominated affairs. They are often started by men, fought by men and then the peacebuilding and system reform is negotiated by men, despite the fact that civilian women are often disproportionately affected by the conflict (Bell & O'Rourke, 2007, p. 25). As a result, the original conception of transitional justice mechanisms did not take into account how conflict affects women. In the 1990s, transnational feminist mobilization and the emergence of "women's rights are human rights' agenda" (O'Rourke, 2016, p. 507) focused on exposing how sexual violence during conflict was systematic abuse and therefore relevant to transitional justice. This mobilization advanced transitional justice in three areas: recognising women's experience of gender-based violence during conflict to be a serious war crime, bridging the gap between legal standards and their enforcement and securing courtroom procedure reforms to protect victims of sexual violence from being re-victimised during the legal process (Bell & O'Rourke, 2007, p. 26). The most important part of this development was the inclusion of rape "within the definitions of a 'grave breach' of the Geneva Conventions, of crimes against humanity and of genocide" (Bell & O'Rourke, 2007, pp. 26-27). In the Rome Statute of the International Criminal Court, the

development was solidified by explicitly recognising “rape, sexual slavery, enforced prostitution, pregnancy and sterilization and other forms of sexual violence as crimes against humanity and as war crimes”, including trafficking and gender-based persecution (Bell & O’Rourke, 2007, p. 27).

The International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia made history in transitional justice practices by bridging the gap between legal standards and their enforcement by treating systemic sexual abuse as a war crime in court (Bluen, 2016, p. 214; Bell & O’Rourke, 2007, p. 27). Especially the International Criminal Tribunal for the Former Yugoslavia changed the rules of evidence by limiting the extent to which consent could be presented as a defence to sexual violence and furthermore prohibiting the use of victims’ sexual history as an argument for the defence and removing the requirement for further corroboration of evidence (Bell & O’Rourke, 2007, p. 27). Special units have also been established to help support survivors and witnesses with counselling, taking into consideration that having to explain their experiences in court can be re-traumatising (Bell & O’Rourke, 2007, p. 28).

As a result of this feminist mobilisation and inclusion of sexual violence in the 90s, contemporary transitional justice now includes a distinct stream of gender analysis. Catherine O’Rourke (2016) argues that the important part of gender and transitional justice is its simultaneous existence as both an academic field and area of policy implementation and practice, as seen in both non-governmental organisations’ gender justice programmes and within inter-governmental activity (p. 507). The UN Women has four priority areas where one of them is Peace and Security, which includes dedicated policies on transitional justice. The UN also has the Committee on the Elimination of All Forms of Discrimination Against Women, which created the landmark document General Recommendation 30 where transitional justice for women in conflict prevention, conflict and post-conflict situations is a priority area (O’Rourke, 2016, p. 507). These all demonstrate that gender justice is considered an important part of transitional justice, from both civil society and intergovernmental institutions, as well as how periods of conflict and political transitions can influence gender relations (O’Rourke, 2016, p. 507).

Looking at the history of gender justice, the focus on sexual violence has been at the forefront of advancing the field of transitional justice. However, this focus has been critiqued for being too narrow and reproducing stereotypical gender types where women are considered victims of conflict (O’Rourke, 2016, pp. 513-14). Kelly-Jo Bluen (2016) argues that although the legacy of the tribunals of Rwanda and Yugoslavia is an important global legal and policy framework that addresses sexual violence in conflict, they also leave a legacy of viewing conflict-related sexual

violence as strategic or instrumental (p. 214). This understanding affects policies on sexual violence by homogenizing it and potentially marginalizing the experience of many victims and depending on the reception of this legacy, might also affect policies on non-conflict-related sexual violence (Bluen, 2016, pp. 214-15). Furthermore, the existence of a legal framework and tribunals do not necessarily constitute actual prosecution and justice (Bluen, 2016, pp. 215-16). The framing of sexual violence as an instrument of war also does not recognise how sexual violence in both conflict and non-conflict situations are committed by different actors for different reasons and might not be a case of "opponents" but could also be done by someone on the same side as the victim or done to someone considered 'the enemy'. Both of these cases would not be recognised as war crimes and therefore not part of the justice framework. Considering sexual violence as a strategy also does not include cases where militaries forbid the use of rape, yet it is done by the soldiers anyway for other reasons (Bluen, 2016, p. 217). So, while the legacies of these tribunals are an important legal framework that recognises rape as a war crime, they also perpetuate a narrow understanding of sexual violence and how transitional justice should respond to it – through criminal tribunals – which displaces other ways of thinking about justice and disregards other gendered forms of harms (Bluen, 2016, p. 218).

Feminist scholarship has attempted to influence the field by making visible a wide range of harms that happens during the process of societal transformation beyond that of sexual violence, such as socioeconomic harm or damage to familial relationships (O'Rourke, 2016, p. 508; 513). Part of this feminist perspective is to avoid stereotyping women's experiences during conflict as victims and instead show a more nuanced understanding that includes women's political agency and resistance (O'Rourke, 2016, pp. 513-14).

The public-private divide has especially been a focus of analysis because international law and the human rights framework often focus on civil and political rights which are symbols of the individual's 'public' life and relationship with their government. This benefits both men and women, however, most women are a bigger part of the private sphere than the public sphere and need this protection to extend into the private. Understanding political violence as a thing that happens in a masculine domain means reducing women's experience of harm to either be in relation to a male political actor or generally viewed as secondary and therefore not a priority for accountability or redress (O'Rourke, 2016, pp. 508-9).

As mentioned in both of the former sections, there exist other transitional justice mechanisms beyond criminal courts. Looking at them from a gendered perspective, especially peace agreements

are very important sites for negotiating gender justice because besides negotiating peace, peace agreements often also outline a plan for post-conflict accountability, yet women and gender issues have often been excluded from these sites and debates (O'Rourke, 2016, pp. 512-13). Prosecutions are another focus of feminist mobilisation, specifically the debate on including crimes of sexual violence in the ranges of offences that cannot be amnestied. Truth-recovery and truth commissions are also considered especially relevant to gender justice because they provide a shared societal narrative of past wrongs and include a deterrent to future wrongs. By including gender issues in these commissions, a shared moral opposition to gendered harm is created which can result in a commitment to new gender relations in the new political system (O'Rourke, 2016, pp. 514-15). However, truth-recovery has also been critiqued by feminist scholars. The focus on bodily harm takes away other aspects of women's experiences during conflict, such as socioeconomic exclusions, the violation of the home and damage to the family. This lack of an official narrative can result in ignorance, a belief that these experiences are not harmful and a lack of justice (O'Rourke, 2016, pp. 515-16).

Reparations is another area of transitional justice where gender-specific experiences were not originally taken into account. Once again, the inclusion of gender in contemporary reparations programs is almost equal to including incidences of sexual violence and as such replicates the limitations of the other measures mentioned so far (O'Rourke, 2016, p. 516). By focusing on reparations for sexual violence, the mechanism does not consider how women might need material assistance with addressing the consequences of the deaths of male partners and the deprivation that often follows conflict and repression (O'Rourke, 2016, p. 517). Furthermore, the understanding of reparations is often with the objective of restoring the victims to their original situation before the violation occurred, which does not take into account the gender inequalities that might have been entrenched into society pre-conflict. This can legitimise gender-based discrimination and reproduce harmful stereotypes. These deficiencies in understanding the nuance of gender justice can limit the transformative potential of reparations, which could, if done correctly, further gender equality and equity (O'Rourke, 2016, p. 517).

If we take a step back from the different mechanisms and look at gender justice overall, a significant critique is that of the understanding of gender itself. Philipp Schulz (2019) argues that although the inclusion of gender in transitional justice is significant, there are numerous gendered blind spots within both praxis and scholarship of transitional justice (p. 692). The current gender perspective within transitional justice tends to neglect local understandings of gender and justice,



instead reproducing and exporting neo-colonial assumptions about both (Schulz, 2019, p. 692). At the same time, the understanding of gender that is seen in transitional justice often equates it to women. "Conflict-related experiences and harms are only regarded as 'gendered' when they represent or reinforce 'the unequal position of women in society'" (Schulz, 2019, p. 692), dismissing the experiences of men in conflict, including ideas of violent masculinities and men as victims of sexual violence (O'Rourke, 2016, p. 519). This understanding of gender reproduces the stereotypes of women as victims in need of external protection and men as naturally violent perpetrators, effectively silencing anyone who falls outside of this hetero-normative dichotomy (Schulz, 2019, p. 692).

Schulz (2019) argues that in order to further gender justice and have transitional justice succeed in being transformative for gender inequality within societies, we need to let go of simplistic understandings of gender and instead recognise how power, vulnerability, privilege and oppression, as we usually understand them in relation to gender, are contextually dependent as well as influenced by political, socioeconomic and policy approaches (p. 692). Additionally, while the recognition of women as victims during conflict is important, there needs to be a better understanding of the many different kinds of victims, including sexual and gender minorities, male sexual violence survivors and women and girls as active agents during conflict (Schulz, 2019, p. 692).

## **2.4 Feminist Institutionalism**

Feminist institutionalism (FI) is a theory and an approach that combines feminist political science with new institutionalism (NI) in order to examine the interactions between institutions and actors, how political life is interconnected with social life, the relationship between formal rules and informal practices, discourses and norms, as well as institutional creation, continuity and change (Krook and Mackay, 2011, p. 13). NI's fundamental premise is that that the organisation of political life – institutions – matters. The theory has four main approaches: rational choice institutionalism, historical institutionalism, organisational (or sociological) institutionalism and discursive institutionalism. They commonly focus on institutions but depending on the approach have different methodologies and vary in the level of institutional practices that are analysed (Krook and Mackay, 2011, p. 8). By combining feminist political science and NI, a new strand of institutionalism, FI, is

created which understands institutions as both gendered and capable of having gendered effects (Mackay, 2011, p. 181).

An important focus of FI is understanding how formal and informal institutions interact and shape political outcomes (Mackay, 2011, p. 183). Formal institutions are what we generally understand to be the organisation of political life, including formal rules and practices that shape the institutions, although the exact definition changes depending on which NI approach one engages with (Krook and Mackay, 2011, pp. 8-11). Two different definitions can be found in Mackey et al. (2011)'s *Towards a Feminist Institutionalism* which encompasses the broadness of institutions, namely that they are "the rules of the game in a society or ... the humanly devised constraints that shape human interaction" and a "structural feature of the society and/or the polity ... that may be formal (a legislature, an agency in the public bureaucracy, or a legal framework), or may be informal (a network of interacting organizations, or a shared set of norms)" (as cited in Krook and Mackay, 2011, p. 11). While formal institutions are a bit easier to recognise in political and public life, it is also important to recognise the informal institutions that interact with formal institutions, such as norms, practices and discourses (Krook and Mackay, 2011, p. 5). FI is especially interested in the interaction between formal and informal discourses because our understanding of gender and gender relations is one such informal practice that both affects and is affected by formal institutions (Mackay, 2011, pp. 181-183).

According to Mackay et al. (2011), there is no single definition or agreed-upon approach to FI. For some scholars, FI consists of feminist variants of the different NI approaches, while others take a more pluralist approach and combine elements from different strands of NI but still with an understanding of institutions as gendered (p. 182). This combination of elements is logical because FI is social constructivist, and in order to understand the complexity of the institutions FI wish to analyse, there is a need for models that can incorporate both norms and ideas, history, rationality and so on (Mackay, 2011, p. 182).

In this project, I will combine the two NI approaches of historical institutionalism and discursive institutionalism, and as such will give a brief explanation of the two approaches. Historical institutionalism (HI) research is conducted at the meso- or macro-level with a focus on "the long-term ramifications of largely contingent events" (Krook and Mackay, 2011, p. 9). As an approach, HI is concerned with asymmetries of power in institutions, understanding institutions to be the formal and informal procedures, norms, routines and conventions that are embedded within society, politics and the economy. Furthermore, HI also examines path dependency, the role of

unintended consequences, institutional creation and change (Krook and Mackay, 2011, p. 9). Historical institutionalists understand institutional change to be either a result of critical junctures, where social, political and economic change will suddenly occur in previously stable institutions due to external shock, or as incremental where the change is more continuous as adjustment and adaptation (Sorensen, 2022, p. 4).

Discursive institutionalism (DI) research is conducted on multiple levels, including the micro-, meso- and macro-level as well as their connection. The approach's definition of institutions is rather broad and fits with the other NI approaches, however, it places an emphasis on the role of "ideas and ideas-as-discourses in influencing actor interests, preferences, and behaviour" (Krook and Mackay, 2011, p. 10). Furthermore, from a DI perspective, discourse is a medium of power in itself. This means that discourse and ideas shape and construct power perceptions. DI's conception of institutional change is centred on the 'inside out' and the interactive processes in which discourses and ideas are both constructed, legitimised and communicated (Krook and Mackay, 2011, p. 10). As such, Di explains the change in institutions as a result of change in ideas (through discourse) (Mackay, 2011, p. 192). Importantly, DI also distinguishes between discourses and institutions, understanding that institutions can have a discursive effect (Krook and Mackay, 2011, p. 10).

## **2.5 Combining the Two Theories**

In this thesis, I introduce two different theories, transitional justice theory and feminist institutionalism theory, in order to combine them and examine the UN and EU's responses to the Ukrainian War. But why combine these two theories? I choose to do so because understanding the UN and EU to be gendered institutions whose behaviour has a gendered effect gives some insight into their responses to conflicts such as the war in Ukraine. Using HI as part of the FI approach allows for an understanding of the war in Ukraine as a critical juncture that can result in societal, political and economic institutional change. Combining this understanding with the DI approach and examining the responses from the UN and the EU as discursive responses that reproduce or construct ideas is especially relevant when one adds the concept of transitional justice, specifically gender justice, to it.

According to O'Rourke (2016), transitions and transitional justice can be "characterized as 'critical junctures' or 'moments of opportunity' for gender relations and gender equality" (p. 505) and Teitel (2000) also understands transitional justice to have "a potentially profound impact on the

resulting societal shift in norms” (p. 9). Using HI’s focus on critical junctures and unintended institutional consequences in combination with DI’s understanding of discourses and ideas as both influencing institutional behaviour and being a medium of power that can enact change, creates an FI approach that parallels this conception of transitional justice as capable of creating normative shifts (change in informal institutions) through transitional justice mechanisms (formal institutions). With both of these frameworks in mind, the formal institutional response that can be recognised as gender justice will have certain gendered consequences on informal institutions, such as gender relations or norms, that can either enact institutional change or continuity. In this case, the informal institutions of gender relations can either be affected and challenged by the formal institutions of the UN and EUs understanding of gender justice and subsequent discourse surrounding it, or gender relations might be reproduced as is or in a way that is not contextually appropriate and as such does not result in any justice.

This combination of theories makes it possible to answer the research question of *How does the EU and the UN articulate their understanding of Gender Justice in their response to the Ukrainian Conflict?* by focusing on the discursive context in which gender justice is articulated in the responses chosen, and consequently discuss how the institutions can be viewed as gendered with gendering effects. The combination of transitional justice and FI theorises that the way the formal institutions articulate their understanding of gender justice in their response to the conflict constructs informal institutions of gender justice (e.g., norms or practices) which can have various gendered effects, including negative ones, on the post-conflict society.

### **3. Methodology**

This project takes a social constructivist approach, which is a social theory in international relations that centralises ideas and norms as the driving forces behind actors' behaviours and the structure of social life (Barnett, 2017, p. 147). This project is social constructivist on the basis of the two chosen theories. Feminist institutionalism concerns itself with the relationship between formal and informal structures and understands institutions to be both affected by norms and practices and capable of affecting norms and practices, such as gender (Krook and Mackay, 2011, p. 13). According to Teitel (2000), transitional justice is inherently social constructivist, because the different mechanisms in transitional justice processes can help legitimise or delegitimise political systems, as well as shape

ideas of what is just or unjust (pp. 7, 29). The contemporary focus on prosecuting crimes against humanity helps construct a normative shift for societies in transition (Teitel, 2000, p. 66).

Based on the social constructivist approach, the research question that this thesis aims to answer is *How does the EU and the UN articulate their understanding of Gender Justice in their response to the Ukrainian Conflict?* which problematises the way formal institutions respond to a conflict constructs an understanding of gender justice which can have various gendered effects on the normative shift that happens in the transitional period of a conflict, such as negatively affecting gender equality.

The focus of this thesis is how the UN and the EU's understanding of gender justice is articulated through their responses to conflict. This focus came about as a result of the news coverage of the Russian invasion of Ukraine, which sparked an interest in the academic field of gender and conflict but specifically how global governance and international institutions view gender in relation to conflict and what consequences this understanding might have on gender relations. As such, in this project, I choose to examine the UN and the EU's understanding of gender justice through the case study of the war in Ukraine. The war in Ukraine has been selected as the case study considering its contemporary relevance and the fact that the eight-year conflict has been the bloodiest in Europe since the 90s and the largest armed conflict in Europe since the Second World War (Masters, 2023; Council of Councils, 2023), which is when transitional justice and subsequently gender justice was introduced as a field. It is important to note that this project is not done with the aim of exploring the case study of war in Ukraine, but rather is trying to analyse the institutions chosen. The case study was chosen because trying to generalise transitional justice and gender justice is a large undertaking and considering the context-specific nature of transitional justice, not very probable to do.

I am focusing on the institutions of the UN and the EU for multiple reasons. The UN is a global governance organisation whose central mandate is to maintain international peace and security (Weiss et al., 2010, p. 55). The UN has also been practising the concept of transitional justice in many important documents since the 90s and views the concept as an important part of international human rights law (United Nations, 2008; UN OHCHR, n.d. c). Furthermore, in 2000 the UN Security Council Resolution 1325 on Women, Peace and Security was adopted, which marked formal political and legal recognition at the highest international institutional level that political transitions during periods of violence should improve the lives of women and advance gender equality, and as such is directly engaged in gender justice (O'Rourke, 2016, p. 504).

The EU is included in the project because even though Ukraine is not a member of the EU, the country is located in Europe and therefore geographically relevant to the EU, both in terms of security and economically. Ukraine has also been in the Association Agreement with the EU since 2014, with the end goal being political association and economic integration, and as such the EU is strategically invested in the country (European Union, n.d.). Because of the organisational structure of the UN system, the two institutions are also somewhat intertwined in their response to the war in Ukraine. The UN includes all the internationally recognised nations in the world, and all 27 Member States of the EU are also independent members of the UN. As such, the EU Member States together have more than 1/8 of the votes in the UN General Assembly, and the EU is the UN's largest financial contributor (United Nations Regional Information Centre for Western Europe, 2007). Additionally, the two institutions share the same "fundamental values and goals, namely the maintenance of international peace and security, [...] and the promotion and consolidation of the respect of human rights and fundamental freedoms for all people" (United Nations Regional Information Centre for Western Europe, 2007, p. 2). This means, that while there may be small differences in their responses to the conflict and understanding of gender justice, the EU is still working within the UN system.

### **3.1 Method**

I will be doing a content analysis that searches for discursive representations of the formal institutions' (the EU and UN) understanding of gender justice in their responses to the case study. As a result of choosing DI as one of the FI approaches, one would assume that the analysis should be a discourse analysis. I considered this but found discourse analysis to be too particular and focused on grammar choices and gendered language within the text, as opposed to content analysis which examines overarching themes and categories. Considering my problem formulation, *How does the EU and the UN articulate their understanding of Gender Justice in their response to the Ukrainian Conflict?* it methodologically makes more sense for this project to do a content analysis of the chosen data because I am examining the content of the responses in relation to gender justice and how this reflects on the EU and the UN.

### **3.2 Content Analysis**

Content analysis is one of two commonly used qualitative analysis methods in the academic field of international relations. According to Lamont (2015), content analysis is not essentially either qualitative or quantitative, because while doing content analysis, one breaks down the text into keywords and phrases that allow the researcher to examine larger amounts of data (p. 89). Such activity is traditionally understood as quantitative, yet the following analysis of the findings can be considered interpretative, and therefore qualitative (Lamont, 2015, pp. 89-91). In the context of this project, the method can be viewed as more qualitative, considering I do not wish to gain a comprehensive statistical understanding of how the UN and the EU respond to the Ukrainian conflict. Instead, I am examining their response from the point of view of both FI and transitional justice, which as explained in the *Combining the Two Theories* section, understand the institutions' responses to the case study to be an indicator of their larger understanding of gender justice and is interpretative. Either way, content analysis is a method of analysis which investigates artefacts of social communication, and as such can include a very broad data set using textual data, photographs, films and more (Lamont, 2015, p. 89).

The aim of content analysis is to search for patterns in communication. This is done by first specifying the scope of the analysis – e.g., what is the focus of the analysis, from what sources does one access the artefacts and in what timeline (Lamont, 2015, p. 89-90). Following this, the next step is categorization. Categorization has two different approaches, deductive and inductive. A deductive categorization is done before the reading of the sources and is a creation of categories one expects to find based on one's pre-existing knowledge of the situation. Inductive categorization is done while reading the sources and as such tries to generate categories on the go that seem to fit with the materials (Lamont, 2015, p. 90).

After generating categories, one must code keywords that are then searched for in the text. These keywords are words or themes that represent the category and can demonstrate how the category may exist in multiple instances despite having different keywords. As a result of searching for keywords and themes, the researcher ends up with a large amount of data that can then be interpreted in relation to the overarching research project (Lamont, 2015, pp. 90-91).

### **3.3 Choice of Data**

In my search for data, I had a few criteria. The responses had to be from either the UN or the EU but could include many different kinds, such as speeches from representatives, news articles from

UN News or similar, statements from the different organisations that are a part of the UN, and in the same vein, could come from any of the EU institutions. These responses had to relate to gender and had to be a response to the Ukrainian conflict. When searching for the data, I used keywords such as 'response to Ukrainian conflict' and 'Ukrainian conflict and gender'. I deliberately kept it rather vague to get a broader sense of what data was available, but despite this, most of my data relates to sexual violence which is rather telling in itself.

It is important to note how these responses are different, not just in terms of content, but also as data themselves. For example, by including a meeting coverage of a Security Council meeting, I cannot only analyse the actors in the meeting and what they have to say as representatives, but also have to take into account that the UN is choosing to highlight certain aspects of this meeting in the publication of this meetings coverage. I will further elaborate on this in my explanation of the choice of data later in this section. Lastly, after having done a preliminary search, I also looked directly for transitional justice mechanisms from either the UN or EU in relation to Ukraine that mentioned either women, gender, or gender-based violence.

As a result of this search for responses, these are my choices of data and an explanation of why they are chosen. I will present the ones from the UN first, although some of them I have chosen because they are in collaboration with or supported by the EU, and then end with the data from the EU.

*Sexual Violence 'Most Hidden Crime' Being Committed against Ukrainians, Civil Society Representative Tells Security Council.*

This is a meeting coverage of the 9056TH Security Council meeting that took place on the 6<sup>th</sup> of June 2022. I have chosen this piece of data both because it presents the issue of sexual violence by Russian troops in the Ukrainian conflict and quotes multiple speakers from both the UN, NGOs and the EU who are commenting on the situation, but also because as a meetings coverage and not minutes of the meeting, the UN is highlighting certain aspects of the meeting which reflects on the UN (United Nations, 2022).

*Remarks of SRSR-SVC Pramila Patten at the Summit of First Ladies and Gentlemen Hosted by the First Lady of Ukraine, 23 July 2022.*

Pramila Patten is the UN Secretary-General's Special Representative on Sexual Violence in Conflict. This piece of data is her speech at the Summit of First Ladies and Gentlemen in July 2022.



This response relates to the above Meetings Coverage where Patten is also quoted, however, this speech is held a month later in a different setting. As such, I feel it necessary to include it as data, since it is appealing to a different audience at a later date. Furthermore, where the Meetings Coverage represents both the representatives within the meeting and the agency of the UN in presenting this data, this remark is directly from the Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict and could potentially show a different aspect of the narrative (Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, 2022).

*Statement by UN Women Executive Director Sima Bahous on Ukraine*

This statement is a direct response on behalf of UN Women to the invasion of Ukraine in February 2022. UN Women is perhaps the most obvious UN organisation to examine a response from since they are directly engaged with gender, especially women, within the UN system. As such, I have chosen this statement as a piece of data because I assume it will show the UN Women's understanding of gender-related issues during war and this will be relevant to the later overarching discussion of the UN's understanding of gender and gender justice during conflict (UN Women, 2022).

*Statement by UNFPA Executive Director Dr. Natalia Kanem on women and girls in Ukraine*

This statement is from February 24, 2022, and is also a direct response to the invasion of Ukraine. The United Nations Population Fund (UNFPA) is an organisation within the UN system that focuses on gender quality, reproductive health and youth empowerment (UNFPA, n.d.). Their response to the conflict is relevant for this project because 1) they once again show an aspect of the UN system and 2) the European Commission has donated €1.5 million to UNFPA to assist women and girls in Ukraine (Directorate-General for European Civil Protection and Humanitarian Aid Operations [ECHO], 2022), meaning responses from UNFPA in relation to Ukraine can also be construed as a combined response from both the UN and the EU. The statement is also a warning from the UNFPA on what impact the war will have on women and girls, which is interesting in combination with the next piece of data (UNFPA, 2022)

*Women and girls still suffering immense hardship as war in Ukraine passes one year mark*

This is a press release from UNFPA from the 23<sup>rd</sup> of February 2023, a year after the invasion. The reasons for choosing a UNFPA press release are the same as the above, but I am also including this data because the conflict is ongoing and as such it is interesting to see the evolution of responses to the situation. This press release sums up a year of war in Ukraine and what the UNFPA has been doing during that time. It can be viewed as a follow-up to the initial statement (and warning) from Director Dr Kanem and highlights how the Director's predictions came true (UNFPA, 2023).

#### *Independent International Commission of Inquiry on Ukraine*

This document is a truth inquiry done by the United Nations Human Rights Office of the High Commissioner and is published the 18<sup>th</sup> of October 2022. It was requested by the Human Rights Council resolution S-34/ 1 and encompasses findings from late February and March 2022. I choose to include this document as data because as mentioned in the theory section, truth inquiries and commissions is a commonly used during-conflict justice mechanisms and as such would be interesting to examine in the context of this project (United Nations General Assembly, 2022).

#### *Ukraine: EU is stepping up support to sexual and gender-based violence survivors*

This news article from the 13<sup>th</sup> of May 2022 is published on the European Commission's website and includes comments from both the Commissioner for Crisis Management and the Commissioner for Health and Food Safety. As such, much like the Meeting Coverage from the UN, it is a piece of data that both presents the situation in Ukraine and what is being done, while also actively being highlighted by the European Commission (ECHO, 2022).

#### *We must help victims of sexual violence in Ukraine*

Marija Pejčinović Burić, the Council of Europe Secretary General, published a media release on the 24<sup>th</sup> of November 2022 commenting on the issues of sexual violence in Ukraine. This piece of media is included as data because it is a direct response from the Council of Europe to the situation in Ukraine (Pejčinović Burić, 2022).

#### *The impact of the war against Ukraine on women*

This is a European Parliament resolution from May 5<sup>th</sup>, 2022, which accesses how women are impacted by the war in Ukraine. This document is included as data because it acknowledges

different aspects of how the war impacts women. Furthermore, it references many different legal frameworks, including the Rome Statute of the International Criminal Court and the UN Security Council Resolution 1325, which are both relevant to gender justice (European Parliament, 2022).

The data has been compiled into Appendix 2 and 3 in order to reference it in the analysis and conduct the keyword search efficiently.

### 3.4 Conducting the Analysis

The scope of this analysis takes place in the Ukrainian Conflict, which started in 2014 and goes to the present day. The focus of the analysis is the different responses of the European Union and the United Nations to the conflict that relates to either women or gender. Because the conflict has taken place over 9 years and presumably there will be many responses, I will be prioritising the most recent responses that explicitly showcase women and gender because they are more relevant.

For this project, I will be doing a deductive categorisation. The category I will explore for the keyword search is gender justice. The keywords I will be searching for in the data are sexual violence, gender-based violence, violence (that appears without sexual or gender-based in front) human rights, peace, justice, and accountability.

The keywords and themes search will be showcased in Appendix 1, table 1. The table will be constructed as such, however, 'keyword' and 'data 1, 2, 3... ' will be replaced in the analysis with the actual keywords and titles of data. The table will show the number of mentions of the keyword pr. piece of data.

	Data 1	Data 2	Data 3	Data 4
Keyword				
keyword				
keyword				
keyword				
keyword				

After the keyword search, I will conduct the analysis and discuss the findings in relation to the research question *How does the EU and the UN articulate their understanding of Gender Justice in their response to the Ukrainian Conflict?* The structure of the analysis is divided into

during-conflict and post-conflict and follows the identified transitional justice mechanisms that can be seen in the text and divided into the categories. The keywords are both discussed individually per mechanism, as well as any overlaps that appear in the data. After the during-conflict and post-conflict analysis, I have also added a miscellaneous section which includes the different findings of the keyword search that does not fit neatly into the predetermined categories yet is still relevant for the larger discussion. Lastly, as part of the analysis, I will be discussing how the findings of the analysis relate to gender justice and the research question.

### **3.5 Discussion**

Following the analysis, there is a brief discussion on how the findings of the analysis discussion relate to a larger discourse on gender justice, specifically the UN framework of Women, Peace and Security that was adopted in 2000 and has inspired the EU's framework on gender justice. I will also discuss how the findings of the analysis and the dominant understanding of gender justice might affect gender norms and practices.

## **4. Background of the Ukrainian Conflict**

In February 2014, Russia annexed Crimea by force as a direct result of the Ukrainian pro-Russian government of President Viktor Yanukovich collapsing and being replaced by a new Ukrainian parliament. A month later, the peninsula declared independence from Ukraine followed by a referendum that stated Crimea as a federal subject of Russia. Crimea has been Russian-controlled ever since, with the conflict spreading to the regions of Donetsk and Luhansk in eastern Ukraine (Walker, 2023, p. 4).

The international community's response to the crisis in Crimea was to condemn Russia's actions and refuse recognition of the referendum that declared Crimea to be part of Russia, considering the crisis a blatant breach of international agreements (Euromaidan Press, 2014). The United Nations General Assembly adopted Resolution 68/262 "Territorial integrity of Ukraine" on March 27, 2014, affirming the United Nations commitment to the "sovereignty, political independence, unity and territorial integrity of Ukraine within its internationally recognized borders" (United Nations Digital Library, 2014, p. 2) and reminding all states of the obligations to refrain from using threat or force against territorial integrity or political independence of another

state (... p. 1). A hundred members were in favour of the resolution while 11 voted no, 58 abstained from voting and 24 did not vote (United Nations Digital Library, 2014).

From the European Union's perspective, all EU Member States voted in favour of the United Nations Resolution and furthermore pursued a non-recognition policy and sanctions. The sanctions included banning; imports to the EU from Crimea unless accompanied by a Ukrainian origin certificate, investments by EU companies in the region, exporting products to Crimea in the transport, telecom, energy or fuel sector as well as any EU tourism services. Furthermore, the European Union froze the assets of 48 entities relating to the region and added 177 people to the sanctions lists for undermining Ukraine's sovereignty and territory (European Union External Action, 2021).

Later in the year, pro-Russia separatist forces in the eastern regions of Ukraine, Donetsk and Luhansk, announce self-rule, which is condemned by both Ukraine and Western countries. The armed conflict continues and escalates in the region until September when the Ukrainian government and the pro-Russia forces sign the first Minsk Agreement to end the fighting. The agreement only lasts a few days. What follows was a series of events resulting in more casualties before the second Minsk Agreement is signed in February of 2015 (Walker, 2023, p. 15).

Despite the agreement, the conflict did not stop, resulting in Ukraine choosing a future NATO membership as the country's strategic foreign policy objective and entering into an association agreement with the European Union. In 2019, Ukraine's current President, Volodymyr Zelenskyy was elected, and by September of the same year, the first prisoner exchange since 2014 took place. In 2020, Ukraine was granted NATO Enhanced Opportunity Partner status, which is a deepening of the cooperation between the country and NATO, though not quite a membership (Walker, 2023, pp. 15-16).

As a response, Russia announced mass military drills in April of 2021, which by the end of 2021, meant that nearly 100.000 Russian troops were amassed on the Ukrainian border. In exchange for defusing the crisis, Russia shares a list of security demands which include Ukraine never becoming a NATO Member State and NATO stopping any military action in eastern Europe and Ukraine (Walker, 2023, pp. 15; 27).

A month later, in 2022, the Foreign Office of the United Kingdom found evidence of a plan to install a pro-Russian government in Ukraine, which the United States responded to by placing 8500 troops on high alert and NATO reinforcing its eastern borders. On the 21<sup>st</sup> of February, President

Putin recognised the independence of the Donetsk People's Republic and the Luhansk People's Republic and three days later, Russia invades Ukraine (Walker, 2023, pp. 27; 39).

#### **4.1 The War in Ukraine**

Only moments before the Russian invasion of Ukraine, President Putin appeared on Russian state television to announce a "special military operation" meant to "demilitarize" and "denazify" Ukraine (CNN, 2023). The invasion shook the world and has resulted in many changes during the year and some months that the war has been ongoing, among others what have been dubbed the return of geopolitics (Auer, 2022).

As a response to the Russian invasion, Ukrainian President Zelenskyy decreed full military mobilisation, with means all men aged 18-60 are forbidden from leaving Ukraine, as well as introducing martial law and closing Ukrainian airspace (Walker, 2023, p. 39). On the 26<sup>th</sup> of February, Ukraine filed a lawsuit against Russia to the UN International Court of Justice at the Hague, which resulted in President Putin readying Russia's nuclear deterrence forces (Walker, 2023, p. 39; International Court of Justice, 2022, p. 1). The day after, rocket attacks kill dozens of civilians in Kharkiv and President Zelenskyy signed a request for Ukraine to join the EU immediately (Walker, 2023, p. 39). The International Court of Justice declared on March 16<sup>th</sup> that Russia's claim for invading Ukraine, stopping the genocide of Russian-speaking residents of the Donetsk People's Republic and the Lugansk People's Republic, is false and therefore the invasion is unjustified (International Court of Justice, 2022, pp. 1-4).

Many Western experts and analysts initially believed that if Russia were to invade Ukraine, Russia's large military force would simply overpower Ukraine, capture Kyiv and within days the conflict would be over (Gessen, 2022; Vorozhko, 2023; Eckel, 2023). This has clearly been disproven; however, a consequence of these predictions was, according to political expert Taras Kuzio, a lack of immediate support from the West in the form of heavy military equipment (Vorozhko, 2023). The Ukrainian Ambassador to the United States highlighted how the narrative of Russia as a "mighty military force and Ukraine as a weak society that would welcome Russian troops" (Vorozhko, 2023, np.) is a leftover from the Soviet Union and Russian Empire, as well as a result of the experience with Afghanistan where the President fled the country because of the Taliban threat (Vorozhko, 2023).

Instead of this scenario, President Zelenskyy and other important government figures released a video on the 25<sup>th</sup> of February, stating “we are all here defending our independence, our state and it will remain so” (as quoted in CNN, 2023). Zelensky had refused the evacuation offer from the US, instead asking for ammunition (CNN, 2023).

A year later, the fighting is still ongoing, military casualties are allegedly 100.000 give or take on both sides and Ukrainian civilian casualties are deemed in the 20 thousand (Mittal, 2023; United Nations, 2023). Over 8 million Ukrainian refugees have left the country and spread out into Europe, with over a million in both the Russian Federation, Poland and the Netherlands and between 100 and 300 thousand in the Republic of Moldova (UNCHR, 2023). With the martial law in place that forbids able-bodied men between 18-60 to leave the country, the majority of Ukrainian refugees are female and children. As of December 2022, 34.2% of refugees were male with 65.8% being female. However, around half of the male refugees are children, so the gender statistics of the working-age population between 18 and 64 are 26.7% male and 73.3% female (Botelho and Hägele, 2023).

## **4.2 The UN and EU's Response**

The general response to the Russian invasion on the 24<sup>th</sup> of February 2022 has been that of condemnation, judging the reasoning behind the aggression as unjustified (NATO, 2023; European Union External Action, 2022). Immediately after the invasion on the 24<sup>th</sup> of February, the United Nations Security Council suggested a draft resolution on ending the Ukraine crisis, which the Russian Federation vetoed (United Nations, 2022). This did not come as a surprise, considering Russia has one of the five permanent seats on the Security Council and therefore the right to veto.

However, the United Nations is a very large organisation of which the Security Council is only a part of – although an important part – so when the General Assembly on the 2<sup>nd</sup> of March proposed a resolution rejecting Russia’s invasion, demanding immediate withdrawal of Russian forces and for Russia to abide by the rules of the UN Charter, it was adopted with 141 in favour, 5 against and 35 abstaining (European Union External Action, 2022). Furthermore, the resolution affirmed the international community’s “commitment to the sovereignty, independence, unity and territorial integrity of Ukraine” as well as calling for “unimpeded access for humanitarian assistance” (European Union External Action, 2022, n.p.).

From the European point of view, the European Union responded to the invasion with condemnation and demanded that Russia immediately cease all military actions and withdraw its

forces. The EU has introduced several sanctions against Russia, including within finance, energy and transport, dual-use goods, export control and export financing, visa policy, a ban on transactions with the Russian Central Bank, a ban on Russian aircrafts in the EU airspace as well as various restrictions and bans within the energy sector (European Council, 2023). The last one might have been the one that European citizens have felt most keenly because of the resulting energy crisis and high inflation (Carter, 2023). The EU has also added several persons and entities to the sanctions list, including President Putin and other high-ranking members of the Russian government (European Council, 2023).

Additionally, the EU is also committed to show solidarity and provide support to Ukrainian refugees and has coordinated different humanitarian aid programmes with the United Nations, OSCE, NATO and the G7. They are also holding Russia and Belarus responsible for war crimes in accordance with international law (European Council, 2023).

## **5. Content Analysis**

The purpose of this analysis is to examine the chosen data as responses from the EU and UN in order to highlight how the two institutions are using transitional justice mechanisms in response to the war in Ukraine, and how the use and articulation of these mechanisms reflect the institutions' understanding of gender justice.

The following analysis has been divided into two categories, during-conflict justice and after-conflict justice. The structure of the analysis further follows the different transitional justice mechanisms that are evident in the data and systematically discuss how the keywords in Appendix 1 table 1 relate to these mechanisms. Although there are six during-conflict justice mechanisms and six post-conflict transitional justice mechanisms mentioned in the theory, not all are found in the data and so the only ones discussed here are truth-commissions, reparations and criminal justice. I have also added a miscellaneous category in order to mention any findings that do not fit into the predetermined categories yet are relevant for both transitional justice and gender justice. The last part of the analysis discusses how these mechanisms are specifically related to gender justice and what their presence in the response means for the EU and UN's understanding of gender justice.



## **5.1 During-Conflict Justice**

### **5.1.1 Truth-commissions and commissions of inquiry**

'Sexual violence' is mentioned 120 times throughout the data, where 41 of those mentions relate to the mechanism of truth-telling or truth-inquiry (Appendix 1, table 1). Most of these mentions reference the estimations of and reports on sexual violence committed by Russian soldiers against Ukrainians, but some are more focused on the act of truth-telling and evidence collection, emphasising the need for proper independent investigations of all reports in order to hold perpetrators accountable. An example of this is Brazil's representative in the Security Council Meeting Coverage, who calls "for urgent, independent investigations of all reports of sexual violence being committed in Ukraine" (Appendix 2, p. 2). Another mention, which differs from the other, is from the Russian representative, who insists that Russian soldiers are being accused without evidence, while the Chinese representative emphasises how serious a crime the use of sexual violence as a tool of war is and as such any allegations should be properly investigated (Appendix 2, pp. 7, 9). I am highlighting these because they are outliers, yet still manage to reiterate the importance of 'finding the truth' during the conflict in order to deliver justice.

'Gender-based violence' is not as common a keyword as 'sexual violence', and all 6 times it is mentioned in relation to truth-inquiries, it is also in direct correlation to sexual violence. For example, in the Security Council Meeting Coverage, the Mexican representative "called for the continued collection of evidence and disaggregated data on sexual and gender-based violence" (Appendix 2, p. 6). Like with sexual violence, this means that these mentions are mostly directly related to reports of sexual violence or the demand for investigations of reports. It is also important to emphasise that one of the chosen data pieces is the Independent International Commission of Inquiry on Ukraine and as such, is primarily focused on describing the different circumstances and cases. While the purpose of the Inquiry is to investigate allegations of war crimes from both sides in Ukraine, the main war crime highlighted is that of sexual and gender-based violence. The mentions of both keywords in the document appear in relation to descriptions of survivors having experienced sexual and gender-based violence, yet there is also a prominent focus on the methodology of the Inquiry, stating "the Commission includes findings in its report when, based on a body of verified information, an objective and ordinary prudent observer would have reasonable grounds to conclude that the facts took place as described" (Appendix 2, p. 22).

Considering there are many kinds of violence taking place during war, I thought it prudent to also simply include 'violence' as a keyword and examine the contexts where it appears without

'sexual' or 'gender-based' in front. Despite 'violence' appearing 16 times across the data, only one of those relates to truth-inquiry. It is mentioned in the Security Council Meeting Coverage that "[v]erification of cases is ongoing, and a national hotline on domestic violence, human trafficking and gender-based discrimination has been set up" (Appendix 2, p. 4). Although the use of violence here is in relation to a national hotline on domestic violence, it once again demonstrates the emphasis being put on proving that these cases are true by verifying and finding evidence. This persistence of 'finding and proving the truth' is presumably because the evidence of the truth-inquiries is needed in order to pursue justice in a criminal court and hold perpetrators accountable in that aspect. There are other aspects to transitional justice that can result in accountability and having achieved justice, yet in practice, it seems the end goal is to achieve criminal justice through trials and tribunals.

'Human rights' are mentioned 21 times in relation to this mechanism of truth-inquiry. Most of the mentions are either actors – such as the Human Rights Council or the Office of the United Nations High Commissioner – or in relation to reports of violations of human rights. These reports are especially prominent in the Inquiry because it investigates all allegations of violations of human rights. Although there can be many kinds of violations of human rights during war, some of which are mentioned in the Inquiry, most of the mentions are once again regarding sexual and gender-based violence (Appendix 2, pp. 20-40). The overarching theme for the use of human rights in relation to truth-inquiries is the way it is used to establish a legal framework and legitimacy. For example, in the Inquiry, there is a section dedicated to the legal framework, where it states, "pursuant to Human Rights Council resolution 49/1, international human rights law, international humanitarian law and international criminal law constitute the laws applicable to the mandate of the Commission" (Appendix 2, p. 23).

This is interesting when discussing transitional justice because according to Teitel (2014), the present normalisation of transitional justice has taken the form of human-rights law and is considered in use all the time, as opposed to traditional transitional justice which was only relevant during the transition period (p. 64). It is also this human-rights law that is actually used for justification of war, because in human rights discourse, if a state is violating human rights, then there is a legitimate excuse for the international community to intervene (Teitel, 2014, p. 64). Furthermore, if a state is reported to abuse human rights, then human-rights law can be used to legitimise the start of a war (Teitel, 2014, p. 64). As such, the emphasis on the results of the truth-commissions being violations of human rights might be interpreted to legitimise the continuation of

the war and shift the focus from achieving peace – in which the outcome can be many different things – to achieving justice, in which the only acceptable end of the war would be one where Ukraine wins and the perpetrator, Russia, is being held accountable.

Neither ‘peace’ nor ‘justice’ appear in the data in relation to truth-inquiry, however, ‘accountability’ is mentioned five times in relation to the mechanism. However, much like the other keywords, the mentions are all in relation to finding the truth in order to later prosecute the perpetrators and achieve criminal court justice (see Appendix 2, p. 6 for an example).

### **5.1.2 Reparations**

In the context of reparations, ‘sexual violence’ is mentioned 11 times across the data, with 8 of those mentions being in correlation with ‘gender-based violence’ (Appendix 1, table 1). These mentions appear as reparations in two different contexts, mainly as either identifying what support is needed for survivors of sexual violence or highlighting what services are actively being provided for the survivors during the war (see Appendix 2, p. 42 for an example). The support provided is primarily that of healthcare, but physically such as reproductive healthcare, and mentally in terms of counselling and psychological support. This is understandable considering the nature of sexual violence causes both physical and psychological damage to the victim (Resilience, n.d.).

Unlike the above category of truth-commissions, ‘gender-based violence’ appears 15 times in the data with only 8 of those overlapping with ‘sexual violence’. Much like ‘sexual violence’, the keyword is mentioned in the context of either providing support for victims or stressing the need these people have for comprehensive humanitarian services with a focus on physical and mental healthcare. However, the mentions of ‘gender-based violence’ that appear without ‘sexual violence’ show a broader understanding of reparations that goes beyond healthcare and includes both safe accommodation and employment possibilities. This broader understanding is especially found in the European Parliament Resolution which examines the impact of the war in Ukraine on women (see Appendix 3, p. 5 for an example).

Reparations of other forms of violence are only mentioned once in the data, in the Security Council Meeting Coverage. Here, the French representative applauds the UNFPA for providing survivors for victims of violence (appendix 2, p. 6). He did not present these reparations as relating to either sexual or gender-based violence, however, the UNFPA is primarily focused on reproductive health, so it might be safe to assume that these victims of violence are still meant as victims of sexual violence.

Compared to the mentions in relation to truth-commissions, there is also an interesting instance in the Security Council Meeting Coverage, where Pramila Patten, the UN Secretary-General's Special Representative on Sexual Violence in Conflict, states “[a]n active battleground is never conducive to accurate ‘book-keeping’ [...] if we wait for hard data and statistics, it will always be too late.” The international community must mobilize immediately on the basis of its common conviction that even one case of sexual violence is unacceptable" (as quoted in Appendix 2, p. 4). I am highlighting this instance because the general response from the UN seems to be very focused on truth-commissions and inquiries in order to collect evidence for a post-conflict prosecution, however, Pramila Patten is trying to shift the focus away from truth-commissions and emphasise another aspect of gender justice, mainly reparations, but also prevention. Arguably, prevention can be considered a part of reparations as a transitional justice mechanism, considering one of the key aspects of reparations is the guarantee of non-recurrence (ICTJ, n.d.).

'Human rights' only appears twice as part of reparations, and both times are in the European Parliament resolution. The European Parliament calls on the Commission to support and protect women human rights defenders against any persecution they might face for being active in Ukraine during the war (Appendix 3, p. 11). Considering it's a call for action, one could argue whether it counts as reparations or not, however, the awareness on the part of the European Parliament of what these women might experience because of the war is rather telling of the EU's larger understanding of gender justice. Unlike the UN, which is very focused on collecting evidence for a post-conflict prosecution, the EU seems to be more active 'on the ground', but in terms of preventative measures and supporting survivors and refugees.

This difference in perspective could be attributed to the organisational structure of the two institutions. The UN System is rather large with many small organisations within it, so determining any singular voice as a response to a conflict is difficult, however, considering the mandate of the UN Security Council it is not a reach to assume that their response also can be considered a dominant part of the larger UN response. The focus on truth-commissions, finding evidence and referencing human rights from the Security Council Meeting Coverage could be understood as a way for the UN to legitimise any potential action they would take in trying to achieve transitional justice and gender justice, yet they are limited by their organisational structure because Russia has a permanent seat on the Security Council and can veto any intervention (Council of Foreign Relations, 2023). As such, establishing that Russia is indeed in breach of international law (and therefore should be tried in the International Criminal Court) might be the Council's only possibility

for action. Comparatively, the EU can take a more practical approach. Ukraine is not a part of the EU, but the country is located in Europe, and they have an Association Agreement with the Union (European Union, n.d.). As such, it is strategically relevant for the EU to help Ukraine, both in terms of geography – if Russia gets control of Ukraine, they are closer to the EU border – and economically. Furthermore, the geographic location of Ukraine means that any refugees fleeing the country are mostly arriving in Europe and need help. It is this help which can be considered as part of transitional justice reparations.

As for the keywords 'justice' and 'accountability', there are a few mentions in both the Security Council Meeting Coverage and the Inquiry where the right to justice and accountability is highlighted as reparation for survivors (Appendix 2, p. 12, 21). This is interesting when examining the mentions of 'peace' in the data because there seems to be a conflict between wanting justice and accountability for the crimes, versus negotiating a peace so that these crimes can be prevented from happening. The Chinese representative at the Security Council emphasises "[o]nly through a ceasefire and the restoration of peace can the trauma facing Ukrainian women and children be fully avoided" (Appendix 2, p. 7).

According to Teitel (2014), this is a debate that has always been present in the transitional justice field, and it speaks to the nature of transitional justice itself because the concept is paradoxical in trying to punish past crimes while also creating new political systems that are capable of moving forward (pp. 58-60).

## **5.2 Post-Conflict Justice**

### **5.2.1 Criminal justice**

Post-conflict transitional justice mechanisms cannot be fully determined considering that the war in Ukraine is ongoing. Nonetheless, reading the data and analysing the different contexts the keyword search exposed, there seems to be an awareness of the preparations needed for post-conflict transitional justice processes, especially criminal justice. As mentioned in the during-conflict analysis, the keywords 'sexual violence' and 'human rights' often appear in correlation with evidence-gathering and verification of cases. These reports of sexual violence are emphasised by the different speakers at the Security Council Meeting Coverage to be war crimes, and as such should be prosecuted. Charles Michel, the President of the European Council, stresses that "sexual

violence is a war crime, a crime against humanity and a shameful act that must be prosecuted without impunity” (Appendix 2, p. 11).

Furthermore, the keywords of 'justice', and 'accountability' appear in relation to the idea of criminal court justice. In the Security Council Meeting Coverage, it is emphasised multiple times that victims of sexual violence deserve justice and that this justice is achieved by holding perpetrators accountable (for example, see Appendix 2, p. 2, 7). This idea of justice is primarily thought of as criminal justice, although the Inquiry also highlights how there should be forms of accountability that supplement that of criminal justice, "including measures of recognition, reparation, rehabilitation, reconstruction and, importantly, guarantees of non-repetition” (Appendix 2, p. 40). The European Parliament also emphasises how proper evidence collecting is needed in “order to bring the cases for prosecution to the ICC and hold the perpetrators accountable” (Appendix 3, p. 8) but interestingly, they also acknowledge how the track record for justice at the ICC regarding victims of sexual violence is rather low (Appendix 3, p. 5).

It is arguable whether this preparation for criminal justice can actually be considered a post-conflict mechanism or not, however, it does demonstrate an awareness of transitional justice by the two institutions, although it is rather fixated on criminal justice as the end goal of justice. That being said, the EU does seem to articulate a more nuanced understanding of gender justice, or at least that the current criminal justice system might not be the most useful in achieving gender justice.

### **5.3 Miscellaneous**

There are other instances in the data that can be considered relevant for transitional justice but were not necessarily found through the keyword search or fit within the predetermined categories. In both the Security Council Meeting Coverage and Pramila Pattens' Remarks the *Framework of Cooperation with the Government of Ukraine on the Prevention and Response to Conflict-Related Sexual Violence* is referenced and outlined multiple times. As mentioned in the theory section, prevention is an aspect of transitional justice and therefore, this framework can be considered a transitional justice measure and response. It is especially interesting which aspects are highlighted of the framework in the chosen data, such as addressing sexual violence in the framework of any ceasefire agreement and prohibiting amnesty for sexual violence crimes (Appendix 2, p. 4).

Included in the framework is also the strengthening of the rule of law and accountability in order to both deter and prevent sexual violence, ensuring reparations for survivors and their children and addressing conflict-related trafficking for the purpose of sexual exploitation (Appendix 2, p. 4). The reparations explicitly mention socioeconomic services which is an acknowledgement that sexual survivors need more than healthcare, yet the focus is still on survivors of sexual violence and does not acknowledge the broader socioeconomic gendered harm that war can bring.

Another brief mention related to transitional justice is that of sanctions. In the Security Council Meeting Coverage, multiple speakers reference the sanctions that the EU have adopted against Russia as a response to the invasion. Ghana's representative specifically argued that "conflict-related sexual violence and human trafficking should be treated as a basis for targeted sanctions against culpable actors" (Appendix 2, p. 7). This is relevant to transitional justice because, as mentioned in the theory section, the legal basis from 1988 determined that one of the fundamental obligations in the area of human rights is to impose suitable sanctions for those responsible for the violations (United Nations 2008, p. 2). Sexual violence became a war crime and a crime against humanity ten years later with the creation of the International Criminal Court and was first put into use in 2002 (International Criminal Court, n.d.). That Ghana's representative felt the need to point out the use of conflict-related sexual violence should be a basis for sanctions suggest that is not the norm, which is concerning from a gender justice point of view and in correlation with the mention of the low track record from the International Criminal Court (see Appendix 3, p. 5) paints a rather bleak picture of gender justice in practice.

The keyword search for 'peace' also revealed a prominent use of the word in relation to including women and girls in peace negotiations. For example, in the UN Women statement, Director Sima Bahous states "[w]omen's full and meaningful participation is also vital in improving peace and security processes" (Appendix 2, p. 16). This is relevant for two reasons. One, transitional justice is a key component to achieving lasting, sustainable peace (Duthie, 2022). Secondly, the UN has incorporated gender justice into the Women, Peace and Security agenda since 2000, with one of the key priorities being incorporating the "full, equal and meaningful participation of women in peacemaking, conflict prevention and peacebuilding" (Political and Peacebuilding Affairs, n.d.). So, the insistence on mentioning women in peacebuilding processes matches with the larger gender justice strategy in the UN, however, a common criticism from feminist scholarship suggests that UN rhetoric concerning women in peacekeeping is often stereotypical (Pruitt, 2018, p. 125). The Un relies on narratives of women peacekeepers as naturally

good at it, which is a gendered stereotype that can do more harm than good and hinder women's participation in peace and security (Pruitt, 2018, p. 125). So, the focus in the data on women's participation in peace processes can be a double-edged sword in regard to gender justice, because on one hand it is true that women are often not present at the negotiation table and therefore not heard (Paffenholz et al., 2016), but on the other, portraying women as inherently peaceful can be harmful to the overarching gender relations and gender equality.

Lastly, as a comment on the mechanisms of reparations, there is also an interesting quote in the data of the Security Council Meeting Coverage from the Albanian representative. He states "[l]et's help Ukrainians, particularly women and girls, go from nightmares to normal lives, to dreams" (Appendix 2, p. 10). This is interesting because the idea of reparations comes from the concept of restorative justice, where the point of reparation is to return the victims to their pre-conflict state. From a gender justice perspective, this would mean that if a state does not have gender equality, and that is not acknowledged and worked into the ceasefire agreements or negotiations for peace, then the people would presumably return to 'normal' gender relations that could be considered against transitional justice because they would count as systematic abuse by the state (Bell & O'Rourke, 2017, pp. 40-41). Before the Russian invasion, Ukraine's gender equality status was already on the lower end of the scale. Ukraine has many traditional values and patriarchal views, which are only made worse by the conflict. The invasion has resulted in higher levels of subjective poverty, economic insecurity, lower employment rates – despite having the same education as men – as well as lower personal security (Machlouzarides et al., 2022). For the Albanian representative to mention not just a 'return to normal' but aiming towards 'dreams' suggests that the representative at least has an understanding that gender equality in Ukraine is still a work in progress, regardless of the war.

#### **5.4 In relation to gender justice**

Based on the larger scope search for data as well as the keyword search, it is clear that there is a prominent focus on gender justice as primarily justice for victims of sexual violence. The original data search did not include sexual violence as a criterion but was simply a search for any response to the war including gender. Almost all the data that was available – and has been included in this project – relates primarily to sexual violence. The only data that does not reference sexual violence is the UNFPA statement from Dr Natalia Kanem which was published on the day of the Russian



invasion and before any actual reports of sexual violence had been made (UNFPA, 2022). However, the UNFPA is an agency concerned with reproductive health and their statement included that their priority was to ensure the health, rights and dignity of women and girls including being able to give birth safely. While this is not directly related to sexual violence and is indeed a really important task, especially during war, it still suggests a bit of biological determinism that confuses sex and gender and equals gender with women.

Generally, across the data, gender seems to be equated to women. Of course, when the majority of the victims of sexual violence that are discussed in the data are indeed women and girls, it should be acknowledged that this specific issue is affecting women disproportionately. And there are attempts in the data to highlight how men and boys have also been affected by sexual violence. Especially the Norwegian representative in the Security Council Meeting Coverage emphasised the many different gender identities and sexualities that have been affected by the war in Ukraine (Appendix 2, p. 7). However, the few attempts at highlighting men and boys throughout the data only make it more obvious how often 'gender' is assumed to be women and girls. And additionally, how often 'gender-based violence' is assumed to only include 'sexual violence'.

This narrow focus on 'sexual violence' as the most important or perhaps only gendered harm that happens during war can be harmful on multiple levels, formal and informal. According to Bluen (2016), the current global legal and policy framework surrounding sexual violence has contributed to a universal narrow focus on sexual violence as a strategy or instrument of war (p. 214). While the inclusion of sexual violence as a war crime that can and should be prosecuted is an important step for gender justice, it also has other consequences. Bluen especially criticises the limitations of what is considered a war crime, crime against humanity or genocide, because for the International Criminal Court to prosecute the perpetrators, sexual violence has to be shown as a "systematic attack against any civilian population on national, political, ethnic, racial or religious grounds" committed with "intent to destroy, in whole or in part, a national, ethnical, racial or religious group" (as quoted in Bluen, 2016, p. 216).

This legal framework has resulted in a global narrative in which conflict-related sexual violence is almost exclusively considered a weapon of war. This creates constrictions on when sexual violence during war can be prosecuted, because how do you prove intent? This framing does not encompass the nuances and multiplicity of causes and acts of sexual violence, and it does not recognise that both victims and perpetrators can be found on both sides of war and does not equate the 'enemy' or 'opponent' to always attack the 'defender' (Bluen, 2016, p. 217). As a result, acts of

sexual violence during the war that e.g., includes two people on the same side, 'random' instances of sexual violence or Ukrainians violating Russians might not be considered as conflict-related sexual violence that can be prosecuted. This demonstrates how formal institutions, such as a legal framework, can affect informal institutions, such as our understanding of conflict-related sexual violence and the following practices surrounding it.

Interestingly, despite the otherwise overwhelming presence of the narrative of Russian soldiers using sexual violence as a weapon of war against Ukrainians in the data, Pramila Patten mentions a meeting with the Mission of the Russian Federation where she emphasised that her office is “at the disposal of all parties to the conflict to support the implementation of preventative measures that mitigate the acute risks of conflict-related sexual violence” (Appendix 2, p. 4). So, at least one office in the UN system is trying to change the norms and informal practices in order to broaden the general understanding of conflict-sexual violence, which could subsequently result in a change of formal practices.

Another level of harm that the dominant focus on sexual violence can cause, is more directly related to the informal institutions. According to Lemaitre and Sandvik (2014), the prioritisation of sexual violence comes at the expense of considering other gendered harms that happen during war (p. 244). Furthermore, this dominant narrative can be considered as sexualising and infantilising women, because it suggests that sexual harm is the worst thing that can happen to them, and paints women as mostly victims of war (Lemaitre and Sandvik, 2014, p. 244).

This critique is not attempting to discredit the harm that survivors of sexual violence have experienced but rather seeks to highlight how other forms of gendered harm also need attention. For example, forced internal displacement can disproportionately affect women's socio-economic and legal status and set back gender equality as a result (Lemaitre and Sandvik, 2014, p. 245). Additionally, because of the seemingly hegemonic understanding of gender as equating to women, neither of the institutions seems to be considering that the forced conscription of men to fight in the war in Ukraine should also be considered gendered harm with gendered consequences, both for men and women. During the war, it is disproportionately men who are forced to fight and experience both mental and physical harm as a result, and if we think about the future post-conflict reparations, research highlights how the effects of combat exposure can result in "criminality, alcohol use, marital problems, mental illness and reduced life span" (Howell and Wool, 2016, p. 250). These issues often happen in communities that are in precarious situations because of the war and have another gendered aspect, that of shifting the burden of care of the family and community unto the

partner, who are often women (Howell and Wool, 2016, pp. 250-51). Furthermore, soldiers who have been exposed to violent combat are more likely to kill another person or engage in verbal and physical aggression, including domestic violence (Howell and Wool, 2016, pp. 252-253).

In conclusion, the UN and EU's focus on sexual violence, both through truth-commissions in order to later prosecute and hold perpetrators accountable, but also for reparations of survivors of sexual violence, can be viewed as the institutions articulating a narrow understanding of gender justice which only concerns sexual violence as a weapon of war that is used against the nation by targeting the nation's women. There are exceptions to this understanding throughout the data as mentioned multiple times in the analysis, but they are few and far in-between. From a FI perspective, this narrow understanding of gender justice can have negative gendered effects on post-conflict gender relations and equality because it stereotypes women as victims, considers the worst harm that can happen to them to be sexual – which sexualises women – and distracts from other kinds of gender-based violence and harm that happen during war.

## **6. Discussion**

As mentioned at the beginning of this thesis, it has already been well established by feminist scholarship that gender influences how people experience war and conflict. The International Criminal Court has been responsible for establishing a specific notion of criminal gender justice in relation to sexual violence through the Rome Statute, and the UN has provided a framework, UN Security Council Resolution 1325, the Women, Peace and Security agenda (WPS), through which women is included in peace and security processes (International Criminal Court, n.d.; Political and Peacebuilding Affairs, n.d.). The adoption of Resolution 1325 was a breakthrough for both understanding women's rights as a matter of international security and started a gender mainstreaming process within the UN system (Lemay Langlois, 2017, p. 154). The EU also has a Policy Framework on Support to Transitional Justice which includes a gender dimension that references the adoption of the 2008 EU Comprehensive Approach to the EU implementation of the UN Security Council Resolution 1325 and 1820 on Women, Peace and Security (European External Action Service, 2015, section 7). As such, it seems relevant to this project to discuss how the response to the war in Ukraine relates to this larger discourse of gender justice and the criticisms that have been made by feminist scholars of the WPS.

The WPS agenda is based on four pillars: the role of women in conflict prevention, women's participation in peace processes, protecting the rights of women and girls both during and post-conflict and women's specific needs in relation to reparations (Political and Peacebuilding Affairs, n.d.). Following the original Resolution 1325, other resolutions within the WPS agenda have been implemented throughout the years. Four of these are specifically focused on the protection of women against sexual violence, while three emphasise the need for women's participation in peace processes (Lemay Langlois, 2017, p. 155).

A common critique of the framing of the WPS has been the loose notion of what gender means, and how it is automatically equated with women. (Lemay Langlois, 2017, p. 155). According to Lemay Langlois (2017), it is not just in UN Security Council Resolutions that this is an issue but can also be found as a part of the larger discourse in the UN system, including the Secretary-General's reports. In the same vein, the loose notion of gender transfers to gender-based violence, which is what the UN is trying to stop and prevent by implementing the WPS. Parts of the UN system, such as the UN Human Rights Office, understand sexual violence to be an aspect of gender-based violence, but the Security Council does not have a definition. This is important because the Security Council is responsible for the normative understanding of transitional justice since its mandate is to maintain peace and security (Lemay Langlois, 2017, p. 147, 156). Generally, they understand sexual violence committed against women to be gender-based violence, but there does not necessarily exist the same common implicit understanding when it comes to sexual violence committed against men or persons based on their gender or sexual identity (Lemay Langlois, 2017, p. 156).

This was also something I came across when analysing the data, as briefly mentioned in the *Miscellaneous* section of the analysis. Sexual violence and gender-based violence were generally used interchangeably or in direct correlation with each other and not acknowledging other kinds of gendered violence. At the same time, it was often implicitly and explicitly understood in the responses to mainly include women and girls. There are only a few instances across the data where this is not the case, and those are arguably not enough to be considered part of the larger hegemonic discourse on gender justice. This focus on sexual violence as the main gendered harm that happens to women during war has also been criticised by Haynes, Cahn and Ní Aoláin (2012), who has reviewed the impact of UN actions in terms of achieving gender centrality and have come to the conclusion that this is a patriarchal view of women's needs that essentialises them to their sex and does not address any underlying structures that produce systematic sexual violence (p. 210). From a

FI perspective, this means that by using the WPS agenda as the main framework for gender justice, both the UN and the EU as institutions are gendered in a way that produces masculine views on gender and women, which has gendered effects on both the formal institutions – e.g., the implementation of resolutions – and informal practices and norms such as reproducing stereotypes of women as victims of sexual violence and constructing gender as 'women', thereby ignoring the gendered needs of other gender identities, including men.

## 7. Conclusion

In this thesis, I have aimed to answer the research question of *How does the EU and the UN articulate their understanding of Gender Justice in their response to the Ukrainian Conflict?*

This research question is problematised as a result of the social constructivist approach of feminist institutionalism, which views the relationship between formal institutions and informal institutions as capable of influencing each other, and therefore considers how the formal institutions of the EU and the UN respond to the war in Ukraine can have consequences for both the conflict and new post-conflict societal practices. Especially the two institutions' understanding of gender justice can affect what is viewed as gendered harm, who is considered harmed, and overall gender relations and equality.

In order to answer this question, the project used the frameworks of transitional justice theory and feminist institutionalist theory in combination to understand transitional justice mechanisms and how they are applicable to gender justice. The method of analysis chosen was content analysis, which searches for patterns in communication. The scope of the analysis was used to locate the responses that could be considered data and resulted in nine documents from various organs and agencies in both the UN and the EU. A keyword search using different relevant keywords for gender justice was then collected in Appendix 1, table 1, and used for the discussion of the analysis. This discussion of analysis examined each transitional justice mechanism present in the responses and then related them to gender justice.

The conclusion of the analysis, and subsequent answer to the research question, was that both the EU and the UN in their response to the Ukrainian conflict have a dominant understanding of gender justice as justice for victims of conflict-related sexual violence, primarily women. There are attempts at including a more nuanced view throughout the responses by different actors, and the EU

does differ from the UN in a few aspects of transitional justice mechanisms, however, both institutions clearly understand the main gendered harm of conflict to be sexual violence with women as victims. In the discussion section of this thesis, I have briefly related this dominant understanding in relation to the case study to a larger discourse on the UN's gender justice framework where common criticisms from feminist scholars are that prioritising sexual violence and equating gender with women disregards other gendered harms, such as socio-economic harm, and portrays both the EU and the UN as gendered institutions whose gendered effects can be considered patriarchal and can have negative consequences towards gender equality and gender justice.

This thesis has had the limitations of the fact that the war in Ukraine is ongoing, which has limited the amount of available data. Furthermore, the lack of diversity in gender topics of the data can both be considered a limitation and a sign of the dominant discourse surrounding gender justice. There is also the issue of the UN system itself and how it is difficult to determine a singular voice that represents the UN. As a different approach, I could have focused on purely the UN Security Council or another agency, or perhaps chosen a past conflict to examine the institutions' understanding of gender justice there.

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